

## This Is Murder, Not Self Defence

■ Dr. M.N. Buch

The media reported on 7<sup>th</sup> April 2015 that the Andhra Pradesh Police, in the forests of Chittoor District, has shot dead twenty people in an encounter when intercepting them in the illegal felling and transport of Red Sanders, a wood much in demand, especially in China. The botanical name of this species is *Pterocarpus santalinus*, known in Hindi as *Lalchandana* or *Raktachandana*. The tree is treasured because its heartwood is very hard, is deep red or purple coloured, does not warp and is excellent for carving into *objets d'art*. The encounter is said to have taken place in the early hours of the morning at about 0300 hours. The police version is that as they were combing the forest they came under heavy attack by the wood smugglers who were armed with axes and pelted stones. The police fired in self defence resulting in twenty civilians being killed.

It is a fact that villagers from the border areas of Tamil Nadu and Andhra Pradesh do illegal felling of Red Sanders. It is obvious that this is not being done by them for their own profit because the local market is restricted and much of the felled timber is exported. The local villagers do not have the money or the organisation for large scale trade and, therefore, as is a well known fact, they are really in wage employment of timber smugglers, illegal exporters of forest produce, financiers and political and bureaucratic godfathers. Not one of the twenty people killed belongs to these categories of the real criminals behind the illegal felling of forests and equally illegal trading in the produce. Those killed are at best foot soldiers who are expendable. It is obvious that so far as the gang leaders were concerned, they were not the target of the police, who were apparently under orders to try and put a stop to the illegal felling of the species by putting the fear of law into the villagers. The result is twenty persons, who had no fire arms or explosives, lost their lives. In a television programme conducted by Nidhi Razdan on ND TV 24x7 on 7<sup>th</sup> April 2015 one of the participants was Swarajit Sen, former D.G. Police, Andhra Pradesh. Without knowing the facts he had the nerve to say that this was an act of self defence by the police conducting a night operation. He had no answer when he was asked how many policemen were injured by aggressive action by the villagers. He said that it was a night time operation when visibility was low and the police had no option but to fire. As DM I have handled law and order situations and faced intensive stone throwing by mobs of students and other rioters. Stone throwing, especially in an enclosed space, can be quite terrifying and in Ujjain in 1966 in one incident my S.P. had five broken ribs, I had a dislocated kneecap and twenty-one policemen suffered serious injuries with fractures. Because it was a student mob we refrained from firing, but by closing in on the mob we dispersed it through tear gassing and a very effective lathi charge. In Andhra Pradesh in a forest where undoubtedly the Force was well dispersed over the ground the effect of stone throwing must have been much less and, therefore, retaliatory firing resulting in twenty deaths leaves me aghast.

Swarajit Sen claimed self defence and justified the police firing. In how many encounters with Naxalites has the Andhra Pradesh Police ever killed twenty Naxalites in one encounter? The marksmanship of the average policeman is such that he cannot hit the broadside of a barn from ten yards with a twelve bore shotgun. How did the police suddenly become such sharp shooters that in the dark, without night vision equipment, they were able to use rifles so effectively that twenty people were killed? How many rounds did the police party fire? I know that the former DGP of Andhra Pradesh was standing up for his Force, but he forgets that every IPS officer, every police officer, owes his first loyalty to the law, the second loyalty to the citizens and last of all to his jawans. The statements made by Mr.Sen make me sick.

There are only two circumstances in which the police may use lethal force. The first is under chapter X Cr.P.C. where under section 129 on the orders of an Executive Magistrate the police may use necessary force, including lethal force, to cause an unlawful assembly to disperse. The second is under General Exceptions listed in chapter IV of the Indian Penal Code, that is, sections 76 to 106. Section 76 states that nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it. Section 96 exempts an act done in the exercise of the right of private defence. Section 100 IPC states the circumstances under which the right of private defence of the body extends to causing death. A person may cause death if he is assaulted in such a way that he has reasonable cause to believe that this will cause his death or result in grievous hurt to himself, may result in a rape or an act of sodomy or will lead to his being abducted or otherwise wrongfully confined. This will apply to similar assaults against other persons in whose private defence a person acts. Under section 103 the right of private defence may extend to defence of property as enumerated in the section. However, as soon as the apprehension of harm to the body ceases the right of private defence ends. Similarly in the right of private defence of property the right ends if the person committing the crime retreats. The right of private defence does not extend to aggravated firing over a period of time against persons whom one can hardly see because it is too dark. It certainly does not extend to killing twenty people.

In a parallel case the Telangana Police has shot dead five under trial prisoners being escorted from Nalgonda to Hyderabad because it is alleged that they, under the guise of answering the call of nature, had the van stopped and then assaulted the policemen. The fact that the police was able to shoot all the five means that certainly the police was not in danger of being overwhelmed. Here no right of private defence applies and this is a clear-cut case of murder. The least that the Andhra Pradesh Government can do is to suspend the D.G. Police of Andhra Pradesh, the DIG of the Special Task Force and the Superintendent of Police of the district in which the so called encounter took place. Both in Andhra Pradesh and in Telangana cases of murder must be registered against the policemen and investigated by an independent agency. It is vital that the bodies of the slain villagers be taken into neutral custody and their post mortem examination be conducted by a team of doctors from outside Andhra Pradesh. The nature of the injuries will clearly indicate how the deaths took place. I am normally very sympathetic towards the police but even I cannot condone murder.

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