

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 644 of 2002

1. H.R.Ahirwar, S/o Shri J.P. Ahirwar, aged 45 years, Sub Inspector Kansabel, District Jashpur (CG) [Add-now posted in Police Line Reewa (MP)]
2. Laloo Ram Bhagat, S/o Khasru Ram Pradhan, aged 40 years, Constable No.246, Police Station Kansabel, District- Jashpur (CG) [now posted as Head Constable Police Station Kapu, Distt. Raigarh (CG)]
3. Rajendra Sai, S/o Shri Sugul Sai, aged 40 yrs. Constable No.632, Police Station Kansabel, District- Jashpur (CG) [now posted in Kotwali Jashpur (CG)]
4. Churawan Das, S/o Shri Mapal Das, aged 29 yrs. Constable No.455, Police Station Kansabel, Distt.Jashpur (CG) [now posted at Reserve Police Line Bilaspur (CG)]
5. Shankar Ram Kalo, S/o Thoya Ram Kalo, aged 42 years. Constable No.631 Police Station Kansabel, Distt. Jashpur (CG) [now posted at Police Station Kapu, District. Raigarh (CG)]
6. Suresh Kumar, S/o Late Shri Padman Panda, aged 40 years. Constable No.247, Police Station Kansabel, District Jashpur (CG) [now posted at Schedule Caste & Schedule Tribe Police Station Chakradhar Nagar, District -Raigarh (CG)]

---- Appellants

Versus

1. State Of Chhattisgarh through District Magistrate, Jashpur Nagar
2. Rim Nath Ram, S/o Chullu Ram, aged about 30 years, Caste- Nagvanshi, Resident of Village Dhengurjor, Police Station Kansabel, Tahsil Bagicha, District Jashpur

---- Respondents

For Appellants	:	Shri Ashok Soni, Advocate
For State/Res. No.1	:	Shri Anand Verma, Dy Govt. Advocate
For Respondent No.2	:	Shri A.K. Prasad and Shri Aditya Chopda, Advocates

ACQA No. 451 of 2010

Rimnath Ram, S/o Chullu Ram, aged about 30 years, Caste Nagvanshi, R/o Village Dhengurjor, P.S. Kansabel, Tehsil Bagicha, Distt. Raigarh (MP) Now Dist. Jashpurnagar (CG)

---- Appellant

Versus

1. H.R. Aharwal, S/o Shri J.P. Aharwal, aged 45 years, caste- Aharwal, the then Sho Kansabel, Distt. Jashpur, C.G.
2. Laloo Ram Bhagat, S/o Khasru Ram Pradhan, aged 40 years, Constable No.246, Police Station Kansabel, District- jashpur (CG)
3. Rajendra Say, S/o Shri Sugul Say, aged 45 yrs. Constable No.632, Police Station Kansabel, District- Jaspur (CG)
4. Churawan Das, S/o Shri Mapal Das, aged 29 yrs. Constable No.455, Police Station Kansabel, Distt.Jashpur
5. Shankar Ram Kalo, aged 42 years. Constable No.631 Police Station Kansabel, Distt. Jashpur (CG)
6. Suresh Kumar, S/o Late Shri Padman Panda, aged 40 years. Constable No.247, Police Station Kansabel, District Jashpur (CG)
7. Rapait, S/o Johan Ekka, age 50 years, Occupation-Constable, No.152, PS Jashpurnagar, Distt. Jashpur (CG)
8. Ishwar, S/o Gorango, age 50 years, occupation-Constable, No.152, PS Jashpurnagar, Distt. Jashpur, CG)
9. Karmela Kujur, W/o Ishwar Ram, R/o Village Dhengurjor, PS Kansasbel, Distt.Jashpur CG
- 10.The State of Chhattisgarh, through the District Magistrate, District Jashpur (CG)

---- Respondents

For Appellant	:	Shri A.K. Prasad and Shri Aditya Chopda, Advocates
For Res. No.1 to 6	:	Shri Ashok Soni, Advocate
For Res.No.7 to 9	:	Smt. Indira Tripathi, Advocate
For State/Res.No.10	:	Shri Anand Verma, Advocate

D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava & Hon'ble Mrs. Justice Rajani Dubey

Judgment On Board

15/03/2019

Per Manindra Mohan Shrivastava, J.

1. This order shall govern disposal of Criminal Appeal No.644 of 2002 and Acquittal Appeal No.451 of 2010 as both the appeals arise out of impugned

judgment dated 11.6.2002 passed by learned Additional Sessions Judge, Jashpurnagar (CG) in ST No.211 of 1997.

2. By the impugned judgment, out of 11 accused, 6 accused (appellants in Criminal Appeal No.644 of 2002) have been convicted. Three accused namely Rapait, Ishwar and Karmela Kujur (respondents in Acquittal Appeal No.451 of 2010) were acquitted. The appeal against acquittal filed by complainant- Rimnath Ram is directed against acquittal of aforesaid three acquitted accused. By way of the acquittal appeal, the complainant has also assailed impugned judgment praying that all the accused of the case, in view of the evidence led before the trial Court, are liable to be convicted for commission of offence under Section 302 IPC.

As the appeals arise out of same judgment, both have been heard together.

