A

STATE OF U.P.

v.

RAM SWARUP & ANR.

May 2, 1974

[M. H. BEG, Y. V. CHANDRACHUD AND V. R. KRISHNA IYER, JJ.]

B *Criminal Law—Murder—Private defence, right of.*

Appeal—Appeal against acquittal—Locus standi of State to appeal under article 136.

G and deceased M were trade rivals. At about 7 a.m. G went to purchase a basket of melons from the deceased. The deceased declined to sell it. Hot words followed. G left in a huff. An hour later G went to the market with his son R and two other sons. G had a knife R a gun and the others carried lathis. They advanced aggressively towards the deceased C who attempted to retreat. R shot him dead at point blank range. The Learned Sessions Judge convicted R under section 302 and sentenced him to death. G was convicted under section 302 read with section 34 and was sentenced to imprisonment for life. The other two sons were acquitted of all the charges. On appeal, the High Court of Allahabad acquitted R and G and confirmed the acquittal of the other sons.

HELD : Confirming the acquittal of G but restoring the conviction of R and awarding life sentence,

D (i) The burden which rests on the prosecution to establish its case beyond reasonable doubt is neither neutralised nor shifted because the accused pleads the right of private defence. The prosecution must discharge its initial traditional burden to establish the complicity of the accused and until it does so, the question whether the accused has acted in self defence or not does not arise. The Sessions Court accepted the evidence of 5 prosecution witnesses after a careful Secruting and the High Court was unduly suspicious of that evidence in the name of caution. Caution is safe and unfailing guide in the E judicial armoury but a cautious approach does not justify an *a priori* assumption that the case is surrounded in suspicion. Murders are not committed by coolly weighing the pros and cons. [412C-F, H; 414A]

(ii) The right of private defence is a right of defence, not of a retribution. It is available in face of imminent peril to those who act in good faith and in no case can the right be conceded to a person who stage-manages the situation wherein the right can be used as a shield to justify an act of aggression. Evidently the accused went to the market with a pre-conceived design F to pick up a quarrel. It is a necessary incident of the right of private defence that the force used must bear a reasonable proportion to the injury to be averted. There was no justification for killing the deceased selectively. The right of defence ends with the necessity for it. When a person is accused of an offence the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code is upon him and the court shall presume the absence of such circumstances. The right of private defence constitutes a general exception to the offences defined in the Penal Code. The burden which rests on the accused to prove the exceptG tion is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for accused to show as in a civil case that the preponderance of probabilities is in favour of his plea. The respondents led no evidence to prove their defence but that is not necessary because such proof can be offered by relying on the evidence led by the prosecution, the material elicited by cross-examining the prosecution witnesses and the totality of facts and circumstances emerging out of the evidence in the case. The conclusion of the High Court in regard to Ram Swarup being plainly unsupportable and leading to a manifest failure of justice it was set H aside and the order of the Sessions Court convicting him under section 302 of the Penal Code was restored. The sentence was however, reduced to life imprisonment since the possibility of scuffle cannot be excluded. [414H; 416D-417G]

In regard to G although if this Court was to consider the case independently it might have come to a conclusion different from the one arrived at by the High Court, in view of the principles governing appeals under Article 136 the order passed by the High Court was not disturbed. [418A-D]

(iii) The *locus standi* of State Governments to file appeals in this Court against judgments or orders rendered in criminal matters has been recognised over the years for a valid reason namely, all crimes raise problems of law and order and some raise issues of public disorder. The State Governments are entrusted with the enforcement and execution of laws directed against prevention and punishment of crimes. They have, therefore a vital stake in criminal matters. The objection that the State Government has no *locus standi* to file the appeal must be rejected. [421A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 192 of 1972.

Appeal by special leave from the Judgment and order dated the 13th October, 1971 of the Allahabad High Court in Crl. A. No. 672 of 1971.

D. P. Uniyal and *O. P. Rana,* for the appellants

Frank Anthony, A. K. Garg, Santokh Singh and Ramesh Sharma, for respondent No. 1.

R. K. Garg and *Santokh Singh,* for respondent No. 2.

Nurrudin Ahmed and *U. P. Singh,* for the complainant.

