

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

535 + 202

CRA-D-1634-DB-2014 (O&M)

Reserved on: 21.11.2022

Date of Decision: 07.12.2022

JAGDISH

-Appellant

Versus

STATE OF HARYANA

-Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Maninder Singh, Advocate
Amicus Curiae for the appellant.

Mr. Anmol Malik, DAG, Haryana.

Ms. Arushi Garg, Advocate
for the complainant.

KULDEEP TIWARI, J.

1. The present appeal has been directed against the verdict of conviction dated 26.08.2014 and the order of sentence dated 05.09.2014 passed by the learned Additional Sessions Judge, Kaithal, in case FIR No.68 of 24.06.2013, registered under Sections 302, 307, 323, 34 of IPC and Section 27 of Arms Act, 1959, at Police Station Siwan, District Kaithal, whereby the appellant was convicted for the offence punishable under Sections 302 and 323 of IPC and Section 27 of Arms Act, 1959 and

was awarded sentence as under:-

Offence under Section	Period (R.I.)	Fine	In Default
302 of IPC	R.I. for life	Rs.1,00,000/-	R.I. for 1 year
323 of IPC	R.I. for 6 months	Rs.2000/-	R.I. for 15 days
27 of Arms Ac	R.I. for 6 months	Rs.2000/-	R.I. for 15 days

All these sentences were ordered to run concurrently.

FACTUAL MATRIX

2. The prosecution agency was set into motion upon receipt of telephonic information on 24.06.2013 in the police station, to the effect that a firing incidence has taken place in Village Nagal and as a result whereof, Satnam Singh and his two sons Rajwinder Singh and Richhpal Singh suffered gunshot injuries. Upon such information being received, SI/SHO Ved Parkash along with police party reached Village Nagal, where PW1, Swaran Singh (complainant/eye-witness), met him at the spot. The statement of Swaran Singh was recorded to the effect that he is an agriculturist and has two sons namely Dalbir Singh and Satnam Singh. Both his sons reside in separate villages and he resides with his son Dalbir Singh. His son Satnam Singh also has two sons namely Rajwinder Singh and Richhpal Singh. He is having one acre of land owned by custodian department and Mukhtiar Singh and Jagtar Singh are also having 3-4 acres of land belonging to the said department. Out of his aforesaid land, one kanal land is in possession of Mukhtair Singh and Jagtar Singh, who are his brothers-in-law. He requested them to vacate their possession over this one kanal land, however, they nurtured grudge against him on this account and accordingly, on 23.6.2013, at about 10:30

p.m., when he was sleeping at the tubewell situated in the land taken on lease by him, Jagdish (present appellant) and Gagandeep Singh attacked upon him with lathis. These lathi blows hit on his four limbs, whereupon, he raised hue and cry and then both of them fled away and he himself went to his house. Thereafter, the next morning, at about 6.00 a.m., his son Satnam along with his grandsons Richhpal Singh and Rajwinder Singh came to the land taken on lease for irrigating the fields with tubewell. He and his son Dalbir also followed them. When he and his son Dalbir Singh were standing under a mulberry tree in the fields near tubewell, Mukhtiar Singh, armed with gandasi, Jagdish (present appellant), armed with double barrel gun (hereinafter referred to as DBBL), Amrik Singh, empty handed, Sukhdev, armed with lathi, Gagandeep, armed with danda, brother-in-law of Sukhdev Singh, armed with lathi and Ranjit Singh, armed with gandasi, were also standing in the nearby fields taken on lease by Mukhtiar Singh etc. from Hoshiar Singh. Subsequently, Mukhtiar Singh exhorted to teach a lesson to Satnam Singh etc. for demanding back the possession of one Kanal land. Upon this, all of them came towards their tubewell and Jagdish fired gunshot from a distance of 1/2 acre upon his grandson Rajwinder Singh from DBBL gun, who was irrigating paddy crop. The said gunshot hit him on backside of his shoulder, as a result of whereof, he fell down and he was dragged away to their tubewell by Amrik Singh, Sukhdev Singh, Gagandeep Singh, brother-in-law of Sukhdev Singh and also by Ranjit. Mukhtiar Singh and Jagdish came near their tubewell and threatened

