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A CASE COMMENT ON Vishwanath v. State of Uttar Pradesh (1960)1SCR 646: AIR 1960 SC 67

INTRODUCTION: -

There are circumstances when the state mechanism may not be accessible to the citizens to defend themselves in case of impending danger, and in those situations, a person is allowed to employ force to avert the impending threat. People have the right to protect themselves when state aid cannot be obtained and this right is called the right of private defence of body.¹ This right is provided under Sections 96-106 of the Indian Penal Code (IPC).²

However, this right can only be exercised when the circumstances justify it and not otherwise. The right of private defence is subject to restrictions given under Section 99 of the IPC. Section 99 provides that the right to private defence cannot be availed when there is sufficient time to take recourse to the public authorities, and also not against a public servant acting in good faith under a legal duty unless reasonable apprehension is caused. It also provides that force used must not be excessive than is necessary to ward off the impending threat.

In certain circumstances, the right of private defence also extends to causing death of the person who poses such a danger. This right is provided under Section 100 of the IPC.³ In order to avail this, there must be reasonable apprehension that death or grievous hurt might be caused, or in case

¹ RATANLAL AND DHIRAJLAL, THE INDIAN PENAL CODE 173 (34th ed. 2014).

² PSA PILLAI, CRIMINAL LAW 199 (10th ed. 2008).

³ K.D. GAUR, THE INDIAN PENAL CODE 188 (4th ed. 2009).

of assault with intention of committing rape, abducting, wrongfully confining a person or when there is apprehension of throwing or attempting to throw acid.⁴

Although the law permits causing of death in certain circumstances of private defence, it ensures that the person does not exceed this right.⁵ This right can only be availed when the danger or the threat is imminent and the force applied must be proportionate to the danger. However, as stated in *Puran Singh v. State of Punjab*⁶, there is no set of scales that determines whether the accused has exceeded the right. It has to be determined from the facts and circumstances of each case.

In this project I will be commenting upon the case of *Vishwanath v. State of Uttar Pradesh* (1960)1SCR 646: AIR 1960 SC 67, with special emphasis on section 97 and 100 of the penal code.

BRIEF FACTS

In this case Gopal deceased was married to the sister of the appellant. The appellant and his father Badri were living in a railway quarter at Gorakhpur. Gopal's sister was married to one Banarsi, who was also living in another railway quarter nearby. Gopal had been living for some time with his father-in-law. They did not, however, pull on well together and Gopal shifted to the house of Banarsi. Badri persuaded Gopal to come back to his house but the relations remained strained and eventually Gopal shifted again to the quarter of Banarsi about 15 days before this occurrence which took place on June 11, 1953, at about 10 p.m. Gopal's wife had continued to live with her father as she was unwilling to go with Gopal. Her father Badri and her brother Vishwanath appellant sided with her and refused to let her go with Gopal. Gopal also suspected that she had been carrying on with one Moti who used to visit Badri's quarter.

Consequently, Gopal was keen to take away his wife, the more so as he had got a job in the local department some months before and wanted to lead an independent life. On June 11, there was some quarrel between the appellant and Gopal about the girl; but nothing untoward happened then and the appellant went back to his quarter and Gopal went away to Banarsi's quarter. Gopal asked Banarsi's sons to help him in bringing back his wife. Banarsi also arrived and then all four of them went to Badri's quarter to bring back the girl. On reaching the place, Banarsi and his two sons

⁴ DR. HARI SINGH GAUR, INDIAN PENAL CODE 297 (14th ed. 2013).

⁵ K.N.CHANDRASEKHARAN PILLAI, GENERAL PRINCIPLES OF CRIMINAL LAW 150 (1st ed. 2003).

⁶ AIR 1975 SC 1674.

stood outside while Gopal went in. In the meantime, Badri came out and was asked by Banarsi to let the girl go with her husband. Badri was not agreeable to it and asked Banarsi not to interfere in other people's affairs. While Badri and Banarsi were talking, Gopal came out of the quarter dragging his reluctant wife behind him.

