SUPREME COURT OF INDIA

Ravishwar Manjhi

Vs.

State of Jharkhand

Crl.A.No. 2020 of 2008

(S.B. Sinha and Cyriac Joseph JJ)

12.12.2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Appellants and one Raghu Manjhi, since deceased, along with four others were tried for commission of offences under Sections 302/149, 307/149, 326/147/148/324 and 326 of the Indian Penal Code.

3. The occurrence is said to have taken place on or about 31.10.1997 at about 2.00 p.m. at village Simultand within the jurisdiction of Chandan Kiyari (Bangaria Assistant Thana) Police station in the district of Bokaro. First Information Report (FIR) in relation to the said incidence is said to have been recorded at 3.45 p.m. in the complainant's (Suresh Kumar Das, P.W.10) house. In the FIR, it

was alleged by the complainant that when his father Nagender Nath Das (deceased) and uncle Manpuran Das were sitting in front of their house after taking meal, he heard a noise (hulla) whereupon he came out and saw Ravishwar Manjhi, son of Berda Manjhi armed with `iron tenta', Jaleshwar Manjhi, son of Veda Manjhi armed with `tangi', Kala Chand Manjhi, son of Berda Manjhi, Santu Manjhi son of Balesar Manjhi armed with `bhala', Raghu Manjhi son of late Nakul Manjhi armed with `bhala' and Umakant Rajak armed with `bhala' were assaulting his father and uncle. He raised an alarm whereupon his other uncle Gour Das came to rescue them. Jaleshwar Manjhi assaulted him also with a `tangi' as a result of which he had received an injury on the palm of his right hand. Manpuran Das, his uncle sustained injuries on his left armpit, on left knee joint and on the left side of the head. Jaleshwar Manjhi caused tangi blow to his father.

When he wanted to take his father with him then Ravishwar Manjhi pierced iron tenta (ballam) on the right side of the back of his father and fled away. The motive for commission of offence was stated to be objection by his father from creating nuisance by the accused in front of their house. In the FIR, it was said to have been recorded that the dead body of Nagender Nath Das was lying on the road and Gour Das was lying in injured condition and Puran Das was lying in the state of unconsciousness.

4. P.W.17-Shankar Ram A.S.I., however, stated that on the said date he had received a phone call informing him that a fight was going on at village Simultand. On the basis of the said information, he recorded a `Sanha' and proceeded towards the place of occurrence. However, admittedly, the said `Sanha' has not been produced. He, furthermore, did not disclose as to from whom he received the information.

5. Indisputably, another fard-beyan of Ravishwar Manjhi (accused No.5) was recorded by one Alok Kumar, the Investigating Officer of the present case. He, however, had not been examined by the prosecution.

6. Both the FIRs were lodged at about 10.15 p.m. in the Chandankiyari Police Station. Whereas FIR No. 104 was recorded against the appellants under Sections 147, 148, 149, 323, 324, 326, 307 and 302 of the Indian Penal Code, FIR No. 105 was registered against the complainant party under Sections 147, 148, 149, 323, 324, 342, 448 and 354 of the Indian Penal Code.

7. The case of the appellants as stated in the said FIR No. 105 lodged by the accused No. 5 is that the deceased had trespassed into his house and tried to outrage the modesty of Chinta Muni Majhian, wife of his younger brother and when she raised alarm, appellants tried to save her. The deceased, however, was armed with a tangi wherewith he assaulted on both the appellants. He called all his family members who also were armed with lethal weapons. Appellants were assaulted causing injuries to them. The injuries sustained by the appellants Ravishwar Manjhi and Jaleshwar Manjhi were examined by the SHO Chandankiyari Police Station. He prepared injury reports of the

appellants and sent them to the hospital for further treatment.

8. The injured, however, were sent to the private clinic of P.W. 11 - Dr. Ratan Kejriwal. Admittedly, at Chandankiyari there is a government hospital. It is also not in dispute that there is a hospital of Bharat Coking Coal Limited (BCCL), a public sector undertaking at Amlabad in which one of the injured witnesses was an employee.

They, however, chose to go to village Chas which is at a distance of 22 kilometers from the place of occurrence and were admitted in the clinic of P.W.11.