The Judgment of the Court was delivered by

CHANDRACHUD, J. On the morning of June 7, 1970 in the Subzi Mandi at Badaun, U.P., a person called Sahib Datta Mal *alias* Munimji was shot dead. Ganga Ram and his three sons, Ram Swarup, Somi and Subhash were prosecuted in connection with that incident. Ram Swarup was convicted by the learned Sessions Judge, Badaun, under section 302, Panel Code, and was sentenced to death. Ganga Ram was convicted under section 302 read with section 34 and was sentenced to imprisonment for life. They were also convicted under the Arms Act and sentenced to concurrent terms of imprisonment. Somi and Subhash were acquitted of all the charges as also was Ganga Ram of a charge under section 307 of the Penal Code in regard to an alleged knife-attack on one Nanak Chand.

The High Court of Allahabad has acquitted Ganga Ram and Ram Swarup in an appeal filed by them and has dismissed the appeal filed by the State Government challenging the acquittal of Somi and Subhash. In this appeal by special leave we are concerned only with the correctness of the judgment of acquittal in favour of Ganga Ram and Ram Swarup.

Except for a solitary year, Ganga Ram held from the Municipal Board of Badaun the contract of Tehbazari in the vegetable market from 1954 to 1969. The deceased Munimji out-bid Ganga Ram in the annual auction of 1970-71 which led to the day-light outrage of June 7, 1970.

A At about 7 a.m. on that day Ganga Ram is alleged to have gone to the market to purchase a basket of melons. The deceased declined to sell it saying that it was already marked for another customer. Hot words followed during which the deceased, asserting his authority, said that he was the Thekedar of the market and his word was final. Offended by this show of authority, Ganga Ram B is alleged to have left in a huff.

An hour later Ganga Ram went back to the market with his three sons, Ram Swarup, Somi and Subhash. Ganga Ram had a knife, Ram Swarup had a gun and the two others carried *lathis*. They threw a challenge saying that they wanted to know whose authority prevailed in the market. They advanced aggressively to C the *gaddi* of the deceased who, taken by surprise, attempted to rush in a neighbouring *kothari*. But that was much too late for before he could retreat, Ram Swarup shot him dead at point-blank range.

It was at all stages undisputed that Ganga Ram and Ram Swarup went to the market at about 8 a.m. that one of them was armed with a gun and that a shot fired from that gun by Ram Swarup caused D the death of Munimji.

Though there was no direct evidence of the 7 O'clock incident the learned Sessions Judge accepted the prosecution case that the shooting was preceded by that incident. In coming to that conclusion the learned Judge relied upon the evidence of Sona Ram, Nanak Chand, Shanti Lal, Shariat Ullah and Shiva Dutta Mal (P. Ws. 1 to 5) to whom the deceased had narrated the incident. E These witnesses were also examined in order to establish the main incident and their evidence in that regard was also accepted by the learned Judge. Having found that these witnesses were trustworthy and that their evidence established the case of the prosecution the learned Judge proceeded to consider whether as contended by Ganga Ram and Ram Swarup the shot was fired by Ram Swarup in exercise of the right of private defence. Adverting to a variety of circumF stances the learned Judge rejected that theory and held that the charges levelled against the two accused were proved beyond a reasonable doubt.

The High Court disbelieved the evidence in regard to the 7 O'clock incident. In any case, according to the High Court, that G incident was far to trifling to lead to the shooting outrage. The High Court accepted the defence version that a scuffle had taken place between the deceased Munimji and Ganga Ram and that Ganga Ram was assaulted with *lathis* by Shiva Dutta Mal (P.W. 5) and the servants of the deceased. The High Court concluded :

> "If Ganga Ram was being given repeated lathi blows H by P.W. Shiva Dutta Mal and servants of the deceased, then Ram Swarup had full justification to fire his gun in the right of private defence of the person of his father. It may be that the gun fire injured the deceased, rather

> than those who were belabouring Ganga Ram with lathis. But once we come to the conclusion that it was not unlikely that Ram Swarup had used his gun in the circumstances narrated above, i.e. in order to save his aged father from the clutches and assaults of his assailants, he cannot be held guilty of murder or for the matter of that of any other offence".

In regard to Ganga Ram the High Court held that he could not be found guilty under section 302 read with section 34 "as his presence in the Subzimandi was not for the purpose of killing the deceased, as suggested by the prosecution, but he had more probably reached there alongwith his son Ram Swarup, on way back from their vegetable farm, in order to purchase melons. . ."