them to run away, otherwise, they will open fire. Then Jagdish fired gunshot upon his grandson Richhpal Singh from his DBBL gun, which hit him on his chest and he also fell down on the ground. Thereafter, Jagdish fired gunshot upon his son Satnam Singh, which hit him on his left arm. Then Jagdish and Mukhtiar Singh went to their tubewell. He and his son Dalbir Singh tried to go towards tubewell of Mukhtiar Singh to see his grandson Rajwinder Singh, however, Mukhtiar Singh again threatened them that if they would come towards them they would open the fire. In the meantime, someone telephonically informed the police and on seeing the police vehicle, Mukhtiar Singh etc. fled away from the spot along with their respective weapons towards Village Gogh. Thereafter, several persons gathered at the spot. His grandsons Rajwinder Singh and Richhpal Singh succumbed to the injuries at the spot itself.

3. On the basis of afore statement, the instant FIR came to be registered. Thereafter, the investigation in the matter was carried out. The photographs of dead bodies were clicked by the Investigation Officer with his digital camera, however, photographer was also called at the spot and he also clicked photographs. Scene of Crime Team was informed to reach the spot. The dead bodies of Rajwinder Singh and Richhpal Singh were inspected by the Investigation Officer. The blood stained earth was lifted by the Investigation Officer from the spot and was put in a small plastic container. The inquest proceedings under Section 174 Cr.P.C. were carried out at the spot qua both the dead bodies. The scene of crime was also got inspected by Scene of Crime Team consisting of PW12,

Krishan Kumar, S.S.O. Rough site plan was also prepared at the spot. Ruqa (information) was sent through Constable Dilawar Singh. Satnam Singh was also medico legally examined on the same day. The post-mortem of both the dead bodies was conducted at G.H. Kaithal by a Board of Doctors. Post-mortem report along with sealed envelope, police papers, sample seal and parcels were handed over to the I.O., which were taken into possession vide recovery memo. Thereafter, dead bodies were handed over to their family members.

4. During the course of investigation, one Baljinder Singh, resident of Village Sotha, met the Investigation Officer and produced Jagdish (appellant herein) and Sukhdev before him, thereafter, both were arrested. Subsequently, Jagdish was interrogated and during interrogation, he suffered disclosure statement Ex.PF. Likewise, Sukhdev was also interrogated, who also suffered disclosure statement Ex.PG. Both these disclosure statements were witnessed and attested by ASI Ved Parkash and ASI Abhey Ram. In pursuance of his disclosure statement, the appellant Jagdish got recovered one DBBL gun .12 bore along with two empty and one live cartridge from the concealed place, of which a recovery memo was prepared and it was proved on record as Ex.PH. The site plan of the place of recovery was also prepared and proved as Ex.PXX. Thereafter, the Investigation Officer sought opinion regarding the nature of injuries on the person of PW3, Satnam Singh. The opinion of the doctor in this regard was proved on record as Ex.PQQ. Subsequently, Swaran Singh, complainant, moved an application to

doctor for conducting his MLR, whereupon, he was medico-legally examined and his MLR was prepared, which was proved on record as Ex.PDD. The Investigation Officer also arrested Gagandeep, who was interrogated and his disclosure statement was recorded on 27.06.2013, however, subsequently, he retracted from this disclosure statement and suffered another disclosure statement on 28.06.2013. In pursuance of his disclosure statement, he got demarcated the place of occurrence and a memo in this regard was prepared, which was proved on record as Ex.PN. Thereafter, in pursuance of his disclosure statement, he led the police party and got recovered one danda from the concealed place. The recovery memo of danda was prepared and proved on record as Ex.PM. Thereafter, upon arrest of accused Sukhvinder, he was interrogated on 29.06.2013, who also suffered a disclosure statement witnessed and signed by SI Ved Parkash and HC Raghbir Singh, which was proved on record as Ex.PQ. In pursuance of this disclosure statement, he got recovered one lathi, of which a recovery memo was prepared and proved on record as Ex.PS. Accused Sukhvinder also identified the place of occurrence and a separate memo in this regard was prepared and proved on record as Ex.PT. The scaled site plan was also got prepared and proved on record as Ex.PY. After completion of the investigation, Final Report under Section 173 Cr.P.C. was filed before the concerned Illaqa Magistrate only qua four persons namely Jagdish son of Mukhtiar Singh, Sukhdev Singh son of Mukhtiar Singh, Gagandeep son of Sukhdev and Sukhvinder son of Darshan Singh. However, Mukhtiar Singh son of

