

A RANBIR SINGH & ORS.
V.
STATE OF HARYANA
Criminal Appeal No. 604 of 2006

B APRIL 30, 2009
[D.K. JAIN AND R.M. LODHA, JJ.]

Penal Code, 1860:

ss.300 Exception 2, 304(Partl), 148, 324 and 323 r/w s.34

C – Prosecution of eight accused u/ss. 148, 302, 324, 323 r/w s.149 IPC – For causing death of one and injuries to three persons – Accused taking plea of self defence – Conviction of four accused and life sentence by courts below — On appeal, held: Accused has been able to probabalise that the death of

D the deceased occurred as they acted in excess to their right of self-defence – Accused entitled to benefit of Exception 2 to s.300 as they were not the aggressors – Conviction u/s. 302 altered to u/s. 304(Part(l) and conviction under other provisions maintained – Sentence reduced to the period already undergone i.e. nine years.

s.300 Exception 2 – Applicability of – Discussed.

E Evidence – Burden to prove self-defence — Held: Burden to prove self-defence is on accused — The burden is not that onerous as which lies with prosecution — Such burden can be discharged by probabalising the defence.

G Appellant-accused alongwith four co-accused were prosecuted u/ss. 148, 302, 324 and 323 r/w s.149 IPC for having caused death of one person and injuries to three persons. In the course of the occurrence, appellants-accused also sustained grievous injuries. They took the plea of self-defence. Trial court convicted the accused for the offences charged under r/w. s.34 IPC and sentenced

them to life imprisonment. High Court confirmed the A conviction and sentence. Hence the present appeal.

The question for consideration before this court was whether the appellants-accused had been able to probablise that the death of the deceased occurred in exercise of their right of self-defence and whether they exceeded that right. B

Partly allowing the appeal, the Court

HELD: 1.1 From the medical evidence, it is sufficiently established that death of the deceased was homicidal. The C appellant did not challenge this aspect at all. Their plea is that the death of the deceased was caused as they exceeded their right to private defence. [Paras 9 and 18] [218-F; 223-A]

1.2 The appellants have not set up the right of private defence as a total defence. Their whole emphasis was with reference to Exception 2 to Section 300 IPC. The existence of good faith is a must before the accused claims benefit of this exception. While acting in good faith, if the accused has exceeded the right of self-defence and caused death of a person without pre-meditation and further he had no intention of causing more harm than was necessary for the purpose of the defence although in fact more harm was caused, the benefit of Exception 2 to Section 300 may be available if the accused was not the aggressor. [Para 23 & 24] [225-G-H; 226-A-B] E F

2. The Court should take an overall view of the case and if a right of self-defence is made out from the evidence on record, that right should not be construed narrowly because the right of self-defence is a very valuable right and it has a social purpose. [Para 21] [224-G-H] G

Vidya Singh v. State of Madhya Pradesh 1971 (3) SCC 244; V. Subramani and Anr. v. State of T.N. 2005 (10) SCC 358 – relied on. H

A 3. The burden of proving self-defence is always on the accused but it is not as onerous as the one which lies with the prosecution. Such burden can be discharged by probablising the defence. The accused may discharge his onus by establishing a mere preponderance of

B probabilities either by laying basis for that plea in the cross-examination of prosecution witness or by adducing defence evidence. [Para 25] [226-B-C]

C 4. In the instant case, initially, some argument took place between A-1 and PW-12 with regard to taking out the buffalos from canal; A-1 pushed PW-12 in canal water. PW-12 went home crying. Then there was altercation later in the evening between PW-1 and A-1. A-1 with the help of A-2 and A-5 is said to have inflicted some injuries to PW-1 in that altercation. In this back ground, obviously it was D PW-1 and his family members who had an axe to grind against A-1, A-2 and A-5 and not the accused party. The prosecution case about commencement of incident appears to be little doubtful. The prosecution has not come out with truthful version as to how the incident E commenced. This is so, because according to PW-1, he was ahead of the deceased by 50 paces. If A-1, A-2, A-3 and A-4 were aggressors, they would have attacked PW-1 as he had reached *Gher* of A-6 first and the deceased was about 50 paces away from him. A-1, A-2, A-3, and A-4 F had no direct quarrel with the deceased. Altercation was exchanged between A-1 and PW-1 two days before. Why should have they spared PW-1? The prosecution version is, thus, not in accordance with human probabilities. [Para 20] [223-D-H; 224-A-B]

