

PETITIONER:
MOHINDER PAL JOLLY

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 14/12/1978

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
REDDY, O. CHINNAPPA (J)

CITATION:
1979 AIR 577 1979 SCR (2) 805
1979 SCC (3) 30

ACT:

Indian Penal Code, 1860 (Act 45 of 1860) Ss. 99, 101, 103, 302, 303 and 304. Factory owner fired from revolver on workers agitating for wages outside factory-Death of a worker-Accused claiming right of private defence of property and person-Right when available-Accused if should be convicted and sentenced under Part-II of Section 304 and not Part-I.

HEADNOTE:

There was a dispute between the appellant, a factory owner and his employees in regard to wages, during the period of their lay-off.

The prosecution alleged that on the day of the occurrence when the workers gathered outside the factory and raised innocuous slogans demanding their wages, the appellant came out and fired a shot from his revolver, which hit a worker resulting in his death.

The appellant on the other hand alleged that a large number of labourers who collected outside the factory, shouted very abusive slogans, threatening that they would not leave him alive and showered brickbats at the factory premises causing damage to the appellant's property. Apprehending imminent danger to his life and property, his driver fired a shot from the revolver which resulted in the death of the deceased.

The trial court, with whose findings the High Court agreed, found that the workers might have hurled brickbats into the factory premises; but they did not break the barbed wire on the boundary wall nor did they try to scale the boundary wall. that they did not carry any sticks, that no brickbats hurled by the workers could enter the appellant's office and therefore his version that some brickbats damaged the glass on his office table was incorrect and that it was the appellant and not his driver that fired his revolver which resulted in the death of the deceased. The High Court, agreeing with the trial court, held that though the appellant had the right of private defence of property it did not go to the extent of causing death and, therefore, he exceeded his right of private defence. Holding that the offence fell under Exception 2 to s. 300 IPC the High Court convicted him under s. 304, Part-I.

In appeal to this Court it was contended on behalf of the appellant that in the exercise of his right of private defence the appellant was entitled to and justified in law in using force even to the extent of causing death although he never intended to kill the deceased or anyone. On the facts and circumstances of the case, it did not come within clause 4thly of s. 300; or even if it fell within that provision, on the application of exception 2, he could only be convicted under Part II of s. 304 and not under Part I. Even if his conviction were maintained, imposition of fine would meet the ends of justice.

Dismissing the appeal in part,

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HELD: The appellant could be convicted only under Part-II of s. 304 and not Part-I. [813 C].

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(1) The High Court was right in not finding the appellant guilty of having committed culpable homicide amounting to murder within clauses Firstly, Secondly or Thirdly and finding him guilty with the aid of clause 4thly where the intention to cause murder is absent but "the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death". The clause further says that the person "commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid." The appellant must have committed the act with the knowledge that it was imminently dangerous and in all probability must cause death or such bodily injury as was likely to cause death. Dehors Exception 2, he had no excuse for committing the said act. [813 D-E]

In the present case the workers' demand for wages was not legal. The workers raised provocative slogans and did throw brickbats damaging the appellant's property and endangering it to further damage. But that by itself could not give any right of private defence of person to the appellant. There is no evidence to show that the workers had broken the barbed wire or that some of them tried to scale the boundary wall. It may well be that some of them tried to raise their heads above the boundary wall. The appellant came out of his office and fired the shot, which could not be merely to scare away the crowd of workers. He could and did fire the shot so that it could pass over the boundary wall almost grazing it. The bullet which must have passed just over the boundary wall could and did hit the deceased killing him instantaneously. [812C-813C]

2. (a) In the matter of exercise of the right or private defence of property or person the onus is on the accused to establish this right not on the basis of the standard of proving it beyond doubt but on the theory of preponderance of probability. He might or might not take this plea explicitly or might or might not adduce any evidence in support of it but he can succeed in his plea if he is able to bring out materials on the record on the basis of evidence of the prosecution witnesses or on other pieces of evidence to show that the apparently criminal act which he committed was justified in exercise of his right of private defence of person or property or both. But the exercise of this right is subject to the limitation and exceptions provided in section 99 of the Code. As to when the right of private defence of the body extends to causing death is provided for in s. 100. [813 F-814 A]

(b) The appellant had not only the right of private defence of his-property but also his body to a limited extent within the meaning of s. 101 subject to the

restrictions mentioned in s. 99. This did not extend to the inflicting of so much harm to the deceased and causing his death, nor does the right of private defence of property available to an accused extend to causing death, unless it is covered by any of the clause of s. 103. [814 B]

