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MUNNEY KHAN

v.

STATE OF MADHYA PRADESH

August 28, 1970

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[V. BHARGAVA AND I. D. DUA, JJ.]

Indian Penal Code (*Act* 45 *of* 1860), *ss.* 96 *to* 101—*Right of private defence—Nature of—Availability in the case of a free fight.*

The appellant was charged with the offence of murder. The trial court observed in its judgment that it appeared that the deceased must have picked up a quarrel with the appellant's brother, that the deceased overpowered the appellant's brother, threw him on the ground and sat on his chest giving him fist blows, and that since the appellant could not prevent the deceased hitting his brother by the use of his fist, he stabbed the deceased in the back with a knife. The trial court found the appellant guilty of murder, and the High Court dismissed his appeal summarily, agreeing generally with the conclusions of the trial court.

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On the question of the nature of the offence,

HELD : The appellant had exceeded his right of private defence and his guilty of culpable homicide not amounting to murder punishable under the first part of s.304, I.P.C.

(*Per* Bhargava, J.) On the facts stated the deceased was the aggressor and a right of self-defence of the body of his brother had accrued to the appellant. But the right is governed by s. 101, I.P.C., and is subject to the limitations that in the exercise of the right death may not be caused, and that the force used should not exceed the minimum required to save the person in whose defence it is used. In the present case, the use of the knife itself was in excess of the right and it became much more excessive when the blow was given in a vital part of the victim's body and was, in the ordinary course of nature, likely to cause his death. [945 G-H; 946 A-D]

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(*Per* Dua, J.) The right of private defence is codified in ss. 96 to 100 I.P.C. By enacting these sections the authors of the Code wanted to except from the operation of its penal clauses classes of acts done in good faith for the purpose of repelling unlawful aggression. This right is available against an offence and, therefore, where an act is done in exercise of right of private defence such an act cannot give rise to a right of private defence in favour of the aggressor in return. This would seem to be so even if the person exercising the right of private defence has the better of his aggressor provided he does not exceed his right because the moment he exceeds it he commits an offence. There is also no right of private defence when there is time to have recourse to the protection of public authorities. This right is essentially a defensive right circumscribed by the statute, and should not be allowed as a pretext for vindictive, aggressive or retributive purpose. As this right vests even in strangers for defence of body and property of others against offences, the courts should be careful in seeing that no one on the mere pretext of exercise of right of private defence takes sides in a quarrel between two or more persons and inflicts injuries on one or the other. When two parties are having a free fight without disclosing as to who is the initial aggressor it would be dangerous as a general rule

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to clothe either of them or a sympathiser with a right of private defence. If however, one of them is shown to be *committing an offence affecting human body* then that would give rise to such right . When there is no initial right of private defence there can hardly be any question of exceeding that right. [947 E-H; 948 A-B] A

In the present borderline case the facts of which are peculiar, there was no firm finding by the trial court that the deceased was guilty of unlawful aggression or of an offence giving rise to the right of private of defence. In view of the summary dismissal of the appeal by the High Court in a brief order expressing general agreement with the conclusions of the trial court the appellant was given the benefit of the trial court's observation that the deceased must have picked up a quarrel with Zulfikuar. [948 B-D] B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 64 of 1968. C

Appeal by special leave from the judgment and order dated March 29, 1966 of the Madhya Pradesh High Court in Criminal Appeal No. 104 of 1966.