3. The genesis of dispute between the policemen and some of the villagers lies in the background that a meeting of villagers was called on 25.3.1992 to discuss certain issue, to which, Station House Officer of Police Station- Kansabel objected to holding of such meeting. According to complainant, the matter was reported to the SDO. On that very date, the in-charge of police station came along with certain police personnel in village Dhengurjore and apprehended complainant Rimnath and other 15-16 persons and also effected arrest of one Nasimmudin. They were kept in police station and it is alleged that some of them were also beaten up. Next day, some of them were released but Rambabu and Nasimmudin and few others were produced before the Sub Divisional Magistrate (SDM). Though SDM directed their release on each of them furnishing personal bond of Rs.5000/-, it is alleged that they were not allowed to furnish security, due to which, the persons who were apprehended by the police in proceedings under Sections 107, 116 Cr.P.C. could not be released and they were being taken to Jashpur jail in a bus. It is said that when the bus reached at village Dhengurjore at about 5:00 in the evening, at that stage, Malki Bai, mother of one apprehended person & complainant -Rimnath came there and making allegation that they are falsely implicated, she insisted on meeting her son-Rimnath and then, a dispute arose in which, Station House Officer of Police Station- Kansabel H.R. Ahirwar started abusing, lady was pushed

away. She fell on the ground and she was also assaulted and slapped. At this stage, Ramnath, son of Malki Bai then came there and raised objection to the act of the police personnel, whereafter, it is alleged, the police officer H.R. Ahirwar commanded other constable to assault Ramnath and other villagers and then, there started fight in which, assaults were given and finally when Ramnath came forward, it is alleged, the SHO H.R. Ahirwar fired with his service pistol on Ramnath, due to which, Ramnath fell down and died. In the incident villagers also sustained injury.

Respondent- Rimnath filed a complaint as no offence was registered in the police station. Upon making preliminary enquiry and recording statement, the Magistrate took cognizance and having found that the allegation is of commission of offence triable by Court of Sessions, committed the case for trial. The appellant along with other three acquitted accused were put to trial on the allegation of having assaulted villagers and committed murder of Ramnath by shooting him.

4. The prosecution led evidence regarding death of Ramnath due to bullet injury and also proved other injury sustained by deceased Ramnath and number of villagers. The defence taken by the appellants, before the trial Court, was that when the police personnel were taking certain persons from the Court of SDM to Jashpur jail, on way, when the bus stopped at village- Dhengurjore, the mother of Rimnath, who was also one of the apprehended arrested persons and being taken away in bus, arrived and there were many other persons who opened assault on the police personnel and in order to disperse the group, gun was fired in air to warn but even thereafter, when assault continued and it reached at the point when there was apprehension that if assailants are not stopped, SHO- H.R. Ahirwar may be killed, fire had to be opened and because of one single bullet shot injury, Ramnath died. The appellants accused, thus, came out with the case of exercise of right of private defence to the extent of causing death. Learned trial Court taking into consideration the evidence of the prosecution as also the defence came to the conclusion that, though, there existed a situation for exercise of right of private defence, to the extent of giving gunshot injury on Ramnath, appellant- H.R. Ahirwar exceeded in exercise of his right of private defence. Against all the police officers, it was held that they had assaulted the victim resulting in simple injury and on

such clear finding, learned trial Court held appellant No.1 H.R.Ahirwar guilty of commission of offence under Section 304 Part-I IPC and sentenced him to undergo RI for 5 years with fine. All other appellants No.2 to 6 were held guilty of commission of offence under Section 323 read with Section 34 IPC and were imposed RI for 3 years on each of them.

5. Arguments were advanced at length in both the appeals, one by the accused who have been convicted and the other, the complainant.
6. Learned counsel appearing for the appellants in Criminal Appeal No.644 of 2002 argued that the prosecution has come out with the story of appellants having fired gun shot on Ramnath and assaulting villagers who had gathered around the bus, in which, arrested persons were being taken to jail but it has failed to explain the injury sustained by the appellants. It is argued that as compared to simple injury sustained by the victim, the police personnel/appellants had sustained far more serious and grave injury in the incident. It is argued that appellant H.R. Ahirwar, the Station House Officer of Police Station- Kansabel and another police constable -Shankar Ram Kalo had sustained multiple injuries which were fracture injury. The defence of the appellants has been that when crowd surrounded and started assaulting police officers, a situation arrived that fire had to be opened, otherwise, the police personnel would have been killed in the incident. According to learned counsel for the appellants, this defence is wholly probable looking to the multiple injury caused to all the appellants on their body which proves that they were being assaulted by number of persons. None of the prosecution witnesses, it is alleged, could explain as to how the appellants sustained injury, grievous in nature, in the incident, which means that the prosecution witnesses have not disclosed the incident and suppressed assaults given to police officials.

A specific argument has been advanced on behalf of appellant No.1 H.R. Ahirwar that the prosecution has failed to prove beyond reasonable doubt, that it is this accused who had fired gunshot, resulting in death of Ramnath. He would argue that the evidence of Dr. Yashwant Kumar Toppo (PW10) is that the nature and extent of injury and the movement of bullet inside the body renders more probable that the bullet was fired from the rifle. The prosecution has not come out with any Armorer or Ballistic report

to prove that bullet was fired from service pistol held by appellant H.R. Ahirwar. He would argue that even the seizure of bullet has not taken place in the present case. One of the co-accused/appellant Suresh Kumar, Constable, has clearly stated in his examination under Section 313 Cr.P.C. that it was he, who fired gunshot with his rifle injuring Ramnath. This is what has been stated by all the appellants in their examination under Section 313 Cr.P.C. Therefore, it is contended, the prosecution has failed to prove beyond reasonable doubt that Ramnath died because of bullet injury as a result of fire from the service pistol of appellant H.R. Ahirwar and renders more probable that bullet was fired from rifle. It has also been argued that present is not a case where the police personnel had opened any assault but it is the other way round. The police personnel were on their duty as some of the arrested persons were produced before the SDM but could not be released on bail who were being taken to Jashpur jail. The assailants who had gathered at the spot attempted to rescue arrested persons and assaulted police officers, therefore, in an attempt to resist this, might have resulted in simple injury to other victim.

