REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 56 OF 2010

R. JAYAPAL ..... APPELLANT(S)

VS.

STATE OF TAMIL NADU & ANR. .....RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

1. In this appeal, the accused-appellant has called in question the judgment and order dated 21.02.2008 in Criminal Appeal No. 1003 of 2000 whereby, the High Court of Judicature at Madras has affirmed his conviction for the offence under Section 302 of the Indian Penal Code ('IPC'), even while acquitting the accused No. 2 for the offence under Section 302/34 IPC in modification of the judgment and order dated 27.06.2000 as passed by the Principal Sessions Judge, Thanjavur in Sessions Case No. 168 of 1999.

1.1. In the Sessions Case aforesaid, the accused-appellant was charged for the offence under Section 302 IPC whereas the appellant's brother (accused No. 2) was charged for the offence under Section 302/34 IPC and the appellant's wife (accused No. 3) was charged for the offences under Sections 302/34 and 341 IPC. The Trial Court convicted the appellant for the offence under Section 302 IPC

and awarded him the punishment of life imprisonment together with fine of Rs. 1,000/- with default stipulations; and also convicted the appellant's brother (accused No. 2) for the offence under Section 302/34 IPC and awarded him the same punishment of life imprisonment with fine of Rs. 1,000/- with default stipulations. However, the Trial Court found the appellant's wife (accused No. 3) not guilty of the offences under Sections 302/34 and 341 IPC and she was, accordingly, acquitted. In appeal, the High Court maintained the conviction and sentence of the appellant but found the accused No. 2 not guilty and he was, accordingly, acquitted.

2. The basic question calling for determination in this appeal is as to whether, in the given set of facts and circumstances, the High Court was justified in maintaining the conviction of the appellant for the offence under Section 302 IPC?

3. The background aspects of the case, so far relevant for the question at hand, could be noticed, in brief, as follows:

3.1. The prosecution case had been that the deceased Poondhaisezhiyan and wife of the appellant, Smt. Jayaseeli (who was accused No. 3 in this case) carried a long-drawn rivalry because of the elections of Town Panchayat where the deceased was instrumental in getting another candidate elected as President and thereafter, himself got elected as Vice-president by defeating the accused No. 3. According to the prosecution, the accused No. 3 made a complaint against the deceased that was enquired into and was found to be false; and this failure of complaint had enraged the accused persons. It was alleged that on 23.08.1997 at

about 5.00 p.m., the appellant R. Jayapal (accused No. 1) along with his wife (accused No. 3) had had an altercation with the deceased in front of his house when the appellant vowed to finish off the deceased within 24 hours. It was further alleged that the same day at about 7.15 p.m., when the deceased left his house in order to visit Thanjavur and was crossing the lane in front of the house of the appellant, the appellant came down with a spike, the accused No. 2 came with a sickle, and the accused No. 3 came unarmed; the accused No. 2 (brother of the appellant) attacked the deceased with sickle but his blow was blocked by the deceased; the deceased attempted to run away but was ambushed by the accused No. 3 and she exhorted not to spare the deceased; and then, the appellant stabbed the deceased on chest with the spike. This incident was allegedly witnessed by PW-1 Pandian, brother of the deceased who carried the deceased to hospital and on whose statement, FIR was registered as per the report made by PW-12 Head Constable Jaganathan. The relevant parts of FIR could be usefully extracted as follows:-

> *"…….Today on 23.08.97, at 5 p.m. my brother was in his house. When I returned from bazaar, there were shouting. When I went near I saw my brother Poondaichelian, Jayaseeli and Jayapal were arguing. Then my brother Poondaichelian told Jayaseeli that was sending false complaint against him and she was talking ill of him and told her to behave properly. For that Jayaseeli asked what respect he deserved. Jayapal told him to finish him off within 24 hours. I pacified my brother and send him to his house. Jayaseeli and Jayapal went towards east. Then my brother listened the 7 ¼ news in radio and started to Thanjavur. At that time in the post near my house, light was glowing. There was good illumination. I was sitting on the raised platform of my house. When my brother was going towards east in the road in front of the road near the house of Jayapal, Jayapal came with a spike, Savier came with a sickle and Jayaseeli came with no*