The burden which rests on the prosecution to establish its case beyond a reasonable doubt is neither neutralised nor shifted because the accused pleads the right of private defence. The prosecution must discharge its initial traditional burden to establish the complicity of the accused and not until it does so can the question arise whether the accused had acted in self-defence. This position, though often overlooked, would be easy to understand if it is appreciated that the Civil Law rule of pleadings does not govern the rights of an accused in a criminal trial. Unlike in a civil case, it is open to a criminal court to find in favour of an accused on a plea not taken up by him and by so doing the court does not invite the charge that it has made out a new case for the accused. The accused may not plead that he acted in self-defence and yet the court may find from the evidence of the witnesses examined by the prosecution and the circumstances of the case either that what would otherwise be an offence is not one because the accused has acted within the strict confines of his right of private defence or that the offence is mitigated because the right of private defence has been exceeded. For a moment, therefore, we will keep apart the plea of the accused and examine briefly by applying the well-known standard of proof whether the prosecution, as held by the Sessions Court, has proved its case.

The evidence of the five witnesses—Sona Ram, Nanak Chand, Shanti Lal, Shariat Ullah, Shiva Dutta Mal—is consistent and convincing on the broad points of the case. The Sessions Court accepted that evidence after a careful scrutiny and we are inclined to the view that the High Court was unduly suspicious of that evidence in the name of caution. The High Court thought that the evidence of these witnesses must be viewed with great caution because Sona Ram and Shanti Lal are the first cousins of the deceased, Nanak Chand and Shiva Dutta Mal were co-sharers of the deceased in the Tehbazari contract, Shariat Ullah was a constituent of the deceased and because Sona Ram, Nanak Chand and Shiva Dutta Mal being co-sharers in the contract should have been moving about the market rather than remain at the *gaddi* of the deceased where he was shot down. Caution is a safe and unfailing guide in the judicial armoury but a cautious approach does not justify an *a priori* assumption that the case is shrouded in suspicion. This is

A exemplified by the rejection of the melon incident by the High Court on the grounds, inter alia, that there was no entry in the account books of the deceased evidencing the sale of the melon-basket and that the owner of the melons was not called to support the prosecution case. The point in issue was not whether the melon-basket was in truth and reality sold to another customer, in which case the evidence of the B owner and the account books of the deceased would have some relevance. The point of the matter was that three was trade rivalry between the deceased and Ganga Ram, their relations were under a deep strain and therefore the deceased declined to sell the melons to Ganga Ram The excuse which the deceased trotted out may be true or false. And indeed, greater the falsity of that excuse greater the affront to Ganga Ram.

C

The melon incident formed a prelude to the main occurrence and was its immediate cause. By disbelieving it or by treating it alternatively as too trifling the High Court was left to wonder why Ganga Ram and Ram Swarup went to the market armed with a gun, which they admittedly did. The case of the prosecution that they went back to the market to retaliate against the highhandedness of the deceased D was unacceptable to the High Court because "it does not stand to reason that the appellants and their two other companions (sons of Ganga Ram) would walk into the lion's den in broad day light and be caught and beaten up, and even be done to death by the deceased, his partners and servants, besides hundreds of people who were bound to be present in the Sabzimandi at about 8 A.M. Such a large congregation could have easily disarmed the appellants and their two E other companions and given them a thorough beating if not mortal injuries". Evidently, they did go to the market which to their way of thinking was not a lion's den. And they went adequately prepared to meet all eventualities. The large congregation of which the High Court speaks is often notoriously indifferent to situations involving harm or danger to others and it is contrary to common experience that anyone would readily accost a gun-man in order to disarm him.

F

The High Court saw yet another difficulty in accepting the prosecution case :

> "Even if the appellants and their companions would have been so very hazardous, they could not have exposed their lives by carrying only one cartridge in the gun, if they had G really gone to murder the deceased and make a safe retreat. It might very well have been that the first shot went stray and did not hit the deceased. It was, therefore, necessary to have at least both the barrels loaded with cartridges. In fact one would expect the ready availability of more cartridges with the appellants, because they were bound to fire some rounds of shots to create a scare in the crowded Sabzi- H mandi, before making good their escape. For this reason also one would expect them to keep both the barrels loaded with cartridges and also to carry some spare cartridges for the sake of contingency and safety."

