Neutral Citation No. - 2026:AHC-LKO:31741-DB

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

GOVERNMENT APPEAL No. - 91 of 1987

State of U.P.

…..Appellant(s)

Versus

Tulsi Ram

…..Respondent(s)

Counsel for Appellant(s)	:	Shri Bireshwar Nath,
Counsel for Respondent(s)	:	Ram Naresh Singh Chauhan

Reserved On:23.03.2026
Delivered On:30.04.2026

HON'BLE RAJNISH KUMAR, J.
HON'BLE MRS. BABITA RANI, J.

(Per: Hon'ble Mrs. Justice Babita Rani)

1. Heard Sri Arunendra, learned AGA for the State/appellant and Shri Ram Naresh Singh Chauhan, learned counsel for the respondents.

2. The present appeal has been filed by the State of U.P. challenging the judgment and order dated 31.03.1986 passed by the Special Sessions Judge, Unnao acquitting the respondents (hereinafter referred to as accused) for the charges under Sections 302/323 read with Section 34 of the Indian Penal Code,1860 (hereinafter referred to as 'IPC' for brevity) in re: State v. Tulsi Ram and others, bearing S.T. No. 386/84 and in re: State vs. Harnaam, under Section 25 of the Arms Act in S.T. No. 235/85, police station Makhi, District Unnao.

3. During pendency of the appeal, accused Tulsiram and Lakshmi Narain, had passed away and thus, the instant appeal was abated on their behalf by this Court vide order dated 28.11.2022. Now instant appeal survives only for accused Jagat Pal and Harnaam.

4. Brief facts of the case are that on 15.06.1984, at about 10:00 AM, the informant's brother, Jamuna Prasad (deceased) was fixing parnala on his roof and the informant, Amrit Lal(PW1), was putting up mud on his rooftop. The accused opposed installation of parnala on the ground that the same would result in the flow of water on their roof. However, Jamuna Prasad refused to budge and continued fixing the parnala stating that the rain water had been flowing to the roof of the accused through the parnala from old times. This resulted in a heated exchange between the two sides, and on the instigation of accused Tulsi Ram, accused Lakshmi Narayan with lathi, Harnaam with bhala and Jagat Pal with lathi having iron rings on it, came and assaulted the person of Jamuna Prasad (deceased) with their lethal weapon. PW1, who was on his roof, rushed to save his brother Jamuna Prasad and in this process, he was also beaten up by them. The incident was witnessed by PW2, who was working on his roof as well as other neighbours working on their roof who assembled on hearing the hues and cries. The accused, thereafter, fled away from the spot with their weapons. When the injured Jamuna Prasad was being taken to hospital for treatment by complainant Amrit Lal by a bullock cart, he succumbed to injuries. Complainant Amrit Lal submitted an application of incident to the police concerned to lodge the first information report.

5. On the basis of written tehrir (Ex. Ka.1) of complainant Amrit Lal (PW1), the first information report (Ex. Ka.3) was registered in Police Station- Makhi on 15.06.1984 under Sections 302/323 of IPC by PW 4 Head Constable Shubh Karan Singh. The investigation was entrusted to PW7, Sh Ram Lal Yadav, who reached on the spot and after nomination of panch, prepared the panchnama of the body Ex. Ka10 and collected blood soaked clothes and soil samples vide recovery memo Ex. Ka14 and 15 as well. The site plan Ex. Ka16 was prepared at the instance of complainant PW1. Post-mortem of the body was conducted by Dr. S.P. Rastogi (PW5), who prepared the report Ex. Ka-8. On 17.06.1984, the accused namely Harnaam and Lakshmi Narayan were arrested. Accused Harnaam in custody made a disclosure statement that he had hidden the

lathi and bhala used in the incident in his house. He led to the place and got the bhala and lathi recovered from the dung store. The subjected weapons were taken into possession and sealed on the spot in presence of witnesses vide recovery memo Ex. Ka 2, and site plan of recovery of weapons was prepared. On 17.06.1984, on the basis of recovery of bhala by PW7, first information report was registered by PW4 against accused Harnaam under Sections 4/25 of Arms Act, 1959.

6. After the completion of entire investigation and prima-facie evidence collected against accused, charge-sheet was filed against all accused under Sections 302/323 IPC including section 4/25 of Arms Act against accused Harnaam. The magistrate took cognisance of case and committed the case for trial to the court of sessions. Learned Sessions Judge framed charges under Section 302 read with Section 34 IPC and Section 323 IPC against Harnaam, Jagat Pal and Lakshmi Narayan and Section 302 read with Section 114 IPC against Tulsi Ram whereas in connected Sessions Trial No. 235/85, charge against accused Harnaam was framed under Section 25 of the Arms Act, 1959, to which they all pleaded not guilty and claimed a trial.

7. The prosecution examined as many as 9 witnesses in it's support and closed evidence while accused examined Dr. L.D. Shukla, the jail doctor as DW-1 who examined Harnaam on 17.06.1984.

