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Ramaswami Chettiar v. The Official Receiver

Subba Rao J.

The third contention of the learned Counsel for the appellants is a weak one. It is said that the official receiver does not claim under Meenakshi Achi, and, therefore, he cannot rely upon the execution petition filed by her to save the bar of limitation. There is a fallacy underlying this argument. The question for decision is not whether the official receiver claims under Meenakshi Achi, but whether the execution petitions filed by her were in accordance with law. If as I held, at the time the previous execution petitions were filed, Meenakshi Achi had a valid title to execute the decree, the execution petitions filed by her would certainly be in accordance with law within the meaning of art. 182(5) of the Indian Limitation Act. I, therefore, reject this contention.

In view of the aforesaid conclu[illegible]rived at by me, the last two contentions based on payments of instalments do not arise for consideration.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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September 3

VISHWANATH

v.

THE STATE OF UTTAR PRADESH

(SYED JAFER IMAM and K. N. WANCHOO, JJ.)

Criminal Trial—Right of private defence—When extends to causing death—Whether mere abduction which is not punishable gives right of private defence to cause death of abductor—Husband trying to take away wife forcibly from her father's house—Wife's brother stabbing husband and killing him—If protected by right of private defence—Indian Penal Code, 1860 (XLV of 1860), ss. 97, 99 and 100.

The relations between one G and his wife were strained and she went to live with her father B and her brother V, the appellant. G, with three others, went to the quarter of B and he went inside and came out dragging his reluctant wife behind him. She caught hold of the door and G started pulling her. At this the appellant shouted to his father that G was adamant and thereupon B replied that he should be beaten. The appellant took out a knife from his pocket and stabbed G once. The knife penetrated the heart of G and he died. B and the appellant were

tried for the murder of G; B was acquitted and the appellant was convicted under s. 304 Part II Indian Penal Code and sentenced to three years rigorous imprisonment. The appellant contended that he had acted in the right of private defence of person under s. 100 fifthly Indian Penal Code, which extended to the causing of death as G had assaulted his wife with the intention of abducting her. The respondent urged that s. 100 fifthly applied only when the abduction was of such a nature as was punishable under the Penal Code.

Held, that the appellant had the right of private defence of the body of his sister which extended to the causing of death of G. The extended right under s. 100 arose when there was the offence of assault of one of the types mentioned in the six clauses of that section. It was not necessary that the intention with which the assault was committed must always be an offence itself. The word "abduction" used in the fifth clause of s. 100 meant nothing more than what was defined as "abduction" in s. 362, and it was not necessary, to get the protection of this clause, that the abduction must be of a type punishable under the Penal Code. Further, the appellant had not inflicted more harm than was necessary and was not guilty of any offence.

Emperor v. *Ram Saiya*, I.L.R. 1948 All. 165, overruled.

Jagat Singh v. *King-Emperor*, A.I.R. 1923 Lah. 155, *Daroga Lohar* v. *Emperor*, A.I.R. 1930 Pat. 347, *Sakha* v. *The State*, I.L.R 1950 Nag. 508 and *Dayaram Laxman* v. *State*, A.I.R 1953 Madhya Bharat 152, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 32 of 1958.

Appeal by special leave from the judgment and order dated April 25, 1957, of the Allahabad High Court in Criminal Appeal No. 992 of 1954, arising out of the judgment and order dated January 25, 1954, of the Additional Sessions Judge, Gorakhpur in Sessions Trial No. 71 of 1953.

S. P. Sinha and *S. D. Sekhri*, for the appellant.

G. C. Mathur and *C. P. Lal* (for *G. N. Dikshit*), for the respondent.

1959. September 3. The Judgment of the Court was delivered by

WANCHOO J.—This is an appeal by special leave against the judgment of the Allahabad High Court in a criminal matter. The facts of the case, as found by the High Court, are no longer in dispute and the

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question that is raised in this appeal is whether the appellant had exceeded the right of private defence of person. The relevant facts for our purposes are these. Gopal deceased was married to the sister of the appellant. The appellant and his father Badri were living in a railway quarter at Gorakhpur. Gopal's sister was married to one Banarsi, who was also living in another railway quarter nearby. Gopal had been living for some time with his father-in-law. They did not, however, pull on well together and Gopal shifted to the house of Banarsi. Badri persuaded Gopal to come back to his house but the relations remained strained and eventually Gopal shifted again to the quarter of Banarsi about 15 days before the present occurrence which took place on June 11, 1953, at about 10 p.m. Gopal's wife had continued to live with her father as she was unwilling to go with Gopal. Her father Badri and her brother Vishwanath appellant sided with her and refused to let her go with Gopal. Gopal also suspected that she had been carrying on with one Moti who used to visit Badri's quarter. Consequently, Gopal was keen to take away his wife, the more so as he had got a job in the loco department some months before and wanted to lead an independent life. On June 11, there was some quarrel between the appellant and Gopal about the girl; but nothing untoward happened then and the appellant went back to his quarter and Gopal went away to Banarsi's quarter. Gopal asked Banarsi's sons to help him in bringing back his wife. Banarsi also arrived and then all four of them went to Badri's quarter to bring back the girl. On reaching the place, Banarsi and his two sons stood outside while Gopal went in. In the meantime, Badri came out and was asked by Banarsi to let the girl go with her husband. Badri was not agreeable to it and asked Banarsi not to interfere in other people's affairs. While Badri and Banarsi were talking, Gopal came out of the quarter dragging his reluctant wife behind him. The girl caught hold of the door as she was being taken out and a tug-of-war followed between her and Gopal. The appellant was also there and shouted to his father

