

CASE NO.:  
Appeal (crl.) 1636 of 1996

PETITIONER:  
Laxman Singh

RESPONDENT:  
Poonam Singh & Ors.

DATE OF JUDGMENT: 10/09/2003

BENCH:  
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:  
J U D G M E N T

[With Crl. Appeal No.1637 of 1996]

ARIJIT PASAYAT, J.

These appeals are by the informant and the State of Rajasthan questioning the correctness and legality of judgment of the High Court of Rajasthan at Jodhpur directing acquittal of the respondents-accused persons.

The factual antecedents which the prosecution unfolded during trial are as follows:-

There was long-standing litigation between Mohan Singh (hereinafter referred to as 'the deceased') and his brother and other relatives on one hand and the accused persons on the other. On 10.6.1984, the fateful day in the morning hours deceased-Mohan Singh and his brother Bherusingh (PW-2) and other relatives were ploughing the disputed land. Accused-respondents Poonam Singh, Harisingh, Devaram, Gamma and 12 others acquitted by Trial Court told them not to do so. They asserted that the field belonged to them and they will not allow the complainant side to plough the field. For a long time assertions and counter-assertions went on. Thereafter accused Poonamsingh hit on the head of Mohansingh with a laval (kind of stick) and accused-Devaram hit on his shoulder by a Bewadi (form of stick) due to which, he having become unconscious fell down. Thereafter accused persons started assaulting and inflicting injuries. The incident was seen by Godawari (PW-4), Arjunsingh (PW-16), Geeta (PW-13), Babusingh (PW-21), Bherusingh (PW-2) and others. They were also injured being assaulted by the accused persons. After this first information report was lodged by Bheru Singh at about 8.30 p.m. and investigation was undertaken. Mohan Singh was admitted in the Pali Hospital for treatment and subsequently he breathed his last on 11.6.84 around 11.00 a.m.

In order to substantiate its version the prosecution examined 34 witnesses. The accused persons pleaded innocence and examined 4 witnesses. On consideration of evidence on record, the Trial Court came to hold that the land was in possession of the complainant side, though revenue records were in favour of the accused-appellants with their companions. Having held so, it was observed that all the accused were to be acquitted of the charges under Section 447 of the Indian Penal Code, 1860 (in short 'IPC'). It was held that though right of private defence was available, it was exceeded. Even though the accused persons had sustained injuries, yet the maximum they could have done was to exercise the right of private defence by inflicting simple injuries. Ultimately, it was held that present respondents were guilty of offences punishable under Sections 304 Part-II and 323 IPC for causing death of Mohansingh and inflicting injuries on Godawari (PW-4). The conviction and

sentences were challenged by the four respondents-accused. The State did not challenge the acquittal or the alteration of conviction. Similar was the position vis-à-vis the informant.

The High Court by the impugned judgment held that the case was one where the accused persons had exercised the right of private defence and had not exceeded it. The fact that the accused persons received injuries was considered to be of great significance. The acquittal in respect of offences relating to Section 447 was also considered to be of vital importance in deciding the question about the right of private defence. Accordingly it was held that the accused persons were entitled to exercise the right available in respect of private defence. Both the State and the informant have questioned the High Court's conclusions.

In support of the appeals, learned counsel for the State and the informant submitted that the parameters of right of private defence as provided in IPC have been completely lost sight of by the High Court. It was, therefore, submitted that the High Court was not justified in directing acquittal. In addition, learned counsel for the informant submitted that though the Trial Court appears to have observed that the right of private defence was available to the accused persons, yet it was contrary to the findings recorded about the complainants having possession of the disputed land. In view of these findings, the observations made by the Trial Court, can be held to have been rendered by assuming about the possession by the accused persons. Responding to the aforesaid pleas, learned counsel for the accused-respondents has submitted that the possession of the accused persons has been established. It has been categorically recorded that the revenue records stand in the name of accused persons. This conclusion is reinforced by the acquittal in relation to offence punishable under Section 447 IPC. The accused persons had sustained injuries and, therefore, the High Court was justified in holding that the right of private defence had not been exercised in excess of the permitted limits.

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 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 of 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 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.

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 probablis 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 (i) 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.

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, or commit the offence, although the offence may not have been committed but not until that 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.

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, *Sekar alias Raja Sekharan v. State represented by Inspector of Police, T.N.* (2002 (8) SCC 354).

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 moment, 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 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 negated. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially a finding of fact. Though acquittal in respect of offence punishable under Section 447 IPC is not always determinative of the question whether right of private defence has been exceeded, in a given case the same assumes importance as in the present case. It has been significantly noted by both the Courts below that the attacks were not premeditated. On the contrary, for several hours, the parties were discussing their respective stands (may be with some amount of verbal aggression), and that aspect has indelible importance while assessing the basic issue regarding exercise of the right of private defence.

In the background of legal and factual position indicated above, the appeals are without any merit and deserve dismissal, which we direct.