

Ram Baran Roy and Others Vs. the State of Bihar

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Court : Patna

Decided On : Jan-30-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 582 of 2011 & 585 of 2011

Appellant : Ram Baran Roy and Others

Respondent : The State of Bihar

Judgement :

Cav Judgment:

1. Cr. Appeal No. 582 of 2011 wherein Ram Baran Roy happens to be appellant and Cr. Appeal No. 585 of 2011 wherein Pankaj Ishwar, Shiva Nandan Ishwar, Kaila Ishwar and Rajendra Roy happen to be appellants, commonly originate against judgment of conviction dated 25.04.2011 rendered by 2nd Additional Sessions Judge, Banka holding all the above named appellants guilty for an offence punishable under Sections 326 IPC and order dated 29.04.2011 directing each of them to undergo RI for 10 years as well as also slapped with fine appertaining to Rs.2500/- in default thereof, to undergo SI for 3 months, have been heard together and are being disposed of by a common judgment.

2. Informant, Bhagwat Ishwar (since deceased) filed written report on 16.01.1996 at about 10.15 a.m. disclosing therein that on the same day at about 8.45 a.m. while he was sitting along with his family members at his Darwaja, at that very

time, Ram Baran Roy, Randhir Roy, Shiva Nandan Ishwar, Kaila Ishwar, Narayan Ishwar, Pankaj Ishwar, Rajendra Sharma along with 5-6 persons armed with rifle, pistol, hand bomb came to his Darwaja, caught hold his son, Brajesh Kumar @ Dhurin and dragged him along with them. Brajesh Kumar @ Dhurin was assaulted while being taken away by them. They were also saying that either he would be murdered or his hand would be chopped off and then he would be implicated in a pistol case. The Informant with others tried to intervene but because of firing made by Ram Baran Roy, they became afraid of and withdrew themselves giving passage to the accused persons. On hearing the sound of firing as well as alarm raised by them, Barun Ishwar, Anil Kumar Ishwar along with others rushed in and saw the occurrence.

3. On the basis of the aforesaid written report Amarpur P.S. Case No. 13/1996 was registered and investigation, accordingly, commenced during course thereof Brajesh Kumar @ Dhurin was rescued from the clutches of appellants but after having his right wrist chopped off for which he was given proper medical facilities, witnesses were examined, P.O. was inspected and then thereafter charge-sheet was submitted whereupon the trial commenced and concluded in a manner as indicated above, hence this appeal.

4. The defence case, as is evident, from mode of cross-examination as well as from the exhibits made on their behalf that the so alleged victim who carries notoriety being a hardened criminal and accused in so many cases as well as also happens to be inimical along with others, made a house trespass and shot at, son of Ram Baran Roy who had a narrow escape and just to prevent from attempting furthermore costing life as well as in their right of private defence, Randhir Roy gave a sickle blow causing amputation of right wrist and for that on the Fard-e-beyan of Bhola Roy, Amarpur P.S. Case No. 14/1996 was registered on the same day. The police came before whom, Bhola Roy had given Fard-e-beyan, took possession of so alleged victim Brajesh along with fire arm, cartridges for which seizure list was prepared. It has further been pleaded that the aforesaid event was committed by the accused persons in the background of land dispute.

5. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellants that the learned lower court while recording conviction and sentence acted mechanically. It has also been submitted that right from filing of written report the prosecution was very much aware with the activity of victim, Brajesh, whereunder they had gone to the place of appellants armed with deadly weapon, made house trespass, fired wherein the wrist of Brajesh was chopped off on account of which arms and ammunition which he was carrying remained inside the house of appellants and the same happens to be supported with the factum of seizure along with Fard-e-beyan of Bhola Roy. Therefore, virtually, it was the prosecution party who were the aggressors and were thirsty of blood of appellants whereunder after house trespass firing was made and on account thereof, chopping off right wrist was nothing but during course of exercise of right of private defence and that is the reason behind that written report which was subsequently filed but got it registered taking the police in their collusion, there happens to be averment, that accused persons were saying that either he would be murdered or his hand would be amputated as well as he would be implicated in a pistol case.