8. PW1, the informant and injured witness, stated that on the day of occurrence, his brother Jamuna Prasad (deceased) was fixing an old parnala on his roof, which is above the roof of the accused respondents. Accused Tulsi Ram told Jamuna Prasad not to fix the parnala but Jamuna Prasad refused to budge and told Tulsi Ram that the parnala was an old one and the water has always flown towards the roof of the accused. Tulsi Ram then instigated Lakshmi Narain, Jagat Pal and Harnaam to bring lathi and bhala and immediately accused Lakshmi Narayan with lathi, Jagat Pal with lathi and Harnaam with bhala came on the roof of Jamuna Prasad and started assaulting him with the lathis and bhala. When PW1 Amrit Lal tried to intervene, the respondents assaulted him

too. Neighbours Ramsevak, Baijnath, Guruprasad and Dayashankar, who were also working on their roofs, came rushing upon hearing the screams of PW1 and his brother. The accused respondents then fled away from the scene and PW1 started carrying his injured brother Jamuna Prasad to the police station. However, just outside the village, Jamuna Prasad succumbed to his injuries, so PW1 brought his deceased brother back home. Thereafter, PW1 wrote a complaint (Ex Ka1) and handed over the same in the police station. PW2, Guruprasad, is eye witness of the incident and has corroborated the testimony of PW1. PW3, Ram Chandra, is a witness to the recovery of the bhala and lathi at the instance of accused Harnaam and proved not only the disclosure statement of accused and recovery of weapons, but also his undoubted presence at the time of recovery of weapon in question.

9. PW5, Dr S.P. Rastogi conducted the autopsy of Jamuna Prasad and prepared the post-mortem report (Ex Ka 8) on 16.06.1984, which disclosed the following injuries:

a. Lacerated wound 1.5" x 3" x scalp deep, present on left side scalp-middle part, 5.5" above the left eye brow and 3.5" above the left ear, 1" outer (left) to mid-line, 3" distal to the choti, clotted blood adherent to the margino.

b. Stab wound 0.5" x 0.5" x chest cavity deep, present on left side scalp middle part of back, 8" below the lower end of left scapula and 1" left to the vertebral column. Directions of the wound is from left oblique upwards, medially on opening the chest cavity, left side chest cavity full of fluid and clotted blood, left lung lower lobe at its dorsal aspect shows stab 0.3" x 0.3" and left verticle 0.2" x 0.2" stab wound.

The injuries were reported to be about one day old. The internal examination disclosed stab wound present on the left lung and the cause of death was reported to be shock and haemorrhage as a result of ante mortem injury no. 2. PW5 stated in his testimony that the injury no. 2 was more likely to have been caused by a bhala. Genuineness of the post-mortem report was admitted by the respondents under Section 294 of the Code of Criminal Procedure, 1973.

10. PW6, Dr G.P. Awasthi, medically examined the informant PW1 Amrit Lal and found the following injuries on his person (Ex Ka 9):

a). Lacerated wound 2 cm x 0.5 cm x scalp deep present on the occipital region of the skull.

b). Contusion 6 cm x 3 cm present over the back left scapular region

c). Traumatic swelling 4 cm x 2 cm present over the dorsal aspect of left foot. The aforementioned injuries, in the opinion of PW6, were of a simple nature and had been caused by a blunt object.

11. The sole defence witness (DW1), Dr LD Shukla, performed the medical examination of accused Harnaam on 19.06.1984 and found the following injuries on his person.

a). Contusion 2 c.m. x 1 c.m. on right side of face at maxillary prominence.

b.) Traumatic injury on dorsum of right hand measuring 10 c.m. x 8 c.m. swelling is covered by multiple contusions

c). Circumferential traumatic swelling around the wrist joint in left hand. Swelling is extending up to 4 c.m. above wrist left forearm.

d). Complaint of pain on both buttock and right foot but no visible injury seen

On the nature of injuries, DW1 stated that the injuries were simple in nature and were caused by a blunt object. The injuries were reported to be around 5 days old. The medical report was marked as Ex. Kha1.

12. Upon appreciating the evidence available on record and on the basis of the testimonies of the various witnesses, the learned Trial Court came to the conclusion that the accused had acted in self-defence for the protection of their person and property and thus, the accused were acquitted of all the charges. The learned Trial Court found that the prosecution had failed to explain the injuries as recorded on the person of the accused Harnaam by DW1 and such a failure was held to be fatal on the part of the prosecution.

13. The learned counsel for the appellant /state has challenged the impugned judgment primarily on the ground that the learned Trial Court

wrongly and erroneously observed that the presence of unexplained simple injuries on the person of accused Harnaam entitled him to claim the plea of self-defence. The counsel for the state vociferously contended that the injuries on the body of the accused were of such a minor and simple nature, that the prosecution was not required to explain them. Further, the learned Trial Court failed to appreciate that in view of the minor and trivial nature of the injuries, the right of self-defence cannot be said to have extended to the extent of causing death. The learned counsel submitted that the case of the prosecution had been established beyond reasonable doubt by adducing the cogent, consistent and reliable ocular evidence of eyewitness PW2 as well as injured witness PW1, thus, the acquittal as recorded by the learned Trial Court was not sustainable. Concluding the arguments, the appellant placed on reliance on the law laid down by Hon'ble supreme court in **State of Madhya Pradesh v. Ramesh; (2005) 9 SCC 705, Lakshmi Singh and Others v. State of Bihar; (1976) 4 SCC 394 and State of Gujarat v. Bai Fatima & Another; (1975) 2 SCC 7.**

14. Per contra, the learned counsel for the respondents has contended that on 15.06.1984, the informant and his brother were fixing the parnala on their roof to which the respondents objected and this resulted in a hot exchange between the two sides. Thereafter, the informant and his brother, Jamuna Prasad started assaulting accused Harnaam with a lathi and resultantly, accused Harnaam sustained injuries. This forced the accused to act in defence of their person and property which resulted in the death of Jamuna Prasad. The accused/respondents thereafter approached police station for lodging an FIR against the informant and his deceased brother but the police did not register the FIR and instead took them in custody on the same day.

