A SUKUMARAN

v.

STATE REP. BY THE INSPECTOR OF POLICE

(Criminal Appeal No. 5 of 2009)

B MARCH 07, 2019

[ABHAY MANOHAR SAPRE AND R. SUBHASH REDDY, JJ.]

Penal Code, 1860: s.302 r/w ss.109 and 203 – Prosecution case was that appellant-A-1 was working as Forest Range Officer – On the fateful day, while he was on duty and going in his official jeep along with co-accused, the driver of his jeep, he noticed four persons (deceased driver, PW1, PW2 and one cleaner) in a lorry – Suspecting smuggling of sandalwood, he chased them and after some distance when the lorry stopped and the driver of the lorry and his associates started running, he fired a gun shot from his DBL-gun which hit the driver causing his death – It was the case of prosecution that the lorry which the deceased was driving was empty, however, the appellant after he shot the deceased, got down from his jeep and loaded sandalwood weighing 276 Kgs and also kept one SBML gun in the lorry – Thereafter, with the help of co-accused, the appellant caught hold of PW-1 and PW-2 and brought them to police station and gave the false information by lodging the complaint that he fired the gun shot to the deceased in his right of private defence – Appellant along with co-accused was tried for offence under s.302 r/w ss.109 and 203, s.36-A and E of Tamil Nadu Forest Act, 1882 and s.3 r/w s.25(1-B)(a) of Arms Act, 1959 – Appellant was convicted while co-accused was acquitted by trial court – High Court allowed the appeal in part and altered conviction of appellant under s.302 to s.304 Part II while acquitting him for offence under Arms Act and Forest Act – On appeal, held: Both the eye witnesses PWs 1 and 2 and also other two more witnesses, namely, PW-3 and PW-7 were declared hostile and, therefore, there was no evidence to prove as to how and in what manner, the incident in question took place – Prosecution was not able to prove the manner in which the incident occurred as alleged by them in their charge sheet – In this view of the matter, the appellant was entitled to be acquitted

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from the charges for want of any evidence against him – Tamil Nadu Forest Act, 1882 – s.36-A and E – Arms Act, 1959 –s.3 r/w s.25(1-B)(a).

Penal Code, 1860: ss.96 to 106 – Right of private defence – Appellant-A-1 was working as Forest Range Officer – On the fateful day, while he was on duty, he noticed that four persons were going in a lorry – Suspecting smuggling activity, he chased them – Thereafter, the driver of the lorry and his associates started pelting stones at them and shouted "fire them" – At that time, appellant fired a gun shot which hit the driver of the lorry resulting his death – Defence of the appellant that he fired a gun shot on the deceased party in his right of private defence, was not accepted by High Court – On appeal, held: High Court failed to appreciate that the appellant had every reason to believe that due to suspicious movement of the deceased party in the forest, they were trying to smuggle the sandalwood from the forest – The deceased party was aggressor because, they first pelted the stones and damaged the appellant's vehicle shouting "fire them" – It was the duty of the appellant to apprehend the culprits who were involved in the activity of smuggling sandalwood and at the same time to protect himself and his driver in case of any eventuality arising while apprehending the culprits – The appellant while firing the gun shot did not target any particular person out of four as such but fired to resist their aggression towards him and his driver – If the appellant had not fired, the deceased party having said "fire them" would have either used their gun in shooting the appellant or the driver or would have run away from the spot to avoid their arrest – One gun was seized from the deceased party on their arrest which was deposited by the appellant along with his own gun in the police station while registering the FIR – The appellant being a forest ranger on duty was entitled to use his gun against the deceased party – In view of this, firing of gun shot by the appellant towards the deceased party was not unjustified.

