

JANGIR SINGH

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v.

THE STATE OF PUNJAB

(Criminal Appeal No. 2499 of 2009)

OCTOBER 31, 2018

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**[N. V. RAMANA AND MOHAN M. SHANTANAGOUDAR,
JJ.]**

Penal Code, 1860: ss. 304 Part I and 300 Exception II - Right to private defence – Benefit of – On facts, altercation between the appellant and the victim, in presence of other colleagues – Victim aimed rifle at the appellant and the appellant fired gunshot at the victim in exercise of his right of private defence of his body and killed the victim – Acquittal by the trial court, however, the High Court convicted the appellant u/s. 302 holding that the right to private defence on the part of the appellant was not made out – On appeal, held: Owing to the imminent danger perceived by the appellant from the aiming of rifle at him by the deceased, he fired at the deceased and killed him – Having regard to the situs of the injury—chest of the deceased, it is clear that the accused exceeded the power given to him in law and caused the death of the deceased against whom he exercised right of private defence without premeditation – Absence of good faith is not found in exercise of right of private defence – In view thereof, offence committed by the appellant converted to s. 304 Part I – Appellant having already undergone the maximum sentence prescribed for the offence committed u/s 304 Part-I, is directed to be released forthwith.

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Disposing of the appeal, the Court

HELD: 1.1 The right to private defence cannot be claimed by the accused, if disproportionate harm has been caused, while defending himself or any other person. However, if the accused has not caused disproportionate harm, then the benefit of Exception II to Section 300 IPC can be given to the accused. [Para 11][736-E-F]

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1.2 The fateful incident at the hands of appellant was pursuant to an altercation with the deceased for around 15 minutes,

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- A in the presence of other colleagues. Both the deceased and the appellant–accused were altercating face-to-face and standing at a distance of 10 feet from each other. This shows that they could see the facial expressions of each other clearly and comprehend the apprehending circumstances accordingly. Taking note of the
- B fact that owing to the imminent danger perceived by the appellant from the aiming of rifle at him by the deceased, he fired at the deceased and killed him. This comes within the ambit of right to private defence, however, it clearly traverses beyond the legitimate exercise of the same. The appellant–accused chose to shoot on a vital part of the body *i.e.*, chest to safeguard himself
- C from the imminent threat. However, the accused could have avoided the vital part of the deceased. But absence of good faith is not found in exercise of right of private defence. However, having regard to the situs of the injury (*i.e.* the chest of the deceased), it is clear that the accused has exceeded the power given to him in law and has caused the death of the deceased
- D against whom he exercised right of private defence without premeditation. In cases of disproportionate harm leading to death of the aggressor, sentence under Section 304 Part I is the appropriate sentence. Thus, offence committed by the accused–appellant will fall under Section 304 Part I IPC. [Para 12, 13]
- E [737-D-H; 738-A-B]

1.3 Taking into consideration all the material facts, the conviction under Section 302 IPC passed by the High Court is set aside and the same is converted to Section 304 Part–I IPC. [Para 17][739-C-D]

- F 1.4 The appellant has undergone 10 years of actual imprisonment which amounts to 18 years of imprisonment as per the concerned State Jail Manual. As the maximum sentence prescribed for the offence committed under Section 304 Part I, IPC is 10 years and the appellant is stated to have already
- G undergone 10 years of actual imprisonment. The appellant is directed to be released forthwith. [Para 18][739-D-E]

- H *Vidhya Singh v. State of Madhya Pradesh* (1971) 3 SCC 244; *James Martin v. State of Kerala* (2004) 2 SCC 203; *Darshan Singh v. State of Punjab* (2010) 2 SCC 333; *Bhanwar Singh v. State of Madhya Pradesh* (2008) 16

SCC 657; Udaikumar Pandharinath Jadhav Alias Munna v. State of Maharashtra (2008) 5 SCC 214; Trilok Singh v. State (Delhi Administration) 1995 SCC (Cri) 158; Pathubha Govindji Rathod v. State of Gujarat (2015) 4 SCC 363 – referred to.

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(1971) 3 SCC 244	referred to	Para 10	B
(2004) 2 SCC 203	referred to	Para 10	
(2010) 2 SCC 333	referred to	Para 10	
(2008) 16 SCC 657	referred to	Para 11	
(2008) 5 SCC 214	referred to	Para 14	C
1995 SCC (Cri) 158	referred to	Para 15	
(2015) 4 SCC 363	referred to	Para 16	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2499 of 2009

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From the Judgment and Order dated 07.04.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 160-DBA of 1994.

Ashwani Bhardwaj, Adv. for the Appellant.

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Ms. Jaspreet Gogia, Ms.Mandakini Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. This appeal arises out of the impugned judgment dated 07.04.2008, passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 160-DBA/1994, whereby the High Court has reversed the judgment of acquittal passed by the Sessions Judge, Faridkot dated 14.05.1993, and convicted the appellant-accused under Section 302 IPC and Section 27 of the Arms Act.

