

CASE NO.:
Appeal (crl.) 195 of 2005

PETITIONER:
Ranbaj Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 14/11/2006

BENCH:
A.K.MATHUR & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T
With
Crl.A.No.196 of 2005.

A.K. MATHUR, J.

Both these appeals arise against the same order therefore, they are disposed of by this common judgment. Brief facts giving rise to these appeals are Kulwinder Singh son of Pal Singh is a resident of village Loharke. On the basis of the statement of Kulwinder Singh, a first information report was registered at the Police Station, Raja Sansi on 22.12.1999 to the effect that they are agriculturist. It is alleged that on the fateful day while they were going to the field for cultivation, they passed through a small passage across the land of accused Mohan Singh. On the eastern side of the passage there is land of accused Mohan Singh and he has encroached the passage which has reduced the width of the passage. On 21.12.1999 at about 4.00 P.M. the complainant, along with brother Gurwant Singh and father Pal Singh were transporting bricks in their tractor trolley to their land for some pucca construction of the pucca tube well. When they were passing through the passage, one tyre of the tractor trolley passed through the land of accused Mohan Singh where they had sown wheat crop. Mohan Singh saw the damage done to the wheat crop by the tyre of the tractor trolley. He went to his house and after some time he came on his tractor which was driven by his son accused Shamsher Singh. Accused Mohan Singh and his sons Ranbaj Singh and Balraj Singh were armed with a dang. All the accused raised lalkara and they started ploughing the field of Pal Singh (deceased) in which Javi crop was sown. Pal Singh pleaded with the accused that he had not intentionally damaged the wheat crop but accidentally the tyre of the tractor trolley has passed over some part of their wheat crop. Thereupon accused Shamsher Singh called Pal Singh and his sons be taught a lesson for the damage to the wheat crop. Accused Mohan Singh gave dang blow to Pal Singh which he warded off on his right arm. Accused Ranbaj Singh gave dang blow to Pal Singh which hit him on his head and Pal Singh fell down on the ground. While he was lying on the ground, accused Balraj Singh gave another dang blow on Pal Singh's head. Both Mohan Singh and Ranbaj Singh also gave dang blow on Pal Singh's head as a result of which he became unconscious. The complainant had stated that because of fear from the accused he ran away and then he raised alert. Thereafter, all the accused persons along with their weapons on their tractor ran away from that place. Meanwhile, the complainant's uncle, Gurdip Singh came to the spot who witnessed the incident. Gurvail Singh, the cousin of the complainant, brought the tractor trolley and Pal Singh was taken

to Guru Nanak Dev Hospital, Amritsar where he was admitted as an indoor patient and his statement was recorded and formal FIR under Section 307 read with Section 34, Indian Penal Code (to be referred to as 'the IPC') was registered against all the accused persons at Police-station, Raja Sansi. On 23.12.1999, Pal Singh died and therefore a case was registered under section 302 read with Section 34, IPC. During the course of investigation accused persons were arrested and they were charged under section 302IPC read with Section 34,IPC and committed to session for trial.

The prosecution examined 11 witnesses. After close of the trial, learned Sessions Judge by his judgment dated 6.11.2001 convicted accused appellant Ranbaj Singh and Mohan Singh under section 304, Part-II, IPC and sentenced them to undergo rigorous imprisonment for seven years each and to pay a fine of Rs.2000/-. In default of payment of fine, both the convicts were directed to further undergo rigorous imprisonment for four months each. The other two accused namely, accused Balraj Singh and Shamsher Singh were given the benefit of doubt and they were acquitted. Both the convicted accused preferred appeal against their conviction and State preferred appeal against the acquittal of accused Balraj Singh and Shamsher Singh and also prayed that the conviction of the accused under section 304, Part-II, IPC be converted under Section 302, IPC. The High Court dismissed the appeal of the accused and allowed the appeal filed by the State and converted the conviction under Section 304, Part-II, IPC to that of Section 302,IPC and sentenced the accused to life. However, the order of acquittal of Shamsher Singh and Balraj Singh was upheld. Hence the present appeals. Meanwhile accused Mohan Singh expired hence appeal by accused Ranbaj Singh only.

