

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRIMINAL L.P. No. 570/2011**

Reserved on: 04th February, 2013

% **Date of Decision: 31st May, 2013**

STATE Appellants

Through Ms. Richa Kapoor, APP.

Versus

CHATURBHUI SINGH ...Respondent

Through Mr. Yogesh Swaroop, Mr. Dushyant Swaroop and Mr. B.K. Roy, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J.:

The present leave to appeal by the State questions judgment dated 20th July, 2007 passed in Sessions Case No.40/2010 arising out of FIR No.114/2006 Police Station Kashmere Gate. By the said judgment, respondent Chaturbhuj Singh has been acquitted from the charge under Section 304 Indian Penal Code, 1860 (IPC). The respondent was charged for culpable homicide not amounting to murder by firing and killing from his rifle Sarvesh Sapra on 9th March, 2006 at about 3.15 p.m.. It is an undisputed position and the prosecution case is that the respondent was posted as a security guard

at Punjab and Sindh Bank, Kashmere Gate Branch, Delhi on the said date and was doing his duty at that time.

2. The reasoning given in the impugned judgment reads;-

“44. Now the question that remains to be seen is whether the accused fired upon the deceased with the intention and knowledge to commit the murder of deceased or it was while discharging his duties and in exercise of the right to private defence that accused fired at said Sarvesh Sapra, the deceased. Ld. APP for the state argued that the right to private defence is not punitive but preventive and accused exceeded his right to private defence as well as his duties and therefore he is liable for punishment. On the other hand Ld. Defence Counsel argued that the accused was working as guard in the bank and therefore his foremost duty being guard of the bank was to save the bank and public money from being looted. Ld. Defence counsel further argued that it is the case of prosecution itself that the deceased was not Amarjeet Maurya whose passbook he was holding and deceased also manipulated and forged the signatures of the said Amarjeet Maurya and when he was confronted by the bank officials and he got an inkling that the bank official will call the police, he tried to run away and when one more bank official as well as accused who was on guard duty tried to stop him, then he not only broke the glass of the main gate to run away from the bank but also in that process tried to hit the accused due to which accused caused bullet injury on the person. Counsel for the accused argued that not only accused exercised his right to private defence but being the guard, he was discharging his duty and thereafter he has not committed any offence. In this case there is very thin line between the offence and the right to private defence or the duty which the accused was performing being the guard of the bank. It is only that line which has been blurred and has been given the name of offence by the

prosecution and the police. If somebody after doing forgery with the bank, from the fear of being apprehended was running from there then it was the duty of the guard to catch that person. In the process of running away, that person also broke the glass of the main gate of the bank and in order to stop him it seems the accused exceeded his right as well as the duty due to which that person was killed. Whether the accused exceeded his right or duty is a question of fact which the prosecution has failed to prove. None of the bank officials who have been examined by the prosecution have stated that it was the accused who shot at the person and that too intentionally at his stomach.

45. PW33 who is one of the independent witness has stated that a person came in front of his car and he was shot at his stomach and accused was having a gun. But he has also not stated that accused shot that person intentionally at his stomach or that accused exceeded his right to private defence or his duty. None of the witness have deposed that accused instead of hitting that person on the legs intentionally or with knowledge shot the deceased at the stomach. Thus, after considering the whole evidence on record, the prosecution has failed to prove any intention on the part of the accused to kill the deceased and it cannot be said that accused had any intention to cause the death or such bodily injury to the deceased as is likely to cause his death.

46. So far as the knowledge of accused is concerned, then everybody under the principles of criminal law is presumed to have knowledge of his act. The accused was not a child who was not aware of the consequences of his act but at the same time this knowledge is to be seen in context of the incident that happened. Suddenly when the boy started running from the bank and accused who was posted at the main gate heard noise of 'Pakro Pakro – Chor Chor'. He himself tried to apprehend that boy but after breaking the glass of the main gate, that boy tried to run away from the bank and in that

process in order to stop him it seems that accused fired at him and that bullet instead of hitting the deceased on his legs hit him at the stomach. Neither any intention nor any knowledge on the part of accused can be attributed in such circumstances. Accused was posted as a guard in the bank and therefore his foremost duty was the security of the bank and the persons who were working in the bank as well as to save the public money. Thus, it cannot be said that accused had any knowledge or intention to kill the deceased. It was sudden fire only to detain the deceased from running away and if in that melee the accused's bullet hit the deceased at his stomach then it cannot be said that accused with due deliberations or premeditation intentionally or with knowledge killed the deceased."

3. There is ample evidence and material to show that deceased Sarvesh Sapra had gone to the bank in question along with the passbook of Amarjeet Maurya, who has appeared as PW-11. Amarjeet Maurya (PW-11) deposed that he had an account in the said bank and had deposited Rs.30,000/- in his account on 21st February, 2006, but had left the pass book with the computer operator to make entries. Thereafter, he went to collect the passbook on 7/8th March, 2006, but could not retrieve, the same in spite of search in the passbook bundle. On 10th March, 2006, he was called by the police and he had deposed on the aforesaid facts. He was informed that somebody had tried to withdraw money using his passbook. He has deposed that he had not given his passbook to anyone for withdrawing money.

4. Amarjeet Singh (PW-1), Chief Manager and Gurbachan Singh (PW-2), Manager of Punjab and Sindh Bank, Kashmere Gate, Delhi have deposed that on 9th March, 2006, the deceased had come to the bank for withdrawing money on the basis of the passbook of Amarjeet Maurya with him. He did not have any cheque and, therefore, was given a loose cheque for withdrawing money. The deceased filled up the said cheque for withdrawing Rs.1.15 lacs and handed it over to the Counter Clerk Harvinder Pal Singh, who issued him a token. The cheque was also posted in the computer and passed on to the passing officer Amarpal Singh, who appeared as PW-5. At that time, it was noticed that the signature on the cheque did not tally with the specimen signatures. The deceased was asked to sign again on the cheque, but this signature also did not tally with the specimen signatures. Gurbachan Singh (PW-2) has deposed that he had asked the customer i.e. the deceased a number of times to properly sign the cheque, but the deceased had insisted that the signatures were the same/correct. However, both PW-1 and PW-2 have stated that they did not see the actual occurrence since PW-1 left the bank as it was lunch time and he had gone to buy motor parts. When he came back, a crowd had gathered outside the bank branch and he came to know about the firing. PW-2 claims that he was not keeping well and had gone to a Chemist

shop to purchase medicines and when he came back, he was informed about the firing outside the bank. With regard to what had transpired thereafter, we have depositions of Mohinder Singh (PW-3), Sunil Malhotra (PW-4) and Amarpal Singh (PW-5). PW-3 and 4 have stated that they were working as officers of the bank and on 9th March, 2006 they were present, when at about 3-3.15 p.m. they heard the noise “catch-catch, thief-thief” (chor-chor, pakro-pakro). Thereafter, they heard noise of breaking of glass. They came outside and saw that the glass of the main gate door was broken and the glass pieces were scattered here and there. A boy was lying on the road. PW-4 in his slightly more elaborate statement has stated that one H.P. Singh, his colleague, had tried to stop the deceased from running away and raised an alarm “chor-chor, pakro-pakro”. The glass pane of the door was broken and deceased ran away from the door. H.P. Singh along with respondent Chaturbhuj Singh followed and tried to stop him. He had not stepped out from his office.

5. Amarpal Singh (PW-5) has deposed that the deceased, a boy aged about 30-35 years, had handed over a cheque of Rs.1.15 lacs to the Counter Clerk, Harinder Pal Singh. The cheque was processed for clearing and passed on to Gurbachan Singh. Deceased was asked to wait as it was lunch time, but the deceased had stated that his father

was to be operated and he required money urgently. PW-5 checked the signature on the cheque and found that the signature was not tallying with the specimen signatures of the account holder. He informed the person i.e. the deceased, who once again signed the cheque and handed over the same to PW-5. On verification, again it was noticed that the signatures on the cheque did not tally with the specimen signatures of the account holder. The deceased had stated that he would recollect his signature. PW-5 returned the cheque and asked him to come back after lunch. Deceased came back at 3.15 p.m. and re-presented the same cheque. He again signed the cheque but once again it was noticed that the signatures were not tallying. PW-5 this time spoke to his colleagues and told that the deceased was trying to commit fraud. He went to the chamber of the Manager along with the cheque and signature binder. In the meantime, he heard the noise “chor-chor, pakro-pakro” and saw the boy i.e. the deceased rushing towards the exit gate. He heard the noise of breaking of the glass. The respondent- Chaturbhuj Singh tried to apprehend the boy, who ran outside the gate and then he heard the noise of firing. Police was called.