The girl caught hold of the door as she was being taken out and a tug-of-war followed between her and Gopal. -The appellant was also there and shouted to his father that Gopal was adamant. Badri, thereupon replied that if Gopal was adamant he should be beaten (tomaro). On this the appellant took out a knife from his pocket and stabbed Gopal once. The knife penetrated into the heart and Gopal fell down senseless. Steps were taken to revive Gopal but without success. Thereupon, Gopal was taken to the hospital by Badri and the appellant and Banarsi and his sons and some others, but Gopal died by the time they reached the hospital.

Sessions Judge was of the opinion that Badri who had merely asked the appellant to beat Gopal could not have realized that the appellant would take out a knife from his pocket and stab Gopal. Badri was, therefore, acquitted of abetment. The Sessions Judge was further of opinion that the appellant had the right of private defense of person, and that this right extended even to the causing of death as it arose on account of an assault on his sister which was with intent to abduct her. He was further of opinion that more harm than the circumstances of the case required was not caused; and therefore, the appellant was also acquitted. The State then appealed to the High Court against the acquittal of both accused. The High Court upheld the acquittal of Badri. The acquittal of - the appellant was set aside on the ground that the case was not covered by the fifth clause of s.100 and the right of private defense of person in this case did not extend to the voluntary causing of death to the assailant and therefore it was exceeded. The High Court relied on an earlier decision of its own in Emperor v. Ram Saiya. The appellant was therefore convicted under s.304 Part 11, of the Penal code and sentenced to three years' rigorous imprisonment. He applied for a certificate to enable him to appeal to the apex Court but this was refused. Thereupon he applied to the Supreme Court for special leave which was granted.

ISSUES BEFORE THE SC: -

WHETHER APPELLANT HAD EXCEEDED RIGHT OF PRIVATE DEFENCE OF PERSON?

JUDGEMENT: -

The court held that the appellant gave only one blow with a knife which he happened to have in his pocket. It is unfortunate that the blow landed right into the heart and therefore Gopal died. But considering that the appellant had given only one below with an ordinary knife which, if it had been a little this way or that, could not have been fatal, it cannot be said that he inflicted more harm than was necessary for the purpose of defense. As has been pointed out in Amjad khan v. The state " these things cannot be weighed in too fine a set of scales or in golden scale" ‘. And, therefore, the court allowed the appeal and held that the appellant had the right of private defense of person under the fifth clause of S.100 and did not cause more harm than was necessary and acquit him.

ANALYSIS: -

Section 100 is applicable in the present matter: -

The right of Private Defense 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:

- Firstly-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-An assault with the intention of committing rape;
- Fourthly-An assault with the intention of gratifying unnatural lust;
- Fifthly-An assault with the intention of kidnapping or abducting;
- Sixthly-An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Appellant got relief under paragraph four of Section 100 because the deceased was dragging his sister, and this amounts to assault under Section 352. Also, the intention of the deceased was to commit Abduction because the deceased was compelling the sister of appellant by force to leave that place.⁷

Abduction in clause (5) of Section 100

Clause 5 of Section 100 provides Right to Private Defence of body extending to causing death in case of ‘An assault with the intention of kidnapping or abducting’. This means only abduction simpliciter as defined under section 362 of the Indian Penal Code, i.e. where a person is compelled by force to go from any place. The moment there is an assault with intention to abduct, the Right to Private Defence is available. It would be not right to expect from a person who is being abducted by force to pause and consider whether the abductor has further intention as provided in section 364-369 of the Indian Penal Code. Moreover, the clause (5) itself doesn’t qualify the term ‘abduction’ and hence, the clause must be given full effect according to its plain meaning. The clause merely requires that there should be an assault which is an offence against human body, and that assault shouldn’t be with the intention of abducting.⁸

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The restriction contained under Section 99 is entirely a question of fact to be decided upon.

Right of Private Defence of body extends to the extent of even causing death of the aggressor. This is recognized by Section 100. It must always be borne in mind that this right is subject to the restrictions imposed under Section 99.

