

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.200 of 2002

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1. Ram Prawesh Sharma
2. Ram Sajeewan Sharma both sons of late Bhuneshawar Sharma, resident of
Village Mirzapur-Bandwar-Bishunpur-Sharma Tola, P.S. Begusarai Town,
Distt-Begusarai.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Adv.
Mr. Ravindra Kumar, Adv.
Mr. Bimal Kumar, Adv.

For the Respondent/s :Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C A V J U D G M E N T

Date: 23-01-2015

Appellants Ram Prawesh Sharma and Ram Sajeewan Sharma along with others faced Sessions Trial No. 330/85/169/1995 and vide judgment of conviction and sentence dated 17.04.2002 passed by 3rd Additional Sessions Judge, Begusarai found them guilty for an offence punishable under Sections 304, (II) IPC and each of them has been directed to undergo RI for seven years as well as also fined Rs. 5,000/- in default thereof, to undergo RI for three months while remaining were convicted for an offence punishable under Section 323 IPC and were directed to execute bond for Rs. 2,000/- with one surety to be effective for a year during midst thereof, to maintain peace and harmony. However, the appellants named above only challenged the verdict.



2. Bereft of unnecessary details, as per *Fard-e-beyan* of Ram Naresh Sharma (PW 8) recorded on 25.09.1984 at about 10:30 p.m. while was admitted to Sadar Hospital, Begusarai disclosing therein that on the same day at about 6:00 p.m. an altercation took place in between his father, Girolal Sharma with Bhuwaneshawar Sharma concerning land at Chakdanish Mauza, due to which, Bhuneshawar along with his sons chased him up to his house. They were armed with Lathi and Bhala. Just after coming, Bhuneshawar Sharma ordered, on which, Ram Prawesh, Sheo Charan, Ram Sajeewan, Ugwa @ Sanjay Sharma began to assault him as well as his brother Ram Ratan Sharma (deceased) with Lathi and Bhala.

3. Ram Prawesh and Ram Sajeewan gave Lathi blow on the head of his brother causing injuries thereupon while rest accused assaulted him with Lathi and Bhala on account of which his fingers of right hand sustained Bhala injuries as well as also sustained injuries over his back, hand and other parts of body. His brother, Ram Ratan Sharma became severely injured and on account thereof, he has been admitted at the clinic of Ram Naresh Singh while he has been admitted to Sadar Hospital.

4. On the basis thereof, Begusarai P.S. Case No. 272/1984 was registered and during course of investigation, on



account of death of Ram Ratan Sharma as well as having the investigation completed, charge-sheet was submitted under Sections 147, 148, 149, 342, 323 and 302 of the IPC whereunder cognizance was taken and accordingly, the case was committed to the court of sessions wherein the appellants along with others ultimately faced the findings adverse to their interest, hence the instant appeal.

5. The defence case, as is evident from the mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C. is that of complete denial of occurrence. It has also been pleaded that the prosecution had not come with true versions. Prosecution illegally tried to encroach upon the land belonging to the accused persons which was resisted and during course thereof, accused were assaulted for which they were admitted, examined by the doctor and further for which counter case bearing Begusarai Town P.S. Case No. 273/1984 was lodged. In support of their plea, apart from examination of two DWs, series of documents have been exhibited.

6. In order to substantiate its case, the prosecution had examined altogether 10 PWs out of whom PW-1 is Indra Mohan Sharma, PW-2 is Prem Nandan Sharma, PW-3 is Ram Bahadur Sharma, PW-4 is Jagdambi Singh, PW-5 is Dharamdeo Singh,



PW-6 is Dr. R.R. Prasad who held postmortem examination, PW-7 is Sakia Devi @ Surji Devi, PW-8 is Ram Naresh Sharma, PW-9 is Ram Lagan Pandit, the Investigating Officer and PW-10 is Dr. Ghulam Sarful Haque who had examined the informant as well as had also exhibited Ext-1 Postmortem Report, Ext-2, signature of informant on the Fard-e-beyan, Ext-2/1, Fard-e-beyan, Ext-2/2 the forwarding note over Fard-e-beyan, Ext-3, injury report, Ext-4, Formal FIR, Ext-5, inquest report.

