

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-253-DB of 2018 (O&M)
Reserved on : 21.05.2019
Date of decision : 24.05.2019

Joginder Singh

.... Appellant

Versus

State of Punjab

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. K.S. Dadwal, Advocate, for the appellant.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

Mr. Diwan S. Adlakha, Advocate, for the complainant.

* * *

RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 29.01.2018 and order dated 30.01.2018, rendered by learned Additional Sessions Judge, Hoshiarpur, in Sessions Case No. 01 dated 02.05.2015. Appellant Joginder Singh, who was charged with and tried for the offence punishable under Sections 302 and 323 IPC, was convicted and sentenced as under :-

<i>Offence</i>	<i>Sentence</i>
Under Section 302 IPC	Rigorous imprisonment for life and to pay fine of ₹ 5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.
Under Section 323 IPC	Rigorous imprisonment for six months and to pay fine of ₹ 500/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days.

2. The case of the prosecution, in a nutshell, is that injured Piari (PW.4) lodged complaint with the police on 01.11.2014. According to the contents of the complaint, their family was agriculturist by profession. Her husband was scaring away the birds on 01.11.2014 in the evening. She went to the fields. In the adjoining fields, her brother-in-law (Devar), namely Joginder Singh, was clearing the water channel. Her husband asked her to bring tea for him. At about 5.15 PM, she along with her son Lakhwinder Singh went to their fields with tea. They saw her brother-in-law Joginder Singh carrying spade in his hand. He was shouting loudly at her husband. In her presence as well as in the presence of her son Lakhwinder Singh, he gave 3-4 spade blows from its sharp edged side to her husband, hitting him on his head, forehead, nose and face. Her husband collapsed. The spade slipped from the hands of Joginder Singh and came under the body of her husband. Then Joginder Singh picked up an iron '*Tangli*' (an agricultural implement used for taking wheat chaff or hay). He gave *Tangli* blow to her husband on his forehead. She came forward to snatch *Tangli* from the hands of Joginder Singh. He gave a *Tangli* blow to her also. She raised her right hand in order to ward off the blow. *Tangli* blow hit between index and middle fingers of her hand. She and her son tried to catch hold of Joginder Singh. He ran away from the spot along with *Tangli*. Blood started oozing out from the mouth of her husband due to injuries received by him. He died at the spot. The motive behind the occurrence was an earlier dispute pending between both the brothers regarding partition of their agricultural land. Ruqa was prepared. FIR was registered. The rough site plan was prepared. The dead body was sent to Civil Hospital, Garhshankar, for post

mortem examination. The investigation was initiated and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution. According to him, he was working in his fields on 01.11.2014. His brother Harbhajan Singh was also present in the adjoining fields. At about 4.30 PM, his brother Harbhajan Singh came towards his fields. He was abusing him and his family. He tried to hit him with spade (Kassi). Harbhajan Singh hit him from the blunt side as well as sharp side of the spade. He received injuries and fell down. Harbhajan Singh fell down along with the spade and received injuries from the spade. Harbhajan Singh again tried to hit him (accused). He picked a *Tangli* lying nearby. He pointed *Tangli* towards Harbhajan Singh, in order to save himself. Charanjit Kaur and Tarsem Singh also came on the spot. He examined three witnesses in his defence. He was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case against his client. Learned counsel appearing on behalf of the State has supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW.1 Dr. Parminder Singh conducted post mortem examination on the body of Harbhajan Singh, on 02.11.2014 at 11.50 AM. He led his evidence by way of affidavit Ex.PA. He noticed as many as 25 injuries on

the person of the deceased. The cause of death was multiple bone fractures and injury to vital organ brain leading to haemorrhage and shock, which was sufficient to cause death in ordinary course of nature.

7. PW.2 Dr. Raghbir Singh medico legally examined Joginder Singh on 01.11.2014 at about 5.10 PM. He noticed the following injuries on his person :-

1. Linear abrasion transversally present in the middle of the right forearm, measuring 6 cm x 0.5 cm.
2. Linear abrasion 2 cm x 0.1 cm on the left hand of dorsal aspect.
3. Incised wound 1 cm x 0.1 cm on the right hand on palmer aspect, skin deep.
4. Complain of pain in the neck due to alleged history of assault. No external injury present.