Penal Code, 1860: ss.96 to 106 – Right of private defence – Exercise of – The right does not arise if there is time to have recourse to the protection of the public authorities, and for another, it does not extend to the infliction of more harm than is necessary for the purpose of defence – Another limitation is that when death is caused,

A *the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself or to those whom he is protecting; and in the case of property, the danger to it must be of the kinds specified in s.103.*

Allowing the appeal, the Court

B **HELD: 1. The order of the Sessions Judge and the High Court show that both the eye witnesses, i.e., PW-1, PW-2 and also PW-3 and PW-7 were declared hostile. When both the eye witnesses–PWs 1 and 2 and also other two more witnesses, namely, PW-3 and PW-7 were declared hostile, there was no** C **evidence to prove as to how and in what manner, the incident in question had occurred. [Para 25] [668-E-F]**

2. The appellant took a defence that he fired a gun shot on the deceased party in his right of private defence. Sections 96 to 106 of IPC deal with right of private defence of a person involved D **in commission of offences under the IPC. Section 96 of IPC says that nothing is an offence, which is done in the exercise of the right of private defence. Section 97 of IPC provides that a right of private defence extends not only to the defence of one's own body against any offence affecting the human body but also to defend the body of any other person. The right also embraces** E **the protection of property, whether one's own or another person's, against certain specified offences, namely, theft, robbery, mischief and criminal trespass. For one thing, the right does not arise if there is time to have recourse to the protection of the public authorities, and for another, it does not extend to the infliction of** F **more harm than is necessary for the purpose of defence. Another limitation is that when death is caused, the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself or to those whom he is protecting; and in the case of property, the danger to it must be of the kinds specified in Section 103. [Paras 30, 32-33] [669-D-H]**

G **3.1 The contents of the FIR coupled with the appellant's evidence (DW-1) showed that there was a variation in the prosecution version and the appellant's version on the manner in which the incident in question occurred. However, the version of the appellant on the manner in which the incident occurred is**

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accepted. It was established on the basis of the factual scenario on the spot that the appellant had reasonable grounds for apprehending that either death or grievous hurt would be caused to him or to his driver (A-2). The incident occurred in the early morning, the appellant was patrolling in the forest in official vehicle with his driver (A-2) since overnight. By virtue of his post, he was given Jeep and the gun for the protection of forest area, forest produce, his own body and the body of others on duty with him. The deceased party having seen that the appellant was chasing their lorry made attempt to flee from the place in the first instance but after some time stopped and got down from their lorry and started pelting stones on the appellant's jeep which suffered damage. The deceased party not only was pelting the stones but also shouting "fire them". The appellant, in such scenario, had rightly formed a reasonable apprehension that either death or grievous hurt may cause to him or/and to his driver (A-2). In these circumstances, it was enough for the appellant to also react in his self defence against the deceased party and fire from his gun towards the deceased party to save him and his driver (A-2). There was no motive attributed to the appellant towards any member of the deceased party. Having seen the incident in this perspective, firing the gun shot by the appellant towards the deceased party cannot be said to be in any way unjustified. In fact, the appellant while firing the gun shot did not target any particular person out of four as such but fired to resist their aggression towards him and his driver (A2). If the appellant had not fired, the deceased party having said "fire them" could either use their gun in shooting the appellant or A-2 or would have run away from the spot to avoid their arrest. [Paras 37, 38, 40, 44] [673-B-F; 674-B-D; 675-B-D]

3.2 The prosecution having failed to prove their case could still prove that the appellant was liable to be convicted in the light of defence version. The High Court, therefore, could have gone into the question as to whether the appellant had no right of private defence against the deceased party on such facts or whether he exceeded his right. The prosecution even failed to prove this fact while cross examining the appellant. Nothing was solicited from the appellant in his cross-examination on these

A **two issues. It was a case where the appellant had a reasonable apprehension that the deceased party may cause him and A-2 death or grievous hurt either by pelting stones or by use of gun shot or by physical violence jointly. In these circumstances, the appellant being a forest ranger on duty was entitled to use his gun against the deceased party. [Paras 45, 46] [675-D-G]**

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Amjad Khan v. Haji Mohammad Khan **AIR 1952 SC 165 : [1952] SCR 567 ;** *Darshan Singh v. State of Punjab & Anr.* **(2010) 2 SCC 333 : [2010] 1 SCR 642 – relied on.**

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Case Law Reference

[1952] SCR 567	**relied on**	**Para 33**
[2010] 1 SCR 642	**relied on**	**Para 34**

D CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5 of 2009.

From the Judgment and Order dated 12.06.2008 by the High Court of Judicature at Madras in Crl. A. No. 513 of 2006.