U. P. Singh, for the appellant.

I. N. Shroff, for the respondent. D

The following Judgments were delivered by

Bhargava, J. This is an appeal by special leave by one Munney Khan who has been convicted for the offence of murder punishable under section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. In this case, it is not necessary to describe in detail the two versions which were put forward by the prosecution and the defence in the Court of Sessions. It is sufficient to give the findings of fact recorded by the Sessions Judge, who tried the case, which have been affirmed by the High Court of Madhya Pradesh. E

In Berkhedi, the residents, in accordance with their usual practice, gathered to celebrate "Durga Utsav" on 1st October, 1965 near Kabir Mandir and, in that connection, a drama of "Amarsingh" was to be staged at about 10 or 10.30 p.m. Reotisingh deceased was one of the volunteers who was posted on duty in connection with the arrangements close to the sitting place reserved for the ladies in order to check men from entering that area. At about 10.30 p.m., the appellant and his brother Zulfiquar came and wanted to pass through the ladies corner, but were prevented by Reotisingh who asked them to go *via* a lane, though that was a longer route. The appellant being annoyed pushed Reotisingh and insisted on passing through the ladies corner. There was a short scuffle which subsided when other persons intervened. After a short while, Reotisingh went to his house in order to take his meals, leaving his duty in charge of Pooranlal. When Reotisingh was returning after taking his meals, he met the appellant F G H

A and his brother Zulfiquar and a quarrel started. Though, according to the prosecution, the appellant and his brother had launched the attack, the finding recorded by the Sessions Judge is that it is much more likely that it was Reotisingh who picked up a quarrel with Zulfiquar first. He overpowered Zulfiquar and threw him on the ground and sat on his chest giving fist blows. The appellant B Munney Khan, seeing his brother being overpowered and beaten, came to his rescue and tried to save him by giving fist blows to Reotisingh. When this did not succeed, he took out a knife and stabbed Reotisingh in the back. In the meantime, other persons arrived; and the appellant and his brother Zulfiquar ran away. It may be mentioned at this stage that the case put forward by the C appellant was that he did not stab Reotisingh. According to him, Chotelal witness arrived to intervene and had a knife in his hand with which Chotelal aimed a blow at the appellant who dodged it and the blow hit Reotisingh. This version of the defence was not supported by any evidence and was disbelieved by the Sessions Judge. The Sessions Judge recorded the finding, as stated by us earlier, to the effect that Munney Khan appellant gave the knife D blow at the back of Reotisingh when he found that he could not prevent Reotisingh from continuing to shower fist blows on Zulfiquar by merely fist blows to Reotisingh.

This version was accepted by the Sessions Judge on the basis of the evidence of eye-witnesses, Manilal, Chotelal and Shankerlal, which was corroborated by the evidence of two other witnesses E Pooranlal and Motilal. It was also in line with the medical evidence. This assessment of the evidence was affirmed by the High Court. On these facts as found by the Sessions Judge and affirmed by the High Court, the appellant has been convicted for the offence of murder under s. 302, I.P.C. Even learned counsel for the F appellant did not advance any arguments before us to displace these findings of fact.

However, the main point that was canvassed and that arises on these facts is whether the conviction of the appellant for the offence under s. 302, I.P.C. is justified. The findings of fact show that the knife blow was given by the appellant to Reotisingh when G Reotisingh had picked up a quarrel with the appellant's brother Zulfiquar, had overpowered him, was sitting on his chest, was giving him fist blows, and could not be prevented from doing so by the appellant by mere use of his fist. Clearly, in these circumstances, Reotisingh was the aggressor and was causing hurt to Zulfiquar, the brother of the appellant, so that a right of self-defence H of body of his brother Zulfiquar had accrued to the appellant. That right, however, could not justify the act of appellant in stabbing Reotisingh in his back so as to cause his death. The right of private defence was a very limited one. It only extended to

causing hurt of any kind to Reotisingh, but it did not provide any justification for giving a fatal blow. Such a right of private defence is governed by section 101, I.P.C. and is subject to two limitations. One is that, in exercise of this right of private defence, any kind of hurt can be caused, but not death; and the other is that the use of force does not exceed the minimum required to save the person in whose defence the force is used. In these circumstances, in the present case, when Zulfiquar was being given fist blows only, there could be no justification at all for the appellant to stab Reotisingh with a knife and particularly to give him a blow which could prove fatal by aiming it on his back. The use of the knife itself was in excess of the right of private defence and it became much more excessive when the blow with the knife was given on a vital part of the body which, in the ordinary course of nature, was likely to cause the death of Reotisingh. From the fact that the blow was given in the back with a knife an inference follows that the appellant intended to cause death or at least intended to cause such injury as would, in the ordinary course of nature, result in his death. In adopting this course, the appellant would have been clearly guilty of the offence of murder had there been no right of private defence of Zulfiquar at all. Since such a right did exist, the case would fall under the exception under which culpable homicide does not amount to murder on the ground that the death was caused in exercise of right of private defence, but by exceeding that right. An offence of this nature is made punishable under the first part of section 304, I.P.C. Consequently, the conviction of the appellant must be under that provision and not under s. 302, I.P.C.

