

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

CRA-S-2294-SB-2004 (O&M)

Date of pronouncement: 24.08.2022

Subh Ram

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. S.S. Kang, Advocate and
Mr. P.R. Yadav, Advocate for the appellant.

Mr. Brijesh Sharma, Assistant Advocate General, Haryana.

H.S. MADAAN, J.

1. In nutshell, the facts of the case as per prosecution story are that on 24.05.2000, information was sent from Kalyani Hospital, Gurgaon to Police Station Udyog Vihar, Gurgaon with regard to admission of injured Ashok Kumar son of Girdhari, R/o Dundahera there; on receipt of that information, ASI Ajmer Singh (hereinafter referred to as the First Investigating Officer/IO) went to that hospital on 24.05.2000 and enquired about fitness of injured to make statement. However, since the injured was opined to be unfit to make statement, therefore, he returned to police station. He again went to Kalyani Hospital on next day i.e. 25.05.2000 and after obtaining the opinion of the attending doctor with regard to fitness of injured to make statement which was in affirmative,

he recorded statement of injured at about 8.00 PM; inter alia, in the statement, the complainant/injured Ashok Kumar stated that he is doing business of transport having an office on the main road in Dundahera; he also owns a truck bearing registration No.DIL-862; on 24.05.2000, while he was sitting in his office, Surender son of Chhelu and Rakesh @ Sunder son of Hukam Singh, both residents of Dundahera were also sitting with him there; then at about 4.00 PM, accused Subh Ram son of Matadin, R/o Dundahera came and called him out from his office; the complainant accordingly went out on the road; Subh Ram was accompanied by his sons Ajay and Vijay; Subh Ram said to the complainant that he was helping Rakesh etc., in a case and would depose against them and on that day, they would teach him a lesson for that; the complainant told accused Subh Ram that he would not give evidence against anybody; in the meanwhile, Surender and Rakesh were also coming towards them, however, before they could reach near the complainant, Ajay Pal and Vijay both sons of accused Subh Ram caught hold of the complainant and then accused Subh Ram gave a blow of ballam with an intention to kill him, hitting the complainant on left side of the chest; resultantly complainant fell on the road; Surender and Rakesh intervened and rescued the complainant from clutches of the accused, who while leaving the spot threatened the complainant that he had been saved on that day but would be killed by them in future.

Complainant/injured Ashok Kumar was then removed to Kalyani Hospital, Gurgaon by his brothers namely Pawan and Raj Kumar;

according to the complainant, he had come to know that accused had also broken the front glass of his truck besides damaging the shutters of his shops with ballam.

After recording statement of complainant/injured Ex.PA, ASI Ajmer Singh put his endorsement below the same as Ex.PA/1 and then sent ruqa to police station through Constable Krishan on the basis of which formal FIR Ex.PK was recorded by ASI Sunil Kumar; thereafter the IO went to the place of occurrence and prepared rough site plan thereof as Ex.PG; he took into possession the blood stained clothes of complainant/injured i.e. shirt, a terricoat pant with belt, white cotton vest and stripped cotton underwear which had been handed over to him by Dr. Satender Kumar, Medical Officer, Kalyani Hospital, Gurgaon; the clothes were converted into a parcel, sealed with the seal having inscription 'KH' and the parcel was seized vide recovery memo Ex.PA, attested by witnesses.

Further investigation of the case was carried out by ASI Sunil Kumar (hereinafter referred to as the latter Investigating Officer); accused Subh Ram was arrested in this case on 12.06.2000; he was interrogated, during the course of which he suffered a disclosure statement Ex.PL on 13.06.2000 that he had kept concealed a ballam in the chaubara of his residential house after separating it from lathi and cleaning it with water as well as broken piece of the lathi which he could get recovered; then in pursuance of the disclosure statement, Subh Ram accused led the police party to the disclosed place and got the ballam and

piece of lathi recovered from his possession, which were taken into police possession, vide recovery memo Ex.PM, attested by witnesses; the IO prepared rough sketches of the broken piece of lathi and ballam Ex.PO and PP respectively; site plan of place of recovery was prepared as Ex.PN; the lathi and ballam along with blood stained clothes of injured/complainant were sent to Forensic Science Laboratory, Madhuban, Haryana.