E A. Raja Rajan, Sabarish Subramanian, Y. William Vinoth Kumar, R. Pandiarajan, Deepak Anand, Advs. for the Appellant.

Balaji Srinivasan, AAG, B. Vinodh Kanna, Ms. S. Valarmathi, Ms. Pallavi Sengupta, M. Yogesh Kanna, Advs. for the Respondent.

The Judgment of the Court was delivered by

F **ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed against the final judgment and order dated 12.06.2008 passed by the High Court of Judicature at Madras in Criminal Appeal No.513 of 2006 whereby the Division Bench of the High Court partly allowed the appeal filed by the appellant herein.

G 2. In order to appreciate the issues involved in this appeal, it is necessary to set out the facts *infra.*

3. The appellant herein (A-1) along with co-accused-Chinnakolandai (A-2) were tried for the commission of the offences punishable under Section 302 read with Sections 109 and 203 of the

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Indian Penal Code, 1860(hereinafter referred to as "IPC"), Section 36-A and E of the Tamil Nadu Forest Act, 1882 and Section 3 read with Section 25 (1-B) (a) of the Arms Act in the Court of Additional Sessions Judge, Dharmapuri in Session Case No.342/2004. A

4. By Judgment/order dated 17.05.2006, the Additional Sessions Judge convicted the appellant herein(A-1) for the offences punishable under Sections 302 and 203 IPC, Section 36-A and E of the Tamil Nadu Forest Act and Section 3 read with Section 25(1-B)(a) of the Arms Act and sentenced him to undergo life imprisonment with a fine of Rs.2000/- and in default of payment of fine to further undergo rigorous imprisonment for three months under Section 302 IPC, to undergo rigorous imprisonment for two years with a fine of Rs.500/-, in default of payment of fine to undergo further simple imprisonment for three months under Section 203 IPC, to undergo rigorous imprisonment for two years with fine of Rs.7,500/-, in default of payment of fine, to undergo further simple imprisonment for three months under Section 36-A and E of the Tamil Nadu Forest Act, to undergo imprisonment for two years with a fine of Rs.500/- in default of payment of fine to further undergo simple imprisonment for three months under Section 3 read with Section 25 (1-B)(a) of the Arms Act. B C D

5. All the awarded sentences were to run concurrently. So far as Co-accused-Chinnakolandai (A-2) is concerned, he was acquitted from all the charges. E

6. The appellant (A-1) felt aggrieved by the order of conviction and sentence passed against him and filed criminal appeal in the High Court of Judicature at Madras. So far as the order acquitting co-accused-Chinnakonlandai (A-2) was concerned, the State did not file any appeal against that part of the order and hence the order of acquittal of co-accused-Chinnakolandai (A-2) became final. F

7. The High Court, by the impugned order, allowed the appeal in part and while setting aside the conviction and sentence imposed on the appellant under Section 302 IPC altered it to Section 304 Part-II IPC and sentenced him to undergo rigorous imprisonment for five years with a fine amount of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. The appellant was, however, acquitted from the offence punishable under Section 36-A and E of the Tamil Nadu Forest Act and was also acquitted from the offence G H

A punishable under Section 25 (1-B) (a) of the Arms Act. However, the High Court did not consider the case of the appellant so far as his conviction under Section 203 IPC is concerned. The State has not filed any appeal against that part of the order by which the appellant was acquitted from the charges as detailed above.

B 8. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in convicting the appellant under Section 304 Part-II IPC and was, therefore, justified in awarding rigorous imprisonment for five years.

9. In other words, the question to be considered in this appeal is C whether the prosecution was able to prove beyond reasonable doubt that the appellant was guilty for commission of the offence punishable under Section 304 part II of IPC.

10. In order to answer this question, it is necessary to take note of the prosecution case in brief *infra*.

D 11. The appellant (A-1) was working as Forest Range Officer in State Services. He was posted in Dharmapuri forest area in the State of Tamil Nadu.