weapon. Savier ran to my brother and cut my brother with sickle. My brother blocked that and pushed him down. So, the cut did not land on my brother. My brother tried to run toward West. Jayaseeli blocked the way of my brother and shouted not to spare him. Jayapal stabbed the spike in his hand on the left chest of my brother. My brother fell down. I ran shouting. Arumainathan who is in front of my house and those who came by the way, Chinnaiyan s/o Rengamani, Ravichandran, s/o Gurusamy also shouted. Jayapal, Jayaseeli and Savier also ran. I chased them to catch them. They ran to each direction. I chased Jayapal towards east and caught him in a short distance. Fearing that he may punch me with the spike, I snatched the spike. He tussled and threw away the spike and ran away. The spike is lying there. When returned and saw my brother, he was struggling for life. I got a van urgently and got him in the Thanjavur Medical College hospital there doctor examined him told that my brother had died and sent the corpse to mortuary. He also told me that he would inform that police. I was shocked since my brother died and I sat there weeping. Now I am telling you what happened. I request you to take action on Jayapal, Savier and Jayaseeli who killed my brother."

4. In Trial, the prosecution, *inter alia*, relied on the testimony of alleged eye witnesses PW-1 to PW-4, who made the statements more or less in conformity with the narrations in the FIR that the deceased left his house to visit Thanjavur; that the appellant and other accused persons were standing outside their house; that upon the deceased reaching their house, the accused No. 3 ambushed him, the accused No. 2 unsuccessfully attacked him with a sickle, and the appellant attacked him with a spike and inflicted the injury on the left side of chest; and that the appellant and accused No.2 ran away after throwing their spike and sickle. The victim succumbed to the injuries at the Thanjavur Medical College Hospital.

4.1. On the other hand, it was suggested on behalf of the accused persons that the deceased along with 5 or 6 people came to the house of appellant and broke open the door; that the deceased, armed with aruval, pushed the accused No. 3

(wife of the appellant) when she tried to lock the door; and that the deceased pulled the saree of the wife of the appellant and went on to tear her jacket. It was further alleged that since the deceased did not leave despite requests, the appellant, in order to protect his wife and while exercising the right of private defence, stabbed the deceased on chest with the pair of scissors of a sewing machine and, when the deceased fell down, the other persons left the scene. The accused persons also examined two witnesses in support of their version of the incident.

5. On appreciation of evidence, the Trial Court, by its judgment and order dated 27.06.2000, rejected the defence version and found it proved beyond reasonable doubt that the appellant did cause injury on the vital part of body of the deceased. The Trial Court proceeded to hold that the acts of the accused-appellant and accused No.2 had been of murder and they were guilty for offences punishable under Section 302 IPC and under Section 302/34 IPC respectively. The Trial Court held proved the facts that the deceased warded off the blow attempted by the accused No. 2 but when the deceased tried to escape, the appellant stabbed him with the spike. However, the accused No. 3, wife of the appellant was acquitted with the Trial Court disbelieving the prosecution story regarding her participation in the crime, particularly for her having two children in the age of 2 years and 4 months respectively, and none of the witnesses having alleged that she was armed with any weapon. The Trial Court, *inter alia*, observed as under :-

> *"53…The evidence of P.W. 1 to 4 is that when the assault of A2 was warded off and he pushed him down the accused ran away. It is not the case of the prosecution that A3 also assaulted him before or after Poonthaisezhiyan fell down. When the evidence of P.W. 1 to 4 is that when A2 assaulted Poonthaisezhiyan he warded off and when he tried to ran away A1 stabbed him, and so it cannot be believed and accepted that A3 way laid him. Moreover, it is not disputed that on the date of occurrence, and at that time of occurrence, the 3rd accused was with two children aged about 2 years and 4 months. In such circumstances, it is difficult to accept the case of the prosecution that A3 joined with A1 and A2 helped them and way laid the deceased to commit murder. Thus the evidence on the side of the prosecution is not sufficient for the court to come to the conclusion that the charge framed U/s 341, 302 r/w 34 IPC has been proved. Against A3. But the evidence on the side of the prosecution is cogent, believable and sufficient to prove the charge, u/s 302 against 1st accused and the charge 302, r/w 34 IPC levelled against A2."*