15. The respondents have further contended that their plea of self-defence stands corroborated by the injuries present on the body of accused Harnaam as recorded by the Jail doctor (DW1). The prosecution has failed to explain his injuries and thus, the learned trial court has

passed a well-reasoned and sound legal principle-based judgment extending them the benefit of self-defence and thereby acquitting them observing the presentation version being produced with concealment of true and material facts of not explaining injuries of accused. The accused in support of their arguments, placed reliance in the principles laid down by Hon'ble Supreme Court in **Kumar v. State represented by Inspector of police; (2018) 7 SCC 536, Mohan Alias Srinivas v. State of Karnataka; AIRONLINE 2021 SC 1184, Lakshmi Singh and Others v. State of Bihar; (1976) 4 SCC 394, State of UP v. Atar Singh and others; AIR 2008 Supreme Court 411, Anwar Ali v. State of Himachal Pradesh; AIR 2020 SC (Criminal) 1649, Supreme Court and Jairam & Others v. State of U.P.; Criminal Appeal No. 877 of 1982 (judgment dated 28.11.2025)**. Concluding the arguments, it is submitted that the order and judgement of acquittal passed by learned trial court warrants no interference and appeal deserves to be dismissed.

ISSUES EMERGED FOR CONSIDERATION AND ADJUDICATION:-

16. Having heard the rival submissions advanced by the learned counsels for the contesting parties and having meticulously perused the record, the following issues emerge for consideration and record:

> ***a***. *Whether the learned Trial Court has rightly accorded the benefit of self-defence to the accused?*
>
> ***b***. *Whether the failure of the prosecution in explaining the injuries on the person of the accused renders the entire prosecution story untrustworthy?*
>
> ***c***. *Whether the impugned order and judgment of acquittal bears any illegality or perversity?*

ANSWER TO THE HEREIN ABOVE FORMULATED ISSUES:-

17. Before commencing to pen down an answer to Issue No. (a), it is deemed appropriate to refer to some significant provisions and judicial precedents which are germane to the facts and disputes of the present case.

18. The right to private defence is contained under Chapter IV of IPC, which deals with General Exceptions. Section 96 of IPC states that nothing is an offence which is done in exercise of the right of private defence. Section 99 of IPC states that the right of private defence does not extend to inflicting more harm than necessary of the purpose of self-defence. Section 100 of IPC stipulates the circumstances under which the right to self-defence extends to causing death. The relevant sections are reproduced hereunder:

> "***96. Things done in private defence***.*—Nothing is an offence which is done in the exercise of the right of private defence.*
>
> ***97. Right of private defence of the body and of property***.*—Every person has a right, subject to the restrictions contained in section 99, to defend—*
>
> *First.—His own body, and the body of any other person, against any offence affecting the human body;*
>
> *Secondly.—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.*
>
> ***
>
> ***99. Acts against which there is no right of private defence.****—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.*
>
> *There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.*
>
> *There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.*
>
> ***Extent to which the right may be exercised***.*—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose ofdefence.*
>
> ***Explanation 1.***—*A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.*

> ***Explanation 2.***—*A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.*
>
> ***100. When the right of private defence of the body extends to causing death***.—*The right of private defence 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:—*
>
> *First.—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.*
>
> *Seventhly.—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.*

19. Section 105 of the Indian Evidence Act, 1872 states that the burden of proving the plea of self-defence is on the accused person who takes such defence. The plea of self-defence is a question of fact which has to be determined on the basis of the facts of each case. The accused is not required to prove the defence beyond reasonable doubt and it will suffice if the accused is able to show the preponderance of probability in favour of the plea of right of self-defence.

20. In ***Vijayee Singh and Ors v. State Of Uttar Pradesh; (1990) 3 SCC 190*** the Hon’ble Supreme Court observed that:

> "***16.*** *The phrase "burden of proof" is not defined in the Act. In respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless*

proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. Section 105 of the Evidence Act is in the following terms:

> *"105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."*

The Section to some extent places the onus of proving any exception in a penal statute on the accused. The burden of proving the existence of circumstances bringing the case within the exceptions mentioned therein is upon him. The Section further lays down that the Court shall presume non-existence of circumstances bringing the case within an exception." The words "the burden of proving the existence of circumstances" occuring in the Section are very significant. It is well settled that "this burden" which rests on the accused does not absolve the prosecution from discharging its initial burden of establishing the case beyond all reasonable doubts. It is also well-settled that the accused need not set up a specific plea of his offence and adduce evidence. That being so the question is: what is the nature of burden that lies on the accused under Section 105 if benefit of the general exception of private defence is claimed and how it can be discharged? In Woolmington v. The Director of Public Prosecutions, [1935] Appeal Cases 462, Viscount Sankey, L.C. observed:

> *"When evidence of death and malice has been given (this is a question for the jury), the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all, the evidence are left in reasonable doubt whether, even if his explanation be not accepted,' the act was unintentional or provoked, the prisoner is entitled to be acquitted."*

It is further observed:

> *"Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence ...*
>
> *Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any stationary exception. If, at the end of and on the whole of the case, there is reasonable doubt created by the evidence given by either the prosecution or the prisoner as to*

whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

(Emphasis added by court)

....