Post-mortem was conducted on 1.11.1997 at about 11.30 a.m. in the Sadar Hospital, Bokaro by Dr. Avinash Kumar Chaudhary (P.W. 12). The injuries observed by him in his post-mortem report on the deceased were as under:

"(i) incised wound 5" x 1 =" x cranial cavity deep on the left side of the forehead obliquely placed and extending to the right parietal region of the scalp with obvious commuted fracture of frontal bone on the left side;

(ii) Abrasion 2 =" x 1 =" over front of left shoulder wrist;

(iii) Abrasion 1 =" x =" over left shoulder;

(iv) Penetrating wound with sharp margins 1 =" x <" x 5" deep over the right renal area 1" away from the L2 spine

(v) On dissection, the doctor had found the cranial vault fractured and the margins and brain matter were torn, lacerated and contused over the left asterior half extending to the right hemisphere; The penetrating would was 5" deep and in its area had lacerated right kidney bodily through out its breadth. It had also perforated the peritoneum and the ascending column of the large gut and part of the small intestine. The soft tissue and pours of the aforesaid would was lacerated. The abdominal cavity was filled with blood clots, faecal matter and other intestinal material.

The doctor had further observed that an iron rod with a spear shaped head with two spikes (tenta)

was found stuck in the body which he had removed and handed over to the constable. In the opinion of the doctor, the death occurred due to injury no. (iv), which was caused by a sharp weapon and due to cardiac respiratory failure on account of the internal and external hemorrhage and injury to the vital organs like brain, kidney and intestine.

9. In both the cases, chargesheets were filed on 31.12.1997.

The following charges were framed against the accused under Sections 302/149, 307/149, 326/147, 148, 324 I.P.C. on 23.4.1994 by Additional District & Sessions Judge, IInd Bokaro at Chas, which read as under:

"FIRST - That you, on or about the 31st day of October 97 at 2 pm at village Simultand P.S. Chandankiyari, Distt. Bokaro all of you in furtherance of common object did commit murder by intentionally or knowingly causing the death of Nagendra Nath Das and thereby committed an offence punishable under Section 302/149 of the Indian Penal code, and within my cognizance.

SECONDLY- That you, on or about the same date of same time at same place all of you in furtherance of common object did (sic) act it namely assaulted with deadly weapons with such intention or knowledge under such circumstances, that if by that act you had caused the death of Manpuran Das @ Puran Chandra Das and (2) Gour Das you would have been guilty of murder and thereby committed an offence punishable Section 307/149 of the Indian Penal Code, and within my cognizance.

THIRDLY- That you, on or about the same date of same time at same place voluntarily caused grievous hurt to (1) Manpuran Das @ Puran Chandra Das and (2) Gour Das by means of Tangi which is an instrument for cutting and thereby committed an offence punishable under Section 326 of the Indian Penal Code, and within my cognizance.

FOURTHLY- That you, on or about the 31st day of October 1997 at 2 pm at village Simultand P.S. Chandankiyari, Distt. Bokaro all of you were a member of unlawful assembly and in prosecution of the common object of the said assembly committed the offence of rioting and thereby committed an offence punishable under Section 147 of the Indian Penal Code, and within my cognizance.

FIFTHLY- That you, on or about the same date of same time at same place were a member of unlawful assembly and did in prosecution of the common object of that assembly commit the offence of rioting and at that time you were armed with a deadly weapons namely, Tanta, Tenta

(Ballam), Bhala etc. and thereby committed an offence punishable under Section 148 of the Indian Penal Code, and within my cognizance.

SIXTHLY-That you, on or about the same date of same time at same place voluntarily caused hurt to (1) Manpuran Das @ Puran Chandra Das and (2) Gour Das by means of Tangi which is an instrument for cutting and thereby committed an offence punishable under Section 324 of the Indian Penal code, and within my cognizance."

Indisputably, charges were also framed against the prosecution witnesses under Sections 147/149, 323/149, and 342/149 respectively by Sub-Divisional Judicial Magistrate, Chas, Bokaro on 12.7.1999, which read as under:

"FIRST- That you, on or about the 31st day of October 1997 at village Simultand P.S. Chandankiyari, Distt. Bokaro being a member of an unlawful assembly committed rioting in the prosecution of common object of an unlawful assembly and thereby committed an offence punishable under Section 147/149 of the Indian Penal Code, and within my cognizance.