12. According to the prosecution, on 05.06.1988 at around 6.30 a.m., the appellant while on duty was going in his official jeep bearing E Registration No. TNC 9206 along with co-accused(A-2)- driver of his Jeep to Pennagaram Main Road from Kattampatti Road. At that time, the appellant noticed that four persons, namely, Basha-the deceased, Chan Basha (PW-1), Ganesha (PW-2) and one cleaner were going in a lorry bearing No. ADA 4869. On seeing the lorry, the appellant chased F it upto some distance. However, Basha-the driver of the lorry drove it for some distance and then stopped, got down from the lorry and started running with his associates. The appellant, at that time, fired a gun shot from his DBL-Gun, which hit Basha s/o Ameer causing his death.

13. On these allegations, the prosecution prayed that the appellant G is liable to be prosecuted for an offence punishable under Section 302 IPC.

14. It is also the case of the prosecution that the lorry, which the deceased - Basha was driving, was empty. However, the appellant, after he shot Basha from his gun which hit on his back, got down from his jeep and then loaded 64 billets of sandal woods weighing 276 KG and H

also kept one SBML Gun in the lorry with a view to show that the deceased party was smuggling sandal woods from the forest area without holding a valid permit/license. It is also the case of prosecution that the appellant with the help of co-accused (A-2)-Driver then reached to deceased party, caught hold of PW-1 and PW-2 and brought them to the police station. Another person Jaheer, however, managed to flee from the place.

15. It is also the case of the prosecution that the appellant intentionally gave the false information by lodging a complaint in the Police Station, Pennagaram on 05.06.1988 stating therein that he fired the gun shot to Basha in his right of private defence.

16. On these allegations, the prosecution prayed that the appellant be also prosecuted for an offence punishable under Section 203 IPC. The investigation was accordingly carried out. The statements of the witnesses were recorded, material items were seized and later the appellant and co-accused(A-2) were apprehended. The charge-sheet was accordingly filed against them and the case was committed to the Court of Additional Sessions Judge.

17. The prosecution, in support of their case, examined 16 witnesses and filed 23 documents. 15 MOs were marked. The appellant (A-1) appeared as DW-1 to prove his case. His statement under Section 313 of the Criminal Procedure Code was also recorded.

18. The Additional Sessions Judge convicted the appellant (A-1) under Sections 302, 203 IPC and Section 36-A and E of Tamil Nadu Forest Act read with Sections 3 and 25 (1-B) (a) of the Arms Act. The appellant was accordingly awarded sentence as mentioned above. So far as co-accused (A-2) is concerned, he was acquitted from all the charges.

19. The appellant felt aggrieved and filed appeal in the High Court of Madras. The High Court, by impugned order, set aside the conviction and sentence imposed on the appellant herein under Section 302 IPC and altered it to Section 304 Part II IPC and accordingly awarded him 5 years' RI. As mentioned above, the appellant was acquitted from all other charges. However, the High Court did not consider the legality and correctness of the conviction under Section 203 IPC, though impugned by the appellant in his appeal.

A 20. It is against this order, the appellant (accused-A-1) has felt aggrieved and filed the present appeal by way of special leave in this Court.

21. Heard Mr. A. Raja Rajan, learned counsel for the appellant (accused) and Mr. Balaji Srinivasan, learned counsel for the respondent-
B State.

22. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order and acquit the appellant from all the charges for the reasons stated *infra*.

C 23. We find that the prosecution in order to prove their case against the appellant had examined 16 witnesses. We also find that out of 16 witnesses, the prosecution examined 2 witnesses, namely, (PW-1-John Basha and PW-2 - Ganesh) as eyewitnesses to prove the incident and the manner in which it occurred. Indeed, the two Courts below also
D relied on their evidence for sustaining the appellant's conviction.

24. It is not in dispute, as is clear from the perusal of Paras 18 and 19 of the judgment of the Additional Sessions Judge dated 17.05.2006 and also para 2(a) to (d) of the impugned order that both the eye witnesses, i.e., PW-1, PW-2 and also PW-3 and PW-7 were declared hostile.

E 25. In our considered opinion, when both the eye witnesses–PWs 1 and 2 and also other two more witnesses, namely, PW-3 and PW-7 were declared hostile, there was no evidence to prove as to how and in what manner, the incident in question had occurred. In other words, apart from the evidence of PW-1 and PW-2, the prosecution had not led
F any evidence to prove the incident and the manner in which the alleged incident had occurred .

