

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

Crl. Appeal S-1373-SB of 2003

Date of Decision : May 16, 2017

Krishan Kumar and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present : Mr. Mehtab Khaira, Advocate for
Mr. Hemant Bassi, Advocate
for the appellants.

Mr. Kapil Aggarwal, Addl. A.G., Haryana.

Mr. Rajesh Lamba, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants, namely, Krishan Kumar, Maha Singh and Ram Partap, sons of Moman Ram, alongwith five others, namely, Ram Kumar, Ram Sarup, Ram Pal, Moman Ram and Raj Kumar were charge-sheeted for the offences punishable under Sections 148, 302/149, 307/149 and 323/149 IPC. Vide judgment and order dated 24/27.5.2003, learned Additional Sessions Judge, Fatehabad acquitted Ram Sarup, Moman Ram, Raj Kumar, Ram Pal and Ram Kumar of the charge against them.

The appellants were, however, convicted under Section 304 Part I read with Section 34 IPC and sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. The period, if any, already undergone by them in jail during the trial of the case was to be set off against the sentence awarded to them.

Aggrieved of their conviction and sentence, the appellants filed the instant appeal which was admitted on 1.8.2003. Subsequently, vide order dated 1.9.2003, this Court had suspended the sentence of imprisonment of the appellants and released them on bail.

According to the prosecution, Dana Ram, father of complainant Surender and Pala Ram are two brothers from different mothers. They are sons of Devat Ram, Dana Ram, father of the complainant took birth from the womb of Smt.Rukma while Pala Ram, uncle of the complainant took birth from the womb of Parvati, Devat Ram, grand-father of the complainant was having 83 acres of land out of that, 25 acres of land fell to the share of the complainant, 25 acres of land fell to the share of his uncle Pala Ram and remaining 33½ acres of land was willed by Devat Ram in favour of Pala Ram. Father of the complainant filed a civil suit challenging the Will. The Will was set aside. Out of the above land, 10 acres of land was transferred vide civil court

decree by Smt. Parwati to Smt.Dharmo, the aunt of the complainant (Bhua) and remaining 23½ acres of land was transferred by his grandmother in favour of Pala Ram vide civil court decree against which also they had filed a civil suit which was pending in the court. Pala Ram out of this 33½ acres of land exchanged 10 acres of land belonging to Dharmo and 25 acres of land owned by him i.e. total 35 acres of land with accused Moman and Ram Sarup. After this exchange, Pala Ram started cultivating land of Moman Ram and Ram Sarup at village Ahuyian and also started living there. Remaining 23½ acres of land which was transferred vide Civil Court decree was in possession of the complainant. Complainant asked Moman and Ram Sarup to provide him a passage out of 10 acres of land transferred to Smt. Dharmo vide Civil Court decree, but they refused to do so. At this complainant party asked that if they will not provide them the passage, then they will not allow them to cultivate this 10 acres of land. Out of this 10 acres of land situated in between Dhani of the complainant and accused Moman, Moman, etc. cultivated the cotton crop in one acre of land.

It is also the case of the prosecution that on 19.5.97 at about 1.30 AM, complainant Surender, his brother Mani Ram, Rajesh son of Balbir Singh, Rakesh son of Mani Ram, Smt. Surje wife of Mani Ram, Roshni wife of Balbir, Lilawati wife of Mohinder (all sisters-in-law/Bhabhis of the complainant) and Pawan Kumar

son-in-law of the complainant had gone to plough the land of that killa on a tractor No. HR-22-5042. The tractor of Pawan Kumar was also with them. They started ploughing the land of this killa with both the tractors. Then accused Moman, Ram Partap, Maha Singh, Ram Kumar, Ram Sarup and Ram Pal armed with lathis and Krishan son of Moman armed with iron pipe and two other persons, the relatives of above accused were standing at some distance having the guns. Immediately on their arrival, Krishan accused gave blow with iron pipe on Mani Ram, brother of the complainant which hit on his head. Mani Ram fell down. Maha Singh, Ram Partap and Ram Singh carried Mani Ram to their Dhani. At that time, Mani Ram had died. After that two persons, who was standing at some distance, fired shots from their guns and the pellets hit the complainant. After that Ram Kumar and Ram Sarup caused injuries to Smt. Mohra with the lathis. Those two persons fired 2/3 shots from their guns and pellets hit Smt. Roshni, Lilawati, Rajesh, Pawan Kumar and Smt. Mohra. Ram Sarup and Ram Pal also caused injuries with their lathis to Smt. Surjo, Roshni, Lilawati, Mohra. After that members of the complainant party fell down due to the injuries and the accused/assailants ran away from the spot alongwith their weapons. Dead body of Mani Ram, brother of the complainant was lying in the Dhani of accused Moman Ram. After making arrangement of conveyance, injured was brought to Civil Hospital,

