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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No. 591 OF 2014

Aakash Vijay Kondayya	)
of Bombay, adult Indian Inhabitant	)
Age 23 yeas, residing at Plot No.8,	)
Tirupati Park, Subhashnagar,	)
Tingarenagar, Pune	)
At preent Yerawada Central Prison	)...Appellant

Versus

The State of Maharashtra	)
through Vishrantwadi Police Station,	)
Pune	)...Respondent

Mr. Jehangir M. Khajotia for Appellant

Mr. S.S. Pednekar -APP for the State

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : NOVEMBER 29, 2018

JUDGMENT:

1. The Appellant herein is convicted for the offence punishable under section 304 (Part I) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years, in default, to suffer simple imprisonment for six months by the Additional Sessions

Judge, Pune in case of Sessions Case No. 857 of 2013. Hence this appeal.

2. Such of the facts necessary for the decision of the appeal are as follows.

. That the present Appellant happens to be a good friend of one Ranjit Rajan Nayar. They used to meet regularly at the house of the Appellant along with their other friends and girlfriends. That they had also been to Tirupati Balaji together. At that time, the Appellant was unemployed and, therefore, could not afford the expenses of the trip and the same were borne by the friends. The Appellant herein was residing in Tirupati Park. The president of the said society had objected to the meeting of all the friends including girlfriends in the house of the accused-Appellant and, therefore, he had restrained his friends from visiting his house at odd hours and had also refused to give the keys of his house.

. It is the case of the prosecution that on 7th July, 2013 Ranjit Nayar had visited the house of the present Appellant. He had demanded the keys of the house. The Appellant had refused to give the keys of the house and had objected to utilize his house in his absence. There were heated arguments. In the course of arguments,

Ranjit Nayar had sought refund of the money spent for the Appellant in their tour to Tirupati Balaji. The Appellant was unemployed at that time and, therefore, he had disclosed that he has no money to refund. The heated arguments had precipitated into a quarrel. Ranjit Nayar had picked up a kitchen knife from the kitchen room of the accused-Appellant and had attempted to assault the Appellant. By virtue of the presence of mind, the Appellant had caught hold the knife and, thereafter, he had assaulted Ranjit Nayar with the same knife. Initially, he had inflicted four blows on the person of Ranjit thereby causing four incised wound on the vital part of his body. Ranjit Nayar had attempted to save himself from the clutches of the accused-Appellant and at that time, the Appellant had chased him and assaulted him, thereby inflicting 27 incised /stabbed wounds on his person. Ranjit had succumbed to an instantaneous death in the house of the Appellant and, thereafter, the Appellant approached to the president of the society and informed that in the quarrel, he had caused the death of his friend Ranjit. The police had come to the house of the accused. They had inquired with the accused and at that time the accused had disclosed that the deceased was his good friend. He had never intended to cause his death but he was

taken aback and shocked the act of the deceased whereby he had attempted to cause injury to the accused by knife. He had also disclosed that if he had not mounted assault upon Ranjit, he would have been assaulted by him with the knife. In short, the defence of the accused is that of private defence as contemplated under section 100 of the Indian Penal Code.

3. The police had called PW-1 Sunil Nayar, who happens to be the maternal uncle of the deceased to the police station. He had identified the dead-body of the nephew. He had also identified the Appellant as a friend of the deceased. His statement was recorded. On the basis of which, CR No. 200 of 2013 was recorded at the Vishrantwadi Police Station against accused-Appellant for the offence punishable under section 302 of the Indian Penal Code.

4. After completion of investigation, the charge-sheet was filed and the case was committed to the Court of Sessions and registered as Sessions Case No. 857 of 2013. The prosecution examined eight witnesses to bring home the guilt of the accused.

5. PW-1 Sunil Nayar is the maternal uncle of the deceased. He has identified the dead-body of his nephew and, thereafter, lodged FIR, on the basis of the statement given by the accused and the facts disclosed by the police.

6. PW-2 Rajan Nayar is the father of the deceased. He was only aware that his son was a good friend of the accused. He has no knowledge of the incident till he was called to the police station. He had requested Sunil Nayar to lodge the report as he was not in a good state of mind.

7. PW-3 Pramod Katti is the resident of Tirupati Park. He was residing as a neighbor of the accused. He had noticed that the friends of the accused visiting the house along with other girlfriends at odd hours and, therefore, he requested the accused not to bring the friends in his room and, thereafter, the accused refused to entertain his friends in his house. As far as the incident is concerned, PW-3 has stated that on 7th of July, 2017 at about 6.55 p.m., he had heard shouts from the house of his neighbor i.e. the accused. He had gone to the house of the accused where he found one person lying in injured condition and the accused was standing with knife in his hand. The accused had asked PW-3 to take him to the police station. However, PW-3 had called upon the police to the spot. The witness has not been shattered in his cross examination. PW-4 is another neighbor, who was residing in Flat No.7, Tirupati Park. According to him, he had dialed to the police on the telephone No.100. In the present case it would not be

necessary to scrutinize the veracity of the prosecution case since the incident has been admitted by the accused. He had admitted to be the author of the injuries inflicted upon the deceased and which had unfortunately become fatal. He has also admitted that he was a good friend of the deceased. There was no enmity. That in the course of heated arguments, the passions had risen so high that the deceased had taken the knife from the house of the accused and had attempted to assault him with the knife. The said fact is established by the injury certificate of the accused which is at Exhibit 38. The injury sustained by the accused is incised wound over web between thumb and index finger of right hand of about 3x1x1 cm. No doubt it was a simple injury but it would show that the Appellant had caught hold the knife which was being brandished by the deceased.