(c) When mischief is caused to property it must be shown that it was caused under such circumstances as may reasonably cause apprehension that death or grievous hurt would be the consequence if such right of private defence was not exercised. A mere claim of such apprehension is not enough. The court on objective tests and on the facts and circumstances of each case must arrive at the conclusion that the situation was such as was likely to reasonably cause such apprehension. [814 D-E]

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(d) The right of private defence of property in the appellant's case extended to causing of any harm other than death. The appellant did exceed this right of private defence and the murder which he committed was within the meaning of clause '4thly' of s. 300 squarely and fell within Exception 2 thereof. [814 F]

(e) The appellant exceeded the right given to him by law and caused the death of the deceased against whom he was exercising such right of defence. He did so without premeditation and without any intention of doing more harm than was necessary for the purpose of such defence. He thought that by indulging in this imminently dangerous act he would be able to scare away the labourers and stop them from continuing their unjustified agitation, the raising of the slogans and the throwing of brickbats. But then, although the intention was not to kill or cause such bodily injury as was sufficient in the ordinary course of nature to cause death, yet he must have committed the act knowing that it was so imminently dangerous that it must in all probability cause death of the worker or workers standing on the other side of the boundary wall. [814 G-H]

3. If the accused commits an act while exercising the right of private defence by which death is caused either with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death then he would be guilty under Part-I. On the other hand if before the application of any of the Exception of s. 300 it is found that he was guilty of murder within the meaning of clause "4thly" then no question of such intention arises and only the knowledge is to be fastened on him that he did indulge in an act with the knowledge that it was likely to cause death but without any intention to cause it or without any intention to cause such bodily injury as was likely to cause death. In the instant case the appellant could be convicted only under Part-II of s. 304 and not Part-I. [815A-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 118 of 1972.

Appeal by Special Leave from the Judgment and Order dated 24-4-1972 of the Punjab and Haryana High Court in Criminal Appeal No.303 of 1969.

A. N. Mulla, Harbans Singh and Faqir Chand for the Appellant.

Hardev Singh for the Respondent.

The Judgment of Court was delivered by

UNTWALIA, J.-The appellant in this appeal by special

leave was convicted by the Additional Sessions Judge, Jullundur under section 304 Part-I, Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs. 10,000/- in default to two years' further rigorous imprisonment. The fine, if recovered, was directed to be paid to the dependants of the deceased in equal shares. The appellant filed a criminal appeal in the High Court of Punjab and Haryana against his conviction and sentence. The State

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also filed an appeal and the widow of the deceased filed a revision in the High Court for convicting the appellant under section 302 of the Penal Code instead of section 304 Part-I. The High Court dismissed both the appeals as also the revision. The appellant only has preferred this appeal in this Court.

The appellant was running a factory at Jullundur and on account of non-availability of raw-materials the factory remained closed for a fortnight from the 14th to 28th September, 1967 resulting in lay-off of the workmen. A dispute arose between the management and the workmen in regard to the payment of wages for the period aforesaid. Ultimately a settlement was arrived at through the intervention of the Labour-cum-Conciliation Officer, Jullundur and the terms of the settlement were reduced to writing which was marked Ext. D.A. in the case. Rightly or wrongly the workers, according to the prosecution case, got the impression that they were to be paid their wages for the period of lay-off. They accordingly went to the appellant on 7th October, 1967 for demanding the wages. The appellant is said to have told them that the same would be paid on the 11th October. On this date again they went to the factory and sent P.W. Mota Singh to demand wages from the appellant. He asked him to go away. Mota Singh came out and passed on the information to the workers present outside the factory premises, who, amongst others, included Sant Ram, the deceased, Darshan Singh, P.W. 4 and Gurcharan Singh, P.W. 5. According to the prosecution case the workers then started raising innocuous slogans demanding their wages and did nothing else. It is said that thereupon the appellant opened the door of his office and fired a shot from his revolver towards the workers who were raising slogans. The shot hit on the forehead of Sant Ram who fell down and died instantaneously at the spot. The occurrence took place at 2.00 p.m. on the 11th October, 1967. A First Information Report was lodged at the Thana at 2.15 p.m., on the written report of Mota Singh, P.W. 2, Shadi Lal, P.W. 13, Sub-Inspector of Police reached the place of occurrence at about 2.30 p.m. and started investigation. After submission of Charge-Sheet and commitment the appellant was tried for having committed the offence of murder of Sant Ram punishable under section 302 of the Penal Code.

