

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1275 of 2000

Judgment reserved on: 26-9-2016

Judgment delivered on: 27-10-2016

1. Dila @ Dilaram Gond, aged 50 years, R/o Village Baklo,
2. Dileshwar, S/o Premasai Gond, aged 25 years, R/o Village Terkeshwarpur,
3. Chain Sai, S/o Adalsai Gond, aged 25 years, R/o Village Tarkeshwarpur,
4. Ahbaran, S/o Jagmohan Gond, age 28 years, R/o Village Tarkeshwarpur.
5. Shyam Lal, S/o Dilsai Gond, aged 22 years, R/o Village Tarkeshwarpur,

All Police Station Premnagar, Distt. Surguja, M.P. (now C.G.)

----- Appellants

Versus

State of M.P. (now State of C.G.), through P.S. Premnagar, Distt. Surguja, M.P. (now C.G.)

----- Respondent

Criminal Appeal No.1461 of 2000

Mohitram, S/o Jarra Gond, aged about 34 years, R/o Bakalo, P.S.H. Prem Nagar, Distt. Sarguja, M.P. (now C.G.)

----- Appellant

Versus

The State of M.P. (now the State of C.G.), through the P.S.H Officer, P.S.H. Premnagar, Distt. Sarguja, M.P. (now C.G.)

----- Respondent

AND

Criminal Appeal No.396 of 2001

1. Radharam Gond, S/o Jarra Gond, aged about 55 years, R/o Bakelo,

- 2. Sahat @ Sahatram Gond, aged about 45 years, S/o Jarra Gond, R/o Bakelo,
 - 3. Alakhram, S/o Thakur Ram Gond, aged about 30 years, R/o Bakelo
 - 4. Ishwar, S/o Shivbalak Gond, aged about 24 years, R/o Uneshwarpur.
- Appellants

Versus

State of Chhattisgarh, Through Police Station Premnagar, District Surguja (C.G.)

----- Respondent

For Appellants in Cr.A.Nos.1275/2000 and 396/2001: -
Dr. Rajesh Pandey and Mr. Rakesh Pandey, Advocates.

For Appellant in Cr.A.No.1461/2000: -
Mrs. Meena Shastri, Advocate.

For Respondent / State:
Mrs. Smita Ghai, Panel Lawyer.

Hon'ble the Chief Justice and
Hon'ble Mr. Justice Sanjay K. Agrawal

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. Ten accused persons namely Radharam (A-1), Sahat @ Sahatram (A-2), Dila @ Dilram (A-3), Mohitram (A-4), Dilkeshwar (A-5), Alakhram (A-6), Chainsai (A-7), Ahbaran (A-8), Shyamlal (A-9) and Ishwar (A-10) were tried by the trial Court for the offences punishable under Sections 147, 302 and 302 read with Section 149 of the IPC and by the impugned judgment, they were convicted for the aforesaid offences and sentenced to jail and also sentenced to fine which are as under: -

Conviction	Sentence
Section 147 of the IPC	RI for one year

Section 302 of the IPC for committing murder of Ratin	Imprisonment for life and fine of Rs.1,000/- each, in default additional RI for one year
Section 302 of the IPC for committing murder of Noharsai	Imprisonment for life and fine of Rs.1,000/- each, in default additional RI for one year
Section 302 read with Section 149 of the IPC for committing murder of Ratin	Imprisonment for life and fine of Rs.1,000/- each, in default additional RI for one year
Section 302 read with Section 149 of the IPC for committing murder of Noharsai	Imprisonment for life and fine of Rs.1,000/- each, in default additional RI for one year

2. Feeling aggrieved against the judgment of conviction recorded and sentence awarded, ten convicts have preferred these appeals before this Court under Section 374 (2) of the Code of Criminal Procedure, 1973. Since they arise out of a common judgment and the accused / appellants were tried together and convicted and sentenced by a common judgment, for the sake of convenience, they were clubbed together, heard analogously and are being decided by this common judgment.

