
(2005) 02 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No's. 132-DB, 737-DBA and 1081 of 2004

Raj Singh and Others

APPELLANT

Vs

State of Haryana and etc.

RESPONDENT

Date of Decision : 22-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 304

Citation : (2005) CriLJ 2118 : (2005) 4 RCR(Criminal) 227

Hon'ble Judges : V.K. Bali, J;Nirmal Singh, J

Bench : Division Bench

Advocate : R.S. Ghai and Vinod Ghai, in Cri. A. No. 132-DB/2004 and Baldev Singh and Ashwinder Singh, in Cri. Revn. No. 1081 of 2004, for the Appellant; R.S. Ghai and Ashit Malik in Cri. A.No. 737-DBA/2004 and Sanjay Vashisht, D.A.G., for the Respondent

Judgement

Nirmal Singh, J.—Cri. A.No. 132-DB of 2004 has been filed by the appellants-Raj Singh, Ram Mehar and Kuldeep against the judgment and order dated 22/24-1-2004 vide which they were convicted and sentenced as under :--

Raj Singh u/s 302, IPC To undergo imprisonment Ram Mehar for life and to pay a fine of Rs. 10,000/- each. In default of payment of fine, they were further directed to undergo R.I. for one year each. Kuldeep u/s 307, I.P.C. To undergo R.I. for 4 years Singh and to pay a fine of Rs. 20,000/-. In default of payment of fine, to further undergo R.I. for one year.

2. Criminal Appeal No. 737 DBA of 2004 has been filed by the State against acquittal of Kamlesh, Raj Bala, Sandeep and Kuldeep while Criminal Revision No. 1081 of 2004 has been filed by the petitioner-complainant against the acquittal of Kamlesh, Raj Bala, Sandeep and Kuldeep and also for enhancement of fine. Since both the appeals as well as criminal revision have been filed against the same judgment and order passed by learned trial Court, those are being disposed of by this common judgment.

3. The prosecution story in brief is that on 23-7-2001 at about 5 p.m. when Anil Kumar along with his mother Parmeshwari were present in front of their house in the street, their neighbours Raj Singh, his sons Kuldeep Singh and Sandeep Singh and their mother Raj Bala were discharging water of their house towards the house of their neighbour Rajesh, due to which plaster of the house of Rajesh was damaged. Parmeshari then asked Raj Singh, accused that they should not do so. However, Raj Singh objected to it and he along with his wife and children caught hold of Parmeshwari and gave fist blows to her. When Anil Kumar tried to rescue his mother, they also caused fist blows to him. Anil Kumar and Parmeshwari went to their house and bolted the door. Despite that Raj Singh continued to beat their door and alarmed that they would teach them a lesson for interfering in their matter. After that Anil Kumar, complainant went to Ganaur and informed the incident to his uncle Pirthi Singh. At about 7 p.m. when the complainant, his cousin Joginder, his father, uncle Sukhbir Singh, aunt Sumitra and Sudesh were enquiring about the incident from their mother, accused-Raj Singh, Kuldeep Singh, Sandeep, Ram Mehar armed with daggers and accused-Raj Bala and wife of Ram Mehar armed with lathis came there. Accused-Raj Singh alarmed that they would teach a lesson to the complainant party for not allowing them to discharge the water. Meanwhile Raj Singh and Kuldeep Singh gave one blow each with dagger to Joginder Singh on his chest, due to which he fell down. When he was lying down, accused-Sandeep and Ram Mehar also gave dagger blows on his chest. When Inder Singh, father of complainant tried to rescue him, accused-Kuldeep Singh gave a blow to him also with dagger on his stomach while Raj Bala and wife of Ram Mehar caused injuries to Sumitra and Sudesh with lathis. After that the complainant party rushed to their house and bolted the door. Later on, when some inhabitants of the village gathered there, the accused party ran away with their respective weapons. Joginder Singh was taken to Sita Hospital, Ganaur, where he succumbed to the injuries. Thereafter, statement of Anil Kumar, Ex. PA/4 was recorded, on the basis of which formal FIR was record at 12.40 a.m. on 24-7-2001. Police arrested the accused and on their disclosure statements, the weapons used in the occurrence were also recovered.

4. After completion of investigation, challan against all the accused was presented in the Court of Illaqa Magistrate. They were charged for the offence punishable under Sections 148, 302 read with Sections 149 and 307 read with Section 149, I.P.C. to which they pleaded not guilty and claimed trial.