6. In appeal by the present appellant and the accused No. 2, the High Court of Madras, in its impugned judgment and order dated 21.02.2008, found no reason to consider interference in the findings recorded by the Trial Court as regards conviction of the appellant under Section 302 IPC, but acquitted accused No.2 on the grounds that no injury corresponding to the weapon allegedly used by him was found on the body of the deceased; and that the witnesses in their testimonies had made improvements at the time of the examination before the Court, casting a doubt on the case against accused No.2. The findings of High Court in relation to accused No. 2 could be usefully extracted as under: -

> *"10. As far as A-2 was concerned, he had aruval and wielded the same, according to the witnesses examined by the prosecution. But, no corresponding injury as found. The prosecution witnesses came forward to state that A-2 had aruval and wielded it also. According to the prosecution, originally to start with, A-2 had aruval; but no injury was caused which was simply warded off. But, the witnesses have made a development*

at the time of the examination before the Court, and thus, it casts a doubt whether A-2 could have been in the place of occurrence with an aruval either, or he attacked the deceased, since no corresponding injury is found. The evidence of these witnesses in respect of A-2, casts a doubt, and hence, it could not be taken as a proof, since it is shrouded with doubts. Under the circumstances, that part of the prosecution case in respect of A-2, cannot be believed.

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13. As regards A-2, this Court is able to see that the evidence is shrouded with reasonable doubts, and hence, A-2 is entitled for acquittal. Accordingly, the conviction and sentence imposed on A-2 by the trial Court are set aside, and he is acquitted of the charge. The fine amount if any paid by him, will be refunded to him. The bail bound executed by him shall stand terminated."

7. For the High Court having affirmed his conviction and sentence for the offence under Section 302 IPC, the appellant (accused No. 1) has preferred this appeal. Assailing the judgment and order so passed by the High Court, learned counsel for the appellant has strenuously argued that the present one is a clear case of exercise in good faith the right of private defence since the appellant was only trying to protect his wife from being assaulted and molested by the deceased who had illegally entered into their house and, in natural circumstances, the appellant attacked the deceased with the object that was accessible to him. The learned counsel would submit 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; and the burden could be discharged by the accused by showing preponderance of probabilities in favour of that plea on the basis of material available on record. The learned counsel has referred to several decisions, including those in ***Munshi Ram & Ors. v. Delhi Administration*****: (1968) 2 SCR**

455*; James Martin v. State of Kerala:* (2004) 2 SCC 203; *Darshan Singh v. State of Punjab and Anr.:* (2010) 2 SCC 333*;* and ***Sukumaran v. State*: 2019 SCC Online SC 339.** According to the learned counsel, on the facts and in the circumstances available on record, the case of right of private defence deserves to be accepted. The learned counsel has also argued that in any event, the present one had been a case of sudden fight and grave and sudden provocation for the reason that the deceased entered the house of the appellant and attempted to cause harm to the family of the appellant. Therefore, according to the learned counsel, the action of the appellant does not lead to the offence of murder and it would, at the most, be a case of culpable homicide where the appellant had no intention of causing death or causing such bodily injury as is likely to cause death. In support of these contentions, the learned counsel has referred to and relied upon the decisions in ***Budhi Singh v. State of Himachal Pradesh*: (2012) 13 SCC 663** and ***Surain Singh v. State of Punjab*: (2017) 5 SCC 796.**

