

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS . 701-702 /2015
(Arising out of S.L.P. (CrI.) Nos.5767-5768/2013)

RAJ SINGH ..Appellant

Versus

STATE OF HARYANA ETC. ..Respondents

WITH

CRIMINAL APPEAL NO. 703 OF 2015
(Arising out of S.L.P. (CrI.) No.6347/2013)

RAJ KUMAR ..Appellant

Versus

MAHABIR & ORS. ..Respondents

AND

CRIMINAL APPEAL NO. 704 OF 2015
(Arising out of S.L.P. (CrI.) No.10739/2013)

BHARAT SINGH ..Appellant

Versus

RISHI PAL & ORS. ..Respondents

J U D G M E N T

R. BANUMATHI , J.

Leave granted.

2. These appeals by way of Special Leave arise out of the common judgment dated 30.01.2013, passed by the Punjab and Haryana High Court in Criminal Appeal

No.D-440-DB of 2008 & Criminal Revision No.2758 of 2008, by which, the High Court dismissed the Criminal Appeal of the appellant-Raj Singh and partly allowed the Criminal Revision qua Raj Singh filed by Bharat Singh and thereby converting the conviction of the appellant under Section 304 Part 1 IPC to Section 302 IPC and maintained sentence of life imprisonment imposed on him and dismissed the revision qua Rishi Pal and Rajpal.

3. Brief facts which led to the filing of these appeals are as follows: The complainant-Bharat Singh serves in the Army and on 23.11.2004, he came to his village for fifteen days holidays. They are three brothers, Girdhari Lal, Devender Singh and Bharat Singh. In his complaint, Bharat Singh alleged that on 3.12.2004 at about 6.00 pm, when he was standing at the main gate of his cousin's house with one Tilak Raj, Rishipal-brother of the appellant came there with an axe in his hand and there was wordy altercation. Rishipal assaulted the complainant-Bharat Singh with a Kulhari on his left buttock, however, Bharat Singh managed to save his life, and rushed towards his home. The complainant narrated the

whole incident to his brother Devender Singh and he was taken to the hospital wherein Dr. Gobind Singh at village Badshahpur treated him and thereafter both the brothers returned to the village. When the elder brother Girdhari returned home at about 8.30 P.M., Bharat Singh narrated the whole incident to him and he was rebuked by his elder brother.

4. While the complainant and others were talking to each other at the main gate, the appellant-Raj Singh, armed with licensed pistol, Rishi, armed with countrymade pistol, Rajendra and Ram Pal, armed with lathies came to the house of Girdhari Lal and attacked Bharat Singh and others. Appellant-Raj Singh fired shot at Girdhari's chest from his pistol and Girdhari fell down on the ground. When Bharat Singh raised alarm, appellant fired at Bharat Singh which hit his left back side below the shoulders. As Bharat Singh raised alarm, Mahabir Singh and his elder brother Gajraj-PW6 rushed to the spot. Mahabir tried to lift Girdhari in order to save him, at that time, Rishi again fired from the countrymade pistol on Mahabir Singh and Gajraj. Further Rajender and

Rampal assaulted Gajraj with lathis. Girdhari was immediately taken to Government Hospital, Gurgaon for treatment where the doctor declared him as “brought dead”. Injured persons Mahabir, Gajraj-PW6 and Bharat Singh-PW1 were given treatment. On receipt of ruqqa from the Government Hospital, Gurgaon, PW13-Rajender Singh (ASI) recorded the statement of PW1-Bharat Singh and registered the case in FIR No.321/2004 under Section 302 IPC. On completion of investigation, chargesheet was filed under Sections 323, 324, 302, 307 and 506 read with Section 34 IPC.

5. To bring home the guilt of the accused, prosecution examined as many as thirteen witnesses and accused have examined three defence witnesses. The Additional Sessions Judge, Fast Track Court, Gurgaon vide judgment dated 17.05.2008 held that the appellant-Raj Singh had exceeded the right of private defence and convicted the appellant-Raj Singh under Section 304 Part-1 IPC and acquitted Rajpal and Rishi Pal. The ASJ Vide separate order dated 20.05.2008, sentenced the appellant-Raj Singh to undergo rigorous

imprisonment for life and imposed a fine of Rs.7,000/- with default clause.