3. Essential facts as unfolded by the prosecution during the course of trial are as under: -

Admitted facts: -

4. Anandram Gond died leaving his son Amritlal Gond (PW-8) and two daughters namely Sukwaro Bai and Sarihano Bai. After marriage of Sukwaro Bai, her father Anandram kept his son-in-law along with his daughter as *ghar jamai* and gave some land to her also for their livelihood which was not accepted by his son Amritlal and brother of Sukwaro, which ultimately led to filing of Civil Suit No.129-A/1993 by

Sukwaro and her sister Sarihano against Amritlal before the civil court at Surajpur and ultimately, the civil court by its judgment and decree dated 18-10-1993 granted decree for partition of the suit land and held that Sukwaro is entitled for 0.14 decimal of land of Khasra No.1587/2. Ultimately, in Revenue Case No.885/1993, aforesaid land was recorded in the name of Sukwaro Gond which is apparent from copy of khasra panchshala filed as Ex.D-3. The aforesaid land is the sole basis of dispute between the parties and is situate at Village Bakalo. The land in dispute is known as *mudajhorkha*.

5. Accused A-1 to A-4 namely Radharam, Sahat @ Sahatram, Dila @ Dilram and Mohitram are sons of Sukwaro in whose name the land in dispute is recorded in revenue records. They have claimed that on behalf of their mother, they were in possession of the suit land and cultivated crops of paddy and that has been grown and it was ready for harvesting on the date of occurrence.
6. The prosecution witnesses namely Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14) are also close relatives of Amrit (PW-8). Deceased Ratin Bai was wife of Amrit (PW-8) and deceased Noharsai was son of Amrit (PW-8). Pilo Bai (PW-3) is wife of deceased Noharsai. Devmatia (PW-4) and Premlata (PW-6) are daughters of deceased Noharsai. Pratap Singh (PW-7) is son of deceased Noharsai.
7. It is the case of the prosecution that on 28-10-1997 at about 9 a.m. at Village Bakalo, deceased Noharsai and Ratin Bai along with aid and assistance of Balam (PW-12), Satiram (PW-13) and Thakur Prasad

(PW-14) were harvesting the crop sown and grown by them, then all the ten accused persons armed with deadly weapons stopped them from harvesting the crop and assaulted Noharsai and Ratin Bai by lathi by making murderous attack on them and by which both died on the spot. Parmeshwar (PW-9) informed the incident to Police Station at Premnagar at 2.35 p.m. then Station House Officer / Investigating Officer Padumsai Mahilane (PW-15) registered marg intimation Exs.P-28 & P-29 and reached to the spot at 3 p.m., and prepared inquest of their dead bodies vide Ex.P-13 and sent their dead bodies vide Ex.P-14A to Primary Health Centre, Premnagar where autopsy was conducted by Dr. Amritlal Soni (PW-11) who submitted postmortem reports Exs.P-14 & P-15 describing cause of death as excessive bleeding and shock due to injuries inflicted on their bodies. Thereafter, Ex.P-9 FIR was recorded and the matter was taken into investigation. After the statements of witnesses were recorded, lathi and blood stained clothes were seized and sealed, and they were sent for chemical examination to Forensic Science Laboratory, Sagar. Thereafter, charge-sheet was filed under Section 173(2) of the CrPC against the accused persons for commission of aforesaid offences.

8. The prosecution in order to bring home the offences, examined 15 witnesses (PW-1 to PW-15) whereas brought documents Exs.P-1 to P-40. The accused persons A-1 to A-10 abjured guilt and pleaded no guilty and entered into defence. They have examined six defence witnesses DW-1 to DW-6 in support of their plea and also exhibited documents Exs.D-1 to D-3 and D-1C in support of their plea. All the

accused persons except Mohitram took the plea that they have not committed the offence and alternatively, they have also taken the plea that they were in settled possession of the land in dispute and they have sown and grown the crops and the crop was ready for harvesting, it was being harvested by the complainant party and they have stopped it and in exercise of their right of private defence of their property, they have assaulted the complainant party and therefore in exercise of the right of private defence, they are entitled for acquittal.

