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SURESH SINGH AND ORS.

v.

STATE OF HARYANA

MARCH 31, 1999

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[G.B. PATTANAIK AND M.B. SHAH, JJ.]

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*Criminal Law—Right of Private Defence—Indian Penal Code Ss. 97, 99, 302, 304 Part I—Accused chased by deceased—Deceased done to death 110m away from his house with sharp weapons resulting in five incised wounds—Held, accused exceeded their right of private defence; acquitted of charge of murder but convicted for culpable homicide not amounting to murder.*

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Ten persons including the three appellants, (SS, MS and CP) were charged and tried for the offences of forming an unlawful assembly and committing the murder of the deceased and injuring three others. The sessions Judge acquitted four of the accused persons. Of the remaining six persons, three more were acquitted by the High Court on appeal. However, the appellants SS and MS were convicted under s. 302 and sentenced to life imprisonment. Appellant CP was convicted under s. 304 Part I and

E

The appellants contended that seven out of ten of the accused having been acquitted, it would be unsafe to convict the remaining three on the evidence of the witnesses, although injured. Further, since the High Court had found that one of the accused, R, who gave a lalkara, was being chased by the deceased and at that point of time the three accused SS, MS and CP gave blows to the deceased, they would be entitled to plead the right of private defence.

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Partly allowing the appeal, this Court

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**HELD :** The accused persons exceeded their right of private defence while giving blows on the deceased. However, in the circumstances, the conviction of SS and MS under s. 302 could not be sustained. They could be convicted under s. 304 Part I. The conviction of CP is maintained and all the appellants are sentenced to seven years R.I. [295-F-G]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.

336-37 of 1993.

From the Judgment and Order dated 5.11.92 of the Punjab & Haryana High Court in CrI.A. Nos.137-DB and 144-DB of 1991.

U.R. Lalit, Ms. Kanwaljit Kochhar and J.D. Jain for the Appellants.

Prem Malhotra for the Respondent.

The Judgment of the Court was delivered by

**PATTANAIAK, J.** The appellants Suresh Singh and Mohinder Singh have been convicted under Section 302 IPC and have been sentenced to undergo life imprisonment whereas the appellant Chander Pal has been convicted under Section 304 Part I IPC and has been sentenced to undergo rigorous imprisonment for 10 years by the High Court of Punjab & Haryana. These three appellants and seven others were tried by the learned Additional Sessions Judge, Rewari for offences under Sections 148/149/324/325/302/307 IPC, for having formed an unlawful assembly and committing murder of Mahipal as well as having injured Chand Ram, Chander Deep and Rajbir, when they came to rescue Mahipal. Learned Sessions Judge acquitted four of the accused persons of all the charges after screening the prosecution evidence on a finding that those accused persons were not present at the spot but they were named later on to implicate as many persons as possible from the side of the accused. The Sessions Judge also acquitted rest of the six accused persons of the charge under Section 307 read with Section 149 IPC, but convicted them under Sections 148/302/323/324/325 read with Section 149 IPC. The convicted accused persons preferred an appeal to the High court and the High Court by the impugned judgment acquitted three more accused persons of all the charges levelled against them and acquitted the present three appellants of rest of the charges and convicted only under Section 302 and 304 Part I IPC, as already stated and hence the present appeal.

The prosecution case as unfolded in the first information report given by PW5 is that while deceased Mahipal was sitting on a cot in front of his house on 13.9.89 at 5.30 P.M., all the accused persons armed with different deadly weapons arrived there and accused Rameshwar having given a lalkara that Mahipal should not be allowed to go, they gave different blows on different parts of the body of Mahipal. Hearing the cries of Mahipal, when his brothers Chand Ram, Chander Deep and Rajbir rushed to the spot, they were also attacked and thereafter the accused persons left the scene of

