

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-897-DB of 2009

DATE OF DECISION: JANUARY 20, 2015

RAM PHAL & OTHERS

...APPELLANTS

VERSUS

STATE OF HARYANA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. SURENDER DESWAL, ADVOCATE FOR THE APPELLANTS.
MS. TANISHA PESHAWARIA, DAG, HARYANA.

M. JEYAPPAUL, J.

1. Accused Ram Phal, Naveen Kumar and Satyawar preferred the present criminal appeal challenging the conviction recorded by the trial Court under Sections 302 read with Section 34 and Section 323 read with Section 34 IPC.

2. Accused Ram Phal had died on 11.8.2011. Death Certificate also was produced by the learned DAG, Haryana. By virtue of the order passed by this Court on 7.1.2015, in the above facts and circumstances, the appeal qua appellant Ram Phal stood abated.

3. It is the case of the prosecution that on 14.8.2007 at about 1.00 p.m., PW2 Sunil Kumar and PW3 Jaibir having come all the way from Delhi on hearing that a quarrel had taken place in the morning on account of draining of the dirty water in front of the house of their brother Satbir, proceeded to the house of accused Ram Phal where he alongwith his sons,

Naveen Kumar and Satyawar attacked PW2, PW3 and deceased Satbir. Accused Satyawar attacked Satbir on his head with a spade and caused his death.

4. PW2 Sunil Kumar and PW3 Jaibir, brothers of deceased Satbir, have deposed in one voice that there was a quarrel on 14.8.2007 at about 9.00 a.m. between accused on one side and deceased Satbir, his wife and his mother on the other, due to filth being drained in the drainage canal running in front of the house of the deceased. On receipt of a telephonic message, PW2 and PW3 came down to the village of the deceased and after taking tea in the house of the deceased, they proceeded to the house of Ram Phal where Ram Phal was standing outside his gate. PW2 informed Ram Phal that it was not appropriate to pick up quarrel on day to day basis with his brother's wife and mother. Ram Phal started abusing him. In the meantime, accused Naveen Kumar and Satyawar armed with spades came out from their house. Accused Ram Phal also was armed with a jelly. Ram Phal caught hold of the neck of PW2 and slapped him. PW3 alongwith other villagers arrived at the spot. Accused Satyawar rushed towards deceased Satbir armed with a spade and attacked him on his head. Accused Naveen armed with a spade attacked Jaibir on his knee. Satbir fell down and started bleeding from his nostrils and ears.

5. Satbir was admitted to hospital for treatment, but he died on 16.8.2007 due to the injuries he sustained.

6. PW10 ASI Braham Parkash conducted inquest on the dead body of Satbir and prepared the inquest report.

7. PW13 Dr.Manoj conducted post mortem examination on the

dead body of Satbir on 17.8.2007. He found a lacerated wound present over the tongue by a tooth bite. He also noted that there was haematoma present over the fronto-parieto temporal region with fracture of bilateral temporo-parietal bone. He opined that Satbir had died due to coma as a result of the head injury consequent upon blunt force impact. Both the injuries were certified as ante mortem in nature and sufficient to cause death in the ordinary course of life.

8. PW12 SI Hari Singh arrested accused Naveen who was produced by Ram Kumar on 18.8.2007. He was interrogated by PW12. On the basis of the disclosure statement Ex.P16 suffered by accused Naveen, a spade which was kept concealed under a heap of wheat in one of the rooms of his house was recovered. Accused Satyawar was arrested on 20.8.2007 on being brought by Ram Kumar. On interrogation, he also suffered disclosure statement Ex.P19. Based on the disclosure statement, a spade was recovered from a room on the first floor of his house.