G 5. The defence version is that PW-1, PW-11 and PW-13 and the deceased were armed with lathies; they came to the *Gher* of A-6 and started assaulting A-5, A-6, A-7 and A-8 and in their self-defence they attacked assailants and as a result of which the deceased died. That A-5, A-6, A-7 H and A-8 sustained multiple injuries in the incident is

admitted by prosecution. The prosecution sought to A explain the injuries on A-5, A-6, A-7 and A-8 by submitting that PW-1, PW-11 and PW-13 snatched lathies from A-3 and A-4 in their self-defence and gave lathi blows to A-5, A-6, A-7 and A-8. However, PW-11 in his cross examination stated that he did not snatch any lathi from A-3 and A-4. On a careful consideration of the cross-examination of PW-1, PW-11 and PW-13, the possibility of the complainant party being aggressors cannot be ruled out. The defence has been able to probablise that complainant party attacked first. As a matter of fact, A-5 received six injuries and few of these injuries were grievous. A-8 sustained eight injuries while A-7 received nine injuries some of which were grievous. However, it does not mean that number of injuries on the accused side by itself may not be sufficient to establish right of private defence. [Para 20] [224-C-G] D

6. The High Court and the trial court failed to consider the plea of self-defence set up by the accused in right perspective. The accused have been able to make out a case for the benefit of Exception 2 to Section 300. The appellants are, thus, held guilty of the offence punishable under Section 304 read with Section 34 IPC. Their conviction under Section 302/34 IPC is altered to Section 304 (Part 1) 34 IPC. The sentence undergone i.e. nine years for the offence punishable u/s.304 (Part I) IPC, shall meet the ends of justice. Their conviction and sentence under other offences is maintained. [Paras 26, 27 and 28] [226-B-G] E F

Case Law Reference

1971 (3) SCC 244 Relied on. Para 21 G

2005 (10) SCC 358 Relied on. Para 22

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 604 of 2006]

From the Judgement and Order dated 30.11.2005 of the H

A Hon'ble High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 189-DB of 1997.

Naresh Kaushik, Rupesh Kaushik, Lalita Kaushik, for the Appellant.

B Rajeev Gaur 'Naseem', T.V. George, for the Respondent.

The Judgement of the Court was delivered by

R.M. LODHA, J.

C 1. Eight persons were sent up for trial to the Sessions Judge, Sonepat for the offences under Section 148, 302, 324 and 323 read with Section 149 IPC. The trial Court convicted four among them and acquitted the other four accused; one of the acquitted accused had died during the trial. The convicted persons were sentenced under Section 302 read with 34 IPC

D to the life imprisonment and varying period of imprisonments under other offences; fine with default stipulation was also imposed. All the four convicted persons filed appeal before the High Court of Punjab and Haryana. The High Court by its judgment dated November 30, 2005 affirmed the conviction and

E sentence imposed by the trial court. This appeal by special leave is preferred by these four convicted persons.

F 2. The prosecution version is this: on September 26, 1990, Suresh (PW-12) took his buffaloes to Delhi Canal. The buffaloes entered into the canal water. At the same time Ranbir (A-1) also brought his buffaloes to the canal. Ranbir asked Suresh to take out the buffaloes from the canal but Suresh refused to do so on the ground that the canal water was deep. At this, Ranbir pushed Suresh into the canal. Suresh came out of the canal water and went home crying and narrated the incident to his brother Krishan

G (PW-1). Krishan protested with Ranbir in this regard in the evening which led to an altercation between them. Ranbir inflicted some injuries to Krishan which was reported to the police in the night of September 26, 1990. On September 27, 1990, Krishan is said to have been medically examined. On September

H 28, 1990, at about 8.00 A.M., PW-1 and his uncle Balwan

[R.M. LODHA, J.]

