

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No.1277 of 2014**

1. Heerasingh, S/o. Jangli Singh, Aged About 30 Years R/o. Vill. Bijrakachhar, P.S. Lormi, Civil And Rev. Distt. Mungeli C.G.
2. Rammanohar @ Bacche S/o. Goduram Aged About 30 Years R/o. Vill. Bijrakachhar, P.S. Lormi, Civil And Rev. Distt. Mungeli C.G.
3. Jangli Singh S/o Nanhu Singh, Aged About 55 Years R/o. Vill. Bijrakachhar, P.S. Lormi, Civil And Rev. Distt. Mungeli C.G.,
4. Sangeeta Bai W/o Heerasingh Aged About 25 Years R/o. Vill. Bijrakachhar, P.S. Lormi, Civil And Rev. Distt. Mungeli C.G.
5. Bhagwaniya Bai, W/o Goduram, Aged About 50 Years, R/o. Vill. Bijrakachhar, P.S. Lormi, Civil And Rev. Distt. Mungeli C.G.
6. Sukhmat Bai, W/o Jangli Singh, Aged About 48 Years, R/o. Vill. Bijrakachhar, P.S. Lormi, Civil And Rev. Distt. Mungeli C.G. ---- **Appellants**

**Versus**

State Of Chhattisgarh, Through P.S. Lormi, Distt. Bilaspur Now Mungeli  
Chhattisgarh **....Respondent**

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|---------------|---|--------------------------------|
| For Appellant | : | Mr. Chitendra Singh, Advocate  |
| For State     | : | Mr. Neeraj Mehta, Panel Lawyer |

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**DB : Hon'ble Shri Justice Manindra Mohan Shrivastava****Hon'ble Smt. Justice Vimla Singh Kapoor****Judgment On Board by Manindra Mohan Shrivastava, J.****11.04.2019**

Heard.

There is a report received and it is confirmed by learned counsel for the parties also that during the pendency of this appeal, one of the appellant, Jangli Singh, died during the pendency of appeal, therefore, appeal of Jangli Singh stands abated.

1. This appeal is directed against impugned judgment of conviction and order

of sentence dated 20.06.2013 passed by Additional Sessions Judge Mungeli, District Bilaspur (CG) in Sessions Trial No.5/2011, whereby and whereunder, the appellants have been held guilty of commission of offence and sentenced as described below :

| Conviction                   | Sentence                                                                                                        |
|------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Under Section 302/149 of IPC | Life imprisonment along with fine of Rs.1000/- in default of payment of fine amount, further R.I. for 6 months. |
| Under Section 324/149 of IPC | R.I. for 1 year along with fine of Rs.500/- in default of payment of fine amount further R.I. for three months. |
| Under Section 324/149 of IPC | R.I. for 1 year along with fine of Rs.500/- in default of payment of fine amount further R.I. for 3 months.     |
| Under Section 324/149 of IPC | R.I. for 1 year along with fine of Rs.500/- in default of payment of fine amount further R.I. for 3 months.     |
| Under Section 324/149 of IPC | R.I. for 1 year along with fine of Rs.500/- in default of payment of fine amount further R.I. for 3 months.     |
| Under Section 324/149 of IPC | R.I. for 1 year along with fine of Rs.500/- in default of payment of fine amount, further R.I. for 3 months.    |
| Under Section 148 of IPC     | R.I. for 1 year along with fine of Rs.100/- in default of payment of fine amount further R.I. for 1 month.      |
| Under Section 147 of IPC     | R.I. for 1 year along with fine of Rs.100/- in default of payment of fine amount further R.I. for 1 month.      |
|                              | All the sentences run concurrently.                                                                             |

2. The prosecution story, as unfolded from the records of the case and the impugned judgment, is that Mahavir Singh (PW7) gave intimation regarding death of his brother Yaghdutt @ Raju on 30<sup>th</sup> of September, 2010, upon which, a merge in Ex.P/27 was recorded. It immediately followed recording of an FIR in Ex.P/28 at

