

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Appeal No. S-570-SB of 2000

Paramjit Singh

.....Appellant

versus

State of Punjab

.....Respondent

Crl. Appeal No. S-642-SB of 2000

Bakhshi Ram and another

.....Appellants

versus

State of Punjab

.....Respondent

Date of Decision: May 23, 2019

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Deepanshu Gupta, Advocate
for the appellant in Crl. Appeal No. S-570-SB of 2000

Mr. Gautam Dutt, Advocate and
Mr. Ishwar Lal, Advocate
for the appellants in Crl. Appeal No. S-642-SB of 2000

Mr. H.S. Sullar, DAG Punjab

Sudhir Mittal, J.

This common judgment shall dispose of Crl. Appeal No. S-570-SB of 2000 and Crl. Appeal No. S-642-SB of 2000 as they arise out of the same judgment dated 14.06.2007 passed by the Court of Sessions Judge, Jalandhar.

2. FIR No. 109 dated 01.10.1993 came to be registered at Police Station Division No. 6, Jalandhar, under Sections 307, 326, 323, 324, 452, 429, 506, 148,

149 of Indian Penal Code (45 of 1860) (for short 'IPC') and Sections 25, 27 of the Arms act, 1959. A total of seven persons were named as accused, out of whom four were acquitted. The appeals have been filed by three persons namely Bakshi Ram, Rajinder Kumar @ Kala and Paramjit Singh.

3. According to the case of the prosecution, 18 kanals of land situated in Mohalla Abadpura was owned by the complainant party and 30-32 rooms had been constructed thereupon. The same had been rented out. A civil dispute was going on regarding this property between the complainant party and the accused party. At about 11.00 p.m. on 30.09.1993, the accused persons came to the spot armed with deadly weapons alongwith 30-35 other people and started demolishing the rooms constructed at the spot. When the complainant party tried to stop these persons, Bakshi Ram fired from his .12 bore gun injuring Surjit Ram. Paramjit Singh also fired from his .12 bore gun at Surjit Ram. Rajindner Kumar @ Kala gave a kirpan blow on the head and shoulder of Harbhajan Dass and some unknown persons gave a blow with a hockey stick on the head of Karmi. On raising an alarm, the accused persons ran away from the spot.

4. As mentioned earlier, out of seven persons, four were acquitted. Learned Sessions Judge also found on the basis of evidence on record that the property on which the occurrence took place was infact in the possession of the accused persons on the date of the incident as possession thereof had been handed over to them in execution of a decree on 30.05.1993. Thus, all accused were acquitted of the charges under Sections 452, 148 and 149 IPC. He, however, held that the accused persons had no right of private defence and, thus, convicted Bakshi Ram and Paramjit Singh under Section 308 IPC and Section 27 of the Arms Act, 1959. Rajinder Kumar @ Kala was convicted under Section 324 IPC.

5. Learned senior counsel for the appellants submits that the finding of

the learned Sessions Judge that the appellants did not possess the right of private defence is flawed and is based on failure to appreciate the evidence on record. The evidence on record and the circumstances of the case clearly establish that the complainant party trespassed into the property of the accused persons and in exercise of right of private defence some injuries were caused to two persons. Existence of the right of private defence can be proved on the basis of preponderance of probabilities and the said right should be widely construed. Since the appellants caused injuries in exercise of their right of private defence, they are entitled to be acquitted. Reliance is placed upon *Satya Narain Yadav vs. Gajanand and another, 2008(3) RCR(Criminal) 954*.

6. On the other hand learned State counsel submits that even if it is held that the appellants acted in exercise of the right of private defence, they exceeded the said right and, thus, have been rightly convicted.