Makhan Singh, Amrik Singh son of Mukhtiar Singh and Ranjit Singh son of Jagtar Singh, were declared innocent and were kept in column No.2 by the investigation agency. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate committed the case to the court of Sessions vide committal order dated 07.08.2013.

PROCEEDINGS OF TRIAL COURT

5. Finding a prima-facie case, the aforesaid four persons (including the present appellant) were charge-sheeted for commission of offence punishable under Sections 302, 307, 323, 34 IPC and Section 27 of Arms Act, 1959 against the present appellant. It is apt to bring on record that initially Swaran Singh, complainant, was examined as PW1. Thereafter, an application under Section 319 Cr.P.C. was moved to summon Mukhtiar Singh son of Makhan Singh, Amrik Singh son of Mukhtiar Singh and Ranjit Singh son of Jagtar Singh, who were declared innocent by the investigation agency. However, this application was dismissed and the verdict qua aforesaid three persons has attained finality. The only allegation qua those three persons was that all three of them had dragged the body of Rajwinder Singh from Point 'C' to Point 'B', as per site plan (Ex.PU).

6. The prosecution, in order to prove its case, examined as many as 15 witnesses and also proved on record various documentary evidence. During the course of trial, the learned Public Prosecutor, vide his separately recorded statements, gave up ASI Abhey Ram, HC Raghbir Singh, Dalbir Singh, Ramesh, ASI Satyawan, Dr. Satpal, Dr. Suman Lata

and ASI Chander Bhan being unnecessary.

7. The accused were examined under Section 313 Cr.P.C, wherein, they denied all the allegations levelled against them and pleaded false implication. The present appellant Jagdish specifically pleaded that he has been roped in a false case and the story of the prosecution is concocted and a product of due deliberations. He further pleaded that all his family members have been falsely involved in the present case, whereas, in fact, his family members have been ploughing the custodian land for last 40-45 years and the complainant party was also ploughing the land without giving any charges to the custodian department. On 23.06.2013, he prepared one acre of land for plantation of paddy. Swaran Singh, complainant, was also planting paddy in one acre of land through labourers. He requested the labourers, who were working in the field of Swaran Singh, complainant, to plant paddy in his one acre of land in the next morning, upon which, Swaran Singh, complainant, started abusing him. He also exchanged hot words with him, whereupon, they grappled with each other. This led to Swaran Singh, complainant, feeling insulted and resultantly, he went to his house. On the same day, at about 9-10 o'clock in the night, Swaran Singh along with his sons Dalbir Singh and Satnam Singh, his grandsons Rajwinder Singh and Richhpal Singh and his nephew attacked his house with arms. His house is situated in the fields at a distance of about 4-5 kms from the village abadi while the complainant party is residing in village abadi. The main gate of his house was closed from inside. Upon request of the female members of his house

