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LAXMAN SINGH
v.
POONAM SINGH AND ORS.

SEPTEMBER 10, 2003

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[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Penal Code, 1860—Sections 96, 97, 100, 101 & 102—Right of private defence—Availability of—Held, is dependent on the facts and circumstances of the case—Has to be pleaded by the person and cannot be presumed on mere conjectures and surmises—Burden of proof is on the person taking the plea—Injuries sustained by the person cannot be the basis—Available when there is reasonable apprehension of the death or grievous injury on the person—Evidence Act, 1872—Section 105.

D

The deceased and his relatives were having a long standing dispute with the respondents over the possession of a piece of land. On the fateful day, the deceased and his relatives were ploughing the disputed land. The respondents with 12 others objected to the ploughing by the deceased on the ground that the disputed land belonged to the respondents. In the ensuing fight, the respondents assaulted and inflicted injuries on the deceased and his relatives with sticks resulting in the death of the deceased. The brother of the deceased PW2 lodged a complaint with the police. The respondents were tried and the trial court held that the land was in possession of the complainant even though the revenue records were in favour of the respondents.

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Accordingly it acquitted the respondents of the charges under Section 447 IPC. However, the trial court held that the respondents exceeded the right of private defence available to them under Section 96 IPC by inflicting serious injuries on the deceased and hence were guilty of offences under Section 304 Part II and Section 323 IPC. The respondents challenged the conviction and sentence before the High Court. The

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High Court acquitted the respondents on the ground that they have not exceeded the right of private defence since the respondents sustained injuries in the fight.

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In appeals to this Court, the appellants contended that the parameters of the right of private defence provided under the IPC have

been completely overlooked by the High Court and hence the High Court was not justified in acquitting the respondents. A

The respondents, on the other hand, contended that they were acquitted of the charges under Section 447 IPC on the basis of the revenue records; and that the right of private defence had not been exceeded by the respondents since they themselves had sustained injuries in the fight. B

Dismissing the appeals, the Court

HELD: 1. Section 96 IPC does not define the expression 'right of private defence'. Whether in a particular set of circumstances, a person acted in 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 for determining such a question can be laid down. In determining the question of fact, the Court must consider all the surrounding circumstances. 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. [534-B-E] C D E

2. Under Section 105 of the Indian Evidence Act, 1872, 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 required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. 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 accused need not prove the existence of the right of private defence beyond reasonable doubt. [534-E-H] F G H

A *Munshi Ram & 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; *Mohinder Pai Jolly v. State of Punjab*, AIR (1979) SC 577 and *Salim Zia v. State of U.P.*, AIR (1979) SC 391, referred to.

B 3. 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 probabilise 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. [535-E-G]

Lakshmi Singh v. State of Bihar, AIR (1976) SC 2263, referred to.

F 4. 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 the 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. The right of private defence commences as soon as 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 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. [535-H, 536-A, E-G]

Jai Dev v. State of Punjab, AIR (1963) SC 612; *Biran Singh v. State of Bihar*, AIR (1975) SC 87; *Wassan Singh v. State of Punjab*, [1996] 1 SCC 458 and *Sekhar alias Raja Sekharan v. State represented by Inspector of Police T.N.*, [2002] 8 SCC 354, relied on.

5. 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 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. 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 in a given case. [537-A-E]

Butta Singh v. The State of Punjab, AIR (1991) SC 1316, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1636 of 1996.

A From the Judgment and Order dated 5.1.94 of the Rajasthan High Court in S.B. CrI. A. No. 327 of 1991.

WITH

CrI. A. No. 1637 of 1996.

B S.D. Rajpurohit, Dr. R.S. Deo Rajpurohit, Surya Kant, Ms. Sandhya Goswami, Sushil Kumar Jain, Alok Bachawat, A.P. Dhamija, Ms. Ruchi Kohli and Ms. Anjali Doshi for the Appearing parties.

The Judgment of the Court was delivered by

C **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.

D 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 Bheru Singh (PW-2) and other relatives were ploughing the disputed land. Accused-respondents Poonam Singh, Hari Singh, Devaram, Gamna 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 Poonam Singh hit on the head of Mohan Singh 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), Arjun Singh (PW-16), Geeta (PW-13), Babu Singh (PW-21), Bheru Singh (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 Mohan Singh 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

A 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.

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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.

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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.

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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

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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

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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

- A** 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
- B** 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
- C** 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
- D** 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
- E** 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
- F** 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,
- G** 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*
- H** *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
 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, C
 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, D
 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. F

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

B.S.

Appeals dismissed. G

A THIRUMALA TIRUPATI DEVASTHANAMS AND ANR.
v.
THALLAPPAKA ANANTHACHARYULU AND ORS.

SEPTEMBER 10, 2003

B [S.N. VARIAVA AND H.K. SEMA, JJ.]

Constitution of India, 1950 : Articles 32 and 226.

C *Writ of Prohibition—Writ Jurisdiction—Power of Court—Plaintiff's appeal against grant of patta to defendants in respect of suit land dismissed—Writ petition also dismissed—Appeal and review petitions too dismissed by Supreme Court—Subsequently, plaintiffs filed civil suit for declaration of ownership and also filed appeal against grant of patta to defendants—But High Court issued writ of Prohibition restraining the courts below from proceeding in the matters on the grounds that the suit*
D *was barred under Section 14 and also on the principles of res judicata/estoppel—Correctness of—Held: A writ of Prohibition must be issued only in rarest of rare cases—Such power cannot be allowed to be used "as a cloak of an appeal in disguise"—Civil court had jurisdiction to decide whether suit could be entertained and whether the proceedings were*
E *barred on principles of res judicata/estoppel—High Court should not have usurped the jurisdiction of civil court—Writ of Prohibition set aside—Civil court directed to decide maintainability of suit as a preliminary issue and also whether the suit was barred on the principles of res judicata/estoppel—Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, S. 14.*
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Code of Civil Procedure, 1908:

Order 7 Rule 11 and Order 14 Rule 2—Scope and ambit of—Held: Civil Court competent to decide its own jurisdiction and questions regarding
G *maintainability of suit—Civil court also competent to decide whether a suit was barred on principles of res judicata/estoppel.*

The appellants-plaintiffs filed an appeal against grant of patta to the respondents-defendant in respect of the suit land, which was dismissed. Writ Petition was also dismissed. Appeal and review petitions
H **too dismissed by this Court.**