

**(2009) 04 P&H CK 0372**

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

**Case No:** Criminal Appeal 238-SB of 1998, Criminal Revision No. 713 of 1998

Sadhu Ram

APPELLANT

Vs

State of Haryana <BR> Giani Ram  
and others Vs Sadhu Ram

RESPONDENT

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**Date of Decision:** April 18, 2009

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 304

**Citation:** (2009) 5 RCR(Criminal) 409

**Hon'ble Judges:** Sham Sunder, J

**Bench:** Single Bench

**Advocate:** Hemant Bassi, for the Appellant; Neeraj Bhutani, Additional Advocate General, Haryana, For the Complainant Mr. Deepender Singh, Advocate, Criminal Appeal No. 238-SB of 1998, For the Revision-petitioner Mr. Deepender Singh, Advocate, For the Respondents No. 1 to 6. Mr. Hemant Bassi, Advocate, For the Respondent No. 7-State and Mr. Neeraj Bhutani, Additional Advocate General, Haryana, for the Appearing Parties

**Final Decision:** Dismissed

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**Judgement**

Sham Sunder, J.

This judgement shall dispose of Criminal Appeal No. 238-SB of 1998, filed by Sadhu Ram, accused (now appellant) against the judgement of conviction dated 26.02.98, for the offence punishable u/s 304 part 1 of the Indian Penal Code, and the order of sentence dated 28.02.98, vide which, he was sentenced to undergo rigorous imprisonment for a period of seven years, and to pay a fine of Rs. 2000/-, and in default thereof, to further undergo rigorous imprisonment for a period of one year, and Criminal Revision No. 713 of 1998, filed by Giani Ram, revision-petitioner, for convicting respondents No. 1 to 6, for various offences.

2. The facts, in brief, are that, on 19.03.92, at about 8.30/9.00 PM, Ram Chander went out of his house, in order to urinate. The accused namely Sadhu Ram,

Mahender Singh, Ram Parshad, Atam Parkash, Raghbir, and Krishan, were sitting in a flour mill (chakki), which was near the house of Ram Chander. Ram Chander overheard the accused talking ill of him, and about his family. He asked them not to talk ill of him, and his family. Upon this, the accused became angry and they asked Ram Chander that he could not ask them, not to talk in the manner they like. This led to some altercation, between the accused and Ram Chander. Hearing the commotion, Lal Bahadur, Chanan, and Munshi, who were sitting in the Baithak of Ram Chander, came out. Mahender was armed with jelly, whereas, the remaining accused were Munshi, who were sitting in the Baithak of Ram Chander, came out. Mahender was armed with jelly, whereas, the remaining accused were armed with lathis. Mahender, gave a jelly blow, using it like a lathi, on the head of Ram Chander. Raghbir, gave a lathi blow, on his left eye, whereas Ram Parshad, gave a lathi blow on the nose of Ram Chander, as a result whereof, he fell down. Munshi Ram, tried to intervene, but he was attacked with lathis by Sadhu Ram, Krishan, and Ram Parshad, as a result whereof, he also fell down. Thereafter, Lal Bahadur and Chanan tried to intervene. Mahender aimed jelly, using it like a lathi, at the head of Lal Bahadur. However, Lal Bahadur, raised his hand, in order to ward off the blow. In that process, Lal Bahadur, received injuries, on his hand. Thereafter, Lal Bahadur, fell on his father (Ram Chander), in order to save him. Sadhu Ram, gave lathi blows thrustwise on the chest of Ram Chander, whereas, Ram Parshad and Krishan, gave lathi blows to Chanan, on his head and left arm. Atam Parkash and Raghbir gave lathi blows to Ram Chander, while he was lying on the ground. The alarm raised by Ram Chander and his companions attracted Ram Singh and Chandu. When they tried to intervene, the accused gave lathi blows to them as well. However, in the meanwhile, Sultan and Ram Kumar, also came there. On seeing them, all the accused ran away, from the spot, with their respective weapons. According to Lal Bahadur, in their self-defence they also inflicted injuries on the person of Sadhu Ram, Raghbir Singh, Krishan and their companions.