(deceased) were returning after answering the call of nature. A When they were about to take turn to the street to their house, Ranbir (A-1), Balbir (A-2), Shiv Kumar (A-3), Sadhu (A-4) came out of the Gher of Ram Sarup (A-6). A-1 was armed with an axe while A-2 had Jailwa in his hand, A-3 and A-4 were armed with lathies. A-1, A-2, A-3 and A-4 surrounded Balwan and exhorted to finish him off as Krishan had escaped earlier. Seeing Balwan surrounded by A-1, A-2, A-3 and A-4, PW-1, Rohtas (PW-13) and Sahab Singh (PW-11) came running from their respective Gher. A-1 inflicted an axe blow on the head of Balwan while A-2 inflicted jailwa blow from the log side on the head of Balwan. A-3 and A-4 also inflicted lathi blows on Balwan. Balwan fell down. PW-1, PW-11 and PW-13 intervened. At this, A-3 and A-4 gave lathi blows to them also. A-2 attacked PW-11 as well. PW-1, PW-11 and PW-13 snatched lathies from A-3 and A-4. By that time number of people had arrived; seeing them A-1, A-2, A-3 and A-4 ran away from the spot. At that time, Lekh Ram (A-5), Ram Sarup (A-6), Bhalle Ram (A-7), Krishan son of Bhalle Ram (A-8) surrounded PW-1, PW-11 and PW-13 but PW-1, PW-11 and PW-13 attacked them by lathies which they had snatched from A-3 and A-4. PW-1, PW-11 and PW-13 took Balwan to Primary Health Centre, Ganaur in an unconscious condition but he died on the way. The doctor on duty there declared Balwan dead.

3. PW-1 lodged the complaint at Police Station, Ganaur at about 1.35 PM., based on which first information report was registered.

4. Daya Chand, ASI (PW-6) prepared inquest of the dead body and sent it for autopsy which was conducted by Dr. R.N. Tehlan (PW-8) at about 5.00P.M.

5. Dr. Krishan Kumar (PW-3), Medical Officer, Primary Health Centre, Ganaur examined PW-1, PW-11, PW-13, A-5, A-6, A-7 and A-8, all of whom were injured in the incident.

6. Ran Singh (PW-9) took all necessary steps towards investigation and after collecting necessary evidence and on

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A completion of investigation, filed charge sheet in the Court of Judicial Magistrate, First Class, Sonepat against the eight accused persons.

7. PW-8 conducted post mortem examination and found following injuries on the dead body:

B "1. Incised wound 10 x 3 cm present on right parietal area of the skull, anteo-posterior, 3 cm lat. to midline, cutting scalp with regular margins. Right parietal bone was fractured in pieces. The right parietal bone is fractured in pieces. Three pieces are driven into the brain. (Right cerebral hemisphere) and surrounding parietal bone is depressed. Brain matter is present in the wound. Clotted blood present around in the layers of scalp, extra-dural and sub-dural area. Right cerebral hemisphere showed haemotoma.

C D 2. Red-brownish contusion on right supra-orbital ridge 3 cm x 2 cm, right eye was swollen.

3. Red-contusion 6 cm x 2 cm back of left arm.

E 4. Red-contusion 6 cm x 1.5 cm back of right fore-arm."

F 8. According to PW-8, the cause of death of the deceased Balwan was head injury. PW-8 also found that the injuries were ante-mortem in nature and sufficient to cause death in the ordinary course.

G 9. From the medical evidence, it is sufficiently established that death of Balwan was homicidal. As a matter of fact, the counsel for the appellant did not challenge this aspect at all.

H 10. That in the incident that occurred on September 28, 1990, Balwan died and PW-1, PW-11, PW-13, A-5, A-6, A-7 and A-8 sustained injuries is not in dispute.

11. Dr. Krishan Kumar examined PW-11 at about 10.40 A.M. on September 28, 1990. He found the following injuries on his person:

“1. A penetrating wound 1 cm x 0.5 x 1 cm deep present A
on the right side of chest, 6 cm above the right nipple and
9 cm below the sterno clavicular joint. Fresh clotted blood
present. No foreign body seen. There is cut mark on the
shirt above this injury mark with staining of blood. Adv. X-
Ray.

2. An abrasion 0.5 cm x 0.2 cm present on the chest 5.5' B
cm medially to the injury No. 1 and 2 cm below the
manubrium sterni.

3. Complaint of pain chest and respiratory distress.” C

12. Dr. Krishan Kumar also examined PW-13 at about D.M on the same day and he found the following injuries
on the person of PW-13.

“1. An abrasion 5.5 x 1 cm present on the back of right D
shoulder. Red in colour. Movements normal.

2. An abrasion 6 x 0.2 cm present on the post surface of E
left shoulder, 3 cm below the tip of shoulder.

3. A contusion 6 x 2.5 cm present on the post surface right E
fore-arm, 11 cm below the elbow.

4. A contusion 6 x 2 cm present on the post surface of left E
fore-arm, 7 cm above the wrist.

5. A contusion 7 x 2 cm present on the P/L surface of left F
fore-arm, 14 cm above the wrist.

6. A contusion 5.5 x 2 cm present on the A/L surface of F
right upper arm, 10 cm above the elbow.”

13. On September 28, 1990, Dr. Krishan Kumar also G
examined the accused. In the afternoon at about 12.40 P.M. on
September 28, 1990, A-5 was medically examined and PW-3
found the following injuries on his person.

“1. A reddish contusion 7 x 2.5 cm present on the post H
surface of left fore-arm, 4 cm above the wrist. There is

A deformity and swelling around it. The movements of the adjacent joints are restricted. Adv. x-ray.

2. ALW 1 cm x 0.5 cm present on the dorsal aspect of P.I.P. joint of left index finger. Movements were restricted. Advise X-ray.

B 3. ALW 3 x 0.5 x skin deep present on the palmer aspect of left index finger and clots of blood present. Movements painful.

C 4. A contusion 5 x 2 cm present on the A/L surface of middle of left fore-arm. Adv. X-Ray.

5. A contusion 1.5 x 0.5 cm present on the posterior surface of left side of back, 12 cm below the tip of shoulder joint. Red in colour.

D 6. An abrasion 3 x 0.5 cm present on the anterior surface of right thigh, 12 cm above knee."

Injuries Nos. 1, 2, and 3 were subjected to X-ray examination. A-5 was also radiologically examined by Dr. S.S. Wadhwa (PW-2). As per X-ray report (Ex. PE), A-5 had suffered fracture of both bones of left fore-arm and dislocation of proximal inter phalangeal joint of left index finger.

14. PW-3 at about 1.10 P.M. on September 28, 1990 medically examined A-8 and found the following injuries:

F 1. ALW 1.5 X 0.5 cm x 0.5 cm present on the right side of scalp, 8.5 cm above the right ear pinna, 13 cms away from the outer canthus of right eye. Fresh clots of blood present. No FB seen. Adv. X-ray.

G 2. A contusion 6 x 7 cm present on the ante surface of middle of right upper arm. Reddish in colour. Adv. X-Ray.

3. A contusion 5 x 1 cm present on the post surface of right wrist. Movements normal.

H 4. A contusion 8 x 7 cm present on the post surface of left

fore-arm in its middle. There is a swelling and deformity A around it. Movements restricted. Adv. X-ray.

5. A contusion 14 x 3 cm present on the post lateral surface of right thigh, 3 cm above knee. Red in colour.

6. A contusion 8 x 2 cm present on the medial surface of B left thigh, 10 cm above knee.

7. A contusion 5 x 3 cm present on the medial surface of right leg, 10 cm below the knee.

8. ALW 2.5 x 0.5 cm x 1.5 cm present on the ante surface C of left leg, 17 cm below the knee. Clotted blood present. Adv. X-Ray. Movements were painful"

15. A-6 was medically examined by PW-3 on September 28, 1990 at 1.40 P.M. Following injuries were found on his D person:

"1. A lacerated wound 9 x 1 cm x bone deep present on the right side of scalp, 10 cm above the right ear pinna, 4 cm above the right eyebrow. Fresh clotted blood was present. No foreign body seen. The injury was advised for E X-ray.