to the complainant party to go away assuring that the matter would be settled in the morning, they went away. He further stated that on 24.06.2013, he went to the field of Hoshiar Singh, which was with him on lease, and was present near water storage tank for tubewell. He was also having his licensed gun as he was apprehending attack from the complainant party due to previous night's incident. In the meantime, Swaran Singh, armed with his licensed gun, being accompanied by his sons Dalbir Singh and Satnam Singh, his grandsons Rajwinder Singh and Richhpal Singh and his nephew, armed with lathis and gandasis, came there and then Swaran Singh fired gunshot upon him with his licensed gun, however, said gunshot hit Rajwinder Singh on upper part of his left arm. No other co-accused was present there at the spot nor the body of Rajwinder Singh was dragged by any one of them as alleged by the prosecution. Richhpal Singh was armed with gandasi and when he was in the process of attacking him, he felt immediate danger from the complainant party and fired on the lower body of Richhpal Singh. However, he sat at once and his fire hit him on his chest and he died at the spot. Gagandeep Singh, Sukhdev Singh and Sukhvinder Singh were not present at the spot. At about 06:30 p.m., he went away from the spot on seeing the police. The dead body of Richhpal Singh was shifted by the complainant to the tubewell of Baljeet Singh, whose land was taken on lease by them. He did not cause any injury to Satnam Singh and is totally innocent. The present story has been concocted by the complainant party in connivance with police.

8. The learned trial Court, considering the prosecution evidence, as well as the plea of defence taken by accused persons in their statements recorded under Section 313 Cr.P.C., acquitted Sukhdev Singh, Gagandeep Singh and Sukhvinder of the charges levelled against them, however, convicted Jagdish (appellant herein) for commission of offence under Section 302 and 323 of IPC and Section 27 of Arms Act, 1959.

9. It is apt place to note here that against the judgment of acquittal of aforesaid Sukhdev Singh, Gagandeep Singh and Sukhvinder, a criminal appeal bearing No. CRA-D-1631-DB-2014 was filed before this Court by Satnam Singh and Swaran Singh (complainant), however, the same stands dismissed vide judgment dated 25.07.2016. Therefore, the verdict of acquittal qua these persons has attained finality up to this Court. Now, we are only concerned about the role of the present appellant.

SUBMISSIONS BY BOTH THE COUNSELS FOR THE PARTIES

10. The learned counsel for the appellant submitted that the appellant, in his statement recorded under Section 313 Cr.P.C., has taken a specific stand of right to private defence and by adducing defence evidence i.e. statement of Satnam Singh son of Swaran Singh (Ex.PA) and Jamabandi for the year 2012-2013 (Ex.PB), created a dent in the prosecution story and discharged the onus of proving the circumstances under which he was compelled to use the force in his self-defence. He further pointed out the contradiction in the statement of PW1, Swaran Singh (complainant/eye-witness), and PW3, Satnam Singh (injured/eye-

witness). He stated that the prosecution has miserably failed to prove the spot of crime and further submitted that it was, in fact, the people of complainant party, who were aggressors and the present appellant, in order to defend himself, had used the force and therefore, the verdict of the trial Court is liable to be set-aside. The trial Court has not appreciated the evidence in its right perspective and mechanically held the appellant guilty of the charges framed against him. He further submitted that the appellant has proved the existence of circumstances, which are sufficient to bring his case within the general exception of Indian Penal Code. He has discharged his burden by proving those circumstances and he further submitted that the appellant/accused is not required to prove the existence of those circumstances beyond reasonable doubt, rather, the only obligation upon the appellant/accused is to establish his plea by way of preponderance of probabilities.

11. Per contra, learned State counsel submitted that the appellant, in his statement recorded under Section 313 Cr.P.C., has categorically admitted the commission of offence. However, he failed to prove that the appellant exercised his right of private defence specifically in the circumstances when he had suffered no injury, whereas, on the other hand, three persons of the complainant party had suffered gunshot injuries, out of whom, two succumbed to their injuries. The motive for inflicting the injuries was also proved by prosecution beyond reasonable doubt, therefore, the trial Court has rightly convicted the appellant for the charges framed against him.

REASONS

12. From the statement of accused recorded under Section 313 Cr.P.C., it clearly transpires that the appellant has taken the plea of self-defence. Now, we have to examine the nature and the extent of the burden that the appellant has to discharge while establishing the plea of self-defence. If the benefit of general exception to criminal liability as rooted in the instant case on the plea of self defence is claimed, then the provision of Section 105 of the Indian Evidence Act, come into operation. Section 105 of the Indian Evidence Act, does shift, the burden of proof from the prosecution to upon the accused, to prove the above raised plea. For ready perusal, Section 105 of the Indian Evidence Act is reproduced as under:-

“105. Burden of proving that case of accused comes within exceptions. — When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.”