It is also argued that on the report lodged by the police personnel in the police station, number of villagers including assailants were tried for commission of offence of attacking the police officers and they stand convicted also on the allegation of having committed offence under Sections 323, 332 and 333 IPC for assaulting police officers. Therefore, it is submitted that at the first place, the prosecution failed to prove beyond reasonable doubt that Ramnath died due to gunshot fired by appellant- HR. Ahirwar. Even if the same is accepted for the sake of argument, the prevailing situation where all the police officers were being badly assaulted, in which, two of them sustained head injury and fracture, exercise of right of private defence, to the extent of causing death, was fully justified and it could not be said that opening of fire and giving one singular bullet injury which led to unfortunate death of Ramnath, appellant H.R. Ahirwar in any manner, exceeded in exercise of his right of private defence. In support of his submissions, learned counsel for the appellants placed reliance upon **Dharam and Ors. Vs. State of Haryana** (2007) 15 SCC 241, **State of Punjab Vs. Ajaib Singh** (1995) 2 SCC 486 and **Gajey Singh and Anr. Vs. State of U.P.** (2001 CRI. L.J. 2838).

7. Learned counsel appearing for respondent -complainant Rimnath and the counsel for the State opposed the prayer. Learned counsel for the State argued that in the circumstances and on the basis of the evidence, which has come out on record, it has been found proved that, though, a crowd had gathered and some of the police officers were also given assault, the circumstances were not so grave as to open firing on the assailants. He would argue that both the side had sustained injury meaning thereby that at the spot, an open and free fight had taken place. The villagers who had gathered were not armed with any weapon and were pitted against armed police personnels. The exercise of right of private defence could not go to the extent of causing death and the police officials could have fired on the non-vital part of the body to prevent and resist the assault being given to the police officials. Moreover, as not only deceased Ramnath, but other victims, have sustained certain injury, though minor in nature, conviction of the appellants under Section 323 IPC does not warrant any interference.
8. Learned counsel appearing for the complainant pressed into service his own appeal assailing the impugned judgment on the submission that in the circumstances and on the basis of evidence on record, as one of the villager- Ramnath died due to fire of police personnel without there being any situation of exercise of right of private defence, much less, to the extent of causing death, all the accused who have been acquitted as well as appellants in the connected appeal are liable to be convicted under Section 302 IPC. He would argue that the evidence led by the injured witnesses clearly proves that when the bus, which was carrying the arrested persons to Jashpur jail, stopped in the village Dhengurjore, Malki Bai had come to meet her son Rimnath who was one of those arrested persons but she was misbehaved and beaten and thrown on the ground and thereafter, the police official started assaulting the villagers and one of the appellants namely H.R. Ahirwar took out his pistol and straightway fired Ramnath, who died. According to him, the defence of the appellants that situation had become so grave that police had to open fire has not been established as no specific defence evidence in that regard has been led and the suggestion given in the cross-examination of the witness are not found probable from the evidence on record or from the medical evidence because even if it is held that two of the police personnel had sustained fracture injury, it has

come in the evidence that there was a scuffle going on and the police personnel may have sustained injury because of fall and not because of any grave assault on their life. Therefore, the appellants in the connected appeal (CRA No.644 of 2002) and the three acquitted accused namely Rapait, Ishwar and Karmela Kujur (respondents in ACQA No.451 of 2010) are liable to be convicted under Section 302 IPC.

9. We have given our anxious considerations to the submissions made by learned counsel for the respective parties and perused the records of the Court below.
10. As records speak, initially a complaint was filed by Rimnath (Appellant in ACQA No.451 of 2010) before the Magistrate, copy of which is also on record. The Magistrate having taken cognizance and finding that the allegation was of commission of offence exclusively triable by the Court of Sessions, the case was committed for trial and thereafter, in the sessions trial, impugned judgment came to be passed.
11. This complaint was filed by Rimnath, the brother of deceased Ramnath. The story, as has been stated in the complaint with regard to what happened when the bus carrying arrested persons and police officers reached village Dhengurjore is that when the bus reached the village, it stopped and two persons, Ishwar Mahkul and Ilahi Bux were asked to get down. At this stage, mother of deceased Ramnath namely, Malki Bai and another lady Guruwari Bai came there and extended request to the Station House Officer to allow them to meet Rimnath, but the Station House Officer misbehaved, pushed Malki Bai, assaulted Guruwari and slapped Malki Bai, whereafter, 6-7 villagers came along with Ramnath and altercation took place between Station House Officer and Ramnath. The police personnel who were sitting in the vehicle, then came out and according to the complainant, the SHO commanded those police personnel to assault villagers. It has also been alleged in the complaint that Ramnath was assaulted by Ishwar with a knife which was given to him by accused Karmela and at that stage, when Ramnath raised objection, the SHO took out his revolver and threatened to kill. Ramnath stood in front of police officer and said that he will not leave his party and if he has courage he may shoot him and then, Ramnath was shot dead by the Station House

Officer.

