

! Crl.A.No. 1750 OF 1996
ITEM No.104

Court No.6

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.1750 OF 1996

Purshothaman and Ors.

Appellant (s)

VERSUS

State of Kerala

Respondent (s)

Date : 16/09/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU

HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. K. Sukumaran, Sr.Adv.
Ms. Karthika S., Adv.
Mr. N.R. Shonker, Adv.
Mr. G. Prakash, Adv.

For Respondent (s) Mr. Ramesh Babu M.R., Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed to the extent indicated in the
signed order.

(Neena Verma) (Vijay Aggarwal)
Court Master Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1750 OF 1996

Purushothaman @ Purushu and Ors..... Appellants

Versus

State of Kerala

..... Respondent

O R D E R

Four persons faced trial allegedly for committing murder of Retnam (hereinafter referred to as the deceased). The dispute which led to the killing was over sharing of water on 26.04.1990. The trial court, after considering the evidence, came to hold that A-2 was not guilty as he had exercised his right of private defence. However, the other three persons were held to have exceeded such right and were convicted under Section 304 Part-I IPC. They preferred an appeal before the Kerala High Court which, by the impugned judgment, held that the right of private defence was not available. In view of the acquittal of A-2 and the non challenge to the findings recorded by the Trial Court, the only question to be adjudicated was whether Section 304 Part-I IPC was rightly applied.

The High Court came to the conclusion that considering the background facts, conviction under Section 304 Part-I IPC was proper and the sentence of five years rigorous imprisonment, as imp

osed, was not harsh.

Learned counsel appearing for the appellants submitted that during the pendency of the appeal before this Court, A-1 has expired. According to him, the factual position, as noticed by the Trial Court and the High Court clearly establishes that the deceased was the aggressor. It was but natural for the accused persons who are closely related to protect their life when under apprehension of danger. In response, learned counsel for the State submitted that the right of private defence was not available because the apprehension of danger disappeared after a point of time.

We notice that the Trial Court had extended the benefit of right of private defence to A-2. In respect of others, it was held that they had exceeded such right. It is an established law that while considering the question of right of private defence, same cannot be weighed in golden scales. The acts committed at the spur of the moment and the mental frame have to be also taken note of. Only when the accused continued the assaults, after the apprehension of danger ceased, then it can be held that the right of private defence was not available. In the present case, we find from evidence that the apprehension continued. Therefore, the accused persons were justified in continuing the assault. That being the position, we are of the view that the benefit of right of private defence as available under Section 97 IPC, has to be extended to the accused persons also. The conviction and sentence imposed are set aside. The bail bonds of the accused persons who are on bail are discharged.

The appeal is allowed to the extent indicated above.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)
New Delhi,
September 16, 2003.