

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

1. CRA-S No.1040-SB of 2003

Virender Singh & others

... Appellants

Versus

State of Haryana

... Respondent

2. CRR No.2147 of 2003

Naresh Kumar

... Petitioner

Versus

Sunil & others

... Respondents

Date of decision: 4th July, 2018

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sudhir Sharma, Advocate for the appellants.

Mr. Siddarth Sanwaria, Asstt. Advocate General, Haryana.

Mr. Deepinder Brar, Advocate for the petitioners.

Mr. Abhimanyu Kalsy, Advocate for

Mr. Rakesh Dhiman, Advocate for respondents No.4, 6 & 8
(in CRR-2147-2003).

FATEH DEEP SINGH, J.

Since both these matters, a criminal appeal by convicts Bahadur, Ram Mehar, Virender Singh and Rakesh, bearing CRA-S No.1040-SB of 2003 challenging their conviction for offences under Sections 304 (Part II), 148, 323/149 IPC whereby they have been sentenced to undergo RI for a period of five years and to pay a fine of Rs.1,000/- each under Section 304 (Part-II) IPC and in default of

payment of fine to further undergo RI for six months, and also to undergo RI for six months under Section 323/149 IPC and further RI for three months under Section 148 IPC; and the other a criminal revision bearing CRR No.2147 of 2003 by the dissatisfied complainant Naresh Kumar seeking conviction of the accused for the charges so framed against them and enhancement of their sentences, have both arisen out of a common judgment dated 20.05.2003 passed by the Court of learned Additional Sessions Judge, Fast Track Court, Gurgaon, being intricately intertwined, factually as well as legally, are thus being taken up and disposed off together by this common finding.

It was on 13.06.2001, a telephonic message was received by SI Shakuntala of Police Station Sadar, Gurgaon intimating admission of one Rohtash in Govt. Hospital, Gurgaon, upon which the police acted and on reaching the hospital met Naresh Kumar son of Rohtash, the present complainant, and recorded his statement. In his statement, the complainant alleged that on 13.06.2001 around 12:30 p.m. accused Ram Mehar along with a few persons had started demolishing the doul (watercourse) and seeing which the complainant Naresh Kumar, his father Rohtash (now deceased), his uncle Ram Kishan and cousin Surender reached at the spot and tried to stop them. It is alleged that at that point of time Ram Mehar was accompanied by accused Virender, Bahadur, Sunil, Rakesh and 7/8 other young boys in a vehicle make TATA Sumo. When Rohtash asked Ram Mehar not to demolish the

watercourse, it is alleged by the complainant that Bahadur and Ram Mehar caught hold of his father whereas Virender gave an axe blow on his head and Rakesh gave a blow of lathi on the head of the deceased and at that time Ashok Kumar gave pipe blows on the fingers of right hand as well as wrist of the deceased. In the occurrence, Ram Kishan and Surender have too alleged to have received injuries from the hands of the accused. It is alleged that upon receiving injuries, Rohtash fell down and was rushed to the hospital where he succumbed to his injuries. On the basis of this statement, led to registration of the present case by way of FIR No.371 dated 13.06.2001 under Sections 302, 148, 149, 323 IPC with Police Station Sadar, Gurgaon. It is as a consequence of this, in all 12 accused came about to be booked for this murder comprising of Sunil, Bahadur, Ram Mehar, Tejpal, Deepak, Satish Kumar, Dalbir, Manoj Kumar, Virender Singh, Rakesh and two juveniles namely Amit and Gobind.

Upon completion of investigations, challan against ten accused was filed in the Court jointly who were put to trial and against whom charges under Sections 302, 148, 149, 323 IPC were framed whereas juveniles' trial was separated. It is worthwhile to mention here that through the impugned judgment, accused Tejpal, Deepak, Satish Kumar, Dalbir and Manoj Kumar were given the benefit of probation whereas sentence of Sunil was that of already undergone. It is the present appellants Bahadur, Ram Mehar, Virender Singh and Rakesh

who have been found guilty and convicted under Section 304(Part II) read with Section 34 IPC and sections 148, 323 and 149 IPC and were acquitted for offence under Section 302/149 IPC.

This is how the present two recourses have come about by the two sides challenging the impugned judgment.

Heard Mr. Sudhir Sharma, Advocate for the appellants; Mr.Siddarth Sanwaria, Asstt. Advocate General, Haryana; Mr.Deepinder Brar, Advocate for the petitioners; Mr. Abhimanyu Kalsy, Advocate representing Mr. Rakesh Dhiman, Advocate for respondents No.4, 6 & 8 in CRR-2147-2003, and perused records of the case.

During the course of arguments, as is the submission of the accused appellants' side, the date, time and place of occurrence are not at all disputed. Learned counsel for the appellants has sought to hammer home the point that it is a case of exercise of right of private defence by the accused side as the occurrence has taken place in the land of the accused who in the exercise of their right have used reasonable force and therefore, the total silence of the prosecution in not able to explain the injuries on the person of Dalbir, Ashok, Amit, Manoj Kumar, Gobind, Satish Kumar, Deepak and Sunil Kumar, whose MLRs have been proved as Ex.DA to Ex.DH, entitles acceptance of the appeal and acquittal of the accused.

The same is sought to be opposed with much vehemence by the learned State counsel assisted by learned counsel for the

complainant, who have sought to bring about that since it is the accused side who has come to demolish the watercourse of the complainant side and being aggressors, were not entitled to any such relief.