Bhattu Kalan.

It is further the case of the prosecution that on receipt of ruqa Ex.PM from the doctor, SI Karan Singh went to Civil Hospital, Bhattu Kalan and moved application Ex.PN seeking opinion of the doctor regarding the fitness of injured persons to make the statements. The doctor gave his opinion Ex.PM/1 declaring them fit to make statements. SI Karan Singh, accordingly, recorded statement Ex.PFF of complainant-Surinder and made his endorsement Ex.PFF/1 followed by sending the same to the Police Station for registration of the FIR on the basis of which formal FIR Ex.PFF/2 was recorded. During the investigation, SI Karan Singh reached the place of occurrence in the Dhani of Krishan in the area of village Jandwala. The dead body of Mani Ram was lying in the verandah. Devender Singh, Photographer reached the spot and took photographs of the dead body. The Investigating Officer then prepared inquest report Ex.PA/1 besides taking into possession the blood lying near the dead body. The dead body was, thereafter, sent for post-mortem. The Investigating Officer inspected the spot and prepared rough site-plan Ex.PLL on the pointing of Rajesh and Lilawati. He recovered blood stained earth from the field of Moman Ram vide recovery memo Ex.PII. Statements of the witnesses under Section 161 Cr.P.C. were recorded.

It is also the prosecution case that on 22.5.1997, the

Investigating Officer reached village Jandwala Bagar where PW Dana Ram met him at Bus stand who was joined in the investigation. He disclosed that wrist watch of the deceased and his identity card was missing. Accused Krishan, Maha Singh, Raj Kumar and Ram Kumar surrendered before the Investigating Officer. Accused Ram Kumar produced one lathi which was taken into possession vide recovery memo Ex.PNN. Accused Raj Kumar produced one single barrel 12 bore gun alongwith five empty cartridges of the same bore and twenty four cartridges of 12 bore besides the arms licence which was taken into possession vide recovery memo Ex.POO. On 24.4.1997, accused Krishan and Maha Singh in pursuance of their disclosure statements Exs.PQQ and PRR respectively got recovered iron pipe and lathi vide recovery memos Exs.PSS and PSS/1. On 25.4.1997, accused Moman Ram surrendered before the police and produced a lathi which was taken into possession vide recovery memo Ex.PUU. On 27.5.1997, the Investigating Officer reached the Dhani of Moman Ram where accused Ram Partap surrendered before him, who in pursuance of his disclosure statement Ex.PJJ got recovered one lathi and wrist watch vide recovery memo Ex.PHH. After completion of investigation, report under Section 173 Cr.P.C. was prepared against accused Moman Ram, Ram Partap, Maha Singh, Ram Kumar, Krishan Kumar and Raj Kumar. However, accused Ram Sarup and Ram Pal were

found innocent. Said Ram Sarup and Ram Pal were later on summoned under Section 319 Cr.P.C. as additional accused. All the accused including the appellants were, thereafter, charged for the offences, as mentioned above, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined sixteen witnesses.

PW1 Dr. Sangeeta Mehta, Medical Officer deposed that she had conducted post-mortem on the dead body of Mani Ram and found the following injuries on his person:-

1. A lacerated wound of the size of 5" x ½" on the middle of the scalp on its parietal area. Clotted blood was present around the wound. On dissection infiltration of blood was present underlying bone was fractured and brain matter was found lacerated.
2. A lacerated wound of the size of 3" x ½" present diagonally on the right parietal area of the scalp. Clotted blood was present around the wound. On dissection infiltration of blood was present underlying the bone which was found fractured and brain matter was found lacerated.
3. A lacerated wound of the size of 2" x ½" present on the right temporal area of scalp. Clotted blood was present. On dissection infiltration of blood was present and underlying bone was found fractured and

lacerated.