8. *Per contra*, learned counsel for the respondent would argue that the appellant had the intention of causing death of the deceased because of enmity; and prior to the incident in question, the accused had categorically expressed his intention to kill the deceased. Learned counsel would submit that the witnesses have established the fact that the place of occurrence was the road opposite to the house of the appellant and in the given circumstances, the case had neither been of the exercise of the right of private defence nor of provocation and sudden fight; and the act of the appellant squarely falls under the principal part of Section 300 IPC because of the nature of fatal injury inflicted upon the deceased on the

vital part of his body with a dangerous weapon. Hence, according to the learned counsel, the appellant is not entitled to the benefit of any of the Exceptions of Section 300 IPC. Learned counsel has referred to and relied upon the decisions in ***Pulicherla Nagaraju alias Nagaraja Reddy v. State of A.P*.: (2006) 11 SCC 444** *and* ***Gudar Dusadh v. State of Bihar*: (1972) 3 SCC 118.**

9. Having given anxious consideration to the rival submissions and having examined the record with reference to the law applicable, we are clearly of the view that in the given set of facts and circumstances, the appellant deserves to be convicted for the offence under Part-I of Section 304 IPC, for the offence of culpable homicide not amounting to murder.

10. The principal part of Section 299 IPC specifying the offence of culpable homicide reads as under: -

> *"**299. Culpable homicide.** -Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

10.1. The principal part of Section 300 IPC specifies the offence of murder as follows: -

> *"**300. Murder.** - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-*
>
> Secondly.- *If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-*

Thirdly.- *If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-*

Fourthly.- *If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."*

10.2. The aforesaid description of the offence of murder in Section 300 IPC is subject to five exceptions. Exceptions 1, 2 and 4 thereof, being relevant for the present purpose, could also be taken note of as under: -

"**Exception 1*. When culpable homicide is not murder***.- *Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

The above exception is subject to the following provisos:-

First.-*That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

Secondly.-*That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

Thirdly.-*That the provocation is not given by anything done in the lawful exercise of the right of private defence.*

Explanation.-*Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact."*

Exception 2.-*Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence."*

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Exception 4.-*Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

Explanation.- *It is immaterial in such cases which party offers the provocation or commits the first assault.*

*** *** *** ”

10.3 While Section 302 IPC provides the punishment for murder, Section 304 thereof provides the punishment for culpable homicide not amounting to murder. For its relevance, we may also extract Section 304 IPC as under:-

“*304. Punishment for culpable homicide not amounting to murder*.- *Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,*

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

11. We may now briefly refer to the decisions cited by the learned counsel for the parties.

11.1. The principles in the case of *Gudar Dusadh* (supra), as regards the operation of clause “*Thirdly*” of Section 300 IPC are not of any dispute but the same would apply with reference to the facts and circumstances of each case. On the facts of the case of *Pulicherla Nagaraju* (supra), this Court noticed that there was previous enmity between the parties and half an hour before the

incident, father and brother of the deceased had been attacked by the appellant and his father and there was no indication of any cause for an apprehension that the deceased might attack the appellant. In the given fact situation, this Court found that the act of the appellant causing an injury on a vital part of the body by stabbing with great force had been of the offence of murder.

11.2. The principles in *Munshi Ram* and other cited decisions on behalf of the appellant, that the plea of self defence could be considered if arising from the material on record and the burden could be discharged by the accused by showing preponderance of probabilities in favour of that plea, are also neither of doubt nor of dispute. The question, however, would remain as to whether the appellant has been able to show a reasonable apprehension so as to put the right of self defence into operation. In *Budhi Singh* and *Surain Singh* (supra), the accused persons were convicted for offences under Section 304 Part-I and Section 304 Part-II respectively in view of the facts of the given case. In the ultimate analysis, each case is required to be examined on its own facts to find the nature of offence.

12. Reverting to the case at hand, as noticed, one of the fundamental features of this case had been that the appellant, his brother and his wife were arrayed as accused Nos. 1, 2 and 3 respectively with the imputations that these three persons had acted in furtherance of common intention where they intercepted the deceased when he was crossing the lane in front of the house of the appellant; where brother of the appellant (i.e., accused No. 2) attacked the deceased with sickle but his blow was blocked by the deceased; where the accused No. 3