3. It was further stated by Lal Bahadur that about 4/5 months prior to the present occurrence, the children of both the parties, had some altercation, as a result whereof, the relations between the accused and Ram Chander (deceased), became strained. Due to this reason and the reason mentioned above, the injuries were caused by on the person of members of the complainant party, as a result whereof, Ram Chander, died.

4. Sultan arranged a vehicle (matador) and transported all the injured except Ram Singh, and Chandu to General Hospital, Hansi. All the injured were medico-legally examined. The condition of Ram Chander and Munshi Ram, was serious. The Medical-Officer, therefore, referred them to the Medical College, Rohtak. On the way, Ram Chander, succumbed to the injuries. Therefore, his dead-body was brought to Civil Hospital, Hansi, for post-mortem examination, whereas, Munshi Ram, was got admitted in the Medical College, Rohtak, where he remained under treatment for about 14/15 days.

5. On the basis of ruqa Ex. PE, sent by the doctor, regarding the arrival of the injured, in Civil Hospital, Hansi, Om Singh, Assistant Sub Inspector, went there. The doctor opined that Ram Chander and Munshi Ram were not fit to make the statements. He, therefore, recorded the statement of Lal Bahadur exhibit PN. The Investigating Officer sent the aforesaid statement, after appending his endorsement thereon, to the Police Station, on the basis whereof, a formal first information report PN/1, was recorded. Thereafter, he went to the spot (at Village Kutabpur Dhani) and lifted the blood stained earth therefrom. He took the same into possession, vide recovery memo PS. He also prepared the rough site plan PQ. He received ruqa PF, regarding death of Ram Chander. Thereafter, he again went to the General Hospital, Hansi. Special reports were sent to the concerned authorities, including the Magistrate. Om Singh, Assistant Sub Inspector, prepared the inquest report PL/1 of the dead-body of Ram Chander, and moved an application PL, requesting the Medical Officer, to conduct the post-mortem on his dead-body. A board consisting of Dr. M.L. Kalra, and Dr. Mrs. Usha Kalra, was constituted to conduct the post-mortem on the dead-body of Ram Chander. The parcel containing cloth of deceased Ram Chander, was taken into possession, vide recovery memo PR. The Investigating Officer, also recorded the statements of witnesses.

6. Ramesh Chand Misra, prosecution witness, took over the investigation of the case, from Om Singh, Assistant Sub Inspector. On 28.03.92, he interrogated Sadhu Ram, Ram Parshad, Atam Parkash, Raghbir, and Krishan while in custody. They made disclosure statements PY, PY/1, PY/2, PY/3, and PY/4, respectively disclosing about the place of concealment of their respective weapons, and got recovered lathis P5 to P9, respectively. The lathis were taken into possession, vide seizure memos PZ, PZ/1, PZ/2, PZ/3, and PZ/4. The Investigating Officer, prepared the site plans of the place of recovery exhibits PAA, PAA/1, PAA/2, PAA/3, and PAA/4, respectively. He recorded the statements of Giani Ram, Ram Kumar, Mukat Ram, Attar Singh, and Munshi Ram, prosecution witnesses.

7. On 13.06.92, Harish Kumar, Assistant Sub Inspector, partly investigated the case, and recorded the statement of Shamsheer Singh, draftsman, who had prepared the scaled site plan of the place of occurrence. On 09.09.92, he arrested Mahender Singh, and interrogated him on 10.09.92. Mahender Singh, made a disclosure statement PW, to the effect that he had concealed the jelly, in the eastern portion of his field, in the area of Dhani Kutubpur, of which, he only knew, and could get the same recovered, by pointing out. In pursuance of his disclosure statement, he led the Police party, to the pre-disclosed place, and got recovered the jelly P4, rough sketch whereof, exhibit PW/1, was prepared, by the Investigating Officer. The jelly was converted into a parcel, duly sealed, with seal, bearing impression NS, and taken into possession, vide recovery memo PW/2. Rough site plan PW/3 of the place of recovery, was prepared. The Investigating Officer, deposited the case property with the Moharrir Head Constable, and also recorded the statements of the formal witnesses. After the completion of investigation, the accused were challaned.

8. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, charge under Sections 148, 302, 325, 323, and 307 read with Section 149 of the Indian Penal Code, was framed against the accused, which was read-over and explained to them, to which they pleaded not guilty, and claimed judicial trial.