4. A diagonal bruise of the size of 7" x 1" on the right lower side of the chest. On dissection infiltration of blood was present and underlying 6th, 7th, 8th ribs were found fractured. A large portion of the liver was found lacerated. Abdominal cavity was containing large amount of blood.
5. A contusion with bruise of the size of 3" x 3" on the middle part of the left leg. On dissection infiltration of blood was found present and underlying muscle was found lacerated and both the bones were found fractured.:

PW2 Dr. Dale Singh, Medical Officer, CHC Bhattu Kalan testified that he had medico-legally examined complainant-Surender, Pawan Kumar, Roshni, Rajesh, Lilawati and Surji. He further deposed that he also medico-legally examined accused Moman Ram and Ram Partap apart from Keshar wife of Moman Ram and Raj Bala.

PW3 Ajit Singh, Assistant in the Office of District Magistrate, Hisar proved arms licence of accused Ram Kumar Ex.P7.

PW4 HC Ram Kishan tendered in evidence his affidavit Ex.PV.

PW5 Constable Sita Ram, another formal witness tendered in evidence his affidavit Ex.PW.

PW6 Constable Mohinder Singh, another formal witness tendered in evidence his affidavit Ex.PX.

PW7 ASI Rishal Singh deposed that he had recorded formal FIR Ex.PA/1 on receipt of ruqa Ex.PA.

PW8 Constable Ram Chander tendered in evidence his affidavit Ex.PY.

PW9 Kailash Chand, Revenue Patwari proved the scaled site-plan Ex.PCC of the place of occurrence which he had prepared.

PW10 Constable Dalip Singh tendered in evidence his affidavit Ex.PDD.

PW11 Constable Mangat Ram tendered in evidence his affidavit Ex.PEE.

PW12 Surrender, the complaint in the case deposed about the occurrence.

PW13 Rajesh son of Balbir Singh, injured witness of the case also supported the prosecution case.

PW14 Devender Singh, Photographer proved photographs Exs.P11 to P15 and their negatives Exs.P9 and P10.

PW15 Inspector Karan Singh deposed about the various steps taken by him during the investigation of the case.

PW16 Lilu Ram deposed about the making of disclosure statements by accused Krishan and Maha Singh leading to recovery of iron pipe and bahi (arm of the cot) in his

presence.

Before closing the prosecution evidence, learned Public Prosecutor tendered in evidence reports of FSL Exs.PVV and PVV/1.

When examined under section 313 Cr.P.C., accused Moman and Ram Partap pleaded that they were in possession of the land. Complainant party had come to forcibly dispossess them from the land in the night time. They started ploughing the land with tractors to uproot and over turn cotton crops near their Dhani. When they tried to stop them, they were attacked with lathis and iron pipes by the complainant party which was aggressor. They retreated to the Dhani and Raj Bala and Keshar came from the Dhani to save them, but they were also injured by the complainant party. That in exercise of right of private defence of person and property, injuries were caused to Mani Ram etc. of the complainant party by accused Ram Partap, Moman Ram, Smt.Raj Bala and Keshar. Pala Ram fired from some distance to save them and to disengage the parties. Surrender etc. in collusion with the police lodged false case against them. The police did not record their version and did not take any action against complainant party. Maha Singh, Krishan, Raj Kumar, Ram Kumar, Ram Sarup and Ram Pal were not present at the spot at the time of occurrence and they have been falsely implicated in this case. Accused Raj Kumar and Maha Singh

pleaded that the complainant party had come to take forcible possession of their land which was cultivated by them and they attacked on them with weapons. His mother, Ram Partap and other members of their family received injuries and in their self defence they have also caused injuries to the complainant party. Remaining accused pleaded that they have been falsely implicated in this case and are innocent. However, the accused did not lead any evidence in their defence.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court while convicting and sentencing the appellants made certain observations which go to the root of the case. Those observations are reproduced here-below:-

“The most vital question for consideration in this case is as to whether the accused persons have exercised the right of private defence of persons and property. Even as per admitted version in the first information Report Ex.PFF/2 nine persons from the side of complainant had gone to the field of the accused in two tractors. In the FIR, it is categorically mentioned that when they started ploughing the land of the accused party where cotton crop was standing, then the accused party came there armed with weapons. Thus, even as per admitted case of the prosecution, complainant party had gone to the field of the accused in the odd hour of the night in a planned manner having two tractors with intention to

over turn the crop of the accused and to create a passage.

