XP
Crl.A.No. 1642 OF 1996
ITEM No.104 Court No. 5 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.1642 OF 1996

THANKACHAN Appellant (s)

VERSUS

STATE OF KERALA Respondent (s)

Date : 04/09/2003 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. EMS Anam, Adv.

For Respondent (s)Ms. Bharati Upahdyaya, Adv. for
Mr. KR Sasiprabhu, Adv.

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

Mr. EMS Anam, learned counsel for the appellant started his arguments at2.30 pm and concluded at 2.40 pm. Thereafter Ms. Bharati Upadhyaya, learned counsel for the respondent-State made her submissions upto 2.55 pm. The appeal is allowed in terms of the signed order setting aside the conviction and sentence passed against the appellant. The appellant is discharged from his bail bonds.

(D.L.Chugh) (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.1642 OF 1996

THANKACHANAppellant

versus

STATE OF KERALA Respondent

O R D E R

The above appeal has been filed by the accused in Sesssions Case No.34 of 1991 on the file of the IVth Additional Sessions Judge, Ernakulam who was acquitted by the learned trial judge but on reversal, convicted by the High Court for an offence punishable under Section 304 Part II of the Indian Penal Code (for short 'the IPC') and made to suffer rigorous imprisonment for five years. The case of the prosecution to prove the charge against the appellant charged with an offence punishable under Section 302 read with Section 34 IPC was that the original accused who were two in number are brothers; that they were abused by the victim and as a sequel to the quarrel which ensued the deceased threatened to kill the appellant besides shouting abusive and obscene words against them and their mother. He was said to be holding something like scissors or a knife in his hand and followed with threatening postures the accused. At that stage the appellant seems to have picked up a stick lying at the toddy shop and gave a blow on the left side of the neck near the ear, as a consequence of which the deceased was said to have fallen down. The accused even thereafter was said to have continued giving further blows and as a result of all these the victim George died. The learned trial judge after considering the evidence of PWs 1 to 11 and also the post mortem report submitted by PW 5 the doctor and other materials on record came to the conclusion that the hitting of the deceased by the first accused with MO 1 the wooden stick was only in exercise of his self defence inasmuch as he was put under a fear of death by the deceased who was holding a sharp weapon, something like that of a knife. The learned trial judge also noticed the fact that the MO stick with which the appellant hit the deceased was picked up by him on the spot from the hanger of PW 4 at the spur of the moment when he was under the fear of death from the deceased and keeping into consideration all these aspects with the medical opinion rendered that each of the injuries caused by the appellant on the body of the deceased were not by itself fatal in nature and the skull of the deceased was intact, sustained the plea of right of private defence and recorded an acquittal in favour of the accused. In coming to such a conclusion the learned trial judge placed reliance also upon the decision of this Court reported in AIR 1991 SC 1316 entitled Buta Singh vs. The State of Punjab whereunder it was observed that having regard to the nature of the incident, in a given case on facts, it would be difficult to say that the accused exceeded the right of private defence for the obvious reason that he could not have on the spot weighed in golden scales in the heat of the moment the number of injuries only required to disarm his assailant, who was armed with lethal weapon. The respondent-State went in Criminal Appeal No.646 of 1992 before the High Court of Kerala at Ernakulam so far as the acquittal of the appellant, arrayed as first accused before the trial court. On a perusal of the judgment of the High Court it is seen that the learned Judges were carried away much by the fact that once it has come to notice that with the infliction of first blow the deceased fell down, the subsequent blows inflicted thereafter by the accused appellant was quite unjustified and in their opinion this being a case of 'overkill', the acquittal was not justified though at the same time the court was alive to the fact that it was the deceased who offered provocation by his words and acts that the three blows delivered by the appellant cannot also be said to be in a cruel or unusual manner; but yet ultimately chose to convict the appellant on the ground and merely observing that the appellant "over-reacted perhaps under the heat of passion". Thus, the High Court recorded conviction under Section 304 Part II IPC and sentenced the appellant to undergo five years rigorous imprisonment. Hence this appeal.

Heard the learned counsel for the appellant as well as the learned counsel for the respondent-State.

On a careful consideration of the materials on record and the respective pleas of the learned counsel appearing on either side we are of the view that the High Court was not justified in interfering with the order of acquittal passed by the learned trial judge, at any rate, on the facts and circumstances of the case, as borne out by the evidence of PWs 1 to 3, as also the evidence of PW 5 the doctor and the very materials noticed as well as the view taken as found expressed by the High Court in paragraphs 8 and 9 of the judgment. On such fact situation, the ultimate conclusion arrived at by the High Court to indict the appellant seem to be wholly unwarranted. The High Court, in our view, appear to have adopted a sweeping approach and completely overlooked the specific reason assigned by the learned trial judge well merited and justified, based on the ratio of the decision of this Court in Buta Singh's case (supra) which, in our view, squarely applied to the case on hand. Injuries Nos.6 to 11 could have been sustained, even as per the medical opinion, after and on account of the fall of the person and the appellant was supposed to have inflicted after the deceased had fallen down, as disclosed from the evidence on record, injuries which are indisputably superficial in nature and not serious; in which case, as observed by this Court in the decision in Buta Singh's case (supra), relied upon by the learned trial judge it could not have been possible, in the heat of passion for the appellant who himself was under the threat of his life having regard to the weapon which the deceased was having and also found to have been in an abusive and aggressive mood, to weigh in such a situation on the spur of the moment as to what injury the deceased is going to cause and what amount of force in retaliation would alone be sufficient to disarm his assailant.

It is also useful to notice also the subsequent decisions of this Court reported in 1996 (1) SCC 458 entitled Wassan Singh vs. State of Punjab and 2002 (8) SCC 354 entitled Sekar alias Raja Sekharan vs. State represented by Inspector of Police, T.N. (to which one of us, namely, Justice Arijit Pasayat was a party) wherein the said principle has been reiterated. In moments of excitement or disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use only so much of force in retaliation commensurate with the danger apprehended to him where an assault is about to take place by use of force, it would be lawful to repel the force in self defence and right of private defence commence as soon as the threat to him becomes imminent. Such situations have to be judged in the light of what happens on the spur of the moment on the spot and keeping in view the normal reaction in the ordinary course of human conduct as to how each person would react under such circumstances in a sudden manner with an instinct of self-preservation. Further, as observed in Sekar's case (supra) "that the number of injuries is not always the safe criterion for determining who the aggressor was". The burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution to prove the charge and that while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea in defence to the hilt and may discharge his onus by establishing on the principle of mere preponderance of probabilities either by laying basis for that plea in the cross-examination of prosecution witnesses or by adducing defence evidence. In the light of the above and in the facts proved, we are of the view, that the conclusion arrived at by the High Court and the consequent conviction cannot be justified. The High Court not only failed to give due importance and weight to the extenuating circumstances and advantages in favour of the appellant which inevitably go to show that he acted well within his reasonable limits but committed a grave error in interfering with the acquittal of the appellant merely because there could be also another possible view in the matter as against the accused. Accordingly this appeal is allowed and the conviction ordered by the High Court and sentence imposed are hereby set aside. The order of acquittal passed by the learned trial judge is restored. The bail bonds of the appellant shall stand discharged.

.....J.
(DORAISWAMY RAJU)

.....J.
(ARIJIT PASAYAT)
New Delhi,
September 04, 2003