7. Side by side, the defence had also examined two DWs, DW-1 is Dr. Gulam Sarful Haque and DW-2 is Ram Lagan Sharma as well as had also exhibited Ext-A injury report, Ext-B, Kewala, Ext-C, Charge-sheet of Begusarai P.S. Case No. 273/84.

8. While assailing the judgment of conviction and sentence recorded by the learned lower court, it has been submitted that in spite of ample material available on record adduced on behalf of appellants coupled with inconsistencies persisting in the evidence of the PWs, the learned lower court ignoring the same, in arbitrary manner convicted and sentenced the appellants though is found non justifiable on that very score. On this score, further expanding the argument, it has been submitted that the witnesses are fluctuating on each and every aspect. They have not been able to identify the actual place of occurrence and on account thereof, the prosecution version



regarding manner of occurrence could not have been relied upon. On this score, it has been submitted that right form Fard-e-beyan, it is evident that an altercation took place in between father of deceased as well as informant with Bhuneshawar Sharma relating to land at Chakdanish Mauza and it is further disclosed that Bhuneshawar Sharma along with his sons chased father of informant up to his house. It has further been submitted that during course of evidence, it has come up that one house of the prosecution party lies at Chakdanish Mauza while other house lies at Bishanpur Mauza, adjacent to each other and then in that event, it was incumbent upon the prosecution to have properly identified the place whether it happens to be of Chakdanish Mauza or Bishanpur.

9. It has also been submitted, even taking into account, for argument's sake, that it was at Chakdanish Mauza, even in that event, as per initial version the occurrence should have been in front of the house while the witnesses differed on that very score, couple with objective finding of the Investigating Officer, PW-9. Then, it has been submitted that witnesses are inconsistent over manner of occurrence and more particularly, from their cross-examination, it could conclusively be held that they have been borrowed to support the prosecution case. It has further been submitted that though the witnesses intentionally and purposely withheld the injuries sustained



by appellants during course of the occurrence, however, is found properly proved by the examination of witnesses. PW 10, has been examined as DW-1 subsequently, along with exhibit of the charge-sheet of the counter case whereupon it could be inferred that by suppressing the injuries having over person of accused, the prosecution had suppressed the genesis as well as manner of occurrence. That being so, on account of non explanation of injuries sustained by them will discredit the version of the prosecution.

10. In this context, it has also been submitted that from the evidence of PW 9, the Investigating Officer, it is evident that during inspection of place of occurrence, he had found the field belonging to the prosecution adjacent to the field of accused, dug and that being so, the accused has got their legal right to object as it would have caused destruction of his land and during course thereof, had got right to defend their property and for that, they were entitled to exercise the right of private defence. The appellants have exercised their right of private defence with proper restrain and it was unfortunate for the deceased, who died. The manner of assault and the weapon so used are indicative of the fact that at the time of exercising of right of private defence, the appellants have not scaled beyond whatever they had in terms of Section 96 of the Indian Penal Code and on account thereof, they would not have been convicted.

Had there been proper consideration of the plea of the appellant inconsonance with the materials available on the record, no case even of culpable homicide not amount to murder is made out. So submitted that the conviction and sentence recorded by the learned trial court is fit to be set aside.

11. In an alternative, it has also been submitted that in the background of the aforesaid factual aspect persisting on the record, which justifies exercise of right of private defence, even found to be crossed beyond permissible limit and further, having absence of intention or knowledge on the part of the appellants, on account thereof, the sentence inflicted by the learned trial court needs interference and can be ordered by way of modification, the period already undergone. To support the plea, the counsel for the appellants referred *(1979) 3 SCC 30*.

12. On the other hand, learned APP, while supporting the finding rendered by the learned trial court, submitted that from the objective finding of the Investigating Officer regarding place of occurrence, though digging of land was found but that was in the field of prosecution itself and on account thereof, the appellants were not entitled to interfere therewith. Having done so, they could not claim exercise of right of private defence as, they have not succeeded in placing that the prosecution by such activity, or during



such activity gone over land of appellants lying adjacent to the land of prosecution. Consequent thereupon, the activity of the appellants is not found having legal sanction. It has further been submitted that witnesses have categorically stated regarding presence of house of the prosecution at Mauza Chakdanish, lying in the same Survey Plot Number and that being so, there happens to be no contradiction or inconsistency over the place of occurrence. Furthermore, it has also been submitted that appellants were well aware regarding place of occurrence hence they restrained themselves to cross-examine the witnesses on that very score.