13. A perusal of the above provision clearly depicts that it is a statutory obligation upon the Courts to presume absence of such circumstances and for that, the burden is upon the accused to prove existence of such circumstances. “*Presumption*” is a rule of law, which enables the Court to presume existence of a fact on the basis of certain

proved facts. Therefore, it is now essential to examine what is the nature of burden that lies on the appellant/accused, as he raises the exculpatory plea of his, in the exercise of right of private defence of body, rather causing the fatal assault besides to analyze the mode as its being proved. This issue was examined in detail by the Supreme Court in the case titled **“Vijayee Singh Vs State of U.P.”, 1990 AIR 1459**, wherein, the Supreme Court has observed as under:-

“25. The maxim that the prosecution must prove its case beyond reasonable doubt is a rule of caution laid down by the Courts of Law in respect of assessing the evidence in criminal cases. Section 105 places 'burden of proof' on the accused in the first part and in the second part we find a presumption which the Court can draw regarding the absence of the circumstances which presumption is always rebuttable. Therefore, taking the Section as a whole the 'burden of proof' and the presumption have to be considered together. It is axiomatic when the evidence is sufficient as to prove the existence of a fact conclusively then no difficulty arises. But where the accused introduces material to displace the presumption which may affect the prosecution case or create a reasonable doubt about the existence of one or other ingredients of the offence and then it would amount to a case where prosecution failed to prove its own case beyond reasonable doubt. The initial obligatory presumption that the Court shall presume the absence of such circumstances gets lifted when a plea of exception is raised. More so when there are circumstances on the record (gathered from the prosecution evidence, chief and cross examinations, probabilities and circumstances, if any, introduced by the accused, either by adducing evidence or otherwise) creating

a reasonable doubt about the existence of the ingredients of the offence. In case of such a reasonable doubt, the Court has to give the benefit of the same to the accused. The accused may also show on the basis of the material a preponderance of probability in favour of his plea. If there are absolutely no circumstances at all in favour of the existence of such an exception then the rest of the enquiry does not arise inspite of a mere plea being raised. But if the accused succeeds in creating a reasonable doubt or shows preponderance of probability in favour of his plea, the obligation on his part under Section 105 gets discharged and he would be entitled to an acquittal.

27. It can be argued that the concept of 'reasonable doubt' is vague in nature and the standard of 'burden of proof' contemplated under Section 105 should be somewhat specific, therefore, it is difficult to reconcile both. But the general principles of criminal jurisprudence, namely, that the prosecution has to prove its case beyond reasonable doubt and that the accused is entitled to the benefit of a reasonable doubt, are to be borne in mind. The 'reasonable doubt' is one which occurs to a prudent and reasonable man. Section 3 while explaining the meaning of the words "proved", "disproved" and "not proved" lays down the standard of proof, namely, about the existence or nonexistence of the circumstances from the point of view of a prudent man. The Section is so worded as to provide for two conditions of mind, first, that in which a man feels absolutely certain of a fact, in other words, "believe it to exist" and secondly in which though he may not feel absolutely certain of a fact, he thinks it so extremely probable that a prudent man would under the circumstances act on the assumption of its existence. The Act while adopting the requirement of the

prudent man as an appropriate concrete standard by which to measure proof at the same time contemplates of giving full effect to be given to circumstances or condition of probability or improbability. It is this degree of certainty to be arrived where the circumstances before a fact can be said to be proved. A fact is said to be disproved when the Court believes that it does not exist or considers its non-existence so probable in the view of a prudent man and now we come to the third stage where in the view of a prudent man the fact is not proved i.e. neither proved nor disproved. It is this doubt which occurs to a reasonable man, has legal recognition in the field of criminal disputes. It is something different from moral conviction and it is also different from a suspicion. It is the result of a process of keen examination of the entire material on record by 'a prudent man'.