Murders like the one before us are not committed by coolly weighing the pros and cons. Ganga Ram and Ram Swarup were wounded by the high and mighty attitude of a trade rival and they went back to the market in a state of turmoil. They could not have paused to bother whether the double-barrelled gun contained one cartridge or two any more than an assailant poised to stab would bother to take a spare knife. On such occasions when the mind is uncontrollably agitated, the assailants throw security to the winds and being momentarily blinded by passion are indifferent to the consequences of their action. The High Court applied to the mental processes of the respondents a test far too rigid and unrealistic than was justified by the circumstances of the case and concluded :

> "It is noteworthy that P.W. 1 Sona Ram clearly admits that Ganga Ram had a farm in village Naushera, which is at a distance of two miles from Badaun. It is very likely that the two appellants must have been going every early morning to have a round of their vegetable farm and returning home therefrom at about 8 A.M. in the sultry month of June. It is not surprising that on such return to Badaun on the morning of June 7, 1970 the appellants went to the Sabzimandi in order to purchase melons, when they were called to the Gaddi of the deceased, ultimately resulting in the fatal occurrence as suggested by the defence."

The High Court assumed without evidence that Ganga Ram used to carry a gun to his vegetable farm and the whole of the conclusion reproduced above would appear to be based on the thin premise that Sona Ram had admitted that Ganga Ram had a village farm situated at distance of two miles from Badaun. We find it impossible to agree with the reasons given by the High Court as to why Ganga Ram and Ram Swarup went to the market and how they happened to carry a gun with them. It is plain that being slighted by the melon incident, they went to the market to seek retribution.

The finding recorded by the High Court that the respondents went to the market for a casual purchase and that they happened to have a gun because it was their wont to carry a gun is the very foundation of its acceptance of the theory of private defence set up by the respondents. According to the High Court a routine visit to the market led to an unexpected quarrel between the deceased and Ganga Ram, the quarrel assumed the form of grappling, the grappling provoked the servants of the deceased to beat Ganga Ram with *lathis* and the beating impelled Ram Swarup to use the gun in defence of his father. Our view of the genesis of the shooting incident must, at the very threshold, deny to the respondents the right of private defence.

The right of private defence is a right of defence, not of retribution. It is available in face of imminent peril to those who act in good faith and in no case can the right be conceded to a person who stage-manages a situation wherein the right can be used as a shield to justify an act of aggression. If a person goes with a gun to kill another, the intended victim is entitled to act in self-defence and if he

A so acts there is no right in the former to kill him in order to prevent him from acting in self-defence. While providing for the right of private defence, the Penal Code has surely not devised a mechanism whereby an attack may be provoked as a pretence for killing.

Angered by the rebuff given by the deceased while declining to sell the melons, Ganga Ram went home and returned to the market B with the young Ram Swarup who, on the finding of the High Court, carried a gun with him. Evidently, they went to the market with a pre-conceived design to pick up a quarrel. What semblance of a right did they then have to be piqued at the resistance put up by the deceased and his men? They themselves were the lawless authors of the situation in which they found themselves and though the Common Law doctrine of "retreat to the wall" or "retreat to the ditch" C as expounded by Blackstone(1) has undergone modification and is not to be applied to cases where a victim, being in a place where he has a right to be, is in face of a grave uninvited danger, yet, at least those in fault must attempt to retreat unless the severity of the attack renders such a course impossible. The exemption from retreat is generally available to the faultless alone.

D Quite apart from the consideration as to who was initially at fault, the extent of the harm which may lawfully be inflicted in self-defence is limited. It is a necessary incident of the right of private defence that the force used must bear a reasonable proportion to the injury to be averted, that is, the injury inflicted on the assailant must not be greater than is necessary for the protection of the person assaulted. Undoubtedly, a person in fear of his life is not expected to modulate his E defence step by step or tier by tier for as Justice Holmes said in *Brown* vs. *United States* (2) "detached reflection cannot be demanded in the presence of an uplifted knife". But section 99 provides in terms clear and categorical 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".

