

Present : Muhammad Yaqub Ali and Sajjad Ahmad, JJ

AHMAD AND 3 OTHERS-Appellants

versus

THE STATE-Respondent

Criminal Appeal No. 13 of 1971, decided on 23rd June 1971.

(On appeal from the judgment and order of the former High Court of West Pakistan, Lahore, dated the 27th July 1967, in Criminal Appeal No. 605 of 1965).

(a) Penal Code (XLV of 1860), Ss. 300, 302 & 304-Murder and culpable homicide-Application of Ss. 302, 304, Part I & 304, Part II-Section 302 attracted if offence not one of culpable homicide not amounting to murder-Case covered by S. 304, Part I if offence of murder reduced to culpable homicide by being covered by any exception to S. 300-Part II of S. 304 applies if fatal injury inflicted without any intention on part of accused to cause death or such injury likely to cause death and accused could be burdened with knowledge of injury being likely to cause death.

In a murder case if the intention of the accused was to cause such bodily injury to the deceased as was likely to cause his death, or which was sufficient in the ordinary course of nature to cause death, the case obviously would be one of murder falling under section 302, P. P. C. being covered by the definition of murder as contained in section 300, *Secondly* and *Thirdly* of P. P. C. and the conviction could only be made under section 302, P. P. C. and not under section 304, which is attracted if the offence is one of culpable homicide not amounting to murder. A case is covered by Part I of section 304, P. P. C. if the offence which is otherwise murder is reduced to culpable homicide not amounting to murder by reason of being covered by any of the exceptions to section 300, P. P. C. Part II of section 304, P. P. C. applies if the fatal injury inflicted on the deceased is caused to him without any intention on the part of the accused to cause death, or such bodily injury as is likely to cause death, but about which the accused can be burdened with the knowledge that it is likely to cause his death.

(b) Penal Code (XL V of 1860), Ss. 99, 100 & 103--Private defence, right of-Primarily subjected to restrictions contained in S. 99-Harm caused to offending party, out of all proportions to harm threatened or apprehended from such party. Right of self-defence, in circumstance would stand negated.

The exercise of the right of self-defence of body or property is subject primarily to the restrictions contained in section 99 of the Penal Code. One basic restriction in this behalf is that no harm is to be caused other than what is absolutely necessary for the exercise of the right of self-defence. If the harm caused to the offending party is out of all proportion to the harm which may be received or which is threatened by the other party, and which gives occasion for the exercise of that right, the right of self-defence will stand completely negated. This right is available only if it is rooted in good faith and no intention is manifested by the circumstances of doing more harm than is necessary for the purpose of self-defence.

(c) Penal Code (XLV of 1860), Ss. 302, 304, 325 & 308--Complainant party (unarmed) intruding on land in possession of accused-Accused entitled to evict them without causing any harm other than strictly necessary-Accused mercilessly beating complainant party-Inference - that accused acted more out of spite and revenge than in exercise of self-defence-Deceased sustaining one injury inflicted with blunt side of weapon. Accused, held, could not be burdened with intention to kill deceased-Accused guilty of causing grievous injury under S. 325 Conviction altered from S. 304, Part I to S. 325/34-Accused delivering to another member of complainant party numerous injuries likely to cause his death-Conviction under S. 308/34 maintained.

Bashir Zafar, Advocate Supreme Court instructed by Sh. Masood Akhtar, Advocate-on-Record for Appellants.

Iftikharul Haq Khan, Advocate Supreme Court instructed by Maqbool Ahmad, Advocate-on-Record for Ijaz Ali, Advocate-on-Record for the State.

Dates of hearing : 10th and 11th June 1971.