9. The trial Court by its impugned judgment, upon appreciating oral and documentary evidence on record, came to the conclusion that death of Ratin Bai and Noharsai was homicidal in nature and the accused / appellants have formed unlawful assembly and have caused the death of Ratin Bai & Noharsai and sentenced them for the period aforesaid as stated in the opening paragraph of this judgment.
10. Dr. Rajesh Pandey, learned counsel appearing on behalf of all the accused persons except the appellant in Cr.A.No.1461/2000 namely Mohitram, would submit that the prosecution has miserably failed to bring home the offences against the appellants and consequently, the judgment of conviction recorded and sentences awarded by the learned trial Court is perverse and contrary to the record. He would further submit that Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14) are not eyewitnesses, as their presence on the spot is doubtful, they did not inform the family members of the deceased just after the incident and even after registration of FIR, they kept mum. No test identification was conducted by the investigating

agency as the alleged three eyewitnesses failed to recognize the appellants either by name or by face. He would also submit that there is significant inconsistency between medical evidence and ocular evidence, as according to Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14), the accused persons assaulted deceased Ratin Bai and Noharsai by lathi, whereas Dr. Amritlal Soni (PW-11) in his postmortem report has found four incised wounds on the body of Ratin Bai and three incised wounds on the body of Noharsai and according to him, the injuries were caused by hard and blunt object. Not only this, no sharp edged weapon has been seized from the possession of the appellants and as such their evidence before the trial Court claiming to be eyewitnesses is not worthy of credence and consequently, liable to be discarded. He would further submit that the appellants had not formed any unlawful assembly as there was no object and as they had come to the field to stop the deceased persons from harvesting the crop with intention to save their property and the deceased persons were trespassers as well as aggressors, and involvement of all the appellants in the occurrence is also doubtful. In alternative, he would submit that the appellants are recorded owners of the disputed land, they have cultivated it but the deceased persons were harvesting the crop and if the accused persons have exceeded in their private defence of the property then at least offence under Section 304 Part-II of the IPC will be made out against the appellants. Therefore, the impugned judgment of conviction recorded and sentence awarded for aforesaid offences,

deserve to be set aside.

11. Mrs. Meena Shastri, learned counsel appearing for the appellant in Cr.A.No.1461/2000, would submit that the name of appellant Mohitram is not mentioned in the FIR. She would further submit that six defence witnesses have been examined supporting the case of the defence. She would also submit that the plea of alibi taken by appellant Mohitram is fully established as on the date of offence, accused Mohitram was on Government duty, he was not at Village Bakalo and he was at Village Namnakala which is duly established by defence witnesses Shiv Kumari (DW-1), Kanwal Sai (DW-2), Ramratan Sahu (DW-3) and Anandram Porte (DW-6), as he was on duty at the time of incident and the attendance register is Ex.D-1C, and he has been falsely implicated only due to enmity developed between the parties for the land. She placed reliance upon a decision of the Supreme Court in the matter of **Jumni and others v. State of Haryana**¹.

12. Mrs. Smita Ghai, learned Panel Lawyer appearing on behalf of the State / respondent, would submit that the prosecution has adduced evidence to bring home the offence, there are sufficient oral and documentary evidence on record to connect the appellants with the offence in question and the trial Court has rightly analyzed oral and documentary evidence on record and rightly reached to the conclusion that the appellants have committed the aforesaid offence and appropriate sentence has been awarded to them which warrants

¹ (2014) 11 SCC 355

no interference in exercise of appellate jurisdiction by this Court, and thus, all the appeals deserve to be dismissed.

13. We have heard learned counsel for the parties and cautiously analyzed the submissions made by the parties and also gone through the records of the trial Court extensively and thoroughly.
14. The first question to be considered is whether deaths of deceased Ratin Bai and Noharsai were homicidal in nature.
15. Deaths of Ratin Bai and Noharsai are not in dispute. The question is whether their deaths were homicidal in nature.
16. Dr. Amritlal Soni (PW-11) conducted postmortem over the body of deceased Ratin Bai. He has noticed four external injuries on the body of deceased Ratin Bai and found four incised wounds on head region and also found fracture in occipital region and also near left ear. According to him, the injuries were caused by hard and sharp edged weapon. He also found internal injury, as parietal bone of skull was fractured. According to him, death of deceased Ratin Bai was caused due to excessive bleeding and shock on account of injuries suffered on head and injuries were sufficient to cause death. His report is Ex.P-14.
17. Same witness Dr. Amritlal Soni (PW-11) has also examined Noharsai who was found to have suffered three incised wounds on temporal region and bone of skull was found fractured. He also found internal injury on skull, as temporal and right tempo and parietal bones were fractured. According to him, Noharsai also died due to excessive

bleeding and shock. His report is Ex.P-15.