On 21.07.2000, accused Ajay Pal was associated with the investigation of the case; however, another accused namely Vijay Pal was found innocent as a result of investigation conducted by Inspector Attar Singh, SHO of the police station. After completion of investigation and other formalities, challan against accused Subh Ram and Ajay Pal was prepared and filed in the Court.

2. On presentation of the challan in the Court of Judicial Magistrate 1st Class, Gurgaon, copies of documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C., and then finding that offence under Section 307 IPC was exclusively triable by the Court of Sessions, learned JMJC, Gurgaon committed the case to the Court of Sessions, vide order dated 20.11.2000, from where it was assigned to Addl. Sessions Judge, Gurgaon.

On receipt of challan, finding a prima facie case, charge for offences under Sections 307/427 and 506 read with Section 34 IPC was framed against both the accused; in addition, charge for offence under Section 25 of the Arms Act was framed against accused Subh Ram; the

accused pleaded not guilty and claimed trial.

3. During the course of prosecution evidence, prosecution examined the following witnesses:-

PW-1 Complainant/injured Ashok Kumar provided the ocular version of the incident, deposing in consonance with the prosecution story.

PW2 Rakesh another eye witness of the incident deposed as per prosecution version.

PW-3 Sh. Sarwan Kumar, Draughtsman, SP Office, Faridabad stated that on 19.07.2000, he had visited the spot and prepared scaled site plan Ex.PB as per instructions given by Sh. Ashok Kumar, injured.

PW-4 Dr. Arun Vashista, Medical Officer, Kalyani Hospital, Gurgaon stated that on 25.05.2000, while he was working in that very hospital as a doctor on duty, on police request, he had given fitness certificate with regard to patient Ashok Kumar and declared the injured unfit to make statement. He proved his such opinion as Ex.PC.

PW-5 SI Ajmer Singh stated that on 24.05.2000 while he was posted at Police Station Udyog Vihar, Gurgaon, on that day, he had received a medical ruqa Mark A from Kalyani Hospital, Gurgaon and then reached there for recording statement of injured, then he had moved an application Ex.PD for obtaining opinion of the doctor regarding fitness of the injured to make statement; the concerned doctor vide his endorsement had declared Ashok Kumar injured unfit to make statement;

he further stated that on 25.05.2000, he again went to Kalyani Hospital, Gurgaon and moved application Ex.PE to the concerned doctor who had declared Ashok Kumar fit for making statement. Thereafter, he had recorded statement of injured Ashok Kumar as Ex.PA, putting his endorsement Ex.PA/1 below it, sending ruqa to the police station through Constable Krishan Kumar for registration of the FIR. He further deposed regarding taking into possession the clothes of injured given to him by the doctor after converting it into a sealed parcel, vide recovery memo Ex.PF. He stated that he had gone to the place of occurrence and prepared rough site plan Ex.PG on indication of Rakesh Kumar and Surender Kumar witnesses and on return to the police station, he deposited the parcel containing clothes of injured with MHC Suresh Kumar; on 26.05.2000, he had moved an application Ex.PH to the doctor for obtaining his opinion about nature of the injury found on the person of injured Ashok Kumar and on 12.06.2000, he had arrested accused Subh Ram from the Court where he had surrendered, obtaining his police remand for one day.

PW-6 HC Suresh Kumar, a formal witness tendered his affidavit in evidence as Ex.PJ.

PW-7 Constable Surender Singh deposed that on 08.09.2000, while he was posted at Police Station Udyog Vihar, Gurgaon, on that day, MHC Suresh Kumar had handed over a lathi and a parcel duly sealed for depositing the same with FSL, Madhuban. He had handed over those articles at FSL in the same condition.