SECONDLY- That you, on or about the same day of same at same voluntarily caused hurt to informant Ravishwar Manjhi and his younger brother Jaleshwar Manjhi in the prosecution of common object of an unlawful assembly and thereby committed an offence punishable Section 323/149 of the Indian Penal Code, and within my cognizance.

THIRDLY- That you, on or about the same day of same at same wrongfully confined to informant and his younger brother in the prosecution of common object of an unlawful assembly and thereby committed an offence punishable under Section 342/149 of the Indian Penal Code, and within my cognizance."

10. Both the cases were taken up for hearing by different courts. It is, however, stated that the cases lodged by the accused persons is still pending in the Court of Judicial Magistrate, Bokaro.

11. Before the learned Sessions Judge, Seventeen witnesses were examined on behalf of the prosecution. P.W.1- Manpuran Das, P.W.7-Parmeshwar Das, and P.W. 9-Gour Das were injured witnesses. P.W. 2- Rajan Das (Pradeep Kumar Das), P.W. 3-Dhaneshwar Das (Dhona Das), P.W. 6 Khagendra Nath Das, P.W. 8-Neelam Devi and P.W. 10- Suresh Kumar Das (Informant) were said to have witnessed the occurrence. P.W. 4 Chinta Haran Das and P.W. 5-Mantu Das were also said to have witnessed a part of the occurrence.

P.W.11-Dr. Ratan Kejriwal in whose Nursing Home the injured were admitted, P.W. 9 Gour Das and Puran Chand Das were admitted, P.W. 12- Dr. Avanish Kumar Choudhary, the Autopsy Surgeon, P.W. -16 - Dr. P.S. Kashyap, who is said to have examined Parmeshwar Das (P.W. 7), P.W.17- Shankar Ram, A.S.I. who had recorded the fard-beyan of P.W. 10 and conducted the inquest were also examined.

The Investigating Officer, however, was not examined.

Appellants also examined two defence witnesses, namely, Sahdeo Mahto (D.W. 1), a police constable for proving the fard-beyan, FIR and charge-sheet filed against the complainant party and Dr. Virendra Kumar (D.W.2) who had examined the accused Ravishwar Manjhi and Jaleshwar Manjhi.

12. The learned trial judge did not place any reliance upon the evidence of P.W.7 Parmeshwar Das, who claimed himself to be an injured eyewitness.

The learned trial judge further did not believe the allegation of giving a `tangi' blow by Umakant Rajak on the head of Manpuran Das. It was, however, held that Jaleshwar Manjhi had caused grievous injury by a `sharp weapon' on the left palm of Gour Das and Raghu Manjhi caused grievous injury on the left knee joint by a `sharp weapon' to Manpuran Das and the accused Kala Chand Manjhi also caused grievous injury on the left scapula of Manpuran Das by a `sharp weapon'. Accused Jaleshwar Manjhi was found to have been assaulted the deceased by giving severe blow by `tangi' on the head causing fracture of the frontal bone and the brain matter was torn. Ravishwar Manjhi pierced Tenta in the back of the deceased.

On the basis of the aforementioned finding, the accused persons were convicted and the following sentences were imposed:

Name of accused	Convicted under Section	Sentence awarded
Ravishwar Manjhi	302, 148 I.P.C.	Life imprisonment and 2 years RI respectively.

Jaleshwar Manjhi	302, 148 & 326 I.P.C.	Life imprisonment and 2 yrs. RI and 5 yrs. RI respectively
Kala Chand Manjhi	326 and 148 I.P.C.	5 yrs. RI and 2 yrs. RI respectively
Raghu Manjhi	326 and 148 I.P.C.	5 yrs. RI and 2 yrs. RI respectively
Santu Manjhi	148 I.P.C.	2 yrs RI
Uma Kant Rajak	148 I.P.C.	2 yrs. RI

13. The High Court by reason of the impugned judgment has dismissed the appeal preferred by the appellants herein.

14. Mr. Abhijit Sengupta, learned counsel appearing on behalf of the appellants would contend:

(i) The genesis and origin of the occurrence has been suppressed by the prosecution.

(ii) The injuries on the person of the accused having been denied, the prosecution witnesses must be held to be not reliable as they suppressed material points.

(iii) Non-examination of the Investigating Officer has caused serious prejudice to the accused.