F Compare for this purpose the injuries received by Ganga Ram with the injuries caused to the deceased in the alleged exercise of the right of private defence. Dr. N. A. Farooqi who examined Ganga Ram found that he had four contusions on his person and that the injuries were simple in nature. Assuming that Ganga Ram had received these injuries before Ram Swarup fired the fatal shot, there was clearly no justification on the part of Ram Swarup to fire from his gun at point-G blank range. Munimji was shot on the chest and the blackening and tatooing around the wound shows that Ram swarup fired his shot from a very close range. Under section 100 of the Penal Code the right of private defence of the body extends to the voluntary causing of death if the offence which occasions the exercise of the right is of such a nature as may, to the extent material, reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of the H assault. Considering the nature of injuries received by Ganga Ram, it

(1) Blackstone's Commentaries, Book IV, p. 185.
(2) (1921) 256 U.S.

is impossible to hold that there could be a reasonable apprehension that he would be done to death or even that grievous hurt would be caused to him.

The presence of blood near the door leading to room No. 2 and the pellet marks on the door frame show that Ram Swarup fired at the deceased when the latter was fleeing in fear of his life. In any event, therefore, there was no justification for killing the deceased selectively. The right of defence ends with the necessity for it. Under section 102, Penal Code, the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises and it continues as long as such apprehension of danger continues. The High Court refused to attach any significance to the pellet-marks on the door-frame as it thought that "the gun fire which hit the chaukhat was not the one which struck the deceased". But this is in direct opposition to its own view that the respondents had loaded only one cartridge in the gun—a premise from which it had concluded that the respondents could not have gone to the market with an evil design. Ballistically, there was no reason to suppose that the shot which killed the deceased was not the one which hit the door frame. It is quite clear that the deceased was shot after he had left his *gaddi* and while he was about to enter room No. 2 in order to save his life.

It would be possible to analyse the shooting incident more minutely but it is sufficient to point out that under section 105 of the Evidence Act, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Penal Code, is upon him and the court shall presume the absence of such circumstances. The High Court must, of course, have been cognizant of this provision but the Judgment does not reflect its awareness of the provision and this we say not merely because section 105 as such has not been referred to in its Judgment. The importance of the matter under consideration is that sections 96 to 106 of the Penal Code which confer and define the limits of the right of private defence constitute a general exception to the offences defined in the Code; in fact these sections are a part of Chapter IV headed "General Exceptions". Therefore, the burden of proving the existence of circumstances which would bring the case within the general exception of the right of private defence is upon the respondents and the court must presume the absence of such circumstances. The burden which rests on the accused to prove that any of the general exceptions is attracted does not absolve the prosecution from discharging its initial burden and truly, the primary burden never shifts save when a statute displaces the presumption of innocence; "indeed, the evidence, though insufficient to establish the exception, may be sufficient to negative one or more of the ingredients of the offence(1)". That is to say, an accused may fail to establish affirmatively the existence of circumstances which would bring the case within a general exception and yet the facts and circumstances proved by

(1) *K.M. Nanavati* vs. *State of Maharashtra*; [1962] (1) Supp. S.C.R. p. 567 a p. 598.

A him while discharging the burden under section 105 of the Evidence Act may be enough to cast a reasonable doubt on the case of the prosecution, in which event he would be entitled to an acquittal.(1) The burden which rests on the accused to prove the exception is not of the same rigour as the burden of the prosecution to prove the charge beyond a reasonable doubt. It is enough for the accused to show, B as in a civil case, that the preponderance of probabilities is in favour of his plea.(2)

The judgment of one of us, Beg J., in *Rishikesh Singh* v. *State*(3) explains the true nature and effect of the different types of presumptions arising under section 105 of the Evidence Act. As stated in that judgment, while the initial presumption regarding the absence of circumstances bringing the case within an exception may be met by showing the existence of appropriate facts, the burden to establish a plea of private defence by a balance of probabilities is a more difficult burden to discharge. The judgment points out that despite this position there may be cases where, though the plea of private defence is not established by an accused on a balance of probabilities, yet the totality of facts and circumstances may still throw a reasonable doubt on the D existence of "mens rea", which normally is an essential ingredient of an offence. The present is not a case of this latter kind. Indeed realising that a simple plea of private defence may be insufficient to explain the nature of injuries caused to the deceased, Ram Swarup suggested that the shot fired by him at the assailants of his father Ganga Ram accidentally killed the deceased. We have no doubt that the act of Ram Swarup was deliberate and not accidental.

E

The respondents led no evidence to prove their defence but that is not necessary because such proof can be offered by relying on the evidence led by the prosecution, the material elicited by cross-examining the prosecution witnesses and the totality of facts and circumstances emerging out of the evidence in the case. In view of the considerations mentioned earlier we find it impossible to hold that Ram Swarup fired F the shot in defence of his father Ganga Ram. The circumstances of the case negative the existence of such a right.