The defence set up by the appellant was that the Labour Officer had given the decision contained in Ext. D.A. on the 28th September, 1967 that no wages would be paid for the lay-off period but that the workmen would be treated on leave and would be paid as per leave due to each one of them. He along with his son and driver Bansi

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Lal was in the office at about 1.50 p.m. on the 11th October when eight or nine labourers of his factory and fifteen or twenty labourers who are outsiders came to his factory. Some of them entered his office while others stood outside. They demanded wages not only for the period of lay-off but also for the period from 7th October onwards when they had

decided not to join the work until their wages were paid. The factory gates were closed and a big crowd of labourers collected outside. They became violent. They shouted very abusive and obnoxious slogans and were saying that they would not leave the owner of the factory alive that day. They showered brick-bats at the factory premises. His office air-conditioner was broken so was the electric globe outside the office. The brick-bats hit the office wall and damaged it and also damaged the table glass on the table inside the office. Numerous brick-bats fell both inside and outside the office. Apprehending imminent danger to his life and in exercise of the right of private defence of property and person, Bansi Lal, the appellant's driver fired the shot from the revolver and not he. The labourers had started breaking the barbed wire fixed on the boundary wall of the factory on the other side of which they were standing. Some of them including Sant Ram tried to scale the boundary wall. It was in such a situation that the bullet hit Sant Ram causing his death.

Largely, almost wholly, agreeing with the conclusions arrived at by the Trial Court, the High Court has arrived at the following findings of fact:-

- (1) The version of the labourers that they were entitled to their wages for the lay-off period was not countenanced by Ext. D.A., rather, that of the appellant was borne out by it. "The demand of the workers made on 7th October, 1967 and 11th October, 1967 for payment of full wages was not in accordance with this agreement and therefore was not legal."
- (2) "That after the refusal by the accused to pay wages to the workers for the lay-off period they raised some slogans and might have hurled some brick-bats into the factory premises of the accused and caused damages as observed by Shadi Lal (P.W. 13) Sub-Inspector, who arrived at the spot within about half an hour of the occurrence."
- (3) "The workers did not break the barbed wire affixed on the boundary wall of the factory nor they tried to

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scale the boundary wall and there is no reliable evidence on the file to show that they were armed with any DANDAS or sticks. Their purpose was to hold a demonstration against the accused when he refused to consider their demand of wages for the lay off period which was obviously not justified in view of the agreement arrived on 28th September, 1968, copy of which is Exhibit D.A."

- (4) "Provocative slogans might have also been raised by them at that time, when the accused was sitting in the office."
- (5) "Admittedly the workers were, at that time, standing outside the factory wall which was 5 1/2 feet high and on which barbed wire is fixed. The distance between that outer wall and the office of the accused was about 13 feet. No brick-bats hurled by the workers could, therefore, enter the office room of the accused. The defence version that some brick-bats fell inside the office of the

- accused and broke the glass of his table is false and incorrect."
- (6) The mob hurled bricks-bats on the building and the globe outside his office was broken and some damage was done to the air-conditioner and as such the mob was guilty of mischief."
- (7) "The accused on hearing slogans of the workers came out of his office and stood on the THARI in front of the office and fired the shot towards the workers, who were raising slogans outside the factory and as a result of that shot Sant Ram died instantaneously."

On the basis of the findings aforesaid the High Court, in agreement with the Trial Court, came to the conclusion that the appellant had the right of private defence of property extending to the voluntary causing of any harm other than death to the workers but not to the causing of death and obviously he exceeded his right of private defence and thus this offence falls under Exception 2 of section 300 of the Indian Penal Code. The High Court found the appellant in the first instance guilty of culpable homicide amounting to murder within the meaning of clause '4thly' of section 300. And since the appellant's case was found to have been covered by Exception 2 he was convicted under section 304, Part-I.

