Rizan & Another vs State Of Chhatisgarh Thru Chief ... on 21 January, 2003

Equivalent citations: AIR 2003 SUPREME COURT 976, 2003 (2) SCC 661, 2003 AIR SCW 469, 2003 (1) ACE 468, 2003 CALCRILR 455, 2003 SCC(CRI) 664, 2003 (1) SCALE 357, (2003) 3 ALLINDCAS 12 (SC), 2003 (4) SRJ 137, 2003 (3) ALLINDCAS 12, (2003) 1 SCR 457 (SC), (2003) 2 JT 191 (SC), 2003 (1) SLT 469, 2003 (1) SCR 457, (2004) SC CR R 1003, (2003) 1 CURCRIR 180, (2003) 3 BLJ 368, (2003) 1 EASTCRIC 263, (2003) 1 SCALE 357, (2003) 25 OCR 111, (2003) 2 RECCRIR 662, (2003) 1 SUPREME 890, (2003) 2 ALLCRIR 1140, (2003) 2 UC 750, (2003) 3 INDLD 328, (2003) 4 KCCR 2543, (2003) 46 ALLCRIC 428, (2003) 2 ALLCRILR 804, (2003) 2 CRIMES 125, 2003 (1) ALD(CRL) 367

Author: Arijit Pasayat

Bench: Shivaraj V. Patil, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  82 of 2003

PETITIONER:
RIZAN & ANOTHER

RESPONDENT:
STATE OF CHHATISGARH THRU CHIEF SECRETARY GOVT. OF CHHATISGARH RAIPUR

DATE OF JUDGMENT: 21/01/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:
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JUDGMENT 2003(1) SCR 457 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. Leave granted.

Appellants call in question legality of impugned judgment rendered by the Madhya Pradesh High Court at Jabalour, whereby it upheld the conviction and sentence awarded by the Additional Sessions Judge, Jashpurnagar.

Prosecution version which led to the trial of the appellants (hereinafter referred to as 'the accused' by their respective names) is as follows:

On 29.11.86 information was lodged by Jhanguram (PW-2) that six persons had assaulted him with intention to take his life, and had also caused injuries to his wife Pandri Bai (P.W.4) and his daughter-in-law Tilobai (P.W.5). On the basis of such information, the case was registered and investigation was undertaken. On completion of investigation charge was framed for commission of offences punishable under Sections 147, 148, 307 read with Section 34 and Section 323 of the Indian Penal Code, 1860 (in short MPC'). It was alleged that accused Khodhibai (since acquitted) and Pandri Bai (P.W.4) are sisters. There was a bad blood between them over certain properties and civil litigation was going on. The six accused persons were cutting the crops raised by Jhanguram (P. W.2) on the date of the occurrence. When he asked them not to do so, the accused persons did not pay any heed. Suddenly accused-appellant Rizan snatched the axe which Jhanguram (P.W.2) was holding and assaulted him with the said weapon and caused several injuries on different parts of his body e.g. lips, hands and feet. More particularly, accused-appellant. Duda hit Jhanguram and Pandri Bai with a stick. Other accused persons also hit him with their hands and feet. Some persons standing nearby came to their rescue. The injured P.Ws. 2, 4 and 5 were examined by the Doctor (PW-1). During investigation the weapon of assault i.e. axe was seized from the accused-appellant, Rizan and some other weapons from the other persons. Six witnesses were examined to further the prosecution version. Accused persons pleaded innocence and false implication. On consideration of the evidence on record, the Trial Court held that the prosecution has not been able to bring home the accusations against accused-Paras, Vinod, Khodibai and Jaymala.

Accused-appellant Rizan was found guilty for the offences punishable under Section 326 IPC for inflicting injuries on Jhanguram (P.W.2) and under Section 323 IPC for the injuries inflicted on Pandri Bai (P.W.4). Accused Duda was found guilty for the offences punishable under Section 323 IPC for inflicting injuries on aforesaid two witnesses. However, both the accused- appellants Rizan and Duda were acquitted of the offences relatable to Sections 147 and 148 IPC. It was also held that the offence committed by the accused persons is not covered by Section 307 IPC. After hearing the accused persons on the question of sentence, accused-appellant, Rizan was sentenced to undergo RI for two years and two months respectively for the offence punishable under Sections 326 and 323 IPC. Both the sentences were directed to run concurrently. Accused Duda was sentenced to undergo RI for two months. In appeal, by the impugned judgment, the High Court dismissed the appeal maintaining the convictions and the sentences. In support of the appeal, learned counsel for the accused-appellants submitted that this is a case where the conviction is not maintainable as the injuries were inflicted by the accused-appellants while exercising their right of private defence. Further on the same set of evidence four persons have been acquitted and, therefore, so far as the appellants are concerned, conviction does not stand to reason. It is also submitted that the witnesses who claim to have seen the occurrence are witnesses who were in inimical terms with the accused-appellants. Residually, it is submitted that the sentences as imposed are high, and considering

