REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2009
(Arising out of SLP (Crl.) No.3905 of 2008)

Ranveer Singh ...Appellant

Vs.

State of M.P. ...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 Madhya Pradesh High Court at Gwalior Bench. The appellant was convicted by learned First Additional Sessions Judge, Bhind, for offence punishable under Section 302 read with Section 109 or in the alternative

under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). He was sentenced to undergo imprisonment for life.

3. The High Court by the impugned judgment altered the conviction to section 304 Part I IPC read with Sections 109 and 34 IPC. He was sentenced to undergo imprisonment for 5 years and to pay a fine of Rs.20,000/- with default stipulation.

4. Prosecution version in a nutshell is as follows:

Report Ex.P/1 was lodged by complainant Lakhansingh (PW1) according to which on 31.5.1990 his cousin Pappu had some altercation with Kanthshree (DW1), sister-in-law of appellant. Due to that incident when on 1.6.1990 at 6.00 a.m. Pappu was going to answer call of nature, he was surrounded by appellant Ranveer Singh and his son Munnu alias Prithviraj and was thrashed to ground. When he shouted, complainant Lakhansingh (PW 1), Vasudev (P.W.3) and Vrindawan (PW 3) reached the spot alongwith Lalita alias Firki (hereinafter referred to as the 'deceased'), sister of the complainant Lakhansingh and his cousin Sunil (PW8). Seeing them, appellant asked his son Prithviraj alias Munnu to bring his licensed rifle from the home. Prithviraj alias Munnu brought the gun from the house. On exhortation of the present appellant, Munnu fired a gun shot which

caused injury to Lalita on the left thigh. Lalita was taken to the hospital in a bullock cart but on the way she succumbed to the injury sustained by her.

Report of the incident was lodged on 1.6.1990 at about 7 A.M. at police station Dehat, Bhind. On the basis of the report lodged by Lakhansingh (PW 1), police registered a criminal case against the present appellant and his son Prithviraj alias Munnu. Said Prithviraj alias Munnu being a minor, his case was referred to the Juvenile Court. So far as the present appellant is concerned, the matter was investigated by the police and challan was filed against him. The case was committed to the Court of Sessions for trial. The Sessions Court recorded the evidence and after appreciating the evidence convicted and sentenced the present appellant as indicated hereinabove. An appeal was preferred before the High Court.

Before the High Court the basic stand was that the accused had exercised the right of private defence and, therefore, no offence was made out. The High Court held that even if the right of private defence is accepted to be available at some point of time, it was exceeded and, therefore, the appropriate conviction was under Section 304 Part II IPC.

5. Learned counsel for the appellant submitted that the appellant is clearly protected because he was exercising the right of private defence.

6. Learned counsel for the State on the other hand supported the judgment.

7. 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."

8. 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.

9. 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 of self defence may relate to 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.

10. 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.

11. 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 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).

12. 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 on the spur of the 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 which is 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 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.

13. 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.

14. 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."

15. 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 a mechanism whereby an attack may be a 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.

16. The above position was highlighted in V. Subramani and Anr. vs. State of Tamil Nadu (2005 (10) SCC 358) and Salim and Ors. v. State of Haryana (SLP (Crl.) No.463 of 2008 disposed of on 11.8.2008.)

17. In the present case the High Court has rightly held that even if it is accepted that at some point of time the appellant was exercising the right of private defence, the same was exceeded and has rightly found him guilty under Section 304 Part I, IPC and sentenced him to undergo imprisonment for five years. The sentence as imposed cannot be considered to be harsh. On payment of fine of Rs.20,000/-, same was to be paid to the heirs of the deceased. Here again there appears to be no infirmity in the order of the High Court.

18. Looked at from any angle, the appeal deserves to be dismissed, which we direct.

…….J.
(Dr. ARIJIT PASAYAT)

…….J.
(ASOK KUMAR GANGULY)

New Delhi,
January 21, 2009