

## Dilbag Singh and ors Vs State of Haryana

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** July 31, 2006

**Acts Referred:** Penal Code, 1860 (IPC) – Section 302, 323

**Citation:** (2006) 20 CriminalCC 505 : (2007) 1 RCR(Criminal) 775

**Hon'ble Judges:** Amar Dutt, J; A.N. Jindal, J

**Bench:** Division Bench

**Advocate:** Baldev Singh, with Mr. Harinder Singh, for the Appellant; B.S. Rana, D.A.G. Haryana, for the Respondent

**Final Decision:** Dismissed

### Judgement

A.N. Jindal, J.

Dilbag Singh, Gurdarshan Singh, Harbans Singh, Kaka Singh and Gurbachan Singh faced trial under Sections 302, 323

read with Section 34 of the Indian Penal Code (hereinafter referred to as the IPC). Consequently, they were convicted by learned Additional

Sessions Judge, Yamunanagar for the afore-said offences and were sentenced as under :

Gurbachan Singh and Harbans Singh to undergo imprisonment for life and to pay a fine of Rs. 4000/- each and in default of payment of fine, they

were to further undergo imprisonment for another period of three months each for the offence u/s. 302 IPC read with Section 34 IPC. Accused

Kaka Singh was sentenced to under RI for a period of two years and to pay a fine of Rs. 1000/- and in default of payment of fine to undergo RI

for another period of one month u/s 323 IPC.

2. Succinctly, the facts as emanating from the prosecution evidence are that the fields of Gurdeep Singh complainant and Gurdev Singh (deceased)

adjoin each other. The land of Gurdev Singh abuts both the sides of the passage. On the fateful day i.e. 1.2.1998 Gurdev Singh deceased after

drawing the pipe from one side of the passage was irrigating his land on the other side of the said passage. Due to leakage of the pipe, some water

was scattered in the passage. On that day i.e. 1.2.1998 at about 5/5.30 p.m. the accused Dilbag Singh, Gurdarshan Singh alias Lila sons of

Harbans Singh, Gurbachan Singh son of Gurdit Singh came on a jhhotta baggi (cart pulled by He buffalo) reached near the fields of Gurdev Singh.

Harbans Singh son of Gurdit Singh was following the cart on foot. On seeing the scattered water in the passage they felt offended. Dilbag Singh

exhorted Gurdev Singh to stop irrigating and not to spoil the passage. However, Gurdev Singh responded that he will stop irrigating after watering

two more beds, over which quarrel ensued. Harbans Singh accused exhorted by raising lalkara that they should kill Gurdev Singh and they having

influence in the high ups will get the things settled. In the meantime, Dilbag Singh after picking up an iron rod from the cart alongwith Gurdarshan

Singh alias Lila and Gurbachan Singh (both the accused armed with sticks) followed Gurdev Singh. When Gurdev Singh was running he was

stopped by Kaka Singh and Rajinder Singh sons of Balwant Singh. At the same time, accused Dilbag Singh inflicted a rod blow in the head of

Gurdev Singh. Resultantly, he fell down then Gurbachan Singh and Gurdarshan Singh inflicted lathi blows upon him. When Gurdev Singh came

forward to rescue Gurdev Singh then Kaka Singh inflicted lathi blow on the head of the complainant, however, the complainant, succeeded in

running towards his house. Ranjit Singh father of Gurdeep Singh was attracted to the spot who along with Gurnam Singh took Gurdev Singh into

Civil Hospital Jagadhri but Gurdev Singh succumbed to his injuries in the way.

3. The motive behind the occurrence as disclosed in the supplementary dated 2.2.1998 is that on 13.12.1997 Dilbag Singh and Gurdarshan Singh

accused had attended the marriage of Amrik Singh where they had quarrelled with Gurdeep Singh complainant. The matter reached the Panchayat

where the aforesaid two accused were found at fault and ultimately a compromise was arrived due to the intervention of the respectables of the

village. Dilbag Singh and Gurdarshan Singh had a grudge that the complainant was responsible for their humiliation before the panchayat.

4. On the aforesaid statement of Gurdeep Singh FIR Ex.PA/2 was recorded at Police Station Bilaspur and the investigation commenced.