9. The prosecution, in support of its case, examined Dr. M.L. Kalra (PW1), Daya Nand Khurana (PW2), Dr. T.R. Garg (PW3), Lal Bahadur (PW4), Shamsheer Singh, draftsman (PW5), Ram Kishan, Assistant Sub-Inspector (PW6), Dharampal (PW7), Dr. Madan Gopal (PW8), Munshi Ram (PW9), Chanan Ram (PW10), Mukat Ram, Head Constable (PW11), Harish Kumar, Assistant Sub-Inspector (PW12), Rajpal, Constable (PW13), and Ramesh Chand Misra (PW15). Thereafter, the Public Prosecutor, for the State, closed the prosecution evidence.

10. The statements of the accused u/s 313 of the Code of Criminal Procedure, were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. Sadhu Ram, accused, in his statement, u/s 313 of the Code of Criminal Procedure, stated that on March 19, 1992 it was a day of Holi festival, when Munshi Ram, injured, in drunken condition, came to the house of Krishan and misbehaved. with his wife Devi in order to outrage her modesty. He further stated that Smt. Devi, raised an alarm, which attracted him, Krishan and Raghbir, from the Chakki (flour mill). He further stated that he, Krishan, and Raghbir, caught hold of Munshi, in the house. Lal Bahadur, Chanan, and Ram Chander came to the house of Krishan, with lathis and Gandasis. He further stated that he and Krishan bolted the door, from inside, so as to ensure that Munshi should not be allowed to go, and should be handed over the police. However, Lal Bahadur, Chanan Ram, and Ram Chander, came inside the house, after scaling over the adjoining wall, and started causing injuries to him, Raghbir, Krishan and Devi. He further Stated that, in exercise of the right of private defence of their bodies as also of Smt. Devi, they caused injuries, with lathis, and brick bats, to the members of the complainant party. It was further stated by him, that Lal Bahadur, Chanan Ram, and Ram Chander, however, managed to take Munshi alongwith them forcibly. He further stated that Chhaju and Ram Singh, did not receive any injury, at the spot. He further stated that Sultan Singh, and Ram Kumar, prosecution witnesses, were not present, at the spot.

11. Mahender Singh son of Sheodan, Ram Parshad son of Sheodan, Atam Parkash son of Ram Parshad, Raghbir son of Sheodan, and Krishan son of Sheodan, the accused (since acquitted), also took up the same plea, as was taken up by Sadhu Ram, in his statement, u/s 313 of the Code of Criminal Procedure.

12. The accused examined Jai Gopal, Photographer (DW1), in their defence. Thereafter, they closed their defence evidence.

13. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court convicted and sentenced Sadhu Ram, accused, for the offence, punishable u/s 304 part-I of the Indian Penal Code, whereas, it acquitted the remaining accused.

14. Feeling aggrieved, the instant appeal, was titled by the appellant and Criminal Revision No. 713 of 1998, was filed by the complainant.

15. I have heard the Counsel for the parties, and have gone through the evidence and record of the case, carefully.

16. The Counsel for the appellant, submitted that the trial Court, was completely wrong, in recording conviction, and awarding sentence to Sadhu Ram, accused, holding that he exceeded the right of private defence of his body, as also of the body of Devi, by causing the death of Ram Chander. He further submitted that Munshi Ram, trespassed into the house of Krishan, and tried to outrage the modesty of Devi his wife. He further submitted that Munshi Ram, was under the influence of liquor, at that time. He further submitted that the remaining members of the complainant party trespassed into the house of Krishan, by scaling over the adjoining wall and opened attack on the members of the accused party. He further submitted that with a view to repulse that attack, in exercise of the private defence of their bodies and the body of Devi, the members of the accused party, caused injuries, on the person of the members of the complainant party. He further submitted that Sadhu Ram, therefore, in exercise of the right of private defence of his body as also of Devi, was well within his limit, to cause the death of Ram Chander. It was further submitted by him, that after long delay, the first information report was got registered, which time a was utilized for the purpose of implication of more accused, concoction of story, and introduction of false witnesses. It was further submitted by him, that there was an over-writing in PN, the first information report, at point A, which cast a cloud of doubt, on the prosecution story. He further submitted that there were as many as four injured, on the side of the accused namely Raghubir, who sustained eight injuries, Smt. Devi, who sustained three injuries, Krishan, who sustained three injuries, and Sadhu Ram, who sustained seven injuries, on vital as well as non-vital parts of their body, at the hands of the members of the complainant party. He further submitted that the judgement of conviction, and the order of sentence, being not based on the correct appreciation of evidence, and law, on the point, were liable to be set aside.

17. On the other hand, the Counsel for the respondent submitted that the appellant, certainly exceeded the right of private defence of his body, as also of the body of Devi. He further submitted that there were as many as five injured, on the side of the complainant party namely Munshi Ram, who sustained five injuries, on his vital and non-vital parts of the body, Chanan Ram, who received two injuries, Lal Bahadur, who received six injuries, Ram Chander, who received five injuries, and succumbed to the same, and Chhaju Ram, who received three injuries, at the hands

of the accused. He further submitted that all these injuries were on the vital and non-vital parts of the body of the injured. He further submitted that the brutality with which the injuries were caused on the person of the members of the complainant party, by the accused, clearly showed that Sadhu Ram, accused, exceeded his right of private defence of body.

18. From the record, it emerges that the occurrence was almost admitted by the parties, but only the mode and manner, the presence of number of persons, on the side of both the parties, and the place of occurrence, were disputed. In these circumstances, the Court is required to determine, as to which party was the aggressor and which party was the aggressive. For determining this question, in the first instance, it is to be decided, as to whether, the occurrence took place, in the street, near the house of the members of the complainant party, as deposed to by the prosecution witnesses, or in the house of Krishan, as is the case of the accused. Om Singh, Assistant Sub Inspector, had gone to the place of occurrence, on the night intervening 19/20.3.92. After recording the statement of Lal Bahadur, he lifted the blood stained earth from the place of occurrence, and had prepared the recovery memo PS. This recovery memo was attested by Sultan, and Ram Kumar. Om Singh, Assistant Sub Inspector, died during the trial of the case, and could not be examined. Sultan Singh, and Ram Kumar, two witnesses, who attested PS recovery memo, regarding the lifting of blood stained earth, from the place of occurrence, were also not examined, by the prosecution. In the absence of the examination of Om Singh, Assistant Sub Inspector, who had died, during the pendency of the trial, it was obligatory upon the prosecution, to examine Sultan Singh, and Ram Kumar, so as to pin-point the place, wherefrom, the blood stained earth was lifted and taken into possession, vide memo PS. In the absence of production of the material witnesses, namely Sultan Singh, and Ram Kumar, it could not be certainly said that the blood stained earth was lifted from the street, where according to the prosecution witnesses, the alleged occurrence took place. No other cogent and convincing evidence was produced by the prosecution to pin-point the exact place of occurrence, as the street. However, with a view to corroborate the version set up by the accused, in their statements u/s 313 of the Code of Criminal Procedure, that the occurrence took place, in the house of Krishan, they examined Jai Gopal, Photographer, DW1, who was summoned to the spot by the Investigating Officer, for taking the photographs, but the prosecution failed to examine him. It was stated by Photographer, DW1, that, on the night intervening 19/20.03.92, he had gone to village Dhani Kutubpur, at the behest of the Police officials, and took photographs of the house of Krishan. D1 to D12, are the photographs. Ramesh Chand Misra, PW15, who partly investigated the case, also admitted this factum. It was also admitted by him, that the spot was got photographed from Jai Gopal, Photographer, DW1. From the perusal of the photographs, it became evident, that the occurrence took place, in the house of Krishan. Signs of blood stain, on the floor,