26. Even on perusal of the evidence of PW-1, PW-2, PW-3 and PW-7 to the extent it is permissible in law because these four witnesses had turned hostile coupled with perusal of the evidence of remaining
G witnesses with a view to find out as to whether the prosecution was able to prove their case against the appellant beyond reasonable doubt, we find it difficult to hold in favour of the prosecution that the prosecution was successful in proving their case as was required to be proved in law against the accused(appellant herein).

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27. Indeed, perusal of the evidence of remaining witnesses, who were not declared hostile, clearly shows that their evidence was not on the question as to how and in what manner, the incident occurred. We find their evidence to be on the issues, such as proving of seizer, post-mortem report, ballistic report etc. etc. A

28. In the light of the foregoing discussion, we are of the view that the prosecution was not able to prove the manner in which the incident occurred as alleged by them in their charge sheet. In this view of the matter, the appellant was entitled to be acquitted from the charges for want of any evidence against him. B

29. Be that as it may, since the appellant, in order to prove his defence, examined himself as DW-1 after seeking permission under Section 315 of the Code of Criminal Procedure, it is necessary to examine the question as to whether the appellant was able to prove his defence. C

30. The appellant, in substance, took a defence that he fired a gun shot on the deceased party in his right of private defence. D

31. Before we examine this question, it is apposite to take note of the law relating to a right of private defence.

32. Sections 96 to 106 of IPC deal with right of private defence of a person involved in commission of offences under the IPC. Section 96 of IPC says that nothing is an offence, which is done in the exercise of the right of private defence. E

33. Section 97 of IPC provides that a right of private defence extends not only to the defence of one's own body against any offence affecting the human body but also to defend the body of any other person. The right also embraces the protection of property, whether one's own or another person's, against certain specified offences, namely, theft, robbery, mischief and criminal trespass. The limitations on this right and its scope are set out in the sections which follow. For one thing, the right does not arise if there is time to have recourse to the protection of the public authorities, and for another, it does not extend to the infliction of more harm than is necessary for the purpose of defence. Another limitation is that when death is caused, the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself or to those whom he is protecting; and in the case of property, the danger to it must be of the kinds specified in Section 103. The scope F G H

of the right is further explained in Sections 102 and 105 of the IPC.(See observations of Justice Vivian Bose in **Amjad Khan** vs. **Haji Mohammad Khan,** AIR 1952 SC 165)

34. This Court also examined this question in the case of **Darshan Singh vs. State of Punjab & Anr.** (2010) 2 SCC 333 and laid down the following 10 principles after analyzing Sections 96 to 106 IPC which read as under:

> **" (*i*) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.**
>
> **(*ii*) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.**
>
> **(*iii*) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.**
>
> **(*iv*) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.**
>
> **(*v*) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.**
>
> **(*vi*) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.**
>
> **(*vii*) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.**

(*viii*) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(*ix*) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(*x*) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

35. In the light of the principle of law laid down by this Court in the aforementioned two cases, we have to examine the question as to whether the appellant (A-1) was justified in exercising his right of private defence when he fired a gun shot on the deceased party.

36. At this stage, it is apposite to reproduce the FIR (Ex-P-9), which was lodged by the appellant immediately after the incident with Sub-inspector, Police Station Pennagaram. It reads as under:

"EXHIBIT P 9

EXPRESS FIRST INFORMATION REPORT

B 785612

(FIRST INFORMATION REPORT IN RESPECT OF OFFENCE FOR WHICH AN ARREST COULD BE MADE BY THE OFFICER INCHARGE OF THE POLICE STATION WITH OUT THE ORDER OF THE COURT UNDER SECTION 184 OF THE CRIMINAL PROCEDURE CODE)

Crime No. 108/88
Police station: Pennagaram
Section and Act: 302 IPC
Circle: Pennagaram
District Dharmapuri

I received copy of the complaint lodged by me free of cost.
Signature/
5.6.88

Submitted

Today the 5.6.88, Sunday at about 11.00 o'clock in the morning, Mr. S. Sukumar, Dharmapuri forest ranger appeared in the police station and lodged the complaint. The details of the complaint is as under:

S. Sukumaran, Forest ranger, Dharmapuri

To

Sub inspector of police, Police Station,
Pennagaram

Application number 1/88 dt. 5.6.88, Sir, On the basis of the information about the smuggling of sandal wood logs, I left Dharmapuri in a jeep along with my driver Mr. Chinnakulanthai on the evening at about 6.00 o'clock of 4.6.1988 in a jeep with registration number TND 2296 and reached Pennagaram. Through out the night we inspected Nazanoor area. We completed the inspection at about 5.00 o'clock in the morning and left the place. Near Vanathipaty, that is we reached near Kattampatty road, Kattampatty junction road, we saw a lorry coming in the Kattampatty road. We stopped the lorry signaled the lorry to stop. Driver of the lorry turned the lorry to left. Engine of the lorry stopped We started to move towards the lorry. Persons in the lorry got down and started attacking us with stones. Glass pane of the lorry was broken. Immediately, they shouted that "you shoot them". It was about 6.30 'o'clock in the morning. Then the deceased person has taken out a gun. I started early and I fired a gun shot one round in self defense. He dropped the gun and fell down. Thereafter, I apprehended other two persons 1. John Basha and 2. Ganesan. Cleaner Zaheer escaped. When we went to see the above mentioned driver we found him dead due gun shot wounds. I am now handing over the country made gun which was in his possession and the gun with which I fired DBG 12 load (?) AB 8202321, empty cartridge and two other cartridges to you. I request you to take action on this. Sd. (S. Sukumaran), 5.6.88, Forest ranger, Darmapuri.

On the basis of the above mentioned I registered the complaint as crime number 18/88 of the police station under section 302 of the Indian Penal Code and prepared the express FIR and sent to the senior officer.

Sd.

5.6.88"

37. Reading the contents of the FIR (Ex-P-9) coupled with the appellant's evidence (DW-1), we find that firstly, there is a variation in the prosecution version and the appellant's version on the manner in which the incident in question occurred. However, having perused the FIR (Ex.P-9) lodged by the appellant and his evidence as DW-1, we are inclined to accept the version of the appellant on the manner in which the incident occurred.

38. In other words, having regard to the manner in which the incident occurred, the appellant, in our view, was entitled to exercise his right of private defence against the deceased party inasmuch as it was established on the basis of the factual scenario on the spot that the appellant had reasonable grounds for apprehending that either death or grievous hurt would be caused to him or to his driver (A-2). It is clear from the following facts and the reasoning detailed *infra*.

39. First, when the incident occurred in the early morning at around 6.30 a.m., the appellant was patrolling in the forest in official vehicle with his driver (A-2) since overnight; Second, by virtue of his post, he was given Jeep and the gun for the protection of forest area, forest produce, his own body and the body of others on duty with him; Third, the deceased party having seen that the appellant was chasing their lorry made attempt to flee from the place in the first instance but after some time stopped and got down from their lorry and started pelting stones on the appellant's jeep which suffered damage; Fourth, the deceased party consisted of four persons with weapon-Gun with them whereas the appellant and his driver (A-2) were two.

40. Fifth, there is no evidence to show as to why the deceased party was roaming in the forest area in their lorry in such early hours. Sixth, it is not in dispute that the forest in question is known for producing sandal woods and sandal wood being an expensive commodity for sale in the market, the people were indulging in its smuggling at a large scale

A in the forest area; Seventh, the appellant had noticed that the deceased party was trying to become aggressor in an encounter between him and the deceased party because the deceased party had started pelting stones on them so that the appellant is not able to apprehend them. Eighth, the deceased party not only was pelting the stones but also shouting "fire them". Ninth, the appellant, in such scenario, had rightly formed a B reasonable apprehension that either death or grievous hurt may cause to him or/and to his driver (A-2). Tenth, in these circumstances, it was enough for the appellant to also react in his self defence against the deceased party and fire from his gun towards the deceased party to save him and his driver (A-2); Eleventh, the appellant having seen the C suspicious moments of the deceased party in the forest area rightly formed an opinion that the deceased party was moving around in the forest to smuggle the sandal woods. The appellant was, therefore, entitled to chase the deceased party and apprehend them for being prosecuted for commission of offence punishable under the forest laws. Indeed, that was his duty; Twelfth, there was no motive attributed to the appellant D towards any member of the deceased party; Thirteenth, the appellant and A-2 rightly caught hold of PWs 1 and 2 and brought them to the police station; and lastly, the appellant promptly filed a complaint(Ex.P-8/9) in the police station narrating therein the entire incident and the manner in which it occurred and also surrendered the gun recovered E from the deceased party and his own gun.