5. Initially, challan was presented against three accused namely Dilbag Singh, Gurdarshan Singh and Kaka Singh, accordingly, vide order dated

9.10.1998 the said three accused were charge-sheeted. Subsequently, on the application filed by the State, accused Harbans Singh, Gurbachan

Singh and Rajinder Singh were also summoned to face trial along with the other accused and consequently on filing of the supplementary report u/s

173 Cr. P.C. against all the six accused they were all charge-sheeted for the offences under Sections 302, 323 read with Section 34 IPC to which

they pleaded not guilty and claimed trial.

6. In order to secure conviction against the accused, prosecution examined as many as eight witnesses. PW-1 Dr. Sandeep Gupta, who on receipt

of the dead body of Gurdev Singh sent ruqa Ex. PA to Police Station City Jagadhri. PW-2 Gurdeep Singh is the complainant. He has supported

the prosecution version in all minute details. His testimony has been corroborated by PW-3 Bawa Singh on all material particulars. PW-4 Dr.

Sanjiv, who was posted as Medical Officer, Public Health Centre, Bilaspur at the relevant time, medico-legally examined Gurdeep Singh on

1.2.1998 at 6.45 p.m. and observed the following injuries :

1. A lacerated wound of size 4 cms x .5 cm on the frontal region of scalp 6.5 cms above the nasal bridge. Fresh bleeding was present. Tenderness

was present. Wound was bone-deep. There was no complaint of vomiting. X-ray for scalp was advised.

2. An abrasion of size 1 x .5 cms on the left side of the face 4 cm anterior to the left ear lobe.

3. Complaint of pain in the left clavicalow region. Movements were normal.

7. Injury No. 1 was kept under observation and its nature was to be declared after x-ray report. Probable duration was within 24 hours and

weapon used was blunt. He has proved the copy of the Medico-legal report Ex.PC. He also proved the medico-legal reports of Dilbag Singh and

Gurdarshan Singh which he prepared after examining them on 4.2.1998.

He described the following injuries on the person of Dilbag Singh :

1. Complaint of pain in the left fore-arm about 10 cms above the left wrist joint on the posterior aspect. Abrasion of size 1 cm x .5 cms on the site

was present. Clotted blood was present. Movements were normal.

2. Complaint of pain in the left clavicalow region. There was overlying bruise present 2 cms x 1 cm reddish blue in colour. Movements were

normal.

3. Complaint of pain in the right side of the hip joint. No mark of injury was present.

4. A lacerated wound 2 cms x .5 cms on the scalp on the left side 4cms above the left eye-brow. Clotted blood was present. No fresh bleeding

was present. Wound was healthy. No Odima inadjoining area was present. Wound was superficial in nature.

On the tame day at about 7.20 PM he examined Gurdarshan Singh accused and found the following injuries on his person :

1. A lacerated wound of size 1.5 cms x .5 cms. superficial on the scalp on the back side in the mid-line 9"" from the nasal bridge. Clotted blood

was present. No fresh bleeding was present.

2. Complaint of pain in the right thumb. Tenderness was present. Bluish discolouration was present on the right thumb beneath the nail. Movements

were normal.

3. Swelling of the size 2.5 cms x 2.1 cms on the right arm on the posterior aspect of the arm just above the right elbow joint. Movements were

normal. Tenderness was present. X-ray was advised for the fore-arm and arm with elbow joint.

4. An abrasion 1 cm x 1 cm on the left elbow joint on the posterior aspect. Wound was healthy.

PW-5 Dr. Ravi Kansal, who conducted the postmortem examination on the dead body of Gurdev Singh on 2.2.1998 at 11 a.m. observed as

under :

It was a dead body of a young male, well built and well nourished, wearing white-black full sleeve jersey, white banyan, khaki pant, printed multi

coloured underwear. Eyes were closed, mouth was closed. Rigor mortis was present in neck and all the four limbs.

Injuries :

1. Abrasion 2 cms x 1 cm on left frontal area of scalp obliquely placed, 6 cms above and lateral to the lateral aspect of left eye brow.

