

must be examined with care and viewed in its proper setting. 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. [Para 6] [348-G-H; 349-A-C]

1.2. 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 that there is reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. [Para 7] [349-E]

1.3. When the factual scenario is examined it becomes crystal clear that even if it is accepted for the sake of arguments that the accused persons were at some point of time exercising the right of private defence, it was exceeded. That being so, the plea regarding exercise of right of private defence cannot be sustained. However, the appropriate conviction would be under Section 304 Part I IPC. The conviction is altered accordingly. Custodial sentence of 10 years would meet the ends of justice. [Para 9] [350-A-B]

Rizan and Another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, Chhattisgarh 2003 (2) SCC 661; Sucha Singh and Anr. v. State of Punjab 2003 (7) SCC 643 and Bihari Rai v. State of Bihar SLP (Crl.)

A **No.862 of 2007, relied on.**

Jai Dev v. State of Punjab AIR 1963 SC 612, referred to.

Case Law Reference:

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AIR 1963 SC 612 Referred to. **Para 7**

2003 (2) SCC 661 Relied on. **Para 8**

2003 (7) SCC 643 Relied on. **Para 8**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 598 of 2009.

From the Judgment & Order dated 26.2.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal D No. 804-DB/1997.

K.T.S. Tulsi, Raj Kamal, Rishi Malhotra for the Appellant.

Kuldip Singh, R.K. Pandey, T.P. Mishra and Sanjay Katyal for the Respondents.

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The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 27 of the Arms Act, 1959 (in short 'Arms Act'). Three persons faced trial for commission of murder of Jagdev Singh (hereinafter referred to as the 'deceased'). Sadhu Singh, Wazir Singh and Harjinder Singh faced trial for alleged commission of offences punishable under Sections 302, 323 read with Section 34 IPC and Section 27 of the Arms Act. The trial Court held that the appellant was guilty of offence punishable under

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Section 302 IPC while the other two were guilty of offence punishable under Section 323 IPC. Additionally, appellant was found guilty of offence punishable under Section 27 of the Arms Act.

3. Prosecution version in a nutshell is as follows:

On November 12, 1996 Bachittar Singh (PW-3) along with his sons Sukhdev Singh (PW) and Jagdev Singh (hereinafter referred to as 'deceased') were returning to their village at about 9.00 p.m. on a tractor which was being driven by Bachittar Singh while his two sons were sitting on it and when they were about 5-7 Karams short of the house of accused Sadhu Singh they saw the three accused standing in Sadhu Singh's doorway. At that time Sadhu Singh was armed with a 12 bore SBBL gun while Wazir Singh and Harjinder Singh alias Pappa were empty handed. Wazir Singh and Pappa walked upto the tractor and stopped it. Thereafter, Wazir Singh raised a lalkara that Bachittar Singh and others should be taught a lesson for cultivating the land coming in their father's share and thereupon Sadhu Singh fired a shot at the deceased and Pappa Singh started throwing bricks. Bachittar Singh and others raised alarm and the accused retreated to their house. When Bachittar Singh and Sukhdev Singh came down from the tractor they saw that Jagdev Singh had died. Bachittar Singh left Sukhdev Singh near the dead body and drove the tractor to his house from where he collected Baljinder Singh (brother-in-law of the deceased) and met S.I. Satwant Singh S.H.O., Police Station, Saddar (P.W.6), near the canal bridge within Bir Behman and narrated the occurrence to S.I. Satwant Singh who recorded his statement Ex. P. D. This statement was sent through Constable Chhinder Pal to Police Station Saddar for registration of the case after recording proceedings Ex. P D/2) by M.H. C. Sikandar Singh.

The Investigator took up investigation. The doctor found various injuries on the body of the deceased.

A After completion of investigation charge sheet was filed. As the accused persons pleaded innocence, trial was held. In order to further its version the trial Court primarily relied on the evidence of PWs 1, 3 and 4. It did not accept the plea of right of private defence as set up by the accused persons. In appeal, B the stand before the trial Court was re-iterated but the High Court found that there was no question of exercise of right of private defence.

C 4. Learned counsel for the appellant submitted that the trial Court has relied primarily on the statement recorded under Section 313 of Code of Criminal Procedure, 1973 (in short the 'Code'). The factual scenario shows that the complainant was returning after ploughing the land in front of the house of the accused but correct genesis of the situation has not been brought on record. The deceased was about to hit the accused D with a spear. The trial Court and the High Court proceeded on the basis as if the accused had time to go into his house and on that he picked up a gun. It was nobody's case that the accused went inside and brought a gun. The trial Court makes out a third case. It was pointed out that the claim that the E accused persons came and attacked the deceased and PWs is not established. In fact the trial Court and the High Court have not recorded any positive finding regarding the deceased and the PWs travelling in a tractor as on bullet marks were found on the tractor.

F 5. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

G 6. 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 H 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.

7. 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 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 rout, there can be no occasion to exercise the right of private defence.

8. The above position was highlighted in *Rizan and Another vs. State of Chhattisgarh*, through the Chief Secretary, Govt. of Chhattisgarh, Raipur, *Chhattisgarh* (2003 (2) SCC 661), *Sucha Singh and Anr. v. State of Punjab* (2003 (7) SCC 643) and *Bihari Rai v. State of Bihar* (SLP (Crl.) No.862 of 2007 disposed of on 26th September, 2008)

- A 9. When the factual scenario is examined it becomes crystal clear that even if it is accepted for the sake of arguments that the accused persons were at some point of time exercising the right of private defence it was exceeded. That being so, the plea regarding exercise of right of private defence cannot be sustained. However, the appropriate conviction would be under Section 304 Part I IPC. The conviction is altered accordingly. Custodial sentence of 10 years would meet the ends of justice.
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10. The appeal is allowed to the aforesaid extent.

- C N.J. Appeal partly allowed.