21. In ***Ramesh (supra)*** the Hon'ble Supreme Court made the following observations regarding the plea of self-defence:

"**10.** *Only question which needs to be considered, is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression 'right of private defence'. 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 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. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. 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. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram and Ors. v. Delhi Administration (AIR 1968 SC 702), State of Gujarat v. Bai Fatima (AIR 1975 SC 1478), State of U.P. v.*

Mohd. Musheer Khan (AIR 1977 SC 2226), and Mohinder Pal Jolly v. State of Punjab (AIR 1979 SC 577). Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in Salim Zia v. State of U.P. (AIR 1979 SC 391), runs as follows:

> *"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."*

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

11. *The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence. 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. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See Lakshmi Singh v. State of Bihar (AIR 1976 SC 2263)]. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting."*

(Emphasis added by court)

22. The right of private defence is a defensive right, serving a social purpose, which cannot be given such a wide meaning as to sub serve

vindictive purposes. In **Darshan Singh v. State of Punjab; (2010) 2 SCC 333,** the Hon'ble Apex Court held:

> "***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."*

23. In view of the above-mentioned legal position, we proceed to analyse the facts of the instant case. It is worth-while to mention here that the accused have not disputed the day, time, place of occurrence and further the injuries inflicted on the person of deceased Jamuna Prasad, who succumbed due to the injuries sustained in occurrence. Moreover, there is no dispute that both are neighbours and had adjacent rooftop of their respective houses. The rooftop of deceased on which he was installing parnala, was higher to that of the accused and the water had to flow to the roof of the accused, to which they raised objection. But the deceased ignored the protest of accused and continued with his work, and therefore, a dispute arose over this matter. Further, this fact is also not disputed that PW1 informant Amrit Lal along with deceased and accused was present on the spot at the relevant time. The accused has not confronted substantially the lacerated and stab injuries sustained by deceased and rather had admitted genuineness of post mortem report of deceased, and thus the fact of injuries being outcome of lathi and bhala as opined by PW5 is not disputed. Prosecution further led evidence of PW3 Ram Chandra and PW 7 investigating officer who deposed and corroborated the fact of arrest of accused Lakshmi Narayan and disclosure statement of accused Harnaam regarding hiding of weapons

used in offence and to get them recovered and further leading recovery of weapons in their presence and same was taken into custody on the spot vide recovery memo under the signature of witnesses. Thus, in view of admitted incident by accused and adducing ocular evidence, prosecution successfully proved its case beyond reasonable doubt.

24. On the contrary, accused submitted that on being opposed for not installing parnala on his roof as the water would be flowing on their roof, the deceased became violent and opened assault on them. It is further case of accused that it was the deceased, who was adamant to damage their roof and the act of deceased was falling in the category of offence of mischief and they got every right to protect their property, therefore, in order to protect their person and property as well, the deceased sustained and succumbed to injuries, while PW1 received simple injuries in same occurrence. According to the submissions of accused, they had clear case of right of private defence but the prosecution has not put forth the true material facts of occurrence and narrated only their injuries in complete non-explanation of injuries suffered by accused Harnaam during the occurrence, therefore, learned trial court while taking serious note of non- explanation of injuries of accused, rightly disbelieved prosecution version and observed that accused were acting in the self defence while causing injuries and acquitted them.

25. Now the question that needs redressal is whether informant and his brother can be termed aggressors on the basis of the facts and evidence available on record, thus, entitling the accused to claim the benefit of plea of self-defence. As observed above, it is not disputed that PW1 along with his brother Jamuna Prasad and accused were present on their respective roofs on the day of occurrence. PW2 has deposed and established his presence on his roof at the relevant time. Jamuna Prasad was repairing the parnala, while PW1 was putting mud on his roof. The repair work being carried on was opposed by accused, due to the reason of deceased having the roof higher than the accused and installation of

parnala in the direction of roof of accused, would have caused flow of water on their roof, but deceased did not pay heed and on the instigation of Tulsi Ram, co-accused Harnaam and Lakshmi Narayan attributed fatal injuries to Jamuna Prasad leading to his death and when PW1 tried to interfere and save his brother, he was also given beatings by accused. PW1 and PW2 corroborated the prosecution story and narrated the eye account verbatim. PW1 is not only the eye account, but also injured in the incident.