2. Abrasion 5 cms x 1 cm obliquely placed, on fronto-parietal aspect of scalp, 4 cms above the left eye-brow.

3. Swelling right fronto-temporal region.

4. Mild swelling right eye-brow.

On dissection of skull, diffused haematoma present over the skull bones (frontal and parietal and right temporal). Fracture of the left frontal bone.

On further dissection, subdural haematoma present over frontal, both parietal and right temporal region and left frontal lobe ruptured.

The stomach contained small amount of semi-digested food. The intestines contained digested food and the large intestines contained fecal matter

and gasses. Rest of the organs were healthy.

8. In their statements recorded u/s 313 Cr.P.C. accused Kaka Singh, Rajinder Singh and Harbans Singh explained that they have been falsely

involved in this case. After thorough inquiry by the higher police officers, they were found innocent. However, accused Dilbag Singh and

Gurdarshan Singh while pleading their innocence have set up the following counter-version :

Gurdev Singh since deceased, owned land towards North and South of the passage, leading from our village, from East to his fields, and to our

fields which were ahead of his fields towards West. He has his tubewell only towards the North of the passage and used to irrigate his southern

fields by digging the passage and thereby taking the water to his fields on the other side, thus used to damage the passage. On the day of

occurrence, I along with Gurdarshan Singh were on our way to our fields, with Jhota Baghi, when it got stuck at the passage and a bag full of

fertilizer fell in the passage, we had an altercation and hot words were exchanged between us and Gurdev Singh. Gurdeep Singh instigated Gurdev

Singh because of his previous rift in December, 1997 with us, and they both waited for our coming back, towards the village. Gurdev Singh and

Gurdeep Singh concealed/hided themselves in the Sugarcane fields of Gurdev Singh and Bawa Singh, and on seeing us in the evening, after

emerging from the sugarcane fields they caused injuries to me and Gurdarshan Singh. We defended ourselves by taking out one Khunta each from

the Baghi and caused one blow to each of them in the right of self-defence. Had we not defended ourselves, then they would have caused us more

injuries. None of my co-accused other than Gurdarshan Singh, was present there and none of the other so- called, eye witnesses was present

there. During the occurrence, the other co- villagers had come to the spot. We have no enmity with Gurdev Singh nor he was witness to the

previous application moved Joy Gurdeep Singh nor was a party to the compromise of the applications, moved to the police of P. S. Bilaspur by

Gurdeep Singh etc. All the applications were compromised in the Police Station amicably by the intervention of relatives and respectables.

9. In defence, the accused examined DW-1 Kamal Kishore Puri, Clerk Complaint Branch, D.C. Office, Ambala and proved the complaint

received from Pritam Singh Sandhu on 15.7.1989 and 17.8.1988. He has proved the copy of the letter Ex. DF and closed the defence evidence.

10. On conclusion of the trial, the trial Court convicted the four accused namely Dilbag Singh, Gurdarshan Singh, Harbans Singh and Gurbachan

Singh under Sections 302/34 IPC whereas accused Kaka Singh though was acquitted u/s 302 IPC, was convicted u/s 323 IPC. However, by

giving benefit of doubt the accused Raj Singh alias Rajinder Singh was acquitted of the charges framed against him. Consequently, the afore-said

five accused were sentenced accordingly. Hence this appeal.

11. The genesis of the occurrence from where the sparks of homicide emanated has not been denied by the accused.

12. Admittedly, the quarrel took place in the passage over the damaging of the passage by Gurdev Singh on account of the leakage of water and

the dispute arose when Dilbag Singh and Gurdarshan Singh felt annoyed over the damage being caused by Gurdev Singh to the passage. The

altercation between Gurdev Singh on one side and the accused on the other side has not been denied. The prosecution has substantiated its case

by leading sufficient evidence by examining PW-2 Gurdeep Singh and PW-3 Bawa Singh that on the day of occurrence when Gurdev Singh was

irrigating his land by taking the rubber pipe across the passage, the four accused namely Gurdarshan Singh, Gurbachan Singh, Dilbag Singh came

on the jhotta baggi whereas Harbans Singh was following them on foot. They had a quarrel with Gurdev Singh when the latter resisted their

objection and refused to stop irrigating the field there and then which was followed by an instigation to commit the crime by Harbans Singh.