the fact that the occurrence took place five years back, the sentences should be reduced to what has already been undergone which is stated to be about three months. It is pointed out that accused-appellant. Duda has already suffered the sentence awarded. Learned Counsel for the prosecution on the other hand submitted that the evidence clearly rules out application of the right of private defence. Merely because the evidence of some of the witnesses has not been accepted to be fully reliable, in view of the clear and categorical findings recorded that the evidence is cogent and credible so far as the appellants are concerned, the conviction does not suffer from any infirmity.

We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

In Dalip Singh and Ors. v. The State of Punjab, AIR (1953) SC 364 it has been laid down as under:-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culorit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only mads to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan, [1974] 3 SCC 698 in which Vadivelu Thevar v. State of Madras, AIR (1957) SC 614 was also relied upon.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon has no substance. This theory was repelled by this Court as early as in Dalip Singh's case supra in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose. J. it was observed:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of even men hangs on their testimony, we know of such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to may criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. State of Rajasthan, AIR (1957) SC 54 at p.59). We find, however, that the unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

Again in Masalti and Ors. v. State of U.P.. AIR (1965) SC 202 this Court observed; 202-210 para 14;

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautions in dealing with such evidence: put the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

To the same effect is the decision in State of Punjab v. Jagir Singh, AIR (1973) SC 2407 and Lebna v. State of Haryana, [2002] 3 SCC 76.

Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co- accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material would not ruin it from the beginning to end. The maxim "falsus in uno falsus in ominbus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such case testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. See Nisar Alli v. The State of Uttar Pradesh, AIR (1957) SC 366. Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. See Gurucharan Singh and Am. v. State of Punjab, AIR (1956) SC

460. The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead-stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. See Sohrab s/o Belt Navata and Anr. v. The State of Madhya Pradesh, [1972] 3 SCC 751 and Ugar Ahir and Ors. v. The State of Bihar, AIR (1965) SC 277. An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. See Zwingle Ariel v. State of Madhya Pradesh, AIR (1954) SC 15 and Balaka Singh and Ors. v. The State of Punjab AIR (1962). As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr., AIR (1981) SC 1390, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi and Ors. v. State of Bihar, etc. JT (2002) 4 SC 186 Gangadhar Behera and Ors. v. State of Orissa, (2002) 7 Supreme 276. Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned.

Then comes plea relating to alleged exercise of right of private defence. Section 96 IPC provides that nothing is an offence which is done on the exercise of the right of private defence. The Section does not define the expression 'right of private defence.' It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstance, a person acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defines was legitimately exercised it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 the burden of proof is on the accused who sets up the plea of self-defence and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self- defence. The Court shall presume the absence of such circumstances. It is for the

accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence: he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warning off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. See Munshi Ram and Ors. v. Delhi Administration, AIR (1968) SC 702; State of Gujarat v. Bal Fatima, AIR (1975) SC 1478; State of U.P. v. Mohd. Musheer Khan, AIR (1977) SC 2226 and Mohinder Pal Jolly v. State of Punjab, AIR (1979) SC 577). Sections 100 to 10! define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death of grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P., AIR (1979) SC 391, runs as follows:

> "It is true that 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 and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

The number of injuries is not always a safe criterion for determining who the aggressor was, it cannot be stated as a universal rule that whenever the injuries are on the body of the accused person, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent so independent and disinterested, so probable, consistent and credit-worthy, that if far outweighs the effect of the omission on the part of the prosecution to explain the injuries. See Lakshmi Singh v. State of Bihar, AIR (1976) SC 2263. In this case, as the Courts below found there was not even a single injury on the accused persons, while PW2 sustained large number of injuries and was hospitalized for more than a month. 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 or private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right 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 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 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. Sections 102 and 105. IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commence, as soon as a reasonable apprehension of danger to the body arises from an attempt, or commit the offence, although the offence may not have been committed but not until that 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, AIR (1963) SC 612, 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.

In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstance whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Thus, running to house, fetching a tabli and assaulting the deceased are by no means a matter of course. These acts bear stamp of a design to kill and take the case out of the purview of private defence. Similar view was expressed by this Court in Biran Singh v. State of Bihar, AIR (1975) SC 87 and recently in Sekar @ Raja Bekharan v. State represented by Inspector of Police Tamil Nadu, (2002) 7 Supreme 124.

Sentences imposed do not in any way appear to be harsh. Merely because the occurrence took place sometime back, same cannot be a factor to reduce the sentences. The appeal is without merit and is dismissed.