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Cr1.A.No. 965 OF 2000
ITEM NO.101

COURT NO.6

SEC -II

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Criminal Appeal No.965/2000

Devi Lal

Appellant(s)

VERSUS

State of Rajasthan

Respondent(s)

Date: 04-9-2002: This matter was called on for hearing today.

CORAM :

HON'BLE MR JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE ASHOK BHAN

For the Petitioner(s) :Mr. Harinder Mohan Singh, Adv.

For the Respondent(s) :Mr. Alok Bachavat, Adv.
Mr. Javed Mahmud Rao, Adv.

UPON being mentioned the Court made the following
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Mr. Harinder Mohan Singh, learned counsel for the
appellant made his submissions from 10.40 a.m. to 11.15
a.m.

The appeal is dismissed in terms of the signed order.

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(R.K. Dhawan)
Court Master

(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 965 OF 2000@@
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Devi Lal

Appellant(s)

versus

State of Rajasthan

Respondent(s)

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Acceptability of the plea of private defence has been the key issue which falls for consideration in this appeal against the order of conviction and as stand confirmed by the High Court. At this juncture, a brief reference to the factual score may be convenient and the facts of the case may be briefly stated as below :

On 4.10.1979, at 1.30 P.M., Dal Chand orally reported at the Police Station, Dabok that on that day, at about 10 A.M., his brother-in-law Dhan Raj, brother Keshu Ram, Shobna Lal, Dalla, Raghunath Singh, wife of Dhan Raj, his sister-in-law and mother went Chandesara to cut the crop of 'makki'. From Chandesara, Raghunath Singh S/o Kalyan Singh, who was in the employment of Dhan Raj, returned and he told Dal Chand that at about 1.30 P.M. on the way connecting Chandesara with Khemli Station, Devi Lal

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had murdered Dhan Raj by inflicting injuries on his body with a knife. Raghunath Singh further told Dal Chand that at the time of incident Shobha Lal, Dalla, Keshu Ram, wife of Dhan Raj, mother of Dhan Raj and wife of Keshu Ram were presented and they had seen the incident with their own eyes. It was further told by Raghunath Singh that when Shobha Lal and Dalla ran after Devi Lal, he escaped and could not be arrested and, while escaping, he left a pair of 'chappal' which was lying near the dead body of Dhan Raj. It was also stated by Raghunath Singh that when the wife of Dhan Raj tried to intervene, Devi Lal inflicted an injury on her hand by biting with his teeth and that, at the time of incident, Onkar Lal father of Devi Lal, was also presented at the spot but he had hidden himself in fencing and he had stood up to see Devi Lal and, at that time, he was told about the act of Devi Lal but saying that many animals die, he went towards his house. Dal Chand has further reported at the police station that a litigation was pending in respect of land for the last 2- 2 1/2 years and, few days ago, Devi Lal and his father had entered in the house of Dhan Raj and inflicted injuries to Dhan Raj and his mother. Information given by Dal Chand was recorded on Ex.P.1 which is First Information Report of the

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case and a criminal case under section 302 of the Indian Penal Code was registered and investigation was committed. After usual investigation, the case was committed to the court of Munsif & Judicial Magistrate, Mawali. The learned Munsif & Judicial Magistrate, Mawali, took cognizance of the offence under Section 302 of the India Penal Code and committed the case to the Court of District & Sessions Judge, Udaipur by his order dated 24.11.79.

The learned District & Sessions Judge, Udaipur framed a charge under Section 302 of the India Penal Code against the accused (appellant) Devi Lal. The accused pleaded not guilty to the charge. The prosecution examined Dal Chand (P.W. 1), Smt. Kisturi Bai (P.W.2), Shri Keshu Ram (P.W.3) Shri Shambhu Dayal (PW 6), Smt. Phula Bai (PW 7), Shri G.L. Dad (PW 8), Shri Man Singh (PW 9), Dr. B.P. Gupta (PW 10), Shri Ganesh (PW 11) and Shri Mohan Lal (PW 12) in support of the prosecution case. Several documents were also produced.

The records depict that the accused was examined thereafter under Section 313 of the Criminal Procedure Code and denied the allegation made against him.

Incidentally, the High Court came to a definite conclusion as regards the non availability of the plea of the right of Private defence. The High Court observed:

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"The learned counsel for the accused-appellant has submitted that the medico legal report Ex.D.1 fully supports the statement of the accused that Dhan Raj had attempted to inflict injuries on the accused Devi Lal with a sickle (dentali) and, at that time, in order to save himself, the accused inflicted knife injuries on Dhan Raj. We have carefully considered this statement and we do not find any force in it. It may be pointed out that the medico legal report was prepared by Dr. G.L. Dad (PW 8), on 13.10.79, which date is nine days after the murder of Dhan Raj. There is no explanation whatsoever why the accused did not produce himself before a medical expert, soon after the occurrence on 4.10.79, for the examination of his injuries. He had escaped from the scene of occurrence after the incident and he was arrested by the police on 11.10.79 at 9.30 P.M. at Bombay Central. It means that during the period from 4.10.79 (after the incident) to 11-10-79 (upto 9.30 P.M.), the accused Devi Lal had opportunity to get his injuries medically examined. He did not take any steps to get his injuries medically examined. In these circumstance, it is difficult to believe that the injuries mentioned in medico legal report Ex.D.1 had in fact been inflicted at the time to incident which occurred on 4.10.79.

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All the eye-witnesses of the occurrence who have been examined by the prosecution during trial have denied the defence version put to them in their cross-examination. According to them, at the time of incident, Dhan Raj had no sickle in his hand; his hands were empty and all that he was carrying with him was a bundle of 'ambadi' on his head. In our opinion, the statements of the eye-witnesses are true and the entire defence version as to the manner in which the incident occurred is false. The medico legal report

Ex.D.1 is of no assistance to the appellant in proving the theory of self-defence."

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As regards the plea of right of private defence, this Court in Murali vs. State of T.N., 2001 (1) SCC 229,@@
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observed that the right of private defence undoubtedly is a defence available to an accused but the court while dealing with the defence ought to act with proper circumspection and caution, since the same is an exception rather than a rule. The evidence pertaining to the injuries as sustained by the accused person do not inspire our confidence as regards the correctness of the same. In any event, those injuries are rather minor in nature and they are restricted to mere abrasions. There was no wound or serious injury which may prompt him to commit heinous crime of murder.

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In any event, it is now well settled that concurrent findings of the fact ought not to be interfered with by this Court unless there exist on record a finding which is totally perverse resulting in manifest injustice.

In the matter in issue, we are unable to record our concurrence with the submissions made in support of the appeal that there exist some perversity warranting intervention of this Court.

On the wake of the aforesaid, this appeal has no merit. The appeal, thus, fails and is dismissed.

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(U.C. BANERJEE)

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(ASHOK BHAN)

New Delhi,
September 4, 2002.