18. Thus, from the aforesaid medical evidence of Dr. Amritlal Soni (PW-11), it is duly established that deaths of Ratin Bai and Noharsai were homicidal in nature and which is established on record on the basis of evidence adduced by the prosecution beyond doubt.
19. Now, the next question is whether the appellants have murdered Ratin Bai and Noharsai.
20. The first contention that has been raised by Dr. Rajesh Pandey, learned counsel for the appellants, would be whether Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14) are eyewitnesses or not. In support thereof, it has been contended that there is discrepancy in ocular and medical evidence, as according to Dr. Rajesh Pandey, three witnesses have deposed that injury was caused by lathi, whereas incised wounds were found on the bodies of two deceased persons and the doctor, who conducted postmortem on the dead bodies of the deceased persons, has also opined that incised wounds have been caused by hard and sharp-edged weapon and the aforesaid witnesses PW-12, PW-13 and PW-14 have not deposed that the accused persons were armed with tangi and caused injury by tangi and therefore they are not eyewitnesses. Thakur Prasad (PW-14) in his statement before the Court has clearly stated that the accused persons were armed with lathi and tangi. He has not been cross-examined to elicit that the accused persons were not armed with tangi and only armed with lathi. Likewise, Balam (PW-12) and Satiram (PW-13) have clearly deposed their presence on the spot.

21. It is the case of the prosecution that in order to harvest the crops, Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14), who are residents of Village Parsa and close relatives of Amrit (PW-8), have been brought to Village Bakalo prior to the date of incident and they were involved in the job of harvesting the crops on that day. In their testimony, they have clearly stated that they had come to Village Bakalo for harvesting the crops and when they were harvesting the crop on the date of incident at 9 a.m., the accused persons came and made murderous attack upon Noharsai and Ratin Bai and they caused murder of Noharsai and Ratin Bai on the field itself which was informed by them to the villagers and Village Chowkidar. Therefore, it is duly established by the prosecution that Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14) were eyewitnesses and they have witnessed the incident, and merely because test identification parade was not conducted, it cannot be held that Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14) were not eyewitnesses and as such, their testimony cannot be discarded.

22. Balam (PW-12) has stated in his statement before the Court that on the date of occurrence, he was harvesting the paddy crop sown by Amrit (PW-8) at Village Bakalo in *mudajhorkha* field along with Satiram (PW-13) and Thakur Prasad (PW-14) then in the morning, at 7-8 a.m., ten persons along with accused Dilaram came to the spot; Mohitram, Dilaram and Sahatram were armed with lathi; Dila and Sahat assaulted Ratin Bai, whereas Mohit, Shyamlal and other persons surrounded the two deceased persons. In his statement, he

has admitted that Ratin Bai was his sister and Noharsai was his sister's son. He has also, in his cross-examination, admitted that father of Amrit (PW-8) i.e. Anandram had given some part of his land to Sukwaro which Amrit was not accepting and there was dispute between Sukwaro and Amrit (PW-8), and in partition, the disputed land fell into the share of Sukwaro, by the Court.

23. Satiram (PW-13) has stated before the Court that on the date of incident, when they were cutting the paddy crop sown by the complainants, the accused persons came in the field and surrounded Ratin Bai, as they were sitting in the *med* of the field, and they assaulted Noharsai and Ratin Bai, who died on the spot. The matter was reported to the police.

24. Thakur Prasad (P-14) has stated in the same line and he has clearly deposed in paragraph 1 of his evidence that the accused persons were armed with lathi and tangi (axe), the accused persons have surrounded Ratin Bai and Noharsai and they have assaulted them by which both the persons died. He has admitted in his cross-examination, paragraph 4, that on account of the said land, relationship between the parties were strained.

25. Balam (PW-12) has admitted that the suit land was being sown by the accused A-1 to A-4, sons of Sukwaro, and in that particular year, the crop was sown and grown by sons of Sukwaro – A-1 to A-4 and the villagers declined to cut the crops saying that it was sown by the accused persons. Therefore, he and other two witnesses – Satiram (PW-13) and Thakur Prasad (PW-14) were called for harvesting the

crops.