6. In the aforesaid background, there happens to be admission by way of counter case regarding chopping off of right wrist of Brajesh Kumar and further supported with seizure of arms and ammunitions from the possession of Brajesh is indicative of the fact that appellants had acted in right of private defence which they were entitled to. It has also been submitted that the appellants have not crossed the limit prescribed therefor because of the fact that by way of inflicting single blow, and further finding that, danger no more exist, no repeated blow was made either over person of Brajesh or his associate whose presence was also inside the house during course of commission of occurrence. Not only this, it has also been submitted that as per prosecution version, it is crystal clear that victim was at the mercy of appellants, then in that event, the manner of occurrence as suggested would not have visualized, rather the injured certainly been murdered when his presence was inside the house of the appellants and so the event as picturised supports the plea of the appellants regarding exercise of right of private defence.

7. Further, it has been submitted that the learned lower court failed to consider that prosecution case found absolutely deficient in alleging against other appellants

than Ram Baran. Therefore, convicting other appellants is not at all found supported with the materials available on record. In likewise manner, having the evidence at the side of appellants probalizing the exercise of right of private defence under the guise of preponderance of probability, Ram Baran Roy is also entitled for acquittal. Apart from this, it has also been admitted that all the material witnesses are family members whose presence supports the defence version that that of prosecution. It has further been submitted that due to non examination of I.O. serious prejudice has been caused. Hence, both the appeals are fit to be allowed.

8. On the other hand, learned APP while supporting the finding recorded by the learned lower court submitted that during course of investigation of Amarpur P.S. Case No. 14/96, the same was found false as well as it was also found to be a case of plantation, therefore, the plea of the appellants that they had acted in exercise of right of private defence happens to be nothing but a novice concept conceived by the appellants to escape from legal prosecution. It has also been submitted that all the material witnesses have deposed in truthful manner so much so, that on account thereof, no embellishment, material contradiction, development have been found. It has also been submitted that on account of non examination of I.O. no prejudice has been caused to the appellants as there is positive and concrete evidence adduced on behalf of prosecution more particularly, through the mouth of victim Brajesh as to how the appellants dragged him forcibly to their house where he was given a lesson by getting his right wrist chopped off on account of land dispute.

9. It has also been submitted that prosecution had played its role fairly since inception of the case. Not only since inception, but also, at the stage where Brajesh was over-powered by the appellants whereupon informant rushed to inform the police apprehending some sort of mishappening and that is the reason behind that written report is completely silent with regard to destination as well as the act so subsequently played at the hand of the appellants. Therefore, the judgment of conviction and sentence is fit to be confirmed.

10. In order to substantiate its case, the prosecution has examined altogether nine witnesses out of whom, PW-1 is Arun Kumar Ishwar, PW-2 is Indra Devi, PW-3 is Brajesh Kumar Ishwar @ Dhurin, PW-4 is Subhadra Devi, PW-5 is Bhagwat Ishwar, PW-6 is Bhala Devi, PW-7 is Nand Kishore Yadav, PW-8 is Dr. Jagdish Sharma and PW-9 is Ram Nath Rai. Side by side, the prosecution has also exhibited Ext-1, signature of informant over written report, Ext-2, Formal FIR Ext-3, endorsement over written report, Ext-4, Injury Report, Ext-5, formal FIR of Amarpur P.S. Case No. 118/2007, Ext-5/1, formal FIR of Amarpur P.S. Case No. 98/2007, Ext-5/2, formal FIR of Amarpur P.S. Case No. 145/2007, Ext-6, Final report of Amarpur P.S. Case No. 14/1996. Defence has also proved documentary evidence which have been marked as Ext-A, the order dated 06.04.1996 passed in Misc. Case No. 507/97 by SDM, Banka, Ext-B order dated 04.01.1988 passed in Case No. 1366/87, Ext-C- C.C of police report in Misc. Case No. 1366/87, Ext-D, C.C of FIR of G.R. Case No. 63/96, Ext-D/1, C.C of FIR of Amarpur P.S. Case No.62/95, Ext-D/2, C.C of FIR of Sultanganj P.S. Case No.179/96 and Ext-E , seizure list of Amarpur P.S. Case No. 14/96.

11. PW-3 is the victim himself. He in examination-in-chief had narrated that on 16.01.96 at about 8:00-8:30 a.m. while he was to milch cow after taking bucket from his Bhabhi, Ram Baran Roy armed with rifle, Sudhir Sao armed with gun, Rajendra Sharma armed with bomb, Krishnandan Ishwar, Kaila Ishwar, Narayan Ishwar along with 5-6 other unknown persons came, out of them Ram Baran gave butt blow on his head and then started dragging him over which his mother, Subhadra Devi, father, Bhagwat Ishwar, Indra Devi, Bhabhi, Mala Devi, Arun Ishwar tried to prevent. During said course, Ram Baran fired two rounds in air to terrorize. Then thereafter, Ram Baran and others took him to the house of Ram Baran and closed the door. Firstly, he was assaulted with lathi and then thereafter, on an order of Ram Baran, Manju Devi wife of Ram Baran took sickle from Rajendra Sharma and began to cut his wrist. She fainted. Thereafter, Ram Baran took the sickle and amputated his hand and took the anterior portion of chopped off hand, gone to upstairs and shown the same to villagers. He became unconscious. He regained sense at the hospital at about 2:00-2:30 p.m. but again became unconscious. Subsequently, he regained his sense and found himself admitted in Bhagalpur Medical College Hospital. During cross-examination, he had

admitted the dispute prevailing amongst the parties since before and for that litigation is going on. Paragraphs-2 and 6 are the list of cases. In para-7, 8 he had admitted presence of counter case running at Banka court itself. In para-9, he had stated that 12-14 persons have come to apprehend him out of whom he had identified only 7 persons, rest were unknown. These 7 persons assaulted him after his apprehension by means of butt of rifle as well as Lathi on account of which he sustained injury. Blood had oozed out. He had further stated that accused persons, firstly, assaulted him at his Darwaja for 2-3 minutes then they dragged him and during course thereof, they have also assaulted. In para-16, he had further stated that the accused persons again assaulted him at their Aangan after closing the door. In para-17, he had stated that accused had cut away his hand in the courtyard itself and then thereafter, he became unconscious. In para-18, he had stated that police came after half an hour at about 9:15 a.m.. He had stated few words to police and then again became unconscious. He had disclosed the name of his assailant. Nothing was seized till his consciousness. He had admitted in para-21 on that he had not stated before the police that Ram Baran Roy assaulted him with lathi. He had not stated before the police that Ram Baran had given order of cutting of his hand. Paragraphs-22, 25, 26 and 27 are contradictions. He had denied the suggestion that they had made house trespass having variously armed with and shot at the son of Ram Baran. During course thereof, in retaliation, his hand was cut.

12. PW-8 is Dr. Jagdish Sharma. He had examined PW-3 on 16.01.1996 at about 10:10 a.m. and found following injuries over his persons:- Amputated right hand from wrist joint. The patient brought by the officer Incharge, Amarpur P.S. is pulseless and in pale condition. Lacerated wound 1?x ?x Scalp deep on head. Time of injury within two hours. Injury No. 1 caused by sharp cutting weapon, grievous in nature while Injury No.2 simple in nature caused by hard and blunt substance. The patient was immediately referred to Bhagalpur Medical College. During cross-examination, it is evident that nothing substantial has been elicited from him.