Injuries No.1 to 3 were declared simple in nature. These were caused with sharp edged weapon, whereas injury No.4 was caused with blunt weapon. The probable duration between injuries and medical examination was six hours. He proved MLR Ex.PC.

8. PW.2 Dr. Raghbir Singh also medico legally examined Piari on 01.11.2014 at 7.15 PM. He noticed the following injuries on her person :-

1. Lacerated wound 3 cm x 0.5 cm in the web of the ring finger and middle finger of right hand. Advised X-ray.
2. Complain of pain in the left hand due to alleged history of assault. No external injury present.

Injury No.1 was advised for X-ray. Injury No.2 was declared simple in nature. He also proved MLR Ex.PD/2. In his cross-examination, he deposed that injuries No.1 to 3 on the person of Joginder Singh were possible from sharp side of Kahi (spade), whereas injury No.4 was possible from blunt

side of Kahi (spade).

9. PW.3 Lakhwinder Singh testified that they were agriculturist. His father Harbhajan Singh had gone to the fields to scare away the birds on 01.11.2014. His mother had accompanied him. His father told her to bring tea for him. She came back home. At about 5.15 PM, he along with his mother had taken tea for his father in the fields. Joginder Singh accused was clearing his water channel with spade. When they reached at the spot, they saw accused Joginder Singh abusing his father, namely Harbhajan Singh. He gave 4-5 spade blows on the face, head and neck of Harbhajan Singh. His father collapsed in the mustard fields. In that process, the spade carried by Joginder Singh slipped. It came below the neck of his father Harbhajan Singh. Thereafter, accused Joginder Singh picked iron *Tangli*, which was lying nearby. Accused gave *Tangli* blow on the forehead of his father Harbhajan Singh. He went near his father. Accused Joginder Singh also gave *Tangli* blow to his mother. It hit her on the web of right hand. He along with his mother tried to stop Joginder Singh. However, he ran away with *Tangli*. Joginder Singh was the real brother of his father. His father died on the spot due to the injuries caused by Joginder Singh. There was a dispute between his father Harbhajan Singh and Joginder Singh regarding partition of the land. The police took into possession one *Parna* (towel), *Chappals* of his father and spade stained with blood. In his cross-examination, he deposed that the houses of his sister were situated at a distance of about half a kilometer. He had taken one week leave. He was confronted with his statements Ex.PE and mark D1. No injury was caused to him by the accused. He or his mother or his father caused no injury to the accused. He

did not know whether Joginder Singh was admitted in Civil Hospital, Garhshankar. Litigation was going on between his deceased father and the accused regarding the land. The dispute was also going on regarding the ancestral house and Haveli.

10. PW.4 Piari is the material witness. She testified that on 01.11.2014, Joginder Singh was clearing the water channel of his fields. At about 3.45 PM, her husband asked her to bring tea from the house. She came back to her house. Thereafter, at about 4.45 PM, she along with her son Lakhwinder Singh went to the fields to offer tea to her husband Harbhajan Singh. They saw Joginder Singh giving spade blows to her husband. He was also abusing her husband. He gave 4/5 spade blows to her husband Harbhajan Singh. The blows hit on head, neck, nose and mouth of her husband. Her husband collapsed. The spade of Joginder Singh slipped. It came under Harbhajan Singh. Thereafter, accused Joginder Singh took *Tangli* from there. He gave *Tangli* blow on the eyes of Harbhajan Singh. Thereafter, her son came forward to rescue her husband. She came in front of her son Lakhwinder Singh. Joginder Singh gave *Tangli* blow to her. It hit on fingers of her right hand. They tried to catch the accused. However, he ran away. Blood started oozing from the mouth of her husband. Her husband died on the spot. In her cross-examination, she deposed that suit for partition was still pending in the court at Garhshankar. One suit was filed by Joginder Singh against her husband Harbhajan Singh, regarding the wall, alleged to be owned by Joginder Singh. The suit was decided in favour of Joginder Singh. The incident lasted for 4-5 minutes. Neither she nor her son or husband gave beatings to Joginder Singh. Her clothes and clothes of her

son were stained with blood. Her husband collapsed in the fields.