(iv) Actual place of occurrence, namely, whether it was in front of the house of the appellant Jaleshwar Manjhi or in front of the house of the deceased, has not been firmly established.

(v) The prosecution having not sent the blood stained earth which was collected by P.W.17 for chemical examination, the defence version must be held to have been proved.

(vi) The prosecution witnesses should not be believed as inordinate delay was caused in obtaining their statements.

(vii) The station diary (Sanha) on the basis whereof P.W. 17 was said to have reached the place of occurrence having not been produced, the appellants were seriously prejudiced wherefor adverse inference should be drawn.

(viii) The materials brought on record cast a serious doubt in regard to the time of recording of the fard-beyan as investigation had commenced even on the basis of the station diary, and thus the FIR was inadmissible in evidence.

(ix) There was no reason for the injured to obtain treatment from a private Hospital although there was Government hospital near the place of occurrence.

(x) The courts below in their judgments did not consider and discuss the evidence as regards the charge of forming an unlawful assembly, and thus, the prosecution must be held to have failed to prove that the appellants formed a common object to commit the offence.

(xi) Statements of the prosecution witnesses having been recorded after the medical evidence was available to them, no reliance thereupon shall have been placed by the courts below.

(xii) Statements of the accused persons - appellants were not properly recorded under Section 313 of the Code of Criminal Procedure which caused a grave prejudice.

(xiii) The courts below made out a third case which was not supported by the evidence on record and which is impermissible in law.

(xiv) Wrong description of weapons in the FIR had affected the testimonial value of the witnesses

which improbalize the prosecution case.

(xv) Both the cases should have been tried by the same court and one after another.

(xvi) In any view of the matter, the appellants must be held to have exercised their right of private defence in view of the injuries sustained by them.

15. Mr. Ratan Kumar Choudhuri, learned counsel appearing on behalf of the State of Jharkhad, on the other hand, would contend:

(i) As P.W. 17 has been examined by the prosecution who has recorded the FIR, non-examination of the Investigating Officer was not of much significance.

(ii) Statements of P.W.1, P.W. 3 and P. 7 could not have been recorded as they were admitted in the hospital.

(iii) The injured persons and the deceased were taken to Chas as it was found necessary that they receive treatment in the referral hospital at Chas and the same having been found to be closed, the injured were then admitted to the Nursing Home which was at Chas.

(iv) The prosecution has proved the genesis of the occurrence.

(v) The learned Sessions Judge as also the High Court arrived at the finding of guilt of the accused, upon proper analysis of the evidence adduced by the prosecution and in that view of the matter the impugned judgment should not be interfered with.

(vi) Appellants had formed a common object on the spot and in view of the nature of injuries inflicted on the deceased as also on the injured persons, prosecution must be held to have proved formation of the unlawful assembly.

16. The learned Sessions Judge as also the High Court did not record any finding that all the

accused persons formed a common object.

There was no premeditation on the part of the accused. Two of the accused have been found guilty under Sections 302 and 148 of the Indian Penal Code and other accused under Sections 326 and 148 thereof.

Mr. Sengupta may be correct in his submission that the prosecution has not come out with the genesis of the occurrence. We also do not know as to why both the cases were not taken up by the same court one after the other. We furthermore fail to understand as to how a criminal case of 1999 is still pending in the Court of Judicial Magistrate, Bokaro.

17. The learned Sessions Judge as also the High Court appeared to have proceeded on the premise that as the appellants had not been able to prove their defence, and therefore, the prosecution version should be accepted. The approach of the courts below was, thus, not correct.

The investigation was carried out in a slipshod manner. The FIR clearly showed that even before lodging of the FIR, investigation had started. The inquest was conducted, bloodstained grass and soil had been seized and the dead body was sent for post-mortem.

18. It is beyond anybody's comprehension that if the incident had taken place at about 2'O clock and it took about one and half hours for P.W. 17 to reach the village Simultand, how the FIR was recorded at about 3.45 p.m. while the inquest report was prepared at about 4.05 p.m. and blood stained grass and soil was seized at about 5.00 p.m. The injured persons received grievous injuries. It was expected that they would be rendered some medical help at the earliest. They were unconscious and, thus, they should have been sent for treatment to a nearby hospital. It was absolutely necessary that at least some medical help is rendered to them.

