

Darshan Singh vs State Of Punjab & Anr on 15 January, 2010

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Bench: Asok Kumar Ganguly, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1057 of 2002

Darshan Singh

.. Appellants

Versus

State of Punjab & Another

.. Respondent

JUDGMENT

Dalveer Bhandari, J.

1. This appeal is directed against the judgment and order of the Punjab & Haryana High Court in Criminal Appeal No.446- (Division Bench) of 1994 dated 6.8.2002.

2. Both Darshan Singh and Bakhtawar Singh were acquitted by the Sessions Court, Ludhiana. The said judgment of acquittal was set aside by the High Court of Punjab & Haryana at Chandigarh.

3. Darshan Singh and Bakhtawar Singh filed appeal against the said judgment before this court. During the pendency of this appeal, Bakhtawar Singh died and consequently the appeal filed by him abated.

4. Brief facts which are necessary to dispose of this appeal are recapitulated as under:-

The dispute is between very close and intimate family members. Deceased Gurcharan Singh was the brother of Bakhtawar Singh and uncle of Darshan Singh. He was the father of Gurdish Singh, PW7, the informant. The agriculture fields of both brothers, Gurcharan Singh and Bakhtawar Singh were situated adjoining to each other. According to the prosecution, on 15.7.1991 at about 8 a.m. Gurdish Singh, PW7 and his father, Gurcharan Singh were irrigating their aforesaid fields and were also mending its ridges and at that time Gurdev Singh, PW8 and Ajit Singh were also present there. In the meantime, Darshan Singh and Bakhtawar Singh came there from the side of their fields raising lalkaras and abused the complainant party. Darshan Singh, accused was armed with D.B.B.L. gun and his father Bakhtawar Singh was carrying a Gandasa and they were saying that they would teach a lesson to the complainant party for cutting the ridges.

5. According to the further story of the prosecution, Bakhtawar Singh gave a Gandasa blow causing injuries on the chest of Gurcharan Singh. Gurcharan Singh was also having a Gandasa with him and in order to save himself he also caused injury on the head of Bakhtawar Singh. Thereafter, Darshan Singh fired two shots from his licensed gun which hit Gurcharan Singh in the chest and some of the pellets hit Gurdish Singh PW7 on his left upper arm and Gurdev Singh, PW8 on his left thigh. Gurcharan Singh fell down and died at the spot. Gurdish Singh and others retraced their steps in order to save themselves. Both the accused in order to save themselves ran towards their respective houses. Gurdish Singh, PW7 left the dead body of Gurcharan Singh and proceeded to the police station to lodge a report. Gurdev Singh PW8 also accompanied him. They met Om Prakash, ASI at about 9 a.m. at Barnala crossing where Gurdish Singh PW7 gave his statement. It was then read over and explained to him who signed the same admitting the contents thereof to be correct. Om Prakash, ASI made his endorsement (Ex. N/1) and forwarded the statement to the police station, Rajkot and on the basis of which the case was registered against both the accused.

6. Om Prakash, ASI accompanied Gurdish Singh and Gurdev Singh to the place of occurrence. He prepared inquest report in respect of the dead body of Gurcharan Singh and then sent the dead body for post-mortem examination through Constable Milkha Singh and Head Constable Pargat Singh. Om Prakash, ASI lifted blood stained earth from the place where dead body of Gurcharan Singh was lying and took the same into possession after preparing the recovery memo. One gandasa and an empty cartridge of 12 bore were found lying near the dead body. The gandasa and the empty cartridge were also taken into possession. The Investigating Officer prepared visual site plan of the place of occurrence with marginal notes. Gurdish Singh and Gurdev Singh's injury statements were also prepared and sent for medico legal examination.

7. Dr. Mukesh Gupta PW4 conducted post-mortem examination on the dead body of Gurcharan Singh on 15.7.1991 at 4.30 p.m. On the same day at 5.50 p.m. Dr. Gupta also conducted medico legal examination of Gurdev Singh and found one abrasion on his left thigh. Dr. Gupta found a superficial abrasion on Gurdish Singh on his elbow. Darshan Singh and Bakhtawar Singh were arrested on 28.7.1991. The factum of the incident has not been denied by the accused and they claimed right of private defence.

