

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Crl. Appeal No.S-1942-SB of 2003(O&M)**

**Date of Decision: 19.10.2016**

**\*\*\***

**Boota Ram @ Boota Singh & Anr.**

**.. Appellants**

**Vs.**

**State of Haryana**

**.. Respondent**

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

**Argued by:- Mr. Saurabh Arora, Advocate-Amicus Curiae  
for appellant Boota Ram @ Boota Singh.**

**Appellant No.2 Chaman Lal already  
died.**

**Mr. Sandeep Vashisth, DAG Haryana.**

**\*\*\***

**ANITA CHAUDHRY, J.**

The instant appeal was filed by appellants Boota Ram @ Boota Singh and his father Chaman Lal(since deceased) challenging the judgment of their conviction and order dated 17.09.2003 vide which they were held guilty under Sections 307, 323, 324, 452 and 498-A IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.20,000/- under the first head. In default of payment of fine, they were sentenced to further undergo rigorous imprisonment for one year. They were further sentenced to undergo rigorous imprisonment for one year, three years and seven years under Sections 323, 324 and 452 IPC respectively. For offence under Section 498-A IPC, they were awarded rigorous imprisonment for three years and to pay a fine of Rs.10,000/- each. In default of payment of fine, they were sentenced to further undergo rigorous imprisonment for six month. All the sentences were ordered to run

concurrently. The appellants were acquitted of the charges under Section 506 IPC.

During pendency of the appeal, Chaman Lal-appellant No.2 had died and appeal qua him had abated.

The facts of the case are noticed first.

On 09.11.2001 an information regarding admission of injured Pushpa, Reena and Antaryami in Government Hospital, Sirsa was received. The police had arrived to record their statement, but they were declared unfit to make statement. On the next day i.e. 10.11.2001, after obtaining the opinion regarding their fitness, statement of injured Pushpa was recorded. She disclosed that her marriage was solemnized with Boota Ram on 07.12.1997, her father had given sufficient dowry and more than his capacity. Her husband and father-in-law Chaman Lal were not happy with it and they started taunting and gave beatings to her under the influence of liquor and raised demand of Rs.1 lac. A Panchayat was convened and her father gave a buffalo to the accused. On the birth of a child the accused demanded a scooter. She expressed her inability on account of other responsibilities of her father. She was beaten and turned out of the house. She had been living with her father for the past two months.

On 09.11.2001 her husband and father-in-law came to her parental house. At that time, her mother, sister Reena and brother Antaryami were present. Boota Ram was holding a knife and he inflicted a blow in her abdomen. She raised alarm, upon which her sister Reena came there. Boota Ram inflicted blows which hit on the left side of the nose and right knee of Reena. Her father-in-law Chaman Lal exhorted to teach a lesson to them as she was living at her parents house and was not bringing the scooter. In the

meanwhile, her brother Antaryami came there and her father-in-law after taking a knife from Boota Ram, inflicted blows upon Antaryami which hit on back of his neck, waist region and left hip. Her mother raised alarm and the accused fled from the spot with the knife.

On the basis of aforesaid statement, FIR No. 91 dated 10.11.2001 was registered under Sections 323, 324, 452, 498-A and 506 read with Section 34 IPC and investigated. Injury on the abdomen of Pushpa was declared dangerous to life and Section 307 IPC was added. Boota Ram was arrested on 17.11.2001. He got the knife recovered which was used in the offence. Dowry articles were also recovered from the accused. Accused Chaman Lal was arrested on 29.12.2001. The injury on Antaryami was declared grievous and Section 326 IPC was added. On completion of investigation, challan was filed against the accused.

Charge under Sections 307, 323, 324, 452, 498-A and 506 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

At the trial, the prosecution produced ten witnesses. PW1 complainant Pushpa, PW2 Antaryami and PW3 Radhey Sham, the Draftsman had prepared the scaled site plan of the place of occurrence; PW4 Jagdish Chander tendered his affidavit Ex.PC; PW5 HC Ramesh Kumar had delivered the special report to the Illaqa Magistrate; PW6 Dr. Dilu Singh had medicolegally examined the injured Antaryami, Pushpa and Reena; PW7 Dr. Ashok Kumar Gupta had radiologically examined the injured Antaryami; PW8 ASI Jagdish Chander was the investigating officer of the case; PW9 HC Karan Singh had tendered affidavit Ex.PR and PW10 Dr. Ashwani Kumar Chaudhary treated the injured Antaryami on 20.11.2001

and he operated the patient on 21.11.2001.