Kailash Chander, Patwari has prepared the scaled site plan of the place of occurrence. This witness has categorically admitted in the cross-examination that he has correctly shown point B as the place where the occurrence has taken place and point A where the field was ploughed. He further stated that both these points are situated in rectangle No. 146, Killa No.10. He further admitted that as per jamabandi Ex.DC, killa No. 146//10 was in possession of accused Krishan. He stated that house situated in this killa and shown as gair mumkin house is of Krishan son of Moman (accused) who was entered as owner in possession in the jamabandi. He further stated that as per Khasra girdawaris EX.DD and Ex.DD/1, the possession of this land was with Krishan as co-sharer. This witness has further admitted that there is no path in killa No. 146//10 and the same is not shown in the record as the site plan.

PW12 Surrender complainant has also admitted in the cross-examination that it is correct that accused persons were owners in possession of the land over which they wanted to open the passage. He further admitted that this land was transferred by his grandfather Dev Varat to Moman in the year 1984 and since then the accused are in possession of that land. He further admitted that the passage in dispute is not shown in any revenue record nor the same was left in consolidation. He further admitted that they did not move any

application to any Civil or Revenue Court for providing the passage. This witness has further admitted that the occurrence has taken place at a distance of about ½ acres from the Dhani of the accused persons and that field is owned by the accused persons. He further categorically admitted that his brother Mani Ram after receiving injuries had fallen in the field owned by the accused and his blood had also fallen in his field.

PW13 Rajesh injured has also admitted in the cross-examination that they had gone to the spot for opening passage on two tractors. He further admitted that it is correct that if the passage was to be opened, then cotton crops of the accused had to be destroyed. He further admitted that when the injury on the head of Mani Ram was inflicted, they were present in the field of Moman accused. The blood stained earth was also lifted from the field of Moman.

PW15 Inspector Karan Singh, Investigating Officer of the case has also admitted in the cross-examination that when he reached the place of occurrence he found that cotton crop in the field of Moman had been ploughed/over turned with the help of a tractor. He further stated that Dhani of the accused is situated closer to the place of occurrence than the Dhani of the complainant. Thus, from the above evidence i.e. statements of PW9 Kailash Chander, Patwari, PW12 Surender Complainant, PW13 Rajesh injured and PW15 Inspector Karan Singh, Investigating Officer of the case and the site-plans of the occurrence Ex.PLL

and Ex.PCC it comes out that the place of occurrence is the field which was owned and possessed by the accused party. Accused party was in settled possession of that land. Complainant party had gone in a planned manner at the odd hours in the night with intention to create passage in the land owned and possessed by the accused party and with that purpose they have started over turning the stand crops in the aforesaid land of the accused party.

As far as injuries on the persons of the accused are concerned, the same are also proved from the evidence on record. PW2 Dale Singh has medico-legally examined accused Moman Ram and found three injuries on his person. Injury No.1 on the person of Moman Ram was bruise on the left parietal region 3cm x 3cm. He also medico-legally examined on the same day accused Ram Partap and found four injuries on his person. Injury No.4 was on the occipital region which was a bruise 1 cm x 1 cm having swelling of 3 cm x 3 cm. He was also having three lacerated wounds i.e. on the left leg, right middle finger and left ring finger respectively. Dr. Dale Singh also examined Keshar wife of Moman Ram on the same day and she was having five injuries on her person. Injury No.1 was a lacerated wound of 4.5 cm x 1 cm x bone deep on left parietal region. Fresh bleeding was present. It was surrounded by swelling of 9 cm x 6 cm. Injury No.2 on her person was a fracture of radius and ulna of left fore arm. She was also having three other injuries. So injury No.1 was on the head of

Smt. Keshar and she also suffered fractures of both bones i.e. radius and ulna of left fore arm which is a grievous injury. On the same day, PW 2 Dale Singh has also medico-legally examined Smt. Raj Bala wife of Karmveer, a member of the accused party. She was having two injuries. Injury No.1 was a lacerated wound 6 cm x 1 cm x bone deep on the right parietal and occipital region and fresh bleeding was present.