Subsequently Rajinder Singh and Kaka Singh came there and played a role. Kaka Singh obstructed Gurdev Singh from running and instigated

them to cause injuries to him. Both have consistently stated that Dilbag Singh prevented Gurdev Singh from watering the field through the pipe as to

cause damage to the passage. There was exchange of hot words between Gurdev Singh and Dilbag Singh. The accused Harbans Singh raised

alarm that Gurdev Singh should not (now ?) be taught a lesson. Thereafter, Dilbag Singh lifted an iron rod, Gurdarshan Singh and Gurbachan Singh

armed with lathies followed Gurdev Singh. While Gurdev Singh was running he was obstructed by Rajinder Singh and Kaka Singh, consequently,

all the four accused reached Gurdev Singh. Dilbag Singh inflicted an iron rod blow on the head of Gurdev Singh, Gurdarshan Singh and Gurbachan

Singh gave one blow each on the head of Gurdev Singh when he was lying on the ground. When Gurdeep Singh came at the rescue of Gurdev

Singh, then Kaka Singh inflicted a lathi blow and also exhorted that Gurdev Singh should be finished. These two witnesses were subjected to

lengthy cross-examination which they had the courage to face and as such they withstood the test. Barring a few discrepancies in their statements,

nothing fruitful could be elicited from their testimonies, which may be held sufficient for excluding the presence of Harbans Singh, Gurbachan Singh

and Kaka Singh. Not only this, their testimonies stand corroborated by medical evidence. Dr. Sanjeev, Medical Officer, PHC, Bayal, District

Mohindergarh, has pointed out about the injuries on the person of Gurdeep Singh. The substantial injury caused on scalp of Gurdeep Singh

certainly refers the involvement of Kaka Singh. The other injury in the shape of abrasion and complaint of pain did not require any explanation.

Similarly, Dr. Ravi Kansal, who conducted the autopsy on the body of the deceased also reveals that the injuries caused by the accused were the

result of blunt weapon, that too with more than two weapons. The bare denial made by accused Harbans Singh, Gurbachan Singh and Kaka Singh

that they had been falsely implicated in the case, does not in any way, take us to form a consonant view especially in the absence of any evidence

led by the defence to prove such a plea set up by them.

13. The main stress extended by the counsel for the appellants is that since both Gurdeep Singh and Bawa Singh are interested and inimical

witnesses. Therefore, the chances of exaggeration of the facts and addition of the accused are on the higher side. Bawa Singh lost election to

Harbans Singh. Therefore, it was probable to introduce him as a witness. Gurdeep Singh having developed grudge on account of previous quarrel

and could go to any extent to depose against the accused. Harbans Singh, Dilbag Singh, Gurdarshan Singh are the sons of Harbans Singh and

Gurbachan Singh is the brother of Harbans Singh. Therefore, in order to throw the net wider and to have vengeance against Harbans Singh, he

(Gurdeep Singh) involved Harbans Singh and Gurbachan Singh in the case. Kaka Singh being the collateral of Harbans Singh, was also brought

into the net. While referring to incisiveness of Gurdeep Singh, he urged that Gurdeep Singh had a grudge for his being beaten by Dilbag Singh and

Gurdarshan Singh in the marriage of Amrik Singh and he involved as many people as he could. Thus, in these circumstances, not only the manner

of occurrence becomes doubtful but the introduction of the other innocent family members of Dilbag Singh and Gurdarshan Singh also cannot be

ruled out.

14. Having pondered over the arguments advanced by the learned counsel, we do not feel persuaded by it the four reasons i.e. Firstly, Gurdeep

Singh is not merely a witness in the case, but he having suffered injuries during the occurrence had become the injured witness and was the last

person to depose about the introduction of the innocent persons. The second reason for not disbelieving his testimony is that the accused has not

denied the occurrence, the third being that the accused namely Harbans Singh, Gurbachan Singh and Kaka Singh had not led an iota of evidence

to prove their absence at the time of occurrence and fourthly, it may be observed that the grievance of Gurdeep Singh had stood redressed in the

Panchayat, and the matter stood settled with the intervention of the latter as admitted by PW-2 Gurdeep Singh himself in his cross-examination and

also the accused. In any case, admittedly the previous quarrel took place between Gurdeep Singh PW on one side, Dilbag Singh and Gurdarshan

Singh on the other side, then why he would involve others without any cause. In any case he attributed his injury to Kaka Singh who was not

related to the family. Had he been a false witness, he would have attributed his injuries to the other accused and not to Kaka Singh.

