
(2009) 10 SHI CK 0043
In the High Court Of Himachal Pradesh

Sikandar Pal and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 323, 34, 504

Citation : (2010) 2 Crimes 104 : (2009) 3 ShimLC 186

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Judgement

Surjit Singh, J.—Appellants are aggrieved by the judgment dated 5th September, 2006 of learned Additional Sessions Judge, Kangra at Dharamsala, whereby they have been convicted of offences, under Sections 302, 341, 323 and 504 read with Section 34 IPC and the order of sentence dated 11.9.2006, whereby they have been sentenced as follows:

Offence Sentence

302 IPC Life imprisonment and fine of Rs. 10,000, each; in default of payment of fine simple imprisonment for a further period of one year, each.

341 IPC Simple imprisonment for one month and fine of Rs. 500, each.

323 IPC Simple imprisonment for one year and fine of Rs. 1,000 each; in default of payment of fine to undergo simple imprisonment for a further period of one month each.

506 IPC Simple imprisonment for two years and fine of Rs. 1,000 each; in default of payment of fine to undergo simple imprisonment for a further period of one month.

2. Prosecution case, which led to the trial and incidental conviction and sentence of the appellants, may be stated. Appellants Sikandar Pal, Ashok Kumar and Statish Kumar are real brothers. Appellant Shashtri Devi is their mother. PW-2 Raghubir Singh, his brother Sat Pal (deceased) and their mother Shakuntla, as

also the appellants are residents of village Khatiar, Tehsil Fatehpur, District Kangra. Their houses are situated opposite each other"s. Ahead of their houses, there are courtyards. Their respective courtyards and houses are separated by a path, which has been raised with earth and stones, and in local parlance such a path is called Atli. The two parties had been having dispute, with respect to the use of that path. On 5.9.2004 around 11 p.m., when PW-2 Raghubir Singh, who worked as Taxi Driver at Pathankot, returned to his village and was going to his house along the aforesaid Atli, he was attacked by all the four appellants. Appellant Ashok Kumar was armed with an axe, appellant Satish Kumar was armed with a Darat, appellant Sikandar Pal was having a Danda and appellant Shashtri Devi was carrying a piece of chopped wood (Pachar). PW-2 Raghubir Singh raised alarm, on hearing which, his mother Shakuntla Devi, brother Sat Pal (deceased) and father Puran Chand reached the spot. They too were attacked. Deceased Sat Pal was dealt axe and Darat blows on his head. He was also dealt a Danda blow on his head. Shakuntla Devi was also inflicted injuries by means of axe, Darat, Danda and Pachar by the appellants with their respective weapons. Puran Chand, father of PW-2 Raghubir Singh and deceased Sat Pal, was also caused some injuries. Sat Pal became unconscious. Shakuntla Devi also sustained some serious injuries. They were taken to Primary Health Centre, Fatehpur. Report was lodged with the police at Fatehpur, which was entered in the Rojnamcha.

Copy of the same is Ext. DA. Seeing his condition, doctors at PHC Fatehpur referred Sat Pal to Zonal Hospital, Dharamsala, where he succumbed to his injuries. He had a number of injuries on his person, including swelling over the right half of the forehead and temporal region and an incised wound over the scalp just in the middle of joining point of pinna of both the ears. Post-mortem examination of the dead-body was conducted by PW-22 Dr. A.K. Sharma, who opined that two injuries on the head led to fracture of skull and haemorrhage of brain, resulting in death. In addition to the aforesaid injuries, PW-22 Dr. A.K. Sharma, noticed the following 11 injuries:

3. Red contusion of size 13.4 cm present over right fronto temporal region of scalp.
4. Red abrasion of size 5x.5 cm present over right side of forehead.
5. Red contusion of size 3 x 2 cm present over the lower lip.
6. Red abrasion of size 15 x 4 cm present over posterior - superior aspect of right shoulder.
7. Red abraded contusion of size 4 x 2 cm present over mid lateral aspect of right arm.
8. Stitched incised wound of size 3 x 1 x 1 cm present over anterolateral aspect of right forearm 11 cm above the right wrist joint.
9. Red contusion of size 3 x 1.5 cm present over mid anterior aspect of left

forearm.

