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RAJ PAL AND ORS.

v.

THE STATE OF HARYANA

APRIL 19, 2006

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[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Penal Code, 1860—Sections 34, 97, 299, 300, 304, 323 and 325—Dispute over property—Accused dealt lathi blows to deceased and others—
C *Plea of right of private defence raised by the accused on basis of injuries sustained by them—Trial Court rejected the plea, convicted the accused under section 304 Part I IPC and sentenced them to ten years rigorous imprisonment—High Court confirmed the conviction and sentence awarded by the trial court—Correctness of—Held, exercise of right of private defence*
D *to the extent of causing death cannot be presumed on the basis of injuries on the accused—On facts, no evidence was adduced that the accused were under grave apprehension about the safety of their life and property—Hence, plea of right of private defence is rejected—On the basis of the whole evidence, accused are convicted under section 304 Part II IPC and sentenced to seven years rigorous imprisonment.*

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Deceased was repairing an iron gate of his house with the help of PW 6. Appellants and one other person, armed with lathis, desisted the deceased and PW 6 from repairing the gate, asserting that they had also a share in the property. The deceased told them that they had no right over the property as
F **he had got it in a partition. The appellants abused the deceased and gave lathi blows on the body of the deceased. PW 6 and PW 7 also received lathi blows from the appellants. The deceased died next day in a hospital.**

The appellants contended before trial court that the deceased, with help of some prosecution witnesses, was raising construction on disputed plot
G **claiming his share in the plot; that when they objected, the deceased assaulted the appellants; and that they had acted in self defence of person and property. The Trial Court, on consideration of evidence on record, held that the appellants had no intention to commit murder since they did not repeat blows on the head of the deceased. The Trial Court convicted the appellants for**
H **offence punishable under section 304 Part I read with Section 34 IPC and**

they were sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 2000/-. The appellants were also convicted for offences punishable under section 325 and 323 read with section 34 IPC and were sentenced to undergo rigorous imprisonment for 2 years and six months respectively and a fine of Rs. 500/- Appeal before High Court by the appellants was dismissed.

In appeal to this Court, the appellants contended that the Trial Court and High Court did not take note of the fact that the appellants had suffered serious injuries in the incident in exercise of the right of private defence; and that when the trial court held that the appellants had no intention to cause homicidal death, it should not have convicted them under section 304 Part I IPC.

Partly allowing the appeal, the Court

HELD: 1.1. The number of injuries is not always a safe criterion for derterming who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilies the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [79-B, C, D]

1.2. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. [79-E]

1.3. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would

A **be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. [79-G, H; 80-A]**

1.4. Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death as in this case. Though such right
B **cannot be weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private defence as claimed by the accused persons have been rightly**
C **discarded. [80-D-E]**

Lakshmi Singh **v.** *State of Bihar,* **AIR (1976) SC 2263;** *Jai Dev* **v.** *State of Punjab,* **AIR (1963) SC 612;** *Rizan and Anr.* **v.** *State of Chhattisgarh through the Chief Secretary, Government of Chhattisgarh, Raipur, Chhattisgarh,* **[2003] 2 SCC 661 and** *Sucha Singh and Anr.* **v.** *State of Punjab,* **[2003] 7**
D **SCC 643, referred to.**

2.1. Taking the totality of the evidence into consideration, it would be appropriate to convict the accused persons in terms of Section 304 Part II read with Section 34 IPC instead of Section 304 Part I read with Section 34 IPC. Custodial sentence of 7 years would meet the ends of justice. [85-G]
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Rajwant Singh **v.** *State of Kerala,* **AIR (1966) SC 1874;** *Virsa Singh* **v.** *State of Punjab,* **AIR (1958) SC 465;** *State of A.P.* **v.** *Rayavarapu Punnaya,* **[1976] 4 SCC 382 and** *Abdul Waheed Khan alias Waheed and Ors.* **v.** *State of A.P.,* **[2002] 7 SCC 175 referred to.**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 466 of 2006.

From the Final Judgment and Order dated 15.7.2005 of the High Court of Punjab and Haryana at Chandigarh in Cr. A.No. 177-SB/92.

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U.U. Lalit and Ms. Sunita Sharma for the Appellants.

Rajeev Gaur Naseem and T.V. George for the Respondent.

The Judgment of the Court was delivered by

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ARIJIT PASAYAT, J. Leave granted.

Challenge in this appeal is to the judgment of learned Single Judge of the Punjab and Haryana High Court dismissing the appeals filed by the appellants. Learned Additional Sessions Judge, Gurgaon had convicted the appellants and one Dharam Singh for offence punishable under Section 304 Part I read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC'). They were also convicted for offence punishable under Section 325 read with Section 34 IPC as well as Section 323 read with Section 34 IPC. They were sentenced to undergo RI for ten years and to pay a fine of Rs. 2,000; in default of payment of fine they were directed to undergo RI for six months for the first named offence. They were further sentenced to undergo RI for two years and six months respectively for other two offences. Fine of Rs. 500 with default stipulation was imposed. Two other accused persons, namely, Vijay Singh and Rattan Singh were released on probation for a period of two years under Section 4 of the Probation of Offenders Act, 1958 (in short 'Probation Act') in respect of their conviction under Section 323 IPC. Accused Vijay Singh died on 22.5.1992.

Accused Raj Pal, Bir Singh and Chhater Pal question their conviction and sentences imposed.

The factual background in a nutshell is as follows:-

The appellants are sons of one Bhanwar Singh, and grandson of one Ariya alias Arimal. The complainant and party are their collateral. Arimal had another son Hira Singh. Sube Singh (hereinafter referred to as 'deceased') and Pirthi Singh (PW-7) are sons of Hira Singh. Said Hira Singh had two more sons, namely, Suraj Bhan and Om Parkash. Sanjay (PW-6) is son of Pirthi Singh (PW-7).

The betrothal ceremony of Ajit son of deceased Sube Singh was to take place on 27.2.1990. On 24.2.1990, Sanjay (PW-6) went to the house of his uncle, the deceased to help him in making preparations for the occasion. An iron gate fixed in the boundary wall of the house of Sube Singh (deceased) had got dislocated. They were re-fixing it by applying cement. The time was about 10 a.m. Appellants - Raj Pal, Bir Singh, Chhatter Pal and Dharam Singh (since deceased) came there armed with lathis and jellies. They desisted Sanjay and deceased from repairing the gate asserting that they had also a share in the property. Deceased told them that they had no right over the property and they had got their property in the partition. The appellants and Dharam Singh abused deceased. In a fit of anger, Raj Pal gave a lathi blow

A on the head of deceased. Chhatter Pal also gave a lathi blow on his head. Bir Singh gave a jelli blow on the left leg of the deceased. Sanjay (PW-6) intervened to rescue the deceased. Bir Singh gave Jelli blow on the right wrist of Sanjay; Dharam Singh gave a lathi blow on the left hip of Sanjay. Thereafter, Rattan Singh and Vijay Singh appellants also came there armed with jelli and lathi, respectively and joined the fray. Vijay Singh gave a lathi blow on the B right side of the jaw of Sanjay, Rattan Singh gave jelli blow on his right thigh. Pirthi Singh (PW-7) father of Sanjay along with Randhir Singh cousin of Sanjay came there on hearing the alarm raised by Sanjay. Raj Pal gave lathi blow on the head of Pirthi Singh (PW-7); Chhatter Pal gave a lathi blow on his right shoulder. Bir Singh gave a jelli blow on the head of Randhir Singh. C Tej Pal and Mahender Singh arrived at the place of occurrence and rescued the victims from the attack of the accused persons. The injured persons were taken to the hospital. Deceased breathed his last on 25.2.1990 at about 8.40 p.m. at the Safdarjung Hospital.

After completion of investigation, charge sheet was filed. As accused D persons pleaded innocence and denied the charges, trial was held.

Fifteen witnesses were examined. The statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'). As noted above, the accused persons pleaded innocence. It was their plea that the deceased with the help of some PWs was raising construction E on the disputed plot claiming his share in the plot. When they objected, the deceased who wanted to grab their share assaulted the accused persons along with others. They acted in self defence of person and property. The Trial Court on consideration of the evidence on record directed the conviction and imposed sentence as aforementioned. Appeal filed before the High Court F was dismissed. The Trial Court noted that there was no intention to commit murder and the accused persons did not repeat the blows on the head of the deceased. But knowledge can be clearly attributed to them that by giving blow on the head of the deceased death was only consequence. As the accused persons acted in furtherance of the common intention they were punishable under Section 304 (1) IPC read with Section 34 IPC. The High G Court did not accept the plea of exercise of right of private defence and also did not accept the plea that death was not intended. The appeal filed by the accused persons was dismissed; so was the appeal filed by the complainant for alteration of conviction.

H In support of the appeal, learned counsel for the appellants submitted

that the Trial Court and the High Court did not take note of the fact that the accused persons had suffered serious injuries. In any event, the Trial Court having noted that there was no intention to cause homicidal death should not have convicted the accused in terms of Section 304 Part I, IPC.

Learned counsel for the respondent-State supported the judgments of the trial Court and the High Court.

The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See: *Lakshmi Singh* v. *State of Bihar,* AIR (1976) SC 2263). A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject-matter of right of private defence. The plea of right comprises the body or property (i) of the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused

A to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.

Sections 102 and 105, IPC deal with commencement and continuance of the right of private defence of body and property respectively. The right B commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, or commit the offence, although the offence may not have been committed but not until that there is that reasonable apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. In *Jai Dev* v. *State of Punjab,* AIR (1963) SC C 612), it was observed that as soon as the cause for reasonable apprehension disappears and the threat has either been destroyed or has been put to route, there can be no occasion to exercise the right of private defence.

The above position was highlighted in *Rizan and Anr.* v. *State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur,* D *Chhattisgarh,* [2003] 2 SCC 661, and *Sucha Singh and Anr.* v. *State of Punjab,* [2003] 7 SCC 643.

Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death as in this case. Though such right cannot be E weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private defence as claimed by the accused persons have been rightly discarded.

F This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC "culpable homicide" is the genus and "murder", its specie. All "murder" is "culpable homicide" but not *vice versa.* Speaking generally, "culpable homicide" sans "special characteristics of murder is culpable homicide not amounting to murder". For the purpose G of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree". This is punishable under the first part of Section 304. Then, there is "culpable H

homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

Section 299	Section 300
A person commits culpable homicide if the act by the death is caused is done. -	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done. -
	INTENTION
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

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KNOWLEDGE

(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

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Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the *mens rea* requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

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Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily

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injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

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For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant Singh* v. *State of Kerala,* AIR (1966) SC 1874 is an apt illustration of this point.

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In *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465 Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300 "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

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The ingredients of clause "thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows :

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> "12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';
>
> First, it must establish, quite objectively, that a bodily injury is present;

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A Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

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Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause C death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

The learned Judge explained the third ingredient in the following words (at page 468):

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"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is E nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict F the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

These observations of Vivian Bose, J. have become *locus classicus*. The G test laid down by *Virsa Singh* case (supra) for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is H sufficient in the ordinary course of nature to cause death. It must be proved

that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death *viz.* that the injury found to be present was the injury that was intended to be inflicted. A

Thus, according to the rule laid down in *Virsa Singh* case (supra) even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point. B

Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons—being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid. C D

The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages. E

The position was illuminatingly highlighted by this Court in *State of A.P.* v. *Rayavarapu Punnayya,* [1976] 4 SCC 382 and *Abdul Waheed Khan alias Waheed and Ors.* v. *State of A.P.,* [2002] 7 SCC 175. F

Taking the totality of the evidence into consideration and the special features noticed, it would be appropriate to convict the accused persons in terms of Section 304 Part II read with Section 34 IPC instead of Section 304 Part I read with Section 34 IPC. Custodial sentence of 7 years would meet the ends of justice. G

The appeal is partly allowed to the extent indicated.

B.S. Appeal partly alowed. H