They reached Dr. Kejriwal's Nursing Home at about 7.00 p.m. The following injuries were noticed by P.W.11, in his own words:

"On Gour Das I found following injuries:

1. Incised wound in left palm 9 cm x 1 cm cutting or superficial (illegible)

2. Abrasion on left shoulder joint. Aged within 6 hours. No. 1 by sharp instrument, 2nd by hard substance. No.1 grievous in nature and 2 simple.

On Puran Chand Das found following injuries:

1. Lacerated wound on scalp 5 cm x 0.6 cm x .5 cm avulsing on muscles.

2. Incised wound on (illegible) left scapula .10 cm x 1.2 cm.

3. Incised wound (illegible) left knee joint 8 cm x 10 cm. age within 6 hrs. Number one caused hard blunt object and another by sharp instrument. All the injuries are grievous the two injuries re in pen and signature Exh.4 and 4A.

In response to all the relevant questions, his standard answer was "I do not remember".

19. If the prosecution case is correct that the dead body as also the injured persons were brought to the referral hospital, the same having been found to be closed, the injured were admitted in the Nursing Home, there was no reason as to why a police personnel did not accompany them. It is also strange that neither the exact location of injury on the head of the Puran Das was stated nor description of the said injury had been furnished by the Doctor. He was also not in a position to say whether injury No. 3 was from the front or behind. According to him all injuries could be caused by similar weapons. He, in his injury report, even did not mention the colour of injury.

20. Whereas all the other prosecution witnesses were admitted in the hospital on the same day, P.W. 7 is said to have been admitted on the next day although he had suffered a grievous injury. It is not known whether he had been given any medical aid or not. Statement of none of the witnesses was recorded either on the day on which the occurrence had taken place or the day after.

21. P.W. 1 was examined after the `Shradh Ceremony' of deceased was over which would be about twelve days after the death. P.W. 3 stated that he was examined after one month. Statement of P.W. 7 was also taken after he was discharged from hospital, i.e., at least after a week.

The Investigating Officer in a case of this nature should have been examined. His examination by

the prosecution was necessary to show that there had been a fair investigation. Unfortunately, even no site plan was prepared. There is nothing on record to show as to the exact place where the occurrence had taken place. It is stated that the house of the parties is divided by a road. If that be so, it was all the more necessary to pin point the exact place of occurrence to ascertain who the aggressor was.

22. No doubt, a life is lost and two persons suffered grievous injuries but we must also notice the injuries suffered by two of the appellants as was disclosed by Dr. Virendra Kumar (D.W. 2) in his evidence.

"On 31.10.1997 I was posted at M.O. at Chandankiyari. On that day at 9.30 p.m. I examined Ravishwar Manjhi s/o Berga Manjhi P.S.Chandankiyari, District Bokaro and found following injuries:

1) Incised wound 1 =" x 1/6" x 1/6" over left palm ventrally below (illegible) of thumb by sharp cutting substance.

2) Scratches at four places over both sides of back and upper portions due to sharp cutting instrument 6" and 5"

3) Incised wound at two places over right palm posteriorly 4" x =" x 1" deep and 2" x <" x <" by sharp cutting instrument.

4) Age within 12 hours. 1 and 2 simple and 3 grievous. On the same day I examined Jaleshwar Manjhi, w/o Berga Manjhi of same village and found following injuries.

1) Incised wound at two places over head posterior and interior by sharp cutting substance 3" x =" x skin deep over top of head posteriorly.

2) 2" x <" x skin deep over front head.

3) Complain of pain on whole body without illegible. Injury with 12 hours simple.

The patient Ravishwar Manjhi was referred for X-ray and on receipt of the report both injuries on palm were found to be grievous.

23. The injuries being grievous in nature, the prosecution owed a duty to explain the same. It is unfortunate that the High Court did not take serious notice of the nature of injuries suffered by the appellants, relying on the decision of this Court in Ayodhya Ram alias Ayodhya Prasad Singh and Ors. vs. State of Bihar [(1999) 9 SCC 139], wherein only minor injuries were suffered by the accused persons.

24. Out of seven eyewitnesses, P.W. 7 was not believed by the courts below. P.Ws. 4 and 5 were not present exactly at the place of occurrence. They are said to have witnessed only a part of the occurrence. All other eyewitnesses were related to the deceased. However, we do not hesitate to add that only on that ground their evidences should not be disbelieved.