28. There is a difference between a flimsy or fantastic plea which is to be rejected altogether. But a reasonable though incompletely proved plea which casts a genuine doubt on the prosecution version indirectly succeeds. The doubt which the law contemplates is certainly not that of a weak or unduly vacillating, capricious, indolent, drowsy or confused mind. It must be the doubt of the prudent man who assumed to possess the capacity to "separate the chaff from the grain". It is the doubt of a reasonable, astute and alert mind arrived at after due application of mind to every relevant circumstances of the case appearing from the evidence. It is not a doubt which occurs to a wavering mind."

14. Now, we have to test the plea of the appellant on the touchstone of aforesaid principle of law laid down by the Supreme Court. The prosecution examined complainant Swaran Singh as PW1, who was an injured/eye-witness of the occurrence. When he stepped into the

witness box, he reiterated the version spelt in the FIR. PW3, Satnam Singh son of Swaran Singh, injured/eye-witness, deposed that they are two brothers and his elder brother is Dalbir Singh. They are living separately. However, they are cultivating the land jointly. He had two sons namely Rajwinder Singh, aged about 22 years, and Richhpal Singh, aged about 20 years. They owned 8 acres of land, out of which, 1 acre land is taken by them from custodian department. Mukhtiar Singh and Jagtar Singh have 3/4 acres of land belong to the custodian department. Both the custodian lands are adjacent to each other. One kanal of custodian land as belonging to them was illegally possessed by Mukhtiar Singh and Jagtar Singh. They requested the aforesaid persons to vacate their land illegally occupied by them, however, they did not vacate this land and nurtured grudge in their mind. He further reiterated the contents of Ex.PA and corroborated the version of PW1.

15. Prosecution also examined Dr. Aman Sood as PW10, one of the members of the Medical Board, who conducted the post-mortem of both the dead bodies. As per his statement, Ex.PFF, the following injuries were found on the body of Richhpal Singh son of Satnam Singh, aged 20 years:-

- (i) Circular lacerated wound of size 1.5 x 1.5 cm with abraded collar of width (03mm) present around the wound. On probing, wound is directed medically downward. On deep dissection, there was fracture of underlying manubrium (left side) sterni, medial end of 3rd rib. On further exploration, there was laceration of left lung with hemothorax of approx. 300 ml of blood and blood clots. On further probing, there

was laceration of middle part of mediasternum with laceration and laceration of rt lung with hemothorax of rt side of approx. 200 ml of blood and blood clots. On probing, the metal piece was found embedded in paraspinal area in muscle at level of t4 and t5 with fracture of corresponding vertebrae. Metal piece removed and packed in plastic jar bearing one seal and handed over to police. There was corresponding tear in clothes of deceased.

Likewise, the following injuries were also found on the body of Rajwinder Singh son of Satnam Singh, aged 22 years, details whereof are as under:-

- (i) An oval shaped wound 3x2.5cm with blackened margin on lateral aspect of left arm in its upper 1/3rd margin of the wound somewhat inverted inward. On deep dissection, the wound is slightly directed downward and medially with hemorrhage in muscle of left arm. A piece of black coloured plastic material was found at the opening of wound which is removed and taken in a plastic jar. The wound is directed into the chest cavity with contusion of left axilla. On deep dissection, there is laceration of muscle and axillary artery seen in left axilla. On further exploration of chest cavity, there is laceration of both the lung, upper part of mediastinum with hemothorax of apparently 300 ml of blood and blood clots on both side. During dissection, another piece of black colour plastic material was found in left chest wall in 2nd intercostals space ass. With fracture of 3rd rib and left scapula. On further exploration, an exit wound with everted margin of size 2x1.5cm oval shaped present on rt scapula and clotted blood present. There are corresponding tear in clothes.

The cause of death in both these cases, in the opinion of the

Board, was due to shock and hemorrhage and due to injury to the vital organs, as mentioned in the PMRs, which were ante-mortem in nature and sufficient to cause death in ordinary course of life.