the instance of Mahavir Singh (PW7), in which, it was stated that when the deceased Yaghdutt along with other persons, including injured witnesses Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) went to the house of appellant Heera Singh demanding that he should deposit the amount of Rs.7500/- collected for the purposes of organizing Pooja, Heera Singh was not found in his house and then, while searching, deceased and other persons reached the house of appellant Rammanohar @ Pachhe asking that Heera Singh should return the deposit money collected by him or he should return his own land, 3 appellants namely Sangeeta Bai, Sukhmat Bai, Bhagwania Bai started throwing chili powder solution as also acid which injured Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) and then they all started running and at this stage, Yaghdutt was assaulted with axe and crowbar by Heera Singh, Rammanohar @ Pachhe and Jangli Singh, due to which, he sustained multiple injuries on vital parts and other parts of the body and succumbed to death. It was also alleged that Mahavir Singh (PW7) was also assaulted with the help of axe by Heera Singh, due to which, he also sustained one head injury. On the basis of this allegation, the police registered offences under Section 302, 324 IPC with aid of Section 149 of IPC as also under Section 147, 148 of IPC against the appellants. The postmortem of dead body of Yaghdutt was conducted by Dr. S.P.S. Sidar (PW14) and prepared report Ex.P/44A. Number of injuries including those on the neck, face and other parts of the body of the deceased Yaghdutt were found. The opinion was that the death was due to multiple injuries leading to bleeding, shock, which according to the doctor was homicidal in nature. Injured witnesses Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) were also sent for medical examination and Dr. R.S. Ayam (PW11) examined and prepared MLC report in respect of each of them and they were found having sustained burnt injury, which according to the opinion of the doctor, was caused by acid. Investigation culminated in filing of charge-sheet against all the appellants. Learned Trial Court framed charges against the appellants for commission of offence under Section 302, 324 of IPC with the aid of Section 149 of IPC that they all formed an unlawful assembly with the common object to murder Yaghdutt and caused grievous injury to other witnesses. The charges were also framed under Section 147, 148 of IPC. The appellants having abjured guilt, were put to trial.

3. In order to prove its case, the prosecution mainly relied upon the eyewitness account of the incident given by Chhannu (PW1), Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8). Dr. S.P.S. Sidar (PW14)

proved injuries found on the body of the deceased and Dr. R.S. Ayam (PW11) proved injuries found on Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8). Relying upon the prosecution evidence, learned Trial Court held the appellants guilty of commission of offence and sentenced them as described herein above.

4. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellants would argue that the conviction of the appellants is unsustainable in law because all of them have admitted that there were no lights at the spot and the incident happened in the night. The witnesses have been given suggestion that they were standing far away from the place of incident and in the absence of light, it was not possible for them to identify the assailants, who caused injury to Yaghdutt and Mahavir Singh. It is argued that the prosecution has come out only with one side of the story suppressing the genesis of dispute. According to him, the prosecution evidence, itself, proves that a crowd had gathered in front of the house of Rammanohar @ Pachhe, the appellant, some of whom had even come inside the house. Therefore, it is not the appellants but the other group led by deceased Yaghdutt, who were the aggressor having come to the house of Rammanohar @ Pachhe in search of Heera Singh for extracting money from him. These circumstances, by itself, render it highly improbable that the crowd became violent and even started assaulting the appellants and if in that course of events, certain injuries were found on the body of the deceased and other witnesses, even if it were to be assumed that it was caused by some of the appellants, it was only in bonafide exercise in right of private defence and nothing more. Learned counsel for the appellants, relying upon two judgments of the Hon'ble Supreme Court in the cases of **Darshan Singh Vs. State of Punjab & another, AIR 2010 SC 1212** and **Jangir Singh Vs. State of Punjab, 2018(15) Scale (Volume XV-1)** would argue that present would only be a case of exercise of right of private defence and from the injuries, it cannot be said that this exercise of right of private defence was grossly disproportionate to the threat because the appellants were surrounded by crowd of villagers which had gone violent. In this circumstance when the people had come in the night in a crowd, the appellants were left with no remedy except to save themselves to somehow disburse the crowd. Learned counsel for the appellants would further argue that even if it is held that the deceased Yaghdutt sustained certain injuries by some of the appellants, all of them, cannot be held vicariously liable for individual overt act because in the circumstances, there is no

material to prove that there was unlawful assembly with a pre-meeting of mind and formation of common object in furtherance of which, assault was given to Yaghdutt leading to his death and those, who have not assaulted Yaghdutt or have given assault on Yaghdutt on other parts of the body which cannot be said to be vital, could at the most, be convicted for their individual overt act and nothing more.

5. On the other hand, learned State counsel would argue that the prosecution case is proved from the evidence of injured witnesses Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8), who have coherently stated in their deposition that when the villagers went to the house of Heera Singh to ask him to return to deposit money collected by him in the name of organizing Pooja or to return the land, Heera Singh was not found and then they went to house of Rammanohar @ Pachhe, where Heera was present. But at that stage, without there being any apprehension of any violence, the appellants opened attack on the villagers and started throwing chili powder solution, acid and then appellants Heera Singh, Rammanohar @ Pachhe and Jangli Singh armed with axe and crowbar, started assaulting Mahavir Singh and Yaghdutt. Mahavir Singh sustained one injury on his head and these three appellants assaulted Yaghdutt on various parts of the body including face and neck in a brutal manner. Due to these multiple injuries, Yaghdutt died. Relying upon the decision of the Hon'ble Supreme Court in the case of **State of Karnataka Vs. Chikkahottappa @ Varade Gowda & Ors., AIR 2008 SC 2692**, it is submitted that merely because the injured had come to the house of Rammanohar @ Pachhe, it cannot be said that the accused did not form unlawful assembly with the common object of killing and assaulting others. According to him, formation of such assembly could take place immediately and common object executed with promptness. Therefore, all the appellants are vicariously liable for the commission of offence of murder of Yaghdutt, even though, Yaghdutt was assaulted, only by Heera Singh, Jungli Singh and Rammanohar @ Pachhe.