ambushed the deceased; and where the appellant stabbed the deceased with the spike. The prosecution suggested that the occurrence took place on the opposite side of the road in front of the house of the appellant but, on the other hand, it was suggested on behalf of the accused that the deceased barged into the house of the appellant and tried to assault and molest the wife of the appellant (i.e., accused No. 3); and that the deceased was attacked by the appellant in exercise of right of private defence. We shall discuss the other aspects of the matter, including those relating to the place of occurrence, a little later. Significant it is to notice at this juncture that in relation to the case so set up by prosecution, the Trial Court, even while accepting the evidence of PW-1 to PW-4 in respect of the appellant and accused No. 2, did not accept the same in respect of accused No. 3 and held that the charge levelled against her was not proved. Moreover, the acquittal of accused No. 3 by the Trial Court was never challenged. The appellant and the accused No. 2 laid challenge to their conviction and sentence in appeal before the High Court. The High Court, though accepted the prosecution case in respect of the appellant and affirmed his conviction and sentence but, at the same time, disbelieved the prosecution case in relation to the accused No. 2 and proceeded to acquit him. The aforesaid findings of the High Court and acquittal of accused No. 2 have also not been challenged by the prosecution. In the net result of the respective decisions of the Trial Court and the High Court, the prosecution case as regards accused No. 2 and accused No. 3, respectively the brother and the wife of the appellant, is found unbelievable and stands rejected. As noticed, the assertions by the prosecution witnesses had been that the three accused

persons acted in concert while attacking the deceased and that each of the accused person played his or her specific role in the occurrence. Now, when the prosecution case is disbelieved in relation to the accused Nos. 2 and 3, the questions perforce arise as to whether the implicating parts of the prosecution evidence *qua* the appellant could be segregated from the other part/s and as to whether it would be safe to accept the prosecution case against the appellant alone?

13. The question relating to the propriety of conviction of one accused even while the co-accused persons are acquitted has received attention of this Court in several decisions. With reference to the principles enunciated in the past decisions, this Court observed in the case of ***Yanob Sheikh alias Gagu v. State of West Bengal*****: (2013) 6 SCC 428** that acquittal of co-accused *per se* is not sufficient to result in acquittal of the other accused; and the Court ought to examine the entire prosecution evidence in its correct perspective before it could conclude on the effect of acquittal of one accused on the other in the facts and circumstance of the given case. In the case of ***Dalbir Singh v. State of Haryana:*** **(2008) 11 SCC 425,** this Court extracted the principles propounded in the case of ***Krishna Mochi v. State of Bihar:*** **(2002) 6 SCC 81** and observed as under: -

> "*13. Coming to the applicability of the principle of* falsus in uno, falsus in omnibus*, even if major portion of evidence is found to be deficient, residue is sufficient to prove guilt of an accused, notwithstanding acquittal of large number of other co-accused persons, his conviction can be maintained. However, where large number of other persons are accused, the court has to carefully screen the evidence:*
>
> *'51. … It is the duty of the court to separate the grain from the chaff. Where the 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 particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus *has no application in India and the witnesses cannot be branded as liars. The maxim* falsus in uno, falsus in omnibus *(false in one thing, false in everything) has not received general acceptance in different jurisdiction nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases 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 Ali v. State of U.P. [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 the accused who had been acquitted from those who were convicted. (See Gurcharan Singh 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 the 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 sifted 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 v. State of M.P.[(1972) 3 SCC 751] and Ugar Ahir v. State of Bihar [AIR 1965 SC 277]). An attempt has to be made to in terms of felicitous metaphor, separate grain from the chaff, truth from*

> *falsehood. Where it is not feasible to separate the 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 discard the evidence in toto. (See Zwinglee Ariel v. State of M.P. [AIR 1954 SC 15] and Balaka Singh v. State of Punjab[(1975) 4 SCC 511]). As observed by this Court in State of Rajasthan v. Kalki [(1981) 2 SCC 752] normal discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and these 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 categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so."*

13.1. Hence, where this Court found that separation of truth from falsehood was not feasible because of the two being inextricably mixed up, the prosecution evidence was discarded *in toto*[1]. However, on the facts of other cases[2], this Court found that acquittal of co-accused did not enure to the benefit of the convicted accused.