5. To prove the case, the prosecution examined P.W. 1 complainant Anil, P.W. 2 Inder Singh, father of complainant, P.W. 3 Dharam Singh, P.W. 4 Head Constable Raj Singh, P.W. 5 Dr. Manju Arora, P.W. 6 Dr. Sanjay Jain, P.W. 7 SI Amar Dass, P.W. 6 Constable Balwan Singh, P.W. 9 Ajmer Singh, P.W, 10 SI Ram Avtar, P.W. 11 Constable Jagbir Singh, P.W. 12 H. C. Hari Chand and P.W. 13 Inspector Randhir Singh.

6. The accused were examined u/s 313, Cr. P.C. to explain the incriminating circumstance appearing in the prosecution evidence. They pleaded innocence and

alleged false implication. Accused-Raj Singh took the following plea :--

"Kuldeep Singh is my son, whereas Ram Mehar is my real brother. The lane in front of my house leads from East to West. On that day at about 7.30 p.m. when the Sun had already set, Kuldip was coming to his house along with Ram Mehar, Kuldeep resides with me. When they reached near the house of Ram Singh, Joginder-deceased who is a scoundrel who resides at Ganaur came out of the house of Anil along with his two accomplices armed with lathies and Gandasis. On coming in the street near the house of Ram Singh they attacked Ram Mehar and Kuldeep with their weapons. I saw the entire incident from my Chaubara. Kuldeep and Ram Mehar did not have any arms. I ran towards them so that I could prevail upon the assailants not to cause injuries to Kuldeep and Ram Mehar, They did not listen to me and started causing injuries to me also. I had no other alternative I took out a knife from my pocket in order to save myself, Kuldeep and Ram Mehar. I inflicted injuries to Joginder with that knife when he was in the process of giving injuries to us. A scuffle took place at that time. Inder came out of the house and caught hold of me, so that Joinder could cause injuries. I gave him one injury. His grip loosened. I myself, Kuldeep and Ram Mehar in order to save ourselves took shelter in our house. Joginder followed us. However, he fell down near the Gate of house of Anil. Inder and the two accomplices of Joginder stopped near Joginder, meanwhile we got opportunity and saved ourselves by going inside our house and closed the door. We made this statement before the police. Sandeep and Kamlesh, Raj Bala were not present at the spot. They being close relatives of ours were named falsely. Similarly Anil, Sukhbir, Sumitra, Sudesh, Parmeshwari were not present at the spot. They are false witnesses. The police did not investigate our version of the case and did one side investigation. Anil had given false statement to the police after much consultation and Inder had no other option but to support his story. We got ourselves examined from Civil Hospital, Ganaur and were X-rayed from the General Hospital, Sonapat. The doctors from the Civil Hospital, Ganaur had sent information to the police regarding our admission by a writing. However, no action was taken. The police did not investigate properly. We are in custody since day of occurrence and as such have not been in a position to press our case properly. We could not bring the documents on file regarding the past of Joginder due to this reason. We had been summoned at the spot by the complainant party to kill us. Had we not acted in the fashion stated above all three of us would have been killed at the spot. We are innocent. The witnesses being related have deposed against us. We acted in right of private defence."

7. The accused were called to lead defence. In their defence, they examined D.W. 1 Dr. Shailender Khambra, D.W. 2 Dr. Ashwani Kumar, D.W. 3 Suman Narang, Nursing sister.

8. The learned trial Court, after hearing the defence counsel and learned PP for the State found the appellants, Raj Singh, Ram Mehar and Kuldeep guilty and convicted and sentenced them vide judgment and order dated 22/24-1-2004 as

stated in paragraph 1 of the judgment while Sandeep, Raj Bala and Kamlesh were acquitted of the charges levelled against them.