16. Dr. Navraj Singh was examined as PW8, who proved on record the injuries upon Swaran Singh, complainant. As per his statement, Swaran Singh suffered superficial abrasions on left hand, right forearm, upper part of right leg and upper part of left knee. According to his opinion, the nature of weapons used for inflicting the injuries was blunt.

17. Dr. Rakesh Mittal was examined as PW11, who proved on record the medico-legal report of Satnam Singh. The injuries suffered by Satnam Singh are as under:-

- (i) Rounded deep wound of size about 1 cm in diameter on the left forearm, 3 to 4 finger below the elbow with bleeding and inverted margin.
- (ii) A similar wound as above about 2 cm in diameter on the opposite aspect of forearm with bleeding present with everted margin.

18. A conjoint reading of the ocular testimonies along with medical evidence clearly proves that both the deceased had died because of gunshot injuries and even the injuries suffered by Satnam Singh were from gunshot. So far as the injuries regarding Swaran Singh are concerned, it is important to note that he suffered injuries in the incident of 23.06.2013 and he was medico-legally examined on 25.06.2013. The Medico Legal Report clearly supports the ocular testimony, because on all the superficial abrasions, there are formations of scab, which shows

that the injuries were suffered 2/3 days prior to the date of medical examination. These aforesaid two witnesses, who suffered injuries at the hands of appellant, completely supported the prosecution version and though they were put to pointed and lengthy cross-examinations, but, except minor contradictions, nothing material could be extracted by the defence in order to cause any dent in the prosecution version.

19. Now, at this juncture, it is apt to examine the plea of self-defence. From a perusal of statement of appellant Jagdish Singh, it is clear that he admitted inflicting the fatal gunshot injury upon Richhpal Singh, however, he claimed that the complainant Swaran Singh was also carrying a gun, who fired upon him and suddenly, it was Rajwinder Singh who came between them and resultantly, Rajwinder Singh suffered gunshot injury and fell down at the spot. He further stated that Richhpal Singh tried to attack him with gandasi and in order to ward off the attack, he fired on Richhpal Singh, and, Richpal Singh, in an attempt to dodge the gunshot, had bent down and in this course, he received pellet injury on his chest and fell down. Learned counsel for the appellant while referring to the statement of PW10 Dr. Aman Sood, stated that the bullet entered from the chest of Richhpal Singh travelling downwards towards the back and thus proves the story of the appellant.

20. We are unable to accept this plea of appellant as a perusal of the post-mortem report of Richhpal Singh depicts that the bullet entered from the chest and went **slightly** downwards towards the back, which could be a result of loss of velocity of the bullet, once it entered the body

and travelled towards the backside of body. Therefore, the appellant is unable to create any dent in the prosecution theory. It is also crucial to note that the appellant never made any attempt either before the investigation agency or before the learned trial Court by moving an application for taking the gun of Swaran Singh, complainant, in custody and for it being examined from Forensic Scientific Laboratory, to rest the issue, whether the deceased Rajwinder Singh had received the gunshot injury from the complainant's gun.

21. The appellant, during the course of investigation, suffered a disclosure statement and in pursuance thereof, he got recovered one .12 bore DDBL gun along with two empty and one live cartridges from an iron box lying in a room of his house. The recovery memo was attested by SI Ved Parkash and ASI Abhey Ram. SI Ved Parkash was examined by the prosecution as PW2. The aforesaid recovered gun was sent to the F.S.L. for examination and as per the FSL report, the gun was found in working order.

22. Moreover, another significant factor, which lends credibility and support to the claim propounded by the prosecution, derives its origin from the testimony of PW14, Mamta Rani, Licence and Passport Clerk, wherein it does finds mention that the licence of the recovered .12 bore DDBL gun, stands issued in the name of Jagdish (the present appellant).

23. The injury suffered by the deceased and injured Satnam Singh were, as per the opinion of the doctor, caused with the .12 bore DBBL gun, therefore, this aspect leaves no room for doubt and proves the

guilt of accused beyond reasonable doubt.