In their statements recorded under Section 313 Cr.P.C., the accused pleaded false implication.

Accused Chaman Lal took the plea of alibi and had stated that at the time of occurrence he was working in the fields of Sarwan Singh along with Baltej Singh and Banwari Lal.

Accused Boota Ram took the following plea:-

*"I am innocent. Police has falsely implicated me in this case. From the date of marriage, my wife did not like me and accept me as her husband due to my less beauty. From the wedlock of Pushpa and mine, a boy was born who is deaf and dumb. My grand mother is blind and my father is old. My wife asked me to separate from my parents and grand mother about six months before the alleged occurrence. In order to settle my family, my mother parents separated from me and since then they are residing separately. After about four months of separation from the father, my wife left my house and asked me that she would never come and she want divorce and my wife left her son who is deaf and dumb, aged about 5 years in my custody at Dabwali. On the date of alleged occurrence, I went to my in-laws house to take my wife back to my house after making request. I reached there at about 10.00 a.m. and my wife and other family members asked me to sit in the 'baithak'. Then my father-in-law came there at about 11.00/12.00 a.m. on the said date and my wife and my father-in-law conspired with each other in other room and then my father-in-law came to the 'baithak' and asked me to give divorce to her daughter Pushpa. I refused to do so so. Then my father-in-law gave a 'lathi' blow to me. Then I ran towards the courtyard. I was caught hold by Anteryami and he squeezed my testicles after catching*

*the same. During this process, my wife Pushpa Devi and her sister came to me. Pushpa Devi was armed with a knife. She assaulted me with a knife. I snatched the same and caused a simple blow to Anteryami in order to get it off from him as he had held my testicles. When I tried to run away, Pushpa Devi daught hold me by hairs and my father-in-law gave a 'lathi' blow to me. In order to save myself and to get it off from Pushpa, I gave a simple injury with knife (which is used for cutting vegetables). On this way, I succeeded in running away from the house of my in-laws. Other family members Reena etc. also gave fist and slap blows to me. My father was not with me. I was alone. Complainant party aggigrated(?) the injuries with the help of doctor. I caused simple injuries only to save myself in my defence. My son is deaf and dumb and now he is in custody of my mother and she is rearing my child. The knife has not been recovered from me. It has been purchased by the complainant party after the occurrence and planted upon me. I left the knife which belonged to Pushpa and other (which was snatched from her) at their house at the time of running away from there.”*

In defence they had examined Baltej Singh and Banwari Lal. Both of them deposed that on the day of occurrence, Chaman Lal was working with them in the fields.

The trial Court convicted and sentenced the appellants in the manner indicated above.

Dis-satisfied with the same instant appeal has been filed.

The Amicus Curiae appearing for the appellant Boota Ram had urged that the injury on Pushpa was attributed to the appellant which at the most would fall under Section 326 IPC as the occurrence had taken place in

the spur of the moment and it was not pre-planned and there was no intention on the part of the appellant to inflict injuries. Elaborating his arguments, he had urged that only simple injuries were caused by the appellant that too in self defence and the blow was not repeated. He had further urged that the prosecution had failed to examine injured Reena and the case of the prosecution rested upon the testimony of PW1 Pushpa and PW2 Antaryami, who were closely related and no independent person was examined.

Learned State counsel had supported the judgment and had submitted that the trial Court had rightly appreciated the evidence on record and convicted and sentenced the appellant.

The occurrence is not in dispute. The dispute is regarding the genesis of the incident. Appellant Boota Ram in his 313 Cr.P.C. statement admitted the occurrence and took the stand that only simple injuries were inflicted by him in self defence as he found himself in a situation that it became necessary to retaliate, to save himself and it was in self defence.

The basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with danger and immediate aid is not readily available, then that individual is entitled to protect himself and his property. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger not of self creation. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. When there is real

apprehension that the aggressor might cause death or grievous hurt, in that event the right of private defence of the defender could even extend to causing of death. At the same time, it is also settled position of law that a right of self-defence is only right to defend oneself and not to retaliate. It is not a right to take revenge. The burden of establishing that plea is on the accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of materials available on record.

[In Buta Singh v. The State of Punjab](#) (1991) 2 SCC 612, the Hon'ble Apex court noted that a person who is apprehending death or bodily injury cannot weigh in golden scales in the spur of moment and in the heat of circumstances, the number of injuries required to disarm the assailants who were armed with weapons. In moments of excitement and disturbed mental equilibrium it is often difficult to expect the parties to preserve composure and use exactly only so much force in retaliation commensurate with the danger apprehended to him where assault is imminent by use of force, it would be lawful to repel the force in self-defence and the right of private- defence commences, as soon as the threat becomes so imminent. Such situations have to be pragmatically viewed and not with high-powered spectacles or microscopes to detect slight or even marginal overstepping. Due weightage has to be given to, and hyper technical approach has to be avoided in considering what happens on the spur of the moment on the spot and keeping in view normal human reaction and conduct, where self-preservation is the paramount consideration. But, if the fact situation shows that in the guise of self- preservation, what really has been done is to assault the original aggressor, even after the cause of reasonable apprehension has

disappeared, the plea of right of private defence can legitimately be negatived.

The aforesaid principles have to be weighed in the light of evidence that has come on record.

PW1 Pushpa had deposed that she was married to appellant Boota Ram on 07.12.1997 and after some months of the marriage, demand of cash and dowry was raised. Her husband demanded Rs.1 lac and she was beaten. A panchayat was convened and matter was settled and a buffalo was given. She gave birth to a male child and a scooter was demanded on the occasion. She protested, as a result of which she was turned out from the matrimonial home about two months prior to the occurrence. She further deposed that on 09.11.2001 when she was at her parents' house, then Boota Ram and his father Chaman Lal came. Boota Singh was armed with a knife and he opened the attack and inflict injury on her abdomen. She cried for help, upon which Reena and Anteryami came there. Appellant then attacked Reena and inflicted blows on her face and left knee. Her father-in-law took the knife from Boota Ram and inflicted injuries upon Antaryami and fled from the spot.

PW2 Antaryami deposed on the same lines. He had stated that after two months of the marriage of his sister, there were demands of more dowry and his sister was turned out of the house two months before the occurrence. He further deposed that on 09.11.2001 appellant Boota Ram armed with a knife came to their house and straightway gave a blow in the abdomen of Pushpa and then assaulted Reena on her face and leg. Thereafter, Chaman Lal took the knife from Boota Ram and started inflicting blows on his backbone and hip region. He became unconscious.

He deposed that due to injuries, he had become permanent disabled

As noticed above, the appellant took the plea of self defence for the first time in his statement under Section 313 Cr.P.C., while the suggestion which was put to the injured was that the appellant had not caused any injury to them. It was nowhere suggested to them that the injuries were caused by the appellant in self defence or that the injured were the aggressors and to cope up with the situation, the appellant had to inflict injuries for his survival. He failed to prove that the complainant side had created such a grave situation under which it had become necessary for him to use the force. He even failed to show that he had sustained any injury as alleged in the statement under Section 313 Cr.P.C., rather he fled from the spot and evaded his arrest till 17.11.2001. There is nothing on record which is suggestive of the fact that the complainant party was the aggressor. The evidence of injured suggests that on coming to the house of complainant, the appellant opened attack with knife which he was carrying.

