

RIGHT OF PRIVATE DEFENCE AND EFFECT OF NON-EXPLANATION OF INJURIES

Raghunath Prasad

H.J.S.

The terms 'Private Defence' and 'Self Defence' are synonymous to each other. In fact they carry one and the same meaning. Latin words, 'Se Defendendo' stand for the same. In the olden days, when the civilization had not dawned, only one law had its effective play and that was 'might is right'. With the advancement of society the State took up the task of protecting the person and property of its subject, but experiences were that the State was exclusively - unable to guarantee such protection and thereby its subject were privileged to protect their person and property by causing injuries, simple and grievous, within their reasonable restrictions, to them who intended to pose such danger to person and property.

Sections 96 to 106 of the Indian Penal Code deal with the right of private defence of person and property. This right is based on two principles, (I), It is available against the aggressor only, and (II), the right is available only when the defender entertains reasonable apprehension. There are three tests for ascertaining reasonable apprehension; they are objective, subjective and expanded objective. While objective test emphasises as to how in a similar circumstance an ordinary, reasonable, standard and average person will response, the subjective test examines the mental state based on individualistic attitude. However, expanded objective test, being the combination of aforesaid, two tests, bases its inquiry on an individual as a person and inquiry is furthered to determine whether or not the individual acted as a reasonable person. Right of private defence serves social purpose and the right should be liberally construed. Such a right will not only be a restraining influence on bad characters but will also encourage manly spirit in a law abiding citizen¹ It is a very valuable right. It has a social purpose. It should not be narrowly construed. It necessitates the occasions for the exercise of this right as an effective means of protection against wrong doers².

In judging whether the accused has exceeded his right to private defence or not, the court has to take into account the weapons used particularly in a case of firing and the number of shots that were fired³. In such a case where it was not possible to disengage the truth from falsehood and to sift the grain from the chaff, because the truth and falsehood were so inextricably inter twined together, the prosecution was found to have failed to prove the case beyond reasonable doubt and it was held that the accused could not be said to have exceeded his right of private defence.⁴

¹ Munshi Ram v. delhi Administration, AIR 1968 SC 702

² Vidya Singh v. State of M.P., AIR 1971 SC 1857

³ Madan Mohan Pandey v, State of U,P" 1991 Cr, L,J, 467 (S.C).

⁴ Biri Singh v. State of U.P., 1992 Cr.L.J.1510 (S.C.). S Kamta v. State, 1978 All W.C. 281.

From the point of view of prosecution, it can now be safely said that there are two basic principles of criminal justice system, one, there is presumption of Innocence in favour of the accused, and second, it is for the prosecution to prove the guilt beyond all reasonable doubts.

However, the questions are as to in what manner plea of private defence can be introduced by the accused and as to how the burden of proving the plea of private defence can be discharged. Many debates on both the counts have been made. Now the law is clear.

Evidence establishing a plea of private defence may be Introduced by the prosecution itself or it may be introduced by the defence by the cross examination of the witnesses or by the statement of accused u/s 313 Cr. P.C. or by the defence evidence⁵. Plea of private defence, even if not taken in trial court, can be taken in appeal⁶. Even the accused can rely on circumstances and admissions made by the witnesses in support of his plea of self-defence, without even setting up a specific plea. It was held that it was not a right approach to question that the plea was put forward during the trial and not during investigation⁷.

Section 105 of Indian Evidence Act. 1872 casts a burden on accused to prove exception of defence and in absence of proof it is not possible for the court to presume the truth of the plea of self defence⁸.

In nine Judges bench of Allahabad High Court,⁹ the question for consideration was as to whether the views of Seven Judges¹⁰ were still a good law. While declaring that the majority decision in Parbhoo v. Emperor¹⁰ is still, good law, it was held that the accused person who pleads an exception is entitled to be acquitted if upon a consideration of the evidence as a whole (including the evidence given in support of the plea of the general exception) a reasonable doubt is created in the mind of the court about the guilt of the accused. Discussing it further, it was observed that the majority of their Lordships did not lay down anything beyond three important propositions which, if not either directly or indirectly supported by decisions of their Lordships of the Supreme Court, have not been affected in the slightest degree by these decisions. These propositions are: firstly, that no evidence appearing in the case to support the exception pleaded by the accused can be excluded altogether from consideration on the ground that the accused has not proved his plea fully; secondly, that the obligatory presumption at the end of Section 105 is necessarily lifted at least when there is enough evidence on record to justify giving the benefit of doubt to the accused on the question whether he is guilty of the offence with which he is charged; and thirdly, if the doubt, though raised due to evidence in support of the exception pleaded, is reasonable and affects an ingredient of

⁵ Kamta v. State, 1978 All W.C. 281

⁶ Ahir Raja Ladha v. State of Gujarat, (1969)2 S.C.W.R. 828 (831)

⁷ Bahadur Singh v. State of Punjab. 1993 S.C.C. (Cr.) 94

⁸ Narain Singh v. State of Punjab. (1964) 1 Cr.L.J.730, Ram Dahir v. State of Bihar. 1970 S.C. Cr. R.557; State of U.P. v. Ram Swaroop, AIR 1974 S.C. 1570. Salim Zia v. State Of U.P., AIR 1979 S.C. 391, Mohindra Pal v. State of Punjab, AIR 1979 S.C. 577

⁹ Rishikesh Singh v. state of U.P, AIR 1970 All 51 (FB)

¹⁰ Parbhoo v. Emperor, AIR 1941 All. 402 (F.B.)

the offence with which the accused is charged, the accused would be entitled to an acquittal. Even if the accused fails to establish to the satisfaction of the court, the plea of private defence, it is enough, if a reasonable doubt arises on examination of the probabilities of the case¹¹. Accused need not prove the same beyond reasonable doubt. However, the circumstances should at least probabalise the same.¹²

Some of the cases will justify the causing of injuries in exercise of the right of private defence. Where the accused assaulting victim on seeing his minor daughter being sexually molested by him, it is a case where the right of private defence arises and the case is fully covered by Sections 96 and 97 read with Section 100 of the I.P.C., whether it was a case of sexual intercourse with consent or without consent.¹³ The defence version that the deceased and his brother followed accused and his brother while they were passing the lane via house of deceased and on reaching place of occurrence deceased tried to inflict blow with Kripan, whereupon accused turned and fired shot resulting in death of Darshan Singh on the spot, was found acceptable¹⁴ As she had neither motive nor had intention to kill the deceased, she only wanted to save herself from an armed intruder who had inflicted knife Injuries on her, the court found that she acted in her right of self defence.¹⁵ The compromising position in which the accused found the deceased with his wife gave the accused the grave and sudden provocation. The provocation was further aggravated when the accused found the deceased causing further offence of causing multiple injuries including grievous injury to him. Accused thereafter using chopper and causing death of deceased. The court held that it cannot be said that the accused has exceeded his right of private defence.¹⁶ In this case both the sides were armed. The victim received a number of injuries and fell dead. Two of the accused also received gunshot injuries. The evidence showed that the accused had already taken possession of the land, though it was taken forcibly. The court held that in presence of such evidence the accused could not be held aggressors and their plea of self defence could not altogether be ignored¹⁷.

Effect of non-explanation of Injuries

On this point of law, views of Hon'ble Supreme Court have been of different dimensions. Views are being reproduced below.

Adverse Inference Theory

1. Where the prosecution fails to explain the injuries on the accused, two results follow:

(i) That the evidence of the prosecution witnesses is untrue; and (ii) that the injuries probabalise the plea taken by the accused. Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394: (AIR 1976 SC 2263).

¹¹Munshi Ram v. Delhi Administration, AIR 1968 S.C. 702; State of U.P. v. Ram Swaroop, AIR 1974 S.C. 1570; State of Gujarat v. Bai Fatima, AIR 1975 SC 1478; State of U.P. v. Mohd. Museer Khan, AIR 1977 SC 1897; Mohinder Pal v. State of Punjab, AIR 1979 SC 577; Salim Zia v. State of U.P., AIR 1979 SC 391; Ram Phal v. State of Haryana, AIR 1993 SC 1979.

¹²Ballam Singh v. State of Haryana, 1994 Supp. (1) S.C.C. 92 = 1994 SCC (Cr.) 196

¹³Yeshwant Rao v. State of M.P., 1992 Cr. L.J. 2779 (S.C.)

¹⁴State of Punjab v. Sohan Singh, 1992 Cr. L.J. 2514 (S.C.)

¹⁵Nabia Bai v. State of Madhya Pradesh, 1992 Cr. L.J. 526 (SC)

¹⁶Raghavan Achari v. State of Kerala, 1992 Cr.L.J. 3857 (SC)

¹⁷Khudedu v. State of U.P., AIR 1993 SC 1538

2. The non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

(i) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; (iii) that in case there is a defence version which explains the Injuries on the person of the accused, It Is rendered probable so as to throw doubt on the prosecution case.

Mohar Rai v. State of Bihar, (1968) 3 SCR 525: (AIR 1968 SC 1281).

No Obligation Theory

1. **The prosecution is not obliged to explain the Injuries on the person of the accused in all cases and in all circumstances. It depends upon the facts and circumstances of each case whether the prosecution case becomes reasonably doubtful for its failure to explain the injuries of the accused.**

Bhaba Nanda Sharma v. State of Assam, (1977) 4 SCC 396 : (AIR 1977 SC 2252).

2. The prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain the injuries on the person of the accused.

Ramlagan Singh v. State of Bihar, (1973) 3 SCC 881: (AIR 1972 SC 2593)

Care and Caution Theory

In Onkarnath Singh v. State of U.P., (1975) 3 SCC 276: (AIR 1974 SC 1550), Hon'ble Supreme Court has reiterated its view as expressed in Bankey Lal v. State of U.P., (1971)2 SCC 184: (AIR 1971 SC 2233) and Bhagwan Tana Patil v. State of Maharashtra, (1974) 3 SCC 536: (AIR 1974 SC 21) that the entire prosecution case cannot be thrown over-board simply because the prosecution witnesses do not explain the injuries on the person of the accused. Thereafter, it was observed as follows (at p. 1557 of AIR):-

"Such non-explanation, however, is a factor which is to be taken into account in judging the veracity of the prosecution witnesses, and the court will scrutinise their evidence with care. Each case presents its own features. In some case, the failure of the prosecution to account for the injuries of accused may undermine its evidence to the core and falsify the substratum of its story, while in others it may have little or no adverse effect on the prosecution case. It may also, in a given case, strengthen the plea of private defence set up by the accused. But it cannot be laid down as an invariable proposition of law of universal application that as soon as it is found that the accused had received injuries in the same transaction in which the complainant party was assaulted, the plea of private defence would stand prima facie established and the burden would shift to the prosecution to prove that those injuries were caused to the accused in self-defence by the

complainant party. For instance where two parties come armed with a determination to measure their strength and to settle a dispute by force of arms and in the ensuing fight both sides receive injuries, no question of private defence arises"

Corresponding Obligation Theory

It is true that where serious injuries are found on the person of the accused, as a principle of appreciation of evidence, it becomes obligatory on the prosecution to explain the injuries, so as to satisfy the court as to the circumstances under which the occurrence originated. But before this obligation is placed on the prosecution two conditions must be satisfied:-

1. That the injuries on the person of the accused must be very serious and severe and not superficial;
2. That it must be shown that these injuries must have been caused at the time of the occurrence in question. *Jagdish v. State of Rajasthan*. (1979) 3 SCR 428. (AIR 1979 SC 1010 at p. 1011).

Eye witnesses Preferential Theory

In material particulars the evidence of the three eye-witnesses as also the evidence of dying declaration of the deceased before P.W. Gulam Nabi is so convincing and natural that no doubt creeps into it for the failure of the prosecution to explain the injuries on the person of respondent No.1. The prosecution case is not shaken at all on that account. *State of Gujarat v. Bai Fatima*. (AIR 1975 SC 1478).

Appreciation of Evidence Theory

It is not an invariable rule that the prosecution has to explain the Injuries - " sustained by the accused in the same occurrence. The burden of proving the guilt of the accused is undoubtedly on the prosecution. The accused is not bound to say anything in defence. The prosecution has to prove the guilt of the accused beyond all reasonable doubts. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of the guilt of the accused beyond any reasonable doubt the question of the obligation of the prosecution to explain the injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by, the accused and proves its case beyond reasonable doubt it becomes hardly necessary for the prosecution to again explain how and in what circumstances injuries have been inflicted on the person of the accused.

Hare Krishna Singh v. State of Bihar. AIR 1988 SC 863.

Prosecution witness shy away Theory

Two accused persons sustained injuries on the skull as well as scapular region but no explanation was offered by the prosecution, it was held that if the prosecution witnesses shy away from the reality and do not explain the injuries. It casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the - impression that the witnesses are

suppressing some part of the incident. It was hazardous to place implicit reliance on the testimony of the Injured P. W. 2

State of Rajasthan v. Madho. AIR 1991 SC 1065.

Scope for argument theory

The effect of non-explanation by the prosecution about the injuries on the accused persons depends on the facts and circumstances of each case. Normally if there is such non explanation it may at the most give scope for the argument that the accused had the right of private defence or In general. that the prosecution evidence should be rejected as they have not come out with the whole truth particularly regarding the genesis of the occurrence.

State of Karnataka vs. Jinappa Kudachi and others, 1994 S.C.C. (Cr.) 330.

Accused non explaining factor theory

There is not a whisper on the side of the accused as to how they happened to receive the injuries. No doubt the burden is not on them but in appreciating the facts of the case, this aspect also has to be borne in mind. Jagat Singh v. State of Punjab, 1994 SCC (Cr.) 1246.

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