6. We have heard learned counsel for the parties and perused the records.

7. The merged intimation and FIR lodged by Mahavir Singh (PW7), the brother of the deceased, is to the effect that Yaghdutt, Mahavir Singh and other villagers had gone to the house of Heera Singh. This was in connection with money collected by Heera Singh for organizing 'Pooja' but not deposited with Pooja Samiti (society) for organizing 'Pooja', according to FIR, when Heera Singh was traced and he was found in the house of Rammanohar @ Pachhe where deceased and victim went

alongwith villagers, the appellants started throwing chili powder, acid on the villagers and then Mahavir Singh, Yaghdutt Singh were assaulted with the help of axe, crowbar by appellants Heera Singh, Jangli Singh and Rammanohar @ Pachhe, in which incident, Yaghdutt died and others sustained injury.

8. The evidence of Dr. S.P.S. Sidar (PW14) proves that he had conducted postmortem of the dead body of Yaghdutt and following injuries were found on the dead body.

“.....सिर एवं चेहरे में खून जमा था। सिर के बाल पूरी तरह खून से सने हुए हुए थे। तबल मृतक के चेहरे में होरीजेंटल गड़ा हुआ था। चेहरे में, दोनो आंखो, आंखो के चारो तरफ, उपरी ओंठ में रासायनिक द्रव्य से जला था। तथा गले में सामने की ओर भी जला था। जला हुआ भाग काला हो गया था। चेहरे का जला हुआ भाग हरे पीले रंग का हो गया था। आंख की पुतली पीले रंग की हो गयी थी। अंदर धंसी हुई थी मैंने निम्नानुसार मृत्युपूर्व का चोट पाया था।

1. एक कटा घाव 5.5x1.5x5.5 ईंच के आकार का चेहरे में बांयी तरफ था। लेफ्ट मेजिला से लेकर नाक से होते हुए दाहिने मेजिला तक था। तथा चेहरे को दो भागो में विभाजित कर रहा था।

2. एक कटा घाव ढाई x डेढ़ ईंच x डेढ़ ईंच आकार का उर्ध्वाधर आकार का दाहिने गले में कान के नीचे था। जिससे मसल्स कट गये थे। तथा न्यूरो कट गये थे।

3. एक कटा घाव 2x2x1 ईंच के आकार का होरिजेंटली दाहिने भुजा में कंधे के पास था।

4. एक कटा घाव साढ़े तीन x 2 /डेढ़ ईंच के आकार का था। जो दाहिने जांघ में था।

5. एक खरोंच एवं कंटूजन 4.5 ईंच के आकार का क्षैतिज था। जो बांये छाती में 8 व 10 वे रिप्स में था।”

9. The injuries found on the body of Yaghdutt were multiple. Apart from cut injury found on his left thigh and scratches and contusion on the chest,Tabbal (crowbar) was found pierced across the face which was removed by doctor during postmortem. His face and neck were also found burnt with acid. There was linear cut on his face across left to right maxilla over the nose dividing the face on two parts, a cut injury in the neck resulting in cut of muscles and neuro vascular. One cut injury was also found on the right arm near the shoulder which has horizontal. The cause of death as stated by the doctor was outcome of injury, multiple in

nature sustained by the deceased. Apparently, the nature and extent of injury was homicidal in nature.

10. As to how the incident happened has been narrated by as many as 5 prosecution witnesses namely : Chhannu (PW1), Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8), out of which, Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) have been found injured by acid.

11. The evidence of the eyewitnesses is coherent both with regard to genesis of the incident and the manner in which it happened. Chhannu (PW1) has deposed that at about 8:30 in the night, the villagers had gone to the house of Heera Singh to collect Rs.7500/- collected by him in connection with organizing 'Pooja' but Heera Singh was not found in the house and thereafter, he went to the house of Rammanohar @ Pachhe along with Mahavir, Gyan Singh, Lalji and Ramkumar and others and when they went, wives of Jangli, Golu, Heera Singh started throwing chili powder solution and acid on them and then Heera Singh assaulted Mahavir Singh on his head with the help of axe. He also assaulted Raju on his leg, Pachhe gave an axe assault in the neck and Jangli assaulted with the help Tabbali (small crowbar) on the head of Raju. Raju died on the spot. This witness has been subjected to detailed cross-examination and what has been elicited in his cross-examination is that there were no lights at the spot. It has also come that about 30 to 40 villagers had gone to the house of Heera Singh for collecting amount. We find that in the cross-examination, while it has been elicited that there was no electricity and solar bulbs were not on but the witnesses has repeatedly stated that there was an arrangement of lamp and the suggestion that this witness could not witness the incident has been denied emphatically.

12. Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) all are injured witnesses and they have deposed in their evidence that when they, along with other villagers went to the house of Heera Singh, Heera Singh was not found and then went to the house of Rammanohar @ Pachhe where Rammanohar @ Pachhe, Heera Singh and Jangli Singh were present along with their respective wives and it is said that the acid and chili powder was thrown on them, due to which, they all started running away from the spot and then Heera Singh assaulted Mahavir on his head and Yaghdutt @ Raju on his thigh and then Rammanohar @ Pachhe assaulted Yaghdutt @ Raju in his neck and Jangli gave assault on the head of Yaghdutt @ Raju with the help of crowbar, due to which,

Yaghdutt @ Raju died at the spot. Similar suggestion have been given in the cross-examination to these witnesses that there were no electricity and light, which all of them, have admitted but at the same time, they have clearly stated in their cross-examination that lamps were on and they all could see the incident of assault. The genesis of dispute has also been coherently stated by all these witnesses that the villagers had come to the house of Heera Singh, then went to the house of Rammanohar @ Pachhe to collect money, which was kept by Heera Singh.

13. Dr. R.S. Ayam (PW11) examined these injured witnesses Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) and has prepared his report also, in which, each of these witnesses have been found having suffered burnt injury, which according to the opinion of the doctor, was caused by acid. These four witnesses are credible witnesses and their eyewitnesses account with regard to the manner, in which, the incident happened, genesis and the overt act of the appellants becomes credit-worthy and worth placing reliance upon.

14. We shall now deal with the submission of learned counsel for the appellants that present is a case where the appellants are entitled to protection on account of bonafide exercise of their right of private defence. In order to appreciate the submission of learned counsel for the appellants, it is appropriate to take into consideration the relevant provision contained in the Indian Penal Code with regard to scope and extent of the right of private defence. Those provisions are extracted herein below :

S.96. Things done in private defence.—Nothing is an offence which is done in the exercise of the right of private defence.

S.97. Right of private defence of the body and of property.—Every person has a right, subject to the restrictions contained in section 99, to defend—

(First) — His own body, and the body of any other person, against any offence affecting the human body;

(Secondly) —The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

S.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.]

S.101. When such right extends to causing any harm other than death.—If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

S.102. Commencement and continuance of the right of private defence of the body.—The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

S.106. Right of private defence against deadly assault when there is risk of harm to innocent person.—If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.”

15. The scope and ambit of right of private defence, the circumstances and the extent to which it could be exercised so as to afford protection to one, who has exercised his right was considered by the Hon'ble Supreme Court in the case of *Darshan Singh (supra)*, placing the rule as to the right of private defence considered in various judgments as below :

“24. The rule as to the right of private defence has been stated by Russell on Crime (11th Edn., Vol.1, p.491) thus:

"..... a man is justified in resisting by force anyone who manifestly intends and endeavours by violence or surprise to commit a known felony against either his person, habitation or property. In these cases he is not obliged to retreat, and may not merely resist the attack where he stands but may indeed pursue his adversary until the danger is ended, and if in a conflict between them he happens to kill his attacker, such killing is justifiable."

When enacting [sections 96 to 106](#) of the Indian Penal Code, excepting from its penal provisions, certain classes of acts, done in good faith for the purpose of repelling unlawful aggressions, the Legislature clearly intended to arouse and encourage the manly spirit of self-defence amongst the citizens, when faced with grave danger. The law does not require a law-abiding citizen to behave like a coward when confronted with an imminent unlawful aggression. As repeatedly observed by this court there is nothing more degrading to the human spirit than to run away in face of danger. The right of private defence is thus designed to serve a social purpose and deserves to be fostered within the prescribed limits.

**25.** Hari Singh Gour in his celebrated book on Penal Law of India (11th Edition 1998-99) aptly observed that self-help is the first rule of criminal law. It still remains a rule, though in process of time much attenuated by considerations of necessity, humanity, and social order. According to Bentham, in his book 'Principles of Penal Laws' has observed "the right of defence is absolutely necessary". It is based on the cardinal principle that it is the duty of man to help himself.

**26.** Killing in defence of a person, according to the English law, will amount to either justifiable or excusable homicide or chance medley, as the latter is termed, according to the circumstances of the case.

**27.** But there is another form of homicide which is excusable in self-defence. There are cases where the necessity for self-defence arises in a sudden quarrel in which both parties engage, or on account of the initial provocation given by the person who has to defend himself in the end against an assault endangering life.

**28.** The [Indian Penal Code](#) defines homicide in self-defence as a form of substantive right, and therefore, save and except the restrictions imposed on the [right of the Code](#) itself, it seems that the special rule of English Law as to the duty of retreating will have no application to this country where there is a real need for defending oneself against deadly assaults.