At this juncture, it is necessary to refer to the evidence of PW6 Dr. Dile Singh, who had examined the injured Antaryami and found the following injuries:-

- “1. There was a stab wound of 3.15 cm X ¼ cm, probing was not done. It was on back of chest inter scapular area, on vertible column. Clean cut smooth margines. Fresh bleeding was present. X-ray was advised and ortho surgeon and Surgeon's opinion was advised.*
- 2. Stab wound of 2-1/4 cm X ¼ cm X probing was not done on left buttock (glutial region). Smooth clean cut margins. Fresh bleeding was present. Surgeon's opinion was sought.*
- 3. There was complaint of pain at lambo sacral*

*region on vertible column. X-ray was advised and ortho surgeon's opinion was sought.”*

On medical examination of Pushpa, following injuries were noticed:-

*“1. An incised wound of 1.2” X 1” across abdominal wall. Momentum and small intenstines protruding from the wound. Clean cut smooth margins. Fresh bleeding was present. Surgeon's opinion was sought.”*

Injured Reena was found having the following injuries:-

*“1. There was incised wound of 2-1/4 cm X ¼ cm X muscle deep on left side of nose laterally clean cut smooth margins. Fresh bleeding was present. X-ray was advised.*

*2. Complaint of pain abdomen with history of fist blow.”*

The injury of Pushpa was declared dangerous to life. One injury was there on Reena, apart from complaint of pain and Antaryami was having two injuries and a complaint of pain at lambo sacral region on vertible column. The injuries were stated to be caused with sharp edged weapon. From the above nature of injuries, it is apparent that the appellant had thrashed all the family members, one after the other. As noticed above, he failed to show that he had received any injury in the occurrence. Antaryami was just fourteen years old at the time of occurrence. It cannot be believed that he prevented the appellant Boota Ram from running away from the house. The evidence on record suggest that he trespassed into the parental home of the complainant and was armed with a knife, which was recovered after his arrest on 17.11.2001. The possibility of injuries on the person of Pushpa and Antaryami by the same knife was not ruled out by Dr.

Dile Singh.

The witnesses specifically deposed about the maltreatment of Pushpa at the hands of appellant and his father for bringing more dowry. It has also come on record that at one point of time, a buffalo was given, but the accused were not satisfied with it and the complainant was turned out of her matrimonial home after being beaten. It is also not in dispute that the complainant was living at her parental home at the time of incident. Both the witnesses deposed about the manner in which the appellant and his father inflicted injuries. The medical evidence corroborates the ocular version. Non-examination of Reena is not fatal to the prosecution because her presence is not disputed by the appellant in his statement under Section 313 Cr.P.C. and injuries on her person are duly proved by Dr. Dile Singh. The incident took place in the house and the non-examination of independent witness, who had come at the spot after the occurrence is not of much significance especially when the injured are specific about the role assigned to the appellant and causing injuries is not disputed by the appellant. The evidence of the injured witnesses are trustworthy and credible, there is no reason not to rest the conviction on the basis of their evidence. It is the quality of evidence that matters and not the quantity. The appellant failed to prove that the complainant side had created such a grave situation under which it had become necessary for him to use the force. The plea of self-defence is just an after-thought. The stand taken by learned counsel that he has not repeated the blow and thus Section 307 IPC was not attracted is also not sustainable. It has come in the evidence of injured that as soon as he had inflicted injury upon complainant Pushpa, her sister Reena came to her rescue and appellant Boota Ram started giving injuries to Reena

and thereafter the knife was taken by Chaman Lal and the sequence of event suggest that there was no occasion with the appellant to repeat the blow upon Pushpa. The defence evidence led by the accused primarily relates to the plea of alibi raised by appellant Chaman Lal, who has since died and thus, no further discussion is required.

The inevitable conclusion of the aforesaid discussion is that the evidence of prosecution witnesses had been correctly appreciated by the trial Court while recording conviction of the appellant for harassing the complainant for bringing additional dowry and for causing injuries to Pushpa and Reena by trespassing into the house of complainant. The injury of Pushpa was declared dangerous to life. There is no reason to take a different view.

The appeal is dismissed. The conviction and sentence of the appellant Boota Ram is maintained. His bail bonds and surety bonds stand cancelled. Appellant Boota Ram is directed to surrender before the Court of CJM concerned within six weeks from today to undergo the remaining part of the sentence. In case he fails to surrender before the Court within the stipulated time, the CJM would take appropriate steps to procure his presence. A copy of this order be sent to the CJM concerned for compliance.

**October 19, 2016**  
**Jiten**

**(ANITA CHAUDHRY)**  
**JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No