Furthermore, there was no enmity between the parties. Only a case under Section 107 of the Code of Criminal Procedure was pending against them. Even in respect thereof, no documentary evidence was brought on record to show as to when the said proceeding was initiated and at whose instance. The prosecution witnesses merely supported the prosecution case that a death had taken place and two witnesses suffered grievous injuries but it was absolutely necessary in the facts and circumstances of this case to show that the accused were the aggressors. It was for that reason the genesis of the prosecution case must be held to have grave significance.

25. The very fact that the appellants had gone back to their house to come out with arms and caused injuries on the person of the deceased and injured persons may or may not be correct, but even accepting the prosecution case to be correct, evidently the prosecution party also went to their house and brought weapons from their house. If it is accepted that the appellants were armed with such deadly weapons, it must also be accepted that the prosecution witnesses would also be armed with such weapons. It is, inter alia, for this reason the production of `Sanha' entry was necessary. We are not oblivious of the fact that a mere information received on phone by a Police Officer without any details as regards the identity of the accused or the nature of injuries caused by the victims as well as the name of the culprits may not be treated as FIR, but had the same been produced, the nature of information received by the police officer would have been clear. It is interesting to note that the High Court in its judgment recorded the following:

"The explanation given by the prosecution witnesses that they could not notice the injuries, if any, on the person of the above named appellants on account of the fact that they themselves had sustained injuries and one of their own having sustained fatal injuries had died at the spot and the assault continued hardly for less than five minutes whereafter the assailants had fled away, appears

to be a reasonable explanation as far as the injured witnesses are concerned. This, however, does not apply to the other eye witnesses, since they had an opportunity to see the entire occurrence from the beginning to end. From the evidence adduced by the prosecution and that by the defence, it appears that both sides had indulged in a free fight with each other in course of which, members of both the parties had sustained injuries. In the FIR of the counter case instituted by the appellant Ravishwar Manjhi, a feeble attempt to explain the injuries found on the person of the members of the prosecution party has been made. It is contended that it was in exercise of right of private defence by the appellants while resisting the advances made by the deceased that some injuries may have been caused to the deceased and other members of his family."

26. If there was a free fight which might have taken place and where both the parties were armed with deadly weapons and suffered injuries, all the appellants could not have been convicted under Section 302 of the Indian Penal Code. The entire case should have been viewed by the courts below from that angle. The case was required to be considered in the light of the defence case. The High Court opined that the deceased was accosted by the appellant not in their house, but outside their house on the road is not a matter of moment, particularly when the High Court itself recorded that house of the deceased Nagender Nath Das and that of the appellant Ravishwar Manjhi were opposite to each other with a road (alley) dividing the same. If the dead body was lying on the alley, it matters little as to whether it was in front of the house of the appellant or the deceased.

27. The plea of the appellants as regards exercise of the right of private defence has been negatived by the High Court only on the ground that the right to private defence had ceased immediately after the deceased had retreated from their house. But what has not been considered is the causa causan of the incident.

Whether the outraging of modesty of a female member of the family of the accused was the reason giving rise to the occurrence is a question which should have been considered. If that be so, it was for the prosecution to prove that attempt on the part of the appellants to cause injuries was not as a result of previous enmity but for a different purpose.

If the allegations made in the FIR that the appellants were drunk was correct, it was obligatory on the part of the P.W. 17 and consequently the Investigating Officer to get the said fact established. Medical evidence does not suggest the same. This aspect of the matter was not brought to the notice of the Doctor treating the accused. There were, thus, two versions. Both were probable and if that be so, the plea of exercise of right of private defence raised by the appellant deserved serious consideration.

28. There was no material brought on records to show that the appellants were the aggressors. If everything had happened within a short span of time as is alleged by the prosecution, namely, the appellants were causing nuisance which was objected to by the deceased; they went to their

respective houses; came armed and started assaulting the deceased and other injured persons, it was also necessary for the prosecution to prove as to how accused persons received injuries. It is now a well settled principle of law that the accused can show that they were entitled to exercise right of private defence from the materials on records brought by the prosecution.

29. The places where the injuries had been inflicted also assume significance. If the prosecution witnesses are to be believed, the first injury was caused on hand. It was thereafter injuries were caused on other parts of the person of the prosecution witnesses and the last injury was caused by `tenta'.