(a) The right under Section 100 is subject to the restrictions contained under Section 99.

Paragraph 4 of Section 99 places a limitation on exercise of right of Private Defence. It provides that the right of Private Defence in no case extends to the inflicting of more harm than it is

⁷ Section 361, Indian Penal Code.

⁸ PSA Pillai, Criminal Law, 11th ed., Lexis Nexis Butterworths, p 166.

necessary to inflict for the purpose of Defence.⁹ In the case of *George Dominic Varkey v. State of Kerala*¹⁰ The Hon'ble Supreme Court held that the question whether the right of Private Defence exercised by an accused is in excess of his right and whether the accused has caused more harm than necessary, is entirely a question of fact to be decided upon the circumstances of each case.

On June 11 Gopal asked Banarsi's sons to help him in bringing back his wife. Banarsi also arrived and then all four of them went to Badri's quarter to bring back the girl. On reaching the place, Banarsi and his two sons stood outside while Gopal went in. In the meantime, Badri came out and was asked by Banarsi to let the girl go with her husband. Badri was not agreeable to it and asked Banarsi not to interfere in other people's affairs. While Badri and Banarsi were talking, Gopal came out of the quarter dragging his reluctant wife behind him. The girl caught hold of the door as she was being taken out and a tug-of-war followed between her and Gopal.

The appellant was also there and shouted to his father that Gopal was adamant. Badri, thereupon replied that if Gopal was adamant he should be beaten. On this the appellant took out a knife from his pocket and stabbed Gopal once. The knife penetrated into the heart and Gopal fell down senseless.

The deceased was forcing his wife i.e. appellant's sister to come with him. It would be not right to expect from a person who is being abducted by force to pause and consider whether the abductor has further intention as provided in section 100 of the Penal Code, before he takes steps to defend himself, even to the extent of causing death of the person abducting. The appellant gave only one blow with a knife which he happened to have in his pocket. It is unfortunate that the blow landed right into the heart and therefore Gopal died. But considering that the appellant had given only one blow with an ordinary knife which, if it had been a little here and there, would not have been fatal, it cannot be said that he inflicted more harm than what was necessary for the purpose of Private Defence as per Section 99.

When a person is faced with imminent peril of life and limb of himself or of other, he is not expected to weigh in golden scales the precise force needed to repel the danger.¹¹ The law therefore allows a defender, in the heat of moment, to carry his right of Private Defence a little further than

⁹ *Patil Hari Meghji v. State of Gujarat* (AIR 1983 SC 488)

¹⁰ Cr. LJ 1057 (SC).

¹¹ PSA Pillai, *Criminal Law*, 11th ed., Lexis Nexis Butterworths, p 160.

what would be necessary when calculated with precision and exactitude by a calm and unruffled mind.¹²

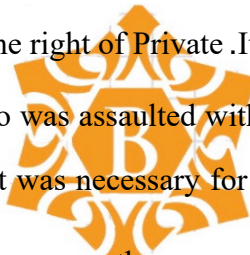
Therefore, when the appellant's sister was being abducted, even though by her husband, and there was an assault on her and she was being compelled by force to go away from her father's place, the appellant would have the right of Private Defence of the body of his sister against an assault with the intention of abducting her by force and that right would extend to the causing of death.

CONCLUSION: -

Here the husband had assaulted his wife, who was major, with a view to abduct her from her father's house. The wife inflicted injuries with a knife on her husband, which resulted in his death.

It was held that she had not exceeded the right of Private .It was remarked that Section 100 would justify the use of force by a person who was assaulted with a view to abduction even if the force used were to result in death provided it was necessary for that person to use that much force. In

this case since the only person in the house was the accused's father who had been put in restraint by the companions of the husband it was only natural for the accused to think that the only way in which she could prevent her abduction was to incapacitate the husband from carrying out his purpose.



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¹² *V Subramani v. State of Tamil Nadu* [(2005) 10 SCC 358]