

CASE NO.:
Appeal (crl.) 158 of 1998
Appeal (crl.) 1077 of 1998

PETITIONER:
JAIPAL

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 08/03/2000

BENCH:
S.R.Babu, S.S.M.Quadri

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

SYED SHAH MOHAMMED QUADRI, J.

These appeals arise out of the common judgment of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.297-DB of 1994 and Criminal Appeal No.483-DB of 1994 passed on April 30, 1997. The appellant in the first-mentioned appeal was accused No.1 and the appellants in the second-mentioned appeal were accused Nos.2 and 3 respectively in Sessions Case No.22 of 1993. They were charged and tried for offences under Sections 302/34 and 323/34 of the Indian Penal Code for inflicting injuries and for committing murder of one Meher Chand on September 05, 1992 at about 10.15 P.M. Learned Sessions Judge, Ambala, convicted and sentenced them to life imprisonment and fine of Rs.500/- (in default of payment of fine they have to suffer further imprisonment of two years each) under Section 302/34; they were also convicted and sentenced to one year rigorous imprisonment under Sections 323/34 IPC. The sentences were to run concurrently. On appeal, their conviction and sentences were confirmed by the High Court of Punjab and Haryana at Chandigarh by the impugned judgment, aforementioned. The gravamen of the charge against them is that while Meher Chand and his son Jagdish Lal @ Jagga (P.W.5), residents of Village Matheri Shekhan, were returning to their house in the night of September 05, 1992 at about 10.15 P.M. When they were near the house of Pritam Khatri they were accosted by Jaipal (A1), Hazara Singh (A2) and Ranbir Singh @ Kaka (A3), residents of Village Matheri Shekhan. A1 was armed with gandasi (P1), A2 and A3 were having lathis (P2) and (P3). A1 gave a lalkara that Jagdish @ Jagga (PW 5) and his father Meher Chand should not be allowed to go alive and that they should be taught a lesson for instituting criminal case against them. A1 gave a

gandasi blow to Meher Chand on his head. A1s second blow was warded off by Meher Chand with his hand resulting in cutting of his finger. A2 and A3 gave three lathi blows and two lathi blows respectively on the forehead, nose and face of Meher Chand. Jagdish @ Jagga (PW 5) raised an alarm saying mar dia, mar dia. On hearing the raula, Sudhir Kumar (PW 6) and Jarnail Singh reached there. It is also the case of the prosecution that A2 and A3 gave lathi blows to Jagdish @ Jagga (PW 5) on his head, left leg, left arm and waist. When Sudhir Kumar (PW 6) intervened, he was given a lathi blow on his head by A3. Both Jagdish @ Jagga (PW 5) and Meher Chand had also given three/four danda blows to all the accused and thereafter the accused ran away along with their weapons. Meher Chand was brought to Chaurmastpur Hospital in the vehicle of PW 6 but due to non-availability of doctor there, he was taken to Civil Hospital, Ambala City where he reached at about 3.00 A.M. Dr.N.P.Jindal, Medical Officer, Civil Hospital, Ambala City (PW 1) examined Meher Chand and found seven injuries on his body; on examining Sudhir Kumar, PW 6, it was noticed that he suffered one injury, and on examining Jagdish @ Jagga (PW 5) three injuries were found on his body. Even before Meher Chand reached Ambala hospital, A1, A2 and A3 were found admitted in the same hospital. On September 6, 1992 at about 6.00/7.00 A.M. Meher Chand succumbed to his injuries in the hospital. The matter was reported to S.I. Mam Chand, SHO, PS Nagal (PW 7) in Civil Hospital, Ambala City, on September 06, 1992 at 11 A.M. The SHO (PW 7) recorded the statement of Jagdish @ Jagga (PW 5) and registered a case against the said three accused under Sections 302 and 323 read with 34 IPC. During investigation gandasi (P1), lathis (P2) and (P3) were recovered from A1, A2 and A3 respectively. The reports of the Director, Forensic Science Laboratory (Ex.PY and Ex. PY1), disclosed that blood was found on gandasi (P1) and lathi (P2) recovered from A1 and A2 respectively but no blood was found on lathi (P3) recovered from A3. Dr. R.K. Patnaik, (PW 2), Medical Officer of the same hospital conducted autopsy on the dead body of Meher Chand (hereinafter referred to as the deceased). After considering evidence of PWs 5, 6 and 7, the medical evidence of doctors (PWs 1 and 2) and other materials, the learned Sessions Judge held that the prosecution brought home the guilt of the accused, who were convicted and sentenced, as indicated above. In the High Court, the accused pleaded that they exceeded the right of self-defence, so they could not be found guilty of murder. The High Court on reappraisal of the evidence took the view that the appellants were aggressors so the plea of exceeding right of self-defence was not available to them and that the deceased and Jagdish @ Jagga (PW 5) and others acted only in self-defence in repelling the aggression. In that view of the matter, the High Court confirmed the conviction and sentence awarded to the appellants by the learned Sessions Judge and dismissed the appeals. Mr.O.P. Sharma, the learned senior counsel for the appellants, contended that the complainant party was the aggressor and that the accused gave the blows to the deceased and PW 5 in self-defence, therefore, they ought not to have been found guilty of the offence charged. He submitted that had the statements of the appellants been recorded in the hospital where they were admitted, the genesis of the incident would have come out correctly. It is argued that in villages each person carries lathi with him, that is, by way of custom as well as necessity so it cannot be said that the accused party had the intention to attack. If that be so there is no reason

why A1 was carrying gandasi with him. The very fact that A1 was armed with gandasi, a dangerous weapon, and no one from the complainant party was armed with any dangerous weapon shows that the accused party alone had the intention to attack but not the complainant party. Indeed from the evidence of PW 5, it is clear that first A1 gave gandasi blow to the deceased, which landed on head and the second blow cut his finger and then A2 and A3 dealt blows with their lathis on vital parts. In these circumstances, we are of the view that the High Court has rightly come to the conclusion that the complainant party was not the aggressor but the accused party was the aggressor. Insofar as the recording of the statements of the accused party is concerned, it is not the case of the appellants that their statements were not recorded at all. Indeed, their statements were recorded though not on the day on which the FIR was recorded. In our view, this can hardly make any difference either to the story set up by the prosecution or to the defence set up by the appellants. It is next contended that the Exception 4 of Section 300 IPC would apply to the case and, therefore, the conviction of the appellants under Section 302 is unsustainable. Exception 4 of Section 300 IPC reads as follows :- Section 300 Murder - Exception 4 Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation. It is immaterial in such cases which party offers the provocation or commits the first assault.

A plain reading of the exception shows that it can be invoked only if culpable homicide is committed :- (i) without premeditation in a sudden fight; (ii) in the heat of passion upon a sudden quarrel, and

(iii) without offenders having taken undue advantage or having acted in a cruel or unusual manner.

Now, in the instant case, the appellants waylaid the deceased duly armed A1 with gandasi; A2 and A3 with lathis. This cannot but be said a premeditated attack which resulted in the death of Meher Chand. Further Dr. R. K. Patnaik, (PW 2), Medical Officer of the Civil Hospital, Ambala City, who conducted post-mortem examination on the dead body of Meher Chand on September 6, 1992 at 3.00 P.M. noted the following injuries :- 1. Stitched wound measuring 7 cm x 5 cm on the front parietal region. It was obliquely placed 2 cm left to the midline at the front and 4.5 cm laterally at the back.

2. One stitched wound measuring 3 cm in length on the right side of the forehead 2 cm. Above the right eye brow.

3. Stitched wound 2.75 cm x .5 cm on the right parietal area 4 cm. behind injury No.2.

4. Both the upper eye-lids were contused. 5. Right little finger was separated from the hand at the level of middle phalanx but it was loosely hanging with a flap of skin.

6. Right upper central incisor was missing. He opined that the cause of death was shock and haemorrhage

which was the result of the injuries to the brain, injuries Nos.1 to 3. He also stated that these injuries were sufficient to cause death in the ordinary course of nature. It would be appropriate to notice here the injuries recorded by Dr. N.P. Jindal, (PW 1), Medical Officer, Civil Hospital, Ambala City, who examined Meher Chand on his admission in the hospital: - 1. Lacerated wound measuring 7 cm x 3 cm over the left front parietal region/obliquely placed 2 cms. left to midline at the anterior and 4.5 cms. from the posterior end. Fresh bleeding was present. X-ray was advised.

2. An incised wound 3 cm x $\frac{1}{2}$ cm over the right side of forehead 2 cm. above the right eye brow. Fresh bleeding was present. X-ray was advised.

3. Both eye lids on both the sides along with the swelling over the sides of the nose, more so on the left side injury was referred to Eye and E.N.T. Surgeon for opinion.

4. Lacerated wound 2.75 cm. x $\frac{1}{2}$ cms over the right parietal area. Fresh bleeding was present. X-ray was advised.

5. Fresh bleeding was present from right nostrils. Injury was referred to E.N.T. Surgeon for opinion and X-ray was advised.

6. Right little finger was hanging with a tag of skin. On inner side at the level of middle phalanx, Margins were clear cut. Fresh bleeding was present. X-ray was advised.

7. Right upper central incisor was missing and rest of incisors were mobile. Injury was referred to dental surgeon for opinion.

Kind of weapon used was sharp for injury No.2 and 6 whereas blunt for remaining injuries. Probable duration of injuries was within six hours.

A comparison of the reports of Dr. N.P. Jindal, (PW 1) and Dr. R.K. Patnaik, (PW 2), shows that injuries Nos.1 and 3 in the post mortem report were lacerated wounds; injury No.2 was incised wound. From the evidence on record, it is clear that injuries Nos.1 and 3 were caused by blunt weapon like lathi and injury No.2 was caused by sharp-edged weapon like gandasi so injury No.2 is attributable to A1. A2 gave three lathi blows to Meher Chand (the deceased) on his forehead and nose and A3 gave two lathi blows to Meher Chand (the deceased) on the forehead and nose. Injuries Nos.1 and 3 can be attributed to A2 and A3. The above discussion leads to the conclusion that the appellants had acted in a cruel and unusual manner. Therefore, Exception 4 of Section 300 IPC does not apply. For the afore-mentioned reason, we are satisfied that the accused were rightly convicted and sentenced for the offences they were charged. We find no merit in the appeals. They are accordingly dismissed.