14. It could be usefully reiterated that in the present case, the prosecution witnesses narrated the happenings in the manner that the deceased was waylaid by the three accused persons on the road and while the two male accused persons (appellant and the accused No. 2) assaulted the deceased with respective weapons, the accused No. 3 prevented the deceased from running

1 Like the cases of *Zwinglee Ariel* and *Balaka Singh,* as indicated in the extracted portion in paragraph 13 hereinabove.
2 Like those in *Yanob Seikh* and *Dalbir Singh (*supra).

away. The chronology or sequence of the actions of the accused persons had occurred slightly different in the different testimonies but those inconsistencies, as such, may not be of material bearing if the witnesses are otherwise found reliable and trustworthy. However, the significant part of the matter is that such accounts by the witnesses stand disbelieved in relation to the accused No. 2 and the accused No. 3, both of whom stand acquitted. In our view, when accused No. 2 and accused No. 3 are removed out of scene, the entire complexion of the prosecution story is altered on material aspects and such an alteration cannot be ignored as being wholly immaterial or irrelevant.

14.1. In other words, if the prosecution case is taken as false (or at least doubtful) as regards accused No. 2 and accused No. 3, this part of falsehood (or doubtfulness) is difficult to be segregated for the purpose of believing the prosecution case *qua* the appellant alone. The exercise of sifting the grain from the chaff in this matter would shake, rather annihilate, the fundamentals of the prosecution case; and an entirely new prosecution story shall have to be assumed that when the deceased was walking down the lane, the appellant alone jumped on him; gave him a blow; threw the weapon towards his own house and ran away. In our view, on the facts and in the circumstances of this case, it would be unsafe to assume such or akin scene of occurrence in replacement of the story propounded by the prosecution. As noticed from the decisions above-referred, when this Court found that separating the truth from falsehood was not feasible because of the two being inseparably mixed up, the prosecution case was discarded *in toto*. However, such a course cannot be adopted in this case and it

cannot be held that the appellant was not involved in the occurrence or did not kill the deceased, essentially for the reason that the appellant himself took the defence that he assaulted the deceased in exercise of his right of private defence when the deceased allegedly intruded inside his house and attempted to assault and molest his wife. It is also noticed from the evidence on record that one injury was caused on the person of the deceased, being a vertical stab injury of 5 cm length and 2.5 cm width in front and outside the left collar bone that had pierced the upper portion of lung through the third rib. The medical officer PW-11 has opined that the injury in the lung was enough to cause death and could have been caused by the spike in question.

15. In view of the above, even after disbelieving the case of prosecution as regards the happenings, but taking into account the admitted case of the appellant that he did inflict injury on the person of the deceased, the matter is required to be examined further on the question as to whether the appellant is entitled to be acquitted for having justifiably acted in exercise of the right of private defence in order to save his wife from the alleged assault and molestation.

16. As regards the question as to whether the appellant has been able to establish the case of right of private defence, we may examine his assertion that the occurrence took place inside his house. A substantial deal of arguments had been that admittedly, there were blood stains outside the house of the appellant, on the road and across the road; and the Investigating Officer PW-14 did not carry out the investigation inside the house of the appellant nor investigated the private defence angle and the original mazhar was not produced.

16.1. The contention as regards original mazhar has only been noted to be rejected. The Trial Court has pointed out, and rightly so, that carbon copy of the same was produced and there was no such discrepancy that could be considered fatal to the prosecution. Having examined the testimony of the Investigating Officer PW-14, we find on the material aspects that he recovered the blood stained weapon of offence (sickle) from the raised platform of the house of appellant; and he went inside the house of appellant too but did not find the things scattered as alleged. He also denied that there were cut marks on the door frame, window glass or on the door of the house. He further denied the suggestion that there was blood on the vegetables inside the house of the appellant. He further stated that the deceased fell down in front of the house of the appellant but a little far away; and the deceased was laid in the place where Rangoli was drawn in the house of one Barnabas. It is also noticed that as per the site plan prepared by the Investigating Officer, the width of tar road was about 10 feet in front of the house of the appellant and his house was just opposite to the house of Barnabas.