Thus according to the complainant, when bus stopped, villagers Ramnath, Malki came there, insisted to meet complainant who was beaten by police and when quarrel further aggravated, police officer took out revolver and shot dead Ramnath.

12. During trial, the prosecution examined large number of witnesses which included Ramnath, Malki Bai and others as witnesses of the incident in which, these witnesses and other sustained injury and Ramnath was shot dead. From the evidence of these witnesses, as far as the background in which the incident happened, culled from statement, is that earlier on 25.3.1992, when a meeting was to be organized in the village, the police had come and warned not to hold meeting and then arrested some of the villagers including Rimnath and they all were kept in the police station in the night and next day produced before the Magistrate in the proceedings under Section 107/116 Cr.P.C. on 26.3.1992. Though, they were directed to be released on personal bond, they were not released as the condition of release were not fulfilled and they all, 13 in number, were being taken by the SHO H.R. Ahirwar, PS Kansabel along with the constable/ police, in a bus for being admitted in jail at Jashpur and the vehicle stopped in village Dhengurjore when it reached there at around 5:00 in the evening. This has been broadly stated in all the statements.
13. From the evidence of these witnesses, another common thread of evidence is that when the bus reached in village Dhengurjore, Malki Bai, mother of Rimnath and Ramnath came there along with another lady Guruwari Bai, insisted to meet her son Rimnath who was being taken away for being admitted in jail and was sitting in the bus along with other persons.
14. The evidence of the prosecution witnesses namely Rimnath Ram Nagwanshi (PW1), Rambabu Sharma (PW2), Edward Minj (PW3), Heeranath Ram Chouhan (PW4), Nasimmundin (PW5), Maheswar Ram Yadav (PW6), Parshu Ram (PW7), Bhola Ram (PW8), Shishupal Nagwanshi (PW9), Dr. Yashwant Kumar Toppo (PW10), Malki Bai Nagwanshi (PW11) and Chhatan Ram (PW12) is that when Malki Bai insisted to meet her son Rimnath, Station House Officer got enraged, abused, assaulted and then Ramnath arrived with number of villagers, dispute arose, quarrel took place and then

assaults were made. All these witnesses have stated regarding assault given by the police officers. The witnesses say that while this dispute was going on, Ramnath came forward and challenged appellant No.1 H.R. Ahirwar, SHO, Police Station – Kansabel to show courage to shoot him, whereafter, he was shot dead. There is one witness namely Chhatan Ram (PW12) who states that when police officer pushed Malki Bai away and she fell down, Ramnath arrived at spot and objected to manhandling of his mother whereafter, the SHO turned towards him and pushed him, due to which he also fell down and somersaulted. Thereafter, he sat over Ramnath, took out his pistol and shot dead Ramnath due to which he fell down. The version of all these witnesses are that the assailing party were the police personnel only which culminated finally in firing gunshot by appellant No.1 H.R. Ahirwar on Ramnath. None of these witnesses, however, has stated regarding any assault given by the people who had surrounded the police officer at the spot. The version of these witnesses, if believed, would mean that only police officer had opened assault and beaten up Malki and Ramnath and other villagers who had surrounded.

15. When these witnesses were put to cross-examination, the suggestion which have been given to these witnesses by the appellants/accused are that at the spot, the villagers including Ramnath, Malki had gathered and they were insisting on release of the arrested persons who are being taken to Jashpur jail and sitting in the bus. The suggestion given is that the group of persons/villagers/ crowd became violent and they started assaulting the police officials and several assaults were made on police officials including appellant H.R. Ahirwar and situation became so grave that ultimately, in order to save H.R. Ahirwar, who was being assaulted by Ramnath, the police party had also to take necessary defence to save them. This suggestion has, however, been denied. The witnesses have not come out and the witnesses have also denied that any assault was given to police official.

16. However, from the prosecution evidence itself, it has been proved that all the appellants had sustained number of injuries including grievous hurt. Dr. Yashwant Kumar Toppo (PW10) who conducted medical examination of not only Ramnath (who later on died) but also of appellants and some other persons has proved his report during his examination. He examined

appellant No.5- Shankar Ram Kalo and found one lacerated wound on his head which was blood stained, large number of scratches on the face, swelling and red-blue spots on right axilla, swelling in the chest and difficulty in breathing, number of scratches on left and right hands, number of scratches on the back and redness. His report Ex.D-2 has been proved by him. He has also deposed that when he suspected fracture, x-ray was taken and report (Ex.D-3) proved fracture on 6th and 7th ribs.

17.Appellant/accused No.6- Suresh Kumar was found having sustained swelling, blued spot on the right hand, large number of scratches on the face, number of scratches on the chest and back of the body and he has proved his report in Ex.D-4 in this regard.

18.Medical examination of appellant No.1 H.R. Ahirwar was also conducted. One incised wound and the other lacerated wound was found on his head which was blood stained, there are number of scratches on the face, number of scratches on both the hands, swelling over the waist, swelling and blue spots in the right calf muscles, large number of scratches on both the legs. He opined that injury No.1 could be caused by a sharp object and remaining injuries could be caused by hard and blunt object. Suspecting fracture, x-ray was also taken and in the report (Ex.D-6), a fracture on the right part of the head was also found.

19.Another police personnel appellant/accused No.4-Churavan Das was also examined. He was found having sustained lacerated wound on the middle of his head, large number of scratches on the chest, abdomen and face. Number of scratches were found on his both legs. Injury report in Ex.D-8 was proved.