26. In his cross examination, PW1 stated that by the time accused came to the place of occurrence, the deceased kept on installing drain. In reply to the specific question regarding having any weapon with Jamuna Prasad and PW1, PW1 categorically denied the same stating that neither he or the deceased was having any lathi or danda at the time of repairing the parnala, nor any bucket was there for getting the repair work done. Explaining the reason, PW 1 specifically stated that due to having wet soil, deceased was working with hands, so he had no danda or bucket etc. Therefore, it is indicative on record from the cross-examination of PW1, that the deceased or PW1 was not having any weapon when the incident occurred. It also emerged from his evidence that the deceased was working till the accused reached his roof with lethal weapons and was not ready for the fight and had no occasion to arrange the weapon for assault. PW2, who was also present on his roof and witnessed the incident stated in his cross-examination that he saw no lathi or danda in hands of Jamuna Prasad or Amrit Lal. He categorically stated that accused Harnaam was not assaulted by them, nor he received any injury. The statement of PW2 is in corroboration and consonance to the statement of PW1. Both the witnesses were put to detailed cross-examination by the accused with regard to the accused being aggressor, but nothing adverse could be brought on record, rather this fact was proved by prosecution witnesses that deceased and PW1 were empty handed at the time of occurrence and they had no occasion and opportunity to cause injuries to any of accused. It is pertinent to mention here that in order to show that accused acted in their self defence, there

must be some cogent and concrete material on record to demonstrate that the injured or deceased were having the fatal weapons and sufficient preparation to put the accused in constraint to use force and weapon to protect themselves. Needless to say, it is established on record in the above discussion that to assault the informant and his deceased brother, accused Harnaam had used a Bhala and accused Lakshmi Narayan used Lathi while Jagat Prasad used Lathi with iron rings. Nothing is on record to indicate that informant and his diseased brother were armed with any weapons.

27. Another aspect to be considered is that who had immediate motive to attack. In order to address the issue, it is apposite to mention here that PW1 is an injured and eye witness. PW2 is also an eyewitness, who was also repairing his roof at the relevant time of occurrence and has supported the prosecution version. Nothing adverse could be brought on record which may lead us to disbelieve his presence and eye account. PW7, investigating officer prepared the site plan at the instance of PW1 and collected the blood stain and plain earth from the roof of the deceased and sealed them on the spot itself. The place from where the plain and bloodstained earth was taken into possession by the investigating officer PW7, has been indicated in the site plan as well, to which accused could not produce anything adverse. Therefore, from the ocular evidence produced by prosecution, it is established that the injuries were inflicted on the deceased on his roof at the time when he was deeply engaged in his work. Even otherwise, the respondents have not raised any dispute regarding the place of occurrence being the roof of deceased. The attending circumstances are clearly indicative of the fact that it was the accused party who chose to jump into the initiation of aggression. PW1 and PW2 categorically stated that Jamuna Prasad fell down by the blow given by co-accused **Jagat Pal** and within no time, accused Harnaam gave a blow of bhala on his back. The testimony of both witnesses is corroborated by the medical evidence of PW5 who found lacerated wound on head and stab wound on the back of chest. This impeccable and unchallenged evidence proved by prosecution has

reasonably established that incident was authored and provoked by accused. It is not the case of accused that deceased and injured criminally trespassed their premises with weapons and they had no safe alternative, but to inflict injuries to them to save themselves. No evidence what so ever, has been adduced by accused to prove that they acted in self defence, except the doctor who proved injuries on the body of accused Harnaam. Therefore, observations of learned trial court that accused acted in self defence and rendering them benefit of acquittal bears material illegality and we are unable to agree with the observations recorded by learned trial court, to this effect.

28. There is yet another aspect that needs to be considered. The right to private defence does not extend to using disproportionate force and Section 99 of IPC categorically states that only such force as is reasonably necessary should be used in private defence. In assaulting the informant and his deceased brother, accused Harnaam had used a bhala without a handle, accused Laxmi Narayan used a lathi and accused Jagat Pal used a lathi with iron rings. There is nothing on record to indicate that the informant and his deceased brother were armed with similar weapons. The nature and type of the weapons used by the accused persons speaks volumes of their intent and by no stretch of imagination can it be said that they used such deadly weapons for mere self-defence. The injuries sustained by accused Harnaam, as evident from the report prepared by DW1, Dr LD Shukla, were of a simple nature. Even if it is accepted that there was some quarrel and heated exchange between accused and the informant and his deceased brother, it cannot be accepted that such a heated exchange gave the accused the right to self-defence to the extent of causing death.

29. In the case of **Bihari Lal v. State of Bihar (now Jharkhand) (2008) 15 SCC 778,** the Hon'ble Supreme Court held that:

> "*Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing death as in this case. Though such right cannot be weighed in golden scales, it has to be established that the accused persons were under such grave*

> *apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private defence as claimed by the accused persons have been rightly discarded.*"

(Emphasis added by court)

In ***Darshan Singh*** (supra), the Hon'ble Supreme Court observed:

> ***55.*** *In Jai Dev v. State of Punjab AIR 1963 SC 612 the court held as under:-*
>
> *".....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.*"

30. The deceased Jamuna Prasad was fixing a parnala on his roof. Even if the respondents were infuriated by the fixing of the parnala, they could have approached the local police or municipal authorities. There was no occasion for them to assault the informant or his brother. The act of fixing parnala cannot be said to have amounted to initiation of aggression. Even if we were to accept the story of the respondents that Jamuna Prasad was aggressively fixing the parnala and attacked them upon being restrained, they had all opportunity to approach the local municipal or state authorities against any unauthorised installation. Instead, they decided to inflict such lethal disproportionate blows on Jamuna Prasad, which resulted in his death. The magnitude of force used by them cannot be said to be that which a reasonable person would have inflicted under similar circumstances. PW1 admitted in his testimony that after a month of incident, the investigating officer resolved the cause of dispute and re-installed the parnala by changing it's flow towards the house of deceased itself. The circumstance speaks in volume that had the accused adopted the legal recourse available to them in law, then the situation would have been resolved by the authorities without the cost of

life of deceased, in which accused acted in complete illogical, irrational and unwarranted manner and took life of deceased.