13. It has further been submitted that the evidence of injured witnesses should not be brushed aside in usual manner unless and until the same has been discredited by the cogent and reliable evidence. At the other end, witnesses having injury is indicative of the fact that at the time of occurrence, he was present at the place of occurrence and during commission of occurrence, he sustained the injuries.

14. It has further been submitted that neither the witnesses are interested nor could be said inimical rather being family members, their presence was but natural which they also proved through their deposition. Furthermore, it has also been submitted that it goes out of consideration that instead of identifying the real

culprit to be the author of the crime will implicate somebody else to satisfy their personal grudge and vendetta.

15. Then it has been submitted that presence of injuries over the person of appellants happens to be own conviction of the appellants because of the fact that appellants failed to suggest the witnesses that during course of said occurrence, appellants were assaulted and on account thereof, they sustained injury. Furthermore, it has also been submitted that the reason best known to the appellants, the version of appellant, that means to say the FIR of the counter case has not been exhibited and on account thereof, the manner of occurrence as flashed by the appellant became doubtful. Had there been the FIR of the counter case, the version of defence would have been flashed and non exhibiting the same probabilizes the version of the prosecution which might have found supported by the counter version. In absence thereof, the evidence of DW-1, the doctor is not going to support the case of the defence. Furthermore, the charge-sheet having been exhibited on behalf of defence itself speaks regarding presence of instant case wherein death of injured had occurred. It has also been submitted that DW-2 who happens to be own family member of appellants also failed to depose on the factum of occurrence. The cumulative effect in the aforesaid background led conclusive resultant of the fact that injury,

as claimed by the appellant would not have any sort of adverse impact over prosecution version.

16. Furthermore, it has been submitted that when the prosecution has succeeded in proving its case by way of adducing consistent reliable evidence of trustworthy witnesses, then in that event, non explanation of injuries that too carrying the nature as indicated by the DW-1 is not going to affect the case of the prosecution. Hence, the judgment of conviction and sentence recorded by the learned trial court is fit to be confirmed.

17. In a way to proper appreciation of the relevant points so raised, first of all, the genesis has to be looked into. The informant had categorically stated in the *Fard-e-beyan* that an altercation took place in between his father Girolal Sharma with accused, Bhuneshawar Sharma on account of land dispute. PWs 1, 2, 4 and 5 have not deposed on that very score, however, from the evidence of PW-3, brother of deceased at para-3, it is evident that he had stated the fact that father of Ram Ratan was digging his field and in likewise manner PW-7, wife of deceased as well as PW-8 informant had deposed and aforesaid event was found by the Investigating Officer, PW-9, during course of inspection of the place of occurrence. It is further evident that from the evidence of the Investigating Officer (para-2) that he had not found ridge, lying in

between land of appellant as well as deceased, to have cut rather the land belonging to prosecution party was dug up to the extent of ridge. Defence could not be able to dismantle the evidence of those witnesses on that very score and on account thereof, eruption of dispute at the end of appellant is not at all found justifiable. Side by side, the aforesaid theme also found sufficient to foreclose the plea of the appellant to exercise the right of private defence. However, this issue is detailed at proper place.

18. PW-6, Dr. R.R. Prasad had conducted postmortem on 26.09.1984 over the dead body of Ram Ratan Sharma and found the following:-

1) A stitched wound vertex emits five stitches, on cutting stitches, there was bleeding haematoma under the scalp. On dissection, there was depressed fracture of skull (parich occipital region) with blood clot under the Durameter and on the surface of brain substratum which was also lacerated and corresponding to injured area.

19. The cause of death, according to the doctor, is above injuries caused by hard and blunt substance used with force resulting into shock and damage to skull and brains substance which is sufficient independently to cause death in ordinary course of nature.

20. During cross-examination nothing substantial has been brought to discredit his testimony regarding cause of death.

Even the defence failed to cross-examine whether the injury found was resultant of single blow or more than that.

