



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.1115/2024

Laxmi Wd/o Amol Pode

Vs.

The State of Maharashtra thr. P.S.O., P.S. Chandrapur City, Tah. & Dist. Chandrapur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.D. Hazare, Advocate for applicant

Shri N.B. Jawade, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 10/12/2024

The applicant who is the wife of the deceased came to be arrested on 18.07.2024 in connection with Crime No.592/2024, registered with Police Station Chandrapur City, District Chandrapur, registered under Section 103(1) of B.N.S., 2023.

2. The accusation against the present applicant Laxmi Amol Pode, is on the basis of the report lodged by Madhukar Sadashiv Pode, uncle of the deceased on an allegation that on 18.07.2024, at about 1.00 to 1.30 a.m., there was a dispute between the present applicant and her husband on account of preparing the meal and on that count the applicant has committed the murder of the deceased by assaulting him by means of knife. He received the information from the present applicant herself and therefore, he immediately rushed to the spot of incident and witnessed that deceased was lying in the pool of

blood. Thereafter, he approached to the Police Station and lodged the report. On the basis of said report, Police have registered the Crime against the present applicant.

3. Heard learned Counsel for the applicant who submitted that applicant is the wife of the deceased. The deceased was addicted to bad vices like drinking liquor and used to harass her. On the fateful night also the deceased came home under the influence of liquor and there was altercation of words between deceased and the present applicant on account of preparing the vegetable. The deceased insisted for preparing the vegetable as per his choice, which is denied by the present applicant and on that count the deceased allegedly attacked on her and therefore, to save herself, she has assaulted the deceased by means of knife. He submitted that there was not only the right of private defence available to the present applicant, but there was a grave and sudden provocation at the hands of the deceased and therefore, the alleged incident took place. He submitted that it was the day and day out the present applicant was facing the harassment at the hands of the deceased and on the fateful night also the deceased came under the influence of liquor and had quarrel with the applicant. Out of which, the alleged incident has taken place. Thus, there was neither intention or motive to commit the murder of the deceased but the case covered under the exception that grave and sudden

provocation and the right of private defence was available to the present applicant. Now investigation is already completed. Charge-sheet is already filed. Further incarceration of the present applicant is not required. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in case of *Satender Kumar Antil Vs. Central Bureau of Investigation and another*, reported in *(2022) 10 SCC 51*, and submitted that in view of old Section 437, New Section 483, the applicant to be released on bail being a woman.

4. Per contra, learned APP strongly opposed the said application and submitted that from the recitals of the postmortem report it reveals that deceased has sustained as many as 23 injuries on his person, therefore, neither the right of private defence nor the exception grave and sudden provocation is available to the present applicant. He submitted that the manner in which the alleged incident has taken place can be assessed from the nature of injuries which are sustained by the deceased. There were Four incised wound present over the frontal area of head, Five incised wound present over occipital area of head and Six incised wound present over parital area of head. Thus, the vital organ was chosen by the present applicant. Moreover, two incised wound present over high parital area of head, Four incised wound present over face, multiple linear abrasions present over upper inter scapular region and multiple contusions and

incised wound present over posterior aspect of left shoulder of size 2 cm x 2 cm x 1cm and 0.5 cm x 0.2cm x 0.1cm respectively and the margins are clean cut and reddish. The death of the deceased is due to the 'shock and hemorrhage due to multiple incised wound over the body'. He submitted that maximum injuries are sustained by the deceased on the vital part that is head. He further invited my attention towards the statements of the witnesses and submitted that the material witnesses are the children of the present applicant. If she is released on bail definitely there would be an attempt to tamper the prosecution evidence and entire prosecution case would affect due to that. In view of that the application deserves to be rejected.