As a result, the appeal is partly allowed, the conviction under s. 302, I.P.C., is set aside, and the appellant is convicted instead under the first part of section 304, I.P.C. In view of the change in the offence for which the appellant is being punished, we set aside the sentence of imprisonment for life and, instead, award him a sentence of seven years' rigorous imprisonment.

Dua, J. I agree. The trial court in the course of its judgment observed :

> "There is nothing on record to show how the quarrel started. It seems that when the deceased Reoti Singh was returning from his house to the place of celebrations he must have picked up a quarrel with Zulfikar whom he overpowered by throwing him on the ground. The accused Munne, seeing his brother being overpowered by the deceased must have come to his rescue and assaulted him (deceased)."

A It is true that this observation was made by that court while dealing with the question of common intention to murder alleged to have been shared by Zulfiquar with the appellant and it is also true that some observations in certain other parts of its judgment suggest that there was a free fight between the deceased on one side and the appellant and his brother on the other. Particularly B in the portion dealing with the question of the right of private defence, the trial court held that there was a hand to hand scuffle between Zulfiquar and the deceased. But in view of the fact that the High Court summarily dismissed the appeal in a brief order generally agreeing with the conclusions of the trial court I am inclined to give the appellant the benfit of the trial court's observation that the deceased must have picked up a quarrel with Zulfiquar. C We were not taken through the evidence in this Court.

I would, however, like to state very briefly my opinion on the law of private defence and I propose doing so in order to guard against a possible erroneous impression about it arising from the peculiar facts of this borderline case in which there is no firm D finding that the deceased was guilty of unlawful aggression or of an offence giving rise to the right of private defence.

The right of private defence is codified in ss. 96 to 100, I.P.C. which have all to be read together in order to have a proper grasp of the scope and the limitations of this right. By enacting these E sections the authors of the Code wanted to except from the operation of its penal clauses classes of acts done in good faith for the purpose of repelling unlawful aggression. This right is available against an offence and, therefore, where an act is done in exercise of the right of private defence such act cannot give rise to any right of private defence in favour of the aggressor in return. This would seem to be so even if the person exercising the right F of private defence has the better of his aggressor provided of course he does not exceed his right because the moment he exceeds it, he commits an offence. There is also no right of private defence in cases where there is time to have recourse to the protection of public authorites. The right of private defence is essentially a defensive right circumscribed by the statute, available only when G the circumstances clearly justify it. It should not be allowed to be pleaded or availed of as a pretext for a vindictive, aggressive or retributive purpose. According to s. 97 this right vests even in strangers for the defence of the body and property of other persons against offences mentioned therein. The courts have, therefore, to be careful in seeing that no one on the mere pretext H of the exercise of the right of private defence takes sides in a quarrel between two or more persons and inflicts injuries on the one or the other. In a case when two parties are having a free fight without disclosing as to who is the initial aggressor it may be

dangerous as a general rule to clothe either of them or his sympathiser with a right of private defence. If, however, one of them is shown to be committing an offence affecting human body then that would of course seem to give rise to such right. If there is no initial right of private defence then there can hardly be any question of exceeding that right. With these observations which I have considered proper to make in order to guard myself against any possible misunderstanding about the precise scope of the right of private defence I agree with my learned brother. A B

V.P.S. *Appeal allowed in part.*

169Sup. CI/71—14-9-71—GIPF.