13. PW-1 is the brother of informant. PW-2, Indra Devi is Bhabhi of informant, PW-4 is mother of victim, PW-5 is the informant himself, PW-6 is Mala Devi, Bhabhi of

informant, PW-9, Ramnath Roy are not the eyewitnesses with regard to chopping of right hand of PW-3, Brajesh which the prosecution had alleged against the accused, more particularly against Ram Baran. They have simply corroborated the event before the occurrence as well as after the occurrence and their evidence on that very score appears to be consistent one but corroborative in nature. None of them have claimed to have gone to the house of Ram Baran and have seen amputation of hand of PW-3, Brajesh.

14. PW-5, the informant had rushed to the police station to inform the police and on whose information police arrived who had gone inside the house and took control over situation. This witness was deferred for cross-examination at the behest of accused and subsequently, he died and on account thereof his cross-examination did not materialize. Even in that event, his evidence is found admissible in terms of Section 33 of the Evidence Act.

15. From the record it is evident that neither the subsequent medical report from Bhagalpur Medical College Hospital nor any doctor therefrom was produced in support of prosecution case. In likewise manner, the I.O. of the case also has not been examined. It is also evident that all the material witnesses save and except PW-9 happens to be family members. It is also evident from the injury report that save and except the specific allegation with regard to assault by butt of rifle over head of PW-3, Brajesh as well as chopping of right wrist, assault at different parts of body by means of Lathi is not found supported therewith.

16. However, it is evident from the evidence of the witnesses that no material contradiction is found in their evidence as well as their presence at their Darwaja from where PW-3, Brajesh was taken away, probable one. On account of claiming the right of private defence and by exhibiting the certified copy of Amarpur P.S. Case No. 14/96 (Ext-D) as well as suggesting PW-3, the victim that he along with others intruded inside the house of Ram Baran Roy and shot at son of Ram Baran Roy who had a miraculous escape and just to prevent the subsequent event they have protected themselves and during course thereof, his right hand was chopped off, is an admission. Apart from the fact that there happens to be consistent evidence of the prosecution that PW-3, Brajesh (Victim) was taken away inside the

house of Ram Baran as well as there is consistent evidence of PW-3, the victim that after getting inside the house, the door was closed and his hand was chopped off by Ram Baran. So on amputation of hand of Brajesh at the house of Ram Baran no more remains under controversy.

17. In the aforesaid admitted factual position, the subsequent event has to be taken into consideration. None of the appellants during course of their statement under Section 313 of the Cr.P.C. has raised the plea of right of private defence nor during course of defence any DW was examined. Though, it is not incumbent upon the accused to project himself as a witness however Section 315 of the Cr.P.C. acknowledges, and, in the facts and circumstances of the case, perhaps, the defence would have come forward to support its plea. Not only this, the Ext-D, (FIR) loses its propriety after going through Ext-4, the injury report. After examination of Ext-4 along with evidence of PW-8, Dr. Jagdish Sharma, it is evident that he had examined PW-3, Brajesh on a police requisition on 16.01.1996 at 10:10 a.m.. Defence had not cross-examined this witness even over the timing of his examination, that means to say, the timing of examination of victim by PW-8 remained unchallenged, unshaken. When Ext-D (FIR) is gone through, it is evident that it was recorded on 16.01.96 at about 11:00 a.m. at the house of appellant, Ram Baran. The improbability of the defence version is further found exposed vide Ext-E, the seizure list prepared in connection with Amarapur P.S. Case No.14/96 (Ext-D). As per Column-3 of the aforesaid Ext-E, it is evident that cartridges were recovered from the pocket of injured, Brajesh as well as from the earth near him while from Column-5, it is evident that a country made pistol, two cartridges of 7.62 mm along with charger as well as one fired cartridge was seized and most surprisingly, the time of seizure happens to be on 16.01.96 at about 11:35 a.m. That means to say, at the time of preparation of Ext-D, E, Brajesh was already before the Doctor. Furthermore from Ext-6, it is evident that final report was submitted in connection with Amarapur P.S. Case No. 14/96.