- A occurrence when the villagers had been collected at the spot. According to prosecution version the motive behind the occurrence was that Rameshwar was the Sarpanch of the village and on account of instigation from Mahipal when several members of the Panchayat did not attend the meeting, no meeting could be held on account of lack of quorum and it is on this score that Rameshwar and his people had a grudge against Mahipal and they avenged of the same by assaulting him on the fateful day. On the basis of the aforesaid report of PW5, the investigation proceeded and ultimately charge-sheet was submitted and the accused persons stood their trial. The deceased Mahipal had sustained as many as 8 injuries on his person and the doctor PW17 who conducted autopsy over the dead body opined that the death was due to shock and haemorrhage due to the injuries which were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. This conclusion of the learned Sessions Judge based on the evidence of PW17 has not been assailed in any form. The defence put forth by the accused persons was a denial of prosecution allegation. The accused persons had taken the plea that it is Mahipal, Chand Ram, Chander Deep and Rajbir who were armed with lathi and sharp edged weapons and caused injuries to accused Chander Pal, Mohinder Singh and Parbati, who in self defence of their person have caused the injuries on Mahipal, Chander Deep, Chand Ram and Rajbir. The learned Sessions Judge came to the conclusion that accused Balbir, Ram Kishan and Ram Sarup were not present at the spot and they were named later on to falsely implicate them from the side of the accused. He also came to the conclusion that accused Ram Sarup an aged man of 90 years, hardly steady on his legs cannot be believed to have given jelly blow on Mahipal and, therefore, serious doubts exist on his presence at the time of occurrence and as such acquitted them of all the offences charged with. But notwithstanding the fact that the eye witnesses PWs 5, 6 and 7 had made improvement to their statements made before the Police under Section 161 Cr.P.C., the learned Judge was of the opinion that such improvements do not go to the root of the prosecution story and as such are of very minor nature and consequently, the witnesses can be relied upon so far as they deposed about the role played by the rest six accused persons. With these conclusions and having considered the evidence of the three eye witnesses and the role ascribed by them to the six accused persons, the six accused persons were convicted by him for the offences as already indicated.

- The High Court in appeal, re-appreciated the entire evidence on record and came to the conclusion that the motive alleged by the prosecution that Sarpanch Rameshwar had a grudge against Mahipal, as he was the instrumental

in not getting the quorum in the meeting of the Panchayat has not been established by the prosecution and on the other hand the defence version as given by the accused Chander Pal in his report to the Police at 7.30 P.M., hardly two hours after the occurrence appears to be more probable and consequently the entire episode took place on account of annoyance created by Mahipal in indulging in abusing under the influence of liquor. Disagreeing with the learned Sessions Judge, the High Court came to the further conclusion that it was the bounden duty of the prosecution witnesses to explain the injury on the person of the accused. The High Court also was of the opinion that the occurrence did not take place in front of the house of Mahipal as alleged by the prosecution but at a distance of 110 feet from the said place when the deceased had given a chase to accused Rameshwar. But the High Court further came to the conclusion that even if accused Rameshwar was being chased by Mahipal and it is that point of time he inflicted the blows on the deceased, but they cannot claim a right of private defence of persons and exception 4 to Section 300 IPC applies, which is apparent from the nature of the injuries on the deceased. The High Court on an analysis of the evidence also was of the view that in view of the sudden fight, the provisions of Sections 148/149 or Section 34 IPC could not be attracted. Besides the conviction of all accused under Sections 323, 324 and 325 read with Section 149 is not sustainable as the element of voluntariness is lost in case of sudden fight. Therefore, the High Court acquitted three of the accused persons and convicted the three appellants of the charge under Section 302 IPC so far as appellant Suresh and Mohinder are concerned and convicted the appellant Chander Pal under Section 304 Part I IPC.

Mr. U.R. Lalit, the learned Senior Counsel, appearing for the appellants contended before us that on the basis of the evidence of the eye witnesses, major part of the prosecution case having been disbelieved, both with regard to the motive as well as the sequence of event as unfolded through the witnesses and seven out of 10 accused persons having been acquitted, it would be unsafe to convict the three appellants on their evidence. Mr. Lalit further contended that in view of the finding of the High Court that it is the accused Rameshwar, who was being chased by the deceased Mahipal and at that point of time the three appellants had inflicted the blows on the deceased, the conclusion that the right of private defence will not be available is erroneous. More so when each of the appellants have been stated to have given one blow each on the deceased, Mr. Lalit also contended that even if the court comes to a conclusion that the accused appellants exceeded their right of private defence by giving the blows on the deceased but taking into

A account the sequence of events as accepted by the High Court and taking into account the number of blows alleged to have been given by the appellants, the conviction can only be under Section 304 Part I, IPC and for such conviction, sentence should not be more than seven years in any event.

