

A  
KATTA SURENDERA  
v.  
STATE OF A.P.  
(Criminal Appeal No. 1525 of 2007)  
B  
JUNE 13, 2008  
[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

*Penal Code, 1860 :*

C  
s. 302 and 304 (Part I) – Murder – Dispute between parties – Fatal blow to deceased – Conviction u/s. 302 with life imprisonment by courts below – Case of accused that he was exercising right of private defence – Held: Not tenable – Even if plea of accused is accepted, it ceased long before blow was given by accused – It cannot be said that because single blow  
D was given offence not covered u/s. 302 – It depends on several factors – On facts, conviction altered to s.304 (Part I)– Custodial sentence of 10 years imposed.

E  
ss. 96 – 101 – Right of private defence – Availability and extent of – Commencement and continuance of the right – Stated.

F  
There was a dispute between the residents of two villages with regard to laying of the road. On the fateful day, the accused persons armed with weapons and bag containing bombs and sticks went to the place where D-1, D-2 and others were working and attacked them. A-13 and A-2 hurled bombs and bomb of A-13 exploded. A-1 stabbed D-1 with a dagger and he succumbed to his injuries. A-2 and A-4 attacked D-2. Other accused attacked the prosecution witnesses. Complaint was lodged. Investigation was carried out. Trial court convicted A-1 for the offence punishable u/s.302 IPC and imposed life imprisonment with fine. Four accused were convicted u/s.324  
G IPC and sentenced to 3 years imprisonment. Other ac-

cused were acquitted. Appeal was filed. A-1 pleaded that he exercised right of private defence; and that as single blow was given offence was not covered u/s.302 IPC and offence should be altered to s.304 Part II IPC. High Court did not accept the plea and upheld the conviction of A-1. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 IPC deals with the subject-matter of right of private defence. The plea of right of private defence comprises the body or property (i) of the person exercising the right, or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101 IPC define the limit and extent of right of private defence and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger

A to the body arises from an attempt, or threat to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. As soon as the cause for  
 B reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence. [Para 10] [1195- G & H; 1196-A,B,C,D,E & F]

C *Jai Dev v. State of Punjab* 1963 (3) SCC 489; *Raj Pal v. State of Haryana* 2006(9) SCC 678 – relied on.

D 1.2. In the instant case, even if it is accepted that at some point of time the appellant was exercising right of private defence, the same had ceased long before the blow was given by the appellant. It cannot be laid down as a rule of universal application that whenever a single  
 E blow is given application of section 302 IPC is ruled out. It would depend upon several factors. In the circumstances of the instant case, conviction is altered to one under section 304 Part I IPC. Custodial sentence of ten years would meet the ends of justice. [Paras 12, 13 and 14] [1196 - G & H; 1197 - A & B]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1525 of 20007

F From the final Judgment and Order dated 20.7.2006 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Crl. Appeal No. 1015/2005

G A.T.M. Rangaramanujam, Anu Gupta, V. Sridhar Reddy and Rani Jethmalani for the Appellant.

D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

H Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High

Court upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). By judgment dated 20<sup>th</sup> July, 2006 the High Court dismissed the appeal so far as the appellant is concerned. While upholding the conviction of the other appellants before it for offence punishable under Section 324 IPC, custodial sentence was reduced to one year from three years, fine amount was retained. Two persons, namely, M. Subbarayappa and Y. Ramappa (hereinafter referred to as D-1 and D-2 respectively lost their lives on 9.3.2002. Allegation was that the appellant and co-accused persons were responsible for their death.

2. Background facts in a nutshell are as follows:

The deceased and the material witnesses are the residents of Chinnavenkataramanagari Pale and the accused are residents of Kammavaripalle. Since the time of MPTC elections in 2001, there were disputes between both the villagers. As there was no road facility to approach Chinnavenkataramanagari village, the deceased and material witnesses were trying to lay a road connecting to their village to Mulakalachervu. About six months prior to the incident, they purchased a land from PW-16 in the name of PW5 and another to lay the road. Against the said purchase, the villagers of Kammavaripalle filed a suit seeking an order of injunction restraining the defendants from laying the road and the result of the suit went in favour of villagers of Chinnavenkatramangaripalli village. On 8.3.2002, on information that the villagers were attempting to lay the road, the Sub-Inspector of Police (PW-31) called both the villagers and advised them to wait for one week as the matter was pending. In spite of it, on 9.3.2002 the villagers started laying the road. PW-5 and another, in whose name the land was purchased, requested PW-31 to arrange police protection, on which PW 31 sent PW 17 along with him immediately and also sent PW-18 and three other constables to the scene of offence. Subsequently, PW-5 and PW 17 went and informed the villagers to stop the work, as there was likelihood of some incident. While they were standing, all the accused armed with sickles, knives