20.Appellant-accused No.3- Rajendra Sai was also found having sustained large number of scratches injury on the face and head, right hand and red-blue spot on the back as also scratch found on the waist. He has proved his report in Ex.D-9.

21.Appellant No.2- Lalu Ram Bhagat was found having sustained a lacerated wound on his head which was blood stained, number of scratches on the face, red-blue spot on the back scapular area and number of scratches on both hands.

22. In addition to aforesaid, the appellants who were police personnel i.e. Sub-Inspector and Constable, two other injured persons namely Ishwar Mahkul and Ilahi Bux were also examined and they were also found having sustained number of injury. According to evidence, which has come on record, these two persons are the complainant against Rimnath and others and it was on their complaint that police claims to have taken action against Rimnath and those who were finally produced before the SDM on 26.3.1992 and, thereafter, they were being taken to Jashpur and on way, as has come in the evidence, Ishwar Mahkul and Ilahi Bux, the complainants were asked to get down from bus when bus reached village Dhengurjore.
23. The doctor, in addition to stating that one of the injuries caused to appellant H.R. Ahirwar could be caused by sharp edged weapon, has further stated in his cross-examination that this injury could be caused by a weapon like knife and all other injuries caused to police officers could be caused by stone, rod and club.
24. It is thus proved from the prosecution evidence itself that all the police officials, who were in the bus, which was carrying arrested persons to Jashpur jail and stopped in between at village Dhengurjore and two complainant Ishwar Mahkul and Ilahi Bux were to get down in village Dhengurjore, sustained number of injuries. In particular, we find that two police officials one appellant No.1 H.R. Ahirwar and appellant No.5- Shankar Ram Kalo have sustained fracture i.e. grievous hurt. While H.R. Ahirwar sustained a fracture injury on his head. He had another injury on his head which was not fracture but a lacerated wound. Two ribs of Shankar Ram Kalo were fractured. We find that another police officer, namely Laloo Ram Bhagat, had also sustained a lacerated wound on his head. In addition to this, the common feature of injury found on all the appellants is that they all had sustained large number of scratches on the face, chest, back, legs and also red- blue spots.
25. This medical evidence unmistakably proves that the police personnel/appellants were not only injured but there was grave assault on them so much so that they sustained fracture injury including injury on their vital part like chest, head etc. But the prosecution has not come out as to how this police personnel sustained number of injuries. All the

prosecution witnesses apparently have given version of only one side of the episode which happened leading to death of Ramnath.

There is also no doubt that apart from gunshot injury, Ramnath had sustained one injury on his forehead. Dr. Yashwant Kumar Toppo (PW10) has also proved that one lacerated wound was found on the forehead of Ramnath in addition to gunshot injury. He has proved injury sustained by one Shivnath. He has also examined Guruwari Bai and found swelling in the right hand, complaining of pain which was simple in nature. Ramsagar was found having sustained scratches. Shishupal was found having sustained red scratches on the nose bridge and was found sustained scratch injury. In the medical examination, reports have also been proved.

Out of these injured persons, Bholaram and Shishupal have been examined as PW8 and PW9 respectively.

26.As far as cause of death and nature and extent of injury on deceased Ramnath is concerned, Dr. Yashwawnt Kumar Toppo (PW10) who examined the external injury found on the body of Ramnath, has stated that Ramnath had sustained one lacerated wound on the frontal part of his head and a gunshot injury which went through right scapular part of the body to the other end. He further stated that on 9th, 10th and 11th ribs, spleen and kidney were found protruded and no other injury was found on the body. Postmortem was conducted by Dr. K.D. Dubey (PW13) who deposed regarding internal and external injury as below:-

“पोस्टमार्टम में निम्नलिखित बाह्य चोटें मैने पाई:-

1. फटा हुआ घाव सिर के सामने बीचोबीच जिसका आकार –

1” x आधा इंच x 1/4” का पाया था।

2. आरपार बन्दूक {गनशार्ट डोर दाहिने तरफ पीठ के पीछे पीठ पर} जिसके कुला बोन के नीचे स्केपला बोन के नीचे आरपार 1/4” x गोल सरकुलर का था ।

3. आरपार गन शार्ट इन्जुरी बाई तरफ पीठ के नवमी, दसमी ग्यारवी पसली के लेवल तक सरकुलर 4” x 4” का था जिसमे से खून रीस रहा था । चोट ऑत स्प्लीन का टुकड़ा तथा किडनी बाहर आ गई थी ।

4. चोट क्र2 के अन्दर से दाहिना फेफड़ा हृदय का निचला हिस्सा तथा रक्त की बड़ी धमनी बायों फेफड़ा डायफ्राम बडी ऑत बाई गुरदा, स्प्लीन फट गए थे। छाती की दोनो तरफ से केविटी रक्त से भरी हुई थी ।

5. गोली के अन्दर लगने छेद के आसपास की चमड़ी जली हुई थी तथा खून के निशान {छीटे} पड़े हुए थे जो काले पड़ गए थे ।