The conclusion of the High Court in regard to Ram Swarup being plainly unsupportable and leading as it does to a manifest failure of justice, we set aside the order acquitting Ram Swarup and restore that of the Sessions Court convicting him under section 302 of the Penal G Code. The possibility of a scuffle, of course not enough to justify, the killing of Munimji but bearing relevance on the sentence cannot, however, be excluded and we would therefore reduce the sentence of death imposed on Ram Swarup by the Sessions Court to that of life imprisonment. We also confirm the order of conviction and sentence under section 25(1)(a) and section 27 of the Arms Act and direct that all the sentences shall run concurrently.

H

(1) Dahyabhai Chhaganbhai Thakker *vs.* State of Gujarat; [1964] 7 S.C.R. 361

(2) Dahyabhai Chhaganbhai Thakker *vs.* State of Gujarat; Supra; Munshi Ram and Ors. vs. Delhi Administration, A.I.R. 1968, S.C. 702.

(3) A.I.R. 1970 All. 51

In regard to Ganga Ram, however, though if we were to consider his case independently for ourselves we might have come to a conclusion different from the one to which the High Court has come, the principles governing appeals under Article 136 of the Constitution would require of us to stay our hands. The incident happened within the twinkling of an eye and there is no compelling reason to differ from the concurrent finding of the High Court and the Sessions Court that Ganga Ram never carried the gun and that at all stages it was Ram Swarup who had the gun. The finding of the Sessions Court that "Ram Swarup must have shot at the deceased at the instigation of Ganga Ram" is based on no evidence for none of the five eye-witnesses speaks of any such instigation. On the contrary, Shariat Ullah (P.W. 4) says that "As soon as they came, Ram Swarup opened the gun-fire" and Shiva Dutta Mal (P.W. 5) says that "Just after coming forward, Ram Swarup opened the gun-fire". The evidence of the other three points in the same direction. True that these witnesses have said that Ganga Ram and Ram Swarup challenged with one voice the authority of the deceased but in discarding that part of the evidence we do not think that the High Court has committed any palpable error requiring the interference of this Court. Such trite evidence of expostulations on the eve of an attack is often spicy and tends to strain one's credulity. We therefore confirm the order of the High Court acquitting Ganga Ram of the charge under section 302 read with section 34 of the Penal Code.

The High Court was clearly justified in acquitting Ganga Ram of the charge under section 307, Penal Code, in regard to the knife-attack on Nanak Chand. Nanak Chand received no injury at all and the story that the knife-blow missed Nanak Chand but caused a cut on his *kurta* and *Bandi* seems incredible. The High Court examined these clothes but found no cut marks thereon. Tears there were on the *Kurta* and *Bandi* but it is their customary privilege to be torn. With that, the conviction and sentence under the Arms Act for possession of the knife had to fall.

There is no substance in the charge against Ganga Ram under section 29(b) of the Arms Act because he cannot be said to have delivered his licensed gun to Ram Swarup. The better view is that Ram Swarup took it.

We, therefore, confirm the order of acquittal in favour of Ganga Ram on all the counts.

This disposes of the appeal on merits.

Mr. Garg had raised a preliminary objection to the maintainability of this appeal which, we thought, was devoid of substance and could briefly be dealt with at the end of the judgment. He argues that the State Government has no *locus standi* to file in this Court an appeal against an order of acquittal passed by the High Court because no such right is conferred by the Code of Criminal Procedure or by the Constitution and there can be no right of appeal unless one is clearly given by statute.

A The Code of Criminal Procedure does not provide for an appeal to this Court. In Chapter XXXI ("Of Appeals"), the only reference to an appeal to the Supreme Court is to be found in section 426(2B) which empowers the High Court to suspend the sentence and enlarge an accused on bail if the Supreme Court has granted to him special leave to appeal against any sentence which the High Court has imposed or maintained. But by section 417(1) of the Code the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than a High Court. It is in pursuance of this power that State Governments file appeals in the High Court against orders of acquittal passed by courts subordinate to the High Court.