31. Against such a backdrop, we find that it was rather the accused who had initiated the aggression and resorted to violence upon being enraged by the act of fixing of the parnala by the deceased. The deceased Jamuna Prasad was merely fixing a parnala on his own rooftop. Such an act did not cause any immediate threat to the person or property of the accused. In our society, such trivial disputes relating to flow of rainwater are not uncommon but these disputes cannot be said to confer a right on either side to take the law in their own hand and resort to any kind of violence only to claim the right of self-defence, when held accountable. Hence, we reached on conclusion that accused has been wrongly provided right of private defence by learned trial court.

Point of Determination No.2:-

32. To know as to when and how fatal it is for prosecution not to describe the injuries of accused, it is apposite to refer to the observations made by the Hon’ble Supreme Court, in **Lakshmi Singh (supra)**, wherein the Apex Court held that:

> "***12***…….*According to the Doctor injury No. 1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor it is believable. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eye-witnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been*

deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai v. State of Bihar tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very Doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows:

> "*The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabilised. Under these circumstances the prosecution had a duty to explain those injuries.... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."*

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. The State of Punjab (1975) 4 SCC 518, which was also a murder case, this Court, while following an earlier case, observed as follows:

> "*In State of Gujarat v. Bai Fatima (1975) 2 SCC 7, one of us (Untwalia, J.), speaking for the Court, observed as follows:*
>
> > *In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:*
> >
> > *(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.*
> >
> > *(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.*
> >
> > *(3) It does not affect the prosecution case at all.*

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has sup- pressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosedition one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima (1975) 2 SCC 7 there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.

(Emphasis added by Court)

33. In **Thoti Manohar v. State of Andhra Pradesh (2012) 7 SCC 723,** the Hon'ble Supreme Court made the following observations:

> "**28.** *Now, we shall proceed to dwell with the criticism on the base of which the case of the prosecution is sought to be demolished. The learned counsel for the appellant would submit that the injuries sustained by the accused have not been explained. On a perusal of the evidence of PW-20, the Investigating Officer, it appears that when he arrested A-1 and A-2, there were certain injuries on their person and they stated that they had received the injuries at the hands of the deceased. It is worth noting that the injuries are superficial in nature, the accused were not sent for medical examination and further there is no suggestion whatsoever as regards the injuries sustained by them to any of the witnesses. The story built up as regards the fight between the two groups does not remotely appeal to common sense and, more so, in the absence of any evidence, it is like building a castle in Spain.*
>
> ***29.*** *Quite apart from the above, nonexplaining of injuries of the accused persons is always not fatal to the case of the prosecution. In this context, we may usefully refer to Sri Ram v. State of M.P. (2004) 9 SCC 292 wherein it has been held that mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases and the said principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested and so probable, consistent and creditworthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. Hence, we repel the said submission of the learned counsel for the appellants."*
>
> ***(Emphasis added by Court)***

34. It is true that explaining the injuries of the accused is an important circumstance and non-explanation of injuries of accused is manifest error as observed by Hon'ble Supreme Court in ***Lakshmi Singh*** (supra) provided that such injuries are grievous in nature. However, in **Thoti Manohar** (supra), it has been propounded by Hon'ble Supreme Court that in case injuries are simple and artificial in nature, non-explanation of such injuries is not always fatal to the prosecution. In the instant case, admittedly injuries of accused has not been brought on record, therefore, the effect of failure to do so on the credibility of the prosecution's case has to be determined in lieu of the facts and evidence available on record. Now it remains to be seen that whether injuries suffered by accused Harnaam were self-inflicted and sustained in the course of occurrence. So far as infliction of injuries on the person of accused is concerned, it has emerged in the statement of PW1 and PW2 that during the course of assault by accused person, accused Harnaam sustained no injury. Nothing could be brought on record by the accused that PW1 and

deceased were having any weapon with them at the time of occurrence or thereafter. However, PW4 scribe of first information report and PW7, Investigating officer admitted the fact that at the time of arrest, accused Harnaam had two-three injuries on his body which were about 3-4 days old. Accused Harnaam with co-accused was arrested on 17.06.84 and surprisingly despite having injuries on his person, he was not medico-legally examined after arrest. On 19.06.1984, accused was medico legally examined in jail by Dr.L.K. Shukla who, was examined as DW1 and corroborated the evidence of PW4 and PW7 of the accused Harnaam having three simple injuries on his person, which were about five days old and that same might have been caused by blunt object. The injuries were found on his face and in form of traumatic swelling on his right wrist. Keeping in view of evidence on record, duration of injuries and admitted presence of accused on place of occurrence, it transpires that he may have sustained injuries during the occurrence. As per DW1, he can't state that injuries of accused were self inflicted or inflicted. Although, nothing emerged on record that prosecution witnesses ever inflicted injuries to him, but existence of injuries has established the fact that accused Harnaam may have sustained injuries during the course of the incident.