We have heard learned counsel for the parties and have gone through the records. It appears that when Kulwinder Singh along with his father, Pal Singh were going to their field which passes through a narrow passage where some portion of the wheat crop of the accused were damaged. Shamsher Singh who was on the field at that time did not do anything but he went to the village and came back along with accused Ranbaj Singh, Mohan Singh and Balraj Singh and they started damaging the field of the deceased Pal Singh with tractor. This was resisted by Pal Singh and it is alleged that Pal Singh gave a sota blow to accused Ranbaj Singh who fell down and in defence of Ranbaj Singh, his father Mohan Singh gave a blow from the backside of Kandhali as a result of which the deceased Pal Singh fell down and thereafter he got up and went to his field. Accused Mohan Singh took Ranbaj Singh in an injured condition to his village and from there he took him to the Hospital at Amritsar and got him admitted in the hospital. However, in the meanwhile, the deceased Pal Singh was also immediately shifted to the Hospital at Amritsar. Thereafter, a case was registered on the basis of the statement of Kulwinder Singh under Section 307, IPC but after some time the deceased Pal Singh expired. Therefore, the case was converted from Section 307,IPC to one under Section 302, IPC. Accused Mohan Singh and Ranbaj Singh were arrested. In view of these facts the question is whether accused Mohan Singh had a right to private defence to the person of his son Ranbaj Singh. It is admitted by the doctor that Ranbaj Singh was admitted in Guru Nanak Dev Hospital, Amritsar where the deceased was also admitted. Accused Mohan Singh in his statement under Section 313 of the Code of Criminal Procedure has taken a definite stand that while going to the tube well of Pal Singh, his cattle used to stray his wheat crop field and used to damage the same. Therefore, in order to save from further damage to the crop from the cattle of the deceased, he along with his son Ranbaj Singh were fixing the branches of thorny bushes in the field by

the side of the said passage. Accused Mohan Singh was digging holes in the earth with kandhali, while accused Ranbaj Singh was fixing the branches of thorny bushes in the said passage. In the mean while Pal Singh came there and objected to the fixing of those bushes. He told his son Ranbaj Singh not to do so to which accused Ranbaj Singh did not agree. Thereafter, Pal Singh who had sota started inflicting sota blows on the head and other parts of the body of Ranbaj Singh. Ranbaj Singh fell down on the ground. But Pal Singh continued to give sota blows to Ranbaj Singh. Therefore, in order to save him from any onslaught by the deceased Pal Singh he gave a kandhali blow from its blunt side on the head of Pal Singh. Pal Singh fell down and thereafter he got up and went towards his village along with sota. Accused Mohan Singh then brought Ranbaj Singh in an injured condition to the village from where he took him to a hospital at Amritsar and was admitted. Accused Mohan Singh stated that the Police met him on 21.12.1999 and recorded his version but after the death of Pal Singh in the Hospital, the Police removed him as well as his son Ranbaj Singh and took them to the Police-station and detained them. Therefore, in view of the categorical stand taken by accused it shows that in fact the incident started with the deceased giving a sota blow to Ranbaj Singh, son of Mohan Singh and in a right to private defence, Mohan Singh gave a blow on the reverse side of the Kandali to the deceased Pal Singh. The prosecution has not placed the matter objectively and fairly before the Court and did not produce necessary medical evidence to the effect that Ranbaj Singh was also similarly admitted in the Hospital and he was also medically examined by the doctor and the statements of Ranbaj Singh and Mohan Singh were recorded by the Police but on the contrary an attempt was made to hide this aspect of the matter. Whenever the plea of right of private defence is taken it is not necessary for the defence to lead specific evidence. The defence is entitled to substantiate their case from the evidence of the prosecution. It is not incumbent upon the defence to substantiate right to private defence if it can be substantiated from the prosecution evidence. Therefore, the burden of establishing the defence is not that rigorous on the part of the defence as that of the prosecution. In the present case, the defence has been substantiated by the fact that the Doctor, P.W.2- Dr. Jaswinder Singh who has come to the witness box has admitted that along with Pal Singh, accused Ranbaj Singh was also admitted in the same ward in Guru Nanak Dev Hospital. He also admitted that the police approached him on 21.12.1999 for statement of accused Ranbaj Singh but he was not fit to make any statement and there was an endorsement made by him on Ex.DB/1. The bed head ticket was also produced by P.W.3 but it was not of Ranbaj Singh but it was of Gurbaj Singh. Therefore, the trial Court has not placed much reliance on that bed head ticket. Kulwinder Singh, P.W.8, son of the deceased Pal Singh admitted in his statement before the Police that injuries were also received by Mohan Singh and Ranbaj Singh, on the basis of that statement which was recorded on 21.12.1999 FIR was registered. Though during trial he disowned that statement when confronted with his statement before the police. P.W.10, ASI Jaswant Singh has also admitted about this fact that Ranbaj Singh had received injuries in the same incident. Therefore, from these facts the defence has substantiated that accused Ranbaj Singh received injuries in this incident and accused Mohan Singh in order to save his son, gave Kandali blow on the reverse side on the head of deceased Pal Singh. Therefore, from these facts, right of private defence of the accused stood established from the evidence of the prosecution. However, the High Court has reversed the finding of the trial court and convicted both the accused under Section 302, IPC. In our opinion, the view taken by the trial court is

correct. Hence we uphold the order of the trial court i.e. conviction under Section 304, Part-II, IPC and sentence the appellant to suffer rigorous imprisonment for seven years and to pay a fine of Rs.2000/-.

As a result of our above discussion, we allow these appeals, set aside the impugned orders of the High Court and affirm the view taken by the trial court and convict the accused appellant under section 304, Part-II, I.P.C. and maintain the sentence of seven years' rigorous imprisonment with a fine of Rs.2000/-, in default to further undergo rigorous imprisonment for four months.

JUDIS