9. Accused Satyawar submitted in his statement under Section 313 Cr.P.C. that on 14.8.2007, there was a quarrel among ladies hailing from his house and the house of PW2 Sunil Kumar over draining dirty water in the drain running by the side of the street. During noon time, PW2 Sunil Kumar, PW3 Jaibir and deceased Satbir came to their house armed with spade. They having hurled filthy abuses, attacked all the three accused. Satbir administered a spade blow from the sharp side on the head of Satyawar. When Satbir tried to hit him again, accused Ram Phal realizing the gravity of the situation and also to save the life of Satyawar gave spade blow from its blunt side on the head of Satbir. Though he

received a blow inside the house, he fell down outside the house. Satyawar was admitted to the hospital and took treatment for 6 days. It was further submitted by him that a false case has been foisted on him and the other family members based on tainted version. Accused Naveen has submitted in his statement under Section 313 Cr.P.C. that he was innocent, but he was falsely implicated in this case. The complainant party attacked them while entering into their house. The investigating officer conveniently changed the place of occurrence. On the side of the defence, DW1 Dr.Kumud Sharma was examined. He medico-legally examined accused Satyawar on 14.8.2007 and found the following injuries on the person of Satyawar:-

- “1. An incised wound of the size 5cm x 1.5cm x bone deep on the left parietal region. Hair pulb were cut and bleeding was present. X-ray was advised.*
- 2. An incised wound of the size 4 x 1.5 cm x bone deep on the left occipital region. Hairs pulb were cut and bleeding was present. X-ray was advised.*
- 3. Abrasion of the size 1 cm x 1 cm on the left sternomastoi process just behind the left ear.*
- 4. Complain of pain on all over the body.”*

10. He declared injuries No.3 and 4 simple in nature. He certified that injuries No.1 and 2 had been caused by a sharp edged weapon. As x-ray report was not produced before him, he could not ascertain the gravity of the injuries No.1 & 2 noted on the person of Satyawar.

11. The trial Court having adverted to the evidence on record came to the conclusion that accused Naveen attacked PW3 Jaibir with a spade on

his left knee and caused simple injury. The other accused also shared common intention. Accused Satyawar armed with a spade attacked Satbir and caused his death and the intention to cause his death was shared by the other two accused.

12. Learned counsel appearing for appellants Naveen and Satyawar would vehemently submit that four injuries sustained by accused Satyawar were not explained by the prosecution. The very fact that accused Satyawar had sustained injuries would go to establish that he was in a position to protect himself by exercising his right of private defence. He would further submit that the trial Court had not properly adverted to the evidence of DW1. The facts and circumstances of this case would go to establish that accused Satyawar had caused injury only to protect himself. The trial Court has committed an error in not accepting the defence set up by the accused in the above background of this case. It is his further submission that no MLR was produced, nor was the Doctor who issued the MLR examined to establish that PW3 Jaibir sustained any injury. Therefore, he prays for acquittal of the accused.

13. We heard the submissions made by learned DAG, Haryana supporting the conviction and sentence recorded by the trial Court.

14. The accused have unambiguously admitted the occurrence which culminated in the death of Satbir. The prosecution would contend that PW2, PW3 and the deceased had not launched any attack on the accused which gave rise to any right of private defence. Whereas the accused would contend that Satyawar was mortally attacked by deceased Satbir and under such grave circumstances, Ram Phal father of accused

Satyawan, attacked Satbir with a spade from its blunt side.

15. It is an admitted fact that both the parties had clashed in the morning on 14.8.2007 by exchanging abusive language on account of the dirt being drained in the drainage canal running in front of the house of deceased Satbir. The evidence of PW2 and PW3 would go to establish that PW3 Jaibir sustained an injury on his knee at the hands of accused Naveen.

16. It is true that no medico-legal report was produced to establish that Jaibir sustained an injury on his left knee at the hands of Naveen. We find that Jaibir was with his brother Satbir right from 14.8.2007 to 16.8.2007, till he died in the hospital. No wonder, no medico-legal report had emerged to show that there was an injury sustained by Jaibir. But in the face of evidence of PW2 and PW3, we have no hesitation to hold that accused Naveen infact attacked Jaibir and caused injury on his left knee. Non-production of MLR to establish the injury sustained by Jaibir does not mitigate the charge under Section 323 IPC slapped on accused Naveen.