A daggers and a bag containing bombs and sticks went near them shouting as to how they dared to lay road and they will see their end. So saying, the accused attacked the prosecution party. A-13 hurled a bomb, which exploded and A-2 also hurled a bomb which fell on the ground, but did not explode. They all tried to run away due to explosion of the bombs. A1 stabbed the deceased No. 1 with a dagger on his left chest due to which he fell down and succumbed to the injury on the spot. Then A-2 to A-4 attacked deceased No.2. Immediately, A-2, A-4 to A-11, A-13 to A-18, A-19 to A-24, A-30 and A-32 attacked PWs. 1 to 11. On a complaint given by PW-I, the police registered a crime and took up investigation. After completion of the investigation, the police laid the charge sheet.

3. The prosecution, in order to prove the guilt of the accused, examined PWs 1 to 33 and marked Exs. P.1 to P.35 and M.Os. 1 to 25. On defence side, DWs 1 and 2 were examined and Exs. D-1 to D-65. Contradictions in the statements of the prosecution witnesses were marked. The trial Court, after considering the oral and documentary evidence, convicted A-1 for the offence punishable under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 2,000/- in default to suffer simple imprisonment for three months. A7, A9, A 11 and A-17 were convicted for offence punishable under Section 324 IPC and sentenced each to undergo imprisonment for three years and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for two months. All the accused were acquitted for all other offences. The appellant and the three convicted accused persons being aggrieved by the judgment of the trial Court, preferred appeal before the High Court challenging its validity and legality.

4. The allegation of the prosecution was that A-1 stabbed deceased No. 1 with a dagger and killed him. A-7, A-9, A-11 and A-17 were convicted for the offence under section 324 I.P.C. for causing injuries to the witnesses.

5. The accused pleaded that there was pelting of stones

by the mob in connection with the dispute regarding the laying of the road, therefore, it is very difficult to say as to who beat whom and who threw stones on him and it is not safe to find the appellants guilty of any of the offences and they shall be given benefit of doubt and the judgment of the lower Court has to be set aside.

6. The High Court found that the accusation was clearly established so far as the appellant is concerned and did not accept the plea that because a single blow was given the offence was not covered under Section 302 IPC and was to be altered to Section 304 Part II IPC.

7. In support of the appeal, learned counsel for the appellant submitted that the background facts have not been correctly analysed by the trial court and the High Court. It should have been held that the appellant was exercising the right of private defence.

8. According to the appellant even if the prosecution version is accepted in toto he was exercising the right of private defence and therefore no offence was made out.

9. Learned counsel for the respondent-State on the other hand submitted that the case is clearly covered under Section 302 IPC. The accused-appellant was the leader of the group and no explanation was offered why he was carrying a knife with him unless he had requisite intention to cause homicidal death of the deceased No. 1. Additionally it is submitted that there is no scope for accepting the plea of right of private defence.

10. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section

A 97 IPC deals with the subject-matter of right of private defence. The plea of right of private defence comprises the body or property (i) of the person exercising the right, or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101 IPC define the limit and extent of right of private defence and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In *Jai Dev v. State of Punjab (1963 (3) SCC 489)* it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

G 11. The above position was highlighted in *Raj Pal v. State of Haryana (2006(9) SCC 678)*.

H 12. In the instant case, even if it is accepted that at some point of time the appellant was exercising right of private defence, the same had ceased long before the blow was given by the appellant.

13. It cannot be laid down as a rule of universal application that whenever a single blow is given application of Section 302 IPC is ruled out. It would depend upon several factors. A

14. In the circumstances of the present case, conviction is accordingly altered. The appropriate conviction is under Section 304 Part I IPC. Custodial sentence of ten years would meet the ends of justice. B

15. The appeal is allowed to the aforesaid extent.

N.J.

Appeal partly allowed.