PW-8 Inspector Ramesh Pal deposed that on 23.01.2001, while posted as SHO, PS Udyog Vihar, Gurgaon, he had prepared report under Section 173 Cr.P.C.

PW-9 SI Sunil Kumar stated that on 25.5.2000, while he was posted as ASI at PS Udyog Vihar, Gurgaon, on that day, SI Ajmer Singh had sent writing Ex.PA through Constable Krishan Kumar on the basis of which, he had recorded formal FIR Ex.PK and on 12.06.2000, the FIR file was handed over to him for investigation. He deposed regarding accused Subh Ram suffering disclosure statement on 13.06.2000 Ex.PL and subsequently, getting ballam and piece of baans bamboo recovered from his possession, which had been seized vide recovery memo. He deposed regarding the other part played by him in the investigation.

PW-10 Dr. Subhash Khanna, Senior Consultant, Kalyani Hospital, Gurgaon stated that on 24.05.2000 at 5.50 PM, patient Ashok Kumar was admitted in the emergency ward, he was firstly attended to by RMO and his medico-legal certificate was prepared by Dr. Satender Kumar, RMO on duty. He proved carbon copy of that certificate as Ex.PQ, prepared and signed by Dr. Satender Kumar, whose signatures and hand writing he identified and further stated that ruqa was sent by Dr. Satender Kumar to the police station. He proved endorsement by Dr. Satender Kumar on police application Ex.PD declaring patient Ashok Kumar unfit to make statement, the endorsement being Ex.PD/1. He further proved endorsement by Dr. Satender Kumar Ex.PQ/1 to the effect that nature of injury would be given later on. He proved several other

documents in hand of Dr. Satender Kumar, further stating that on 26.05.2000, the police had moved an application Ex.PH before him for finding nature of injury on which he made the endorsement that patient was having injuries to axillary vein left side with loss of blood. The patient was given two unites of blood along with IV fluids. He proved his endorsement as Ex.PH/1 on the application.

He further deposed that on the same application, Dr. Satender Kumar had given his finding that on seeing the notes of the surgeon if untreated it could be dangerous to life. He proved that endorsement by Dr. Satender Kumar as Ex.PH/2. Going further this witness stated that the patient was operated upon for injury by him. Pectoralis muscle was repaired and repair of the axillary vein was done. Patient was discharged on 05.06.2000. To a Court question, whether injury on the person of injured Ashok Kumar was dangerous to his life or not? he gave the answer that timely control of bleeding and repair of vein was important part of treatment. If timely untreated the injury could be dangerous to life. He stated that now Dr. Satender Kumar is not serving in their hospital and his present whereabouts are not known to them.

The Public Prosecutor tendered in evidence report of Chemical Examiner as Ex.PH and thereafter, closed the evidence of prosecution.

4. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to them but they

denied the allegations contending that they were innocent.

The plea of accused Subh Ram was to the following effect:-

“I am innocent. Ashok used to park his trucks and trollas in front of my shops & Dhaba (Rao Bhojnalya). Ashok's trucks and trolla and trolla used to lie parked at sometimes for 2-3 days together in front of my house and shops (Rao Bhojnalya which are adjacent). My tenants used to ask me for taking appropriate action in the matter as the parking of the vehicle was adversely effecting their business. Ashok & others used to quarrel with me and told me that he would not remove the trollas and other vehicles since they were paying road tax. On the date of occurrence, Ashok's truck and trolla were lying parked in front of my house and shops (bhojnalya). Ashok was told by me even at the time when he was parking the truck in front of my house/dhaba that he should not do so, An exchange of hot words took place on that occasion between Ashok and myself. At that point of time, Ashok . pulled out a lathi from the truck and had hit me on my right shoulder. Ashok and his two brothers as also his father had also reached the spot in the meantime and they had also assaulted me. I, in exercise of right of person and property, had picked up a PALTA used by halvais from Mani hotal and had caused one injury to Ashok in exercise of such right of private defence. I reported this occurrence to the police on that very day shortly after the occurrence and I was also medico-legally examined regarding my injuries through police. That police was colluding with the complainant and tortured me in police station. When I was produced in the Court I was multiple injuries and on my prayer I was examined by Board of doctors at GH Gurgaon. My signatures were obtained on blank papers and false recovery was shown. I have filed a complaint against police officers who tortured me and they already stand summoned u/ss 342/323 330/506 of IPC. That the complainant in collusion with the police has tried to obtain false report about the gravity of injuries from a private hospital. My son was not present at the time of

occurrence.”

Whereas, his co-accused stated that he was innocent and had been falsely implicated being son of Subh Ram; that he was not present at the spot at the relevant time.

5. During their defence evidence, accused examined three witnesses.

DW-1 Dr. R.K. Sachdev, Medical Officer, General Hospital, Gurgaon stated that on 24.05.2000, he conducted medico-legal examination of Subh Ram son of Matadin, aged about 45 years who was brought by Constable Raj Kumar No. 939 and found the following injuries:-

- 1. Abrasion 2 x 1 cm with swelling behind the left ear. Advised X-ray.*
- 2. Pain and swelling on the right shoulder. Advised X-ray.*
- 3. Pain and tenderness at base of right index finger and little finger. Advised X-ray.*
- 4. Abrasion 2 x 1 cm on right elbow.*
- 5. Contusion 9 x 3 cm in size behind the left shoulder.*
- 6. Pain and swelling below left eye. Advised X-ray skull.*

DW-2 Dr. B.B. Aggarwal, Medical Officer, General Hospital, Gurgaon stated that on the order passed by Duty Magistrate, Gurgaon dated 13.06.2000, which was endorsed by Medical Superintendent, General Hospital, Gurgaon, he along with Dr. Sanjay Narula conducted medico-legal examination of Subh Ram son of Matadin. The examination was conducted at around 2 PM with the history of being assaulted by police. The general condition of the patient was fair. They had observed

the following injuries:-

- 1. Patient was complaint of pain both thighs with tenderness on touch. There was no limitation of movement seen.*
- 2. Abrasion 2 cm x 1 cm with small amount of colloted blood over right knee.*
- 3. Contusion 2 cm x 1 cm on left knee redish blue in colour with defuse swelling.*
- 4. .5 x .5 cm abrasion over base of right great toe overdorsal aspect with mild colloted blood.*
- 5. Complaint of pain and tenderness over left grade toe.*
- 6. There was no external mark of injury seen over penis. No welling. No tenderness.*
- 7. Pain and tenderness over both side of back. There was no external mark of injury seen and no localised swelling was seen over spine.*

DW-3 Darshan Singh, Addl. Ahlmad to the Court of Sh. Krishan Kumar, ACJM, Gurgaon had brought the summoned case file titled as Subh Ram Vs. ASI Sunil Kumar and others pending in the Court of ACJM, Gurgaon for 05.10.2004. He stated that in the said complaint, accused have already been summoned under Sections 342, 323, 330 and 506 IPC to face trial. He proved certified copy of the complaint as Ex.DW3/A.

With that the defence evidence got closed.

6. After hearing arguments, the trial Court, vide judgment dated 03.11.2004, convicted accused Subh Ram for offences under Sections 307/ 427 and 506 IPC, whereas his co-accused Ajay Pal was acquitted of the charge framed against him and in terms of the order passed on that very day, accused Subh Ram was sentenced to undergo rigorous

imprisonment (RI) for a period of 05 years and to pay a fine of Rs.500/- , for offence punishable U/s 307 IPC; in default of payment of fine, to further undergo RI for one month; for offences under Section 427 and 506, he was sentenced to undergo RI for a period of 02 years.

All the substantive sentences of imprisonment were ordered to run concurrently.