10. Stitched incised wound size 2.5 x 1 x 0.5 cm present over the dorso-lateral aspect of distal phalanx of left little finger.

11. Red abrasion of size 6 x 7 cm present over left antero-lateral aspect of thorax 17 cm from the mid line at the level of 7th intercostal space.

12. Red abrasion parallel to injury No. 11 of size 6 x .7 cm present 1 cm below injury No. 11 present over left anterolateral aspect of the thorax.

13. Red abraded contusion of size 2 x 1 cm present mid of medial aspect of right leg.

3. On the person of Shakuntla Devi, PW-1 Dr. A.S. Parmar, noticed an incised wound 2-1/2" long on the forehead above the left eye brow. It was bleeding. PW-2 Raghubir Singh was also examined by the same doctor. He had only one lacerated wound 2" long and 1/4" wide over the left lateral aspect of scalp, which was simple in nature and had been caused with some blunt weapon.

4. To the case, which was initially registered, under Sections 323, 506 and 341 IPC, Section 302 IPC was added, after Sat Pal died and the doctor opined that two injuries on the head were the cause of the death.

5. Prosecution examined Raghubir Singh as PW-2, Kamla Devi, a sister of PW-2 Raghubir Singh as PW-3, father of PW-2 Raghubir Singh, namely Puran Chand as PW-4, Dr. A.S. Parmar as PW-1, Dr. A.K. Sharma as PW-22, Investigating Officer R.P. Jaswal as PW-21, besides other formal witnesses, to prove the charge. Prosecution also led evidence to show that axe, Darat and Dandas were recovered from the house of the appellants.

6. Appellants did not deny that the injuries on the person of PW-2 Raghubir Singh and his mother Shakuntla had been caused by them. Also they did not deny having inflicted injuries to deceased Sat Pal, which proved fatal. They, however, pleaded that it were the deceased, his brother PW-2 Raghubir Singh and their mother Shakuntla Devi (not examined as a witness), who were to blame for the occurrence. According to them, PW-2 Raghubir Singh, his mother Shakuntla and deceased Sat Pal came to their house around 11 p.m. and knocked at the door of their house and when appellant Shashtri Devi opened the door, PW-2 Raghubir Singh, his brother deceased Sat Pal and mother Shakuntla attacked Shashtri Devi as also her sons Sikandar Pal and Satish Kumar. They stated that they sustained injuries on their head and other parts of the body and reported the matter to the police, but the police did not take any action. They got proved medico legal certificates Ext. D-1 of appellant Sikandar Pal and Ext. D-3 of appellant Shashtri Devi from PW-1 Dr. A.S. Parmar. They stated that they acted in exercise of their right of private defence and in that process PW-2 Raghubir Singh, his brother deceased Sat Pal and mother Shakuntla sustained injuries.

7. Learned trial Court did not believe the defence plea and convicted and

sentenced the appellants, as aforesaid.

8. We have heard the learned Counsel for the appellants as also the learned Deputy Advocate General and perused the record.

9. It is submitted by the learned Counsel for the appellants that the evidence on record probabilises the defence plea, aforesaid. He submits that since the appellants caused the injuries to Sat Pal (deceased) and PW2 Raghubir Singh and his mother Shakuntla, their act is not punishable u/s 302 IPC. According to him, the act of the appellants amounts to an offence, u/s 304 IPC.