11. PW.5 Arjun Khanna prepared the scaled site plan Ex.PH.
12. PW.6 Jeet Singh proved jamabandi Ex.PJ for the year 2009-10.
13. PW.9 Vikas Kumar, Ahlmad, brought the record of the case, titled Harbhajan Singh Vs. Krishan Singh, Joginder Singh and Nirmal Singh regarding the dispute of tubewell. It was pending in the court of Additional Civil Judge (Senior Division), Garhshankar. On 05.07.2013, the order of status quo regarding use of the tubewell was passed by the court.
14. PW.10 ASI Om Parkash got the post mortem on the body of deceased Harbhajan Singh conducted. The accused was arrested. He made disclosure statement that he had kept concealed one *Tangli* in the room of electric motor under the grass. The disclosure statement is Ex.PN/2. The accused led the police party to the disclosed place and got recovered *Tangli*.
15. PW.11 Inspector Kulwinder Singh testified that he was present in Police Station Garhshankar on 01.11.2014. He received an information on telephone that one person received injuries in village Darapur. He along with other police officials went to the spot. Piari got recorded her statement. The contents of the same were read over to her. She put her thumb impression thereon. Lakhwinder Singh son of the complainant also signed the same. Piari was taken to Civil Hospital, Garhshankar, for medical examination. He took photographs of the deceased. He also recorded the statement of Lakhwinder Singh. From the place of occurrence, one blood stained Kahi (spade) was recovered. He prepared parcel of the same. MLR of accused Joginder Singh was also obtained. The accused was arrested. He made disclosure statement Ex.PN/2, on the basis of which *Tangli* was got

recovered. In his cross-examination, he deposed that the land, where deceased Harbhajan Singh was lying, was in possession of Joginder Singh accused. He did not take finger prints from *Tangli*, nor recorded statement qua its ownership.

16. DW.1 Charanjit Kaur, Ex-Panch, of the village was examined by the accused in his defence. She deposed that she knew deceased Harbhajan Singh and accused Joginder Singh. They were brothers. On 01.11.2014 at about 4.30/4.45 PM, she was present outside her house. She heard noise. She saw Harbhajan Singh running towards Joginder Singh with Kahi (spade) in his hand. Joginder Singh was working in his fields. Harbhajan Singh was hitting Joginder Singh with Kahi. Then Joginder Singh picked *Tangli* from the fields of Harbhajan Singh. Joginder Singh was in his fields. Harbhajan Singh was hitting Joginder Singh with Kahi and then Joginder Singh with the help of *Tangli* warded off the Kahi blow. She did not know if Harbhajan Singh was hurt with *Tangli*. Thereafter, she immediately left the spot as her husband was unwell. She was called in the house. In her cross-examination, she admitted that her son was convicted under Section 302 IPC. She also admitted that Piari was admitted in Civil Hospital, Garhshankar, on 30.05.2003, as a result of injuries. She also admitted that her son had given injuries to Piari on 30.05.2003.

17. DW.2 Tarsem Singh deposed that on 01.11.2014 at about 4.30 PM, he was irrigating his fields. He heard the noise. Joginder Singh and Harbhajan Singh were arguing with each other. Harbhajan Singh was holding spade in his hand. Joginder Singh was working in his fields. He witnessed Harbhajan Singh trying to give spade blows to Joginder Singh

4-5 times. Joginder Singh picked up a *Tangli* lying in the fields. He tried to ward off the blows. At that time, Joginder Singh, Harbhajan Singh and he were present there. None else was there. Harbhajan Singh received minor *Tangli* injuries. Joginder Singh received two injuries on his hand.

18. DW.3 Wasim Mohammad, Nodal Officer, Bharti Airtel Ltd., categorically deposed in his cross-examination that there was no call inter-se between mobile No. 97796-27572 and 98766-95748 on 01.11.2014.