7. Feeling aggrieved by the judgment of his conviction and order of sentence, accused Subh Ram had filed the present appeal, notice of which was given to the State, which has put in appearance. The appeal was taken up on 23.11.2004, when it was Admitted for regular hearing and vide order dated 15.02.2005, an application under Section 389 Cr.P.C., filed by the appellant/accused was accepted and his remaining sentence was ordered to be suspended subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Gurgaon.

Now the appeal has come up for final hearing.

8. I have heard learned counsel for the appellant/accused, learned State counsel besides going through the record.

9. Learned counsel for the appellant has contended that the impugned judgment of conviction and order of sentence passed against the appellant/accused are not sustainable for various reasons. The main pleas raised by him in this regard are as follow:-

(i) There was delay of 28 hours in reporting the matter to the police inasmuch as the incident had taken place on

24.05.2000 at 4.00 PM whereas statement of complainant Ashok Kumar was recorded at Kalyani Hospital Gurgaon on 25.05.2000 at 8 PM i.e. after a delay of 28 hours and during this period, the complainant had sufficient time to fabricate a false story so as to implicate the accused in this case.

(ii)The complainant had gone to a private hospital by name of Kalyani Hospital rather than going to a Govt., hospital and in Kalyani Hospital, he had manipulated the things inasmuch as the doctor had opined that he was unfit to make statement on 24.05.2000 when his medical record goes to show that he was conscious and could narrate the facts to the police soon after the incident.

(iii)That taking advantage of the delay in making statement to the police, the prosecution has tried to shift the venue of the incident inasmuch as the incident had taken place near Rao Bhojanalya belonging to the accused; the dispute was with regard to complainant parking his trucks and other vehicles in front of shops of the accused to which the accused had been objecting since that affected business of the accused and their tenants, however, the complainant did not pay any heed and as a matter of fact, he along with his father and brothers had beaten up Subh Ram accused. Subh Ram had gone to the police station soon after the

- incident and got DDR lodged. A police constable was sent with him for his medical examination from Government hospital. He was medico-legally examined there.
- (iv)The complainant party was aggressor and to save themselves from prosecution, they have concocted this version.
- (v)The origin and genesis of the occurrence have been suppressed.
- (vi)It was a sudden occurrence and there was no prior planning by the accused.
- (vii)The motive suggested by the prosecution is unconvincing and improbable whereas the one suggested by the defence is plausible and convincing.
- (viii)The medical evidence does not go to prove offence under Section 307 IPC, the facts and circumstances of the case do not show that accused had any intention to commit murder of complainant; it is a case of only a single blow and the injury caused is not on the vital part of the body.
- (ix)That the weapon said to have been used by the appellant/accused in the incident was neither shown to the doctor nor sent to FSL to ascertain the presence of blood upon it and rather it has been planted upon the accused by way of padding.
- (x)That the plea taken up by Subh Ram accused that he had

caused the injury in exercise of his right of self defence was wrongly rejected by the trial Court.

(xi) That presence at spot of PW-2 Rakesh Kumar is highly doubtful.

10. Learned State counsel has tried to counter the submissions made by learned counsel for the appellant.

11. First coming to the delay part, the law is well settled that in case of an incident involving commission of a criminal offence, prompt lodging of report with the police should be there, since that provides spontaneous and blemish version of the incident and with the passage of time, the element of truth in the version gets diluted and possibility of false implication after due deliberations and consultations can easily creep in. It is for that reason the delay is looked down upon with suspicion by the Courts. Here no plausible and satisfactory explanation for delay of about 28 hours in reporting the matter to the police is there, which has been left unexplained. If it is to be taken into view that there is nothing on record to show that the injured was unconscious or was under influence of some medicine, as such, unable to understand and communicate properly, the medical opinion given that he was unable to make statement come out to be doubtful. Furthermore, as per MLR Ex.DA when the injured was admitted in the hospital, he was conscious and, he had stated that he had given location of the occurrence as near Rao Bhojanalya, which is near to the house and shop of the accused. Subsequently, in his version he changed the place of occurrence to one

outside his shop, obviously in an attempt to show that the accused were aggressors, but from what he had told to the doctor on arrival at hospital and duly recorded in the MLR, it comes out that the quarrel took place near Rao Bhojanalya close to the house and STD shop of the accused and not near the office of the complainant.