**29.** The right to protect one's own person and property against the unlawful aggressions of others is a right inherent in man. The duty of protecting the person and property of others is a duty which man owes to society of which he is a member and the preservation of which is both his interest and duty. It is, indeed, a duty which flows from human sympathy. As Bentham said: "It is a noble movement of the heart, that indignation which kindles at the sight of the feeble injured by the strong. It is noble movement which makes us forget our danger at the first cry of distress..... It concerns the public safety that every honest man should consider himself as the natural protector of every other." But such protection must not be extended beyond the necessities of the case, otherwise it will encourage a spirit of lawlessness and disorder. The right has, therefore, been restricted to offences against the human body and those relating to aggression on property.

**30.** 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 settled position of law that a right of self-defence is only right to defend oneself and not to retaliate. It is not a right to take revenge.

**31.** Right of private defence of person and property is recognized in all free, civilised, democratic societies within certain reasonable limits. Those limits are dictated by two considerations : (1) that the same right is claimed by all other members of the society and (2) that it is the State which generally undertakes the responsibility for the maintenance of law and order. The citizens, as a general rule, are neither expected to run away for safety when faced with grave and imminent danger to their person or property as a result of unlawful aggression, nor are they expected, by use of force, to right the wrong done to them or to punish the wrong doer of commission of offences.

**32.** A legal philosopher Michael Gorr in his article "Private Defense" (published in the Journal "Law and Philosophy" Volume 9, Number 3 / August 1990 at Page 241) observed as under:

"Extreme pacifists aside, virtually everyone agrees that it is sometimes morally permissible to engage in what Glanville Williams has termed "private defence", i.e., to inflict serious (even lethal) harm upon another person in order to protect oneself or some innocent third party from suffering the same".

**33.** 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. 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. 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.

**34.** This court in number of cases have laid down that when a person is exercising his right of private defence, it is not possible to weigh the force with which the right is exercised. The principle is common to all civilized jurisprudence. In *Robert B. Brown v. United States of America* (1921) 256 US 335, it is observed that a person in fear of his life is not expected to modulate his defence step by step or tier by tier. Justice Holmes in the aforementioned case aptly observed "detached reflection cannot be demanded in the presence of an uplifted knife".

**35.** According to [Section 99](#) of the Indian Penal Code the injury which is inflicted by the person exercising the right should commensurate with the injury with which he is threatened. At the same time, it is difficult to expect from a person exercising this right in good faith, to weigh "with golden scales" what maximum amount of force is necessary to keep within the right every reasonable allowance should be made for the bonafide defender. The courts in one voice have said that it would be wholly unrealistic to expect of a person under assault to modulate his defence step by step according to attack.

**36.** The courts have always consistently held that the right of private defence extends to the killing of the actual or potential assailant when

there is a reasonable and imminent apprehension of the atrocious crimes enumerated in the six clauses of [section 100](#) of the IPC. According to the combined effect of two clauses of [section 100](#) IPC taking the life of the assailant would be justified on the plea of private defence; if the assault causes reasonable apprehension of death or grievous hurt to the person exercising the right. A person who is in imminent and reasonable danger of losing his life or limb may in the exercise of right of self-defence inflict any harm, even extending to death on his assailant either when the assault is attempted or directly threatened.....”

16. Their Lordship also took into consideration the development of law and the crystallization of the legal position from a large number of cases decided by the Hon'ble Supreme Court and other Courts from time to time as below :

**38.** The legal position which has been crystallized from a large number of cases is that law does not require a citizen, however law-abiding he may be, to behave like a rank coward on any occasion. This principle has been enunciated in *Mahandi v. Emperor* [(1930) 31 Criminal Law Journal 654 (Lahore)]; *Alingal Kunhinayan & Another v. Emperor* Indian Law Reports 28 Madras 454; *Ranganadham Perayya, In re*(1957) 1 Andhra Weekly Reports 181.

**39.** The law clearly spells out that right of private defence is available only when there is reasonable apprehension of receiving the injury. The law makes it clear that it is necessary that the extent of right of private defence is that the force used must bear a reasonable proportion of the injury to be averted, that is the injury inflicted on the assailant must not be greater than is necessary for the protection of the person assaulted. A person in fear of his life is not expected to modulate his defence step by step, but at the same time it should not be totally disproportionate.

**40.** A Full Bench of the Orissa High Court in [State of Orissa v. Rabindranath Dalai & Another](#) 1973 CrL LJ 1686 (Orissa) (FB) summarized the legal position with respect to defence of person and property thus: "In a civilized society the defence of person and property of every member thereof is the responsibility of the State. Consequently, there is a duty cast on every person faced with apprehension of imminent danger of his person or property to seek the aid of the machinery provided by the State but if immediately such aid is not available, he has the right of private defence.

**41.** [In Laxman Sahu v. State of Orissa](#) 1986 (1) Supp SCC 555 this court observed that it is needless to point out in this connection that the right of private defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his creation.