41. One of the reasons which persuaded the High Court to form an opinion against the appellant was that the bullet fired by the appellant hit the deceased in his back. It is on this basis, the High Court concluded that there was no justification on the part of the appellant to exercise his F right of private defence.

42. We do not agree. This finding of the High Court was based on the prosecution story which we have held that the prosecution failed to prove for want of evidence. In any case, in our view, the question as to whether the right of private defence is available and, if so, whether it G is rightly exercised or exceeded, the same is required to be examined keeping in view the entire background facts and circumstances in which the incident occurred resulting in firing the gun shot.

43. The High Court, in our view, failed to appreciate that firstly, the appellant had every reason to believe that due to suspicious moment H of the deceased party in the forest, they were trying to smuggle the

sandal wood from the forest. Secondly, the deceased party was aggressor because, as held above, they first pelted the stones and damaged the appellant's vehicle shouting "fire them". Thirdly, the appellant's duty was to apprehend the culprits who were involved in the activity of smuggling sandalwoods and at the same time to protect himself and his driver in case of any eventuality arising while apprehending the culprits.

44. Having seen the incident in this perspective, we are of the opinion that firing the gun shot by the appellant towards the deceased party cannot be said to be in any way unjustified. In fact, the appellant while firing the gun shot did not target any particular person out of four as such but fired to resist their aggression towards him and his driver (A2). If the appellant had not fired, the deceased party having said "fire them" could either use their gun in shooting the appellant or A-2 or would have run away from the spot to avoid their arrest. It is not in dispute that one gun was seized from the deceased party on their arrest which was deposited by the appellant along with his own gun in the police station while registering the FIR (EX.P-9).

45. In our considered opinion, the prosecution having failed to prove their case could still prove that the appellant was liable to be convicted in the light of defence version. The High Court, therefore, could have gone into the question as to whether the appellant had no right of private defence against the deceased party on such facts or whether he exceeded his right. The prosecution even failed to prove this fact while cross examining the appellant. We find that nothing could be solicited from the appellant in his cross-examination on these two issues.

46. In the light of foregoing discussion, we are of the considered opinion that the case of the appellant satisfies the test laid down in the case of **Amjad Khan** (supra) and also satisfied the test laid down in Clauses (ii), (iii), (iv), (v) and (viii) of **Darshan Singh** (supra). In other words, it was a case where the appellant had a reasonable apprehension that the deceased party may cause him and A-2 death or grievous hurt either by pelting stones or by use of gun shot or by physical violence jointly. In these circumstances, the appellant being a forest ranger on duty was entitled to use his gun against the deceased party.

47. In view of the foregoing discussion, we are of the considered opinion that the Additional Sessions Judge was not justified in convicting the appellant for an offence of murder of Basha under Section 302 IPC.

A Similarly, the High Court was also not justified in convicting the appellant for an offence punishable under Section 304 Part II IPC. In other words, in our view, the appellant was entitled for an acquittal along with A-2 from the charges framed against him.

48. So far as the appellant's conviction under Section 203 IPC is
B concerned, the High Court did not deal with this question in the impugned order though it was challenged by the appellant in his appeal. Having examined this question, we are of the view that the conviction under Section 203 IPC against the appellant is also not legally sustainable for want of any evidence adduced by the prosecution.

C 49. As a matter of fact, once it is held that the prosecution has failed to prove their main case, the offence under Section 203 IPC also must fail. It is also for the reason because we have held that the appellant was justified in taking a plea of self defence against the deceased party which he was also able to prove with the aid of evidence. In any event, in the absence of any evidence as to from where the appellant got 64
D billets of sandal woods for loading in the lorry of the deceased party and the gun, an offence under Section 203 IPC cannot be held as made out against the appellant.

50. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. As a
E consequence, the appellant is acquitted from all the charges. His bail bonds are discharged and he is set free.

Devika Gujral Appeal allowed.