

[SC] Penal Code (1860), S.100 - Right of private defence - Is necessarily a defensive right which is available only when the circumstances so justify it - The circumstances are those that have been elaborated in the IPC - Such a right would be available to the accused when he or his property is faced with a danger and there is little scope of the State machinery coming to his aid - At the same time, the courts must keep in mind that the extent of the violence used by the accused for defending himself or his property should be in proportion to the injury apprehended - This is not to say that a step to step analysis of the injury that was apprehended and the violence used is required to be undertaken by the Court; nor is it feasible to prescribe specific parameters for determining whether the steps taken by the accused to invoke private self-defence and the extent of force used by him was proper or not - The Court's assessment would be guided by several circumstances including the position on the spot at the relevant point in time, the nature of apprehension in the mind of the accused, the kind of situation that the accused was seeking to ward off, the confusion created by the situation that had suddenly cropped up resulting the in knee jerk reaction of the accused, the nature of the overt acts of the party who had threatened the accused resulting in his resorting to immediate defensive action, etc. - The underlying factor should be that such an act of private defence should have been done in good faith and without malice.

Held on facts,

Civilian was shot dead by BSF policeman . Accused on patrolling duty near Bangladesh border - Villagers used to indulge in smuggling activities there .There was an incident where smugglers had assaulted one of the members of the Battalion when he was trying to prevent them from crossing the border. That the deceased used to indulge in smuggling activities and his name was mentioned in the list of smugglers maintained by the BSF. In the Rubber plantation, an area with depressions and undulations on the ground surface, he had noticed 6-7 persons crossing over from Bangladesh by cutting across the International border. They had tried to 'gherao' him. They were armed with weapons. Seeing himself cornered, the appellant started to retreat. But the intruders kept closing him and were in or at a distance of ten yards. Faced with such a precarious situation where the appellant gathered an impression that the intruders were going to attack him any minute, fearing for his life, the appellant fired two rounds in the air. This did not deter the intruders who kept on inching closer to the appellant. When the deceased came as close as 3-4 yards from him and tried to attack him by raising his 'Dah', apprehending an imminent and perceptible threat to his life, the appellant fired at him due to which he fell on the ground. While, the other miscreants fled away to Bangladesh, deceased collapsed at the spot and was declared dead.

The right of private self defence would be available to the appellant keeping in mind preponderance of probabilities that leans in favour of the appellant. In a fact situation where he was suddenly confronted by a group of intruders, who had come menacingly close to him, were armed with weapons and ready to launch an assault on him, he was left with no other option but to save his life by firing at them from his rifle and in the process

two of the shots had pierced through the deceased, causing his death. We are therefore of the opinion that the appellant ought not to have been convicted for having committed the murder of the deceased. Rather, the offence made out is of culpable homicide not amounting to murder under Exception 2 to Section 300 IPC, thereby attracting the provisions of Section 304 IPC.

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