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2. The Sessions Judge, Faridkot *vide* Judgment dated 14.05.1993 acquitted the appellant from the offences punishable under Section 302 I.P.C. and Section 27 of the Arms Act on the ground that the appellant fired gunshot at the deceased in exercise of his right to private defence of his body. Thus, he was exonerated from the liability under Section 302 of IPC. However, on appeal, the High Court reversed the findings

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A of the Sessions Judge on the ground that the right to private defence at the part of the appellant was not made out. Aggrieved by the Judgment of the High Court, this appeal is preferred under Section 379 of the Code of Criminal Procedure, 1973.

3. Facts of the case in a nutshell are such that the incident in question took place on 05.06.1991 at around 7.30 P.M. wherein the appellant shot down Jaswant Singh (hereinafter referred to as “**the deceased**”) by his Self Loading Rifle of Bore 303. The appellant and the deceased were working together as Punjab Home Guard Volunteers. The incident took place when the deceased demanded Rs.100/- from the appellant, which was borrowed by the appellant previously. The appellant got enraged due to the fact that the borrowed money was demanded in front of the other Punjab Home Guard colleagues and it was insulting for the appellant. The appellant had an altercation with the deceased for around 15 minutes, pursuant to which the appellant fired at him and consequently, he died.

D 4. Learned counsel for the appellant-accused vehemently contended that the High Court has reversed the well-reasoned and detailed judgment of acquittal of the trial court by re-appreciating evidence in a different manner and taking a different view. According to the learned counsel, it was a clear case of right to private defence, thus, sentencing under Section 302 IPC by the High Court is unwarranted.

5. On the other hand, learned counsel for the respondent-State submitted that the present appeal by the appellant is not based on any cogent reasons rather the same has been filed on surmises and conjectures. Further, it has also been submitted that all the material evidence and testimonies of relevant witnesses viz., P.W.-3 and P.W.-4 have been taken into consideration, in the well-reasoned judgment of the High Court and the same does not call for interference by this Court.

6. After perusing the material placed before this Court, we are of the considered view, that the conviction by the High Court is solely based on the evidence of P.W.-3(ASI Sukhdev Singh), who is a witness to the incident. Therefore, evidence of P.W.-3 calls for the examination by this Hon’ble Court.

7. The evidence of PW-3 clarifies that the deceased had 303 bore rifle with him at the time of occurrence. So also, the accused had the rifle. PW-3 was standing at a distance of about 60 feet from the appellant

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and the deceased where the incident has taken place. It is admitted by him in cross-examination that he looked at the accused and the deceased only when he heard the sound of gunshot. He did not notice as to who was the aggressor and as to whether the altercation between the accused and the deceased had taken place or not. Looking at the trend of answers given by PW-3 in the cross-examination, it is clear that he did not see as to how the incident started and continued. Thus, there can be no categorical deduction from the evidence of PW-3 that the accused fired at the deceased with premeditation.

8. On the other hand, the evidence of PW-4 specifies that the deceased had aimed a rifle at the accused, obviously because of an altercation between them, pursuant to which the accused also used his gun to fire at the deceased suddenly, without any premeditation. The evidence of PW-4 corroborates the defence taken by the accused as found in his statement under Section 313 of the Cr.P.C.

9. The evidence of PWs 3 and 4 collectively would show that though the incident has taken place because of the gunshot fired by the accused towards the deceased and the deceased lost his life, but the act of the accused will fall under Exception II to Section 300 of the IPC, in as much as the fire by the accused was due to the aforementioned fact of the deceased pointing gun towards the accused, i.e., because of the threat perception created by the deceased in the mind of the accused.

10. Before proceeding any further, it is essential to put-forth things that are to be considered by the Courts, while giving benefit of right to private defence to the accused, as per Exception II to Section 300 of IPC, to determine the ‘quantum’ of this right. This Court in the case of *Vidhya Singh v. State of Madhya Pradesh*,¹ observed that-

“7. ... **The right of self-defence is a very valuable right. It has a social purpose. That right should not be construed narrowly.**”

Further, in the case of *James Martin v. State of Kerala*,² following observations were made by this Court-

“18. ... **Situations have to be judged from the subjective point of view of the accused concerned in the surrounding**

¹(1971) 3 SCC 244

²(2004) 2 SCC 203

- A 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
- B held by this Court, to adopt tests by detached objectivity which would be so natural in a courtroom, 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
- C required in the thinking of a man in ordinary times or under normal circumstances.”

Similarly, in the case of *Darshan Singh v. State of Punjab*,³ this Court went further and gave few parameters to adjudge the exercise of right to private defence in following terms-

- D “56. In order to find out whether the 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 the circumstances whether the accused had time to have recourse to public authorities are all
- E relevant factors to be considered.”