17. Hence, even when we find that the prosecution case cannot be believed as projected, the defence version about the assault on and molestation of accused No. 3, the wife of the appellant, equally appears to be that of overstatement/exaggeration towards the other extreme. In other words, the part of the appellant's suggestion that the deceased entered his house with 5-6 persons and assaulted and molested his wife is difficult to be accepted; neither there is any convincing evidence in that regard nor the circumstances of the case support this version. However, from the evidence on record, this much is apparent that blood

stains were also found at the door-step of the house of the appellant; and the weapon of offence was found at the raised platform of the house of the appellant. The facts and circumstances of this case give rise to a reasonable doubt that the incident in question, in all likelihood, took place right at the door of the house of the appellant. Admittedly, the parties were on hostile terms and they had had an argument at about 5 p.m. the same day outside the house of the deceased. Therefore, the possibility of quarrel taking place upon the deceased reaching the door-step of the appellant is not ruled out.

17.1. In the given set of fact and circumstances, burden was heavy on the prosecution to clear the doubts as to how and why the deceased was at the door-step of the house of the appellant; and how the blood stains were also found at the door-step of the house of the appellant. The prosecution has not been able to remove all the obvious doubts as regards the sequence of events relating to the incident in question and as regards the actual place of occurrence.

17.2. In the given set of fact, circumstances and doubts, preponderance leans towards the probability that the occurrence took place just at the door-step of the house of the appellant; and the likelihood of the deceased, who was on inimical terms with the wife of the appellant, having given reasons for provocation, by way of aggression or attempted intrusion into the house of the appellant, is not ruled out altogether.

18. The upshot of the discussion foregoing is that the projected story of the prosecution cannot be accepted, particularly for the reason that the accused No. 2 and accused No. 3 have been acquitted and their acquittal has attained finality.

Then, the prosecution has not been able to remove all the obvious doubts as to the place and manner of occurrence, particularly as to who was the aggressor and how it started. On the other hand, the defence version that the deceased barged into the house of the appellant with 5-6 persons and assaulted and molested his wife is also unacceptable for want of cogent and convincing evidence. However, the preponderance remains that the occurrence, in all likelihood, took place just at the door-step of the house of the appellant. In the given circumstances, the likelihood of the deceased, who was on inimical terms with the wife of the appellant, having given the reasons for provocation by way of aggression or attempted intrusion into the house of the appellant is not ruled out.

19. Having indicated the obvious but unexplained doubts in the prosecution version and having also indicated the preponderance of probabilities, we may usefully refer to the decision in the case of ***Jumman and Ors. v. The State of Punjab:*** **AIR 1957 SC 469** wherein this Court has indicated the course to be followed in the case where there is ambiguity in deciding the role and involvement of the parties. This Court has said,-

> *"22. In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under Section 300 IPC., Exception 4.*
>
> *23. The matter has to be viewed in this way. It is clear that there was no premeditation and therefore when the contending factions met accidentally and attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties*

had arms, there was no undue advantage taken by either. Hence Exception 4 to Section 300, IPC., applies with the result that the offence is under Section 304 (Part I), of the Indian Penal Code."

20. In view of the foregoing and in the overall circumstances of this case, we are inclined to accept the alternative case of the appellant that the incident in question took place without any premeditation, in a sudden fight in the heat of passion upon a sudden quarrel, when the deceased attempted entry into his house; and the appellant did neither take any undue advantage nor acted in a cruel or unusual manner. *A fortiori*, we are inclined to extend the benefit of Exception 4 of Section 300 IPC to the appellant. However, the act of the appellant leading to the death having been with the intention of causing such bodily injury as is likely to cause death, the appellant deserves to be convicted for the offence under Part-I of Section 304 IPC.

21. Accordingly and in view of the above, this appeal is partly allowed to the extent and in the manner that conviction of the appellant under Section 302 IPC is altered to the one under Part-I of Section 304 IPC and the appellant is sentenced to undergo imprisonment for a period of ten years. The other part of sentence as regards fine and default stipulation is maintained.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(DINESH MAHESHWARI)

New Delhi
Dated: 9th August, 2019