24. Therefore, from the afore discussion, the following points assume paramount significance which, in our opinion, brings the conflicting claims of the prosecution and the appellant to rest:-

- (I) The prosecution has proved beyond reasonable doubt that the appellant was the aggressor and it is not made out on the record that the latter may have well acted in the exercise of the right of private defence.
- (II) The licence of the recovered .12 DBBL gun, from which gunshot injuries were inflicted, stands issued in the name of the appellant.
- (III) Neither the deceased Rajwinder Singh was carrying any weapon nor any such plea was taken by the appellant. Nothing was brought on record to prove the same. Therefore, the appellant cannot take the plea of self defence on the alleged pretext of warding off the attack of Rajwinder Singh when, in fact, he himself was the aggressor

25. It appears that the theory of appellant is an afterthought and concocted. As per the appellant, Swaran Singh along with his sons Dalbir Singh and Satnam Singh, his grandsons Rajwinder Singh and Richhpal Singh and his nephew, armed with lathis and gandasis, attacked him. However, not a single injury was suffered by the appellant, whereas, three persons of the complainant party suffered gunshot injuries. This fact also creates a serious doubt in the story put forth by the appellant. In fact, he could have fired gunshot in air in order to deter the assailants, however, he straightway caused gunshot injuries to three persons, which shows that he did not use the force to defend himself, rather, he attacked

the complainant party. Furthermore, the spot of occurrence clearly proves that the place where the dead body was first found was belonging to complainant party. The motive is also well established by the prosecution. Visual site plan prepared by the Investigation Officer, Ex.PUU, further supports the case of prosecution. As per the site plan, Mark 'A' is the kotha tubewell of Baljeet Singh, where the dead body of Richhpal Singh was lying, and, Mark 'B' is the kotha tubewell of Hoshiar Singh, where the dead body of Rajwinder Singh was lying. It is not in dispute that the complainant party had taken the land of Baljeet Singh on lease, whereas, the appellant/accused party had taken the land of Hoshiar Singh on lease. Further, perusal of the site plan shows that Mark 'C' is the place, where in between these tubewells, near the paddy sapling, deceased Rajwinder Singh is stated to have received the firearm injuries and the appellant/accused etc. lifted and dragged the dead body of Rajwinder Singh to near the kotha of Hoshiar Singh. Therefore, this aspect clearly proves that Richhpal Singh had suffered gunshot injury when he was present at his tubewell and Rajwinder Singh had suffered the gunshot injury when he was present in between the two tubewells i.e. tubewell of Baljeet Singh and tubewell of Hoshiar Singh. The version spelt by the appellant that he had used his gun in order to defend himself stands belied from the fact that the dead bodies were found not on the land of appellant/accused party, rather, dead bodies were lying on the land of complainant party. This aspect clearly proves that it was the appellant, who was the aggressor and he had used his licensed gun with

the sole motive to kill and not to defend himself. There was dispute between the appellant and the complainant party with regard to 1 Kanal of land, which was in the possession of the appellant, and prior to the main occurrence on 24.06.2013, the appellant had caused injuries to Swaran Singh, complainant, on 23.06.2013 and this fact finds corroboration from the MLR of Swaran Singh. Though, learned counsel for the appellant raised doubt due to delay in medical examination of Swaran Singh, however, considering the fact that he lost his two grandsons and his own son also suffered gunshot injuries, he had other priorities than to get himself medico-legally examined for minor injuries, therefore, we do not find any infirmity in the prosecution version in this regard. The ocular version of the prosecution finds support from the medical evidence led by the prosecution. No material infirmity was pointed out in the statement of material witnesses by learned counsel for the appellant.

CONCLUSION

26. In view of the aforesaid discussion, this Court does not find any merit in the instant appeal and accordingly, the same is hereby **dismissed**.

27. The judgment of conviction dated 26.08.2014 and the order of sentence dated 05.09.2014 passed by the learned Additional Sessions Judge, Kaithal, does not call for any interference by this Court and the same is affirmed and maintained.

28. The case property, if any, be dealt with in accordance with

law after expiry of the period of limitation for filing an appeal. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

07.12.2022
ajay-1/devinder

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