that Gopal was adamant. Badri, thereupon replied that if Gopal was adamant he should be beaten (*to maro*). On this the appellant took out a knife from his pocket and stabbed Gopal once. The knife penetrated into the heart and Gopal fell down senseless. Steps were taken to revive Gopal but without success. Thereupon, Gopal was taken to the hospital by Badri and the appellant and Banarsi and his sons and some others, but Gopal died by the time they reached the hospital.

On these facts the Sessions Judge was of opinion that Badri who had merely asked the appellant to beat Gopal could not have realised that the appellant would take out a knife from his pocket and stab Gopal. Badri was, therefore, acquitted of abetment. The Sessions Judge was further of opinion that the appellant had the right of private defence of person and that this right extended even to the causing of death as it arose on account of an assault on his sister which was with intent to abduct her. He was further of opinion that more harm than the circumstances of the case required was not caused; and therefore the appellant was also acquitted.

The State then appealed to the High Court against the acquittal of both accused. The High Court upheld the acquittal of Badri. The acquittal of the appellant was set aside on the ground that the case was not covered by the fifth clause of s. 100 and the right of private defence of person in this case did not extend to the voluntary causing of death to the assailant and therefore it was exceeded. The High Court relied on an earlier decision of its own in *Emperor* v. *Ram Saiya* (1). The appellant was therefore convicted under s. 304, Part II, of the Penal code and sentenced to three years' rigorous imprisonment. He applied for a certificate to enable him to appeal to this Court but this was refused. Thereupon he applied to this Court for special leave which was granted; and that is how the matter has come up before us.

The main question therefore that falls for consideration in this appeal is whether the decision in *Ram*

(1) I.L.R. 1948 All. 165.

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Saiya's case (1) is correct. It appears that four other High Courts have taken a view which is different from that taken in *Ram Saiya's case* (1), namely *Jagat Singh* v. *King Emperor* (2) *Daroga Lohar* v. *Emperor* (3), *Sakha* v. *The State* (4) and *Dayaram Laxman* v. *State* (5) There is, however, no discussion of the point in these four cases and we need not refer to them further. The view taken in *Ram Saiya's case* (1) is that the word "abducting" used in the fifth clause of s. 100 of the Penal Code refers to such abducting as is an offence under that Code and not merely to the act of abduction as defined in s. 362 thereof. Mere abduction is not an offence and, therefore, cannot give rise to any right of private defence and the extended right of private defence given by s. 100 only arises if the offence which occasions the exercise of the right is of one of the kinds mentioned in s. 100.

Section 97 gives the right of private defence of person against any offence affecting the human body. Section 99 lays down that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Section 100 with which we are concerned is in these terms:—

> "The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—
>
> "*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;
>
> *Thirdly*—An assault with the intention of committing rape;

Fourthly—An assault with the intention of gratifying unnatural lust;

Fifthly—An assault with the intention of kidnapping or abducting;

Sixthly—An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release."

The right of private defence of person only arises if there is an offence affecting the human body. Offences affecting the human body are to be found in Ch. XVI from s. 299 to s. 377 of the Penal Code and include offences in the nature of use of criminal force and assault. Abduction is also in Ch. XVI and is defined in s. 362. Abduction takes place whenever a person by force compels or by any deceitful means induces another person to go from any place. But abduction pure and simple is not an offence under the Penal Code. Only abduction with certain intent is punishable as an offence. If the intention is that the person abducted may be murdered or so disposed of as to be put in danger of being murdered, s. 364 applies. If the intention is to cause secret and wrongful confinement, s. 365 applies. If the abducted person is a woman and the intention is that she may be compelled or is likely to be compelled to marry any person against her will or may be forced or seduced to illicit intercourse or is likely to be so forced or seduced, s. 366 applies. If the intention is to cause grievous hurt or so dispose of the person abducted as to put him in danger of being subjected to grievous hurt, or slavery or the unnatural lust of any person, s. 367 applies. If the abducted person is a child under the age of ten and the intention is to take dishonestly any movable property from its person, s. 369 applies. It is said that unless an offence under one of these sections is likely to be committed, the fifth clause of s. 100 can have no application. On a plain reading, however, of that clause there does not seem to be any reason for holding that the word "abducting" used there means anything more than what is defined as "abduction" in s. 362.

