IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 13th OF SEPTEMBER, 2024

CRIMINAL APPEAL No. 187 of 2001

BHERSIYA

Versus

THE STATE OF M.P.

Appearance:

Shri Pravin Kumar Newalkar – Advocate for the appellant.
Shri Amit Rawal– G.A. for respondent/State.

Reserved on : 9/9/2024

Pronounced on : 13th/9/2024

.....

JUDGMENT

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 20.01.2001 passed by A.S.J. Kukshi, District Dhar in S.T. No.89/2000, by which, the appellant has been convicted under Section 304 part II of I.P.C and has been sentenced to undergo 5 years R.I. and fine of Rs. 1000/- with default imprisonment of 4 months R.I.

2. The prosecution story, in short, is that on 23.12.1999 the complainant Idlibai lodged a report that on 22.12.1999 she, her husband Bhuchariya were in their house. The appellant came there

and insisted that her husband should settle his account. At that time she was preparing *Chapatis*. On the question of money, the appellant started abusing deceased in the name of mother and sister and started pelting stone on her husband Bhuchariya. One stone landed on the upper side of left parietal region of Bhuchariya and another stone landed on the left ear. Bhuchariya raised an alarm, therefore, Tersingh, Phula and Balu came rushing and saw that the appellant was scuffling with deceased Bhuchariya. The appellant thereafter scolded her husband that he should settle down the money dispute, otherwise he would kill her husband and left the place. Since it was already night and they did not have any means of conveyance, therefore, the F.I.R was lodged on the next day. Accordingly, the police registered Crime No.126/99 and the injured Bhuchariya was sent for medical examination. Dr. J.S. Pawar found that Bhuchariya was in unconscious condition and suspecting the fracture of left parietal bone, he referred the injured to the District Hospital Barwani. Ultimately Bhuchariya died in the District Hospital Barwani. Accordingly the requisition for conducting the postmortem report was given. The postmortem of the deceased Bhuchariya was done. The *Lash Panchayatnama* was prepared, *Naksha Panchayatnama* was prepared. The Investigating Officer added the offence under section 302 of IPC. Spot map was prepared. The blood stained and plain earth, blood stained *Baniyan* of deceased were seized. Two stones were also seized from the spot. The appellant was arrested. In a query, it was opined by Dr. Pawar that the injuries could have been caused

by the stones, which were seized from the spot. The statement of the witnesses were recorded. The FSL report of the seized articles was obtained and after completing the investigation, the police filed charge sheet for offence under Section 294, 336, 323, 506, 302 of IPC.

3. The Trial Court by order dated 1.7.2000 framed charges under Section 294, 336, 506-B, 302 of IPC.

4. The appellant abjured his guilt and pleaded not guilty.

5. The prosecution in order to prove its case examined Dr. R.C. Goyal (PW-1), Dr. J.S. Pawar (PW-2), Shivnarayan Bhargava (PW-3), Nanla (PW-4), Juwan Singh (PW-5), Phula (PW-6), Remsingh (PW-7), Idli Bai (PW-8), Kasam (PW-9), Tersingh (PW-10), Roopsingh (PW-11), Lalbahadur (PW-12), F.S. Chouhan (PW-13) and Mansukhlal (PW-14). The appellant did not examine any witness in his defence.

6. The Trial Court by the impugned judgment and sentence, convicted the appellant for offence under Section 304 part II of I.P.C and sentenced him to undergo rigorous imprisonment of 5 years and fine of Rs. 1000/-, with default imprisonment of 4 months R.I. The appellant was acquitted for offence under Section 294, 336, 506-B of IPC.

7. Challenging the judgment and sentence passed by the Court below, a solitary ground was raised by counsel for the appellant that since the deceased was under the influence of alcohol and he was trying to snatch the money from the appellant and, therefore, even if

the entire allegations are accepted, then it is clear that it would be an offence under Section 325 of IPC because there was no intention or knowledge on the part of the appellant to kill the deceased Bhuchariya.

8. Per contra, the appeal is vehemently opposed by counsel for the State. It is submitted that since the appellant had thrown stones on the head of the deceased, which is a vital part of the body, therefore, it is clear that the appellant had a knowledge that his act may result in causing death of the deceased Bhuchariya. Therefore, the Trial Court has rightly convicted the appellant for offence under Section 304 Part-II of IPC and does not require any interference.

9. Heard learned counsel for the parties.

10. The prosecution has examined Nanla (PW-4), Phula (PW-6), Remsingh (PW-7), Idli Bai (PW-8), Kasam (PW-9), Tersingh (PW-10), Roopsingh (PW-11) as eyewitnesses. Nanla (PW-4) and Remsingh (PW-7) have turned hostile and not supported the prosecution case. FIR was lodged by Idli Bai (PW-8). She has stated that the appellant had caused injury to her husband by pelting stones on his face. Her husband was taken to different hospitals and ultimately he died in Barwani. The appellant was demanding money from her husband, whereas the entire amount was already repaid, despite that appellant assaulted her husband and killed him. The appellant had pelted stones twice or thrice. When the accused/appellant was pelting stones, she raised an alarm and accordingly Tersingh, Phula and Balu came to the spot. Thereafter,

appellant ran away from the spot. The FIR Ex.P/14 was lodged by her. The police had prepared the spot map. Blood stained and plain earth were seized by the police in her presence. *Baniyan* of her husband was also seized by the police in her presence. Two stones were also seized by the police.

11. Kasam (PW-9) is the son of the deceased. He is aged about 8 years. He has stated that the appellant had pelted stones on account of money. Earlier his father and appellant had come together from Nanpur after selling their pulses. The appellant had assaulted his father twice, at that time he and his mother Idli Bai (PW-8) were in the courtyard. Thereafter his father expired. On hearing the cries of his mother, Tersingh, Roopsingh and Dadu came on the spot. The appellant had ran away prior to arrival of the witnesses. His father was taken to Barwani and because of injuries he died on the way. This witness was cross-examined. In cross-examination he stated that his father Bhuchariya had gone to Nanpur to sell his Toor pulse. His father had called the appellant in his house and requested him to accompany him to Nanpur so that he can take back his money. The appellant is resident of village Arada, whereas he is the resident of village Palvat. Village Palvat is about 2 to 3 km away from village Arada. The name of wife of the appellant is Nanibai. Nanibai was also called by his father to sell Toor pulse. Nanibai had also come along with the appellant to village Palvat. His father had kept the Toor of Nanibai on the pretext that he would sell the same and accordingly Nanibai went back to her village Arada. For selling Toor

pulse, his father and the appellant had gone together. They went to Nanpur at about 8 A.M. Before selling the Toor pulse his father had consumed liquor. His father had sold Toor pulse in village Nanpur and had also taken the money. His father had returned Rs.1,900/- to the appellant. When they started back from Nanpur, his father again consumed excessive liquor. He had also requested the appellant to consume liquor, which was refused by the appellant. Thereafter this witness, his father and the accused came back to village Palvat. In village Palvat all of them were sitting and talking to each other in a cordial atmosphere. At that time his father tried to take out money from the pocket of the accused. His father was interested in taking the money back, whereas the appellant was not interested in giving the money back to him. The appellant ran away from the spot and went towards the field of Tersingh. The appellant was chased by his father. However, he denied that since his father was under the influence of excessive liquor, therefore, he picked up the stones for assaulting the accused/appellant. The appellant went to the field of Tersingh, where the incident took place between his father and the appellant. This witness has further stated that he did not go to the field of Tersingh. However, he had seen the dispute between the appellant and his father. His father had fallen down in the fields of Tersingh. After the appellant ran away from the field, Tersingh and Dadu reached on the spot. Appellant had assaulted his father twice. His statement was recorded by police on the very same day of incident. He denied that

he was tutored by his mother. He denied that he had not seen the incident.

12. The accused in his statement under Section 313 of Cr.P.C. has stated that they had come back after selling their Toor pulse. The deceased Bhuchariya was under the influence of liquor. He wanted to snatch his money and, therefore, he rushed towards his house. He was chased by the deceased and since the deceased was under the influence of liquor, therefore, he fell down on the ground.

13. Kasam (PW-9) has admitted that he had gone along with the appellant and the deceased to village Nanpur and while going to Nanpur, his father had consumed liquor and while coming back from Nanpur, again his father had consumed liquor. Although his father had returned Rs.1,900/- to the appellant but after coming back to village Palvat, he was trying to snatch away money from the appellant, which was objected by the appellant and ultimately the appellant ran away from the spot and he was chased by his father and the incident took place in the field of Tersingh. In the spot map (Ex.P/15) the place of incident has been shown to be the courtyard of house of the deceased. The crime detail form (Ex.P/15) was prepared on the information given by Idli Bai, which bears her thumb impression. Thus, it appears that the place of incident was changed by the police.

14. Phula (PW-6), Tersingh (PW-10) and Roop Singh (PW-11) have also stated that the appellant had pelted stones, thereby causing injury on the head of the deceased.

15. As per the seizure memo (Ex.P/16) two stones of approximately half k.g. each were seized from the spot and as per the FSL report (Ex.P/22), the blood stains on items were found to be disintegrated and their origin could not be determined.

16. Dr. Ramesh Chandra Goyal (PW-1) had conducted the postmortem of the deceased Bhuchariya and found the following injuries on his body:-

> (i) Lacerated wound over left parietal region of head of 2½ x 1/2 inch up to bone deep with underlying linear fracture of parietal bone of skull and haemorrhage under the scalp and (illegible) bleeding (illegible) left ear.
> (ii) Abrasion over the left shoulder of 2 x 2 inch superficial and dark red coloured.
> (iii) Lacerated wound over left thigh of 1 x ½ x ½ inch simple in nature.
> (iv) Abrasion on right and left knee of size 1 x 1 inch (illegible) superficial and dark red coloured.

17. According to Dr. Goyal (PW-1), cause of death was due to coma as a result of injury leading to intracervical haemorrhage. On internal examination, linear fracture of left parietal bone anterior to fronto parietal region and fracture of bone of skull at mastoid region over left ear were found. Earlier as per the MLC (Ex.P/4) the following injuries were found on the body of Bhuchariya:-

> (i) Lacerated wound of 1 x ½ x ½ inch on left side of head - 2 inch above the left ear pinna and 3 inch above the lateral angle of left eye, everted upwards and medially by hard and blunt object.
> (ii) Bleeding from left ear with bony injury. Suspected fracture of left parietal bone.

18. If the evidence of the witnesses is considered, then it is clear that the incident took place all of a sudden on account of some money dispute. However, Kasam (PW-9) who is the son of the deceased, has clarified that in fact it was the deceased who was trying to snatch money from the accused and the accused ran away from the spot and it was the deceased who chased him. Thus, it is clear that at that time the appellant caused injury to the deceased by pelting stones.

19. Now the next question for consideration is as to whether the accused/ appellant is guilty of committing offence under Section 304 Part II or under Section 325 of IPC as claimed by the appellant or for any other offence.

20. In order to appreciate the aforesaid fact, this Court would like to summarize the allegations against the appellant which are as under:-

(1) The accused and the deceased went to Nanpur to sell their Toor pulse.

(2) The deceased consumed liquor while going as well as coming back from Nanpur.

(3) Deceased was required to repay Rs.1900/- to the appellant which he did.

(4) The appellant and the deceased were sitting in a cordial atmosphere in the house of the deceased.

(5) The deceased wanted money back from the appellant.

(6) When the appellant refused to give money to the deceased, then the deceased tried to snatch money from the appellant.
(7) The appellant ran away from the spot but he was chased by the deceased.
(8) The appellant is said to have pelted stone twice on the deceased causing injury on his head.
(9) The head injury sustained by the deceased was a cause of death and two fractures were also found on skull bone as well as in temporal bone.

21. It is well established principle of law that an accused is not required to prove the existence of private defence and if he succeeds to show from the prosecution evidence that either he or his property was in danger, he can claim the benefit of the right of private defence. Although the counsel for the appellant did not argue that from the facts and circumstances of the case coupled with the evidence of Kasam (PW-9), it is clear that the appellant might have acted in exercise of right of private defence but this Court cannot ignore the circumstance which is apparent from the record, although it may not have been argued by the counsel for the appellant. One thing is clear that the appellant and the deceased were having good relationship and they jointly went to Village Nanpur to sell their Toor pulses. The deceased was owing Rs. 1900/- which he repaid to the accused but after coming back from village Nanpur he was insisting that the deceased must give back the aforesaid amount. When it was objected

by the appellant, the deceased tried to snatch the money. In view of the evidence of Kasam (PW-9), the appellant tried to run away from the spot but he was chased by the deceased and at that time it appears that the appellant must have retaliated by throwing stones towards the deceased causing two injuries on his head. Whatever was possible for the appellant to avoid the attempt of the deceased to snatch money, was done by him. He even ran away from the spot but he was chased by the deceased. Furthermore in the statement recorded under Section 313 of Cr.P.C. it was stated by the appellant that since the deceased wanted to snatch money from him, therefore, he ran away from the spot and while chasing him the deceased fell down on the ground and sustained injuries on his head.

22. The right of private defence is a defensive right which is available only when the circumstances justify the same. In order to claim the right of private defence, the accused must indicate that there was a very limited scope for the State Agencies to interfere. Furthermore, it has to be seen whether the accused had exceeded his right of Private defence or not?

23. The Supreme Court in the case of **Rizan and Another vs. State of Chhattisgarh reported in (2003) 2 SCC 661** has held as under:-

> "**13**. Then comes the plea relating to alleged exercise of right of private defence. Section 96 IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression "right of private defence". It merely indicates that nothing is

an offence which is done in the exercise of such right. Whether in a particular set of circumstance, a person acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 the burden of proof is on the accused who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self- defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence: he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See *Munshi Ram vs. Delhi Administration, AIR (1968) SC 702; State of*

Gujarat v. Bal Fatima, AIR (1975) SC 1478; State of U.P. v. Mohd. Musheer Khan, AIR (1977) SC 2226 and Mohinder Pal Jolly v. State of Punjab, AIR (1979) SC 577). Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia vs. State of U.P., AIR (1979) SC 391, runs as follows: (SCC p.654, para 9)

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

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

24. The Supreme Court in the case of **State of M.P. vs. Ramesh reported in (2005) 9 SCC 705** has held as under:-

> "**10**. Only question which needs to be considered, is the alleged exercise of right of private defence. Section 96 IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression "right of private defence". It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of

circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram and Ors. v. Delhi Administration (AIR 1968 SC 702), State of Gujarat v. Bai

Fatima (AIR 1975 SC 1478), State of U.P. v. Mohd. Musheer Khan (AIR 1977 SC 2226), and Mohinder Pal Jolly v. State of Punjab (AIR 1979 SC 577). Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P. (AIR 1979 SC 391), runs as follows: (SCC p.654, para 9)

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

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

13. In order to find 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. Similar view was expressed by this Court in *Biran Singh v. State of Bihar (AIR 1975 SC 87)*. (*See: Wassan Singh v. State of Punjab (1996) 1 SCC 458, Sekar alias Raja Sekharan v. State represented by Inspector of Police, T.N. (2002 (8) SCC 354*).

14. As noted in Butta Singh v. The State of Punjab (AIR 1991 SC 1316), a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment

and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private-defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negatived. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact.

15. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. (*See Vidhya Singh v. State of M.P. (AIR 1971 SC 1857)*. 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.

16. In the illuminating words of Russel (*Russel* on Crime, 11th Edition Volume I at page 49):

> "....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."

17. The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence. It is a right of defence, not of retribution, expected to repel unlawful aggression and not as retaliatory measure. While providing for exercise of the right, care has been taken in IPC not to provide and has not devised a mechanism whereby an attack may be a pretence for killing. A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived."

25. The Supreme Court in the case of **Salim Zia vs. State of Uttar Pradesh reported in (1979) 2 SCC 648** has held as under:-

> "**9**. This takes us to the consideration of the other crucial question viz. whether the appellant was protected by the right of private defence of person or property. It is true that the burden on an accused person to establish the plea of self defence is not as onerous as the one which lies on the

prosecution and that while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying a basis for that plea in the cross-examination of prosecution witnesses or by adducing defence evidence. (See **Partap v. The State of Uttar Pradesh (1976(2) SCC 798) and Munshi Ram v. Delhi Administration (AIR 1968 SC 702)**.....”

26. The Supreme Court in the case of **Dharam and Others vs. State of Haryana reported in (2007) 15 SCC 241** has held as under:-

“**18**. Thus, the basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the state machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot, his feelings at the relevant time; the confusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It

would be repugnant to the very concept of private defence".

27. The Supreme Court in the case of **Buta Singh vs. State of Punjab reported in (1991) 2SCC 612** has held as under:-

"**9**. .....Besides, even if it were so, having regard to the nature of the incident, it is difficult to say that he exceeded the right of private defence for the obvious reason that he could not have weighed in golden scales in the heat of the moment the number of injures required to disarm his assailants who were armed with lethal weapons....."

28. The Supreme Court in the case of **Bhanwar Singh and others vs. State of M.P. reported in (2008) 16SCC 657** has held as under:-

"**50**. The plea of private defence has been brought up by the appellants. For this plea to succeed in totality, it must be proved that there existed a right to private defence in favour of the accused, and that this right extended to causing death. Hence, if the court were to reject this plea, there are two possible ways in which this may be done. On one hand, it may be held that there existed a right to private defence of the body. However, more harm than necessary was caused or, alternatively, this right did not extend to causing death. Such a ruling may result in the application of Section 300, Exception 2, which states that culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence. The other situation is

> where, on appreciation of facts, the right of private defence is held not to exist at all.
>
> **60**. To put it pithily, the right of private defence is a defence right. It is neither a right of aggression or of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self creation. Necessity must be present, real or apparent".

29. Thus, it is clear that when there is a danger and immediate act from the State machinery is not available, then an individual is entitled to protect himself and his property. However, the resistance made by him should not be disproportionate to the injury which is sought to be caused or which is reasonably apprehended. If the facts and circumstances of this case are considered, then it is clear that initially the appellant avoided the attempt of the deceased to snatch his money by running away from the spot. When he was chased by the deceased, then it appears that the appellant must have pelted stones on the deceased twice in order to save himself.

30. Under these circumstances, this Court is of considered opinion that the appellant had a right of private defence to protect himself as well as his money and in exercise of the said right he did not act disproportionately. Since the accused did not exceed his right of private defence, therefore, he is entitled for the benefit of Section 96 and 97 of IPC. Accordingly the trial Court committed a material illegality by holding the appellant guilty for offence under Section 304 Part II of IPC.

31. Accordingly, the judgment and sentence dated 20.01.2001 passed by A.S.J. Kukshi, District Dhar in S.T. No.89/2000 is hereby **set aside**. The appellant is acquitted of all the charges.

32. The appellant is on bail, his bail bonds stand discharged. He is no more required in the present case.

33. Let a copy of this judgment be immediately sent to the trial Court for necessary information and compliance.

34. Appeal **succeeds** and is hereby **allowed**.

(G. S. AHLUWALIA)
JUDGE

trilok

TRILOK SINGH SAVNER
2024.09.13 14:26:37 +05'30'