10. Prosecution relied upon the testimony of PW-2 Raghubir Singh, his sister PW-3 Kamla Devi and PW-4 Puran Chand, father of PW-2 Raghubir Singh, to prove the incident. PW-2 Raghubir Singh testified that when he was returning home around 11 p.m. on 5.9.2004, along the Atli, located between the houses and courtyards of the parties, he was attacked by all the four appellants and that when he raised alarm, initially his sister Kamla Devi and one sister-in-law came to his rescue, but when they were also attacked and given fist and kick blows and they too raised cries for help, his brother Sat Pal (deceased), mother Shakuntla and father Puran Chand came to his rescue. He further stated that his mother was dealt a Darat blow on the head by appellant Satish Kumar, his father Puran Chand was dealt Danda blow on the neck by appellant Sikandar and thereafter his brother Sat Pal was dealt an axe blow on the head by appellant Ashok and a Darat blow by appellant Satish Kumar and other two appellants gave him Danda blows. He denied the suggestion thrown to him, in the cross-examination, that his brother Sat Pal and mother Shakuntla went to the house of appellants at 11 in the night and knocked at their door and that at that time he was armed with an axe and Sat Pal with a Danda and that when the door was opened, they hit appellant Sikandar with their respective weapons and when he cried for help and his mother Shashtri Devi came out and she too was hit by him, his brother and mother. He denied that appellant Sikandar and Shashtri Devi received injuries in the incident. He also denied that he saw injuries on their person.

11. PW-3 Kamla Devi and PW-4 Puran Chand made statements similar to that of PW-2 Raghubir Singh. They also denied the suggestions thrown to them, in the cross-examination, on behalf of the appellants that PW-2 Raghubir Singh, deceased Sat Pal and their mother Shakuntla went to the house of the appellants, armed with an axe and Dandas, and assaulted Sikandar Singh and his mother Shashtri Devi (the appellants).

12. Even though PW-2 Raghubir Singh, his sister PW-3 Kamla Devi and his father PW-4 Puran Chand denied the suggestions that they were aggressors and that they went to the house of appellants and the appellants acted in self defence, improvements made by PW-2 Raghubir Singh over the earliest version, which he gave to the police, vide report Ext. DA, with which he was duly confronted and the contradictions in the statement of PW-4 Puran Chand, in the Court, and the

statement, which he made to the police, during investigation, i.e. Ext. DB, as also the fact that blood and buttons which got detached from the shirt of PW-2 Raghubir Singh were found in the courtyard of appellants as also the presence of injuries on the persons of appellants Sikandar and his mother Shashtri Devi, which are not minor, probalises the defence plea.

13. PW-4 Puran Chand tried to explain the presence of blood in the courtyard of the appellants by improving upon the prosecution version. He stated that deceased Sat Pal was dragged by the appellants towards their courtyard, after he was hit on the head with an axe and a Darat, but the presence of button of the shirt PW-1 Raghubir Singh, in the courtyard of the appellants remains unexplained. Otherwise also, statement of PW-4 Puran Chand, with regard to deceased Sat Pal having been dragged by the appellants, is an improvement over his statement, u/s 161 Cr. PC, Ext. DB, which he gave to the police during investigation. Such a fact does not find mention in the said statement. The witness was duly confronted with the omission in the said statement.

14. Injuries on the persons of Sikandar Pal, included a lacerated wound 1/2" long over the scalp and an incised wound 1/2" long and 1/2" wide and 1/2" deep over the lateral aspect of left arm, besides 2-1/2" long bruise, extending from the aforesaid incised wound. This is apparent from Ext. D-I, medical certificate of appellant Sikandar Pal, which has been proved by PW-1 Dr. A.S. Parmar. Appellant Shashtri Devi was having one incised wound 2" long and 1/4" wide over the lateral aspect of left arm and an irregular lacerated wound over the back of lower margin of scapula, which was 2" long and 1" wide. Medical examination of these two appellants was conducted by PW-1 Dr. A.S. Parmar on 6.9.2004 at 8.30 a.m. Though he gave the opinion that the injuries were more than 12 hours old, but that is only opinion evidence. The witness admitted that he had found that the injuries were bleeding at the time of examination. He also admitted that injuries could have been sustained in the same incident in which complainant side received the injuries. It may be stated that PW-2 Raghubir Singh, PW-4 Puran Chand and deceased Sat Pal were also examined by this very witness on the same day.

15. Moreover, the eye-witnesses examined by the prosecution, i.e. PW-2 Raghubir Singh, PW-3 Kamla Devi and PW-4 Puran Chand denied that the appellants were having injuries. That means, the appellants were not already having injuries when the incident, as alleged by the prosecution, took place, and, therefore, the presumption should be that the injuries were sustained by appellants Sikandar Pal and Shashtri Devi, in the course of the incident, in question.

16. Acceptance of the defence plea, on account of its having been made probalised by the aforesaid facts and circumstance, by itself is a circumstance, ruling out the pre-meeting of the minds of the appellants to cause the death of Sat Pal. They acted in self defence on the spur of moment. Therefore, they are liable for their individual acts and not for the acts of each other also. Only two of

the appellants, namely Ashok Kumar and Satish Kumar are alleged to have dealt blows with their respective weapons on the head of Sat Pal. Appellant Ashok Kumar was having an axe and Satish Kumar was having a Darat. As per evidence of PW-22 Dr. A.K. Sharma, who conducted post-mortem examination, the deceased was having two incised wounds on his head, which were found stitched. His report and testimony, thus, corroborate ocular version that both Ashok Kumar and Satish Kumar dealt blows with their respective weapons on the head of Sat Pal. So, in our considered view, these two appellants are responsible for the act of causing death of Sat Pal. The other two appellants, namely Sikandar Pal and Shashtri Devi did not cause any fatal injury nor were they having any deadly weapons. They were armed with a Danda and a Pachar only. The blows, dealt with by them to PW-2 Raghubir Singh, Puran Chand and even Sat Pal, were not on vital parts of their body. They only caused simple injuries to PW-2 Raghubir Singh, deceased Sat Pal and PW-4 Puran Chand, which they were justified to inflict, as they having been attacked were exercising the right of private defence. Similarly, the injuries, other than the fatal injuries, caused by appellants Ashok Kumar and Satish Kumar, to PW-2 Raghubir Singh, his father Puran Chand as also deceased Sat Pal are justifiable, as they were acting in self defence. However, in respect of two injuries, inflicted by them on the head of Sat Pal, they exceeded the power given by law to act in exercise of right of private defence.

17. Since the two injuries on the head of Sat Pal, which proved fatal, were caused by appellants Ashok Kumar and Satish Kumar, their act is saved from the offence of murder by Exception (2) to Section 300. However, since they exceeded the right of private defence and caused the death of Sat Pal. Therefore, they are liable to be punished, u/s 304 IPC.

18. Next question is whether their act falls under part first or part second of Section 304 IPC. Since both the appellants hit the deceased on the head, with deadly weapons, i.e. axe and Darat, with a great deal of force, as the blows caused fracture of skull and very deep wounds, it can legitimately be said that their intention was to cause the death or such bodily injuries as were sufficient in the ordinary course of nature, to cause death and, so, in our considered view, their act falls within the definition of first part of Section 304 IPC.

19. In view of the above stated position, appeal is partly accepted. Appellants Sikandar Pal and Shashtri Devi are acquitted. Conviction and sentence of appellants Ashok Kumar and Satish Kumar for all the offences, as ordered by the trial Court, are set aside. They are convicted of offence of culpable homicide, not amounting to murder, punishable u/s 304 (first part) of Indian Penal Code, only and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000 each; in default of payment of fine to undergo simple imprisonment for a further period of one year each.

20. Appellants Sikandar Pal and Shashtri Devi, being in jail, serving out the sentences awarded by the trial Court, are ordered to be released, immediately, in

case their detention is not required in any other case. The other two appellants, namely Ashok Kumar and Satish Kumar, shall remain in jail until expiry of the term of jail, awarded hereby, in respect of offence, u/s 304 (first part) of Indian Penal Code. Of course, these appellants will get benefit of Section 428 IPC, that is to say, against the period of sentence, awarded hereby, the detention already undergone by them during investigation, trial and on account of sentence of imprisonment awarded by the trial Court, shall be set off. Amended warrants shall be drawn and sent to the concerned Jail Superintendent, by the Registry.