In Chanan Singh vs. State of Punjab [(1979) 4 SCC 399, this Court held:

"It is true that the defence case also has not been accepted by the High Court but once there is a probability of the accused having acted in self- defence, that is sufficient to entitle him to an acquittal."

In Bishna Alias Bhiswadeb Mahato & ors. vs. State of W.B. [(2005) 12 SCC 657], this Court noticed that a right of private defence need not specifically be taken and in the event the court on the basis of the materials placed on record is in a position to come to such a conclusion, the court may act thereupon. It was held:

"74. 'Right of private defence' is not defined. Nothing is an offence in terms of Section 96 of the Indian Penal Code, if it is done in exercise of the right of private defence. Section 97 deals with the subject matter of private defence. The plea of right of private defence comprises the body or property. It, however, extends not only to person exercising the right; but to any other person. The right may be exercised in the case of any offence against the body and in the case of offences of theft, robbery, mischief or criminal trespass and attempts at such offences in relation to property. Sections 96 and 98 confer a right of private defence against certain offences and acts. Section 99 lays down the limit therefor. The right conferred upon a person in terms of Section 96 to 98 and 100 to 106 is controlled by Section 99. In terms of Section 99 of the Indian Penal Code, the right of private defence, in no case, extends to inflicting of more harm than it is necessary to inflict for the purpose of defence. Section 100 provides that 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 enumerated therein, 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". To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden in this behalf is

on the accused."

30. Yet again in Surendra & Anr. v. State of Maharashtra [(2006) 11 SCC 434], this Court held:

"26. We are not unmindful of the fact that in all circumstances injuries on the person of the accused need not be explained but a different standard would be applied in a case where a specific plea of right of private defence has been raised. It may be true that in the event prosecution discharges its primary burden of proof, the onus would shift on the accused but the same would not mean that the burden can be discharged only by examining defence witnesses.

27. The learned courts below committed a manifest error of law in opining that the Appellants had not discharged the initial burden which is cast on them. Even such a plea need not be specifically raised. The Courts may only see as to whether the plea of exercise of private defence was probable in the facts and circumstances of the case.

32. In regard to the duty of the prosecution to explain the injuries on the part of the accused, this Court observed:

`78. Section 105 of the Evidence Act casts the burden of proof on the accused who sets up the plea of self- defence and in the absence of proof, it may not be possible for the court to presume the correctness or otherwise of the said plea. No positive evidence although is required to be adduced by the accused; it is possible for him to prove the said fact by eliciting the necessary materials from the witnesses examined by the prosecution. He can establish his plea also from the attending circumstances, as may transpire from the evidence led by the prosecution itself.

79. In a large number of cases, this Court, however, has laid down the law that a person who is apprehending death or bodily injury cannot weigh in golden scales on the spur of the moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force. All circumstances are required to be viewed with pragmatism and any hypertechnical approach should be avoided.

80. To put it simply, if a defence is made out, the accused is entitled to be acquitted and if not he will be convicted of murder. But in case of use of excessive force, he would be convicted under Section 304 IPC."

31. In Satya Narain Yadav v. Gajanand & Anr. [2008 (10) SCALE 728], this Court held:

"14. As noted in Butta Singh v. The State of Punjab (AIR 1991 SC 1316), a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self- defence and the right of private defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self-preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has disappeared, the plea of right of private-defence can legitimately be negatived. The Court dealing with the plea has to weigh the material to conclude whether the plea is acceptable. It is essentially, as noted above, a finding of fact."

32.We may notice that the learned Sessions Judge, while examining Jaleshwar Manjhi, did not put any question to him as to whether he had killed the deceased or assaulted anybody.

33. For the reasons aforementioned, we are of the opinion, that it is possible for the court to arrive at the conclusion that the appellants were entitled to exercise their right of private defence. The appeal is allowed. Ravishwar Manjhi (accused No. 5), Jaleshwar Manjhi (accused No. 6) and Kala Chandra Manjhi (acused No.3) who are in custody are directed to be set at liberty and released forthwith unless wanted in connection with any other case.

The bail bonds of Santu Manjhi (accused No. 4) and Umakant Rajak (accused No. 1) shall stand discharged.