**42.** [In Raghavan Achari v. State of Kerala](#) 1993 Supp. (1) SCC 719 this court observed that "No court expects the citizens not to defend themselves especially when they have already suffered grievous injuries".

**43.** [In Jagtar Singh v. State of Punjab](#) AIR 1993 SC 970 this court held that "the accused has taken a specific plea of right of self-defence and it is not necessary that he should prove it beyond all reasonable doubt. But if the circumstances warrant that he had a reasonable apprehension that death or grievous hurt was likely to be caused to him by the deceased or their companions, then if he had acted in the right of self- defence, he would be doing so lawfully."

**44. [In Puran Singh & Others v. The State of Punjab](#)** (1975) 4 SCC 518 this court observed that in the following circumstances right of private defence can be exercised :-

- i. There is no sufficient time for recourse to the public authorities
- ii. There must be a reasonable apprehension of death or grievous hurt to the person or danger to the property concerned.
- iii. More harm than necessary should not have been caused.

**45. [In Bhagwan Swaroop v. State of Madhya Pradesh](#)** (1992) 2 SCC 406 this court had held as under:-

"It is established on the record that Ramswaroop was being given lathi blows by the complainant party and it was at that time that gun-shot was fired by Bhagwan Swaroop to save his father from further blows. A lathi is capable of causing a simple as well as a fatal injury. Whether in fact the injuries actually caused were simple or grievous is of no consequence. It is the scenario of a father being given lathi blows which has to be kept in mind and we are of the view that in such a situation a son could reasonably apprehend danger to the life of his father and his firing a gun-shot at that point of time in defence of his father is justified."

**47. [In Kashmiri Lal & Others v. State of Punjab](#)** (1996) 10 SCC 471, this court held that "a person who is unlawfully attacked has every right to counteract and attack upon his assailant and cause such injury as may be necessary to ward off the apprehended danger or threat."

**48. [In James Martin v. State of Kerala](#)** (2004) 2 SCC 203, this court again reiterated the principle that 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.

**49. [In Gotipulla Venkatasiva Subbrayanam & Others v. The State of Andhra Pradesh & Another](#)** (1970) 1 SCC 235, this court held that "the right to private defence is a very valuable right and it has been recognized in all civilized and democratic societies within certain reasonable limits."

**50. [In Mahabir Choudhary v. State of Bihar](#)** (1996) 5 SCC 107 this court held that "the High Court erred in holding that the appellants had no right to private defence at any stage. However, this court upheld the judgment of the sessions court holding that since the appellants had right to private defence to protect their property, but in the circumstances of the case, the appellants had exceeded right to private defence. The court observed that right to private defence cannot be used to kill the wrongdoer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensue in which case that person would have full measure of right to private defence including killing".

**51. [In Munshi Ram & Others v. Delhi Administration](#)** (1968) 2 SCR 455, this court observed that "it is well settled that even if the accused does not plead self defence, it is open to consider such a plea if the same arises from the material on record. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of materials available on record."

**52. [In State of Madhya Pradesh v. Ramesh](#)** (2005) 9 SCC 705, this court observed "every person has a right to defend his own body and the body of another person against any offence, affecting the human body. The right of self defence commences as soon as reasonable apprehension arises and it is co-terminus with the duration of such apprehension. Again, it is defensive and not retributive right and can be exercised only in those cases where there is no time to have recourse to the protection of the public authorities."

**53. [In Triloki Nath & Others v. State of U.P.](#)** (2005) 13 SCC 323 the court observed as under:-

"No decision relied upon by the Appellants lays down a law in absolute terms that in all situations injuries on the persons of the accused have to be explained. Each case depends upon the fact situation obtaining therein."

**54. [In Vidhya Singh v. State of Madhya Pradesh](#)** (1971) 3 SCC 244, the court observed that "the right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this court, to adopt tests by detached objectivity which would be so natural in a court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances."

**55. [In Jai Dev v. State of Punjab](#)** AIR 1963 SC 612 the court held as under:-

"as soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence."

**56.** In order to find out whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

**17.** Upon consideration of the provision of law and plethora of decision, following principles were laid down -

**"58.** The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly

confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is comterminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) [The Indian Penal Code](#) confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

18. The aforesaid legal position was also reiterated by the Hon'ble Supreme Court in the case of Jangir Singh (supra). In that case also, development of law on the aspect of exercise of right of private defence and protection available under the law was taken into consideration with reference to various decision including the decision in the case of Darshan Singh (supra), referred to above. It was held that the settled law is that the right to private defence cannot be claimed by the accused, if disproportionate harm has been caused, while defending himself or any other person. However, if the accused has not caused disproportionate harm, then benefit of Exception-II to Section 300 of IPC, could be availed as held in **Bhanwar Singh V. State of Madhya Pradesh, (2008) 16 SCC 657.**

19. From the aforesaid decision, it is clearly discerned as the settled legal position that the right of private defence is available only when there is reasonable apprehension of receiving injury and the law makes it clear that it is necessary that

the extent of right of private defence is that the force used must bear a reasonable proportion to the injury to be averted and further that the injury inflicted on the assailant must not be greater than what is necessary for the protection of the person assaulted.