12. One more thing to be taken note of is that the complainant in his statement to the police had named two sons and accused Subh Ram, who according to his version had caught hold of him from his arms while accused Subh Ram had given ballam blow to him. One such son namely Vijay Pal was found to be innocent during the investigation, whereas, the other son Ajay Pal was also found not to be involved in the incident by the trial Court and was acquitted of the charge. Although *maxim falsus in uno falsus in omnibus* that is false in whole, false in part is not made applicable by the Courts in India, but that cast a shadow on the truthfulness of prosecution version rendering it doubtful.

13. Moreover the seat of injury is such which cannot be called a vital part of the body. A normal human being would not consider auxilliary fold which is near armpit to be a vital part of the body so that a hit on it could prove to be fatal. With two sons and co-accused of Subh Ram having not been found to be involved in the incident, it is difficult to understand as to how the injured suffered injury on the armpit when as can be understood unless the arm is raised, the injury cannot take place there.

14. Furthermore it is also doubtful as to whether the injury was

caused with a ballam, though, as per prosecution case, accused Subh Ram when arrested in this case and interrogated had suffered a disclosure statement that he had kept concealed ballam and bamboo handle separated from ballam in his house regarding which he knew and could get those recovered and thereafter in pursuance of the disclosure statement had got the ballam and bamboo handle recovered but then it has to be taken note of that the ballam and bamboo handle were sent to FSL to find out as to whether any blood stains were there or not and as per report received therefrom Ex.PH no blood was detected thereon, which makes it doubtful as to whether the ballam had in fact been used by Subh Ram in causing injury to complainant Ashok Kumar, when the plea taken by him is that on being attacked by complainant side, he had picked up a palta used by the halwai from Mani Hotel and caused injury to Ashok in right of private defence.

Another thing to be seen is that ballam was not shown to the doctor who had medico-legally examined the injured to find out as to whether the injury observed on the person of complainant Ashok Kumar could be caused by a ballam, that also leaves a lacuna in the prosecution case.

On the other hand, the plea taken by the accused that when he was assaulted by Ashok Kumar, his brothers and father and he had suffered injuries, then to save himself he had lifted *palta* from the shop of nearby halwai and hit Ashok Kumar, that rather comes out to be plausible.

15. Another important factor to be taken note of is that soon after the incident, the accused had gone to the police station and reported the matter there, from where a police constable was deputed to accompany him to Civil Hospital, Gurgaon for his medico-legal examination, which was actually conducted and the police official accompanying the accused had brought a copy of the MLR of accused Subh Ram with him, however, no action was taken thereon. Such conduct of the accused is quite natural. If as a matter of fact, he was aggressor and had caused a serious injury to Ashok Kumar then in normal course fearing being held up by the police, he would have avoided going to the police station and reporting the matter there. The very fact that he proceeded to the police station soon after the incident and narrated it there goes to show his natural conduct. One more thing to be noticed is that the time gap between the incident and the accused reaching the police station and narrating the incident there is not such that in the meanwhile he could have fabricated and concocted a version so as to falsely involve complainant Ashok Kumar and his relatives in the case. Although, it needs to be observed here that Subh Ram did hide the factum of his having caused injury to Ashok Kumar may be in self defence, it is for that reason the plea taken by him during the trial of his having caused injury to Ashok Kumar exercising right of self defence was rejected by the trial Court. I find that the trial Court was not justified in doing that. Though in the report lodged by Subh Ram with the police on the basis of which a DDR was recorded, he did not make any mention of his having caused injury to Ashok Kumar

exercising right of self defence but then one thing was there that he had given version of the incident which was corroborated by the injuries found on his person, as a result of his medico-legal examination carried out at Civil Hospital, Gurgaon, where he had gone in company of a police official deputed for that purpose from the police station itself. The injuries on his person clearly show that his version could not be discarded outrightly.

