

State of U.P. Vs. Shiv Murat

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Court : Allahabad

Decided On : May-24-1982

Reported in : 1982CriLJ2003

Judge : H.N. Seth and ;K.N. Misra, JJ.

Appellant : State of U.P.

Respondent : Shiv Murat

Judgement :

H.N. Seth, J.

1. This appeal by the State Government is directed against the judgment and order of IV Addl. District and Sessions Judge, Allahabad dated 30th April, 1976 acquitting respondent Shiv Murat of an offence under Section 302 I.P.C.

2. Connected Criminal Revision No. 634 of 1976 is by Lal Bahadur the person, who had lodged the first information report in the case. He also prays that the aforementioned order of acquittal be, in exercise of revisional Jurisdiction, set aside.

3. The charge against respondent Shiv Murat was that on 22nd Oct. 1974 at about 3 A. M. in House No. 176, Chak Niratul, police station Khuldabad, Allahabad he committed the murder of Santosh Narain Tripathi by inflicting a number of stab

wounds on him and was thus liable for committing an offence punishable under Section 302 I.P.C.

4. Briefly stated, the case for the prosecution was that accused Shiv Murat and deceased Santosh Narain Tripathi were the residents of one and the same village. Deceased Santosh Narain Tripathi developed illicit connection with the wife of accused Shiv Murat, who on 22nd of Oct. 1974 was a worker of Geep Flash Light Company, Allahabad and was residing in House No. 176, which belonged to informant Lal Bahadur. Lal Bahadur himself resided in another house No. 136 which was situated across the road in front of house No. 176 where Santosh Narain Tripathi resided. At about 3 A. M. on 22nd Oct. 1974 Lal Bahadur was awakened by one Munnu Mahajan who said that he had heard the shouts to the effect 'Mar Gaye Chhor Do (I would die leave me) coming from house No. 176. Lal Bahadur accompanied by Munnu Mahajan, Rupan, Bajrang, Chhedi Lal, Jamuna and others then went up to the room on the first floor of house No. 176 where Santosh Narain Tripathi was residing and found that the door of the room was bolted from inside but the two windows facing the roof were open and a lantern was burning inside the room. Through that window Lal Bahadur and other witnesses saw that the accused was sitting on the chest of Santosh Narain Tripathi and was cutting his throat with a knife. As soon as the accused heard the footsteps of the witnesses he stood up. Immediately Jamuna chained the door of the room from outside and placed on it a lock which was lying there. As Santosh Narain Tripathi had died because of the injuries received by him, Lal Bahadur proceeded to police station Khuldabad, one mile away, and lodged a written first information report at about 3.45 A. M.

5. Sri Lokendra Singh, Station Officer police station Khuldabad immediately took up the investigation and proceeded to the spot. He opened the room from the key which was given to him by Jamuna and found accused Shiv Murat inside that room with a blood stained knife which he took in his possession. He immediately arrested the accused and also effected recovery of the lock, bloodstained clothes, bloodstained and plain earth etc. After completing certain formalities he arranged to despatch the dead body of Santosh Narain Tripathi for post mortem examination,

6. It is said that at the time of his arrest Shiv Murat also handed over the letter Ext. 5 with photo material Ext. 9 to the Investigating Officer. In due course after completing the investigation, the police submitted a chargesheet and Shiv Murat was committed to Sessions to stand his trial for an offence under Section 302 I.P.C.

7. The accused pleaded not guilty and denied the charge. He stated that some two years before the occurrence he had friendly relations with deceased Santosh Narain Tripathi but that friendship came to an end. Santosh Narain Tripathi was, however, for oblique reasons which could not be fathomed by him, wanted to revive the friendship. Accordingly on the date of incident Santosh Narain Tripathi invited him to spend the night with him in his room. Not realising the real intention of Santosh Narain Tripathi, he went to his room and at about 1 A. M. when he was lying down Santosh Narain Tripathi suddenly attacked him with a knife. In order to save himself he grappled with Santosh Narain Tripathi but then Santosh Narain Tripathi was bent upon attacking him. By chance he came across a knife lying in the room. He picked it up and wielded it in self-defence causing injuries to Santosh Narain Tripathi. He also did not accept that knife Ext. 7 was recovered at the spot and suggested that the same had been, for ulterior reasons, manipulated by the police. He suggested that he had been falsely implicated in the case as he did not meet their demand to pay a sum of Rs. 5,000/- as illegal gratification.