8. According to the prosecution, the motive of the crime was dispute regarding partition of land between both brothers Bakhtawar Singh and Gurcharan Singh. One year prior to the present incident, the village Panchayat had got the dispute compromised by a written agreement. There was a common well situated in the adjoining land. As a result of the compromise, the well along with a small piece of land attached to it was given to Gurcharan Singh and the land of common pathway leading to the well was given to the accused party. The compromise was not accepted by the accused party and they wanted repartition of the land attached to the well. This grievance led to this unfortunate incident.

9. The prosecution examined 11 witnesses. Dr. Mukesh Gupta, PW4 who conducted the post-mortem examination found the following injuries on the dead body of Gurcharan Singh:-

"1. There were 14 wounds in an area of 20 cm x 18 cm on left side of the chest above the nipple. One of the wounds which was above the nipple was having inverted margins. A wad was recovered from this wound. This wound was 1 cm x 1 cm. The 9 wounds which measured 0.75 cm x 0.75 cm which were on the chest and shoulder also had inverted margins. Out of these wounds 6 were found to entering chest cavity and 6 pellets were recovered from the chest cavity. The remaining 3 wounds were having everted margins. These were near the axilla and each wound measured 1 cm x 1 cm. One of the 14 wounds which measured 0.75 cm x 1.5 cm was having inverted margins. It was skin deep and was on the shoulder, upper part of humerus and clavicle bones were found to be fractured. 4th and 5th rib of the left side of the chest were also found to be fractured.

2. There were 7 wounds in an area of 20 cm x 8 cm on the upper part of the chest on its right side above the nipple. Out of these wounds 3 wounds measuring 0.75 cm x 1 cm each was having inverted margins, these were skin deep. 2 wounds were having everted margins having a dimension of 1 x 1 cm each near the axilla. A pellet was recovered from near the axilla. The remaining 2 wounds were near the top of right shoulder measuring 0.75 x 1.5 cm each with inverted margins. These were skin deep.

3. An incised wound 8 cm x 0.5 cm skin deep on the left side of chest 3 cm above the nipple. It was horizontally placed."

10. Dr. Mukesh Gupta found following injury on the person of Gurdev Singh:-

"An abrasion measuring 1 cm x 0.5 cm on the front and inner side of left thigh. It was a superficial abrasion reddish in colour, over the junction of upper 1/3rd and lower 2/3rd of the thigh. There was damage to the pajama corresponding to the injury."

11. According to the doctor, the injury was simple in nature and was caused within 24 hours. Doctor also found injury on Gurdish Singh to be superficial. The same reads as under:-

"A very superficial abrasion 1 cm x 0.5 cm on the upper side of left upper arm 12 cm above the elbow. It was reddish in colour."

12. It may be relevant to mention that Dr. M.S. Gill, PW5, who conducted the medical examination of Bakhtawar Singh found the following injuries on his person:-

"1. An incised wound 7 cm x 0.5 cm on the parietal region of the right side of head. It was placed anterior posteriorly. The wound was bone deep and 4 cm above the right pinna. Clotted blood was present."

13. According to doctor, this injury was caused by sharp- edged weapons.

14. Both Gurdish Singh, PW7 and Gurdev Singh, PW8 are the eye-witnesses who gave detailed description of the occurrence. After examining the prosecution evidence, the following statements of Darshan Singh and Bakhtawar Singh were recorded under section 313 Cr. P.C.. The relevant portion of the statement of Darshan Singh reads as under:-

"I am innocent. In fact the complainant party had gone back from the agreement got effected by the Panchayat one year prior to the occurrence. In accordance with the said compromise we had ploughed the land which was earlier under common pathway. One day prior to the occurrence we had irrigated that portion of the land. On the day of occurrence when we went to the fields, Gurcharan Singh (deceased) along with 3-4 outsiders came to our field and remarked that we would be taught a lesson for irrigating the land. Immediately thereafter Gurcharan Singh gave a gandasa blow hitting my father Bakhtawar Singh on the head as a result of which he fell down. I felt that my father had been killed. Gurcharan Singh then advanced towards me holding the gandasa. I apprehended that I too would be killed and I then pulled the trigger of my gun. Gurcharan Singh fell to the ground and his companions took to their heels. I then took Bakhtawar Singh in injured condition to Govt. hospital, Sudhar. Police came to the hospital at about 5 p.m. We were kept under guard and brought to the police station on the next day after getting my father discharged. We have been falsely implicated in this case.

Bakhtawar Singh (accused) pleaded as under:-

"I am innocent. It was the complainant party who had resiled from the compromise got effected by Panchayat about a year before the occurrence. We had ploughed the

land which had fallen to our share and one day prior to the occurrence we had irrigated the same. On the day of occurrence when we went to the fields Gurcharan Singh (deceased) along with 3-4 outsiders came to our field and remarked that we would be taught a lesson for irrigating the land. Immediately thereafter Gurcharan Singh gave a gandasa blow on my head as a result of which I fell down. Gurcharan Singh then advanced towards Darshan Singh holding his gandasa whereupon Darshan Singh fired a shot from his gun. I was taken to Government hospital, Sudhar by Darshan Singh. Police came there on the same day at about 5 p.m. and took us to the police station after getting me discharged. I have been falsely involved in this case."

15. According to the versions of the accused Darshan Singh and Bakhtawar Singh, Gurcharan first gave Gandasa blow hitting Bakhtawar Singh on the head and the injury caused on Bakhtawar Singh was an incised wound of 7 cm x 0.5 cm. on the parietal region of the right side of head. The wound was bone deep and 4 cm above the right pinna and clotted blood was present and after receiving these injuries in order to save himself, Darshan Singh fired at Gurcharan Singh and as a result of which he died. According to the accused, the entire act is covered by the right of private defence. According to the prosecution, Bakhtawar Singh gave first injury on the chest of Gurcharan Singh whereas according to the defence the first injury was given by Gurcharan Singh to Bakhtawar Singh. The appellant Darshan Singh fired only after the serious incised wound by a Gandasa was inflicted on his father Bakhtawar Singh and at that time in order to save his life he fired 2 shots which hit the deceased Gurcharan Singh leading to his death.

16. The point for determination is the place where the unfortunate incident had taken place. According to Bhupinder Singh Patwari, PW3, point 'A' in site plan Ex.PC denotes the place where the dead body of Gurcharan Singh was said to be lying and this point is in Khasra No.10. He further testified that accused Bakhtawar Singh was recorded in cultivating possession of Khasra No.10. According to the finding of the trial court, it clearly shows that Bakhtawar Singh was in possession of Khasra No.10. According to Bhupinder Singh Patwari, Point 'E' is in Khasra No.10 from where Darshan Singh had allegedly fired at Gurcharan Singh. According to the site plan prepared by Bhupinder Singh Patwari, Point 'F' is the place where the dispute took place with Bakhtawar Singh. According to the Patwari, this point 'F' is in Khasra No.10 at a distance of 5 karms which is equivalent to 27.5 feet from the aforesaid pathway and point 'A' is at a distance of 7 karms from point 'F'. Thus, from this evidence it is evident that the occurrence took place inside Khasra No.10 which was in possession of Bakhtawar Singh accused. Gurcharan Singh covered a distance of about 7 karms which is equivalent to 37.5 feet.

17. The trial court came to the conclusion that the presence of Gurdev Singh and Gurdish Singh at the time of alleged occurrence is highly doubtful. Dr. Mukesh Gupta also stated that injuries on the person of Gurdev Singh and Gurdish Singh could be caused by friendly hands and can be self suffered. He further stated in the cross examination that duration of the injuries was less than 6 hours. As per the prosecution case, the injuries were allegedly received by them at about 8 a.m. No pellet was recovered from the injuries of these witnesses namely, Gurdev Singh and Gurdish Singh. According to the trial court, the possibility of these injuries on their person having been fabricated at

a later stage cannot be ruled out. The trial court also held that there was no mention of the injuries received by Gurdish Singh and Gurdev Singh in the inquest report whereas this fact finds mention in the first information report. According to the prosecution, Gurdish Singh suffered pellet injury on the left upper arm whereas, Gurdev Singh was hit on his left thigh. If it was so, there would have been mention of this fact in the inquest report or the investigating officer must have prepared their injury statement, but neither any such injury statement was prepared at the spot nor their medical-examination was carried out. Om Prakash, ASI, in his cross-examination has admitted that he came to know about the injuries of Gurdish Singh and Gurdev Singh only when they gave their supplementary statements at the bus stand. According to the findings of the trial court, their injury statement was prepared at the spot and they were medically examined by Dr. Mukesh Gupta. Thus, according to the trial court the injuries were fabricated with connivance with the investigating officer just in order to make Gurdish Singh and Gurdev Singh stamp witnesses.

18. The trial court after discussing the entire evidence came to the conclusion that two counter versions of the case have been presented and, in the view of the trial court, the defence version is more probable and nearer to the truth for the following reasons:

(i) The delay in lodging the FIR impells the court to scrutinize the evidence of witnesses regarding the actual occurrence with greater care and caution.

(ii) The crucial point to be decided in this case was that who was the aggressor or which of the parties can have the motive to open the attack?

The trial court held that "if the accused were already cultivating the land as per compromise, then it does not appeal to reason as to why they would feel aggrieved. On the other hand there was strong motive for Gurcharan Singh to assault the accused person as he has resiled from the compromise."

(iii) The next crucial point according to the trial court was as to where the incident took place? According to the trial court the incident had taken place in the field of the accused.

(iv) According to the trial court, the presence of the prosecution witnesses Gurdev Singh and

Gurdish Singh at the time of alleged occurrence is highly doubtful. Dr. Mukesh Gupta stated that the injuries on Gurdev

Singh and Gurdish Singh could be caused by friendly hands and can be self suffered.

(v) No pellet was recovered from the injuries of the prosecution witnesses namely, Gurdev Singh and Gurdish Singh. The possibility of the injuries on their persons having been fabricated at a later stage cannot be ruled out. The trial court found that, in the instant case, it appeared that the inquest report was prepared first and the FIR was prepared at some later stage because there was no mention about the injuries of Gurdev Singh and Gurdish Singh in the inquest report, whereas this

fact is mentioned in the FIR. According to the prosecution case, Gurdish Singh suffered a pellet injury on his left upper arm whereas, Gurdev Singh was hit on his left thigh. This was so mentioned in the FIR. If it was so, this fact would have been mentioned in the inquest report or the Investigating Officer must have prepared their injury statement, but no such injury statement was prepared at the spot nor their medical examination was got done.

In the cross-examination, Om Prakash ASI had admitted that he came to know about the injuries of Gurdish Singh and Gurdev Singh only when they gave their supplementary statements at the bus stand. The finding of the trial court is that the injuries were fabricated with the connivance of the Investigating Officer just in order to make Gurdish Singh and Gurdev Singh stamp witnesses.

(vi) Gurdish Singh P.W.7 had admitted that his father Gurcharan Singh was face to face when Bakhtawar Singh gave Gandasa blow from above to downward vertically on the chest of Gurcharan Singh. However, Dr. Mukesh Gupta contradicted him and stated that injury no.3 on the person of Gurcharan Singh was skin deep and was horizontally placed and was possible by a fall on a sharp edged weapon.

From this it can safely be concluded that it was not Bakhtawar Singh who gave Gandasa blow to Gurcharan Singh in the manner as suggested by the prosecution. It is most likely that Gurcharan Singh suffered injury no. 3 by a fall on his own Gandasa and this was the reason that the wound was only skin deep.

The story put forth by the prosecution that Gurcharan Singh was cutting weeds of ridges with Gandasa is not believable. Gurdish Singh stated that he was collecting the cut weeds. They were not having any Kassi or Khurpa and it was not possible to cut weeds of ridges with Gandasa.

(vii) The trial court came to a clear conclusion that Bakhtawar Singh was injured at point 'F' as shown in the site plan at the hands of Gurcharan Singh (deceased). Gurcharan Singh after causing that injury forwarded towards Darshan Singh armed with Gandasa and at that point Darshan Singh had no option but to open fire and Gurcharan Singh died of that firearm injury. The trial court came to the definite conclusion that Darshan Singh fired a shot in his right of private defence.

(viii) The trial court after marshalling the entire evidence came to the conclusion that seeing from all angles, the probabilities of the case are much more in favour of the defence than in favour of the prosecution. The possibility of the injuries having been caused to Gurcharan Singh by Darshan Singh in exercise of private defence cannot be ruled out. Thus, the prosecution has failed to prove its case against the accused person beyond any reasonable doubt and the benefit has to be given to them.

19. We deem it appropriate to briefly discuss the principle of right of private defence and how the courts have crystallized this principle in some important judgments.

20. Relevant provisions dealing with the right of private defence are sections 96 and 97 of the Indian Penal Code.

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

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

First.- His own body, and the body of any other person, against any offence affecting the human body;

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

21. Section 100 of the Indian Penal Code is extracted as under:

"100. When the right of private defence of the body extends to causing death. -- The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely: --

First. -- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. -- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. -- An assault with the intention of committing rape;

Fourthly. -- An assault with the intention of gratifying unnatural lust;

Fifthly. -- An assault with the intention of kidnapping or abducting;

Sixthly. -- An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release."

22. Section 100 of the Indian Penal Code justifies the killing of an assailant when apprehension of atrocious crime enumerated in several clauses of the section is shown to exist. First clause of Section 100 applies to cases where there is reasonable apprehension of death while second clause is attracted where a person has a genuine apprehension that his adversary is going to attack him and he reasonably believes that the attack will result in a grievous hurt. In that event he can go to the extent of causing the latter's death in the exercise of the right of private defence even though the

latter may not have inflicted any blow or injury on him.

23. It is settled position of law that in order to justify the act of causing death of the assailant, the accused has simply to satisfy the court that he was faced with an assault which caused a reasonable apprehension of death or grievous hurt. The question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no strait-jacket formula can be prescribed in this regard. The weapon used, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluating whether the apprehension was justified or not?

SCOPE AND FOUNDATION OF THE PRIVATE DEFENCE

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

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

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

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

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

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

endangering life.

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

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

30. When there is real apprehension that the aggressor might cause death or grievous hurt, in that event the right of private defence of the defender could even extend to causing of death. A mere reasonable apprehension is enough to put the right of self-defence into operation, but it is also settled position of law that a right of self-defence is only right to defend oneself and not to retaliate. It is not a right to take revenge.

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

32. A legal philosopher Michael Gorr in his article "Private Defense" (published in the Journal "Law and Philosophy"

Volume 9, Number 3 / August 1990 at Page 241) observed as under:

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

33. The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not

readily available, that individual is entitled to protect himself and his property. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self creation. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose.

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

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

36. The courts have always consistently held that the right of private defence extends to the killing of the actual or potential assailant when there is a reasonable and imminent apprehension of the atrocious crimes enumerated in the six clauses of section 100 of the IPC. According to the combined effect of two clauses of section 100 IPC taking the life of the assailant would be justified on the plea of private defence; if the assault causes reasonable apprehension of death or grievous hurt to the person exercising the right. A person who is in imminent and reasonable danger of losing his life or limb may in the exercise of right of self-defence inflict any harm, even extending to death on his assailant either when the assault is attempted or directly threatened. When we see the principles of law in the light of facts of this case where Darshan Singh in his statement under section 313 has categorically stated that "Gurcharan Singh gave a gandasa blow hitting my father Bakhtawar Singh on the head as a result of which he fell down. I felt that my father had been killed. Gurcharan Singh then advanced towards me holding the gandasa. I apprehended that I too would be killed and I then pulled the trigger of my gun in self defence." Gurcharan Singh died of gun shot injury.

37. In the facts and circumstances of this case the appellant, Darshan Singh had the serious apprehension of death or at least the grievous hurt when he exercised his right of private defence to save himself.

BRIEF ENUMERATION OF IMPORTANT CASES:

38. The legal position which has been crystallized from a large number of cases is that law does not require a citizen, however law-abiding he may be, to behave like a rank coward on any occasion. This

principle has been enunciated in Mahandi v. Emperor [(1930) 31 Criminal Law Journal 654 (Lahore); Alingal Kunhinayan & Another v. Emperor Indian Law Reports 28 Madras 454; Ranganadham Perayya, In re (1957) 1 Andhra Weekly Reports 181.

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

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

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

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

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

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

i. There is no sufficient time for recourse to the public authorities ii. There must be a reasonable apprehension of death or grievous hurt to the person or danger to the property concerned.

iii. More harm than necessary should not have been caused.

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

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

46. The facts of this case are akin to the facts of the instant case.

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

48. In *James Martin v. State of Kerala* (2004) 2 SCC 203, this court again reiterated the principle that the accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

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

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

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

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

protection of the public authorities."

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

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

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

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

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

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

57. In *Buta Singh v. The State of Punjab* (1991) 2 SCC 612, the court noted that 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 negated. 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."

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

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

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

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

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

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-

terminus with the duration of such
apprehension.

(v) It is unrealistic to expect a person under assault

to modulate his defence step by step with any arithmetical exactitude.

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

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

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

reasonable doubt.

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

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

59. The High Court in the impugned judgment has reversed the trial court's judgment of acquittal and convicted the accused. Admittedly, Darshan Singh fired from his 12-bore double barrel gun which had a number of pellets. The High Court disbelieved the trial court's version that Gurdish Singh and Gurdev Singh did not receive fire arm injuries because no pellet or pellets were recovered from their bodies. In the impugned order, the High Court without giving any cogent reasons has set aside the well considered judgment of the trial court.

60. In our view, when a shot was fired from a 12-bore gun and if no pellet was recovered, then the trial court is not wrong in arriving at the conclusion that the injuries were not caused by a fire arm. The High Court on this point discarded the reasoning of the trial court without any sound basis.

61. The High Court gave the finding that "since it is a case of dual version, one given by the complainant, who appears to be a truthful witness when he has not concealed the role of his father and explained the injury of Bakhtawar Singh. On the contrary, the accused persons have come with untenable defence." While arriving at this conclusion, the High Court in the impugned judgment has not followed the consistent legal position as crystallized by various judgments of this Court. The High Court or the Appellate Court would not be justified in setting aside a judgment of acquittal only on the ground that the version given by the complainant is more truthful.

62. In a case of acquittal, if the trial court's view is a possible or plausible view, then the Appellate Court or the High Court would not be justified in interfering with it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial court. The Appellate Court or the High Court would not be justified in reversing the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the Appellate Court or the High Court.

63. The High Court has unnecessarily laid stress on the point of recovery of the gun at the instance of Darshan Singh. The accused has not denied the incident. The case of the defence is that their case is covered by the right of private defence. Darshan Singh in his statement under Section 313 of the Code of Criminal Procedure, 1908 has admitted that he had fired from his licensed gun in his right of private defence. The High Court without properly comprehending the entire evidence on record reversed the well reasoned judgment of the trial court.

64. In the instant case after marshalling and scrutinizing the entire prosecution evidence, we are clearly of the view that the trial court's view is not only the possible or plausible view but it is based on the correct analysis and evaluation of the entire evidence on record. Rationally speaking, no other view is legally possible.

65. Consequently, this appeal is allowed and the impugned judgment of the High Court is set aside and the judgment of acquittal of the trial court is restored. The role attributed to the appellant is fully covered by his right of private defence. Consequently, the appellant is acquitted. The appellant was released on bail by this Court. He need not surrender. The appeal is accordingly allowed and disposed of.

.....J. (Dalveer Bhandari)J. (Asok Kumar Ganguly) New
Delhi;

January 15, 2010