Dr. Dale Singh has admitted in the cross-examination that injury No.4 on the person of Ram Partap, injury No.1 on the person of Raj Bala and injury No.1 on the person of Smt. Keshar Bai were on their heads. The location of injury No.1 on the person of accused Moman also depicts that the same was on the left parietal region. Thus, from the medical evidence on record i.e. statement of PW2 Dr. Dale Singh and medico-legal reports Ex.PK relating to Moman, Ex.PL relating to accused Ram Partap, Ex.PAA relating to Smt. Keshar wife of Moman accused and Ex.PBB relating to Raj Bala, it comes out that four persons from the accused side had suffered the injuries in this occurrence.

The complainant had kept totally silent regarding these injuries in the FIR. However, in their statements in the Court, PW12 Surrender and PW13 Rajesh have tried to explain the injuries on the person of accused by alleging that they had thrown the brick bats upon the accused party in their self defence. The theory of throwing the brick bats is not believable as PW5 Inspector Karan Singh has admitted in the cross-examination that he did not

find any brick bat lying at the place of occurrence. In order to cause such number of injuries to the accused, sufficient number of brick bats would have to be used by the complainant party. The absence of any brick bat from the place of occurrence at the time of inspection of the spot by the Investigating Officer belies the plea of the prosecution witnesses that they used to brick bats in their self defence. The fact remains that there were various injuries on the person of the members of the accused party, but those injuries have not been explained in satisfactory manner by the prosecution.

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In the instant case, as per defence plea the accused have raised the plea of private defence of property and persons. It is pleaded by accused Ram Partap and Moman that they were in possession of the land, complainant had come to forcibly dispossess them from the land in the night time. They started ploughing the land with tractors to uproot and over turn narma crops near their Dhani. Accused Ram Partap and Moman tried to stop them. They were attacked with lathis and iron pipes by the complainant party who was aggressors. Ram Partap and Moman retreated to their Dhani. Raj Bala and Keshar Bai came there to save them, but they were also injured by the complainant party. That in the exercise of right of private defence of persons and property, injuries were caused to Mani Ram etc. of the complainant party by Ram Partap. Moman, Raj Bala and Keshar, accused Maha Singh, Krishan, Raj Kumar, Ram Kumar, Ram Sarup and

Ram Pal were not present at the spot at the time of occurrence. As far as firing incident is concerned, defence plea is that Pala Ram had fired the shot from the distance to save them and to disengage the parties. They further pleaded that police lodged a false case against them in connivance with Surrender etc. and the police did not record their version and did not take action against the complainant party.

The above defence plea even found credence from the version mentioned in the FIR. As already mentioned, it is not disputed that the land where the occurrence has taken place was owned and possessed by the accused party. It is also not disputed that members of the complainant party in two tractors had gone to the field of the accused in the odd hours of the night to create passage. It is also admitted by the prosecution witnesses that cotton crops was standing in the land and if the passage was to be created, the cotton crop has to be over turned. From the statements of PW9 Kailash Chander Patwari and PW15 Inspector Karan Singh, it further comes out that crops standing in the field of the accused were found destroyed. It is also evident from the statements of PW9 Kailash Chander Patwari and admission of PW12 Surrender that there does not exist any passage nor any such passage was left in the consolidation and was not shown in the revenue record. Complainant party did not move any application to the Civil Court or the Revenue authorities for providing the passage to them. This

fact that injuries were caused to the accused persons is also established from the statement of PW2 Dr. Dale Singh and copies of MLRs prepared by him.