26. Likewise, Pilo Bai (PW-3), who is wife of deceased Noharsai, has stated that her husband Noharsai and her mother-in-law Ratin Bai, both, had gone to the village for harvesting the crop and her daughter Premlata, whom she had sent to the field for seeing whether the crops had been fully cut or not, came back and informed her that her mother-in-law and husband, both, have been murdered. Devmatia (PW-4) and Premlata (PW-6) – daughters of deceased Noharsai, had made statement in similar lines. Pratap Singh (PW-7) is son of deceased Noharsai and he has affirmed the fact that his father had called relatives Satiram (PW-13) and others for harvesting the crops.
27. Amrit (PW-8) is father of deceased Noharsai and husband of deceased Ratin Bai. He has affirmed the fact that Sukwaro and Sarihano are his sisters, Sukwaro's husband was made *ghar jamai* by his father, A-1 to A-4 are sons of Sukwaro and in that particular year, he had sown the crop. He has further stated that in the land in dispute, Sukwaro had no right and share and he has been informed that the deceased persons were killed by the appellants. Parmeshwar (PW-9) has lodged FIR Ex.P-9.
28. Investigating Officer Padumsai Mahilane was also examined as PW-15 and his statement has been recorded.
29. As recorded in the foregoing paragraphs, the land was recorded in the name of Sukwaro pursuant to the decree of partition granted by the civil court but it is not clear as to whether after decree for partition was granted by the civil court in favour of Sukwaro and duly recorded her

name in Ex.D-3 – P-II *Khasra Panchshala*, Sukwaro was placed in possession of the suit land. However, Balam (PW-12), who is close relative of Amrit (PW-8) and also of the deceased persons, had clearly stated that the land in dispute was being sown and paddy crop was grown by sons of Sukwaro – A-1 to A-4. He went to the extent of stating that even the villagers of Village Bakalo have refused to harvest the crop on behalf of the complainants saying that the crop has been grown by the accused persons A-1 to A-4. At this stage, it would be pertinent to mention that the aforesaid accused persons were armed with lathi / tangi as clearly been established by the prosecution which is apparent from the statements of Balam (PW-12), Satiram (PW-13) and Thakur Prasad (PW-14), however, the accused persons have taken the plea of right of private defence of the property.

30. Section 96 of the IPC declares that nothing is an offence which is done in the exercise of the right of private defence. Section 97 provides that every person has right of defence of person as well as property subject to restriction contained in Section 99 of the IPC. Section 100 describes the contingencies in which right of private defence of the body extends to causing death. Section 100 of the IPC provides as under:

“100. When the right of private defence of the body extends to causing death.”-The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

First.- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.- An assault with the intention of committing rape;

Fourthly.- An assault with the intention of gratifying unnatural lust;

Fifthly.- An assault with the intention of kidnapping or abducting

Sixthly.- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly.- An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”

31. Section 101 of the IPC provides that when such right of private defence extends to causing any harm other than death. Section 102 provides that 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. Section 103 provides that when the right of private defence of the property extends to causing death. Thus, in order to exercise right of private defence extending to voluntary causing of death accused must establish that there were circumstances giving rise to reasonable ground for apprehending that either death or the grievous injury would be caused to him, and it well

settled that whether or not a right of private defence of person or property was available to the offender is the very first question to be addressed.

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

33. Very recently, the Supreme Court in the matter of **Raj Singh v. State of Haryana**² stated about the right of private defence by holding as under:-

“16.to claim right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The law of private defence does not require that the person assaulted or facing apprehension of an assault must run away for safety. It entitles him to defend himself and law gives him right of private defence. There is no right of private defence where there is no apprehension of danger. Necessity of averting an impending danger must be present, real or apparent.”

34. In **Raj Singh** (supra), Hon'ble Mr. Justice T. S. Thakur (as then His Lordship was) in his separate but concurring judgment summarized the principle of right of private defence as under:-

2 (2015) 6 SCC 268

“32. A conjoint reading of the provisions of Sections 96 to 103 and Exception 2 to Section 300 IPC leaves no manner of doubt that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence, provided that such right is exercised without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence. A fortiori in cases where an accused sets up right of private defence, the first and the foremost question that would fall for determination by the court would be whether the accused had the right of private defence in the situation in which death or other harm was caused by him. If the answer to that question is in the negative, Exception 2 to Section 300 IPC would be of no assistance. Exception 2 presupposes that the offender had the right of private defence of person or property but he had exceeded such right by causing death. It is only in case answer to the first question is in the affirmative viz. that the offender had the right of defence of person or property, that the next question viz. whether he had exercised that right in good faith and without premeditation and without any intention of doing more harm than was necessary for the purpose of such defence would arise. Should answer to any one of these questions be in the negative, the offender will not be entitled to the benefit of Exception 2 to Section 300 IPC.