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Mr. A. N. Mulla appearing for the appellant submitted that he was not challenging the concurrent findings of the courts below that it was the appellant who had fired the shot from his revolver and not his driver. But then, according to his submission, he was forced to do so apprehending imminent danger to his life or of grievous hurt to him and the shot was fired not only to defend his property. He was, therefore, in exercise of that right, entitled to and justified in law in using force even to the extent of causing the death of Sant Ram, although he never intended to kill any one. It was further submitted that the workmen were the aggressors. They had thrown brick-bats even inside the office damaging the office table glass; had collected in large numbers outside the boundary wall; had broken the barbed wire on it and some of them were trying to scale down the wall. In such a situation the appellant was not expected to act like a coward and run from the place, but he had a right to defend his property and person. In any view of the matter, counsel submitted, that the case did not come under clause '4thly' of section 300 or even if it falls within that provision, on the application of Exception 2 he could only be convicted under Part-II of section 304 and not Part-I. On the facts and in the circumstances of this case, counsel submitted, that the sentence imposed upon him is highly excessive and even if his conviction is maintained justice demands only an imposition of fine on him under section 304 Part-II.

Mr. Hardev Singh appearing for the State endeavoured to show that the labourers were justified in demanding their wages for the layoff period; they were very few in number and even if their demand was not warranted on the terms of the settlement embodied in Ext. D.A. they had a right to peacefully demonstrate and ventilate their grievance. They did nothing which could give any right of private defence to the appellant either of his property or person. He could escape from his office for his safety or would have taken recourse to the protection of the public authorities.

Counsel further submitted that the appellant was not at all justified in causing the death of Sant Ram by his revolver and his conviction recorded under section 304 Part-I is correct and the sentence is not at all excessive.

After having appreciated all that was placed before us by learned counsel for the parties and on perusal of the relevant pieces of evidence in the case we have come to the conclusion that none of the findings recorded by the Courts below is such or so erroneous that we can justifiably interfere with it either this way or that way. And this, apart from the fact, that since the State had not come to this Court

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in appeal it was not open to it to argue that the appellant had no right of private defence at all. The argument that the appellant had time to escape like a coward for protecting his person leaving his property to any amount of danger of being damaged, to say the least, was an obviously wrong argument and has been stated merely to be rejected.

Ext. D.A. clearly shows that the workmen were not entitled to claim down right cash wages for the period of lay-off. Their absence was to be adjusted against their leave. To start with, therefore, the High Court was right in saying that their demand was not legal. Yet that, by itself, could not give any right of private defence either of property or of person to the appellant. We have carefully gone through the evidence of P. Ws. 2, 4 and 5 and also the evidence of Vidya Sagar, D.W. 2 on which great reliance was placed by Mr. Mulla. We see no ample Justification for us to say that any brick-bats thrown by the labourers had entered the office room of the appellant breaking the glass of his office table. But then, brick-bats were thrown; they did hit and damage the office wall, the air-conditioner and the globe of the electric light. It may not be possible to determine with exactitude the number of labourers present outside the boundary wall at the time of the occurrence. But it does appear to us that they were neither present in very large number of hundred or more nor the number was as meagre as about ten as deposed to by the P.Ws. The factory of the appellant is situated in an industrial area. It is reasonable to think that some other workers also must have joined their agitational move. Be that as it may, the number of the workers present outside the boundary wall is not of any great significant although it has some significance. They did throw brick-bats damaging the appellant's property and endangering it to further damage. Hurling of brick-bats by the labourers towards the office of the appellant must have caused apprehension of some hurt or injury to him but not necessarily the causing of the grievous hurt as on the facts and in the circumstances of this case it was not possible to draw an inference to that extent. The High Court would have been well advised to try to record a definite finding on the question of hurling of brick-bats instead of saying that the workers "might have hurled some brick-bats into the factory premises of the accused." Similarly the High Court ought to have come to a definite conclusion as to whether the slogans raised by the workers were merely innocuous as they claimed to be or they were raising provocative slogans also which were not only obnoxious but went to the length of saying that the appellant should be killed and the factory should be burnt. We are inclined to think that the

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slogans raised by the workers were more offensive and provocative than claimed by them. But we are not prepared to

accept the contention of the appellant in disagreement with the findings of the courts below that they had broken barbed wire or that some of them tried to scale down the boundary wall. It may well be that some of them tried to raise their heads to mark the reaction of the appellant on the hearing of their slogans. The boundary wall was only 5 1/2 high. The appellant came out of his office room and stood on the THARI which was about 1 1/2 high from the ground level of the factory and fired the shot. It is not possible to accept his contention that he did so merely to scare away the crowd of the workers. He could and did fire the shot so that it could pass over the boundary wall almost grazing it. Sant Ram was standing at a distance of about 5' or 6' from the boundary wall. The bullet which must have passed just over the boundary wall could and did hit Sant Ram. In such a situation the High Court was right in the first instance in not finding the appellant guilty of having committed culpable homicide amounting to murder within clauses '1stly, 2ndly or 3rdly' and finding him guilty with the aid of clause '4thly', where the intention to cause murder is absent but "the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death". The clause further says that the person "commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid." The appellant must have committed the act with the knowledge that it was imminently dangerous and in all probability must cause death or such bodily injuries as was likely to cause death. Dehors Exception 2 which we shall presently refer he had no excuse for committing the said act.