8. In support of its case, the prosecution examined as many as 15 witnesses out of whom the evidence of four witnesses, namely, that of R.P. Srivastava (P. W. 5). Abdul Latif (P. W. 6). Tafazzul Husain (P. W. 7) and constable Nanhku Singh (P. W. 8) was given on affidavit. P. W. 1 Lal Bahadur, informant and P. W. 2 Munnu Mahajan deposed that they had actually seen the accused cutting the throat of Santosh Narain Tripathi. P. W. 9 Dr. L. K. Bhargava conducted the post mortem examination on the dead body of Santosh Narain Tripathi at 3.15 P. M. on 22nd Oct, 1974. He found following ante mortem injuries on the person of the deceased.:

1. Lacerated wound 4 1/2' x 2 1/2' x oesophagus deep, trachea cut into two.

2. Incised wound 2 1/2' x 1/4' x muscle deep on the left side neck, 1/2' below the injury No. 1,
 3. Incised wound 2 1/2' x 1 1/2' x muscle deep on the back of the left side neck.
 4. Incised wound 1 1/2' x 1/3' x muscle deep on the outer part of left elbow joint.
 5. Incised wound 1 1/2' x 1/2' x bone deep on the left side face 1/2' below the lower lip.
 6. Incised wound 1 1/4' x 1/2' x muscle deep on the front of the left shoulder joint.
 7. Multiple linear abrasions on the left side back.
 8. Incised wound 4' x 2 1/2' x muscle deep on the right side neck, 1' below and right to injury No. 1. Ext carotid artery divided.
 9. Multiple linear cut superficial in an area 3' x 2' on the upper of left side chest,
 10. Multiple linear abrasions on the front of the lower part of chest in an area 6' x 4'.
 11. Multiple linear abrasions on the left side, of upper part of abdomen in an area 6' x 4'.
 12. Incised wound 1' x 1/2' x muscle deep on the upper part of right palm 1' below the rt. wrist joint.
 13. Linear abrasion 7' long on the upper part of rt. side abdomen.
 14. Linear abrasion 3' long on the rt. side chest 5' below the Rt. shoulder joint.
 15. Multiple linear abrasions on the Lt. side back in the middle in an area 7' x 5.
9. P. W. 10 Dr. B. K. Malviya deposed that he examined the injuries of the accused on 22nd Oct. 1974 at 2 P. M. and that he found following injuries on his person:

1. Incised wound 1 1/2' x 1/4' x skin deep on the right, palm in the middle.

2. Abrasion 1/2' x 1/8' on the right palm in the middle, 1/2' away from injury No. 1.
3. Incised wound 1/2' x 1/4' skin deep on the first phalanx of the right little finger towards inside.
4. A thin abrasion 1/4' long on the last phalanx of the left thumb outer side.
5. A thin abrasion 1/2' long on the first phalanx of the index finger outer side.
6. Abrasion 1/2' X 1/4' on the second toe of right foot.

10. The remaining witnesses were produced by the prosecution either to show that as the deceased was having illicit connection with the wife of the accused the accused had the necessary motive to commit the murder of Santosh Narain Tripathi or to give evidence of a formal nature.