20. In **Munshi Ram & Others V. Delhi Administration, (1968) 2 SCR 455**, it has been held that even if the accused does not plead self-defence, it is open for the Court to consider such a plea if the same arises from the material on record and that the burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of material available on record.

21. In the present case, though we find that neither in the cross-examination of the prosecution witnesses nor in statement under Section 313 Cr.P.C. or by leading defence witness, any case is sought to be advanced by accused in his defence that it was a case of exercise of right of private defence, an argument has been raised before us that the appellants are entitled to protection as overt act of assault, if any, found to have been committed by them would be no offence as this was all done in exercise of right of private defence.

22. Having held that some of the appellants threw chili powder and acid and some of them assaulted Yaghdutt and Mahavir Singh at the spot, we do not find any material on record of the case, even by applying principles of preponderance of probability that the appellants had reasonable apprehension in their mind that the villagers, who had gone to the house of Rammanohar @ Pachhe, had turned violent, started assaulting, thereby giving reasonable apprehension that if the appellants do not open a counter attack, they would sustain grievous injury or would be killed. Nothing has come in the evidence of the prosecution witnesses nor has it been elicited in the cross-examination that they all had come armed with weapon or some of them had arrived in the house of Rammanohar @ Pachhe, armed with weapon nor is there any iota of evidence that the villagers including deceased and other injured witnesses Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) had started hurling abuses or giving any threat of life or injury from which it could be discerned that the appellants had developed a reasonable apprehension of grievous injury or death in their mind. The entire set of evidence only proves that the villagers had come to the house of Rammanohar @ Pachhe, they were demanding Heera Singh to deposit amount collected by him. That by itself, without anything more, cannot be said to be sufficient to create

reasonable apprehension that they would be causing grievous hurt or killing any of the appellants, much less Heera Singh. Irrespective of individual facts and circumstances of a given case, individual or collective overt act or gesture, it cannot be held that invariably, in all cases where large number of persons gathered in the house of a person, that by itself, without anything more, would necessarily give rise to reasonable apprehension of injury and assault so as to justify exercise of right of private defence. The evidence on record of the present case, at the most proves that some of the villagers had come to the house of Heera Singh and Heera Singh was not found, they had all gone to the house of Rammanohar @ Pachhe, where Heera Singh was present. The other part of the evidence is that attempt was made by Heera Singh to give back money collected by him for organizing Pooja. We are unable to hold by any standard, that by itself, would be sufficient for the appellants accused to exercise their right of private defence to go to the extent of throwing acid on the villagers, who had come and then some of the appellants opening assault with dangerous weapon on vital part of the body of Yaghdutt and Mahavir Singh.

23. We, however, are unable to uphold the finding of learned Trial Court in so far as conviction of the appellants for commission of offence under Section 302 of IPC with the aid of Section 149 of IPC is concerned. The essence of commission of offence under Section 149 of IPC lies in formation of unlawful assembly, a meeting of mind and formation of common object. It is only when these essential ingredient of Section 149 of IPC are proved by prosecution beyond reasonable doubt that the members of unlawful assembly can be held vicariously liable for the criminal overt act for other members of unlawful assembly, even though, they may not have actually committed those criminal overt act. The principles in this regard has been reiterated by the Supreme Court in plethora of decision and we wish to refer to one of the decision in the case of *State of Karnataka (supra)*, cited by learned State counsel before us, wherein, the scope and applicability of Section 149 of IPC discussed as below :

8. [Section 149, IPC](#) consists of two parts. The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under [Section 141](#), if it can be held that the offence was such as the members knew was likely to be committed and this is what is required in the second part of the section. The

purpose for which the members of the assembly set out or desired to achieve is the object. If the object desired by all the members is the same, the knowledge that is the object which is being pursued is shared by all the members and they are in general agreement as to how it is to be achieved and that is now the common object of the assembly. An object is entertained in the human mind, and it being merely a mental attitude, no direct evidence can be available and, like intention, has generally to be gathered from the act which the person commits and the result therefrom. Though no hard and fast rule can be laid down under the circumstances from which the common object can be culled out, it may reasonably be collected from the nature of the assembly, arms it carries and behaviour at the time of or before or after the occurrence. The word 'knew' used in the second limb of the section implies something more than a possibility and it cannot be made to bear the sense of 'might have been known'. Positive knowledge is necessary. When an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object. That, however, does not make the converse proposition true; there may be cases which would come within the second part but not within the first part. The distinction between the two parts of [Section 149](#) cannot be ignored or obliterated. In every case it would be an issue to be determined, whether the offence committed falls within the first part or it was an offence such as the members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part. However, there may be cases which would be within the first part but offences committed in prosecution of the common object would also be generally, if not always, be within the second part, namely, offences which the parties knew to be likely to be committed in the prosecution of the common object. ([See Chikkarange Gowda and others v. State of Mysore](#) AIR 1956 SC 731). These aspects were also recently highlighted in [Chandra & Ors. v. State of U.P. and Anr.](#) [2004 (5) SCC 141].