8. The prosecution has examined Dr. Ajay Taware to prove the postmortem notes. In fact, the accused has admitted the postmortem under section 294 of Cr.P.C. Dr. Taware has proved the postmortem notes and has deposed before the Court that the deceased had sustained as many as 27 injuries. That he had noticed stab injuries underneath injury Nos. 6,7,12,13,18 and 25 of column No. 17. Both pleural cavities contained about 800 cc fluid

blood. Stab injury seen over upper lobe of right lung anteriorly and upper lobe of left lung posteriorly and over right atrium of heart. Pericardial sac contains 100 cc blood. On internal examination of abdomen, doctor had noticed multiple stab injuries. Stab injuries seen over large and small intestines at places. Two stab injuries seen over anterior surface of liver. The cause of death assigned by PW-8 is “death was due to traumatic and hemorrhagic shock, due to stab injuries over chest and abdomen.” The postmortem notes are at Exhibit 37.

9. The learned counsel for the Appellant has vehemently submitted that the case of the accused -Appellant is covered by section 100 of the Indian Penal Code. Clauses (First) and (Secondly) of Section 100 of IPC read as under:

“First:- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly:- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.”

The learned counsel has further submitted that in fact the Appellant had no intention to cause death as stated in his

statement under section 313 of Cr.P.C. and the incident had occurred on a spur of moment. Therefore, according to the learned counsel for the Appellant submits that the Appellant deserves to be acquitted.

10. It is an admitted position that the State has not challenged the acquittal of the accused under section 302 of the Indian Penal Code. However, the learned APP has vehemently submitted that the Appellant had exceeded his right of self defence.

11. That the right of defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. In the case of Yogendra Morarji v. State of Gujarat [AIR 1980 SC 660] the Hon'ble Apex Court held that the conviction needs to be upheld and the defence of the accused cannot be taken into consideration. It was observed*a person placed in peril is not expected to weigh "in golden scales" what amount of force is necessary to keep within the right. Thus, this is a case in which the accused has exceeded this limit of the right of private defence available to him under Section 101 , Penal Code. Nevertheless, this is a circumstance which can be taken into account in mitigation of the sentence".* The Apex Court has further observed as follows:

“ True, that the burden to establish his plea of private defence was on the accused, nevertheless it was as much the duty of the Court of the parties to bring on the record all material evidence necessary to reach at the truth. In the circumstances, the failure of the accused to examine these persons as his witnesses, therefore, did not ipso facts give rise to the inference that the defence story was “absolutely false”.

12. The learned counsel for the Appellant has placed reliance upon various judgments and prayed for acquittal.

13. In the present case, the Learned Sessions Court has observed that in fact the accused Appellant had chased the deceased and inflicted blows from the backside also. That he had initially inflicted four blows on the person of the deceased and according to the Accused, the deceased had attempted to strangle him and at that stage, he had stabbed more than 23 injuries. Due to this, he had caused injuries to the internal organs like liver.

14. In the case of **Darshan Singh Vs. State of Punjab & Anr.** **[AIR 2010 SC 1212]** the Apex Court has laid down that according to Section 99 of the IPC the injury which is inflicted by the person exercising right should commensurate with the injury with which he is threatened. At the same time, it is difficult to expect from a person exercising this right in good faith, to weigh

“with golden scales” what maximum amount of force is necessary to keep within the right every reasonable allowance should be made for the bona fide defender. The courts in one voice have said that it would be wholly unrealistic to expect of a person under assault to modulate his defence step by step according to attack. The courts have always consistently held that the right of private defence extends to the killing of the actual or potential assailant when there is a reasonable and imminent apprehension of the atrocious crimes enumerated in the six clauses of section 100 of IPC. A person who is in imminent and reasonable danger of losing his life or limb may in the exercise of right of self-defence inflict any harm, even extending to death on his assailant either when the assault is attempted or directly threatened.

15. In the present case the Appellant had apprehended that the deceased would cause grievous injury to him by the knife. However, there was time for passions to cool down when the deceased had sustained more than four stab injuries and had fallen on the ground. The explanation of the accused in his statement under section 313 of Cr.P.C. that the deceased had also attempted to strangle him cannot be believed after examining the postmortem notes. After the accused attacked, the deceased

could not have attempted to strangle the accused appellant after he had sustained injuries on his chest and abdomen whereby perforating injuries were caused to lungs and liver and, therefore, it is more than clear that the Appellant had not only exceeded the right of private defence, but also had caused such injuries to the deceased which he knew could cause instantaneous death. In the present case, clause (iv) of the certain principles, which were laid down in the case of **Darshan Singh (supra.)**, reads as under:

“(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.”

In fact after taking into consideration the defence of the accused that he had caused injuries to the deceased in private defence, the conviction ought to have been under section 304 (Part II) of the Indian Penal Code, which reads as under:

“Part II- : Punishment – Imprisonment for 10 years, or fine, or both- Cognizable – Non-bailable – Triable by Court of Session – Non-compoundable”.

It cannot be said for a moment that the accused appellant had intention to cause death of the deceased Ranjit and, therefore, the conviction of the Appellant under section 304 (Part I) deserves to

be quashed and set aside. However, in the facts of the present case the Appellant deserves to be convicted for an offence punishable under section 304 (Part II) of the Indian Penal Code and sentenced to a period of imprisonment already undergone. The Appellant is in custody from 7th July, 2013 till today. Hence, following order:

ORDER

- (i) Appeal is partly allowed.
- (ii) The conviction of the Appellant for the offence punishable under section 304 (Part I) is hereby quashed and set aside.
- (iii) The Appellant is convicted for the offence punishable under section 304 (Part II) of the Indian Penal Code and sentenced to the period already undergone. The sentence of fine is maintained.
- (iv) The accused Appellant be released forthwith, if not required in any other case.

Criminal Appeal stands disposed of.

[SMT.SADHANA S. JADHAV, J.]