16. During the trial, the accused had taken up a plea of causing injury in self defence, that plea was required to be examined rather than rejecting it outrightly. As already observed, the complainant in this case had reported the matter to the police after a considerable delay and a clear attempt to suppress the origin and genesis of the occurrence comes out to be there. As many as six injuries though simple in nature having been found on the person of Subh Ram soon after the incident, the prosecution was required to explain the same which has not been so done merely stating that injuries being simple in nature could be self suffered would not be proper and appropriate.

When the things are seen in context of conduct of the accused, when a person is assaulted by the assailants then the law expects him to stand and resist and not to run away like a coward. Accused/appellant an Ex.serviceman opted to act like a self respecting person and in the process caused injury to Ashok Kumar. As law is well settled while exercising right of self defence, one is not expected to weigh the force to be used in golden scale so as to save his life or that of

his nears and dears in assault by assailants.

Learned counsel for the appellant had referred to various judgments in that regard. First one being **Lakshmi Singh & Ors. Vs. State of Bihar**, (1976) 4 Supreme Court Cases 394 wherein dealing with aspect of appreciation of evidence in a criminal trial, the Apex Court had observed that where the prosecution fails to explain the injuries on the accused that leads to two results, first that the evidence of the prosecution witnesses is untrue and second that injuries probabilise the plea taken by the appellant. It was further observed that whether truth and falsehood are inextricably mixed the entire prosecution case must be rejected.

The second judgment referred to by learned counsel for the appellant is **Mohd. Ramzani Vs. State of Delhi**, 1980 Supp Supreme Court Cases 215, the Apex Court had observed that the onus which rests on an accused person under [Section 105, Evidence Act](#), to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence which the accused is charged, beyond reasonable doubt. A person faced with imminent peril of life and limb of himself or another, is not expected to weigh in "golden scales" the precise force needed to repel the danger. Even if he at the heat of the moment carries his defence a little further than what would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it.

17. The statement of Ashok Kumar complainant recorded in the

Court also does not inspire much confidence. Presence at the spot of Rakesh Kumar is also doubtful. He or the other person said to be present did not opt to report the matter to the police by going to the police station or telephonically. Interestingly signatures of Rakesh Kumar are there on MLC of complainant/injured being the person who had accompanied the injured to hospital but while getting his statement recorded, Rakesh Kumar denied having done so. Why did he deny this fact is for the reasons best known to him.

18. In the application Ex.PD/1 moved by the IO on 24.05.2000 addressed to Medical Officer, Kalyani Hospital, Gurgaon he had enquired about fitness of Ashok Kumar and Raj Kumar injured to make statement. The attending doctor vide endorsement had declared Ashok Kumar unfit to make statement whereas regarding Raj Kumar he had reported that he was not present there at 7.00 PM. That shows one Raj Kumar had also suffered injuries in the incident and had come to Kalyani Hospital, Gurgaon, however, he left the same after some time, for some reason, which have not been explained by the prosecution. Rather the prosecution does not claim that Raj Kumar son of Girdhari Lal a brother of Ashok Kumar complainant had also suffered injuries in the occurrence.

PW-5 SI Ajmer Singh in his cross-examination admitted the names of two injured i.e. Ashok Kumar and Raj Kumar were mentioned on the ruqa Mark A received from hospital. He further stated that Rakesh Kumar had got Ashok Kumar admitted in the hospital while Rakesh Kumar appearing as PW2 had denied so. All these things result in making

the prosecution case doubtful as to whether the incident had happened in the way as claimed by the prosecution; Whether Rakesh Kumar was present at the spot and had seen the incident.