11. The accused did not examine any witness in defence. After noting the evidence produced in the case, the learned Sessions Judge concluded that it was not open to doubt that Santosh Narain Tripathi had died as a result of injuries sustained by him. This fact was not only proved from the medical evidence in the case but was also apparent from the statement of the accused himself. So far as the question of motive was concerned he found that all was not well with the investigation and the manner in which the evidence with regard to motive was collected. He further observed that on their own showing the prosecution witnesses did not see as to how the incident originated. They claimed to have reached the scene only at the concluding stage. He also observed that the prosecution witnesses on their own showing took some time, after the alarm was raised by the deceased, in reaching the scene of incident. The infliction of injuries on the deceased would not have taken much time. In the circumstances, it was difficult to believe that the witnesses reached the scene in time to see the incident. Moreover, these witnesses did not depose anything about the manner and the circumstances in which the assault made by the accused originated and there was nothing in the prosecution case to contradict the version of the accused with regard to the origin of the assault which by itself could be treated as evidence in the case. Moreover, there is no satisfactory explanation in the prosecution

evidence for the injuries found on the person of the accused. The belated claim made by the witnesses that they had seen the injuries on the person of the accused at the time of incident could not be accepted. The accused had thus right of self defence which in the circumstances extended to the extent of causing death. There was nothing in the prosecution evidence to indicate that the object of self-defence could have been achieved even if the accused had refrained from killing the deceased. In this connection the learned Judge observed thus:

Now in this case the nature of the injuries on either side shows that there was grappling between the deceased and the accused. There is no evidence on behalf of the prosecution that there were such circumstances as would have provided such an opportunity to the accused.

12. In the result, the learned Judge acquitted the accused by making following observations:

The prosecution evidence does not prove that the initial aggression was committed by the accused himself not has it been able to prove that the accused has exceeded the right of self defence. Investigation too has not been regular in material particulars regarding the obtaining of the photos and the preparation of numerous parchas. Therefore, it is impossible to say that the prosecution has successfully proved its case against the accused. The accused will, therefore, be entitled to an acquittal.

13. The first question that arises for consideration in this case is as to whether it was the accused who was responsible for causing the injuries resulting in the death of Santosh Narain, So far as this part of the case is concerned, the prosecution placed reliance on the evidence of Lal Bahadur (p. W. 1) the person who lodged the first information report and Munnu Mahajan (P. W. 2). Lal Bahadur in his evidence stated that the house where he resided was situated across house no. 176 wherein the deceased resided just across the road and that at about 3 A. M. on 22nd Oct, 1974 Munnu Mahajan woke him up and said that he had heard the shouts to the effect that 'MAR GAYE CHHOR DO' (I would die leave me) coming from his house No. 176 in which the deceased was residing. After getting up he, along with Bajrang, Chhedi, Munnoo Mahajan, Jamuna and Rupan, went to

the said house and through a window saw the accused cutting the neck of Santosh Narain Tripathi in the light of a lantern that was burning inside the room. The door of that room was chained from outside and thereafter he went and lodged the first information report. The evidence of the witness indicates that he did not see the origin of the assault and that he was not aware of the actual circumstances in which the accused came to assault Santosh Narain Tripathi. We have gone through the cross-examination of the witness but we do not find anything therein to show that this witness has any reason whatsoever to falsely depose against the accused. In his cross-examination he admitted that there were injuries on the right palm of the accused but then he did not offer any explanation as to how those injuries were actually caused. The learned Sessions Judge was not inclined to accept that this witness actually saw the accused cutting the throat of Santosh Narain Tripathi for the reason that in his opinion, in between the raising of shouts by Santosh Narain Tripathi 'MAR GAYE CHHOR DO' (I would die leave me) and the witnesses reaching the scene of the incident after hearing those shouts, considerable time must have elapsed and infliction of the injuries by the accused must have been over by the time these witnesses claim to have reached the spot. In our opinion, the reason given by the learned Sessions Judge does not appear to be sound. The deceased had as many as 15 injuries on his person out of which 8 namely, injuries Nos. 1,2,3,5,6,8,9 and 12 appear to have been caused with a knife. Houses of Lal Bahadur and Munnu Mahajan are very close to the house where the deceased was residing. Infliction of as many as 8 injuries by knife must have taken some time specially when the deceased appears to have been, as is apparent from the nature of injuries found on his person, struggling hard to save himself. In the circumstances, there is nothing surprising if Lal Bahadur and Munnu Mahajan reached the scene of the incident while the accused was still causing injuries to the deceased. The fact that the witnesses were able to chain the door of the room from outside and convey the information to the police as also the fact that the police reached the scene of the incident and arrested the accused, from inside the room lends assurance to the evidence of Lal Bahadur and Munnu Mahajan that they reached the scene in time to see the assault. In case the assault was over before the witnesses reached the scene of incident, there was hardly any point in the assailant continuing to remain in the same room

