

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1461/2012

RAKESH DUTT SHARMA

APPELLANT

VERSUS

STATE OF UTTARAKHAND

RESPONDENT

O R D E R

1. The appellant was charged for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, the 'IPC'). However, the Trial Court, upon examining the evidence available on record, was pleased to convict the appellant for the offence punishable under Section 304 Part I of the IPC and sentenced him to life imprisonment. On appeal, the same was confirmed by the High Court. Aggrieved, the appellant has come before this Court.

2. The facts are not in dispute. The appellant is a medical practitioner. There was enmity between the appellant and the deceased over a money transaction. The deceased, armed with a pistol, went to the clinic of the appellant and shot him. Thereafter, the appellant snatched the pistol from the deceased and shot him down. Both the appellant and the deceased registered FIRs against each other. As the deceased had died, the FIR

registered against him was closed and the appellant was charged for the offence as aforestated.

3. Mr. S. Nagamuthu, learned Senior counsel appearing for the appellant would submit that even if the version of the prosecution is taken as such, it would only be a case of exercise of right of private defence by the appellant. The nature of the injury suffered would be insignificant and the right of private defence cannot be calculated with arithmetical precision. The appellant ought not to have been charged for the offence punishable under Section 302 of the IPC and in any case, the offence punishable under Section 304 Part I of the IPC is also not made out. In support of his submissions, the learned Senior counsel placed reliance upon the judgment rendered by this Court in *Darshan Singh vs. State of Punjab and Another*, (2010) 2 SCC 333.

4. The learned counsel appearing for the State would vehemently contend that the post-mortem report of the deceased and the evidence of the doctor would show that it is a case where the right of private defence was exceeded by the appellant. The deceased was shot by the appellant on vital parts which has been duly taken note of by both the Courts below.

5. As stated, the deceased was the aggressor. He was the one who went to the clinic of the appellant, armed with a pistol and attacked him. Then, the appellant attacked the deceased in retaliation.

6. As rightly submitted by the learned Senior counsel appearing for the appellant, the right of private defence cannot be brushed aside and cannot be weighed in a golden scale. In such a case, the approach of the Court shall not be pedantic. It should be seen from the point of view of a common and reasonable person. When an attack is sought to be made on the accused by a person, who goes to the place of the accused, armed with a pistol and thereafter, shoots him on his head causing injury, there is no way the accused person would apply his rational mind in exercising his right of private defence.

7. Considering the principle governing the right of private defence, this Court, in *Darshan Singh (supra)* was pleased to hold as under:

"54. In *Vidhya Singh v. State of Madhya Pradesh*, (1971)3 SCC 244, the court observed that:

"18. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this court, to adopt tests by detached objectivity which would be so natural in a court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances."

55. In *Jai Dev v. State of Punjab*, AIR 1963 Supreme Court 612 the court held as under:

"13.....as soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence."

56. In order to find out 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.

57. In *Buta Singh v. The State of Punjab*, (1991)2 SCC 612, the court noted that:

"10.....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."

58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable

danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened."

8. Applying the aforesaid principles, we have no hesitation in setting aside the judgments of the Trial Court and that of the High Court. Accordingly, we are inclined to accept the plea of private defence raised by the appellant.

9. The appeal is, accordingly, allowed. The appellant is, thus, acquitted of all charges. Bail bonds stand discharged.

10. Pending application(s), if any, shall stand disposed of.

.....J.
(M.M. SUNDRESH)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi
August 28, 2025

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s).1461/2012

RAKESH DUTT SHARMA

Appellant(s)

VERSUS

STATE OF UTTARAKHAND

Respondent(s)

Date : 28-08-2025 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) : Mr. S. Nagamuthu, Sr. Adv.
Dr. Vijendra Singh, Adv.
Mr. Deepak Goel, AOR

For Respondent(s) :Mr. Akshat Kumar, AOR
Ms. Anubha Dhulia, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The appeal is allowed in terms of the signed order.
2. Pending application(s), if any, shall stand disposed of.

(ARJUN BISHT)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
ASSISTANT REGISTRAR

(signed order is placed on the file)