17. The evidence of DW1 Dr.Kumud Sharma would go to establish that accused Satyawan had sustained four injuries. The accused have not established that two of the injuries sustained by accused Satyawan were grievous in nature. In the absence of such an opinion by the Doctor concerned, we can safely presume that accused Satyawan had sustained simple injuries. Two injuries had been sustained by him on the head. Those injuries also were found to be only bone deep. In other words, just for sake of causing an injury, it appears that the complainant had launched an attack on accused Satyawan. At any rate, in view of the evidence of DW1 we are not in a position to accept the case of the prosecution that the complainant

party had no connection with the injuries found on the person of Satyawar.

18. By examining DW1, Dr.Kumud Sharma and exhibiting an MLR on the side of the defence, the accused had established that the complainant party also had come to the scene of occurrence with sharp edged weapons and attacked the accused party and caused injury to accused Satyawar. Under such circumstances, accused-appellants have a right of private defence as contemplated under Section 97 of the IPC. Further, it is not a case where private defence was not set up by the accused during the course of trial. Even under such circumstances, the Court can evaluate the evidence on record and come to a conclusion as to whether right of private defence was exercised by the accused. But in the instant case, accused Satyawar specifically set up a plea of private defence in his statement under Section 313 Cr.P.C.

19. The next question that arises for consideration is whether accused Satyawar who received simple injuries at the hands of deceased Satbir had inflicted more harm than it was necessary to inflict for the purpose of defence as contemplated under Section 99 of the IPC.

20. An accused may be having a reasonable apprehension on account of the assault he received that death or grievous hurt will be the consequence of such assault. Under such circumstances, the accused has a right to even cause the death of the assailant in exercise of his right of private defence as per the scope of Section 100 IPC.

21. In the instant case, it has come to light that deceased Satbir had caused only simple injury on the person of Satyawar. Accused Satyawar could have caused grievous injury to Satbir in order to protect himself. But

unfortunately, he had caused a lethal injury on the head of Satbir which resulted in his death. In the above facts and circumstances, we are of the considered view that accused Satyawar, though he had a right of private defence, exceeded his right and inflicted more harm than it was required to protect himself by exercising the right of private defence.

22. It was vaguely submitted by accused Satyawar that it was only Ram Phal who caused the lethal injury on the person of Satbir to protect accused Satyawar. We are not in a position to buy such a defence set up by Satyawar. Accused Ram Phal was an age old man. He had almost lived his life. But accused Satyawar had a long length of life. Therefore, Ram Phal had been purposely projected by the accused as one who retaliated the attack launched by deceased Satbir on accused Satyawar. Based on the evidence of PW2 and PW3, we have no hesitation to conclude that it was only Satyawar who retaliated in the exercise of his private defence and exceeded the limit of private defence available to him.

23. Let us now take up the issue as to whether accused-appellant Naveen also shared common intention with accused Satyawar. The murderous attack was launched by accused Satyawar on deceased Satbir only in exercise of his private defence. Had he not been attacked, deceased Satbir would not have received the fatal injury at the hands of Satyawar. Further, the occurrence had taken place in front of the house of the accused. Rather, the complainant party had invited the occurrence by going all the way to the house of accused Ram Phal. Under such circumstances, accused Naveen and accused Satyawar would not have shared the common intention either to cause injury to PW3 Jaibir or to cause death of Satbir. Even

otherwise, the question of sharing common intention in a case where private defence was exercised does not arise for consideration at all.

24. For all these reasons, the judgement of conviction and sentence recorded by the trial Court is modified as follows:-

Accused Naveen is convicted only under Section 323 IPC and is sentenced to undergo 1 year R.I. The records would show that he had already undergone more than 4½ years of imprisonment. He is on bail. Therefore, his bail/surety bond stands discharged. Appellant Satyawar is convicted only under Section 109 read with Section 304 Part I IPC and sentenced to undergo 7 years R.I. and to pay a fine of ₹2000/- and in default, to undergo a further period of 3 months rigorous imprisonment.

25. The accused-appellant Satyawar is on bail. His bail bond stand cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Jhajjar. If he fails to surrender, the learned Chief Judicial Magistrate, Jhajjar shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

(M. JEYAPPAUL)
JUDGE

January 20, 2015
Gulati

(DARSHAN SINGH)
JUDGE