19. The motive suggested by the prosecution is totally improbable and unconvincing. There is nothing on record to show that the appellant/accused had any pending criminal case with one Rakesh Kumar in which Ashok Kumar was cited as a witness and some date of hearing was nearby in which Ashok Kumar was to make statement. Furthermore, appellant going to office of the complainant in such a manner and asking him regarding not making the statement and when Ashok Kumar stated that he was not going to make statement, then there was no reason for any quarrel. If the complainant had stated that he would make the statement against the accused come what may than that might have provoked the accused but not when he stated otherwise. There was no provocation for the incident and accused causing injury to the complainant for some imaginary reason or complainant intending to depose against him in a case between appellant/accused and Rakesh Kumar, does not seem to be convincing rather the motive suggested by the appellant/accused comes out to be much more plausible and satisfactory that is with regard to complainant parking his vehicles in front of his house and STD shop, affecting his access to his house and shop as well his business.

20. Furthermore, offence under Section 307 IPC is not made out from the record. There is only a single injury said to have been caused by

the appellant/accused to complainant. Seat of injury is not a vital part of the body. The medical opinion in that regard is not very convincing. The injured was discharged on 05.06.2000 after 11 days. Dr. Satender Kumar given opinion regarding nature of injury vide endorsement Ex.PH/2 on police application, stating that on seeing the notes of the surgeon if untreated, the injury could be dangerous to life. Such type of opinion cannot result in making out a case under Section 307 IPC. The requisite intention or knowledge in terms of Section 307 IPC are not found to be there. The incident is said to have taken place all of sudden with no plausible motive being there for the accused to cause injury, it cannot be said that he had inflicted the injury on the person of Ashok Kumar with an intention to commit his murder.

21. Learned counsel for the appellant had referred to judgment **Dr. AG Bhagwat Vs. UT Chandigarh**, 1988 (1) RCR (Criminal) 591, where it was observed that before an intended injury can be said to be 'likely ' to cause death, it must be an injury which is sufficient in the ordinary course of nature to cause death which essentially means that the death will be the most probable result of the injury having regard to the ordinary course of nature.

Learned counsel for the appellant has also taken me to Modi's Medical Jurisprudence and Toxicology, 25th Edition, wherein referring to this topic of 'danger to life', it has been mentioned on page No.659 that danger to life should be imminent before the injuries are designated 'dangerous to life'. It is observed that the injuries are proved

fatal remotely by inter-current diseases, such as tetanus, and erysipelas should not be considered dangerous. Therefore, injury found on the person of Ashok Kumar cannot justified to be dangerous to life and in my considered view, it rather comes within four corners of offence under Section 324 IPC.

22. In view of the detailed discussion above, when the origin and genesis of the incident as well as place of occurrence as suggested by the prosecution has been found to be doubtful; the investigation in this case is not shown to have carried out in a very fair and proper manner; the IO left much to be desired in carrying out the investigation; the version of the accused that reported to the police first was not fairly looked into, coupled with delay in reporting the matter to the police; seat of injury being not on vital part of the body; weapon said to have been used by the accused in the incident sent to FSL for forensic examination but report received therefrom not supporting the prosecution case, such weapon having not been shown to the doctor to find out whether injury found on person of Ashok Kumar injured could be caused with that weapon; injuries on the person of appellant/accused not explained by the prosecution; accused/appellant having gone to the police station soon after the incident and reporting the matter there; the medico-legal examination of appellant/accused having been conducted by Civil Hospital, Gurgaon, revealing presence of six injuries on his person; the right of private defence having been found to be available to the accused, the defence version having been found to be more plausible and

convincing. All these factors resulted in creating a reasonable doubt in the mind about truthfulness of the prosecution story. The appellant accused deserved to be granted benefit of such doubt resulting in his acquittal. Hence such benefit to which the accused was entitled as per law is granted to the accused now. Therefore, the judgment of conviction and sentence passed against the appellant/accused cannot be sustained and the same is liable to be set aside by way of acceptance of appeal. The appeal is accepted. The impugned judgment is set aside and the accused is acquitted of the charge framed against him.

24.08.2022

sumit.k

(H.S. MADAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No