21. So far, ocular evidence is concerned, first of all, the evidence of informant PW-8, Ram Naresh Sharma, one of the injured is taken up. He had stated that on alarm raised by his father, he along with his brother, Ram Ratan Sharma came out from their house. Till then, his father arrived there. He also found Bhueshwar, Sheo Charan, Ram Prawesh, Ram Sanjeevan Sharma and Ugwa @ Sanjay out of whom Ram Prawesh and Ram Sanjeevan Sharma were armed with Lathi, Sheo Charan armed with Bhala.

22. On an order of Bhuneshwar Ram Prawesh and Ram Sajeewan gave lathi blow over head of his brother. Sheo Charan gave Bhala blow which he tried to ward off and during course thereof, he sustained injury over his right finger. Rest accused assaulted him with fists and slaps. His brother had sustained lathi blow by Ram Sajeewan and Ram Prawesh over his head on account thereof, became unconscious and fell down. On that very moment Dharam singh, Jadamba Singh, Ram Bahadur Sharma, Indra Mohan Sharma and his wife (wife of deceased), Prem Nandan Sharma were present. Then thereafter, all the accused escaped therefrom. He was lifted to Sadar Hospital while his brother was admitted to the clinic of Ram Naresh Sharma for better treatment. Subsequently his



brother was returned to Sadar Hospital, Begusarai where he died. He had given Fard-e-beyan before police at Sadar Hospital and exhibited the same. During cross-examination at para-4 had stated that two persons have assaulted his brother while rest assaulted him. He was assaulted 2-4 steps away from the place where his brother was assaulted. He had further stated that his brother was standing eastern front while the accused were towards western front. Accused have assaulted at a distance of 5-6 feet with the Lathi. Each one gave single blow over head of his brother. Blood had oozed out over their clothes, however, they have not minutely observed. They have not handed over those clothes to police. He has further admitted that on the following day, police had come to visit place of occurrence and had not found blood at the place of occurrence.

23. PW-1 happens to be nephew of the deceased and at the relevant time he was present in his Chilly field. On hearing alarm of Girolal Sharma, he rushed and saw Ram Prawesh, Ram Sajeewan, Sheo Charan, Bhuneshwar, Ugwa @ Sanjay out of whom Sheo Charan was armed with Bhala while rest were armed with Lathi. They have encircled Ram Naresh and Ram Ratan. Sheo Charan gave Bhala blow over Ram Naresh which he averted and during course thereof, he sustained injury over his right finger while Ram Prawesh and Ram Sajeewan gave Lathi blow over head of



Ram Ratan on account of which he sustained injury over his head. Then thereafter, accused persons escaped therefrom. Both the injured were taken to the doctor and during course of treatment on 26.09.84, Ram Ratan died at Sadar Hospital where he was referred by the treating doctor. During cross-examination at para-2, he had stated that when he reached at place of occurrence, he found 5-7 persons excluding member of prosecution as well as accused persons including wife of deceased. He had further stated that 1-2 minutes after his arrival assault began. It was not from both the sides rather was one sided assault. He had further stated at para-4 that other four accused excluding Sheo Charan had brandished Lathi. Ram Ratan sustained Lathi injury. He is not remembering how many blows were given over Ram Ratan. After Lathi, Bhala blow was given over Ram Naresh which he prevented by his hand and on account thereof, he sustained injuries over his right hand. He had seen injuries over head of Ram Ratan. He had not seen injuries over his body. He had seen injury on the upper portion of back of head of Ram Ratan. Ram Ratan fell down after sustaining injury. No assault was made after his fall.

24. PW-2, who happens to be son of deceased, had stated that on the alleged date and time of occurrence he came out from his house after hearing alarm of his grandfather. He saw Ram Prawesh,



Ram Sanjeewan, Bhuneshwar, Sheo Charan, Ugwa @ Sanjay out of whom Sheo Charan was armed with Bhala while rest were armed with Lathi. Then thereafter, he saw Ram Sanjeewan, Ram Prawesh assaulting his father with Lathi over his head on account of which he fell down. Sheo Charan inflicted Bhala blow over his uncle which he prevented and during course thereof, he sustained injury over his right hand. During cross-examination at para-5, he had stated that he had not seen the assault having been made by Lathi. He had seen blood oozing out from the injuries sustained by his father as well as from the injuries sustained by Ram Naresh.