7. Learned senior counsel for the appellants submits that the incident took place at about 11.00 p.m. on 30.09.1993. The injured were examined by Dr. Romesh Kumar PW-1 at about 12.05 a.m. as is evident from his statement. The time of the incident can be fixed with reference to this statement as this witness has deposed that the duration between medical examination and inflicting of the injury was about one hour. Surjit Ram (one of the injured persons) suffered eight injuries and all of them were lacerated wounds on the hands or legs. Injury No. 8 of Surjit Ram was declared simple in nature while the nature of other injuries was not opined upon as they were referred for surgeon opinion. The other injured person Harbhajan Dass suffered two injuries and both were referred for surgeon opinion. Dr. Ashok Nanda PW-2 examined the injuries referred and declared that there were no fractures. All the injuries were, thus, simple in nature. He also referred to the cross-examination of Surjit Ram PW-5 (injured person) as well as Jagiri Lal PW-7

(complainant) wherein they have admitted that the houses of the complainant party were at a distance of 2-3 Kms from the place of the incident. Accordingly, it is argued that the complainant side came to the property in possession of the accused party at around 11.00 p.m. from a distance of about 2-3 Kms. Obviously, they had come with the intention of taking forcible possession of land, possession of which had been handed over about four months earlier. Thus, the offence of criminal trespass defined by Section 441 IPC is attracted. In respect of such an offence, Section 104 IPC provides the right of private defence to the extent of causing any harm other than death to the wrong doer. This is of course subject to the provisions of Section 99 IPC but the said provision does not come into play as the complainant side were not public servants/acting in pursuance to directions given by public servant. Considering the time of the incident, the accused party could not even have resorted to the protection of any public authority. Thus, the learned Sessions Judge was in error in concluding that right of private defence was not available.

8. Sections 99, 104 and 441 IPC are reproduced below:-

99. Acts against which there is no right of private defence.—*There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.*

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.

104. When such right extends to causing any harm other than death.—If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrong-doer of any harm other than death.

441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

9. From the evidence on record especially the cross-examination of Surjit

Ram PW-5 and Jagiri Lal PW-7 it is established that the houses of the complainant

party were at a distance of 2-3 Kilometers from the place of occurrence. From the evidence of Dr. Romesh Kumar PW-1 it is also proved that the incident took place at about 11.00 p.m. This is also the case of the prosecution as is evident from the FIR. Thus, the complainant side came to the place of occurrence in a group in the dead of night, even though they were unarmed. The only possible inference is that they had come to take forcible possession. This act is covered by the definition of criminal trespass as given in Section 441 IPC and in respect of the offence of criminal trespass, right of private defence is provided under Section 104 IPC. It extends to causing any harm except death. From the evidence of Dr. Romesh Kumar PW-1 and Dr. Ashok Nanda PW-2, it is also proved that the injuries caused were simple in nature and on non-vital parts of the body. It would, thus, be safe to hold that accused Bakshi Ram and Paramjit Singh used their .12 bore guns only to ward off the trespassers and not to cause death. The argument of learned State counsel that the right of private defence had been exceeded because fire arms were used against unarmed persons can not be accepted keeping in view the time of the incident and number of persons present. According to the prosecution itself, five persons from the complainant side were present at the spot.

10. Moreover, according to the judgment of *Satya Narain Yadav's case (supra)*, existence of the right of private defence can be established based on preponderance of probabilities and the said right has to be widely interpreted. Under the facts and circumstances of the present case, this judgment applies with full force. The place of dispute, time thereof and manner in which it took place, makes it extremely likely that the appellants used their respective weapons with the aim of thwarting an attempt of forcible dispossession. Their action can not be said to be in excess of their right of private defence keeping in view the state of injuries and their nature.

11. The appeals are accordingly allowed; the impugned judgment of conviction and order of sentence, are set aside and the appellants are acquitted of the charges, framed against them. Case property, if any, be dealt with as per the rules.

12. Copy of this judgment be sent to the Court/Successor Court of the trial Court concerned for compliance.

13. A photocopy of this order be placed on the file of connected case.

May 23, 2019

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No