5. In support of his contention he placed reliance on the order passed by this Court in ***Criminal Application No. 688/2024, decided on 27.08.2024.***

6. After hearing both the sides and on perusal of the investigation papers, it reveals that there is no dispute as to the fact that deceased is the husband of the present applicant. It is also undisputed fact that deceased was addicted to the bad vices like drinking liquor and was quarreling with the present applicant under the influence of liquor. On 18.07.2024, there was quarrel between the present applicant and deceased on account of preparing the vegetable. As per the allegation, the deceased rushed towards her by holding knife in his hand and therefore present

applicant has snatched the said knife and gave a repeated blow on the person of the deceased. As far as the contention of the present applicant that in the said quarrel, her mother has intervened and she has also sustained the injuries are also substantiated by the medical certificate which shows that mother of the present applicant has sustained two injuries on her index finger. Whether the present applicant has acted in exercising the right of the private defence and whether the exception grave and sudden provocation is available to the present applicant is to be seen. As far as the postmortem report is concerned, admittedly grievous injuries are sustained by the deceased and the grievous injuries are in the nature of four incised wound on the frontal area of head, Five incised wound over occipital region, Six incised wound present over parital area, two incised wound over parital area and four incised wound present over face, which sufficiently shows that a repeated blows are given by the present applicant to the deceased.

7. The alleged incident is witnessed. The eye witnesses of this incident is the mother of the applicant and two children namely Divyanshu and Saransh, aged about 12 and 9 years of age. Except the children there is no other witness.

8. As far as the contention of the learned Counsel for the applicant that right of private defence is available to the present applicant is concerned and his case covers under the exception of Section 96 that

is Right of Private defence. Section 96 does not define the expression 'Right of Private of Defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular state of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and the circumstance of each case. No test in the abstract is laid down for determining such a question. 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 a self defence. If the circumstance shows that the Right of Private Defence was legitimately exercised, it is open to the Court to consider such Plea.

9. The Hon'ble Apex Court in catena of decisions considered when the right of private defence is available to the accused. In the case of ***Ananta Deb Singha Mahapatra and others vs. State of West Bengal***, reported in ***AIR 2007 SC 2524***, in paragraph No. 12, it is held by the Hon'ble Apex Court that the number of injuries is not always a safe criterion for determining who is the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, 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 probablises the version of the right of private defence. Non explanation of the injuries sustained by the accused at 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 creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. A plea of right of private defence cannot be based on surmises and speculations. 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 of 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 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 the limits of the right of private defence. Section 96

and 98 give a right of private defence against certain offences and Acts. The right given under Section 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 that 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.

10. Section 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, 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. As soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to root, there can be no occasion to exercise the right of private defence.

11. In the case of *Darshan Singh vs State Of Punjab & Anr*, reported in *(2010)1 SCR 642*, wherein the principles are laid down by the Hon'ble Apex

Court are as under:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or such

greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

12. In order to find out 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 circumstances 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 preview of a private defence.

13. In another decision of *Bihari Rai Vs. State of*

Bihar, reported in AIR 2009 SC 18, wherein also the Hon'ble Apex Court has observed that 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 persons, 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 probabalises the version of the right of private defence. 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 creditworthy. A plea of right of private defence cannot be based on surmises and speculation.

14. Thus, in the light of the above well settled position the right of private defence commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat to 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. As soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to root, there can be no occasion to exercise the right of private defence.

15. In the light of the above observations if the facts of the present case are considered, it shows that there was a dispute between the husband and wife. Husband was holding knife in his hand and there was a threat to the life of the present applicant and therefore, she snatched the said knife and gave blows on the person of the deceased but as soon as the said apprehension disappears the right of private defence subsequent that is not available to the present applicant. Similar is the case as to the defence of grave and sudden provocation. As soon as the threat to the life of the present applicant goes away, the said defence was not available. From the facts and circumstances of the case it reveals that applicant has given repeated blows that is also on the vital part of the body. Admittedly, the intention of the accused is the inner compartment of his mind and no direct evidence could be available to show the intention, intention is to be gathered from the surrounding circumstances.

16. After considering the entire statements of the witnesses, at this stage, it is difficult to accept that right of private defence was available to the present applicant. It is also difficult to accept that in the exercise of the exception she has acted and given a repeated blow on the deceased. Considering the number of injuries sustained by the deceased that is also on the vital part of the body, both the defences at this stage are not available to the present applicant

and therefore, contention of the learned Counsel for the applicant is not acceptable, in view of that the application deserves to be rejected. Accordingly, I proceed to pass the following order:

ORDER

The application is rejected.

JUDGE

Jayashree....