The law regarding the right of private defence of property or person is well settled and may be briefly recapitulated here. The onus is on the accused to establish this right not on the basis of the standard of proving it beyond doubt but on the theory of preponderance of probability. He might or might not take this plea explicitly or might or might not adduce any evidence in support of it but he can succeed in his plea if he is able to bring out materials in the records of the case on the basis of the evidence of the prosecution witnesses or on other pieces of evidence to show that the apparently criminal act which he committed was justified in exercise of his right of private defence of property or person or both. But the exercise of this right is subject to the limitations and exceptions provided in section 99 of the Penal Code-the last one being-"The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for 814

the purpose of defence." As to when the right of private defence of the body extends to causing death is provided for in section 100. The appellant's case is not covered by it. In the view which we have expressed above we think that the appellant had not only the right of private defence of his property but also his body to a limited extent with in the meaning of section 101 subject to the restrictions mentioned in section 99. This did not extend to the inflicting of so much harm to Sant Ram and causing his death, nor the right of private defence of property available to the appellant extended to causing his death as it was not covered by any of the clauses of section 103. Mr. Mulla tried to bring it under '4thly' which says:-

"Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such

right of private defence is not exercised. Mischief was caused to his property but it was not caused under such circumstances as may reasonably cause apprehension in his mind that death or grievous hurt would be the consequence if such right of private defence was not exercised. A mere claim of such apprehension is not enough. The Court on objective test and on the facts and circumstances of each case must arrive at the conclusion that the situation was such as was likely to reasonably cause such apprehension. The right of private defence of property also, therefore, in the appellant's case extended to causing of any harm other than the death. Undoubtedly the appellant did exceed this right of private defence and apparently the murder which he committed within the meaning of clause '4thly' of section 300 squarely fell within Exception 2 thereof. He exceeded the power given to him by law and caused the death of Sant Ram against whom he was exercising such right of defence. He did so without premeditation and without any intention of doing more harm than was necessary for the purpose of such defence. He thought that by indulging in this imminently dangerous act he would be able to scare away the labourers and stop them from continuing their unjustified agitation, the raising of the slogans and the throwing of the brick-bats. But then, although the intention was not to kill or cause such bodily injury as was sufficient in the ordinary course of nature to cause death, yet he must have committed the act knowing that it was so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death of the worker or workers standing on the other side of the boundary wall.

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A question now arises whether the appellant was guilty under Part-I of section 304 or Part-II. If the accused commits an act while exceeding the right of private defence by which the death is caused either with the intention of causing death or with the intention of causing such bodily injury as was likely to cause death then he would be guilty under Part-I. On the other hand if before the application of any of the Exceptions of section 300 it is found that he was guilty of murder within the meaning of clause '4thly', then no question of such intention arises and only the knowledge is to be fastened on him that he did indulge in an act with the knowledge that it was likely to cause death but without any intention to cause it or without any intention to cause such bodily injuries as was likely to cause death. There does not seem to be any escape from the position, therefore, that the appellant could be convicted only under Part-II of section 304 and not Part-I.

Even so on the facts and in the circumstances of this case we do not feel persuaded to let off the appellant with an imposition of fine only. We, however, thought that sentence of three years' rigorous imprisonment would meet the ends of justice in this case. We were informed at the Bar and an affidavit sworn by the appellant's wife was also filed before us to the effect that the appellant was in jail for about nine months as an under trial prisoner and for about four months after conviction. Thus he has already undergone imprisonment for a period of about a year and a month. The occurrence took place more than a decade ago. The appellant had to pass this long ordeal all these years both mentally and financially. Considering, therefore, the totality of the circumstances while maintaining the imposition of fine of Rs. 10,000/- and in default two years' further imprisonment, we reduce his substantive term of

imprisonment to the period already undergone and maintain the conviction of the appellant not under Part-I of section 304 of the Penal Code but under Part-II.

In the result the appeal is dismissed but subject to the modification made above in regard to the appellant's conviction and sentence.

N.V.K.
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Appeal dismissed.

JUDIS