15. Be that as it may, Bawa Singh lost election to Harbans Singh and Gurbachan Singh had moved an application against him for selling the kikar

trees at a lesser rate or that he had filed a complaint against him u/s 409 IPC and he may be inimical towards Gurbachan Singh or the other

accused on that account, yet his presence at the spot cannot be doubted. His name, being a account yet his presence at the spot cannot be

doubted. His name being a witness stands referred in the FIR, which was recorded within two hours and was completed within the next one hour

i.e. 8.50 p.m. Not only this, FIR was received by the Illaqua Magistrate, during the same night i.e. 2.50 a.m. On 2nd February 1998. Therefore,

his testimony cannot be brushed aside merely for the reason that he was interested or inimical witness. In any case even after excluding the

evidence of Bawa Singh, still there is unquestioned testimony of Gurdeep Singh PW-2. He is injured eye witness. The valuation of the evidence of

interested and inimical witnesses became subject of discussion before the Apex Court many times. The Apex Court in latest judgment in the similar

circumstances of the case, State of Jammu & Kashmir v. S. Mohan Singh and another, 2006 (2) RCR (Cri.) 414 : 2006(1) AC 590 (SC) : 2006

(2) RCC 523 observed as under:

.....Out of these two witnesses, Ram Lal was the informant and an injured witness as the doctor who examined him on the date of occurrence

itself found that he received injuries by hurling of stone. Nothing could be pointed out on behalf of defence to show that the evidence of these two

eye- witnesses is not credible, excepting this that they were interested witnesses. The High Court was not justified in disbelieving them on the sole

ground that they were interested persons. It is well settled that in a murder trial, merely because a witness is interested or inimical, his evidence

cannot be discarded unless the same is otherwise found to be not trustworthy. In the present case, we are of the view that the evidence of these

two witnesses is credible more so when witness Ram Lal received injuries.

Similarly, the Apex Court in the case of State of UP v. Kishan Chand, 2004 (3) AC 723 : 2005 (1) RCR(Cri.) 276 (SC) : 2005(1) R.C.C. 317

observed as under :

That apart, PW1 Shridhar and PW8 Mizazi are both independent and injured witnesses. The testimony of an injured witness has its own relevance

and efficacy. The fact that the witnesses sustained injuries at the time and place of occurrence lends support to their testimony that the witnesses

were present during the occurrence. The injured witnesses were subjected to lengthy cross- examination but nothing could be elicited to discredit

their testimony.

16. Thus in view of the matter, while going to the worst, the testimony of Gurdeep Singh an injured witness cannot be ignored at any cost.

Specifically, when occurrence has not been disputed by the accused. However, the accused have tried to give a twist to the prosecution version by

setting up a plea that the altercation took place in the noon time but when they were returning from the fields, the deceased and Gurdeep Singh,

who were embushing (hiding) in the fields way-laid them and caused injuries and they caused one injury each. This version set up by the accused is

contradictory to the medical evidence which reflects three injuries on the person of Gurdev Singh whereas the accused caused only two injuries to

Gurdev Singh then from where the third injury came. Consequently, we are constrained to repel the contention.