and on the walls, in these photographs, were visible. There were also signs of cut on the doors, which showed, that efforts were made to break open the door of the house of Krishan. Blood stains near the wall, which was scaled over by Ram Chander (since deceased) and others were also found. The blood stains, shown in the photographs, in the house of Krishan, were much more than the blood stains, shown in the same, in the street. The blood stains in the street might be on account of the blood which oozed out of the injuries of the members of the complainant party, when they were passing through the same, after taking away Munshi, from the house of Ram Chander. It was not the duty of the accused; to prove the place of occurrence. Since the prosecution miserably failed to pin-point the place of occurrence, by way of producing the material witnesses, though Om Singh, Assistant Sub Inspector, deposed, they (accused) ventured to prove that the version set up by them, that the occurrence took place, in the house of Krishan, was correct. The accused were not required to prove their version, beyond a reasonable doubt, as the prosecution was required to prove. Even, during the course of the medical examination Munshi Ram, it was found that he was under the influence of liquor. This fact also supported the version, set up by the accused, that the Munshi Ram, trespassed into the house of Krishan, with a view to outrage the modesty of Devi, and in order to save said Munshi Ram, from the from the clutches of the accused, the members of the complainant party trespassed into his (Krishan's) house, and caused injuries on their (members of the accused party) person and such occurrence took place there. The trial Court was thus, right in holding that the occurrence, took place in the house of Krishan. On reappraisal and reappreciation of the prosecution evidence, this Court, also reaches the same conclusion. The finding of the trial Court, in this regard, being correct, is affirmed.

19. Now the second question, that arises for consideration, is as to which party was having the motive, to cause injuries, by commencing the attack on the other party. Since, it was the case of the accused that Munshi Ram, trespassed into the house of Krishan, one of the accused, with a view to outrage the modesty of Devi his wife, when he was under the influence of liquor, and he was caught hold there, naturally with a view to save him, the other members of the complainant party tried to force their entry to that house, but when they were unsuccessful, they scaled over the adjoining wall, and trespassed into the house of Krishan. They had the motive, to cause the injuries, on the person of the accused, with a view to save Munshi Ram. It was, under these circumstances, as is proved, from the evidence, on record, that they commenced attack, on the members of the accused party. With a view to repulse their attack, and, in exercise of the right of private defence of their body as also in private defence of the body of Devi, the accused then caused injuries, on the person of the members of the complainant party. For determining the question, as to which party was the aggressive and which party was the aggressor, the Court is required to take into consideration the place of occurrence; the motive for the occurrence; the number of injured; and the nature of injuries, caused, on the person

of the members of both the parties. Taking into consideration all these factors, the trial Court, was right, in coming to the conclusion that the members of the complainant party were the aggressors, as they opened attack, in the first instance, on the members of the accused party, in the house of Krishan, one of the accused, where Munshi Ram, had trespassed, under the influence of liquor, with a view to outrage the modesty of Devi. This Court, after reappraisal and reappreciation of the prosecution evidence, also comes to the same conclusion. The findings of the trial Court, in this regard, are affirmed.

20. The next question, that arises for consideration, is, as to whether, the members of the accused party, in exercise of the right of private defence of their body, as also in private defence of the body of of Devi, could cause injuries on the person of the members of the complainant party. Since Munshi Ram, one of the members of the complainant party, in the first instance, trespassed into the house of Krishan, one of the accused, with a view to outrage the modesty of Devi, and the other members of the complainant party, with a view to save him, from the clutches of the accused, when they came to know that he had been detained there, and was under the influence of liquor, scaled over the adjoining wall and trespassed into the said house, armed with various types of weapons, and opened attack, the members the accused party, certainly apprehended imminent danger to their lives or causing of grievous hurt to them. In these circumstances, it was not necessary for them to wait till one of the members of their party would have been actually killed or caused dangerous to life or grievous injuries. The right of private defence, envisaged in Sections 96 to 106 of the Indian Penal Code, is based on the instinct of self preservation. The instinct of self preservation is indomitable, in a human being, and this instinct has been recognized, as a lawful defence, in the laws of all civilized countries. If the danger to the body or property is there to a citizen, he need not flee away. He is entitled to hold his ground, and strike back, in defence. But he can do so, within the limits, prescribed in Sections 96 to 106 of the Indian Penal Code. The gist of these sections, when read together, is that the apprehension of danger to life and property, must be real and well-founded and the harm inflicted on the assailant, should not be more than necessary, demanded by a given situation. The apprehension must be imminent. It is the imminence of the danger and the urgency of the situation, that is material. Whether the apprehension was real or not, is always a question of fact, depending upon the circumstances, and the background, in which the incident had taken place. In evaluating the circumstances, and background, one should place himself, in the position of the accused and to assess, how he would have reacted, in that given situation, and in face of that particular apprehension of danger. The situation should be viewed with the stand point of the accused, and not with the spectacles of a cool by-stander. In [Munney Khan Vs. State of Madhya Pradesh](#), it was explained by the Apex Court, that the right of private defence, is essentially a defensive right, circumscribed by the statute, available only when the circumstances, clearly justify it. It should not be allowed to be pleaded or