(emphasis supplied)

11. Further, it is a settled law that the right to private defence cannot be claimed by the accused, if disproportionate harm has been caused, while defending himself or any other person. However, if the
- F accused has not caused disproportionate harm, then the benefit of Exception II to Section 300 of IPC can be given to the accused. This proposition has been well explained in the case of *Bhanwar Singh v. State of Madhya Pradesh*,⁴ wherein this Court made the following observations -

- G “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.

³ (2010) 2 SCC 333.

H ⁴ (2008) 16 SCC 657.

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.”

(emphasis supplied)

12. Now, to consider the question as to whether the exercise of right of private defence by the appellant-accused was legitimate or not, it is undisputed that the fateful incident at the hands of appellant was pursuant to an altercation with the deceased for around 15 minutes, in the presence of other colleagues. Both the deceased and the appellant-accused were altercating face-to-face and standing at a distance of 10 feet from each other. This shows that they could see the facial expressions of each other clearly and comprehend the apprehending circumstances accordingly. Taking note of the fact that owing to the imminent danger perceived by the appellant from the aiming of rifle at him by the deceased, he fired at the deceased and killed him. This, in our opinion comes within the ambit of right to private defence, however, it clearly traverses beyond the legitimate exercise of the same. The appellant-accused chose to shoot on a vital part of the body *i.e.*, chest to safeguard himself from the imminent threat. However, the accused could have avoided the vital part of the deceased. But, we do not find absence of good faith in exercise of right of private defence. However, having regard to the situs of the injury (*i.e.* the chest of the deceased), it is clear that the accused has exceeded the power given to him in law and has caused the death of the deceased against whom he exercised right of private defence without premeditation. Thus, offence committed by the

A accused-appellant will fall under Section 304 Part I of the IPC.

13. The law on this aspect of causing disproportionate harm and exceeding right to private defence is amply clear. In cases of disproportionate harm leading to death of the aggressor, sentence under Section 304 Part I is the appropriate sentence. This has been done by

B this Court in catena of cases.

14. In the case of *Udaikumar Pandharinath Jadhav Alias Munna v. State of Maharashtra*,⁵ this Court acquitted the accused from charges under Section 302 IPC and modified the conviction to Section 304 Part I of IPC, as per the following observations-

C “5. We observe from the evidence that the deceased was not
D only a karate expert but also armed with a knife and it is not
surprising that the appellant apprehended injury at his hands. We
are therefore of the opinion that the best that can be said for the
prosecution at this stage is that the appellant had exceeded the
right of private defence. **We therefore partly allow the appeal,
acquit the appellant of the charge under Section 302 IPC
and modify his conviction to one under Section 304(1) IPC
in the background that the fatal injury caused on the chest
had penetrated deep into the body.** We also impose a sentence
of 7 years’ rigorous imprisonment on the appellant; the other part
E of the sentence to remain as it is.”

15. Further, in the case of *Trilok Singh v. State (Delhi Administration)*,⁶ this Court made observations regarding modification of conviction from Section 302 IPC to Section 304 Part I IPC and the same is as follows-

F “6. We have gone through the entire evidence of PW 24 and PW
25. The evidence of PW 24 is to the effect that he saw the accused
and the deceased were quarrelling and he went to the house and
informed PW 25. ... **But the question is whether he could go
to the extent of causing the death. No doubt in a situation
G like this it cannot be expected that the accused has to
modulate his right of self-defence. But when he went to his
house and brought a knife and caused the death it cannot
be said that he did not exceed the right of private defence.**

⁵(2008) 5 SCC 214

H ⁶1995 SCC (Cri) 158.

We cannot give the benefit to the appellant under Section 100 IPC and the act committed by him only attracts exception to Section 300 IPC. Therefore the offence committed by him could be one under Section 304 Part I IPC.” A

(emphasis supplied) B

16. Similar view was taken by this Court in *Pathubha Govindji Rathod v. State of Gujarat*,⁷ wherein it was ruled that the accused exceeded his right to private defence. Thus, appeal was partly allowed, conviction under Section 302 was set aside and the accused was convicted under Section 304 Part I of the IPC. C

17. Thus, taking into consideration all the material facts, discussions and observations made hereinabove, we deem it proper to set aside the conviction under Section 302 of IPC passed by the High Court and convert the same to Section 304 Part-I of the IPC.

18. Herein, it is brought to our notice that the appellant has undergone 10 years of actual imprisonment which amounts to 18 years of imprisonment as per the concerned State Jail Manual. As the maximum sentence prescribed for the offence committed under Section 304 Part-I, IPC is 10 years and the appellant is stated to have already undergone 10 years of actual imprisonment, it is directed that he be released forthwith, if not required in any other case. D E

19. Thus, the appeal stands disposed of, accordingly.

Nidhi Jain

Appeal disposed of.

⁷ (2015) 4 SCC 363 at Para 15, 17-18.