19. The case of the prosecution precisely is that Harbhajan Singh was in his fields on 01.11.2014. His wife PW.4 Piari went to the fields. Harbhajan Singh asked her to bring tea. She came back to her house and went to the fields again with her son PW.3 Lakhwinder Singh. They saw the appellant hitting Harbhajan Singh with spade as well as *Tangli*. Harbhajan Singh died on the spot. The body was sent for post mortem examination. The cause of death was multiple bone fractures and injury to vital organ brain leading to haemorrhage and shock, which was sufficient to cause death in ordinary course of nature, as per the statement of PW.1 Dr. Parminder Singh. PW.2 Dr. Raghbir Singh also medico legally examined appellant Joginder Singh. He noticed three injuries on his person. He also medico legally examined Piari and noticed one injury on her person.

20. It has come on record that civil dispute was going on between deceased Harbhajan Singh and appellant Joginder Singh. The incident was witnessed by PW.3 Lakhwinder Singh and PW.4 Piari. They had seen the appellant hitting Harbhajan Singh with spade and thereafter with *Tangli*. *Tangli* was got recovered on the basis of disclosure statement made by the appellant vide Ex.PW.3/B. The injuries received by appellant Joginder

Singh were simple in nature, though caused with sharp edged weapon.

21. The FSL report is Ex.PT. Human blood was found on Kassi (spade), soil, *Parna* (towel), Pajama mark D-1, underwear mark D-2, T-shirt mark D-3, *Parna* (towel) mark D-4 and *Gatra* mark D-5.

22. PW.6 Jeet Singh, Patwari, proved jamabandi for the year 2009-10 vide Ex.PJ. PW.9 Vikas Kumar, Ahlmad, deposed regarding the civil dispute between Harbhajan Singh and Joginder Singh and others in the court of Additional Civil Judge (Senior Division), Garhshankar. He proved copy of the order dated 05.07.2013, whereby the order of status quo regarding use of the tubewell was passed by the court.

23. DW.1 Charanjit Kaur claimed that she was on spot and DW.2 Tarsem Singh deposed that he, Harbhajan Singh and Joginder Singh were the only persons present on the spot at the time of occurrence.

24. Learned counsel appearing on behalf of the appellant has vehemently argued that his client caused injuries to Harbhajan Singh with *Tangli* to save himself.

25. Since the appellant was clearing the water channel, he was carrying spade in his hand. Firstly, he gave blows to Harbhajan Singh with spade and thereafter, with *Tangli*. The ocular version of PW.3 Lakhwinder Singh and PW.4 Piari is duly corroborated by the medical evidence. The appellant himself has admitted that he had inflicted injury on the body of Harbhajan Singh with *Tangli*. Piari received injuries, when she was trying to ward off the blows of *Tangli*. The fact that the deceased had received as many as 25 injuries duly proves that the appellant was aggressor and the plea of private defence is not available to him.

26. In **Bhagwan Tana Patil Versus The State of Maharashtra, (1974) 3 Supreme Court Cases 536**, their Lordships of the Supreme Court have held that there is no hard and fast rule that simply because the prosecution witnesses did not explain the injuries on the person of the accused, their entire evidence should be discarded. Their Lordships have held as under :-

“15. The contention appears to be untenable. The mere fact that the evidence of the prosecution witnesses was not firm and safe enough to be relied upon with regard to the part assigned to the acquitted accused in the occurrence, was no ground to reject it mechanically against the appellant also. The maxim falsus in uno falsus in omnibus is not to be blindly invoked in appraising evidence adduced in our courts where witnesses seldom tell the whole truth, but often resort to exaggerations, embellishments and 'padding-up' to support a story however true in the main. It is the function of the Court to disengage the truth from falsehood and to accept what it finds to be true, and reject the rest. It is only where truth and falsehood are inextricably mixed up, polluting beyond refinement, down to the core, the entire fabric of the narration given by a witness, that the Court might be justified in rejecting his evidence in toto. In the present case, the High Court has not positively held that these witnesses, in their evidence, had falsely implicated the three acquitted accused. It only found that qua the acquitted accused, their evidence was infirm and the requisite confirmation of their evidence from