9. Mr. Ghai, learned senior counsel appearing for the appellants, contended that the learned trial Court, after appreciating the evidence on record, has come to the conclusion that complainant, Anil Kumar, had not witnessed the occurrence and that the complainant party was the aggressor and revengeful. The complainant party went to Ghanaur and called deceased-Joginder, who was a vagabond. Prithi Singh and Sukhbir Singh, after the earlier incident in which Raj Singh had given the fist blows to him and his mother. He further submitted that the trial Court has also held that the accused party had no previous enmity with the complainant party and, therefore, they had no motive to cause injuries and kill Joginder. He also pointed out that the learned trial Court held that the complainant party was the aggressor and it was the specific stand of the appellant-Raj Singh that on the day of occurrence, Kuldeep, his son, was coming to his house along with Ram Mehar. When they reached near the house of Ram Singh, Joginder accompanied by two other persons came out of the house of Anil. They were armed with lathis and Gandasis. At that time, Kuldeep and Ram Singh were not having any arm with them. They were attacked by Joginder and others. He ran towards them and they did not listen to them and caused injuries to Kuldeep and Ram Mehar and in the right of private defence, he caused injuries to Joginder. It was further the case of the appellant-Raj Singh that they took shelter in their house. Joginder followed them but he fell down near the gate of the house of Anil. They got an opportunity to save themselves by going inside the house. He submitted that Sandeep, Kamlesh and Raj Bala were not present at the spot. He also contended that aggressor, who opened the attack, the learned trial Court erroneously convicted and sentenced the appellants while ignoring the fact that Ram Mehar sustained 6 injuries and injury Nos. 1 and 2 were on the vital part i.e. head, Kuldeep sustained 9 injuries and Ram Singh sustained 3 injuries on his person. He pointed out that as per D.W. 1 Dr. Shailender Khambra, the duration of the injuries of the appellants as well as complainant side was the same. However, the complainant side has not explained the injuries on the person of the appellants. The learned trial Court overlooked these injuries by observing that the same were not dangerous to life. He submitted that when the learned trial Court has given a specific finding that the complainant party was the aggressor and the injuries on the persons of accused-appellants have not been explained, then it should have acquitted the appellants.

10. On the other hand, learned State counsel submitted that the appellants had admitted that they were present at the place of occurrence. He contended that it is also admitted by appellant-Raj Singh that he had given injuries to Joginder in the right of private defence of life as he was apprehending danger to the life of Kuldeep and Ram Mehar. The plea taken by Raj Singh is falsified from the facts itself. He pointed out that deceased-Joginder had received 9 injuries while Inder, Sumitra Devi, Sudesh Devi and Parmeshwari Devi had also received injuries in this occurrence. He contended that these injuries were not caused by one

person, rather the same were caused by all the three appellants, who were armed with knife (Dagger). He also submitted that injury on the person of Inder Singh could not be self-suffered as the injury was in the abdomen, which was declared dangerous to life. He further contended that the findings recorded by the learned trial Court that the complainant party was the aggressor and Anil had not witnessed the occurrence are without any basis. He also contended that Sandeep, Raj Bala and Kamlesh had also participated in the occurrence but the learned trial Court has erroneously acquitted them of the charges levelled against them. Even the complainant has also challenged their acquittal by filing criminal revision as mentioned above. He supported the judgment qua conviction of Raj Singh, Ram Mehar and Kuldeep but however, challenged the acquittal of Sandeep, Raj Bala and Kamlesh.

11. We have given our thoughtful consideration to the submissions made by learned counsel for the parties and carefully gone through the file.

12. The findings recorded by the learned trial Court that P.W. 1 Anil, complainant, had not witnessed the occurrence are palpably erroneous and the same have been recorded without appreciating the evidence on record. The prosecution would introduce an eye-witness to the occurrence only if there is no witness to the occurrence but in the case in hand, Joginder was unconscious and his condition was serious but other stamped witnesses, who had sustained injuries, were Inder Singh, Sumitra Devi, Sudesh Devi and Parmeshwari Devi. They were conscious and oriented to time and place. Therefore, there was no necessity for the prosecution to introduce Anil as eye-witness to the occurrence, when on the statement of any of the stamped witness, the case could have been registered. The learned trial Court held presence of Anil doubtful on the ground that he had failed to mention the place of occurrence while reporting the matter to the police and, therefore, it observed that he was in the house when the appellants attacked Joginder. These observations of the learned trial Court are not based on the evidence. After appreciating the evidence of P.W. 1 Anil, we are of the considered opinion that Anil had witnessed the occurrence and he promptly recorded the FIR.

13. The learned trial Court, in para 27 of its judgment, has held that the complainant party was the aggressor. The said para reads as under :--

"From the statement of complainant-Anil Kumar itself, it appears that the complainant party was the aggressor and revengeful and that is why he went to Ganaur to call his cousin Joginder, his uncle Pirthi Singh and Sukhbir Singh after the earlier episode in which accused-Raj Singh had allegedly given fist blows to him and his mother. It appears that at his instance, deceased-Joginder, his father Pirthi Singh and Sukhbir Singh came to village Khubru. While it is not the case of the prosecution that the accused party was having any previous enmity with the complainant party. Except some altercation or causing of fist blows to the complainant and his mother just about two hours prior to the occurrence. Once the earlier occurrence had finished then there was no question of having more

grouse on the part of the accused towards the complainant party. Rather, it appears that due to the causing of fist blows by Raj Singh to the complainant and his mother, the complainant party became revengeful and that is why the complainant called deceased-Joginder who came to the house of Anil Kumar to extend help to him. So on the face of it, the accused cannot be considered as the aggressor party for raising a fresh quarrel and the occurrence might have been raised at the instance of the complainant party."

14. In the instant case, appellants-Ram Mehar, Kuldeep Singh and Raj Singh had received the following injuries :--

INJURIES TO RAM MEHAR

- "1. A lacerated wound on left parietal region of scalp with irregular margins and fresh clotted blood, muscle deep horizontal and swelling and epidermal layer deep abrasion around of size 2" x 1/6" x 1/6." I advised X-ray skull.
2. An incised wound on frontal region of the scalp, vertebral slight left to mid line with clean margin and fresh blood, size 2" x 1/8" x 1/8."
3. An incised wound smaller on gap of thumb and index finger, left hand on palmer aspect, size 1/3" x 1/3" x 1/6" with fresh blood and clear margins.
4. An abrasion on dorsal aspect of right hand medial side lateral to knuckle.
5. A reddish rail pattern bruise on right scapular region oblique direction downwards medially of size 8" x 2/3."
6. A swelling on the left hand dorsal aspect. I advised X-ray left hand.

INJURIES TO KULDEEP SINGH

1. A lacerated wound on the top of scalp vertical with irregular margins and fresh clotted blood, size 2" x 1/6" x 1/6." I advised x-ray skull.
2. A swelling and tenderness on the right hand dorsal aspect. I advised x-ray right hand.
3. A reddish bruise on superior-posterior aspect of left shoulder and chest horizontal size 6" x 2/3."
4. A reddish bruise on the left thigh 4" x 2/3."
5. A reddish bruise on hypochondric (right) region half "c" shape as shown in the M.L.R. of size 2.5" x 1/6."
6. There was complaint of pain on the left hand with tenderness medially. I advised x-ray left hand.
7. Swelling around right fore-arm lower 1/3rd.

I advised x-ray of right fore-arm lower 1/3rd part.

Complaint of body ache.

INJURIES TO RAJ SINGH

1. A swelling with tenderness on left hand all over the dorsal aspect. I advised x-ray left hand.
2. A reddish bruise on left side of chest in oblique direction anteriorly upwards of size 3" x 1/6."
3. Complain of chest pain upper part left side."

15. The abovesaid injuries on the persons of the appellants were proved by Dr. Shailender Khambra, who had appeared as D.W. 1. In his cross-examination, he admitted that the injuries on the persons of Ram Mehar, Kuldeep Singh and Raj Singh could not be self-suffered. Even he had specifically denied the suggestion that the injuries found on their persons could have been got inflicted by them to create evidence of self-defence. The prosecution has not given any explanation that how the appellants had sustained the injuries. The learned Additional Sessions Judge did not agree with the version put forth by the prosecution that the appellants came to the house of the complainant and caused injuries to deceased-Joginder and P.W. Inder Singh. Rather, it gave a specific finding that the complainant party was the aggressor and had caused injuries to the appellants to take revenge of the previous incident. The learned trial Court also did not agree with the defence version that they had caused injuries while exercising their right of private defence to body. The learned Additional Sessions Judge instead of agreeing with either of the versions, propounded its own theory that it was a case of free fight between the parties and, therefore, convicted the appellants for the substantive offence u/s 302, I.P.C. It is settled proposition of law that the Court cannot propound its own theory and it has to concur either with the version of the prosecution or the defence. Therefore, after examining the evidence on record, we have come to the conclusion that it was not a case of free fight. The appellants had taken the plea of private defence not only in their statements u/s 313, Cr. P.C. but they had raised this plea in the cross-examination of the prosecution witnesses and as it has been noticed above, the appellants had proved by examining Dr. Shailender Khambra as D.W. 1 that they had sustained injuries in this very occurrence.

16. Certainly, the prosecution has not explained the injuries on the persons of the appellants but it does not mean that the appellants are entitled to be acquitted of the charges levelled against them as they had admitted that they had caused injuries to deceased-Joginder and P.W. Inder. Appellant-Raj Singh had taken specific plea that he had caused injuries to deceased-Joginder in the right of private defence. However, this plea is not acceptable because as per P.W. 5 Dr. Manju Arora, deceased-Joginder had received 9 injuries and as per P.W. 6 Dr. Sanjay Jain, P.W. Inder Singh had also sustained injuries. Therefore, one person cannot cause so many injuries to the persons. Injury Nos. 1 and 2 on the person of Ram Mehar and injury No. 1 on the person of Kuldeep were on the vital

part i.e. scalp but these injuries were not grievous in nature. Therefore, the appellants had exceeded their right of private defence.

17. Section 300, I.P.C. defines "murder," which reads as under :--

"300. Murder.-- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

Secondly.-- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--

Thirdly.-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or--

Fourthly.-- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. xx xx xx xx xx xx xx

Exception 2.-- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purposes of such defence.

Exceptions 3 to 5 xx xx xx xx xx xx xx

18. In *Bahadur Singh and another Vs. State of Punjab*, it has been held as under (para 4) :--

"No doubt the right of self-defence cannot be weighed in golden scales. But the accused by using gandasas and inflicting such serious injuries have exceeded the same. Having gone through the medical evidence as well as the specific plea of the accused, a reasonable doubt arises regarding their right of self-defence and, therefore, they are to be given the benefit of right of self-defence but in our view, they have exceeded the same. The injuries on the deceased were very serious and the accused have used heavy cutting weapons like gandasas. Therefore, they have clearly exceeded the right of self-defence. Therefore Exception II to Section 300 is attracted and the offence committed by them would be one punishable u/s 304, Part I, I.P.C."

19. The ratio of the abovesaid authority is fully applicable in the case in hand. Therefore, after appreciating the evidence on record, we are of the considered opinion that the complainant party was the aggressor. The appellants had given injuries to the complainant, side in the right of their private defence but they had

exceeded their limits. The appellants had caused numerous injuries to deceased Joginder. As per the opinion of P.W. 5 Dr. Manju Arora, the cause of death of Joginder was injuries to vital organs like heart and lungs leading to shock and haemorrhage, which could cause death in the ordinary course of nature. The said injuries were ante-mortem in nature. However, the doctor has not pointed out that which was the specific injury due to which Joginder had died. Therefore, the Court is unable to give a specific finding that who had caused the fatal injury to Joginder. The learned trial Court has wrongly convicted appellants-Raj Singh and Ram Mehar u/s 302, I.P.C. They are liable to be convicted u/s 304, Part I, I.P.C. instead of Section 302, I.P.C. So far as appellant-Kuldeep is concerned, he has rightly been convicted u/s 307, I.P.C.

20. In view of the above discussion, appellants-Raj Singh and Ram Mehar (in CrI. A. No. 132-DB of 2004) are convicted u/s 304, Part I, I.P.C. instead of Section 302, I.P.C. They are sentenced to undergo RI for 7 years with a fine of Rs. 5000/- each u/s 304, Part I, I.P.C. In default of payment of fine, the defaulter shall further undergo RI for six months. Keeping in view the facts and circumstances of the case, sentence of appellant-Kuldeep (in CrI. A. No. 132-DB of 2004) is reduced from 4 years to 3 years with a reduced fine of Rs. 10,000/- u/s 307, I.P.C. In default of payment of fine, he shall further undergo RI for six months.

21. So far as Criminal Appeal No. 737 DBA of 2004 filed by the State and Criminal Revision No. 1081 of 2004 filed by the complainant are concerned, the findings recorded by the learned trial Court are not perverse, rather the same are based on evidence on record. It is established on record that Sandeep, Raj Bala and Kamlesh were not present at the time of occurrence and, therefore, the learned trial Court has rightly acquitted them. No interference in the well reasoned judgment of learned trial Court is called for to that extent.

22. Therefore, Criminal Appeal No. 132-DB of 2004 is partly allowed as indicated above while both Criminal Appeal No. 737-DBA of 2004 and Criminal Revision No. 1081 of 2004 are dismissed.