availed of, as a pretext, for a vindictive, aggressive or retributive purpose. This right is available, against an offence, and therefore, where an act is done in exercise of the right of private defence, such act, cannot give rise to any right of private defence, in favour of the aggressor in return. This would be so, even if, the person exercising the right of private defence, has the better of his aggressor, provided he does not exceed his right, moment he exceeds it, he commits an offence. It is not the law, that a person, when called upon to face an assault, must run away to the Police Station, and not protect himself and when his property has been the subject matter of trespass and mischief, he should allow the aggressor to take possession of the same, while he should run to the public authorities. Where there is an element of invasion, or aggression, on the property, by a person, who has no right to possession then there is obviously no room, to have recourse to the public authorities, and the accused has the undoubted right to resist the attack and use even force if necessary. That right of private defence of property or person, where there is real apprehension, that the aggressor might cause death or grievous hurt to the victim, could extend to the causing of death also, and it is not necessary that death or grievous hurt should actually be caused, before the right could be exercised. A mere reasonable apprehension, is enough, to put the right of private defence into operation. I am fortified, in this view, by the decision in [Jai Dev Vs. The State of Punjab](#), wherein, the Apex Court, observed, as follows :

This, however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has to meet an attack on his property. In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State machinery not readily available, the individual citizen is entitled to protect himself and his property.

There can be no doubt that in judging the conduct of a person who proves that he had a right of private defence, allowance has necessarily to be made for his feeling at the relevant time. He is faced with an assault which causes a reasonable apprehension of death or grievous hurt and that inevitably creates in his mind some excitement and confusion. At such a moment, the uppermost feeling in his mind would be to ward off the danger and to save himself or his property, and so, he would naturally be anxious to strike a decisive blow in exercise of his right.

21. To the same effect, is the decision of the Apex Court, in [Amjad Khan Vs. The State](#), , wherein, it was observed, as under :

It was impossible for him to know whether his shop would or would not suffer the same fate if he waited, and on the findings it was reasonable for him to apprehend death or grievous hurt to himself and his family once they broke in, for he would then have had the right to protect and indeed would have been bound to do what he could to protect his family. The threat to break in was implicit in the conduct of the mob and with it the threat to kill or cause grievous hurt to the inmates; the

circumstances in which he was placed were amply sufficient to give him a right of private defence of the body, even to the extent of causing death. These things cannot be weighed in too fine a set of scales or as some learned Judges have expressed it, in golden scales.

In these circumstances, any prudent person would have taken the same decision as was taken by the members of the accused party, to repulse the attack by causing injuries on the person of the members of the complainant party namely Munshi Ram, Chanan Ram, Lal Bahadur, Ram Chander, and Chhaju Ram. The trial Court, was, thus, right in holding that the members of the accused party had a right to cause injuries, on the person of Munshi Ram, Chanan Ram, Lal Bahadur, Ram Chander, in exercise of the right of private defence of their body, as also of the body of Devi. The trial Court was right, in holding so. This Court after reappraisal and reappreciation of the evidence also comes to the same conclusion. The finding of the trial Court, in this regard, is affirmed.