18. In spite of having final form submitted in connection with Amarapur P.S. Case No. 14/96, by way of Ext-D, amputation of hand of Brajesh inside house of Ram Baran is found admitted. It is also perceived from the evidence of prosecution witnesses that no material developments have been found, in that circumstance,

non examination of I.O. could not be found to be adverse to prosecution case. Moreover, appellant could not be able to confront the mode of prejudice. Impact of non-examination of I.O has been perceived by the Honble Apex Court in the case of Lahu Kamlakar Patil v. State of Maharashtra as reported in (2013) 6 SCC 417 under para-18 which is as follows:-

18. . It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar [(1996)2 SCC 317], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar[(2000)9 SCC 153], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer.

19. In Mohammad Khalil Chisti v. State of Rajasthan as reported in 2013 CrL L. J. 637, the Honble Apex Court has taken into consideration the plea of right of private defence as well as explained the same in following way:-

25) In Krishnan vs. State of Tamil Nadu, (2006) 11 SCC 304: (AIR 2006 SC 3037: 2006 AIR SCW 4185) the following principles have been relied on: (Para 9 of AIR, AIR SCW)

œ15. It is now well settled that the onus is on the accused to establish that his action was in exercise of the right of private defence. The plea can be established either by letting in defence evidence or from the prosecution evidence itself, but cannot be based on speculation or mere surmises. The accused need not take the plea explicitly. He can succeed in his plea if he is able to bring out from the evidence of the prosecution witnesses or other evidence that the apparent criminal act was committed by him in exercise of his right of private defence. He should make out circumstances that would have reasonably caused an apprehension in his mind that he would suffer death or grievous hurt if he does not exercise his right of private defence. There is a clear distinction between the nature of burden

that is cast on an accused under Section 105 of the Evidence Act (read with Sections 96 to 106 of the Penal Code) to establish a plea of private defence and the burden that is cast on the prosecution under Section 101 of the Evidence Act to prove its case. The burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a preponderance of probability (vide *Partap v. State of U.P.*, *Salim Zia v. State of U.P.* and *Mohinder Pal Jolly v. State of Punjab*).

16. In *Sekar v. State* this Court observed: (AIR 2002 SC 3667: 2002 AIR SCW 4315) This Court observed: SCC p. 355) æA 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 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. Whether in a particular set of circumstances, a person acted in the exercise of the right of private defence, is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the court to consider such a plea. In a given case, the court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record.? (emphasis supplied).

17. The above legal position was reiterated in *Rizan v. State of Chhattisgarh*. (AIR 2003 SC 976: 2003 AIR SCW 469)After an exhaustive reference to several decisions of this Court, this Court summarised the nature of plea of private defence required to be put forth and the degree of proof in support of it, thus: (SCC pp. 670-71, para 13) : (Para 13 of AIR, AIR SCW) æUnder Section 105 of

the Evidence Act, 1872, the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. When the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. 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. (emphasis supplied)?

20. In the case of Gopal v. State of Rajasthan as reported in 2013 CrL.J. 1297, again the plea of right of private defence has been discussed and explained under the following paragraph:-

13) Regarding the plea of private defence, it is useful to refer a decision of this Court in V. Subramani and Anr. Vs. State of T.N. (2005) 10 SCC 358. The following principles and conclusion are relevant:

¶11. The only question which needs to be considered is the alleged exercise of right of private defence. Section 96 IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The section does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of

circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the court to consider such a plea. In a given case the court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short the Evidence Act?), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See *Munshi Ram v. Delhi Admn.* (1968) 2 SCR 455, *State of Gujarat v. Bai Fatima*, (1975) 2 SCC 7, *State of U.P. v. Mohd. Musheer Khan*, (1977) 3 SCC 562, and *Mohinder Pal Jolly v. State of Punjab*, (1979) 3 SCC 30.) Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the

assault. The oft-quoted observation of this Court in *Salim Zia v. State of U.P.*, (1979) 2 SCC 648 runs as follows: (SCC p. 654, para 9)

