

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-866-DB of 2003

Reserved on : 06.05.2019

Date of decision : 10.05.2019

Pal Singh and others

.... APPELLANTS

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. P.S. Hundal, Senior Advocate, with
Mr. Jashandeep Singh, Advocate,
for appellants No. 1, 2, 5 to 8.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against judgment and order dated 15.09.2003, rendered by learned Additional Sessions Judge, Moga, in S.C. No. 154 dated 18.09.2000, wherein appellants Pal Singh, Tejwinder Singh alias Teja Singh, Balbir Singh alias Balvinder Singh alias Billu, Gurdial Singh, Sukhdev Singh alias Kaka, Joginder Singh alias Kalu, Gurnam Singh alias Gama and Rajwinder Singh alias Raja, along with co-accused Tara Singh alias Boora, were charged with and tried for the offences punishable under Sections 302/364/342/201/148 read with Section 149 IPC.

2. The appellants were convicted and sentenced to undergo life

imprisonment and to pay fine of ₹ 2,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for three months under Section 302/149 IPC. They were further convicted and sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹ 1,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for one and half months under Section 364/149 IPC. They were further convicted and sentenced to undergo rigorous imprisonment for six months each under Section 342/149 IPC. They were further convicted and sentenced to undergo rigorous imprisonment for two years and to pay fine of ₹ 1,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for one and half months under Section 201/149 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for one year each under Section 148 IPC. All the sentences were ordered to run concurrently.

3. Co-accused Tara Singh alias Boora was acquitted. Another accused Sukhvinder Singh alias Binder was declared proclaimed offender during trial. He was apprehended later on and tried separately. He was acquitted by the trial court vide judgment dated 01.02.2007.

4. The case of the prosecution, in a nutshell, is that on 12.03.2000, Hari Singh complainant lodged FIR stating therein that on 11.03.2000 at 6.30 PM, he was irrigating his fields from the electric motor (tubewell). He went near Tibe Wala field, which was at a distance of about two killas from the said electric motor, to divert the water. He noticed Pal Singh son of Anokh Singh armed with *toki*, Billu son of Mukhtiar Singh armed with *sota*, Binder Singh son of Gurmail Singh Fauji armed with *kirch*, Raja Singh son

of Gurdial Singh armed with *gandasa*, Kaka Singh son of Chanda Singh armed with *toki*, Gurnam Singh alias Gama son of Anokh Singh armed with *kirpan*, Kala Singh son of Mohan Singh armed with *datar*, Gurdial Singh son of Bara Singh armed with *toki* and Teja Singh son of Gurdial Singh armed with *kahi* coming from the back side of the electric motor. They raised lalkara. They encircled and caught hold of him. In the meantime, his father Banta Singh armed with his 12 bore gun came at the spot. He raised his voice and asked the accused to disburse. His father fired shot in air from his gun. The accused did not allow him to go. Then, his father again fired shot towards the accused to save him from them. He could not tell who was hit by the bullet. He was let out by the accused. He ran towards the fields. All the accused over-powered his father Banta Singh along with his licensed gun. They took him away with an intention to murder him. He spent the night in the fields, as he was apprehending that if he was again caught hold by the accused, they would harm him. In the next morning, he came to his house. He narrated the incident and enquired about his father from his family members. He was told that his father had not returned since the last evening. He started searching his father. The motive of crime was that for the last about 30 years, they had a dispute with regard to land measuring 2 killas 6 kanalas with the accused party. Now, a case regarding the said dispute was pending in the court of Commissioner, Ferozepur. Stay order was issued in their favour. However, the accused party had obtained possession of the disputed land on 21.08.1999 through revenue department. He accompanied by his brother Harinder Singh went to Police Station Mehna to report the matter. On the basis of this statement, FIR under

Sections 364/342/148/149 IPC was registered. Balwant Singh son of Ram Singh came to Police Station Mehna and told that he had seen the dead body of Banta Singh near the cremation ground of village Kapure. Report No. 15 dated 12.03.2000 was registered. Section 302 IPC was inserted. The dead body of Banta Singh was found lying in the cremation ground. The dead body was sent to Civil Hospital, Moga, for autopsy. The Investigating Officer lifted the blood stained soil and simple soil from the place, where the dead body was lying. He prepared rough site plan. The police party went to the house of Pal Singh accused. The blood stained and simple soil were lifted from the courtyard of his house. The accused were interrogated. Accused Rajwinder Singh alias Raja, Joginder Singh and Pal Singh made disclosure statements, on the basis of which the weapons of offence were recovered vide memos Ex.PX/1, Ex.PY/1 and Ex.PZ/1, respectively. On 12.06.2000, Joginder Singh son of deceased Banta Singh produced arms licence of Banta Singh, which was taken into possession vide memo Ex.PAA. The matter was investigated and challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. Statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. They also examined three witnesses in their defence.

6. The appellants were convicted and sentenced, as noticed above. Hence, this appeal.

7. Appellants No.3 and 4, namely Balbir alias Balvinder Singh alias Billu and Gurdial Singh, died during the pendency of this appeal. Copy

of their death certificates have been placed on record. Hence, appeal qua them stands abated.

8. Learned counsel appearing on behalf of appellants No. 1, 2 and 5 to 8 has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

9. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

10. PW.1 Dr. Sadhu Ram Mittal deposed that he conducted post mortem examination on the dead body of Banta Singh on 13.03.2000. He found the following injuries on his person :-

- (1) Lacerated wound 5 cm x 1 cm on the back of scalp in mid line.
- (2) Two incised wounds 5 cm x 1 cm and 8 cm x 3 cm on left side of scalp, 6 cm from midline and 4 cm from pinna.
- (3) Black eye on left side.
- (4) Lacerated wound 1 cm x 1 cm on bridge of nose.
- (5) Reddish bluish contusion 8.5 cm x 1.5 cm on back of right chest in lower part.
- (6) 3 cm x 2 cm reddish brownish contusion on back of left chest in lower part.
- (7) Reddish brownish contusion 15 cm x 5 cm on left buttock.
- (8) Incised wound 5 cm x 4 cm on back of left leg near popliteal fossa.
- (9) Incised wound 1.5 cm x 5 cm on front of left knee.
- (10) Incised wound 2 cm x 5 cm on base of left thumb nail.
- (11) Multiple abrasions about 2 cm x 1 cm to 3 cm x 1 cm in size on front of left thigh.

- (12) 3 cm x 1 cm abrasion on medial aspect of left thigh in lower part.
 - (13) Five lacerated wounds 2 cm x 1 cm to 3 cm x 1 cm on back of right leg in upper half.
 - (14) 2 cm x 1 cm incised wound and 1 cm x 1 cm. Reddish abrasion on back right elbow.
 - (15) Reddish abrasion 5 cm x 2 cm, 6 cm below elbow on right forearm.
 - (16) 2 cm x 1 cm to 3 cm x 1 cm five abrasions on front of left thigh in middle.
 - (17) Two lacerated wounds with swelling on dorsum of right hand. On dissection of all these wounds, clotted blood was present in subcutaneous tissues and muscular layer.
 - (18) 28 cm x 20 cm incised wound extending from right side of abdomen towards midline opening the peritoneal cavity and intestine were coming out. The upper margins were slightly irregular while lower margins ending in inguinal region were clear cut, right iliac bone was cut in anterior were infused along with mesentery.
 - (19) Incised wound 25 cm x 15 cm on left side of lower abdomen extending towards midline and meeting with injury No.18 extending to inguinal region and cutting the penis partially. Upper margins were slightly irregular and lower margins were clear cut. Clotted blood was present in subcutaneous tissue.
- Small intestine were healthy and contained gasses and fluids. Large intestines were healthy and contained gasses and fecal matter.

The cause of death, in his opinion, was shock and haemorrhage as a result of injuries which were ante mortem in nature and sufficient to cause death in an ordinary course of nature. The probable time between injuries and death was immediate and between death and post-mortem was between 36 to 48

hours. In his cross-examination, he deposed that the death in this case was possible in the evening of 11.03.2000. All the incised injuries, i.e. injuries No. 2, 8, 9,10, 14, 18 and 19 were possible with one and the same weapon. All the other blunt injuries were possible with only one blunt weapon.

11. PW.2 Hari Singh is the material witness. According to him, on 11.03.2000 at about 6.00 PM, he went to his fields. The fields were at a distance of 2 killas from the place where the electric connection was installed. When he tried to divert water of the fields, he noticed that Gurdial Singh accused armed with *toki*, Teja Singh accused armed with *kahi*, Raja Singh accused armed with *gandasa*, Kaka Singh accused armed with *toki*, Binder Singh accused armed with *kirch*, Pal Singh accused armed with *toki*, Balvinder Singh alias Billu accused armed with *sota*, Kalu accused armed with *dattar*, Gurnam Singh accused armed with *kirpan*, had concealed themselves on both sides of their field. They emerged and raised lalkara. The accused encircled him and caught hold of him. In the meantime, his father Banta Singh who was armed with 12 bore licensed gun also came there. His father asked the accused persons to spare him, but they did not spare him. His father fired a shot in the air to secure his release, but the accused did not release him. Then his father fired a shot at the accused. However, he could not tell who was injured with that shot. Accused released him. He ran towards the fields. The accused forcibly lifted his father Banta Singh along with his gun. They took his father towards the village. Due to fear, he spent night in the fields. On the next day morning, he came to his house. He made enquiry from his family members about his father. His mother told him that his father had not returned to the house since the last

evening. The motive for the crime was that they had a land dispute with the accused party for the last about 30 years. The dispute was pending in the court of Commissioner, Ferozepur. They had obtained stay order from the court. About 4-5 months prior to the incident, the accused party had damaged their cotton and paddy crop. The incident had taken place in their land and not in the disputed land. He and his brother Harinder Singh went to Police Station Mehna. They accompanied the police party to the place of occurrence. The police lifted blood stained and simple soil from the cremation ground and also from the courtyard of the house of Pal Singh. In his cross-examination, he admitted that on 21.08.1999, the revenue agency headed by Naib Tehsildar, with the police assistance, got delivered possession of the said land by ploughing tractor in the disputed land to Gurdial Singh accused. A report was written by the Halqa Patwari in this regard. The accused had not caused any injury to him, except the fist blows. He had seen his father being beaten by the accused only for 2/3 minutes, since he was running towards the fields. His father fired at the accused from a distance of 15-16 karams. The second shot was fired by his father from a distance of 5-7 karams. His father did not load the gun for third time, because the accused had over-powered him. He also admitted that a case under Section 307/326 IPC was pending trial against him, Kehar Singh, Harinder Singh and others. He also admitted that few villagers were present at the time when the soil was lifted from the cremation ground. However, no independent witness was joined. Similarly, no independent witness was joined at the time of lifting turban and pair of *chappal* of the deceased. He also admitted that Police Station Mehna was about 4 kilometers from the

place of incident. One could reach Police Station Mehna after two hours from the place of occurrence. He did not try to go to Police Station Mehna due to fear.

12. PW.3 Mohinder Singh testified that about three years back, at 8.30 PM, he was returning from his fields to his village after daily routine. His fields were situated on the passage which leads to village Kokariwala. When he reached near the house of Pal Singh accused, he heard noise. Pal Singh , Balbir Singh alias Billu , Teja Singh, Tara Singh, Gurdial Singh were saying that they will not spare Banta Singh, as he had fired a shot at Kaka Singh. Thereafter, he went to his house to take his meals. At about 10.30 PM, he again went to his fields to have a supervision as stray cows used to enter the fields. He was coming back and reached near the cremation ground. He saw Teja Singh, Tara Singh, Gurdial Singh, Pal Singh and Balbir Singh alias Billu accused throwing the dead body of Banta Singh. In cross-examination, he admitted that his statement was recorded after 1 ³/₄ months of the occurrence. He did not tell any body in the village about the incident till he made the statement before the police.

13. PW.4 Gursewak Singh prepared the rough site plans Ex.PH/1, Ex.PH/2 and Ex.PH/3 of the place of occurrence and places of recoveries.

14. PW.8 Sohan Singh Patwari is the material witness. He deposed that on 21.08.1999, he received warrant of possession from the court of Shri Kuldeep Singh, Tehsildar, Moga, for delivering possession of land to Gurdial Singh and others. He along with Mukhraj Kanungo went to the spot. With the help of the police, they got delivered possession of land to Gurdial Singh and others from Banta Singh. He also proved copy of

Roznamcha, Ex.PO, regarding delivery of possession of the land.

15. PW.10 Inspector Satnam Singh was the Investigating Officer. According to him, on 12.03.2000 at about 9.30 AM, Hari Singh had made statement Ex.PD. FIR was registered. Subsequently, Section 302 IPC was also inserted in the FIR. He went to the cremation ground, where the dead body of Banta Singh was lying. He prepared inquest report Ex.PB. The dead body was sent for post mortem examination. He prepared rough site plan Ex.PT of the place where the dead body was lying. He lifted simple and blood stained soil after making parcels from the cremation ground. He also recovered one turban and a pair of *chappals* from the field of Balbir Singh. The accused were produced before him on 12.04.2000. Accused Rajwinder Singh made disclosure statement, Ex.PX, that he had buried a *gandasa* in the room. He could get it recovered. The *gandasa* was got recovered by him. Accused Joginder Singh also made a disclosure statement, Ex.PY, on the basis of which a *dah* was got recovered by him. Accused Pal Singh also made disclosure statement, Ex.PZ, on the basis of which a *toki* was recovered. The broken 12 bore gun belonging to deceased Banta Singh was also recovered vide Ex.PBB. In his cross-examination, he admitted that gun Ex.P13 was recovered from the divider between the fields of the complainant and Gurdial Singh.

16. DW.1 Dr. Ravinderpal Singh medico legally examined Sukhdev Singh on 11.03.2000. He noticed the following injuries on the person of Sukhdev Singh :-

- (1) Entry wound 5 cm x 5 cm with irregular and ragged margins with no blackening. Slight oozing of blood was present. Margins were inverted.

(Penetrating wound on the right side of the chest. Entry wound 8 cm superior and medially to right nipple, 16 cm below medial head of clavicle right side.

- (2) a. Exit wound 3 cm x 2 cm with ragged margins. It was 5 cm below right axilla in anterior line.
- b. Lower exit wound 2 cm x 1 cm with irregular margins. 1 cm below upper exit wound.

The nature of injuries was dangerous to life. He handed over to the police a sealed vial containing pellets which were recovered from the body of the injured.

17. DW.2 Dr. V.J.S. Dhillon medico legally examined Rajwinder alias Raja on 11.03.2000. He noticed the following injuries on the person of Rajwinder alias Raja :-

- (1) Lacerated wound $\frac{1}{2}$ cm x $\frac{1}{2}$ cm on left pinna, fresh bleeding was present.
- (2) Abrasion 5 cm x $\frac{1}{2}$ cm on back of left fore arm.
- (3) Incised wound 1 cm x $\frac{1}{2}$ cm on back of right hand, just below the base of little finger. Fresh bleeding was present. X-ray was advised.
- (4) Abrasion 2 cm x $\frac{1}{2}$ cm on right hip.

Injury No.3 was kept under observation. The weapon used was sharp for injury No.3. As far as injury No.3 is concerned, its probable duration was fresh. After X-ray, injury No.3 was declared grievous in nature.

He also medico legally examined Harjinder Singh on 11.03.2000. He noticed the following injuries on the person of Harjinder Singh :-

- (1) Swelling of right elbow was present. X-ray was advised.
- (2) Complaint of pain right shoulder, movements were restricted. X-ray was advised.

- (3) Complaint of pain right leg and knee.
- (4) Multiple abrasions on whole of chest (scattered).
- (5) Abrasion 3 cm x 2 cm on left elbow.
- (6) Abrasion 2 cm x 2 cm on back of right knee.
- (7) Lacerated wound 3 cm x ½ cm on back of left wrist.
Fresh bleeding was present.

Weapon used was blunt. Duration of injuries was fresh.

On the same day, he also medico legally examined Joginder Singh alias Kalu. He found the following injuries on the person of Joginder Singh alias Kalu :-

- (1) Abrasion 6 cm x 2 cm on lateral side of right leg, 10 cm from knee. Leg was swollen. X-ray was advised.
- (2) Lacerated wound 8 cm x ¾ cm, arch shaped on right side of skull, 4 cm from middle and 8 cm from posterior hair line. Wound was bone deep. Fresh bleeding was present. X-ray was advised.
- (3) Lacerated wound irregular shaped 3 ½ cm x ½ cm on front of forehead at midline.
- (4) Contusion 6 cm x 3 cm, red coloured on right arm.
- (5) Multiple reddish contusion on whole of mid chest at back. X-ray was advised.

The weapon used was blunt. Duration of injuries was fresh.

18. Learned counsel appearing on behalf of appellants No. 1,2 and 5 to 8 has vehemently argued that his clients were not the aggressors. According to him, Banta Singh (deceased) had fired at them. They had retaliated to save themselves. He also argued that possession of the disputed land had been handed over to his clients on 21.08.1999. He argued that his clients had a right of private defence to save their property and person.

19. The cause of death of Banta Singh was shock and haemorrhage

as a result of injuries which were ante mortem in nature and sufficient to cause death in an ordinary course of nature. PW.1 Dr. Sadhu Ram Mittal has proved the post mortem report Ex.PA.

20. PW.2 Hari Singh has deposed that on the day of incident, he had gone to water his fields. The accused were hiding in the fields. They had attacked him. They encircled him. His father Banta Singh came at the spot and fired two shots. One shot was fired in air and the second shot hit some body, but he did not know who was hit. He ran away from the spot. His father was taken away by the accused. He hid himself in the fields. He went to his house in the morning. It is not believable that why a son, whose father had been kidnapped, would hide himself in the fields, instead of chasing the kidnappers or going to police station, which was situated at nearby place. The conduct of PW.2 Hari Singh is unusual.

21. PW.2 Hari Singh has categorically admitted that the motive was the disputed land. He admitted in his cross-examination that on 21.08.1999, the revenue authorities headed by Naib Tehsildar with the police assistance had got delivered possession of the land by ploughing tractor in the disputed land to Gurdial Singh accused. PW.8 Sohan Singh Patwari has specifically deposed that on 21.08.1999, he had delivered possession of the disputed land to Gurdial Singh. He has proved copy of Roznamcha, Ex.PO, regarding delivery of possession of the land. The statement of PW.3 Mohinder Singh has rightly been disbelieved by the trial court. In case, he had seen the incident on 11.03.2000, he should have shared the same with the co-villagers or with the family of the deceased. His statement was recorded after considerable period. According to DW.1 Dr. Ravinderpal Singh,

Sukhdev Singh had received three injuries on his person. The injuries were dangerous to life. He had noticed penetrating wound on the right side of the chest. Entry wound 8 cm superior and medially to right nipple, 16 cm below medial head of clavicle right side was also found. He had handed over a sealed vial containing pellets to the police. DW.2 Dr. V.J.S. Dhillon had medically examined Rajwinder alias Raja, Harjinder Singh and Joginder Singh alias Kalu. He had noticed injuries on their persons. Injury No.3 caused to Rajwinder alias Raja was from sharp edged weapon. The probable duration of injuries was fresh. The police did not sent the weapons recovered from the possession of the accused to the FSL for examination. It is a serious lapse on the part of the prosecution. The appellants had also lodged FIR No. 17 on 12.03.2000 against the complainant party. On the day of incident, the appellants were in possession of the land, which was delivered to them on 21.08.1999. Banta Singh had caused fire arm injury to appellant Sukhdev Singh. Injuries were also caused to appellants Rajwinder alias Raja, Harjinder Singh and Joginder Singh alias Kalu. Banta Singh had fired two shots at the appellants. Moreover, as per the statement of PW.2 Hari Singh, Banta Singh had fired at the appellants from close range. The injuries caused to them could result in the death. The appellants had the right of private defence of their person as well as property. They were put in peaceful possession of the disputed land by PW.8 Sohan Singh Patwari on 21.08.1999. It was not a pre meditated act. Rather, Banta Singh (deceased) was armed with a gun and he had fired two shots, one in the air and one hit Sukhdev Singh on his chest. The appellants had reasonable apprehension that they could be killed by Banta Singh. Their case would be covered under

exception 2 of Section 300 IPC. However, the fact of the matter is that the appellants have exceeded their right of private defence by causing as many as 19 injuries on the person of Banta Singh. They had the intention to cause his death.

22. Their Lordships of the Hon'ble Supreme Court in **Deo Narain Vs. The State of U.P., (1973) 1 Supreme Court Cases 347** have held that the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. Their Lordships have held as under :-

“5. In our opinion, the High Court does seem to have erred in law in convicting the appellant on the ground that he had exceeded the right of private defence. What the High Court really seems to have missed is the provision of law embodied in Section 102, I.P.C. According to that section 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 such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and not remote or distant danger. This right rests on the general principle that where a crime is endeavored to be committed by force, it is lawful to repel that force in self-defence. To say that the appellant could

only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in the above section. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him. It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. If after sustaining a serious injury there is no apprehension of further danger to the body then obviously the right of private defence would not be available. In our view, therefore, as soon as the appellant reasonably apprehended danger to his body even from a real threat on the part of the party of the complainant to assault him for the purpose of forcibly taking possession of the plots in dispute or of obstructing their cultivation, he got the right of private defence and to use adequate force against the wrongful aggressor in exercise of that right. There can be little doubt that on the conclusions of the two courts below that the party of the complainant had deliberately come to forcibly prevent or obstruct the possession of the accused persons and that this forcible obstruction and prevention was unlawful, the appellant could reasonably apprehend imminent and present danger to his body and to his companions. The complainants were clearly determined to use maximum force to achieve their

end. He was thus fully justified in using force to defend himself and if necessary also his companions against the apprehended danger which was manifestly imminent. Again, the approach of the High Court that merely because the complainant's party had used lathis, the appellant was not justified in using his spear is no less misconceived and insupportable. During the course of a marpeet, like the present, the use of a lathi on the head may very well give rise to a reasonable apprehension that death or grievous hurt would result from an injury caused thereby. It cannot be laid down as a general rule that the use of a lathi as distinguished from the use of a spear must always be held to result only in milder injury. Much depends on the nature of the lathi, the part of the body aimed at and the force used in giving the blow. Indeed, even a spear is capable of being so used as to cause a very minor injury. The High Court seems in this connection to have overlooked the provision contained in Section 100, I.P.C. We do not have any evidence about the size or the nature of the lathi. The blow, it is known, was aimed at a vulnerable part like the head. A blow by a lathi on the head may prove instantaneously fatal and cases are not unknown in which such a blow by a lathi has actually proved instantaneously fatal. If, therefore a blow with a lathi is aimed at a vulnerable part like the head we do not think it can be laid down as a sound proposition of law that in such cases the victim is not justified in using his spear in defending himself. In such

moments of excitement or disturbed mental equilibrium it is somewhat difficult to expect parties facing grave aggression to coolly weigh, as if in golden scales, and calmly determine with a composed mind as to what precise kind and severity of blow would be legally sufficient for effectively meeting the unlawful aggression. No doubt, the High Court does seem to be aware of this aspect because the other accused persons were given the benefit of this rule. But while dealing with the appellant's case curiously enough the High Court has denied him the right of private defence on the sole ground that he had given a dangerous blow with considerable force with a spear on the chest of the deceased though he himself had only received a superficial lathi blow on his head. This view of the High Court is not only unrealistic and unpractical but also contrary to law and indeed even in conflict with its own observation that in such cases the matter cannot be weighed in scales of gold."

23. Their Lordships of the Hon'ble Supreme Court in **Jai Dev Vs. State of Punjab, AIR 1963 Supreme Court 612** have held that where an individual citizen or his property is faced with a danger and immediate aid from the state machinery is not readily available, the individual citizen is entitled to protect himself and his property. In judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. The

means which a threatened person adopts or the force which he uses should not be weighed in golden scales. To begin with, the person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. Their Lordships have held as under :-

“12. In appreciating the validity of the appellants’ argument, it would be necessary to recall the basic assumptions underlying the law of self-defence. In a well-ordered civilised society it is generally assumed that the State would take care of the persons and properties of individual citizens and that normally it is the function of the State to afford protection to such persons and their properties. This, however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has to meet an attack on his property, In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available, the individual citizen is entitled to protect himself and his property. That being so, it is a necessary corollary to the doctrine of private defence 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 to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The exercise of the right of private defence must never be vindictive or malicious.

13. There can be no doubt that in judging the

conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feelings at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would be to ward off the danger and to save himself or his property, and so he would naturally be anxious to strike a decisive blow in exercise of his right. It is no doubt true that in striking a decisive blow, he must not use more force than appears to be reasonably necessary. But in dealing with the question as to whether more force is used than is necessary or than was justified by the prevailing circumstances, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a Court room, for instance, long after the incident has taken place. That is why in some judicial decisions it has been observed that the means which a threatened person adopts or the force which he uses should not be weighed in golden scales. To begin with, the person exercising a right of private defence must consider whether the threat to his person or his property is real and immediate. If he reaches the conclusion reasonably that the threat is immediate and real, he is entitled to exercise his right. In the exercise of his right, he must use force necessary for the purpose and he must stop using the force as soon as the threat has disappeared. So long as the

threat lasts and the right of private defence can be legitimately exercised, it would not be fair to require, as Mayne has observed, that "he should modulate his defence step by step, according to the attack, before there is reason to believe the attack is over". The law of private defence does not require that the person assaulted or facing an apprehension of an assault must run away for safety. It entitles him to defend himself and law gives him the right to secure his victory over his assailant by using the necessary force. This necessarily postulates that 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. If the danger is continuing, the right is there; if the danger or the apprehension about it has ceased to exist, there is no longer the right of private defence, (Vide Sections 102 and 105 of the Indian Penal Code). This position cannot be and has not been disputed before us and so, the narrow question which we must proceed to examine is whether in the light of this legal position, the appellants could be said to have had a right of private defence at the time when the appellant Jai Dev fired at the victim Jai Dev and the appellant Hari Singh fired at the victim Jai Narain."

24. In **Mohd. Ramzani Vs. State of Delhi, 1980 (Supplement)** **Supreme Court Cases 215**, their Lordships of the Hon'ble Supreme Court have held that the onus on accused is to establish right of private defence only with balance of probability while burden lies on prosecution to prove

the guilt beyond reasonable doubt which never shifts. Due allowance is to be made where right is over-exercised in the heat of the moment. Their Lordships have held as under :-

“19. It is trite that the onus which rests on an accused person under Section 105, Evidence Act, to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged, beyond reasonable doubt. It is further well established that a person faced with imminent peril of life and limb of himself or another, is not expected to weigh in "golden scales" the precise force needed to repel the danger. Even if he in the heat of the moment carries his defence a little further than what would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it. Viewed in the light of these principles, the defence, in the instant case had succeeded in establishing with a balance of probability, that the deceased and Abdul Rashid armed with a saria and knife, respectively, first assaulted Mohd. Shafi and thereupon the appellant assaulted the deceased to save his father and himself from further injuries. Even if it be assumed for the sake of argument that the material on record fell short of discharging the nature of onus on the appellant under Section 105, Evidence Act, on account of the non-production of the doctor who examined Mohd.

Shafi and the appellant, and prepared the medico-legal reports Ex. PW 15/A and Ex. PW 15/DY, then also the benefit of that deficiency and the doubt arising therefrom, could not be given to the prosecution. The prosecution case as propounded by its star witness Abdul Rashid was that both the father (Mohd. Shafi) and the son (appellant) actually participated in the assault on the deceased. To support that story, the prosecution went to the length of 'planting' the deceased's blood on the clothes of Mohd. Shafi. When this substratum of the story viz. Mohd. Shafi holding the deceased at the time of the fatal assault, was found to be false and no satisfactory explanation was coming forth from the prosecution about the injuries of Mohd. Shafi and the appellant, the only prudent course in the ultimate analysis, for the court was to hold that the prosecution had failed to discharge its burden of bringing home the guilt to the appellant beyond reasonable doubt.

20. For reasons aforesaid, we had per our order dated September 13, 1979 allowed this appeal and acquitted the appellant."

25. In view of the above discussion, the appeal is partly allowed. Conviction of appellants No.1, 2, 5 to 8 under Section 302 read with Section 149 IPC is converted to Section 304 Part-I read with Section 149 IPC. However, their conviction and sentence for commission of remaining offences imposed by the trial court are upheld.

26. Appeal qua appellants No.3 and 4, who have died during the

pendency of appeal, stands abated.

27. The State is directed to produce appellants No.1, 2 and 5 to 8 in Court on 20.05.2019 to be heard on quantum of sentence under Section 304 Part-I read with Section 149 IPC.

(**RAJIV SHARMA**)
JUDGE

May 10, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No