22. Having come to the conclusion, that the members of the accused party, had a right of private defence of their body, as also of the body of Devi, were fully justified, in causing injuries, on the person of Munshi Ram, Chanan Ram, Lal Bahadur, Ram Chander, it is to be determined, as to whether, Sadhu Ram, accused, used more force than necessary, and, thus, exceeded his right of private defence, or not. In my considered opinion, it cannot be said that Sadhu Ram, accused, had exceeded the right of private defence of his body and the body of Devi. As stated above, the occurrence took place, in the house of Krishan. No person with dignity could tolerate the behaviour of Munshi, who was under the influence of liquor, when he trespassed into the house of Krishan with a view to outrage the modesty of his wife Devi. The members of the complainant party, were armed with various type of weapons. They caused injuries, on the person of as many as four members of the accused party namely Raghbir, Smt. Devi, Krishan, and Sadhu Ram. Some of the injuries were grievous in nature, as also on the vital as well as non-vital parts of their bodies. In these circumstances, the accused entertained every apprehension that the members of the complainant party, with the weapons, which they were holding, could cause death and grievous hurt to them. They were, thus, fully justified, in causing the death of Ram Chander. Such an apprehension could not be said to be hypersensitive, or based on no ground and it will be idle to contend that the accused should have waited, until one of their party members, would have died, or received serious injuries, before acting, on the spur of the moment, nor can one expect a person, who is attacked by an aggressor, to modulate his blows, in accordance with the injuries, he receives. In these circumstances, therefore, it cannot be said that Sadhu Ram, accused, had, in any manner, exceeded the right of private defence of his body and the body of Devi. If the prosecution does not come out, with the true version of the nature, and the origin of the occurrence, it cannot blame the Court, if the entire version presented by it, is rejected. Reference may be made, in this behalf, to *State of Gujarat v. Bai Fatima*, 1975 SCC Cri 384. Exactly, a similar question

fell for decision in [Puran Singh and Others Vs. The State of Punjab](#), . The Apex Court, thus, held that the accused, who were in possession of the land, in dispute, in that case were fully justified, in causing the death of two persons of the complainant party, as also, injuries to two other persons, of their party, when they had invaded their right of possession and tried to take forcible possession thereof. In that case, only gun shot injuries, to two members of the accused party, had been caused by the members of the complainant party. In *Subramani and Others v. State of Tamil Nadu*, 2002 4 RCR Cri 213 SC, the complainant party had trespassed upon the land of the accused party, to take forcible possession, thereof, and caused simple injuries, on the head of the accused party. The accused party caused death of one of the complainant party. In these circumstances, it was held that the members of the accused party, did not exceed right of private defence as they were justified in entertaining a reasonable apprehension, that the grievous hurt may be caused to them. For the reasons, recorded above, I am clearly of the opinion, that accused Sadhu Ram, in exercise of the right of private defence of his body, as also of the body of Devi, was justified in causing the death of Ram Chander. Sadhu Ram, accused, did not exceed the right of private defence of his body, as also of the body of Devi. The trial Court, was wrong in holding to the contrary.

23. From the evidence of Dr. M.L. Kalra, PW1, it was proved that Sadhu Ram, accused, received seven injuries, detailed in the MLR DD, including one grievous injury, Krishan, received three injuries, as per MLR DC, including the head injury, whereas Raghbir, received eight injuries, as per MLR DA, and Devi, received three injuries, as per MLR DB. In exhibit PN, it was recorded, that on seeing Sultan and Ram Kumar, coming towards the spot, the accused went away, and in that quarrel (jhagra) Raghbir, and Sadhu Ram, received minor injuries. Lal Bahadur, did not state, in his statement, in clear-cut terms, as to who, had caused injuries, on the person of Sadhu Ram, and Raghbir, and as to how many injuries were received by them. It could not be imagined that he had forgotten the manner, in which, the injuries, on the person of Raghbir, and Sadhu Ram, were caused, as he gave a vivid detail of all other aspects of the occurrence. It means that Lal Bahadur, and other eye-witnesses, were watching the occurrence attentively, and an endeavour was to put up a false story that Ram Kumar, and Chhaju Ram, appeared, at the time of occurrence, and inflicted injuries, on the person of the members of the accused party. However, Chanan Ram, PW10, in his statement made before the Police, did not state this factum. He improved over his previous statement, made in the Court, in this regard. Chaju Ram and Ram Kumar, who statedly caused injuries on the person of the members of the accused party, were not examined by the prosecution. Thus, on account of non-explanation of the injuries, on the person of the accused, by the prosecution witnesses, an adverse inference could be drawn, that the prosecution was guilty of suppressing the genesis of the occurrence, and failed to bring the true version before the Court. On account of non-presentation of the true version, before the Court; suppression of place of occurrence; as also

introduction of Chhaju Ram and Ram Kumar, prosecution witnesses, the prosecution case was liable to be thrown out, as a whole. The fact, which was fully proved was that the prosecution did not come to the Court, with clean hands. The entire story of the prosecution was, thus, liable to be rejected. The trial Court, was however, not correct, in properly appreciating the evidence on this aspect of the matter, as a result whereof, it fell into a grave error in recording conviction and awarding sentence to Sadhu Ram.