and be locked in by the witnesses. Likewise p. W. 2 Munnu Mahajan, who also is a close neighbour of Santosh Narain Tripathi, says that as he heard the shouts coming from Santosh Narain Tripathi's house, he went and called Lal Bahadur and on going up to the room saw Shiv Murat, cutting the neck of Santosh Narain Tripathi. Nothing has been brought out in his cross examination to show that he is either inimical to Shiv Murat or has any reason whatsoever to falsely implicate him in this crime. In his cross examination he admitted that he saw injuries on the palm of the accused but then his evidence shows that he did not actually see as to in what circumstances those injuries had been caused. The evidence of these two witnesses stand fully corroborated by the admission made by the accused that he wielded a knife in the exercise of his right of private defence. In the result, we feel satisfied that it was the accused who was responsible for causing the injuries to Santosh Narain Tripathi resulting in his death. Indeed learned Counsel appearing for Shiv Murat, accused, proceeded to argue the case on his behalf on the footing that Shiv Murat was responsible for causing injuries to Santosh Narain Tripathi which resulted in his death. What he argued before us was that the defence version that it was Santosh Narain Tripathi who initiated the attack on Shiv Murat and that Shiv Murat wielded the knife in the exercise of his right of private defence should be accepted.

14. Although the accused in his statement stated that the knife Ext. 7, which according, to the prosecution had been recovered from his possession at the time of his arrest, was a knife which had been planted, we find it difficult to accept the said suggestion. The recovery of the knife from possession of the accused has been proved by the evidence of P. W. 13 Lokendra Singh, Station Officer, who investigated the case as also by the evidence of Jaggu (P, W, 11). Nothing has been brought out in the cross-examination of these witnesses to show that they had any animus to wrongly depose about the recovery of knife and to falsely implicate the accused. All that was suggested to the witness was that he was actually not present at the time of recovery and that his signatures had been subsequently obtained on the recovery memo, The witness denied the suggestion in no uncertain terms. Only thing brought out in the evidence of Lokendra Singh, investigating Officer (P. W. 13) was that he did not take any step to send the knife in question for obtaining the opinion of the Finger Print Expert, The investigating

officer admitted that he did not obtain the report Of the Finger Print Expert. It was nowhere suggested to the investigating officer that some other knife was present in the room and he for ulterior reasons, substituted the same with the knife Ext 7. We find that in the instant, case, there is an admission by the accused that he had caused injuries to the deceased and that the weapon with which such injuries were caused was a knife. We fail to understand as to what advantage the prosecution was likely to obtain by substituting the original weapon of attack which must have been found by the investigating officer when he went to arrest the accused with Ext. 7. Such substitution on the face of it would be meaningless. Accordingly, we are inclined to accept the evidence of P. W. 13 Lokendra Singh and P. W. 11 Jaggu when they say that the knife Ext. 7 was actually recovered from the possession of the accused at the time of his arrest and that it was this knife which had been used by the accused in causing injuries on the person of the deceased.

15. We now proceed to consider the question as to whether in the circumstances of this case it can be said that the accused had, to begin with, visited the room of the deceased with a view to kill him or whether it was the deceased who first assaulted the accused and the accused wielded the knife in exercise of right of private defence.

16. It is significant to note that according to the prosecution the only weapon discovered inside the room was the knife Ext. 7 and that the accused did not use any other weapon. While Dr. B. K. Malviya was being questioned on the point as to whether or not the injuries found on the person of the accused could be caused by Ext. 7, he looked at the knife and stated that the said knife did not have any Muthiya (regular handle) and that there are some edges on the portion of the knife where it could be held. Likewise Dr. Bhargava (P. W. 9) was also _ shown the knife Ext. 7 and he stated that the margins of the handle portion of the knife were not sharp edged and that those edges could not cause sharp edged injuries. In his cross examination he admitted that the width of the portion from which the knife is to be held was only one millimeter. It is difficult to believe that anybody who had murder or revenge in his mind, would go to the victim with a weapon like Ext. 7. It, in our opinion, completely rules out the possibility that when the accused went to the room of the deceased he was at that time armed with Ext. 7 or that he had any

idea of assaulting or causing injuries to the deceased.

17. In this view of the matter it is not necessary for us to enter into the controversy as to whether or not the accused had the motive to kill the deceased for the reason that the deceased had illicit connection with his wife and whether the accused, at the time of his arrest, had with him a letter bearing a picture of his wife. It is obvious that even if the accused was in possession of letter and the deceased was carrying on with his wife the accused did not go to the house of the deceased after preparing himself either to assault or attack the deceased.

18. We now proceed to consider as to whether there is anything in the prosecution evidence to rebut the statement of the accused that to begin with he was attacked by Santosh Narain Tripathi with a knife while he was lying inside the room and that subsequently during grappling he picked the knife and wielded the same. It is significant to note that in this case there is no evidence whatsoever on behalf of the prosecution to indicate the circumstances in which the accused commenced assaulting Santosh Narain Tripathi, The two eye witnesses produced by the prosecution only speak about the concluding stages of the assault. The only person who could have deposed about the commencement of the assault, namely, Santosh Narain Tripathi is dead. The evidence produced on behalf of the prosecution reveals that in the transaction leading to the death of Santosh Narain Tripathi the accused also sustained certain injuries. P. W. 1 Lal Bahadur and P. W. 2 Munnu Mahaj,an admitted in their cross-examination that when they saw the accused he had injuries on his hand. The evidence of Dr. B. K. Malviya (P. W. 10) shows that, the accused had as many as six such injuries. Two of the injuries found on the person of the accused were incised wounds 1/2' x 1/4' x skin deep and 1/2' x 1/4' skin deep on the palm and the little finger of the right hand of the accused. Remaining four injuries were abrasion on various parts of his body. Whereas according to the accused the deceased was responsible for deliberately causing these injuries to him, the suggestion on behalf of the prosecution is that these injuries might have been caused by the edges in the Muthiya of the knife, while the accused was wielding the same on the deceased. Whereas P. W. 9 Dr. L. K. Bhargava is definite that there are no edges in the Muthiya of Ext. 7 that could cause any sharp edged injury to any person, Dr. B. K. Malviya (P. W. 10)

stated that there are edges at the place meant for holding the knife and that the margin of the Muthiya was sharp edged and pointed. Again in his crossexamination the witness stated that the margins of the Muthiya were not sharp edged. In view of this difference in the opinion of the two Doctors produced by the prosecution, learned Counsel for the accused made a request to us that Material Exhibit No. 7 should be summoned from the trial court and this Court should itself see whether the margins of the Muthiya had such sharp edges which could while the accused was wielding the knife, be responsible for causing injuries to his palm and little finger. We passed orders requiring the trial court to forward material exhibit No. 7 to this Court. We have, however, been informed that in view of the following order passed by the learned Sessions Judge while disposing of appeal.. Material exhibits shall be destroyed unless otherwise directed by the appellate Court.

Knife Ext. 7 was destroyed, as the trial court did not receive any order to the contrary from this Court, The trial court, in our opinion, should have seen to it that it passed orders in such a way that the material exhibits continue to be available to the appellate court in case such court requires it to be produced before it and that the same was not destroyed during the pendency of the appeal. Be that as it may, the material exhibit has since been destroyed, and it is not available for our perusal, In the circumstances, we would,' giving the benefit to the accused, proceed on the footing that the sharp edged injuries found on the palm and the little finger of the accused, though they were of very minor nature, could not, as suggested by the prosecution be, caused while the accused was trying to cut the neck of the deceased.

19. In case the incident injuries found on the palm and little finger of the accused were not caused while the accused was assaulting the deceased, the version given by the accused that while he was lying in the room of the deceased, the deceased suddenly attacked him with a knife and caused the injuries on his palm and little finger, becomes probable and as there is nothing in the prosecution evidence to rebut the said version, it can be taken that the accused had retaliated and caused injuries to the deceased only after the deceased had first attacked him with a knife,

20. We now proceed to consider if in the circumstances of this case the accused can for his action claim shelter behind the right of private defence. Section 100 of the I. P. C defines the right of private defence of body thus:

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...

Fourthly...

Fifthly...

Sixthly...

21. Section 99 lays down that the right of private defence in no case, extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. According to Section 96 of the Code, nothing is an offence which is done in the exercise of the right of private defence. Learned counsel for the accused, therefore, argued that in the instant case when Santosh Narain Tripathi attacked the accused with a knife, his act could reasonably cause an apprehension in the mind of the accused that he was going to be killed. In any case the accused could reasonably apprehend that grievous hurt would be the consequence of the assault made by Santosh Narain Tripathi. The accused, therefore, had a right of private defence of person which extended up to causing the death of Santosh Narain Tripathi and as laid down in Section 96 of the I.P.C. action of the accused in killing Santosh Narain Tripathi; did not result in commission of any offence.

22. Learned counsel further urged that while it is true that under Section 99 of the right of private defence is to, in no case, extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence but then in judging the conduct of a person who proves that he has a right of private defence, allowance has necessarily to be made for his feelings at the relevant time. The person faced with an assault which causes a reasonable apprehension of death or grievous hurt, inevitably creates, in his mind, some excitement and confusion. At such a moment, the uppermost feeling in his mind would be to ward off the danger and to save himself and so he would naturally be anxious to strike a decisive blow in exercise of his right. Though it is true that, in striking a decisive blow, he must not use more force than it appears to be reasonably necessary, it would, while dealing with the question as to whether more force is used than what is necessary or justified by the prevailing circumstances, be inappropriate to adopt tests of detached objectivity which would be so natural in a Court room and that is why in some judicial decisions it has been observed that the means, which a threatened person adopts, or the force, which he uses, should not be weighed in golden scales. In support of the aforesaid submission, learned Counsel for the accused Shiv Murat, placed strong reliance on the case of *Jai Dev v. State of Punjab* : [1963]3SCR489 and urged that in the instant case the accused who was threatened with death could not be said to have exceeded his right of private defence by causing injuries to the deceased which resulted in his death.

23. While it is true that law does not expect from the person, whose life is placed in danger, to weigh, with nice precision, the extent and the degree of the force which he employs in his defence, it also does not countenance that the person claiming such a right should resort to force which is out of all proportion to the injuries received or threatened and far in excess of the requirement of the case. In this connection the provision contained in Exception 2 to Section 300 which runs thus-

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

may also be looked with advantage. These provisions, in our opinion, indicate that in judging whether the action of the accused in causing injuries to the victim in the purported exercise of right of self-defence is justified or not, and whether it ceases to be an offence, one has primarily to look into, the *bona fides* of the accused in causing such injuries. In cases where there is marginal excess of the exercise of such right, it may be possible to apply the principles laid down by the Supreme Court in the case of *Jai Dev v. State of Punjab* and to say that the means which a threatened person adopts, or the force, which he uses, should not be weighed in golden scales and in judging whether or not the right of private defence existed, it would be inappropriate to adopt tests of detached objectivity which would be so natural in a court room. There may, however, be cases which may indicate that the extent of the injury inflicted by an accused is clearly in excess of the right of private defence though the accused causing such injuries honestly believed that it was necessary to cause such injury for defending himself. In such cases the accused will get the benefit of Exception 2 to Section 300 I.P.C. and the homicide committed by him though culpable, would not amount to murder. There can also be a third category of cases where the person who has, to begin with, the right of private defence of person, actually goes on inflicting injuries on his assailant not with a view to protect his person but with a view to punish him for the assault made on him. In such cases, causing of injuries would not be in bona fide exercise of right of self-defence. The accused will therefore not, be able to claim benefit of Exception 2 to Section 300 IPC and there would be absolutely no question of his claiming that the said injuries were caused by him in exercise of right of private defence.

24. A perusal of the post mortem examination report shows that the deceased had as many as 15 injuries on his person. Out of them, injuries Nos. 1, 2, 3 and 8 were deliberate blows inflicted by the accused on the neck of the deceased. The deceased also had incised injuries on his left elbow joint, lip, left shoulder joint and upper part of the left palm, vide injuries Nos. 4, 5, 6 and 12. Besides these incised injuries the deceased had multiple linear abrasions on the left side neck, multiple linear cuts on the upper part of left side chest, multiple linear abrasions on the front, of the lower part of chest, multiple linear abrasions on the left side of upper part of abdomen, linear abrasions on the upper part of right side abdomen and

right side chest and multiple linear abrasions on his left side back, vide injuries Nos. 7, 9, 10, 11, 13 to 15. On the other hand the accused too had five injuries on the region of palm of his hand and one on the second toe of the right leg. All the injuries were very insignificant. Only two out of six injuries received by the accused, were incised wounds with the dimension 1 1/2' x 1/4' x skin deep on the innerside of the right palm and incised wound 1/2' x 1/4' x skin deep on the inner side of the first phalanx of the right little finger. Once it is found that these injuries were not caused by the handle of the knife Ext. 7, wielded by the accused, it becomes apparent that these injuries must have been caused before the accused actually started assaulting the deceased. However, the number, nature and location of the injuries found on the person of the deceased go a long way to indicate that those injuries were inflicted on him while the accused had completely over-powered the deceased and he had him completely under his control. Evidence of Lal Bahadur (P. W. 1). and Munnu Mahajan (P. W. 2) also indicates that while assaulting the deceased the accused sat on the chest of the deceased and had him completely at his mercy. In these circumstances, it may be that to begin with the accused had a right of private defence but then he did not cause the fatal injuries to the deceased in a bona fide exercise of the right of self defence. What appears is that when the accused was assaulted, he lost his temper. Accordingly after over-powering the deceased and having him completely at his mercy, he went on wielding repeated knife blows at the deceased with a view to kill or to teach him a lesson for his audacity in attacking him. In these circumstances, the case clearly falls in the third category and no question of the accused giving knife blows to the deceased either in exercise of right of private defence arises. We are accordingly of opinion that in the circumstances, the accused respondent was not entitled either to the benefit of Section 96 or Exception 2 to Section 300 I.P.C.

25. We, however, feel that the action of the deceased in attacking the accused with a knife could give an apprehension to the accused that he had been attacked by the deceased with a view to kill him, amounts to a grave and sudden provocation which could make the accused lose his power of self-control and to induce him to cause injuries resulting in the death of the deceased. The case, in our opinion squarely falls under exception 1 to Section 300 IPC which runs thus:

Culpable homicide is not murder if the offender whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

26. Section 304 (Part I) lays down that whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death _ is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. As already stated the respondent, because of the grave and sudden provocation given by the deceased, intended to cause death of the deceased and as his action cannot be justified by the purported exercise of right of self-defence of person he would be guilty of an offence punishable under Section 304(Part I) of the I.P.C.

27. The judgment of the trial court indicates that in its opinion the respondent was entitled to be acquitted merely because to begin with he had a right of private defence which extended to causing of death. In our opinion, the trial court erred in not applying its mind to the question as to whether the action of the respondent in killing the deceased could, in the circumstances of the case, be said to be bona fide or otherwise in excess of the purported right of self-defence.

28. In the result, the appeal succeeds and is allowed in part. The order dated 30-4-1976 passed by IV Addl, District & Sessions Judge, Allahabad completely acquitting the respondent in respect of the offence with which he was charged is set aside. The respondent is convicted of an offence under Section 304 (Part I) I.P.C. and is sentenced to undergo rigorous imprisonment for a period of five years. The respondent is on bail. He must surrender and serve out the sentence imposed upon him.

29. In the view which we have already taken, it is not necessary to pass any separate order in Criminal Revision No. 634 of 1976 filed by Lal Bahadur and the same stands disposed of accordingly.