ऑंतरिक परीक्षण :-

1. कपाल और मेरुदण्ड सामान्य थे । छाती दाहिने तरफ के आठवीं पसली आरपार रिछी फ्रेक्चर अस्थिभंग थी । बायीं तरफ की दसवीं व ग्यारवीं पसली का आग्जलरी साइड का तथा नवीं पसली का लेटरल साइड का अस्थिभंग था। दाहिना फेफड़ा के बीच का एवं नीचला हिस्सा फटा हुआ था। बाया फेफड़ा का निचला हिस्सा फटा हुआ था। पेरिकार्डियम के द्वायीफ्राम के सतह के उपर फटा हुआ था ।
2. हृदय के दाहिना एवम् बाँया वेन्ट्रीकल निचला हिस्सा फटा हुआ था । बड़ी रक्तवाहिनी भी फटी हुई थी ।
4. उदर:- {एबडामन} – पेट खना से भरा हुआ था । तथा फट गया था बड़ी आँत फट गई थी । स्प्लीन फट गई थी बायीं तरफ के घाव के द्वारा से बाहर निकल रही थी ।”

27.The opinion was that the cause of death was shock as a result of injury on vital organs and it was a case of gunshot injury. He further stated that no bullet pierced in the body was found. As far as medical examination of Ramnath, the deceased, is concerned, the fatal injury was caused due to gunshot and according to evidence ,one bullet entered the body, damaged internal organs including ribs, spleen and went through, creating wound on the other parts.

We find that in the present case, prosecution has not come out with any report of Armorer and Ballistic expert. Dr. Yashwant Kumar Toppo (PW10) who had also examined the dead body of Ramnath has been subjected to detailed cross-examination. He has stated that the nature of injury caused by bullet may be caused by bullet fired by a rifle from a distance of about 10 -20 feet. Importantly, a suggestion that the bullet fired from a revolver may not cause such a grievous internal injury as has been found in the present case, has been admitted.

We have also gone through the nature and extent of internal injury caused to the deceased Ramnath which shows that the bullet which was fired on him and went inside the body had caused extensive damage before its exit.

28.In the present case, the defence taken by all the accused in their respective statements under Section 313 Cr.P.C. is that assault was given to police officials. The defence taken was that when the bus carrying arrested persons reached village Dhengurjore, 60-70 villagers surrounded saying that they will not allow the arrested persons to be taken to jail and thereafter, he and other police officers were pulled out from the bus and

assaulted with axe, lathi, knife, chain, stone etc. Appellant H.R. Ahirwar has stated that Ramnath overpowered, threw him on the ground and sat over him and assaulted his overhead with the help of knife and he was attempting to murder him and then on his order, constable Suresh opened fire in air, which was of no impact and when Ramnath was about to assault him with knife, on his direction, Suresh fired from the rifle. Ramnath sustained injury and fell down. The violent crowd dispersed. All the appellants have come out with this defence in their examination under Section 313 Cr.P.C. They have stated that they were assaulted and had sustained injury. They have stated regarding assault given to H.R. Ahirwar and Shankar, resulting in fracture injury. Importantly, even Suresh, the Constable, who also sustained injury has come out in his defence statement under Section 313 Cr.P.C. to the effect that Ramnath had overpowered H.R. Ahirwar, sat on his chest and was assaulting with knife. Under the command of Sub Inspector H.R. Ahirwar, he first opened a fire in the air, whereafter, Ramnath attacked on him with an axe which stopped from his rifle. He has stated that Ramnath was bent upon killing H.R. Ahirwar and when he took out knife to give assault on Inspector H.R. Ahirwar, on the call of H.R. Ahirwar, he fired from his rifle which hit Ramnath and Ramnath fell down. He has stated that this saved H.R. Ahirwar, otherwise either he would have been killed or would have sustained serious life threatening injury. Two defence witnesses examined by the appellants, proved that one of the police constable who was also in the bus and one of the police constables who were acquitted had come to attend the duty in the police station Kansabel.

29.As the prosecution witnesses have not explained the grievous injury sustained by more than one police officers and proved injury sustained by each of the police personnel, the appellant, the defence story that police persons had to open assault and in self-defence becomes highly probable. All the prosecution witnesses have, in fact, been given this suggestion in their respective cross-examination that assault was opened on the team of police officers by a group in which they all were pulled down, badly assaulted and then finally, to save appellant- H. R. Ahirwar, gunshot was fired on Ramnath who was attempting to inflict grievous hurt to H.R. Ahirwar.

30.As far as appellant No.1-H.R. Ahirwar is concerned, he has been convicted under Section 304 Part-I IPC on the allegation that he fired gunshot with the help of his service revolver on Ramnath and Ramnath died but then we find that even this part could not be proved by the prosecution beyond doubt. As we have discussed herein-above, the prosecution has not come out with the evidence of any Armorer or Ballistic expert to prove that the bullet was fired from service revolver held by appellant No.1 H.R. Ahirwar. Secondly, the evidence of Dr. Yashwant Toppo (PW10), as has been stated by him in cross-examination, renders more probable that the bullet was fired from rifle rather than revolver because of the nature and extent of internal injury caused by the bullet before its exit from the body. Thirdly, one of the appellant Suresh has taken specific defence in his cross-examination under Section 313 Cr.P.C. that he fired bullet from his rifle on the command of H.R. Ahirwar when Ramnath was about to kill or cause grievous hurt to H.R. Ahirwar. Therefore, it cannot be said that the prosecution proved beyond reasonable doubt that Ramnath died due to gunshot given by appellant- HR. Ahirwar with his service revolver and it is highly doubtful whether the bullet was fired from the revolver of H.R. Ahirwar or from the rifle of Suresh, the other constable/appellant No.6.