24. The trial Court, while discussing the aspect of delay in sending the copy of the special report to the Illaqa Magistrate, had also dealt with the aspect, as to whether, PN was interpolated with regard to the time mentioned therein. The trial Court, after going through the evidence, on record, came to the conclusion, that there was unexplained delay in sending the special report. Even Zile Singh, Constable, who allegedly took the special report, did not step into the witness box to explain the delay. The trial Court, thus, came to the conclusion, that the delay in sending the special report, to the Illaqa Magistrate, must prove fatal to the case of the prosecution. The conclusion arrived at, by the trial Court, in this regard, being correct, is affirmed.

25. Coming to the revision-petition, it may be stated here, that the same is also liable to be dismissed, for the reasons to be recorded, hereinafter. The trial Court, acquitted all other accused, except Sadhu Ram. This Court, has come to the conclusion, that the trial Court, was wrong, even in recording conviction, and awarding sentence to Sadhu Ram. The judgement of the trial Court, has been minutely perused. The same does not suffer from any infirmity, so far as the acquittal of the accused other than Sadhu Ram, was concerned. In these circumstances, there is no justification, for this Court, to interfere in exercise of its revisional jurisdiction, in the findings of the trial Court, acquitting Mahender Singh, Ram Parshad, Atam Parkash, Raghbir, and Krishan accused. The High Court, in its revisional jurisdiction, is not to reach a finding, different from the trial Court, at the instance of a private party. In a revision, at the instance of a private party, the Court exercises only a limited jurisdiction, and cannot act as an Appellate Court. The scope of revision against acquittal, was well discussed by the Apex Court, in a judgement rendered in Bindeshwari Prasad Singh @ B.P. Singh and others v. State of Bihar (Now Jharkhand) and another, 2002 4 RCR Cri 61 (SC) . In the said case, their Lordships of the Apex Court observed that, in the absence of any legal infirmity, either in the procedure, or in the conduct of trial, there was no justification, for the High Court, to interfere in exercise of its revisional jurisdiction. In Bindeshwari Prasad Singh's case (supra), their Lordships also placed reliance on [D. Stephens Vs. Nosibolla](#) , [K. Chinnaswamy Reddy Vs. State of Andhra Pradesh](#) , [Akalu Ahir and Others Vs. Ramdeo Ram](#) , ; [Pakalapati Narayana Gajapathi Raju and Others Vs. Bonapalli Peda Appadu and Another](#) , and [Mahendra Pratap Singh Vs. Sarju Singh and Another](#) , . Similar principle of law, was laid down in Gurmail Singh v. Boga Singh and others, 2005 1 RCR Cri 623. In my considered opinion, the trial Court was right,

in coming to the conclusion, that the participation of Mahender Singh, Ram Parshad, Atam Parkash, Raghbir, and Krishan, accused, in the commission of crime, was not proved. The findings of the trial Court, in this regard, do not suffer from any factual infirmity, illegality or perversity. Since it has been held above, that the trial Court, was justified in acquitting Mahender Singh, Ram Parshad, Atam Parkash, Raghbir, and Krishan, accused, the question of acceptance of Criminal Revision No. 713 of 1998, does not at all arise. The revision petition is, thus, liable to be dismissed.

26. No other point, was urged, by the Counsel for the parties.

27. In view of the above discussion is held that the judgement of conviction and the order of sentence are not based on the correct appreciation of evidence, and law, on the point. The same are liable to set aside.

28. For the reasons recorded above, the appeal is accepted. The judgement of conviction and the order of sentence are set-aside. Sadhu Ram, appellant, shall stand acquitted of the charge, framed against him. In case, Sadhu Ram, is on bail, he shall stand discharged of his bail bonds. If he is in custody, he shall be set at liberty, at once, if not required, in any other case.

29. Criminal Revision No. 713 of 1998, being devoid of merit, is dismissed.

30. The Chief Judicial Magistrate, is directed to comply with the judgement immediately, in accordance with the provisions of law.