

(2000) 09 SC CK 0103
In the Supreme Court Of India
Case No : Criminal Appeal No. 861 of 1999

Radhakrishnan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-09-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 304

Citation : (2000) 3 ACR 2722 : (2000) 2 JT 350 Supp

Hon'ble Judges : R. P. Sethi, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.T. Thomas and R.P. Sethi, JJ.—We heard the learned Counsel. The main plea was that the accused had a right of private defence initially and by inflicting fatal injuries on two deceased, the accused had only exceeded the right of private defence and, therefore, the offence could be brought down to Section 304, Part-I of the Indian Penal Code.

2. In order to countenance the said contention, we first perused the evidence of the eye-witnesses in this case, which evidence was believed by the trial court and the High Court. P.W. 1 and P.W. 8 are those two eye-witnesses. The evidence of those eye-witnesses can be summarised as follows:

There was a brawl between the Appellant, on the one side, and deceased Bashir and his brother, deceased Pareed, on the other side. After the brawl subsided, both sides retreated from the scene. The Appellant went into a hotel and a little while thereafter, he went out of the hotel followed by his brother, Saji, who was then armed with a stick. The said brother, Saji, went towards deceased, Bashir. He was followed by the Appellant, moving towards Bashir and then Appellant was armed with a knife. Then, Bashir picked up a stone and hurled it. It did not hit any one of the accused. Suddenly, Appellant plunged his knife on the chest of Bashir. Again he stabbed him on the axilla. By then, brother of Bashir, by name

Pareed, rushed to the scene. Then Appellant stabbed Pareed also on the abdomen.

3. The act of Bashir pelting stone cannot, in the aforesaid broad setting of facts, be regarded as an act of aggression. It could only be an act of defence against an aggression perpetrated by the two accused. When both the accused were armed-one with a stick and another with a knife, and moved towards the deceased Bashir who was then unarmed. Bashir had a right of private defence to repel the said aggression. Hence, Bashir's picking up a stone and pelting the same is not an act of aggression but only an act of resisting the aggression.

4. In the aforesaid set of facts, we are not disposed to consider whether Appellant had exceeded the right of private defence, for, he had no right of private defence even initially. Accordingly, the appeal is dismissed.