31.In either of the situation, taking into consideration the complete evidence, background of the incident, nature and extent of injury sustained by as many as six police officials including grievous injury on the head and ribs, number of persons who had gathered around, it cannot be said that the firing of gunshot was in excess of right of private defence. The evidence and the nature of injury which have been found on the appellant render highly probable that when bus carrying number of arrested persons stopped in village Dhengurjore, to drop two complainant Ishwar and Ilahi Bux, the villager including mother of Rimnath along with her son Ramnath had come and dispute arose at the spot in which the crowd started assaulting policemen.

32.We also notice that it is not a case of the prosecution that when Ramnath was shot dead, the mob attacked police officials and assaulted them. The prosecution has failed to explain the injury sustained by appellants and the eyewitnesses have only given one side of the story without giving any

explanation whatsoever, as to how, appellants sustained injury which included grievous injury also. Therefore, from entirety of the evidence and the circumstances prevailing at the spot what can reasonably be inferred is that, though, initially the police officials might have misbehaved with Malki Bai, the mother of Rimnath and Ramnath (deceased), the group assaulted the police officials and only after having sustained number of injury including grievous injury, gunshot was fired with use of firearm, though, it is not proved beyond reasonable doubt as to whether it was fired from revolver of H.R. Ahirwar or from the rifle of appellant-accused No.6- Suresh Kumar or any other appellant. It is also to be noticed that if the gunshot was already fired on Ramnath without any assault on any police officials, it was wholly improbable that after opening fire, the group would have continued at the spot. Therefore, what appears to be more probable is that first assault was given to police officers and then one of them fired at Ramnath who died instantaneously. We also notice that though all the appellants were holding firearms, even according to the prosecution witnesses, only one gunshot injury was given to Ramnath. This also goes against the prosecution case of opening assault by the appellant, rather what appears to be more probable is that only after each of the appellant was subjected to grave assault, finally, they had to open fire in which unfortunately Ramnath died.

33. According to Section 96 IPC, nothing is an offence which is done in the exercise of the right of private defence. Section 100 IPC provides for the extreme situation where the right of private defence of the body may extend to causing death which reads 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,"

34. The first clause provides a situation where an assault may reasonably cause an apprehension that death will otherwise be the consequence of such assault. The second clause provides a situation where an assault may reasonably cause an apprehension that grievous hurt will otherwise be the consequence of such assault.

Therefore, where the defence succeeds in probalising the circumstance which may give rise to reasonable apprehension that death or grievous hurt would otherwise be the consequence of such assault, exercise of right of private defence of body may extend to causing death. The scope and ambit of the right of private defence was considered by Their Lordships in the Supreme Court in the case of **Dharam** (supra) as below :-

"15. Section 96 IPC provides that nothing is an offence which is done in exercise of the right of private defence. The expression "right of private defence" is not defined in the section. The section merely indicates that nothing is an offence which is done in the exercise of such right. Similarly, Section 97 IPC recognises the right of a person not only to defend his own or another's body, it also embraces the protection of property, whether one's own or another person's against certain specified offences, namely, theft, robbery, mischief and criminal trespass. Section 99 IPC lays down exceptions to which rule of self-defence is subject. Section 100 IPC provides, inter alia, that the right of private defence of the body extends, under the restrictions mentioned in Section 99 IPC, to the voluntary causing of death, if the offence which occasions the exercise of the right be an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault. In other words, if the person claiming the right of private defence has to face the assailant, who can be reasonably apprehended to cause grievous hurt to him, it would be open to him to defend himself by causing the death of the assailant.

16. The scope of right of private defence is further explained in Sections 102 and 105 IPC, which deal with commencement and continuance of the right of private defence of body and property respectively. According to these provisions the right commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat, to commit offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as reasonable

apprehension of the danger to the body continues (see *Jai Dev v. State Of Punjab* AIR 1963 SC 612).

17. To put it pithily, the right of private defence is a defensive right. It is neither a right of aggression nor of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self-creation. Necessity must be present, real or apparent (see *Laxman Sahu v. State Of Orissa* 1986 Supp SCC 555).

18. Thus, the basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon a host of factors like the prevailing circumstances at the spot, his feelings at the relevant time, the confusion and the excitement depending on the nature of assault on him, etc. Nonetheless, the

exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence.

19. It is trite that the burden of establishing the plea of self-defence is on the accused but it is not as onerous as the one that lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea of self-defence to the hilt and may discharge the onus by showing preponderance of probabilities in favour of that plea on the basis of the material on record (see *Munshi Ram v. Delhi Admn.*³, *State of Gujarat v. Bai Fatima* 1975 2 SCC 7 and *Salim Zia v. State Of Uttar Pradesh* 1979 2 SCC 648).

20. In order to find out whether right of private defence is available or not, the injuries received by an accused, the imminence of threat to his safety, the injuries caused by the accused and circumstances whether the accused had time to have recourse to public authorities are relevant factors, yet the number of injuries is not always considered to be a safe criterion for determining who the aggressor was. It can also not be laid down as an abstract proposition of law that whenever injuries are on the body of the accused person, the presumption must necessarily be raised that the accused person had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all

cases (see **Sekar v. State** 2002 8 SCC 354 and **V. Subramani v. State of T.N** 2005 10 SCC 358)."