B Mr. Prem Malhotra, learned counsel appearing for the respondent on the other hand contended that it is no doubt true that six of the accused persons have been acquitted by now but their acquittal is on account of benefit of doubt having been given and the testimony of the eye witnesses cannot be totally ignored on that score, particularly when the witnesses themselves are injured. According to Mr. Malhotra, the injuries on the accused  
C persons are such that even if the prosecution has offered no explanation for the same, the prosecution case will not fall on that score. Mr. Malhotra further submitted that in view of the positive role ascribed to these appellants, the High Court was fully justified in convicting them of the charges under Section 302 so far as the first two appellants are concerned and Section 304 Part I, so far as the third appellant is concerned and there is no infirmity in  
D the same.

Having considered the rival submissions at the bar and having scrutinised the impugned Judgment of the High Court and the findings recorded thereon, there is ample force in the submission of Mr. Lalit,  
E appearing for the appellants. It was possible for the prosecution to argue that the conviction can be sustained on the evidence which have not been relied upon by the High Court but such a step has not been taken and Mr. Malhotra has not advanced any argument on that score. But at the same time, we cannot lose sight of the fact that some of the findings arrived at by the High Court on the face of it, is wholly unsustainable. But we are not examining  
F the same in depth as there has been no appeal against the acquittal recorded by the High Court even as against the appellants of all other charges. This being the position, we have ourselves examined the evidence of the eye witnesses to find out whether the role ascribed by them to these three appellants of having given blows on the deceased can at all be accepted or  
G the entire evidence has to be discarded as contended by Mr. Lalit. Having scrutinised the same with utmost care and bearing in mind the medical evidence as unfolded through the doctor who has conducted the post-mortem examination on the dead body of the deceased Mahipal, which in our view corroborates the ocular statements of the three eye witnesses, we are unable to persuade ourselves to agree with the submission of Mr. Lalit that the  
H entire evidence should be discarded notwithstanding the fact that the role

ascribed as against other accused persons have not believed and seven A  
 accused persons have been acquitted and even the motive alleged by them  
 has not been believed. In our considered opinion, therefore, the ocular  
 statement of the eye witnesses ascribing a particular role to the appellants in  
 the matter of giving blows on the deceased by different weapons can be  
 accepted and we find no infirmity in the impugned Judgment of the High B  
 Court in accepting the same. The question, further remains for consideration  
 is whether the accused can claim a right of private defence of person when  
 their case has been believed by the High Court that while Rameshwar was  
 being chased by Mahipal, the appellants who happened to be related to  
 Rameshwar, came to the spot on hearing the Hullah, gave the three blows in  
 question. In appreciating this contention one thing must be borne in mind C  
 that the theory of chasing may not have much significance in view of the  
 distance between the house of Mahipal and the accused persons, which is  
 hardly 56 paces, but all the same the positive finding of the High Court that  
 the occurrence did not take place in front of the house of Mahipal as alleged  
 by the prosecution witnesses cannot be lost sight of. As has been stated D  
 earlier, the injuries found on the person of the accused persons were not that  
 serious though the injury on Mohinder was an incised wound and could not  
 have been lost sight of by the prosecution witnesses. However for non  
 explanation of such injuries on accused persons the entire prosecution case  
 cannot be thrown out.

The deceased, on the other hand had five incised wounds on his person E  
 on the front to parietal, temporal and temporo occipital region of the skull  
 and two abrasions and a bruise. Even if we accept the finding of the High  
 Court that the accused appellants assaulted the deceased while being chased  
 by the deceased Mahipal but in consideration of the injuries on the deceased,  
 the conclusion is inescapable that the accused persons exceeded their right F  
 of private defence while giving the blows on the deceased. Having taken into  
 consideration of all the aforesaid circumstances and the infirmities noted  
 earlier, we are of the opinion that the conviction of the appellants Suresh and  
 Mohinder under Section 302 IPC cannot be sustained. We, accordingly, acquit  
 them of the charge under Section 302 IPC and instead convict them under G  
 Section 304 Part I, IPC. The conviction of the accused appellant Chander Pal  
 under Section 304 Part I is maintained and for such conviction, we sentence  
 all of them to undergo rigorous imprisonment for seven years. This appeals  
 are allowed to the extent indicated above.