33. Absence of good faith in the exercise of the right of private defence, premeditation for the exercise of such right and acts done with the intention of causing more harm than is necessary for the purpose of such defence would deny to the offender the benefit of Exception 2 to Section 300 IPC. The legal position on the subject is fairly well settled by a long line of decisions of this Court to which copious reference has been made by Banumathi, J. No useful purpose would, therefore, be served by referring to them over again. All that need be said is that whether or not a right of private defence of person or property was available to the offender is the very first question that must be addressed in a case of the present kind while determining the nature of the offence committed by the accused, whether or not a right of private defence was available to an offender is, in turn, a question of fact or at least a mixed question of law and fact to be determined in the facts and circumstances of each individual case that may come up before the court.”

35. In the matter of **Darshan Singh vs. State of Punjab**³, the Supreme Court has indicated that when right of private defence has to be exercised and held as under:-

“When there is real apprehension that the aggressor might cause death or grievous hurt, in that event the right of private defence of the defender could even extend to causing of death. A mere reasonable apprehension is enough to put the right of self-defence into operation, but it is also a settled position of law that a right of self-defence is only a right of defend oneself and not to retaliate. It is not a right to take revenge.”

36. Very recently, the Supreme Court in the matter of **Extra Judicial Execution Victim Families Association (EEVFAA) and another vs. Union of India and another**⁴, considered the distinction between right of self defence and use of excessive force and held as under:-

“118. At the outset, a distinction must be drawn between the right of self-defence or private defence and use of excessive force or retaliation. Very simply put, the right of self-defence or private defence is a right that can be exercised to defend oneself but not to retaliate⁵. This view was reiterated but expressed somewhat differently in *Rajesh Kumar v. Dharamvir*⁶ when it was said: “To put it differently, the right is one of defence and not of requital or reprisal. Such being the nature of right, the High Court could not have exonerated the accused persons of the charges levelled against them by bestowing on them the right to retaliate and attack the complainant party.

122. From the above, it is abundantly clear that the right of self-defence or private defence falls in one basket and use of excessive force or retaliatory force falls in another basket. Therefore, while a victim of aggression has a right of private defence or self-defence (recognized by Section 96 to 106 of the IPC) if that victim exceeds the right of private defence or self-defence by using excessive force or retaliatory measures, he then becomes an aggressor and commits a punishable offence. Unfortunately occasionally, use of excessive force or retaliation leads to the death of the original aggressor.....”

3 (2010) 2 SCC 333

4 AIR 2016 SC 3400

5 *Manjeet Singh v. State of H.P.*, (2014) 5 SCC 697

6 (1997) 4 SCC 496

37. It is also profitable to refer to the decision of the Supreme Court in the matter of V. Subramani v. State of T.N.⁷ in which, following the observation made by the Supreme Court in Salim Zia v. State of U.P.⁸, it was held as under in paragraph 11: -

"11. The only question which needs to be considered is the alleged exercise of right of private defence. [Section 96 IPC](#) provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under [Section 105](#) of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further

7 (2005) 10 SCC 358

8 (1979) 2 SCC 648

reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram v. Delhi Admn.⁹, State of Gujarat v. Bai Fatima¹⁰, State of U.P. v. Mohd. Musheer Khan¹¹, and Mohinder Pal Jolly v. State of Punjab¹².) Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P. (supra) runs as follows: (SCC p. 654, para 9)

'9. ... It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of prosecution witnesses or by adducing defence evidence.'

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea."

38. Based on the aforesaid principle, if we proceed to examine the evidence of prosecution witnesses, it is quite vivid that on the date of occurrence when the crops were sown and grown by the sons of Sukwaro – A-1 to A-4 and it was ready for harvesting, the complainant party wanted to harvest the crops, but the villagers / labours of that village Bakalo declined to harvest the same which is clear from the statement of Balam (PW-12) and therefore Balam (PW-12) and Satiram (PW-13) along with two other persons, who are also close

9 AIR 1968 SC 702

10 (1975) 2 SCC 7

11 (1977) 3 SCC 562

12 (1979) 3 SCC 30

relatives of the complainant party, were called from Village Parsa to harvest the crop and when they were cutting the crops, accused A-1 to A-4 came to the field and stopped them, then only the dispute arose between the parties. The appellants A-1 to A-4 being in possession over the land in dispute and having sown and grown the crops were entitled to maintain their possession over the suit land on behalf of their mother Sukwaro and as such, they were having the right of private defence of the property. The question for consideration would be whether they have rightly exercised the right of private defence or they have exceeded their right of private defence.

