



### PROBLEM SOLVED QUESTIONS – BNS

**Q 1. A had an intention to commit rape of a woman namely W. For this purpose, he makes an assault on W. But before he could even touch the body of W, she draws out a pistol from her purse and shoots A. Consequently, A dies. W is prosecuted for the ‘murder’ of A. W takes the defence of ‘right of private defence’ whereas prosecution argues that A had merely ‘intention’ to commit rape and he did not even touch the body of W (did not make an attempt to commit rape), so he was in preparation stage, and mere intention to rape or preparation for rape is not punishable (an offence). Thus, W had no ‘right of private defence’, hence she is guilty of ‘murder’ of A. Has W right of private defence to the extent of causing death of A? Give reasons and also refer to the relevant provision and case law, if any, on the point.**

**Ans.:** W has ‘right of private defence’ to the extent of causing death of A and she is not liable to be convicted for murder of A-3rd clause of [section 38](#), BNS. and *Mukhtiar Singh Vs. State*, 1975 CLJ 132 (P&H HC) & Mohinder Singh’s case, 1977 Raj Cr C 333.

**Reasons:** [Section 38](#) of BNS lays down 7 circumstances (clauses) under which a person can cause the death of assailant in exercise of his ‘right of private defence’ of body.

The 3rd clause of [section 38](#) provides that a person can go to the extent of causing the death of another if such other person makes an ‘assault with the intention of committing rape’.

Thus, it is clear from the language of 3rd clause of [section 38](#) that for the application of this clause of [section 38](#), only two conditions should be satisfied:—

(i) There should be an intention to commit ‘rape’.

(ii) There should be an assault in the direction of preventing rape. (It is notable that for assault, it is not necessary to touch the body of aggrieved person — [section 130](#) BNS.

Hence, it is amply clear that for application of 3rd clause of [section 38](#) it is no necessary that assailant should enter in the realm of ‘attempt’ by touching the body of woman who is likely to be made the victim of rape. Agreeing with this view the Punjab & Haryana High Court in *Mukhtiar Singh Vs. State*, (1975) Cr LJ132 (P&H) held that a man need not wait to exercise his right of private defence till he is hit by his adversary assailant.

In the given case, A had the intention to rape W and for this purpose he made an assault in this direction. Thus, W gets the right to exercise her right of private defence of body and may even cause the death of A in view of provision made in [section 38](#) (3rd clause) of BNS.

In Mohinder Singh’s case, the Rajasthan High Court held that if accused makes only an assault with the intention to commit rape then nothing more is required to cause the death of accused in view of [section 38](#) (3rd clause).

In this regard, it is also notable that the [section 40](#) provides that the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or ‘threat to commit the offence’.

In the given case, reasonable apprehension of danger (rape) to the body of W has arisen from threat (by assault) to commit the offence of rape. Thus,

the right of private defence of W has commenced in view of **section 40** BNS., as soon as A made an assault to W.

Thus, it can be said without any doubt that in the given case W has not only right of private defence but such right of private defence extends upto the causing the death of A.

Hence, W is **not liable** to be convicted for the murder of A.

**Q 2 . ‘A’ personated as ‘B’ at the examination passed the examination and obtained the certificate in ‘B’ thereupon applied to have his own name entered in the list of candidates for Government service.**

**A.:** Facts: ‘A’ personated as ‘B’ at the examination passed the examination and obtained the certificate in ‘B’ thereupon applied to have his own name entered in the list of candidates for Government service.

**Issue:** What offence has been committed by A?

**Rule:** The present problem is based on Section 319 of BNS. It defines cheating by personation. A person is said to cheat by personation if -

- (a) He pretends to be some other person; or
- (b) Knowingly substituting one person for another, or
- (c) Represents that he or any other person is other than he or such other person really is.

The offence is committed whether the individual personated is a real or imaginary person. For example, CR cheats by pretending to be a certain rich banker of the same name. CR cheats by personation.

Analysis: In the present case, ‘A’ personated as ‘B’ at the examination passed the examination and obtained the certificate in ‘B’ thereupon applied to have his own name entered in the list of candidates for Government service. By

applying the above law on the present facts, it is clear that all the essentials of Section 319(1) are satisfied. 'A' pretended to be some other person i.e. 'B'. He represented that he was 'B'.

**Conclusion:** Therefore, He is liable for committing the offence of cheating by personation defined under Section 319(1) and punishable under Section 319(2) of BNS.