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It is true that the right of private defence of person arises only if an offence against the human body is committed. Section 100 gives an extended right of private defence of person in cases where the offence which occasions the exercise of the right is of any of the descriptions enumerated therein. Each of the six clauses of s. 100 talks of an assault and assault is an offence against the human body; (see s. 352). So before the extended right under s. 100 arises there has to be the offence of assault and this assault has to be of one of the six types mentioned in the six clauses of the section. The view in *Ram Saiya's case* (1) seems to overlook that in each of the six clauses enumerated in s. 100, there is an offence against the human body, namely, assault. So the right of private defence arises against that offence, and what s. 100 lays down is that if the assault is of an aggravated nature, as enumerated in that section, the right of private defence extends even to the causing of death. The fact that when describing the nature of the assault some of the clauses in s. 100 use words which are themselves offences, as for example, "grievous hurt", "rape", "kidnapping", "wrongfully confining", does not mean that the intention with which the assault is committed must always be an offence in itself. In some other clauses, the words used to indicate the intention do not themselves amount to an offence under the Penal Code. For example, the first clause says that the assault must be such as may reasonably cause the apprehension of death. Now death is not an offence anywhere in the Penal Code. Therefore, when the word "abducting" is used in the fifth clause, that word by itself need not be an offence in order that that clause may be taken advantage of by or on behalf of a person who is assaulted with intent to abduct. All that the clause requires is that there should be an assault which is an offence against the human body and that assault should be with the intention of abducting, and whenever these elements are present the clause will be applicable.

Further the definition of "abduction" is in two parts, namely, (i) abduction where a person is compelled

(1) I.L.R. 1948 All. 165.

by force to go from any place and (ii) abduction where a person is induced by any deceitful means to go from any place. Now the fifth clause of s. 100 contemplates only that kind of abduction in which force is used and where the assault is with the intention of abducting, the right of private defence that arises by reason of such assault extends even up to the causing of death. It would in our opinion be not right to expect from a person who is being abducted by force to pause and consider whether the abductor has further intention as provided in one of the sections of the Penal Code quoted above, before he takes steps to defend himself, even to the extent of causing death of the person abducting. The framers of the Code knew that abduction by itself was not an offence unless there was some further intention coupled with it. Even so in the fifth clause of s. 100 the word "abducting" has been used without any further qualification to the effect that the abducting must be of the kind mentioned in s. 364 onwards. We are therefore of opinion that the view taken in *Ram Saiya's case* (1) is not correct and the fifth clause must be given full effect according to its plain meaning. Therefore, when the appellant's sister was being abducted, even though by her husband, and there was an assault on her and she was being compelled by force to go away from her father's place, the appellant would have the right of private defence of the body of his sister against an assault with the intention of abducting her by force and that right would extend to the causing of death.

The next question is whether the appellant was within the restrictions prescribed by s. 99. It was urged that the right of private defence never extends to the inflicting of more harm than what is necessary for the purpose of defending and that in this case the appellant inflicted more harm than was necessary. We are of opinion that this is not so. The appellant gave only one blow with a knife which he happened to have in his pocket. It is unfortunate that the blow landed right into the heart and therefore Gopal died. But considering that the appellant had given

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only one below with an ordinary knife which, if it had been a little this way or that, could not have been fatal, it cannot be said that he inflicted more harm than was necessary for the purpose of defence. As has been pointed out in *Amjad Khan* v. *The State* (1), "these things cannot be weighed in too fine a set of scales or 'in golden scale'".

We, therefore, allow the appeal and hold that the appellant had the right of private defence of person under the fifth clause of s. 100 and did not cause more harm than was necessary and acquit him.

Appeal allowed.

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September 4

CHINUBHAI HARIDAS

v.

THE STATE OF BOMBAY

(SYED JAFER IMAM and K. N. WANCHOO, JJ.)

Factories—Precautions against dangerous fumes—Duty of occupier—Liability for accident—"Be permitted to enter", meaning of—Indian Factories Act, 1948 (LXVIII of 1948), s. 36(3) and (4).

The appellant was the occupier of a factory where there was a pit in which dangerous fumes were likely to be present. The pit was securely covered and enclosed and no one was expected to go down into it for normal work as it was worked by gadgets fixed nearby above the ground. Something went wrong with the machinery inside the pit and five workers went down without wearing suitable breathing apparatus and without wearing a belt securely attached to a rope the free end of which could be held by some person standing outside. All the workers were overcome by poisonous gases and died. It was found that suitable breathing apparatus, reviving apparatus, belts and ropes were not available anywhere in the factory and were not kept for ready use near the pit. The appellant was prosecuted as the occupier for breach of the provisions of s. 36(3) and (4) of the Indian Factories Act, 1948. The trial Court held that no offence under s. 36(3) had been made out and it was not proved that any permission, express or implied, had been given to the workmen to enter the pit, and that no offence under s. 36(4) had been made out because no permission having been given it was not necessary to keep the breathing apparatus etc., near the pit or anywhere else in the factory and consequently it acquitted the appellant. On appeal by the State, the High Court set aside the

(1) [1952] S.C.R. 567.