Appreciating the submissions, the site plan Ex.PQ prepared during the investigations and which could not be displaced in the submissions of the appellants side, depicts point-A as the place of occurrence where blood was also scattered and clearly the same is shown to be the fields of Rohtash deceased which was proved by PW-5 SI Shakuntala the Investigating Officer, of having lifted the blood-stained earth and taken into police possession through memo Ex.PH and who has detailed that the watercourse lies between the fields of Ram Mehar and Rohtash and even no suggestion has been put that the same falls in the land of the accused, therefore, negates the arguments that have been sought to be raised by the appellants to support that the complainant party is the aggressor having trespassed into their land. Though, learned counsel for the appellants has cited '**Laxman Singh v. Poonam Singh**' 2003(4) RCR(Criminal) 560; and '**State of Rajasthan v. Rajendra Singh**' 1998 SCC (Cri) 1605 to enliven his submissions over the exercise of right of private defence, however, in terms of Section 105 of the Evidence Act the onus is on the defence to prove that there has been legitimate exercise of private defence to enable the accused side to take benefit of section 96 of IPC to hold that it is not an offence which is done in the exercise of right of private defence.

More so, it is well writ large on the records that from the side of accused, eight persons have received injuries and three persons resulting into death of one from the side of the prosecution. The number of injuries, the manner in which large number of persons have entered into a fight, armed with weapons, rather to the mind of this Court, it was more of a free fight between two groups who have intentionally entered into a duel. Since the learned counsel for the appellants could not convince this Court if any of the injuries on the person of the accused was grievous or life-threatening, rather is a circumstance which undermines this defence of the accused to the extent that there has been over-exercise of this right of private defence by the accused side than was necessitated at that point of time under the circumstances. This Court to hold this view, seeks support from '**State of M.P. v. Deshraj & others**' 2004 AIR (SC) 2764 where the Hon'ble Apex Court has held that there was a free fight between the accused side and the deceased side in which different persons have received injuries in this sudden quarrel.

The second most rallying point revolves around the role of the convicts Bahadur, Ram Mehar, Virender Singh and Rakesh. It is there in the eye-witness account given by PW-1 Dr. Krishan Kumar, Medical Officer, of having examined the injured Ram Kishan, who has testified as PW-3, by way of MLR Ex.PA and injuries on the person of complainant Naresh Kumar injured, who has been examined as PW-2,

by way of MLR Ex.PB, which were conducted on the police request Ex.PA/1 and Ex.PB/1 respectively, and has underlined injuries to both these persons numbering in all six which are abrasions and contusions; rather stamps the fact as to the presence of these PWs at the time of occurrence. It is there in the testimony of PW-2 complainant Naresh Kumar and PW-3 injured eye-witness Ram Kishan that during the course of fight, accused Bahadur and Ram Mehar caught hold of Rohtash and at that time accused Virender armed with an axe hit a blow on the head of Rohtash and another lathi blow on his head was given by Rakesh followed by a blow of pipe on the fingers of his right hand and as a consequence of which Rohtash fell down and was rushed to hospital where he succumbed to his injuries and it has very well come in the cross-examination of PW-2 that he received injuries when tried to save his father, are matters of much significance. Similar is the deposition of injured PW-3 Ram Kishan that when he ran to save Rohtash, Sunil gave him a lathi blow and Naresh was also given injuries in a similar manner. The contention of learned counsel for the appellants that being brother and son of the deceased, these witnesses have testified, does not cut much ice. Since they have received injuries and therefore their presence is well all the more established and corroborated by all means and therefore, to the mind of this Court, are most probable and natural witnesses.

Thus, from this evidence, it is well highlighted and irrefutably established that it was during the quarrel, these four convicts Virender Singh, Rakesh, Bahadur and Ram Mehar at that point of time had developed intention by preconception of mind to cause injuries resulting in death of the deceased, though a single injury on the head. A common intention certainly can be attributed to the accused in the light of the fact that the accused have trespassed into the land of the deceased, caught hold of him during the course of scuffle and gave him injuries, and even otherwise falls in Explanation 4 of Section 300 IPC. Reliance placed on '**Ramji Singh and another v. State of Bihar**' 2001(4) RCR (Criminal) 502. Furthermore, consequent upon his arrest, Virender Kumar on 17.06.2001, during the course of questioning on 18.06.2001 made a disclosure statement leading to recovery of the axe from his conscious possession, are matters which further corroborate and support the case of the prosecution.

The last leg of submissions of the two sides revolves around the contentions of the appellant side that there has been total non-explanation of the injuries by the prosecution on the accused side which has been well answered by the evidence and the circumstances proved on the record and conclusions drawn that it was more of a case of free fight at the very inception and when especially large number of people are engaged in a quarrel, it is humanely impossible to bring out how or in what manner each of the accused has received injuries when

apparently they are of simple nature comprising mostly of contusions and abrasions, and that too on non-vital parts, not of much consequence. Moreover, in such an eventuality the prosecution is not legally bound to explain each and every injury on the other side.

The learned lower Court has given a well reasoned finding and drawing the conclusions that the accused were members of unlawful assembly and during the scuffle of the two sides, who were in number on both sides, a free fight had ensued and thus, has rightly convicted the persons, who shared common intention at that very point of time of the occurrence, for commission of offences under Sections 304 (part II) read with Section 34 IPC. Reliance placed on '**State of M.P. v. Deshraj & others'** (ibid).

In the light of foregoing discussions, no legal lacuna could be found in the impugned findings and in view of the same, the impugned findings are upheld and consequently both the present matters, appeal as well as the revision, being meritless stand dismissed. Records be sent back.

**(FATEH DEEP SINGH)
JUDGE**

July 4, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No