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or scorching. the  
spreading of



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Section 101 provides that if the offence be not of any of the description enumerated in Section 100; the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend to the voluntary causing to the assailant of any harm other than death. Thus, under this section, any harm short of death can be inflicted in the exercise of the right of private defence in any case which does not fall within the provisions of Section 100. Instances of Exceeded Right of Private Defence: In a case a pistol was said to have been fired from close range in self-defence. But there was no indication of any burning or scorching. The spreading of pellets indicated fire from long distance. Taking into account the spread of pellets and injury to five persons in various parts of the body, the Court was of the view that at least two shots were fired.

On this the conclusion was that the accused caused injuries after the firing. As 28 injuries were caused fracturing skull bone resulting in death after the pistol was snatched the court presumed that the right of private defence was exceeded and injuries were caused when there should be no cause of apprehension of death or grievous hurt. In another case the common object of an unlawful assembly of the victims was to extort money in attempting to intercept and stop the vehicle of accused and putting him to fear of injury. The accused was going in a closed station wagon. Certainly a right of private defence of body accrued under Section 102, I. P. C., but the accused fired three shots in quick succession over the victims who had no arms.

Even if the story as to pelting of stones is taken into account the accused could not reasonably apprehend death or grievous hurt as a result of stone throwing. As such the accused was held to have exceeded his right of private

defence. The Supreme Court has held in *Dharmindar v. State of Himanchal Pradesh*, that onus of proof to establish right of private defence is not as onerous as that of prosecution to prove its case. Where the facts and circumstances lead to preponderance of probabilities in favour of the defence case it would be enough to discharge the burden to prove the case of self-defence.

In order to find out whether right of private defence is available or not, the Supreme Court in *Dhaneshivar Mahakud v. State of Orissa*, held that the injury received by the accused, the imminence of threat to his safety, the injuries caused by accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. In *Laxman Sahu v.*

*State of Orissa*, the accused gave a lathi blow on the head of the victim which it was proved was sufficient to cause death. There was nothing to show that the blow was given by the accused to defend himself. It was held by the Supreme Court that the accused had exceeded his right of private defence and was liable to be convicted under Section 304, Part I, I. P. C. The Court observed that ' it is needless to point out in this connection that the right of private defence is available only to one who is suddenly confronted with immediate necessity of averting an impending danger not of his own creation. The necessity must be present, real or apparent'.

In *Savita Kumari v. Union of India*} the Supreme Court laid down that in private defence the accused is not bound to prove his case beyond doubt.

The burden lies on the court whether accused can get private defence in present facts and situations.