35. Now this question requires answer as to whether non-explanation of injuries of accused vitiate the entire prosecution version? Once it is established on record that the deceased and PW1 were empty-handed and did not use any force or assault against accused, observation of trial court that accused received those injuries due to assault by deceased, appears manifestly erroneous and purely on the basis of assumptions. The above observation of trial Court holds no water in the peculiar circumstances of the case where accused did not even care to adduce any ocular evidence to create even a doubt in story of prosecution. Admittedly, the place of occurrence was roof of the deceased, which was higher than that of accused, therefore, in absence of proof of any intentional assault, there is every likelihood of receiving of such injuries during the process of their assault or while enabling their fleeing from

the spot with weapons. Therefore, in absence of intentional attribution of trivial and simple injuries found on person of accused by deceased and PW1 and further in absence of reliable evidence, it can't be safely observed that injuries were caused by deceased or injured to the accused. Keeping in view of above fact and circumstances, the observation recorded by trial court is not sustainable.

36. It has been held by Hon'ble Supreme Court in ***Bai Fatima*** (supra) that non-explanation of minor and superficial injuries sustained by accused is not fatal to the prosecution, where the evidence is so clear and cogent, so independent and disinterested, so probable, inconsistent and creditworthy that if far outweigh the effect of the omission on the part of prosecution to explain the injuries. In the instant case, it is established that injuries have not been inflicted by PW 1 and deceased and more so are superficial and simple in nature to justify the fatal injuries attributed by them to Jamuna Prasad, of which he succumbed immediately

37. Further, as per Section 105 of the Indian Evidence Act, 1872, the burden of proving the exception of private defence is on the accused. While the burden contemplated under Section 105 is of a relatively light character, the accused still has a duty to establish a reasonable probability in their favour. We do not find any material on record that indicates that the accused faced any sudden or imminent threat to their person or property, which entitled them to claim the right of self-defence to the extent as observed by learned trial court.

38. The injuries established on the person of accused are simple in nature, therefore, in the wake of evidence on record, non-explanation of his injuries is not so much fatal which may render the case of prosecution as unreliable and is squarely covered with the principle laid down in ***Bai Fatima*** (supra) by Hon'ble Supreme Court where the non-explanation of simple and superficial injuries were held not to be fatal and falsify the entire prosecution story. The law laid down by Supreme Court in ***Lakshmi Singh*** (supra) has no applicability in the facts of the case in hands as in the facts of this case, the accused had also suffered

grievous injuries and the doctor who conducted the post-mortem report of deceased had also conducted the medical of accused but inspite of that prosecution didn't explain the injuries of prosecution, therefore, in the peculiar facts, the Hon'ble Court took adverse inference of non-explanation of injuries of accused. The Learned trial court wrongly observed that since the roof of the deceased was on higher pedestal than that of accused, therefore, it was the right of the accused to defend their property. Further, we found that learned trial court has recorded its findings beyond the evidence and purely on the basis of assumption observing that when Harnaam resisted them, then it must have annoyed the deceased and injured and they had taken law in their hands, assaulting Harnaam, who in retaliation would have attacked Jamuna Prasad and Amrit Lal, and consequently, Jamuna Prasad lost his life.

39. We also consider it appropriate to deal with one more argument as raised by learned AGA, who had submitted that learned Trial Court passed the judgment of acquittal in favour of accused Harnaam in Sessions Trial no. 235/85 under Section 25 of Arms Act, without appreciation of any additional evidence and merely on the set of evidence of Session Trial No. 386/84, under Sections 302 and 323 of IPC and therefore in complete violation of theory of fair trial and natural justice. From the perusal of impugned judgment and order, we found force in the arguments that learned Trial Court has not appreciated the evidence produced by prosecution for charges under the Arms Act and merely on the basis of the finding that alleged recovery was unreliable, impugned judgement of acquittal was passed. However, since the occurrence pertains to the year 1984 and appeal before us is to be assessed on point of law and facts and being part of trial, therefore, it would be in the interest of justice to assess at the stage of appeal as to what was the evidence brought by prosecution against the accused for charges under Section 25 of Arms Act.

40. PW7 is complainant and PW8 is investigating officer of Arms Act. Accused Harnaam after his arrest is said to have made a disclosure

statement in presence of PW3 and PW7 investigating officer to the effect that the weapon in question is in his house and he can get it recovered from there and in pursuance of disclosure, he led the recovery of lathi and bhala from his house. PW3 stated in his cross-examination that the police had recovered the weapon in question, that is lathi and bhala, in his presence, but the memo was not prepared in his presence and same was prepared later on. The witness further clarified that being illiterate, he couldn't know about the writing prepared by PW7. Although this witness has supported the fact of recovery in his chief and cross-examination as well, however, he has not placed a reliable testimony regarding the preparation of recovery memo on the spot itself. Admittedly, neither the disclosure statement made by accused was reduced into writing by PW7 investigating officer separately, nor any explanation has been offered on record by him regarding the same. The investigating officer PW7 has not produced on record the GD entry of his departure from the police station to arrest the accused, despite receipt of secret information in advance. Further more, no dimension of alleged bhala and lathi has been described in recovery memo by adducing reliable evidence. The mere material which has been brought on record is that the bhala was handleless. However, nothing has been placed on record how the said bhala was attracting the provisions of Section 25 of Arms Act. PW8, who is the investigating officer of the FIR under the Arms Act, has not placed even an iota of evidence in his testimony that how and what investigation was conducted by him under Section 25 of Arms act. PW7 was the complainant in the FIR lodged under the Arms Act and PW8 categorically admitted that he is junior officer to that of the PW7. We are astonished by entrustment of investigation to the junior officer, where the complainant himself is a senior officer. A junior officer should not be appointed as investigating officer in such cases as there is every likelihood of unfair and bias investigation. In this way. due to absence of incriminating evidence against accused, it cannot be said that the accusations under Section 25 of the Arms Act have been successfully established against the accused

beyond reasonable doubt. Therefore, the accused Harnaam is entitled for acquittal in respect of the charges framed under the Arms Act and the acquittal in respect of such charges is sustained herewith.