35. What follows from the aforesaid enunciation of law is that, though, it cannot be laid down as an abstract proposition of law that whenever injuries are on body of accused person, presumption must necessarily be raised that the accused person had caused injuries in exercise of right of private defence, but the defence has to further establish that the injuries so caused on the accused probalilise the version of right of private defence. It was also highlighted that non-explanation of the injuries sustained by the accused, at about the time of occurrence or in the course of altercation, is a very important circumstance. If we apply the aforesaid principles to the present case, we find that the prosecution having failed to explain injuries sustained by the accused, the defence of the accused becomes highly probable that gunshot was fired on Ramnath only after multiple injuries, including grievous hurt, were actually caused to all the police personnel including appellant No.1- H. R. Ahirwar. We also notice that appellant No.1- H.R. Ahirwar had sustained fracture injury on his head and there was another head injury, though, not fracture but this at least show that before gunshot was fired at Ramnath, appellant No.1 H.R. Ahirwar had already sustained two head injuries, one of them being grievous, resulting in fracture. The other policeman had sustained fracture injury on his ribs and yet another policeman had sustained one more lacerated wound on his head. Apart from this, each of them suffered number of injuries on their body. All these taken cumulatively, leads to a reasonable inference that the gunshot was fired only at a stage when police officials were badly beaten so much so that they had sustained fracture injury. The defence version that at this stage, bullet was fired to save in exercise of right of private defence, cannot be said to be in excess of exercise of right of private defence, though, it was quite unfortunate that one of the assailants on police died in the incident.

36. In the case of **Ajaib Singh** (supra), in a situation where police official challenged those who were suspected to be offenders, whereupon the offenders grappled with police officer, injured him with danda blows followed by assault and death of the offender, it was held as under :

"7.It having been found by

both the High Court and the trial Judge that the defence version that the respondent received the information from a truck passing from that direction that some persons in the police uniform were forcibly collecting money from the truck drivers whereupon the respondent reached there, challenged the deceased who did not disclose his identity rather tried to move towards the car giving an impression that he was about to run away whereupon the respondent rushed towards him, grappled with him and was injured with danda blows used by three companions of the ASI, it is very difficult to say, as held by the High Court, that he had not developed a reasonable apprehension that if firearm was not used he was himself likely to be killed. The respondent had nine injuries. They have been found not to be self-inflicted. He was attacked by the deceased and his companions. The trial Judge found that there was no previous enmity. The submission that the respondent was not entitled to use firearm as he was attacked by dandas only cannot be accepted. That is not what is provided for by clauses I and II of Section 100 of the IPC. It shall depend on facts of each case whether the assault was such as could cause reasonable apprehension that death would otherwise be the consequence of such assault. If the High Court found that the respondent was assaulted by three persons with dandas, and hence the accused developed a reasonable apprehension that if he did not use the firearm then death would be the consequence, it cannot be said that the High Court was guilty of taking palpably erroneous view.".....

37. On aforesaid consideration, we are of the view that whether gunshot was fired from the revolver or from the rifle, in either case, it could not be said

to be a case of exceeding exercise of right of private defence. Therefore, conviction of the appellant No.1- H.R. Ahirwar (in CRA No.644 of 2002) under Section 304 Part-I IPC is not sustainable in law and is liable to be set aside.

38. We find that except appellant No.1- H.R. Ahirwar, all other have been held guilty of commission of offence under Section 323 IPC. It is a case where the villagers have also sustained injury and those injuries have been proved by the prosecution from the evidence of Dr. Yashwant Toppo (PW10). In paragraph hereinabove, we have also come to the conclusion that initially Malki Bai, Ramnath (deceased) and other villagers may have been given minor injury while they attempted to scuffle with the police official, we are not inclined to interfere with the conviction of appellants No. 2 to 6 (in CRA No.644 of 2002) under Section 323/34 IPC. Moreover, appellant No.1-H.R. Ahirwar (in CRA No.644 of 2002) who was the leader of the police team and on whom, accusation is that he pushed away Malki Bai and slapped her also and that number of persons have sustained injury, he could not be absolved of the criminal liability of committing offence under Section 323/34 IPC and has, therefore, to be convicted for commission of offence under section 323/34 IPC along with other appellants.

39. In the result, conviction of appellant No.1- H.R. Ahirwar for commission of offence under Section 304 Part -I IPC is set aside but his conviction is altered to under Section 323/34 IPC. Conviction of all other appellants under Section 323/34 is affirmed. All the appellants have remained in jail for some time. At this juncture, taking into consideration that incident is of the year 1992 and looking to minor nature of injury, the sentence is reduced to the period already undergone by the appellants.

40. **Criminal Appeal No.644 of 2002** is accordingly partly allowed. The appellants/accused are on bail. Their bail bonds stand discharged.

41. As far as appeal against acquittal of Rapait, Ishwar and Karmela Kujur (respondents/accused No. 7, 8 & 9 in ACQA No.451 of 2010) is concerned, our discussions herein-above also leads to conclusion that the finding of the learned trial Court that these persons were not involved in the alleged commission of offence appears to be plausible and does not suffer from any patent illegality warranting any interference. As far as their acquittal

are concerned, **Acquittal Appeal No.451 of 2010** filed by the complainant is therefore dismissed.

42. We also wish to place on record that in the connected appeal i.e. Criminal Appeal No.674 of 2002 filed by the villagers (Malki Bai & Ors.) against judgment of conviction and order of sentence under Sections 323, 332 and 333 read with Section 34 IPC, for assaulting police officers, has also been decided by us vide our judgment dated 14.3.2019, by which, though their conviction has been affirmed, their sentence has been reduced to the period already undergone by them.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Sd/-
(**Rajani Dubey**)
Judge