2. An abrasion 1.5 x 0.5 cm present on the posterior surface of right wrist. Movements were normal.

3. One abrasion 1.5 x 0.5 cm present on the anterior surface of right thigh, 4 cm above knee. F

4. A contusion below the nail bed of left ring finger. The movements were present.

5. An abrasion 6 x 2 cm on the anterior surface of left thigh at its lower 1/3rd ". G

16. PW-3 at about 2.20 P.M. on September 28, 1990 medically examined A-7 also and found the following injuries:

"1. ALW 1 x 0.3 cm. x 0.5 cm present on the left side of scalp, 10 cm above the left ear pinna 12 cm from the outer H

A canthus of left eye. Fresh clotted blood seen. No FB seen. Adv. X-ray.

2. An abrasion 7 x 1 cm present on the middle of right clavicle.

B 3. A contusion 17 x 2 cm present on the A/L surface of right upper arm, just above elbow. Movements normal.

4. A contusion 7 x 3 cm present on the post surface of right fore-arm, above the wrist. There is swelling and deformity around it. Movements very painful. Adv. X-ray.

C 5. ALW 2 x 0.5 cm present on the palmer surface of left little finger at its base. Painful. Movements were normal.

6. A mild swelling just above the base of left little finger.

D 7. An abrasion 2 x 1 cm present on the medial surface of right leg, 14 cm above the medial mallolus. Movements normal.

8. A contusion 10 x 3 cm present on the P/L surface of left leg, 5 cm above the lat. mallolus.

E 9. An abrasion 5 x 2 cm present over the lateral surface of left thigh, 22 cm above the knee."

17. PW-3 also medically examined A-3 and found following injuries on his person:

F 1. An infected wound 4 x 1.5 cm x scalp deep present on the left side of scalp, 7 cm above the left ear pinna and 12 cm behind and above the outer canthus of left eye.

2. An infected wound 2.5 x 0.5 cm x scalp deep present on the right side of scalp, 11 cm above the right ear pinna."

G 18. The learned counsel for the appellant strenuously urged that the incident did not occur in the manner suggested by PW-1, PW-11 and PW-13. He submitted that as a matter of fact Balwan (deceased), PW-1, PW-11 and PW-13 had come armed with lathies to Ram Sarup's Gher and started inflicting lathi blows

to A-5, A-6, A-7 and A-8. To protect themselves, in their right of private defence, A-1, A-2, A-3 and A-4 inflicted injuries to Balwan and unfortunately that resulted in his death. Learned counsel submitted that accused had no intention whatsoever to cause his death. The learned counsel would submit that at the highest, A-1, A-2, A-3 and A-4 exceeded their right of private defence and for that they may be liable for culpable homicide not amounting to murder. Learned counsel submitted that the trial court as well as the High Court failed to appreciate the defence version in right perspective which was apparent from the suggestions put to PW-1, PW-11 and PW-13 in their cross examination as well as in the statement of the accused under Section 313 Cr.P.C. In the alternative, he submitted that the case is covered by Exception 4 to Section 300.

19. The controversy before us is in narrow compass and that is whether the accused have been able to probablise that the death of Balwan occurred in exercise of their right of self-defence and whether they exceeded that right.

20. Initially, on September 26, 1990, some argument took place between A-1 and PW-12 with regard to taking out the buffalos from canal; A-1 pushed PW-12 in canal water. PW-12 went home crying. Then there was altercation later in the evening between PW-1 and A-1. A-1 with the help of A-2 and A-5 is said to have inflicted some injuries to PW-1 in that altercation. In this back ground, obviously it was PW-1 and his family members who had an axe to grind against A-1, A-2 and A-5 and not the accused party. Two days later, on September 28, 1990, the incident occurred just out-side the Gher of A-6. The prosecution case is that A-1 and Balwan were returning after answering the call of the nature and when they were about to take turn to the street to their house, A-1 and A-2 armed with axe and jailwa respectively and A-3 and A-4 armed with lathies surrounded Balwan and after exhorting him, A-1 gave an axe blow on the head of Balwan; A-2 also gave blow to Balwan on his head from log-side of jailwa and A-3 and A-4 gave lathi blows. The prosecution case about commencement of incident appears to