25. PW-3 is Ram Bahadur Sharma, brother of deceased as well as informant. He had deposed that while he was returning from his market, he saw Ram Prawesh and Ram Sajeewan engaged in assaulting his brother Ram Ratan. Bhuneshwar, Ram Prawesh, Sajeewan, Sanjay @ Ugwa, Sheo Charan Sharma were present. Sheo Charan gave Bhala blow over Ram Naresh which he averted and during course thereof, he sustained injures over his right finger. During cross-examination, he had not been cross-examined on the point of occurrence.

26. PW-4 is Jagdambi Singh, a stranger who had reiterated the prosecution version during his examination-in-chief. During cross-examination, he had stated that Ram Ratan was



standing having southern face. Assailants were 2-3 hands away from him. He had further stated that assailants had assaulted two Lathi blows in his presence on account of which, he (Ram Ratan) fell down. Both the blows struck at the same place over head of Ram Ratan. After hue and cry, the accused persons escaped therefrom. He had further stated in para-5 of his cross-examination regarding assault by Sanjay Sharma over Ram Naresh as well as Sheo Charan had inflicted Bhala blow over Ram Naresh which Ram Naresh tried to avert on account thereof, he sustained injuries over his finger. Single Bhala blow was given.

27. PW-5, is another stranger, who had reiterated the prosecution version in the same way. During cross-examination at para-3, he had stated that when he reached at the place of occurrence, he had seen 10-15 persons including that of accused persons, prosecution party and others. In para-4, he had stated that he had seen the deceased having been inflicted by the two lathi blows on account of which, he fell down. Then, there was murmuring that murder has been committed and on account thereof, accused persons escaped therefrom. In para-5 he had further stated that Ram Naresh sustained injury 1 ½ Lagga away from Ram Ratan.

28. PW-7 is the wife of deceased who during course of her examination-in-chief had reiterated the allegation. During cross-



examination at para-6, she had stated that Ram Prawesh and Ram Sajeewan assaulted her husband on account of which he fell down. Then thereafter, her Dewar was assaulted. She further stated that 2-3 Lathi blows were given over her husband on account of which he became unconscious and fell down. She further stated that she is not remembering the location of her husband at the time of assault and in likewise manner she stated regarding her Dewar. She further stated that her Dewar did not try to escape therefrom.

29. Now coming to the Place of occurrence, PW-8 had stated that as soon as he along with his brother came out from his house, he found the accused persons adjacent to his father and they were assaulted at that very place. Cross-examination has been made over the place of occurrence as is evident from para-2 of his cross-examination. Surreptitiously, defence had not tested his version over exact location where it happens to be in front of his house or somewhere else.

30. PW-9 is the Investigating Officer. From para-2 of his examination-in-chief, it is apparent that he had categorically stated the place of occurrence to be field as well as house of prosecution party and had detailed the same. In para-3 of his cross-examination, it is apparent that he has explained the place of occurrence. In likewise manner is the evidence of PW-7, wife of deceased, PW-2,

son of deceased.

31. PW-1 had stated that in para-1 of his examination-in-chief that the occurrence of Maar-peet had taken place in a field lying at Chakdanish Mauza east to house of Ram Ratan Sharma. However, during cross-examination, the same has been made only taking into account the Place of occurrence and that being so, the defence could not be able to expose the exact place of occurrence. PW-3 at para 3 of his examination-in-chief had stated that Maar-peet took place at eastern northern corner of house of Ram Ratan where father of Ram Ratan was digging through spade.

32. Evidence of PWs is found with some development over which their attentions were drawn and had properly been exposed by the defence from evidence of PW-9 (para-9) relating to witness Indra Mohan Sharma, PW-1 (para-6) relating to Prem Nandan, PW-2 (para-7) relating to witness Ram Bahadur, PW-3 (para-8) relating to wife of deceased and para-9 regarding further statement of informant.

33. PW-10 is Dr. Gulam Sharful Haque who had examined the informant Ram Naresh Sharma and found following injuries:-

1. Lacerated wound $\frac{1}{4}$ " x $\frac{1}{4}$ " x skin deep on the inner side of right fore finger.
2. Lacerated wound $1\frac{1}{2}$ " x $\frac{1}{2}$ " x skin deep inner side of right middle finger.
3. Swelling $1\frac{1}{4}$ " x $1\frac{1}{4}$ " on the middle inner part of left

forearm.