41. However, needless to mention here at this juncture that it is a settled principle of law that even though the recovery of weapon has not been established or the charges of Arms Act have not been proven against the accused, even then the accused can be safely convicted in case, cogent, consistent, and reliable evidences are found against them.

42. Having concluded that the benefit of right of private defense has been wrongly extended to the accused, we now proceed to examine whether the accused can be said to have inflicted lethal blows on the deceased in a free fight. As mentioned above, the fact of injuries found on the person of the accused Harnaam is not disputed and same have not been explained by prosecution. It is also admitted between the parties that the genesis of dispute was fixing of parnala by deceased and the resultant heated exchange. We have already observed herein before that accused clearly exceeded the force by causing more harm than was required for the purpose. Further, the accused suddenly and without reasonable provocative impulse, unnecessarily used a weapon like bhala and executed excessive force on empty handed deceased and victim. Further, the above incident cannot be considered a free fight as no weapons were found with the deceased or complainant, as discussed above.

43. Now we proceed to examine whether the accused can be said to have inflicted such lethal blows on deceased with such degree of intention and knowledge so as to convict them for the offense of murder. As per the testimony of PW1, accused Jagat Pal had given a single blow of lathi on the head of the deceased following which accused Harnaam also struck a single blow of bhala on the back of the deceased. Once Jamuna Prasad fell down, no more blows are said to have been inflicted on him. Jamuna Prasad was alive at the time of the incident and succumbed to his injuries while his brother was carrying him on a bullock cart. PW5 Dr. S.P.

Rastogi found the lacerated wound caused by hard and blunt object on the hand of deceased and also found a stab wound on left lung and pericardium during internal examination of dead body of victim and this injury was said to be cause of death. Bringing such a lethal weapon from home on a trivial dispute and then using it in a fit of fury clearly shows that accused was certainly aware of the fact that its blow may take life of anyone. There is no dispute that accused Jagat Pal and Harnaam had inflicted only single injury each by their lathi and bhala and did not attempt to strike again with their deadly weapons, despite of having opportunity. Nothing is on record that there was any enmity between the two before the incident, rather admittedly both were neighbours having cordial relations. As per prosecution witnesses, the incident occurred within two minutes. Prior to open attack on victim, accused alarmed him and asked him to desist of the installation of parnala towards their roof, which was illegal in itself but victim was adamant and being enraged by the same, accused in a fit of fury, armed with lathi and bhala, attacked the accused. It appears that by that time the activity was done only to stop the victim from the act he was doing. But when they found that victim still was persistent to install parnala, they used force upon him to stop him. Hence from the facts and circumstances and on applying the proposition of law and scrutiny of evidence on record, it emerges that the injuries inflicted on the person of deceased were not caused with the intention to cause his death. But this fact cannot be ignored that though the injuries were not result of intentional killing but the accused certainly must have been aware of the fact that blow from such weapon could even result in death. Considering all the circumstances and at the cost of repetition, it is clear that despite knowing that blow of bhala could have caused death of victim, both accused with common intention and in a fit of rage, gave blow resulting in the death of victim, and therefore, are found guilty of committing offence of culpable homicide not amounting to murder and causing simple hurt to complainant.

44. In light of entire facts and circumstances, we are of opinion that impugned judgement and order passed by learned trial court acquitting

the accused from all the charges, is patently perverse and not sustainable in the eyes of law and is hereby liable to be reversed and set aside and accused Jagat Pal and Harnaam are liable to be held guilty for committing the offence under Section 304 Part II/34 and under Section 323/34 of IPC. However, for the reasons discussed herein above, the acquittal of respondent No.4 under Section 25 of the Arms Act as recorded by the learned trial court in S.T. No. 235/85 warrants no interference and is liable to be confirmed.

45. Therefore, the appeal is accordingly **allowed**. Judgment and order dated 31.03.1986 is hereby set-aside and the accused Jagat Pal and Harnaam are held guilty for commission of offence under Section 304 Part II/34 IPC and Section 323/34 IPC.

46. Accused Jagat Pal and Harnaam are on bail. Their bail bonds are cancelled and sureties stand discharged. They be taken in custody. Their non bailable warrants be issued through Chief Judicial Magistrate concerned to produce them before this Court to hear them on point of sentence on 11.05.2026.

47. List on 11.05.2026.

(Mrs. Babita Rani,J.) (Rajnish Kumar,J.)

April 30, 2026
Reena/-

Digitally signed by :-
REENA KANNAUJIYA
High Court of Judicature at Allahabad,
Lucknow Bench