

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1776 OF 2008
(Arising out of S.L.P. (Crl.) No.3647 of 2008)

Raghubir Singh and Ors.

...Appellants

Vs.

State of Haryana

...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court dismissing the appeal (Crl. Appeal

No.68-DB of 1998) so far as the appellants are concerned. However, co-accused Bhagmal was acquitted.

3. The appellants were convicted for offences punishable under Sections 148, 302 read with Section 149 and 323/149 of the Indian Penal Code, 1860 (in short 'the IPC') but they were acquitted of the charge under Section 506 IPC. Co-accused Bhagmal was convicted along with the appellants, but, as noted above, he was acquitted by the High Court.

4. The prosecution story, in a nutshell is as follows.

A case was registered on the basis of statement (Exh.P.L.) of Krishan (complainant-PW-5). As per his statement, joint land owned by his father Naurang (PW6) and his three brothers was earlier partitioned. In that partition, the land in which a well and a room had been constructed by Naurang, fell to the share of his brother Bhagmal and in lieu of it, he was to pay Rs.6600/- to Naurang. In spite of repeated demands, he did not pay that amount and on December 30, 1994, he refused to pay the same. On

December 30, 1994, at about 1 P.M., complainant-Krishan was standing at the door of his house and his brother Attar Singh (hereinafter referred to as 'the deceased') was standing in front of his house in the street. All the appellants, armed with 'Lathis', came there and started giving blows to the deceased saying that he would not be spared. Krishan came to rescue his brother, whereupon, appellant Raghbir Singh gave 'Lathi' blow on the right side of his chest. Appellant Mukhtiar Singh also inflicted a 'Lathi' blow hitting Krishan on the back side of his neck. He fell down on the ground and in that position appellant Kuldeep Singh gave him a 'Lathi' blow on his waist and appellant Raghbir Singh inflicted a 'Lathi' blow on his nose. On hearing the alarm raised by Krishan, his father Naurang (PW6) and his mother Smt. Lichhma came out of the house. Krishan PW-5 and Attar Singh the deceased also inflicted some injuries to the appellants in self-defence.

On December 30, 1994, Dr. Ramphal (PW-1) medico legally examined Krishan (PW-5) and found four contusions on his nose, back of right scapular region, right side of chest and the occipital region. As per opinion of the Doctor, the kind of weapon used was blunt.

On the same day, Dr. Ramphal (PW-1) medico legally examined Attar Singh and found eight injuries on his person which were a lacerated wound on the left supra orbital ridge, an abrasion on the left eye, two contusions on left cheek and right side of forehead, bleeding on nose but no external injury, a tooth was missing in the lower jaw in frontal part, an abrasion on the left side of chest and an abrasion on left forearm. According to the Doctor, the kind of weapon used was blunt.

On December 31, 1994, Attar Singh succumbed to his injuries. Post mortem on his dead body was conducted by Dr. A.P. Sharma (PW-2) on December 31, 1994. According to his opinion, the cause of death was due to the injuries on the head and spleen which were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

After completion of investigation, challan against the accused was presented in the Committing Court.

In order to prove the offences charged against the accused-appellants, the prosecution examined fourteen witnesses.

After closure of the prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') in which they denied the prosecution allegations and pleaded innocence. Plea taken by them is that Krishan and Attar Singh had gone to the house of accused-Bhagmal armed with lathis and had caused injuries to Bhagmal and accused-Kuldeep Singh as well as Smt. Krishna wife of Kartar Singh and Smt. Shakuntla wife of Mukhtiar Singh. The defence plea taken by the accused is that only Bhagmal and Kuldeep Singh accused were present at the time of occurrence and they had caused injuries to Krishan and Attar Singh in self-defence and that the other four accused were not present at the time of occurrence. They also examined two witnesses in defence.

The Trial Court, on consideration of the material on record, more particularly, the evidence of Krishan PW-5, who was injured witness and his

father Naurang PW-6, held the appellant guilty and convicted and sentenced them, as noted above.

The convicted accused persons preferred an appeal before the High Court which was disposed of by the impugned judgment dismissing the same qua the appellants while directing acquittal of Bhag Mal.

5. In support of the appeal, learned counsel for the appellant submitted that the accused persons acted in self defence. The occurrence took place in course of a sudden quarrel and the weapon was a lathi, therefore, Section 302 IPC has no application.

6. Learned counsel for the State, on the other hand, supported the judgment of the High Court.

7. The only question which needs to be considered is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The

Section does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting

necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram and Ors. v. Delhi Administration, AIR (1968) SC 702), State of Gujarat v. Bai Fatima, AIR (1975) SC 1478, State of U.P. v. Mohd. Musheer Khan, AIR (1977) SC 2226 and Mohinder Pal Jolly v. State of Punjab, AIR (1979) SC 577. Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends

under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P., AIR (1979) SC 391), runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence...."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

8. The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probalilise the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See Lakshmi Singh v. State of Bihar, AIR (1976) SC 2263]. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and

mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject matter of right of private defence. The plea of right comprises the body or property of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.

9. Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively.

The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, to commit the offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In Jai Dev. v. State of Punjab, AIR (1963) SC 612, it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

10. In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. Similar view was expressed by this Court in Biran Singh v. State of Bihar, AIR (1975) SC 87. (See: Wassan Singh v. State of Punjab [1996] 1 SCC 458 and Sekar alias Raja Sekharan v. State represented by Inspector of

Police, T.N. [2002] 8 SCC 354.

11. As noted in Butta Singh v. The State of Punjab AIR (1991) SC 1316, a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has

been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negatived. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

12. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. (See Vidhya Singh v. State of M.P. AIR (1971) SC 1857. 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 Court room, 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.

13. In the illuminating words of Russel (Russel on Crime, 11th Edition Volume I at page 49) :

“....a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases, he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended and if in a conflict between them he happens to kill his attacker, such killing is justifiable.”

14. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of

offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.

15. Considering the background facts as highlighted above when tested in the backdrop of the legal principles noted supra the inevitable conclusion is that the accused persons had not established that they were exercising right of private defence. But the assaults were made in course of sudden quarrel and Exception 4 to Section 300 IPC applies. Considering the background facts as noted above, it would be proper to alter the conviction from Section 302 IPC to Section 304 Part I IPC. Custodial sentence of 10 years would meet the ends of justice.

16. The appeal is accordingly disposed of.

.....J.

(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi
November 12, 2008