6. Challenging the acquittal of Rishi Pal and Rajpal, Bharat Singh-PW1 preferred Criminal Revision. Challenging his conviction, Raj Singh-accused preferred Criminal Appeal before the High Court wherein the High Court vide common judgment dated 30.01.2013 dismissed the Criminal Appeal of the appellant-Raj Singh and allowed the Criminal Revision filed by the complainant-Bharat Singh and thereby converted the conviction of the appellant under Section 304 Part 1 IPC to Section 302 IPC and maintained the sentence of life imprisonment imposed on him.

7. On the same day a cross case i.e. on 4.12.2004 in the same police station was lodged by the appellant party against Mahabir Singh and others and they were also charge sheeted. Vide separate judgment dated 17.05.2008, trial court held that complainant party namely, Mahabir Singh, Bharat Singh, Gajraj, Anil and Satish are guilty of constituting unlawful assembly and causing grievous injury with blunt weapon to Rishi Pal and Rajpal and convicted them under

Sections 148, 323, 325 and 452 IPC read with Section 149 IPC and sentenced them to undergo various imprisonment imposed on them. Being aggrieved, Bharat Singh, Mahabir and others preferred appeal before High Court. Upon consideration of evidence and material on record, High Court held that reasonable doubts arise as to the prosecution version regarding scene of occurrence and the manner of attack and held that death of Girdhari and injuries to the accused Mahabir Singh and others were not properly explained which is fatal to the prosecution case and thus acquitted Mahabir Singh, Bharat Singh and others.

8. Mr. Gurukrishna Kumar, learned Senior Counsel appearing for the appellants contended that the place of occurrence was house of the appellant which means that the complainant party (seven in number) came to the house as aggressors and the appellant had no option but to fire from his gun in self defence of his own and his brothers and the alleged act of the appellant cannot in any manner be said to be in excess of right of private defence. It was further submitted that the appellant had specifically urged private defence which

was accepted by the trial court and erroneously rejected by the High Court. Learned Senior Counsel urged that the High Court was not right in dissecting the statement of the appellant under Section 313 Cr.P.C. by relying upon the inculpatory part of it but declining to take into account his explanation as to how the firearm shot occurred and the impugned judgment is unsustainable.

9. Per contra, learned counsel for the respondents contended that no cogent evidence is on record to substantiate the argument that complainant party were the aggressors. It was submitted that the occurrence took place in the house of the complainant but the police helped the appellant by changing the place of occurrence after three-four days of occurrence. It was argued that the act of the appellant in firing gun shots was not in exercise of right of private defence and the High Court rightly reversed the judgment of the trial court and convicted the appellant under Section 302 IPC.

10. We have carefully considered the rival submissions and perused the evidence and material on record and the impugned judgment.

11. PW1-Bharat Singh had spoken about the occurrence in the evening that he was attacked by the accused party with axe (*kulhari*) and PW1-Bharat Singh narrated the same to his brothers Girdhari (deceased) and Anil Kumar-PW5 who returned home at about 8.30 P.M. after attending a marriage party. Girdhari rebuked Bharat Singh and when they were all talking in the house of Girdhari, the appellant and his brother Rishi Pal and Rajpal came to the house of Girdhari armed with deadly weapons. Appellant-Raj Singh fired gun shots and Girdhari sustained firearm injury in his chest and he fell down. Raj Singh fired at Bharat Singh-PW1 and injury was caused on the backside of his shoulder. When Mahabir tried to lift Girdhari, at that time Rishi Pal fired at Mahabir with countrymade pistol. Rajpal and Rajendra are alleged to have given lathi blows on the person of Gajraj Singh-PW6 and all the accused ran away, Girdhari was taken to hospital and he was declared 'brought dead' by the doctor. PW1-Bharat Singh, PW5-Anil Kumar and PW6-Gajraj have clearly spoken about the occurrence, they were consistent in their version despite searching cross-examination and their

evidence is trustworthy. Further, evidence of eye-witnesses is strengthened by the medical evidence.

12. To substantiate the defence plea that the complainant party are the aggressors, much reliance is placed on the evidence of PW7-Dr. Kulvinder Singh, Senior Scientific Officer who has stated that he visited the place of occurrence-house of the accused as well as house of deceased Girdhari on 7.12.2004. As per the site plan Ex.PG/I dead body was detected at spot 'A' and that blood stains were detected on polythene sheet at plan 'C' and splashes of blood detected on dung cakes and one woolen monkey cap, four empty cartridges and one live cartridge were recovered from the courtyard of the house of the accused. PW7 specifically stated that no blood stains or any other physical clues related to the occurrence could be detected in the courtyard of the house of deceased-Girdhari.