17. The other limb of arguments set up by the accused is that the prosecution has failed to explain the injuries on the persons of the accused

Gurdarshan Singh and Dilbag Singh. In the absence of non-explanation of the injuries on their person also creates doubt over the truthfulness of the

prosecution version. No doubt as per medico-legal examination of Dilbag Singh and Gurdarshan Singh dated 4.2.1998 by Dr. Sanjiv, who was

posted as Medical Officer, PHC, Bilaspur at that time found four injuries each on their person but it will be significant to mention here that out of

the aforesaid four injuries three injuries on the person of Dilbag Singh are in the shape of complaint of pain and fourth is a lacerated wound which

according to Dr. Sanjiv (PW-4) is superficial in nature. Similarly, out of the four injuries on the person of Gurdarshan Singh, one was an abrasion,

the other was swelling, the third was complaint of pain and fourth was a lacerated wound. Except one injury on the persons of both the accused, all

are on non-vital parts. Dr. Sanjiv during the course of cross-examination ruled out any possibility of the injuries on their persons having been

caused by a friendly hand. The other circumstance that the accused did not go in for the medical examination and admission in the hospital upto

4.2.1998 about their injuries also propel us to hold that injuries being of minor nature might have been suffered at a friendly hand and these were

not suffered by them during the course of occurrence. The three days" delay in getting them medico-legally examined also raises our eye-brows

about the truthfulness of the injuries having been caused during the occurrence at the hands of the injured or the deceased. In any case, it cannot be

held as a matter of law or invariably a rule that whenever the accused sustained injuries in the same incident, the prosecution is obliged to explain

the injuries and on the failure of the prosecution to do so, the prosecution case should be disbelieved. It has further been laid down that before

holding that non-explanation of the injuries on the person of the accused affects the prosecution case, the Court has to be satisfied of the existence

of the following two conditions :

(1) that the injury on the person of the accused was serious in nature, and

(2) such injuries must have been caused at the time of occurrence in question.

18. As we have already observed that the injuries on the persons of the accused as stated by PW-4 Dr. Sanjiv were not of serious nature and also

could not be said to have been suffered by the accused during the course of occurrence at the hands of the complainant and deceased, therefore,

non- explanation of such injuries is not fatal, to the prosecution case.

19. It has further been observed that non-explanation of the injuries may lose its importance when the evidence is cogent and credit-worthy and

when the Court can distinguish the truth from falsehood without much difficulty and when the case is based on the evidence of the injured witnesses

and their testimony has neither been effected by the defence, nor there is any contradiction or omission on this aspect. Judgment in this case which

can be referred to is State of Madhya Pradesh v. Sardar, 2001(3) R.C.R.(Cri) 622. Similarly, in the instant case, the prosecution has been

successful in examining the cogent evidence of injured eye witnesses which is quite consistent with the medical evidence and the evidence so led by

the prosecution does not suggest any such ambiguity so as to create a dent in the prosecution case. While taking this view this Court is fully

supported by a decision of Apex Court in Amar Malla and Ors. v. State of Tripura, 2002 (4) RCR (Cri) 221.

20. The other submission made by the counsel for the appellants is regarding the delay in FIR and has urged that the said delay has provided

opportunity to the complainant to exaggerate the prosecution version and add the accused. Having given our thoughtful consideration to the

aforesaid argument, we are unable to agree to it. Since, the FIR in question has been lodged within two hours of the occurrence and it has been

sent to the Illaqa Magistrate at Yamunanagar, during the same night, the FIR contains all minute details, i.e. the time, place and manner; the

weapons with which the accused were equipped, the names of the witnesses, the part attributed to them, therefore, instead of observing that the

FIR is delayed one, we must hold that the police acted in a prompt manner in recording the statements of the injured witness, on the basis of which

FIR was registered and the same cannot be said to be delayed one. Consequently, it is held that it does not suffer from any embellishment in the

prosecution version or addition of the accused.

21. The next limb of arguments advanced by the counsel for the appellants is that the accused caused injuries to the deceased while exercising their

right of private defence.

22. Having given our thoughtful consideration to the aforesaid contention, we are not in consonance with the submission made by the counsel for

the accused. Section 96 IPC gives such right. As a matter of fact, it does not define the expression right of private defence but it merely indicates

that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the

exercise of the right of private defence is a fact to be determined on the facts and circumstances of each case. Sections 96 and 98 give a right of

private defence against such offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99 IPC. Sections

102 and 105 IPC deal with the commencement and continuance of the right of private defence of body and property respectively. The burden is

on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and

extent of right of private defence. While interpreting the aforesaid sections, the apex Court in a case of V. Subramani and another v State of Tamil

Nadu, 2005 (1) AC 549 : 2005(2) RCR (Cri) 77 set out the following tests to determine the class of cases in which right of private defence is

available to the accused :

B. Indian Penal Code, Sections 96, 100, 101, 102 and 105 - Right of Private defence - Law summed up :

(1) Plea of right of private defence not taken by accused if the circumstances show that the right of private defence was legitimately exercised, it is

open to the Court to consider such a plea.

