

(2004) 06 KL CK 0074

High Court Of Kerala

Case No: Criminal Appeal No. 46 of 1997 (A)

Chemmayya Gowda

APPELLANT

Vs

State

RESPONDENT

Date of Decision: June 16, 2004**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 100, 300

Citation: (2004) CriLJ 3742 : (2004) 4 RCR(Criminal) 864**Hon'ble Judges:** K.A. Abdul Gafoor, J**Bench:** Single Bench**Advocate:** M. Sasindran, for the Appellant; Viju Thomas, Public Prosecutor, for the Respondent**Final Decision:** Allowed

Judgement

K.A. Abdul Gafoor, J.

The appellant/accused has been charged for the offence punishable u/s 302, I.P.C. Admitting the incident, he pleaded exercise of right of private defence. That was also found in his favour by the Court below. But the Court below was of the view that he exceeded that right and therefore had committed culpable homicide not amounting to murder to fall u/s 304, Part I, I.P.C. He was sentenced to undergo rigorous imprisonment for a term of 4 years and to pay a fine of Rs. 10,000/-.

2. This conviction is assailed in this case contending that having found that he was exercising the right of private defence, the Court ought to have found that he did not exceed that right, as there were only three injuries on the deceased as disclosed in Ext. P-1 post-mortem certificate issued by PW-1, the doctor who conducted autopsy. Threat on the accused by the deceased had been found by the Court below. That threat was using MO. 4 iron rod. He was also injured as is revealed by Ext. P-10 wound certificate issued by PW-11, the doctor who attended him in the hospital where he had been in impatient for about 9 days. In such circumstances,

when he had faced an assault from the deceased with a deadly weapon like MO. 4 iron rod, he should have the protection of 1st clause of or the secondly of Section 100, I.P.C. He is not expected to modulate his actions in such a manner to apply only minimum force with a golden scale while exercising the right of private defence. This is a case where he did never exceed the right of private defence, especially when PW-3, the wife of the deceased, had deposed that the deceased had come to the paddy field where the accused was really engaged in agricultural operation with other workers.

3. It is contended by the public prosecutor that the injury on the leg of the deceased noted in Ext. P-1 post-mortem certificate had been inflicted, as spoken to by the witnesses, after the deceased had fallen down due to the first beat on his head with the handle of the spade in the hands of the accused. Therefore any further injury inflicted on the deceased was in excess of the exercise of the right of private defence available to him. Therefore the conviction u/s 304, Part I, I.P.C. is perfectly justified and no interference is called for.

4. The learned Sessions Judge, appreciating the evidence on record found in para 13 of his judgment as follows:

"PWs-2, 3, 4, 5, 8, 9 and 10 when questioned by the Investigating Officers (all except PW-10 were questioned by PW-13 and PW-10 was questioned by PW-13's successor, PW-14), allegedly stated that they had seen the incident proper. According to them, deceased Ukrappa Gowda had come to the scene of the crime with a weapon like MO. 4 iron rod. There was a quarrel and push and pull between the brothers the accused and the deceased. Consequent to such quarrel Ukrappa Gowda had beaten the accused with iron rod on the head. Thereupon the accused had hit the deceased on the back of his head with his spade. When the deceased fell down, the accused inflicted cuts on the back of the left knee of the deceased with a sharp edge of the spade."

5. Thus even according to all the witnesses the deceased had come to the scene of occurrence with a weapon like MO. 4 iron rod. Going by the evidence of PW-3, the wife of the deceased and by her first information statement Ext. P-3, the deceased had gone to the field where the accused carrying on agricultural operation. Of course there was dispute with regard to the partition of the said property. Admittedly by the prosecution the accused has sustained injuries.

6. PW-11 is the doctor who had issued Ext. P-10 wound certificate after examining the accused. Ext. P-10 shows that there was an injury on the head of the accused. He had also stated that, that injury can be caused by beating with a weapon like MO. 4. The cause of injury stated by the accused to PW-11, the Doctor, was that the deceased had beaten him. Therefore right of private defence was rightly found by the Court below.

7. Whether he had exceeded that right is the only point to be decided. As already spoken to by the witnesses, the deceased had gone to the paddy field where the accused was conducting agricultural operation with an iron rod and had hit on the head of the deceased. Necessarily, the accused who has in his hands a spade will act as in the case of any other human being. He had hit with the handle of the spade on the head of the deceased. True the deceased fell down. As there was beating on head and as there was an apprehension of using that iron rod further, the accused would have used the spade to inflict an injury on the leg which resulted in haemorrhage and consequent death, as certified in Ext. P-1. In inflicting that injury it cannot be stated that he had exceeded the private defence. The other injury mentioned in Ext. P-1 is a contemporaneous injury. Thus this is a case where the accused had not exceeded the right of private defence as he was not expected to modulate his actions in such a manner to use only that much minimum force, measured with a golden scale to avert the threat on his life and limbs.

Accordingly, the conviction is set aside and the sentence is vacated. Bail bond executed by the accused shall be cancelled. Appeal is allowed.