13. Laying much emphasis upon the site plan prepared on 7.12.2004 and evidence of PW7, learned Senior Counsel for the appellant submitted that PW7 is a government official and an independent witness who has no reason to depose falsely in

favour of the appellant and his statement has been further corroborated by the evidence of the investigating officers namely PW8-Kuldip Singh(SI) and PW13-Rajender Singh (ASI). Learned Senior Counsel further submitted that the High Court erred in saying that there was no explanation as to how the articles remained in the courtyard of the house of the accused and were not recovered for four-five days, the High Court has not properly appreciated the evidence of PW13 and erred in reversing the findings of the trial court.

14. It is to be noted PW8-Kuldeep Singh, Sub Inspector of Police had deposed that on 4.12.2004, he along with DSP Sube Singh and other police officials went to Girdhari's house and recorded the statement of one Rajkumar and others and spot inspection was also conducted as per their version and according to him no site plan was prepared on 4.12.2004 as the ladies of the house were weeping and everyone was disturbed. On 5.12.2004, PW8-Kuldeep Singh (SI) prepared the site plan of the place of occurrence as given in the F.I.R., but according to PW8, no physical evidence was available at the spot on 5.12.2004. On 7.12.2004, a team of experts along

with PW13-Rajender Singh (ASI) inspected the house of the accused-Raj Singh and Rajpal and recovered four empty cartridges, one live cartridge, monkey cap and five pairs of hawai chappals and blood stains on polythene. It is a matter of common knowledge that the above material objects recovered on 7.12.2004 could have been noticed with naked eyes. While so, it is quite unnatural as to why the above material objects were not recovered on 4.12.2004 and 5.12.2004 inspite of the investigating team inspecting the spot on those two days. It is in this backdrop, the evidence of PW7-Dr. Kulvinder Singh and PW13-Rajender Singh (ASI) as to the alleged recovery on 7.12.2004 has to be examined.

15. PW13-ASI Rajender Singh has stated that he made enquiries from some persons and he came to know that the actual place of occurrence is the house of appellant and as such no person has been examined in the court to show that the place of occurrence was the house of accused. In the site plan prepared on 5.12.2004, the place of occurrence was shown as in front of the house of Girdhari and not in the courtyard of the house of the appellant. In their statement

under Section 313 Cr.P.C., the accused have stated that PW1-Bharat Singh and his brothers PW5-Anil Kumar, deceased-Girdhari, joined together and went to the house of the accused and that the place of occurrence is the house of the accused. As rightly observed by the High Court, the accused have also not examined any witnesses to substantiate their plea. Ignoring these material aspects, in our view, the Sessions Judge was not right in holding that the place of occurrence was the house of the accused and that the complainant party were the aggressors. The approach of the learned Sessions Judge borders on perversity and reasons for holding that the place of occurrence was the house of the accused is factually unsustainable and the High Court rightly set aside the findings of the trial court. We concur with the findings of the High Court that the investigating officer had helped the appellant by changing the place of occurrence to make it appear that the complainant party were the aggressors.

16. **Plea of self-defence:** The contention of the appellant is that he is not an aggressor and since the

complainant party was in possession of lethal weapons which caused reasonable apprehension in the mind of the appellant as to the threat to his life and his two brothers and therefore the appellant had no option but to fire from his gun and the alleged act of the appellant cannot, in any manner, be said to be in excess of his right of private defence.

17. The right of private defence is codified in Sections 96 to 106 IPC. Section 96 declares that “nothing is an offence which is done in exercise of the right of the private defence”. Section 97 states that every person has right of defence of person as well as of property. Section 100 describes the situations in which the right of private defence of body extends to the extent of voluntarily causing of death. To claim 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 law of private defence does not require that the person assaulted or facing apprehension of an assault must run away for safety. It entitles him to defend himself and law gives him right of

private defence. There is no right of private defence where there is no apprehension of danger. Necessity of averting and impending danger must be present, real or apparent.

18. Elaborating the scope of right of private defence, in *Dharam And Ors. vs. State of Haryana*, (2007) 15 SCC 241 in paragraphs (18) and (19) it was held as under:-

“18. Thus, the basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. . Answer to such a question depends upon a host of factors like the prevailing circumstances at the spot, his feelings at the relevant time, the confusion and the excitement depending on the nature of assault on him, etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence.

19. It is trite that the burden of establishing the plea of self-defence is on the accused but it is not as onerous as the one that lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea of self-defence to the hilt and may discharge the

wonus by showing preponderance of probabilities in favour of that plea on the basis of the material on record (see *Munshi Ram v. Delhi Admn.*(AIR 1968 SC 702), *State of Gujarat v. Bai Fatima*((1975) 2 SCC 7) and *Salim Zia v. State of U.P.*(1979) 2 SCC 648)."

19. In the case of *Bhanwar Singh & Ors. vs. State of M.P.*, (2008) 16 SCC 657, in paragraphs (50) and (60) it was held as under:-

“50. The plea of private defence has been brought up by the appellants. For this plea to succeed in totality, it must be proved that there existed a right to private defence in favour of the accused, and that this right extended to causing death. Hence, if the court were to reject this plea, there are two possible ways in which this may be done. On one hand, it may be held that there existed a right to private defence of the body. However, more harm than necessary was caused or, alternatively, this right did not extend to causing death. Such a ruling may result in the application of Section 300 Exception 2, which states that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. The other situation is where, on appreciation of facts, the right of private defence is held not to exist at all.

60. To put it pithily, the right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. Necessity must be present, real or apparent”. (emphasis added)

The same view is also expressed in the cases of *Biran Singh vs. State of Bihar*, AIR 1975 SC 87, *Wassan Singh vs. State of Punjab*, (1996) 1 SCC 458, *Sekar alias Raja Sekharan vs. State represented by Inspector of Police, T.N.*, (2002) 8 SCC 354, *Buta Singh vs. State of Punjab*, AIR 1991 SC 1316 and *James Martin vs. State of Kerala*, (2004) 2 SCC 203.

20. In the present case, plea of private defence has been put forth by the appellant. To succeed in the plea of private defence, the appellant has to prove that he exercised right of private defence in his favour and this right extended to the extent of causing death. In the facts and circumstances of the present case, let us consider whether right of private defence was available to the accused. Case of the appellant is that complainant party forcibly entered his house and started fighting and the appellant had reasonable apprehension that he would be hurt and therefore he fired the few shots in the air, and during the scuffle, the complainant party tried to forcibly snatch pistol from him and fire was shot which incidentally hit the deceased-Girdhari. Further case of the appellant is that the complainant party armed with weapons

were the aggressors and they caused serious injuries to the appellant and his brothers Rishi Pal and Rajpal.

21. DW2-Dr. Arun has expressed his opinion about the injuries caused to Rishi Pal and stated that Rishi Pal sustained some bruises and contusions and had pain in the left foot. DW2-Dr. Arun examined Rajpal who was brought to the hospital and there was pain and swelling in the left elbow, pain and swelling in the right wrist. DW1-Dr. Shailza Aggarwal examined x-ray of Rishipal and found that there was fracture in the fifth metatarsal of the left foot. DW1-Dr. Shailza Aggarwal also examined x-ray of Raj Pal and found fracture of fifth metacarpal right hand. The injuries on the person of the accused were not so serious.

22. Bharat Singh and his brothers were not carrying any arms or deadly weapons. The accused-appellants if at all any right accrued in their favour, while defending themselves, acted in a manner which is unduly disproportionate to the injury which they would have sustained at the hands of complainant party who were not armed with any deadly weapons. Thus, their act of firing shots which resulted in

death of Girdhari, was not at all to prevent any injury which was sought to be averted or which could have been reasonably apprehended. At no point of time, any reasonable apprehension of death or grievous injury was perceivable, but the accused-appellants aggressively acted and fired shots at deceased. Relying upon the evidence of PW-5-Anil Kumar, High Court also recorded a finding that appellant fired Girdhari from a short distance of four to five feet, even when the complainant party was not armed with lethal weapons. Appellant fired at Girdhari recklessly from a close range indicating that the appellant-accused party were the aggressors. Law does not confer a right of self-defence on a man when he himself was the aggressor. In the present case, the complainant party were not armed with lethal weapons; but the appellant was armed with a pistol. When the appellant and his party were the aggressors firing several rounds of firearm, the High Court rightly held that the plea of self defence raised by the accused is not sustainable. We find no reason warranting interference with the conviction of the appellant

under Section 302 IPC and sentence of life imprisonment imposed on him.

23. Criminal Appeal arising out of SLP (Crl.)

No.10739/2013: So far as acquittal of Rishi Pal and Rajpal is concerned, concurrent findings were recorded by both the trial court as well as the High Court for acquitting them. The appellate court would interfere with the order of acquittal only when the court below ignores or overlooks important circumstances and proved facts and misapplies the principles of criminal jurisprudence or tries to gloss over them. In the case in hand, it cannot be said that the reasonings recorded by the courts below for acquittal of Rishipal and Raj Pal are unreasonable warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India and this appeal is liable to be dismissed.

24. Criminal Appeal arising out of SLP (Crl.)

No.6347/2013: As mentioned above, on the same day i.e. 4.12.2004, a cross case in the same police station (Police Station, Sohna) was registered against the complainant party, namely, Mahabir, Satish, Bharat Singh, Gajraj, Anil and

Devender. According to the complainant-Raj Singh, on 3.12.2004, due to his illness he was in his house and at that time he heard some abuse and when he reached the house of his brother Rajpal, he saw Girdhari lying on the ground. He further stated that Mahabir, Gajraj, Anil, Devender, Bharat Singh and Satish son of Mahipal were present there and Gajraj was armed with lathi, Mahabir was armed with country made pistol, Anil was armed with pharsa, Devender and Lallu were having rods and Bharat Singh was having countrymade pistol and Satish was having rod in his hand and these persons caused injuries to his brothers Rajpal and Rishi Pal. After completion of investigation, chargesheet was filed against Mahabir and others in Sessions Case No. 3/2006. Vide separate order dated 17.5.2008, the Additional Sessions Judge, Fast Track Court, Gurgaon held that respondent party namely Mahabir, Satish alias Lallu, Bharat Singh, Gajraj, Anil are guilty of constituting unlawful assembly and causing grievous injuries with blunt weapon and convicted them under Sections 148, 323, 325, 452 IPC read with Section 149 IPC. For conviction under Section 325 IPC read with Section 149 IPC,

trial court sentenced each of them to undergo rigorous imprisonment for two years and fine of Rs.1500/- each with default clause. For conviction under other offences they were imposed various sentence of imprisonment and also fine. Sentence of imprisonment imposed on each of them were ordered to run concurrently. Giving benefit of doubt, Devender was acquitted of the charges. Challenging the verdict of conviction, Mahabir and others filed Criminal Appeal No.S-1062-SB/2008 before the High Court of Punjab and Haryana and the High Court vide common order dated 30.01.2013 allowed the appeal of the accused persons and the High Court acquitted them of all the charges.

25. As discussed earlier, place of occurrence was not the house of Raj Singh or his brother's house as is evident from the fact, objects were not recovered immediately but recovered only after a gap of three-four days and no credible explanation is forthcoming from PW8-Kuldeep Singh (SI) and PW 13-Rajender Singh (ASI) for such delay. By perusal of the evidence on record, it is clear neither any firearm was used by Bharat Singh and others nor any such firearm was found in their

possession. As far as injuries sustained by Rishi Pal and Rajpal are concerned, Rajpal sustained lacerated wound and fracture fifth of metacarpal and Rishi Pal sustained fracture of fifth metatarsal. The doctors have opined that the said injuries are possible by a fall. As discussed earlier, Mahabir and others were neither the aggressors nor there was any pre-meditation to cause the said injuries. Upon consideration of the facts and circumstances and the nature of injuries caused, the High Court rightly held that the complainant party (Mahabir and others) acted in private defence and acquitted them of the charges. Considering the nature of injuries and other material on record, in our view, the complainant party have not exceeded their right of private defence and caused harm that was necessary for the purpose of private defence. Upon appreciation of evidence, the High Court rightly acquitted Mahabir and others and we find no reason to interfere with the same.

26. **Criminal appeals arising out of S.L.P.(Crl.) Nos.5767-5768/13.** The conviction of the appellant-Raj Singh under Section 302 IPC and sentence of life imprisonment

imposed on him is confirmed and the appeals preferred by Raj Singh are dismissed. **Criminal appeals arising out of S.L.P. (Crl.) Nos.6347/13 & 10739/13** filed by Raj Kumar and Bharat Singh stand dismissed.

.....J.
(T.S. Thakur)

.....J.
(R. Banumathi)

.....J.
(Amitava Roy)

New Delhi;
April 23, 2015

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J U D G M E N T

T.S. THAKUR, J.

1. I have had the advantage of going through the order proposed by my Esteemed Sister Banumathi, J. While I agree with the conclusion arrived at by her, I would like to add a few lines of my own.

2. Exception 2 to Section 300 of the Indian Penal Code provides that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. Right of private defence is, in turn, recognised by Section 96 of the Code which provides that nothing is an offence which is done in the exercise of the right of private defence. Section 97 of the Code recognises the private defence of the body and of property and reads as:

"97. Right of private defence of the body and of property. – Every person has a right, subject to the restrictions contained in Section 99, to defend –

First.- His own body, and the body of any other person, against any offence affecting the human body.

Secondly.- The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass."

3. Section 99 of the Code deals with acts against which there is no right of private defence and, *inter alia*, provides that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Section 100 of the Code deals with situations in which the right of private defence of the body extends to voluntarily causing death or of any other harm to the assailant, if the offence which occasions the exercise of the right is one of the kind enumerated under the said Section. The offences enumerated under the said provision include offences like causing death, grievous hurt, committing rape, gratifying unnatural lust and assault with the intention of kidnapping or abducting. Section 103 of the Code similarly deals with the right of private defence of property in situations enumerated thereunder, which includes offences like

robbery, house-breaking by night, mischief by fire committed of any building, tent or vessel used as a human dwelling etc.

4. A conjoint reading of provisions of Sections 96 to 103 and Exception 2 to Section 300 of the Code leaves no manner of doubt that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence, provided that such right is exercised without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence. A fortiori in cases where an accused sets up right of private defence, the first and the foremost question that would fall for determination by the Court would be whether the accused had the right of private defence in the situation in which death or other harm was caused by him. If the answer to that question is in the negative, Exception 2 to Section 300 of the Code would be of no assistance. Exception 2 presupposes that the offender had the right of private

defence of person or property but he had exceeded such right by causing death. It is only in case answer to the first question is in the affirmative viz. that the offender had the right of defence of person or property, that the next question viz. whether he had exercised that right in good faith and without premeditation and without any intention of doing more harm than was necessary for the purpose of such defence would arise. Should answer to any one of these questions be in the negative, the offender will not be entitled to the benefit of Exception 2 to Section 300 of the Code. Absence of good faith in the exercise of the right of private defence, premeditation for the exercise of such right and acts done with the intention of causing more harm than is necessary for the purpose of such defence would deny to the offender the benefit of Exception 2 to Section 300. The legal position on the subject is fairly well settled by a long line of decisions of this Court to which copious reference has been made by Banumathi, J. No useful purpose would, therefore, be served by referring to them over again. All that need be said is that whether or not a right of private defence of person or property was available to the offender is the very first question that must be addressed in a

case of the present kind while determining the nature of the offence committed by the accused, whether or not a right of private defence was available to an offender is, in turn, a question of fact or atleast a mixed question of law and fact to be determined in the facts and circumstances of each individual case that may come up before the court.

5. The High Court has, in the case at hand, clearly recorded a finding that the appellants were the aggressors in the incident that led to the death of deceased-Girdhari Lal. Banumathi, J. has in the proposed order referred to the evidence supporting that finding. Once it is held that the Raj Singh and others were the aggressors and that the incident had taken place in the house of the complainant and not at the house of the said appellants as alleged by them, there is no room for the appellants to claim the benefit of Exception 2 to Section 300 of the Code. That is so particularly when neither deceased-Girdhari Lal nor others examined as prosecution witnesses supporting the complainant's case were armed. The question whether the appellants exceeded the right of private defence does not, therefore, really arise for

consideration. Since no such right was, in the facts and circumstances of the case, available to them, there was no question of their exceeding the same.

6. With the above words, I concur with the order proposed by my esteemed sister.

.....J.
(T.S. Thakur)

New Delhi
April 23, 2015