34. The injuries were found simple in nature and were caused by hard and blunt substance within 6 hours of examination.

35. From the deposition of the witnesses, it is apparent that they have been suggested at the end of appellants that the prosecution version happens to be false and frivolous and has been launched intentionally to save their skin. The prosecution party brutally assaulted the accused persons and for that they were examined by the PW-10 who subsequently been examined as DW-1 and to support the same the injury report as well as charge-sheet of counter case has been brought on record. However, had not exhibited the Fard-e-beyan or written report whatever may be having been recorded at their end.

36. So far evidence of DW 1 is concerned, he had deposed that on 25.09.1984, he had examined Ram Prawesh Sharma and found following injuries:-

1) Diffused swelling 2"x3" situated on left knee.

The injury has been found simple in nature caused by hard and blunt substance.

37. After analytical scrutiny of the evidence available on the record, it is apparent that the death of Ram Ratan as well as assault over person of informant, Ram Naresh (PW 8) remained



uncontroverted. Though, there happens to be specific suggestion which, the prosecution witnesses more particularly, wife of deceased as well as informant had admitted during their cross-examination regarding institution of counter case, but the reason best known to the appellants they withheld the version coupled with nature of injury posed the right of private defence in utter confusion. Apart from this, according to Section 105 of the Evidence Act, it is the accused who carries an obligation to prove its case so pleaded under general exception. In the aforesaid background, had there been specific version at their end or at least any of the DW would have deposed on that very score as well as having at least grievous injury coupled with specific plea of private defence under their statement recorded under Section 313 Cr.P.C, the situation would have been different.

38. The aforesaid theme has properly been considered in the case of *Manjeet Singh v. State of Himachal Pradesh* as reported in **2014 Cri. L. J 3970** under the following paragraphs:-

18. From the record, we find that neither the accused nor his two companions in the statements recorded under Section 313 Cr.P.C., has stated that the deceased and his companions were the aggressors and that the accused was acting in exercise of the right of private defence. In fact, their case is that of total denial. There is nothing on the record to suggest that the accused or his companions received injuries at the hands of the deceased or the deceased tried to snatch the carbine of the accused. No evidence has been brought on

record that the deceased and his companions entered the Hall of the Hotel with arms.

19. Under Section 96, IPC, “Nothing is an offence which is done in the exercise of the right of private defence”. Right of private defence of the body and of property has been enumerated under Section 97, IPC, subject to the restrictions contained in Section 99, IPC. As per the said section every person has a right 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.”

Section 102, IPC, deals with commencement and continuance of the right of private defence of the body as follows:

“Section 102. Commencement and continuance of the right of private defence of the body.- The right of private defence of the body commences as soon as a 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 such apprehension of danger to the body continues.”

The extent and limitations of the right of private defence is prescribed under Section 96 to 106, IPC. Such a right can be exercised only to defend the unlawful action and not to retaliate.

20. This Court in *George Dominic Varkey v. The State of Kerala*, (1971) 3 SCC 275, has held:

“6.....Broadly stated, the right of private defence rests on three ideas: first, that there must be no more harm inflicted than is necessary for the purpose of defence; secondly, that there must be reasonable apprehension of danger to the body from the attempt or threat to commit some offence; and, thirdly, the right does not commence until there is a reasonable

apprehension. It is entirely a question of fact in the circumstances of a case as to whether there has been excess of private defence within the meaning of the 4th clause of Section 99 of the Indian Penal Code, namely, that no more harm is inflicted than is necessary for the purpose of defence. No one can be expected to find any pattern of conduct to meet a particular case. Circumstances must show that the court can find that there was apprehension to life or property or of grievous hurt. If it is found that there was apprehension to life or property or of grievous hurt the right of private defence is in operation. The person exercising right of private defence is entitled to stay and overcome the threat.”

21. In *Moti Singh v. State of Maharashtra*, (2002) 9 SCC 494, this Court held that dimension of the injuries may not be serious, it is the situs of the injuries that would indicate whether the accused could reasonably entertain the apprehension that at least grievous injuries/hurt would be caused to him by the assaulters unless aggression is thwarted.