39. There is no evidence brought on record by the accused persons to show that they were first attacked by the complainant party when they stopped the complainant party from harvesting the crops and they suffered injuries and if they could not have exercised the right of private defence of the property, there was likelihood of sustaining injury by them which may cause to death. There is not an iota of evidence in the entire record to prove that they have suffered any injury, there was reasonable apprehension or they have developed their mind that they are likely to sustain grievous / serious injury by the complainant party. Merely because the crops were being harvested / being cut by the complainant party, the appellants were not entitled to take the law in their hands and cause death of two persons at-once on the spot then and there. In other words, there was no reasonable apprehension in the minds of the appellants – A-1

to A-4 when they noticed that the complainant party were cutting the crops, but they are not justified in availing the same for the death of two persons. On the other hand, they have exceeded their limits and the material produced by the prosecution clearly shows that there is no injury even suffered by the accused persons – A-1 to A-4 as such, the trial Court was justified in convicting them.

40. Appellant Mohitram has taken the plea of alibi.

41. Plea of alibi has recently been considered by the Supreme Court in the matter of **Darshan Singh v. State of Punjab**¹³ and it has been held as under: -

“The word alibi means “elsewhere”. The plea of alibi is not one of the General Exceptions contained in chapter IV of IPC. It is a rule of evidence recognized under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused. In the present case said condition is fulfilled.”

42. It is well settled that strict proof is required for establishing plea of alibi and finding of fact disbelieving the plea of alibi based on weighty and sturdy reasons should not be interfered with. (See **Binay Kumar Singh v. State of Bihar**¹⁴.)

43. It is also well settled that a plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence. (See **State of Maharashtra v. Narsingrao Gangaram Pimple**¹⁵.)

44. No evidence was brought on record to prove beyond doubt that on the

13 (2016) 3 SCC 37

14 AIR 1997 SC 322

15 AIR 1984 SC 63

fateful day of 28-10-1997 at 9 a.m., accused / appellant Mohitram was not present on the spot and he was present elsewhere. In the present case, the prosecution has proved the offence against Mohitram beyond doubt by not only adducing ocular evidence but also by circumstantial evidence, as such, appellant Mohitram has failed to establish his plea of alibi and his plea of alibi is vacillating, which has rightly been not accepted by the trial Court and is based on sturdy reasons which were are not inclined to interfere.

45. In the matter of **Sahabuddin and another v. State of Assam**¹⁶, Their Lordships of the Supreme Court have held that once the court disbelieves the plea of alibi and the accused does not given any explanation in his statement under Section 313 of the CrPC, the Court is entitled to draw adverse inference against the accused taking the plea of alibi.

46. The plea of alibi has been taken to establish that appellant Mohitram was on Government duty at Namna and has been falsely implicated. The incident is of 28-10-1997 at 9 a.m. in the morning, whereas Anandram Porte (DW-6) has stated that he attended the duty from 10 a.m. to 4.30 p.m. on the date of occurrence. Distance between Village Bakalo and Namna, where accused Mohitram is said to have worked on the date of incident, is 9-10 kms.. It was possible for a person to travel a distance of 9-10 kms. within one hour. The trial Court has also not found the plea of alibi to be acceptable.

47. In the considered opinion of this Court, the plea of alibi taken by

16 (2012) 13 SCC 213

appellant Mohitram is vacillating and is also not acceptable.

48. Thus, after appreciating the entire evidence on record, we do not find any illegality in appreciation of oral, medical and circumstantial evidence or arriving at a conclusion as to the guilt of appellant Mohitram, by the trial Court warranting interference by this Court.

49. Therefore, in the considered opinion of this Court, the trial Court has rightly analyzed the oral and documentary evidence on record and we do not find any illegality, infirmity or irregularity in the judgment of conviction recorded and sentence awarded by the trial Court. We hereby dismiss the appeals of all the accused persons except Radharam (A-1) and Ahbaran (A-8) who had died and their appeals are dismissed as abated.

Sd/-
(Deepak Gupta)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge