# RATHEESHKUMAR @ BABU

# Verses

# THE STATE OF KERALA & ANR.

# 2024 Supreme Court

## Right to Private defence

## Murder exception 2 and 4

**Facts -It appears from the evidence on record that the appellant herein is an agriculturist. He owns his own agricultural farm. The agricultural farm of the deceased is adjacent to the agricultural farm of the appellant herein. On the date of the incident, the deceased was trying to put up a fence in some part of his land. The putting up of fence was objected vehemently to by the father of the appellant herein namely, Ramakrishnan. There was some altercation in words between the two. According to the case of the prosecution, the father called for his son i.e. the appellant herein for help. The appellant herein reached to the place where the quarrel was going on.**

Thereafter, according to the case of the prosecution, the appellant and his father caught hold of the deceased and the appellant is said to have taken out a knife and inflicted stab injuries on the chest region of the deceased. The deceased succumbed to the injuries.

On trial the accused were convicted for committing the offence of murder. Even the appeal before the high court was dismissed.

On appeal before the supreme court the accused raised the plea that his case falls in exception 2 or exception 4 of section 302 IPC

He argued that when the altercation was going on between the father of the appellant herein and the deceased, the appellant was nowhere in the picture. It

is only when the father called for the appellant that he reached the place of the incident and having realised the seriousness of the situation, was left with no other option but to take out a knife and stab the deceased to death. He further submitted that there was an imminent threat to his property. He was trying to protect his property and while trying to protect his property, he exercised his right of private defence.

In the alternative, he submitted that the case may even fall within Exception 4 to Section 300 of the IPC. According to him, the act was not pre-meditated or pre-planned. Everything happened in a spur of a moment and that too in the heat of passion.

He would submit that the father of the appellant desperately wanted to stop the deceased putting up a fencing.

Whereas, the deceased was firm in putting up the fencing. This dispute ultimately led to a very ugly fight between them which led to this particular incident. In such circumstances referred to above, the learned counsel prayed that the conviction of the appellant be altered from Section 302 to Section 304 Part 1 of the IPC and the sentence be reduced accordingly

It is a 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. The court, while deciding this question of fact, is to take into consideration various facts, like the weapon used, the manner and nature of assault, the motive and other circumstances.

Supreme Court in Darshan Singh v. State of Punjab and another reported in (2010) 2 Supreme Court Cases 333, while considering its various previous judgments on the subject, has summarised the following principles regarding the right of private defence : "(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise 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 act is contemplated and it is likely to be committed if the right of private defence is not exercised. offence

(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.**

**Munshi Ram & Others v. Delhi Administration reported in AIR 1968 SC 702**, **has observed that** ***"5. ...It is well settled that even if an accused does not plead self defence, it is open to the court to consider such a plea if the same arises from the material on record — see In re Jogali Bhaigo Naiks [AIR 1927 Mad 97] . 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 the material on record.***

**This Court in K.M. Nanavati v. State of Maharashtra reported in AIR 1962 SC 605, laid down** ***"...But when an accused relies upon the general exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, Section 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that Section the Court shall presume the absence of circumstances bringing the 19 case within any of the exceptions, that is, the court shall regard the non-existence of such circumstances as proved till they are disproved. An illustration based on the facts of the present case may bring out the meaning of the said provision. The prosecution alleges that the accused intentionally shot the deceased; but the accused pleads that, though the shots emanated from his revolver and hit the deceased, it was by accident, that is, the shots went off the revolver in the course of a struggle in the circumstances mentioned in Section 80 of the Indian Penal Code and hit the***

*deceased resulting in his death. The court then shall presume the absence of circumstances bringing the case within the provisions of Section 80 of the Indian Penal Code, that is, it shall presume that the shooting was not by accident, and that the other circumstances bringing the case within the exception did not exist; but this presumption may be rebutted by the accused by adducing evidence to support his plea of accident in the circumstances mentioned therein. This presumption may also be rebutted by admissions made or circumstances elicited by the evidence led by the prosecution or by the combined effect of such circumstance and the evidence adduced by the accused. But the Section does not in anyway affect the burden that lies on the prosecution to prove all the ingredients of the offence with which the accused is charged : that burden never shifts....”*

**The first important question is whether the appellant-convict at the relevant**

time was having a reasonable apprehension of death or grievous hurt or danger to his property at the hands of the deceased, and was justified in causing fatal injuries to the deceased in his right of private defence; and the second question would be that if the appellant was justified in causing injuries to the deceased in his right of private defence, whether he had caused more harm than it was necessary.

Exception 2 to Section 300 that reads as follows:- "Exception 2. – Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without

premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence."

The existence of good faith is a must before the accused claims benefit of this exception. While acting in good faith, if the accused has exceeded the right of self-defence and caused death of a person without pre-meditation and further he had no intention to causing more harm than was necessary for the purpose of the defence although in fact more harm was caused, yet the benefit of Exception 2 to Section 300 may be available if the accused was not the aggressor.

The presence of good faith as given in sec 52 IPC refers to actions done in the absence of due care and attention.

In this instance, inflicting a murderous assault with a deadly weapon upon the unarmed deceased and subsequently continuing to beat him, even when the deceased fell to the ground, provides a clear indication that the accused had not acted in good faith and had the intention of causing more harm than was necessary.

Another essential for invoking Exception 2 is the lack of pre meditation. Such pre-meditation may be established by direct or circumstantial evidence, such as previous threats, expression of ill feelings, acts of preparation to kill, etc. It is clear from the facts, that the accused was already bearing a knife when he arrived on the scene after his father called him.

**As regards Exception 4 to Section 300 of the IPC should also fail.**

**Exception 4 to Section 300 (which defines murder) clarifies that culpable homicide is not murder if committed without premeditation in a sudden fight, in the heat of passion, upon a sudden quarrel, and without the offender taking undue advantage or acting cruelly.**

**It may be that the incident occurred at the spur of a moment and in the heat of passion but we should not be unmindful of the fact that the appellant herein had a knife with him whereas the deceased had nothing with him. He was absolutely helpless at the time when he**

was attacked. Therefore, this amounts to taking undue advantage or acting in a cruel or unusual manner