C Article 132(1) of the Constitution provides that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. Where the High Court has refused to give such a certificate, the Supreme Court may under clause D (2) of Article 132 grant special leave to appeal if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution. Where such a certificate is given or special leave is granted, "any party in the case" may, under clause (3) of the Article, appeal to the Supreme Court on the ground that any question of the aforesaid description has been wrongly decided and with the leave of the Supreme Court, on any other ground.

E Under Article 134(1) of the Constitution an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court if the High Court (a) has in appeal reversed any order of acquittal of an accused person and has sentenced him to death; or (b) has withdrawn for trial before itself any case from a court subordinate to it and has sentenced the accused to death; or F (c) certifies that the case is a fit one for appeal to the Supreme Court.

By Article 136(1) the Supreme Court may notwithstanding anything contained in Chapter IV ("The Union Judiciary"), grant special leave in its discretion to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any G court or tribunal in India.

Article 132(3) referred to above shows that where the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution or the Supreme Court grants special leave to appeal on the ground that the case involves such a question, "any party in the case" may appeal to the Supreme Court. It is in- H controvertible that if the State Government is impleaded to an appear in the High Court as a contending party, it would be a "party in the case" and therefore if the decision is adverse to it, it would be entitled to appeal on the conditions mentioned in Article 132. This right is of

course limited to cases in which a substantial question of law as to the interpretation of the Constitution is involved. A

Article 134(1) extracted above shows that if the High Court reverses an order of acquittal and sentences the accused to death, he can appeal to the Supreme Court as a matter of right. A similar right is available to an accused whose case is withdrawn for trial by the High Court and who on being convicted is sentenced to death. In a case falling under Article 134(1)(a), the appeal against acquittal would normally be filed in the High Court by the State Government under section 417(1) of the Code of Criminal Procedure. It is only in cases instituted upon complaint that the complainant can ask for special leave to appeal from the order of acquittal. If the State Government files in the High Court an appeal against an order of acquittal passed by the lower court and if in such an appeal the accused is sentenced to death, it seems to us patent that if the accused files an appeal in the Supreme Court against the judgment of the High Court, the State Government would be entitled to defend the appeal as a respondent interested in the decision of the High Court. In an appeal falling under Article 134(1)(b) also it is the State Government which would be interested in and entitled to defend the appeal in the Supreme Court. The circumstance that Article 134 does not refer to the right of the State Government to defend such appeals cannot be construed as depriving it of that right. B C D

If in an appeal against a conviction the High Court acquits an accused or if in an appeal by the State Government against an order of acquittal the High Court confirms the order of acquittal, it is the State Government which, if at all, would be aggrieved by the order of acquittal and it would therefore be entitled to challenge the order in a further appeal if any such appeal is provided by law. The right of appeal is a creature of statute and if the law provides for no further appeal the matter has to rest where it stands. But if the Constitution provides for an appeal against a judgment or order, the party aggrieved or affected by that judgment or order would be entitled to avail of the right or facility of appeal, though on the conditions prescribed by the Constitution. E F

Under Article 136(1) of the Constitution this Court has a wide discretion, though sparingly exercised, to grant special leave to appeal from any judgment, decree, determination, sentence or order. This remedy can be availed of by any party which is affected adversely by the decision under challenge. If the State Government is a contesting party to a matter disposed of by the High Court and if it is aggrieved by the judgment or order of the High Court, it is entitled under Article 136(1) to ask for special leave of this Court to appeal from the decision of the High Court. It is, of course, not entitled to obtain leave but that is a separate matter because under Article 136(1) no party is entitled to obtain leave as a matter of right. "The Supreme Court may, in its discretion, grant special leave to appeal" and one of the relevant considerations in granting leave is whether the party seeking G H

A leave is aggrieved by the impugned decision, in which case it would, at any rate, have *locus* to ask for leave.

The *locus standi* of State Governments to file appeals in this Court against judgments or orders rendered in criminal matters, particularly those commenced otherwise than on private complaints, has been recognised over the years and for a valid reason. All crimes raise problems of law and order and some raise issues of public disorder. The effect B of crime on the ordered growth of society is deleterious and the State Governments are entrusted with the enforcement and execution of laws directed against prevention and punishment of crimes. They have, therefore, a vital stake in criminal matters which explains why all public prosecutions are initiated in the name of the Government. The objection of Mr. Garg that the State Government has no *locus standi* to file this appeal must be rejected.

C

P.H.P. *Appeal dismissed.*