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

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea. Based on the above principles, in view of the discussion of the prosecution witnesses, viz., PWs 7, 8 and 10 coupled with the fact that the incident occurred in the field of the appellants, who also sustained injuries which is evident from the evidence of the doctor, who examined the injuries of Gopal (A-1) and Mahesh (A-3)-appellants herein, the stand of the appellants, as rightly argued by learned amicus curiae, is to be accepted. However, as per the prosecution story, not only Rameshwar but in the same incident Prabhat also died due to lathi blows inflicted by the appellants herein.

21. In the case of *Gangabhavani v. Rayapati Venkat Reddy* reported in 2013 CrL.J 4618, the Honble Apex Court had an occasion to decide so many issues including position while particular aspect is found unchallenged during course of cross-examination as well as propriety of the evidence of interested partisan witness. The relevant paragraph is quoted below:-

EVIDENCE OF A RELATED/INTERESTED WITNESSES:

11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each

other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (Vide: Bhagalool Lodh and Anr. v. State of U.P., AIR 2011 SC 2292; and Dhari and Ors. v. State of U. P., AIR 2013 SC 308).

12. In State of Rajasthan v. Smt. Kalki and Anr. AIR 1981 SC 1390, this Court held:

œ5A. As mentioned above the High Court has declined to rely on the evidence of P.W. 1 on two grounds:

(1) she was a "highly interested" witness because she "is the wife of the deceased" For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents.? (Emphasis added) (See also: Chakali Maddilety and Ors. v. State of A. P., AIR 2010 SC 3473).

13. In Sachchey Lal Tiwari v. State of U.P., AIR 2004 SC 5039, while dealing with the case this Court held:

œ7. ..Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another

man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.?

14. In view of the above, it can safely be held that natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/deceased.

17. This Court in *Laxmibai (Dead) Thr. L.Rs. and Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. and Ors.*, AIR 2013 SC 1204 examined the effect of non-cross examination of witness on a particular fact/circumstance and held as under:

œ31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.? (Emphasis supplied) (See also: *Rohtash Kumar v. State of Haryana*, JT 2013 (8) SC 181; and *Gian Chand and Ors. v.*

State of Haryana, JT 2013 (10) SC 515).

18. Thus, it becomes crystal clear that the defence cannot rely on nor can the court base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in- chief and the defence has not cross examined him on the said aspect of the matter.?

22. Thus, after scrutinizing evidence laid on behalf of both the parties, as well as taking into account the relevant exhibits, it is apparent that appellants could not found succeeded even under the banner of preponderance of probability, the right of private defence, contrary to it, the prosecution version with regard to chopping off right wrist of PW-3, Brajesh is found proved apart from admitted under Ext-D. As such, finding of learned lower court on this score is found legal one and is accordingly confirmed. Thus, Cr. Appeal (SJ) No. 582 of 2011 is dismissed. Appellant, Ram Baran Roy is under custody, hence is directed to serve out remaining part of sentence.

23. With regard to presence of remaining appellants, Pankaj Ishwar, Shiva Nandan Ishwar, Kaila Ishwar and Rajendra Roy, the manner whereunder they have been snapped much less attribution of allegation against them is found nullified by the Ext-4, the injury report, and further none of the witnesses specifying these appellants indulged while dragging PW-3, victim, in that circumstance, at least they are found to have some sort of privilege whereunder their conviction and sentence recorded by learned lower court is hewed. Consequent thereupon, Cr. Appeal (SJ) No. 585 of 2011 is allowed.

24. Since all the four appellants, namely, Pankaj Ishwar, Shiva Nandan Ishwar, Kaila Ishwar and Rajendra Roy are on bail, they are discharged from the liability of their bail bond.

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