- A be little doubtful. In our opinion, the prosecution has not come out with truthful version as to how the incident commenced. This is so because, according to PW-1, he was ahead of Balwan by 50 paces. If A-1, A-2, A-3 and A-4 were aggressors, they would have attacked PW-1 as he had reached Gher of A-6 first and
- B Balwan was about 50 paces away from him. A-1, A-2, A-3, and A-4 had no direct quarrel with Balwan. Altercation was exchanged between A-1 and PW-1 two days before. Why should have they spared PW-1? The prosecution version is, thus, not in accordance with human probabilities. On the other hand, the
- C defence version is that PW-1, PW-11 and PW-13 and Balwan were armed with lathies; they came to the Gher of Ram Sarup (A-6) and started assaulting A-5, A-6, A-7 and A-8 and in their self-defence they attacked assailants and as a result of which Balwan died. That A-5, A-6, A-7 and A-8 sustained multiple injuries in the incident is admitted by prosecution. The prosecution sought to explain the injuries on A-5, A-6, A-7 and A-8 by submitting that PW-1, PW-11 and PW-13 snatched lathies from A-3 and A-4 in their self-defence and gave lathi blows to A-5, A-6, A-7 and A-8. However, PW-11 in his cross examination stated that he did not snatch any lathi from A-3 and
- E A-4. On a careful consideration of the cross-examination of PW-1, PW-11 and PW-13, the possibility of the complainant party being aggressors cannot be ruled out. The defence has been able to probablise that complainant party attacked first. As a matter of fact, A-5 received six injuries and few of these injuries
- F were grievous. A-8 sustained eight injuries while A-7 received nine injuries some of which were grievous. A-6 also received injuries. When we observe this, we are not oblivious of the fact that number of injuries on the accused side by itself may not be sufficient to establish right of private defence.
- G 21. The Court should take an overall view of the case and if a right of self-defence is made out from the evidence on record, that right should not be construed narrowly because the right of self-defence is a very valuable right and it has a social purpose. (*Vidya Singh v. State of Madhya Pradesh*¹).
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22. The aforesighted statement of law expounded in *Vidya Singh*¹ has been reiterated by this Court in *V. Subramani and Another v. State of T.N.*². In *V. Subramani*, this Court went on to observe:

“....Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this Court, to adopt tests by detached objectivity which would be so natural in a courtroom, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances.”

23. The learned counsel for the appellants has not set up before us the right of private defence as a total defence. His whole emphasis was with reference to Exception 2 to Section 300 that reads as follows:-

“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.”

24. The existence of good faith is a must before the accused claims benefit of this exception. While acting in good

¹ 1971 (3) SCC 244

² (2005) 10 SCC 358

- A faith, if the accused has exceeded the right of self-defence and caused death of a person without pre-meditation and further he had no intention to causing more harm than was necessary for the purpose of the defence although in fact more harm was caused, the benefit of Exception 2 to Section 300 may be
- B available if the accused was not the aggressor.

25. The burden of proving self-defence is always on the accused but it is not as onerous as the one which lies with the prosecution. Such burden can be discharged by probablising the defence. The accused may discharge his onus by

- C establishing a mere preponderance of probabilities either by laying basis for that plea in the cross examination of prosecution witness or by adducing defence evidence.

26. The High Court and the trial court in the instant case, failed to consider the plea of self-defence set up by the accused in right perspective. Having considered the matter thoughtfully, and in what we have discussed above, we are satisfied that the accused have been able to make out a case for the benefit of Exception 2 to Section 300.

- E 27. The appellants are, thus, held guilty of the offence punishable under Section 304 Part I read with Section 34 IPC. Their conviction under Section 302 read with 34 IPC is altered to Section 304 Part I read with Section 34 IPC.

- F 28. We are informed that the appellants have already suffered imprisonment of almost nine years. In the circumstances, the sentence undergone, for the offence punishable under Section 304 Part I IPC, shall meet the ends of justice. Their conviction and sentence under other offences is maintained.

- G 29. The appeal is, accordingly, allowed in part. The appellants be released forthwith, if not required in any other offence.