(2) u/s 105 of Evidence Act, burden of proof is on the accused, who sets up the plea of self-defence, burden stands discharged by showing

preponderance of probabilities in favour of that plea on the basis of the material on record. It is enough for him to show as in a civil case that the

preponderance of probabilities is in favour of his plea

(3) An accused taking the plea of the right of private defence is not necessarily required to call evidence, he can establish his plea by reference to

circumstances transpiring from the prosecution evidence itself.

(4) If a person has a right of private defence of body u/s 97 IPC, that right extends u/s 100 to causing death if there is reasonable apprehension

that death or grievous hurt would be the consequence of the assault.

(5) Number of injuries is not always a safe criterion for determining who the aggressor was,

(6) Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important

circumstance. Prosecution is not to explain where injuries are minor or where evidence is cogent and creditworthy and outweighs effect of

commission on part of prosecution. Lakshmi Singh and Others Vs. State of Bihar, relied.

(7) Right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99 IPC. 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.

(8) Right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt or threat, to commit the offence,

although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as the reasonable

apprehension of the danger to the body continues. Buta Singh Vs. The State of Punjab, relied.

(9) In order to find whether right of private defence is available or not, the injuries received by the accused, the imminence of threat of 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

(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. Mohanlal Shamji Soni Vs. Union of India and another,

relied.

(11) Right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly. Vidhya Singh Vs. State of

Madhya Pradesh, relied.

(12) 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.

(13) Whether a person acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of

each case. No test in the abstract for determining such a question can be laid down.

23. While putting the facts and circumstances of the instant case to test upon the principles laid down by the Apex Court, it may be observed that

in the instant case, the accused have failed to prove, if the injuries were suffered by them during the occurrence in which Gurdev Singh had died

and Gurdeep Singh suffered injuries. Had they suffered injuries during the occurrence then they would have rushed immediately to the hospital for

getting them medico-legally examined and treated and launched the prosecution in that regard. Even if they had suffered injuries during the

occurrence then inference may be drawn that the accused were not so serious about their injuries, as these were of minor nature. In that case, the

right of private defence was not available to them. It may further be observed that the accused did not explain as to what sort of deadly weapon

the complainant had wielded or what sort of injury complainant/deceased had caused to them so as to give rise to reasonable ground for

apprehending that either death or grievous hurt would have caused to them if they would not have defended themselves. Injuries on their person

being simple in nature also could afford them to form reasonable belief that it had become inevitable for them to beat Gurdev Singh to death. The

deceased in this case was not armed but was holding a rubber pipe for irrigating his fields. The gravity of the annoyance which the deceased

earned by resisting the objection raised by the accused which excited them to use more force against the deceased than was necessary. The other

circumstance that the accused did not feel satisfied with the altercations but they under self invited provocation took out the iron rod and khunta

from the cart and followed the deceased and beat him to death. While considering the background facts as highlighted through the evidence and

tested the same in the backdrop of the aforesaid legal principles as envisaged in V. Subramani and another's case (supra), we are afraid to hold

that the right of private defence was available to the accused or much less that they exceeded the right of private defence. Consequently, the plea

raised by the accused does not stand substantiated.

24. As regards the complicity of Harbans Singh, it is he who pressed the trigger by instigating the accused Dilbag Singh, Gurcharan Singh and

Gurbachan Singh to commit the crime therefore it will be safe to hold that he shared the common intention with the other accused to commit the

crime.

25. No other argument has been advanced and no other law point has been cited in support of their contentions.

26. As an up-shoot of the aforesaid discussion, we find no merit in the appeal, the same is hereby dismissed.

27. Accused Kala Singh is on bail, necessary steps be taken to procure the custody of the said accused/appellant for serving the remaining part of

the substantive sentence.