independent sources was lacking. The case against the appellant stood on a far better footing. The interested evidence of Baliram Ukha and Maharu Baliram had been sufficiently corroborated by independent evidence, so far as the appellant was concerned. Excepting that he belonged to the brotherhood of Baliram Ukha nothing substantial could be pointed out against the integrity of Bhagwan Parshram, P.W.13. He had no axe of his own to grind against the appellant. His coming on the scene of occurrence was highly natural and probable. P.W. Bhagwan Parshram did give an explanation in his statement at the trial of the incised injuries found on the right hand of the appellant. He had described in detail the process, by which he had wrenched out the Jambia from the hand of the appellant, and said that the injuries might have been sustained by the appellant during that struggle with the same Jambia. A similar explanation was given by Baliram Ukha in his deposition at the trial. It is, therefore, not correct to say that the Courts below had themselves invented an explanation for the injuries of the appellant, which the witnesses had not given. True that the explanation given was not found impeccable but there is no hard and fast rule that simply because the prosecution witnesses did not explain the injuries on the person of the accused, their entire evidence should be discarded. The observations of this Court in Bankey Lal v. State of Uttar Pradesh, (1971) 3 SCC 184 are in point. The evidence of Bhagwan Parshram could not be

brushed aside merely because he had not given a flawless explanation of the injuries of the appellant, which, according to Dr. Gune, P.W.8 were very superficial and could be suffered by consent, with a razor-blade. Bhagwan Parshram's evidence, which was found by the Courts below to be fully trustworthy qua the appellant – and we think rightly – was by itself sufficient to fix beyond doubt the identity of the appellant as the assailant of Baliram Ukha.”

27. Their Lordships of the Supreme Court in **Murali Versus State of T.N., (2001) 1 Supreme Court Cases 229** have held that the right of private defence, undoubtedly, is a defence available to an accused but the court while dealing with the defence, ought to act with proper circumspection and caution, since the same is an exception rather than a rule. Their Lordships have held as under :-

“7. A perusal of the facts, as appears from the decision, makes clear the circumstances under which the right of private defence is to be made applicable, unfortunately the same is not available on the contextual facts. The accused was found present at the tea stall, being the deceased's place of business and as such can be termed to be an aggressor and as such question of there being any right of private defence does not arise. The definite evidence in the matter is that the accused opened the door with a bloodstained knife. The nature of his injuries are not, however, sufficient by itself to sustain the plea of private defence. As a matter of fact both, learned Sessions Judge and the High Court, have

negated such a plea and we do record our concurrence therewith. The injuries on the accused are rather minor in nature since they were restricted to tender defusion and abrasion. There is no wound, much less any serious injury which may even prompt a person to take the most heinous step of committing the murder. Reliance was also placed on the decision in the case of Vijayan v. State, (1999) 4 SCC 36 wherein this Court on the facts of the matter in issue and evidence on record was inclined to give judicial imprimatur to the plea of private defence advanced by the appellant and held him not guilty and granted pardon.”

28. In **Hukam Chand Versus State of Haryana, (2002) 8 Supreme Court Cases 421**, their Lordships of the Supreme Court have held that the explanation set up by accused under Section 313 Cr.P.C. that deceased received the fatal blow on his head from his own arms was not creditworthy. The plea of self-defence was not acceptable. Their Lordships have held as under :-

“12. Hereinbefore in this judgment the first issue pertains to a question as to whether the complainant party can be termed to be the aggressors or not. The learned Sessions Judge negated it and so did the High Court. A bare perusal of the injury report of Hukam Chand as a matter of fact negates the theory of aggression, as introduced by the defence. No serious injuries have been shown to have been received by any of the accused persons and the pretended explanation as set up under Section 313 that Udai

Chand received the fatal blow on his head from his own arms cannot but be termed to be otherwise not creditworthy neither acceptable. In the wake of the aforesaid the aggression theory completely fails and we answer the first issue thus in the negate.”

29. In the instant case also, no serious injury was caused to the appellant. The deceased had received as many as 25 injuries with sharp edged weapons. The number of injuries indicate that the appellant was the aggressor, not the deceased.

30. Accordingly, the prosecution has proved its case against the appellant beyond reasonable doubt. There is no merit in the instant appeal and the same is dismissed. The impugned judgment dated 29.01.2018 and order dated 30.01.2018 are upheld.

(RAJIV SHARMA)
JUDGE

May 24, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes