

**Baseruddi Sheikh Vs. King-emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/855300](http://sooperkanoon.com/855300)

**Court :** Kolkata

**Decided On :** Feb-14-1924

**Reported in :** AIR1924Cal776,83Ind.Cas.528

**Appellant :** Baseruddi Sheikh

**Respondent :** King-emperor

**Judgement :**

1. The accused in this case has been convicted under the provisions of Section 304 of the Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for a period of seven years. One point only is made with regard to the charge and it is this. It is said that the learned Judge neglected to charge the jury with regard to the rights of the accused under the provisions of Section 103 of the Indian Penal Code. Now we have read the charge, and although the Judge has directed the jury with regard to the right of private defence of the body under Section 102, we cannot find that there was any direction to the jury with regard to the right of the accused under Section 103, if the jury accepted the defence put forward on behalf of the accused, namely, that he awoke and found the dead man coming from inside the hut. If the deceased man came to the house with the intention of robbery and if he came from inside the hut as was the story put forward for the defence, the learned Judge should have charged the jury that if they accepted this story for the defence, they would have to consider whether there was a reasonable belief or apprehension in the mind of the accused that the thief had with him or was likely to have with him the articles which he had taken

from inside the hut, and he should have further charged the jury that if they accepted this story on behalf of the accused with regard to the probability that the thief had with him articles taken from inside the hut they should consider whether the accused in the exercise of his rights of defence of property under Section 103 used more force than was reasonably necessary for preventing the thief from getting away with the stolen property.

2. Under these circumstances, as this point was not put to the jury at all in the course of the charge, we think that the conviction and sentence must be set aside and we direct the accused to be retried. It at the retrial the accused is convicted the Judge should ascertain the views of the jury upon the matters to which I have referred.

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