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No doubt, eight persons from the complainant side had suffered the injuries. Deceased Mani Ram as per post-mortem report suffered five injuries. PW12 Surrender had suffered six injuries as per medico-legal report Ex.PC. Smt.Mohra wife of Dana had suffered eight injuries as per medico-legal report Ex.PD. Pawan Kumar had suffered one injury alleged with gun shot as per medico-legal report Ex.PE. Smt. Roshni wife of Balbir had suffered three injuries as per copy of medico-legal report Ex.PF. Rajesh son of Balbir PW13 had also suffered one injury allegedly with gun shot as per copy of MLR Ex.PG. Lilawati had suffered three injuries with blunt weapon as per copy of medico-legal report Ex.PH and Surnjit wife of Mani Ram had suffered three injuries with blunt weapon as per copy of MLR Ex.PJ. No doubt the complainant also had suffered more number of injuries with blunt weapon as per copy of MLR Ex.PJ. No doubt the complainant side had suffered more number of injuries in comparison to the accused party. Hon'ble Apex Court in case Rukma (Smt.) and others Vs. Jala and others (supra) has laid down that merely because accused's party received less injuries and the complainant's party received more serious injuries resulting in death of three persons, it cannot be said that the accused were the aggressors and

the defence version was more probable than the version given by the prosecution witnesses. Thus, in the instant case also, more this fact that members of the complainant party had suffered more injuries is itself not a ground to hold that the accused side was aggressor when all other circumstances as discussed above depict that it was the members of the complainant party who were responsible for the start of occurrence.

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Thus, as per the above provisions of law, right of private defence of body extends to voluntary cause death, if the offence which occasions the exercise of right of private defence, is an assault as may reasonably cause apprehension that death or grievous hurt will otherwise be consequence of such assault. In the instant case, there is no evidence on record to show that at the time of occurrence, deceased Mani Ram was armed with any weapon and accused Krishan, Ram Partap and Maha Singh had any apprehension of such assault which may result in death or grievous hurt to them or any other member of the complainant party at the hands of Mani Ram. So, Section 100 Indian Penal Code extending right of private defence to cause death will also not be available in this case. Thus, the plea of private defence raised by the accused in this case will fall under Sections 101 and 104 Indian Penal Code. As per Sections 101 and 104 Indian Penal Code, the right of private defence does extend to voluntarily cause to the assailants any harm other than death. Hence, the accused party had exceeded

the right of private defence in causing death of Mani Ram.

Now the question arises as to who is liable for exceeding right of private defence. As per prosecution evidence, based on the statements of PW12 Surender and PW13 Rajesh, accused Krishan armed with an iron pipe, accused Ram Partap and Maha Singh armed with lathis have caused injuries to deceased Mani Ram. As per post-mortem report Ex.PB, deceased Mani Ram had suffered total five injuries, injuries No.1 to 3 are on his head and injury No.4 is on the liver. PW1 Dr.Sangita Mehta has categorically stated that injuries No.1 to 3 were on the head. These injuries had fractured the underlying parts and had lacerated the brain. She further stated that injuries No.1 to 3 were individually sufficient to cause death. Even injury No.4 had caused extensive damage to the liver besides fracturing three ribs and this injury could also be individually sufficient to cause death. No injuries on the person of Mani Ram has been attributed to any other accused. Thus, accused Krishan, Ram Partap and Maha Singh had exceeded the right of private defence.

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So, in view of the above consistent rule of law laid down by the Hon'ble Apex Court, accused Krishan, Ram Partap and Maha Singh have exceeded right of private defence and they can be held liable for the death of Mani Ram in this occurrence. Remaining accused cannot be held liable with the application of Section 149 Indian

Penal Code.

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Now the question arises as to for what offence accused Krishan, Ram Partap and Maha Singh are liable. Sh.P.K.Sandhir, learned defence counsel has contended that their liability will be for the offence punishable under Section 304 Part II, but I do not find any substance in this plea. Keeping in view medical evidence on record, injuries No.1 to 4 on the person of Mani Ram were individually sufficient to cause death in the ordinary course of nature keeping in view underlying damage caused to brain and liver. These injuries have been attributed to accused Krishan, Ram Partap and Maha Singh. It shows that these three accused had intention of causing bodily injury to Mani Ram and such bodily injury inflicted upon Mani Ram are sufficient in ordinary course of nature to cause death. Thus, the act committed by accused Krishan, Ram Partap and Maha Singh will fall in clause 'thirdly' of Section 300 Indian Penal Code.

As I have already mentioned that accused persons in this were exercising right of private defence, but accused Krishan, Ram Partap and Maha Singh had exceeded the right of private defence so, exception 2 of Section 300 IPC will be applicable in this case.....