22. In the present case during the course of cross-examination of the prosecution witnesses, especially Jai Pal(PW.5), Romi Kapoor (PW.6), Pawan Kumar (PW.7), Satish Kumar (PW.9) and Charanjeet Singh (PW.12) an attempt has been made on behalf of the accused to set up the case of private defence.

23. In *Rajender Singh and others v. State of Bihar*, (2000) 4 SCC 298, dealing with the similar proposition this Court held as follows:

“Non-explanation of the injuries on the person of the accused, ipso facto, cannot be held to be fatal to the prosecution case. Ordinarily, the prosecution is not obliged to explain each and every injury on the person of the deceased even though such injuries might have been caused during the course of the occurrence and they are minor in nature. But where the injuries are grievous, non-explanation of such injuries would attract the Court to look at the prosecution case with little suspicion on the ground that the prosecution has suppressed the true version of the incident.”

39. On account thereof, the plea of right of private defence raised on behalf of appellant is found sketchy one as well as suffers from inherent deficiencies.

40. Now coming to the prosecution case, it is apparent that there happens to be some sort of development in the evidence of the witnesses, some of which appears to be material one. However, presence of PW-8, informant is found properly stalked, moreover, being the injured witness became stamped witness and on account thereof, his status became at upper ladder in terms of Section 118 of the Evidence Act. The status of the injured witness has been taken into consideration in the case of *Balwan v. State of Haryana* reported in *2014 Cr.L.J 4321* under the following terms:-

16. The prosecution case is based on the ocular testimony of PW4 Rekha and PW 5 Sudha. They are the daughter-in-law and daughter, respectively, of deceased Bani Singh. They have categorically testified about the brutal attack made by the appellants on victims by describing their overt acts during the occurrence. Both of them in their statements recorded during the investigation, as well as, in their testimonies have stated that electricity lights were on in the house, at the time of occurrence. Their presence in the house cannot be doubted and they had no difficulty in identifying the assailants. Both of them sustained injuries and the grievously injured PW5 Sudha was admitted in the hospital at 3.25 a.m. itself. The medical evidence is available on record. Rishikesh and Smt. Phulla were also injured during the occurrence but were not examined. The testimonies of injured witnesses PW4 Rekha and PW5 Sudha are

natural, cogent and trustworthy and non-examination of the other two injured witnesses does not, in any way, affect the prosecution case. In a similar fact situation this Court in the decision in *Mano Dutt vs. State of U.P.* (2012) 4 SCC 79, held thus :

“29. As per PW5, Dr. Surya Bhan Singh, he had examined Salik Ram Yadav as well as Nankoo on 22.10.1977 itself and noticed as many as five injuries on Salik Ram and four injuries upon the person of Nankoo. He stated that the deceased was the son of Nankoo, while Salik Ram was his brother. These injuries were suffered by them from a blunt object.

30. Salik Ram was examined as PW2 and his statement is cogent, coherent, reliable and fully supports the case of the prosecution. However, the other injured witness, Nankoo, was not examined. In our view non-examination of Nankoo, to which the accused raised the objection, would not materially affect the case of the prosecution. Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain protect the real culprit.”

It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let actual assailant go unpunished.

41. In the aforesaid judgment the contradiction, variations in the evidence of witnesses have also been dealt with directing that it happens to substratum of the evidence which count. The proposition as laid down is quoted below:-

17. The contradictions and variations in the testimonies of the aforesaid witnesses, in our considered view do not go to the root of the case and the substratum of the prosecution version remains undisturbed. It is to be borne in mind that both of them are rustic women and not tutored witnesses.

42. Thus, giving anxious look with querist approach, it is apparent that the learned trial court had already considered the nature of evidence so adduced on behalf of prosecution and gave permissible relaxation in favour of appellants by convicting under Section 304 Part-II of the IPC as well as inflicting moderate substantial sentence which is found properly based upon the material available on the record and is accordingly, concurred although the right of private defence, as pleaded is found hazy one.

43. Consequent thereupon, the appeal lacks merit and is, accordingly, dismissed. Appellants are on bail. Their bail bonds are cancelled with a direction to surrender before the learned trial court to serve out the remaining sentence, failing which, the learned lower court will take proper steps in accordance with law.

(Aditya Kumar Trivedi, J)

Patna High Court
January 23rd 2015
Perwez/AFR

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