6. It is clear from the deposition of the said witnesses that none of them had actually seen what had transpired and why the firing had

taken place. They are silent. However, the following facts are clear from the aforesaid depositions:-

- (i) The deceased had come to the bank and had fraudulently tried to withdraw money by repeatedly forging signatures of Amajeet Maurya.
- (ii) There was shouting 'Chor Chor Pakro Pakro' (Catch Catch, Thief Thief).
- (iii) The deceased ran out and broke the glass of the main door.
- (iv) The respondent was posted as a guard in the said bank and had heard the noise 'Chor Chor Pakro Pakro'. He did not know what had actually happened inside and had only heard the noise 'Chor Chor Pakro Pakro'.
- (v) The witnesses heard or came to know later on about the firing.
- (vi) None of the witnesses have deposed as to the actual occurrence resulting in the firing and death of Sarvesh Sapra.

7. At his stage, we would like to refer to the deposition of Devender Goel (PW-32) (wrongly mentioned as PW-33 in paragraph 45 of the impugned judgment). Devender Goel (PW-32) is a public witness, who has stated that he heard a shot and thereafter stopped his car 100 feet away from Punjab and Sind Bank, Kashmere Gate. One person fell down in front of the car. He was shot in the stomach.

Another person was standing in the gathering and he had a gun in his hand and was in uniform. He identified the respondent Chaturbhuj Singh as the said person. What is discernible from the statement of PW-32 is that he did not see the actual occurrence. After he heard the shot, he saw the deceased falling in front of his car and noticed that something had happened.

8. As we visualize, when the occurrence took place the deceased would have moved from the place where he was shot at and would have fallen at a small distance. It is, therefore, not possible to accept the contention of the learned counsel for the State that the deceased must have collapsed at the spot where he was hurt and injured by the gunshot wound. As noticed below, blood was found even on the door and on the broken glass pieces.

9. Thus, we do not have any eye-witness account of what had happened and transpired when the respondent confronted or saw the deceased. The site plan Ex. PW18/J and Ex. PW16/B indicate the place of occurrence and the place where the blood, bullet cap etc. were found. Noticeably the crime team report Ex. PW8/A records that glass of the left door of the bank was broken and some blood was visible on the broken glass pieces. Blood stains were also found on the aluminium door frame and one torn white shirt was lying in front of the

main door of the bank in dirty water. Photographs placed on record Ex. PW9/A11, PW9/A5, PW9/A3, PW9/A2 show the broken aluminium glass door.

10. The respondent in his statement under Section 313 of the Code of Civil Procedure, has stated that he was standing at the gate of the bank, which was at about distance of 15 mtrs. from the counter in question and he did not know what had transpired when the deceased had gone to encash the cheque purportedly issued by Amarjeet Maurya. He has stated that he heard the noise 'Chor Chor Pakro Pakro' and closed the aluminium glass door at the entrance. The deceased forcefully pushed him and broke the glass door to run outside. The respondent has stated:-

‘On 9.3.2006 I was posted as security guard in the Punjab & Sind Bank, Kashmere Gate, Delhi. I heard the voice of the bank employees and my officers 'Chor Chor Pakro Pakro' and I immediately closed the aluminium glass door the exit gate where I was standing. I tried to catch the person Sarvesh Sapra who forcefully pushed me and broken the glass to get out. I followed him. There was a scuffle between me and said Sarvesh Sapra in which I also received injuries. The said Sarvesh Sapra tried to snatch my gun when I held it tight, he took a big glass piece and threatened me not to come forward otherwise he will kill me. I fired at the legs of the deceased but he bowed down due to which the bullet hit him in his stomach. I had no knowledge or intention to kill the deceased but I wanted to save the bank/public property and my life and was discharging my duty with honesty.’

11. In view of the aforesaid factual position, question arises whether the respondent has been able to discharge the burden that he had acted in

self-defence. Chapter IV consisting of Sections 96 to 106 incorporates and explains self or private defence principle. The said right is based upon the general principle that when crime is endeavoured to be committed by force, it is lawful to repel that force in self-defence. Self-preservation is respected and recognized as it is a basic right of a person to defend his body, another person, or property, especially when recourse to public authority is not available. The said right is exercised against the aggressor only. The right to private defence being a defensive right is primarily meant to be preventive in nature and not punitive. It is not a right of aggression or reprisal or right to punish. The burden lies on the accused to prove that he had no time to take recourse to public authority before he exercised the right to protect himself, another or property under Section 97 IPC. The penal statute recognizes that every person has a right, subject to restrictions contained in Section 99 to protect his own body, body of any other person against any offence affecting the human body. The person also has right to defend his property or that of any other person against any act which falls under the definition of theft, robbery, mischief or criminal trespass or attempts to commit theft, robbery, mischief or criminal trespass. Under Section 99 IPC states that right to private defence is not available where there is time to have recourse for

protection from public authority and does not extend to inflicting more harm than necessary for the purpose of defence.

12. In the present case the respondent was posted as a guard in a bank and had heard the commotion and noise 'catch catch, thief thief'. This is stated by the prosecution witnesses. Banks do require security and are high risk areas. We accept the respondent's version that he tried to apprehend the deceased by closing the glass door. The broken glass door speaks for itself. We agree that the glass was broken with the deceased ramping and smashing his way through, to make the escape. There was blood on the aluminium door. There was a scuffle and the deceased tried to snatch his gun, so claims the respondent in his statement. When he confronted the deceased, the respondent claims that the deceased picked up a large glass piece and threatened him. The said facts to some extent get corroborated from the crime team report Ex.PW 8/A. Blood was found at the place where broken glass pieces were lying. Torn shirt piece was also found. Thus, establishing scuffle and the confrontation between the respondent and the deceased.

13. Right to private defence continues as long as the offender causes or attempts to cause any person hurt or wrongful restraint. The law does not postulate that a person should become a coward and give up the chase or run away. The only requirement is that the act should be

proportionate to the danger and should not be a pretext for aggression. Principle of self defence does not extend to the right to punish. There should be a reasonable apprehension of danger in form of death or grievous bodily hurt. It should not be a mere assumption. However, we must remember that in such cases no person can pause, ponder and think intelligibly with perspicuity. Action is swift, leaving very little time to take a well-considered decision. Temperament of the assailant is to be adjudged from surrounding circumstances, which would indicate whether he looked violent, dangerous and the threat which was posed to the accused. Law does not expect exacting precision and does not weigh in golden scale the extent and degree of force, which should have been employed and compare it with the actual force used. Marginal excess use of force is pardonable and not penal. But at the same time law does not countenance and protect a person claiming the right to resort to force, to act in a disproportionate manner and cause injuries or hurt on a third person in excess or out of proportion to the injuries received, attempted or reasonably apprehended.

14. Courts have applied test of detached objectivity when they examine and decide the question whether the accused being tried had exceeded his right to private defence or had exercised more force than legitimately necessary for the purpose of defence. The best way to

apply the test is to eventualize the circumstances in the background of the facts as established and place oneself in the position of the accused to assess how he reacted in the situation and in the face of that particular apprehension of danger. But the test is viewed from the stand point of the accused and not from the stand point of a cool bystander or of a calm and composed person. Hindsight does make a person wiser and bestows greater wisdom. In *Jai Dev and Another versus State of Punjab*, AIR 1963 SC 612 it has been observed that right to private defence should not be vindictive or malicious but the court should always keep in mind the feelings of the accused at the relevant time when he faced the assault and whether there was reasonable apprehension of death or grievous hurt. Such circumstances inevitably arouse passion and create confusion and cloud in the minds of most persons who wants to ward off the danger to save himself or his property.

15. Some more facets of the doctrine of self defence may be noticed. Firstly, as a general rule the citizens are not expected to run away for safety when faced with grave and imminent danger to their person or property as a result of unlawful aggression. The right to private defence serves a social purpose (See *Murari Ram versus Delhi Administration* and *Mahna versus State of Rajasthan* and the

observations of the Supreme Court as quoted and observed in *Gottipulla Venkatasiva Subbrayaanam and Others versus State of Andhra Pradesh and Another*, (1970) 1 SCC 235). The principle of retreat, therefore, should not be applied. In *Puran Singh and Others versus State of Punjab*, (1975) 4 SCC 518 it has been observed that the law does not state that a person called upon to face an assault must run away to the police station and not protect himself or his property and allow the aggressor to take possession of the property or to commit the trespass or mischief. When there is an element of invasion or aggression on the property by a person, then there is obviously no room to have recourse to public authorities and the accused has right to resist the attack and even use force if necessary. When proportionate to real apprehension, the right might include right to cause death or grievous hurt to the victim and it is not necessary that grievous hurt or injury should have been caused to the accused by the invader. Secondly, right to self defence or right to private defence of property rarely but can extend to right to assault the assailants by even causing grievous hurt or death. Elucidating upon the said right in *Gottipulla Venkatasiva Subbrayaanam* (supra), it has been observed:

“17. It is in this background that the provisions of Sections 96 to 106, I.P.C., which deal with the right of private defence have to be construed. According to Section 96 nothing is an

offence which is done in the exercise of the right of private defence and under Section 97 subject to the restrictions contained in Section 99 every person has a right to defend: (1) his own body and the body of any other person against any offence affecting the human body and (2) 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 these offences. The right of private defence, according to Section 99, does not extend to an act which does not reasonably cause the apprehension of death or of a grievous hurt if done or attempted to be done by a public servant acting in good faith, etc., and there is also no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. Nor does it extend to the inflicting of more harm than is necessary to inflict for the purpose of defence. Section 100 lays down the circumstances in which the right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailants. They are : (1) if the assault which occasions the exercise of the right reasonably causes the apprehension that death or grievous hurt would otherwise be the consequence thereof and (2) if such assault is inspired by an intention to commit rape or to gratify unnatural lust or to kidnap or abduct or to wrong-fully confine a person under circumstances which may reasonably cause apprehension that the victim would be unable to have recourse to public authorities for his release. In case of less serious offences this right extends to causing any harm other than death. The right of private defence to the body commences as soon as reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed and it continues as long as the

apprehension of danger to the body continues. The right of private defence of property under Section 103 extends, subject to Section 99, to the voluntary causing of death or of any other harm to the wrongdoer if the offence which occasions the exercise of the right is robbery, house-breaking by night, mischief by fire on any building, etc., or if such offence is, theft, mischief or house trespass in such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if the right of private defence is not exercised. This right commences when reasonable apprehension of danger to the property commences and its duration, as prescribed in Section 105, in case of defence against criminal trespass or mischief, continues as long as the offender continues in the commission of such offence. Section 106 extends the right of private defence against deadly assault even when there is risk of harm to innocent persons.”

16. Thirdly, the aforesaid right to use reasonable force extends not only to prevention of crime but includes affecting or assisting in lawful arrest of the offenders or person unlawfully at large. The right subsists so long as there is proximity between the time and place of occurrence and the attempt made to restrain and or detain the perpetrator; otherwise the right to self defence and to protect one’s property will become too narrow (see in this regard Sections 103, 105 and 106 IPC). An individual has the right to chase and catch a thief or robber and retrieve his belongings. When threatened with hurt etc. he can exercise his right to self defence.

17. In the present case, there is no question and it is not the contention of the State that the respondent had any deliberate motive or cause or had acted with malafides. There is also no indication and it can be safely held that the respondent did not act with the intent to punish. He did not act in reprisal or with a spirit of revenge. The question is whether or not he had used excess force by firing the gun i.e. whether he had reasonable apprehension that grievous hurt or death would result from such assault when the respondent tried to apprehend the deceased and prevent him from running away. We feel that the apprehension of death and grievous hurt was present in the mind of the respondent when he exercised the said right in the present case. The respondent who was a guard had heard the shouts and the yelling inside the bank at the counter and then had seen a person trying to make his way through the main door. To stop him, the respondent closed the door. The deceased did not relent but smashed through the glass frame and when confronted picked up a big glass piece. There is evidence of scuffle and blood on glass pieces indicate the statement of the respondent was plausible and correct. The respondent who was trying to catch him at that stage fired the shot. Only one shot was fired. As per the respondent he had fired gun shot at the leg of the deceased but the deceased moved, with the result the bullet hit his stomach.

There is nothing to controvert the said assertion made by the respondent. No one was aware what had actually happened and saw the occurrence. The version of the respondent should be believed.

18. Keeping in view the aforesaid facts we find that the trial court has not committed any error in acquitting the accused and recording the aforesaid findings. We also note that the findings recorded by the trial court are well reasoned and plausible. We do not think that the facts justify grant of leave to appeal. The application for leave to appeal is therefore dismissed.

(SANJIV KHANNA)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

MAY 31st, 2013
NA/VKR/KKB