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In the instant case, there is no evidence on record to show that the accused persons had any pre-meditation for causing injuries to Mani Ram. Rather it was the complainant party who had gone

to the field of the accused party in a planned manner. Accused had also no intention of doing more harm than necessary for the purpose of their right of private defence. It is another matter that while exercising the right of private defence, accused Krishan, Ram Partap and Maha Singh had exceeded their right of private defence. Thus, present cause will attract exception 2 of Section 300 Indian Penal Code. Hence, the offence committed by these three accused will be culpable homicide not amounting to murder.

Now the question arises as to whether they are liable for punishment under Section 304 Part I or Part II. Shri P.K.Sandhir, learned defence counsel has relied upon case Kashiram and others Vs. State of M.P. (supra) to contend that the offence committed by three accused at the most will fall under Section 304 Part II of Indian Penal Code. But in my opinion this authority is quite distinguishable on facts because in that case the injuries were caused on the lower part of the body of Brindawan and Hon'ble Apex Court observed that it cannot be said that accused Ramesh intended to cause death or cause such bodily injury as was likely to cause death though he should be attributed with the knowledge that the injury caused by him was likely to cause death. But in the instant case, injuries to Mani Ram have been caused on the vital part of the body i.e. head and liver. Injuries caused by accused Krishan, Ram Partap and Maha Singh to Mani Ram have been declared as sufficient to cause death in the ordinary course of nature. It shows that these

accused had the intention of causing such bodily injuries to Mani Ram which were likely to cause his death so, in these circumstances they are liable for punishable under Section 304 Part-I of the Indian Penal Code.

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Though accused persons were charge sheeted for offence punishable under Section 302 read with section 149 Indian Penal Code, but in view of my above discussion only three accused namely Krishan, Ram Partap and Maha Singh had exceeded right of private defence and they had shared the common intention for causing death of Mani Ram so, even though Section 34 Indian Penal Code is not mentioned in the charge sheet, they can be convicted for the offence punishable under Section 304 Part-I read with Section 34 Indian Penal Code in view of the latest law laid down by the Hon'ble Apex Court in case Chittarmal Vs. State of Rajasthan, AIR 2003 Supreme Court 796.”

In view of the aforementioned observations made by the learned trial Court, this Court finds that the only question which remains to be examined is as to whether the convicts had complete right of private defence or they had exceeded it.

Section 100 IPC provides the circumstances under which the right of private defence of the body could extend to causing death. The said provision is reproduced here-below:-

“When the right of private defence of the body extends to causing death.- The right of private

defence of the body extends, under restrictions mentioned in the last preceding Section, to the voluntary causing death or of any other harm to the assailant, if the offence which occasions exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

First.-Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.-Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly.-An assault with the intention of committing rape;

Fourthly.-An assault with the intention of gratifying unnatural lust;

Fifthly.-An assault with the intention of kidnapping or abducting;

Sixthly.-An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.”

In the present case, the right of private defence of the body extended to causing death as the appellants had an apprehension that death or grievous hurt would otherwise be the result of assault launched upon the accused in view of the injuries on the accused. Some of the injuries on the accused were on vital parts i.e. head while some had resulted in grievous hurt. Moman Ram, Ram Partap and Keshar Devi had received injuries

on their head. At the same time, Keshar Devi had suffered fracture of radius and ulna of left fore arm. Therefore, the case of the appellants stands squarely covered by the provisions of Section 100 IPC which gave them complete right of private defence of the body by causing the death of Mani Ram. When the appellants repelled the attack launched upon them by the complainant party, they very well acted in exercising the right of private defence. As such, the findings of the learned trial Court that the appellants exceeded the right of private defence, cannot be justified. Instead, the right of private defence exercised by the appellants was complete and, therefore, they could not be convicted and sentenced under Section 304 Part I IPC.

Resultantly, the appeal is accepted, impugned judgment of conviction and order of sentence is set-aside and the appellants are acquitted of the charge against them.

May 16, 2017

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(T.P.S. MANN)**JUDGE**

Whether speaking/reasoned.

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Yes/No

Whether Reportable.

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Yes/No