24. If we apply the principles laid down by the Supreme Court to the facts and circumstances of the present case, we find that present is not a case which can be said to be commission of offence of murder of Yaghdutt by unlawful assembly with that common object. This is so because even according to the prosecution, the villagers had gone to the house of Heera Singh in the night at about 8:30 p.m. and when Heera Singh was not found, tracing Heera Singh, they reached the house of Rammanohar @ Pachhe. It was only when the villagers asked Heera Singh to return money that the assault is said to have been given. It appears that large number of villagers had assembled in the house of Rammanohar @ Pachhe. At this stage, three appellants namely Sangeeta Bai, Bhagwania Bai and Sukhmat Bai started throwing chili powder solution and acid on the villagers, who had gathered therein. This could probably be to disburse the crowd. There is no evidence that three ladies and all other accused namely Heera Singh, Rammanohar @ Pachhe and Jangli Singh had come together, there was meeting of mind leading to formation of unlawful assembly and with a common object, some of them assaulted the deceased, Yaghdutt. As we see, it had all developed

instantaneously at the spot. While three ladies had thrown chili powder and acid, Heera Singh, Rammanohar @ Pachhe and Jangli Singh picked up dangerous weapon in their hands and then started assaulting. Mahavir Singh has been assaulted by Heera Singh on his head but no fracture injury has been found. Heera Singh is also said to have given blow on the leg of Raju (Yaghdutt) and Rammanohar @ Pachhe is said to have been given assault on the neck of Yaghdutt, this assault was given by him with the help of an axe though Jangli Singh is said to have given assault by crowbar on the face of Raju, the appeal of Jangli has been abated, due to his death.

25. As we have come to the conclusion that the appellants could not be convicted with the aid of Section 149 of IPC because the prosecution failed to prove formation of unlawful assembly and assault given to Yaghdutt in furtherance of common object, each of the appellants would be liable for their individual overt act.

26. Heera Singh is proved to have assaulted Mahavir Singh on his head. As there was no fracture injury, Heera Singh would be liable for commission of offence under Section 324 of IPC. Heera Singh also assaulted deceased Yaghdutt though on his leg and the medical evidence proves that there was a cut injury in his thigh. Heera Singh would be liable for commission of offence under Section 324 IPC and that injury caused by him in the leg of deceased Yaghdutt, is said to have given assault in the neck of the deceased Yaghdutt with the help of an axe, due to which, muscles and neuro-vascular were cut and that is said to be one of the injury being cause of death. The intention to murder the deceased is, therefore, manifest. The other appellants namely Sangeeta Bai, Bhagwania Bai and Sukhmat Bai would be liable only to the extent of their individual overt act i.e. of throwing chili power and acid on the deceased and four injured witnesses namely Gyan Singh (PW2), Jonhu (PW4), Mahavir Singh (PW7), Ramanuj (PW8) rendering them liable for commission of offence under Section 324 of IPC.

27. In the result, appellants Heera Singh, Sangeeta Bai, Bhagwania Bai and Sukhmat Bai are held liable for commission of offence under Section 324 of IPC. In the result, conviction of the appellant Heera Singh for commission of offence under Section 324 of IPC is affirmed. The period of sentence awarded to them for commission of offence under Section 324 of IPC is also not interfered with.

28. However, Heera Singh and three ladies namely : Sangeeta Bai, Bhagwania

Bai and Sukhmat Bai are acquitted of charges of commission of offence under Section 302 read with Section 149 IPC.

29. The appellant Rammanohar @ Pachhe is held guilty of commission of offence under Section 302 of IPC and his sentence for life imprisonment is also not interfered with.

30. The conviction of all the appellants under Section 147 & 148 IPC and the sentence awarded to them for those offences are also affirmed.

31. In the result, the appeal of Rammanohar @ Pachhe is dismissed, whereas, appeal of Jangli Singh stands abated. The appeal of Heera Singh and three ladies namely : Sangeeta Bai, Bhagwania Bai and Sukhmat Bai are partly allowed in the manner and to the extent stated above.

32. As Heera Singh and three ladies namely : Sangeeta Bai, Bhagwania Bai and Sukhmat Bai have already undergone jail sentence awarded to them for commission of offence under Section 324 IPC, they be set at liberty.

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

**Sd/-**  
**(Vimla Singh Kapoor)**  
**Judge**