

CASE NO.:
Appeal (crl.) 654 of 2006

PETITIONER:
Babu Ram & Ors

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 15/02/2008

BENCH:
P. P. Naolekar & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 654 OF 2006

Lokeshwar Singh Panta, J.

1. The appellants have filed this appeal against the Judgment and Order dated August 03, 2005 passed by a Division Bench of the Punjab and Haryana High Court at Chandigarh, confirming the conviction and sentence in respect of the offence punishable under Section 302 of the Indian Penal Code (for short the 'IPC') and a fine of Rs.2000/- with a default clause to undergo R.I. for six months awarded to Suraj Dev and imposing punishment of life imprisonment upon appellants Babu Ram and Indraj under Section 302 read with Section 34 of IPC and to pay a fine of Rs.2000/- each, in default of payment of fine to further suffer R.I. for six months each in Sessions Case No. 83 of 1993 / Sessions Trial No.10 of 1997.

2. Briefly put, the facts may be summarized as follows:
On 03.03.1993 at about 7.30 PM, the complainant Sohan Lal (PW-2) on hearing some noise coming from the street near the house of Ram Pratap (PW-3) came out of his house with a torch in his hand. PWs.2 and 3 saw that Babu Ram (A-1) and Indraj (A-2) had caught hold of Ant Ram while Suraj Dev (A-3) gave a blow with a 'Rambi' (an instrument for cutting leather by a cobbler) on the chest of Ant Ram. On receipt of the said blow, Ant Ram fell down. PWs-2 and 3 raised an alarm which attracted many other persons on the spot. Ant Ram was taken to the Civil Hospital, Abohar, by PW-2 and PW-3 where he was declared dead. A ruqqa was sent to Police Station regarding receipt of the dead body of Ant Ram. A.S.I. Hardev Singh (PW-5) came to the hospital and recorded statement of PW-2 Sohan Lal. On the basis of the said statement, formal FIR Ex.PH/1 came to be registered at the Police Station. The Investigating Officer started investigation and prepared an inquest report. He recorded the statement of PW-3 Ram Pratap on the following day of the incident. He went to the place of occurrence and lifted the blood-stained earth and prepared a site plan.

3. On 08.03.1993, Indraj (A-2) was discharged from hospital and was arrested by the Investigating Officer and thereafter investigation of the case was taken over by S.I. Jagdev Singh. On 10.03.1993, S.I. Jagdev Singh accompanied by A.S.I. Hardev Singh (PW-5) went to Village Kikker Khera, where Ram

Pratap, Ex-Sarpanch, produced Babu Ram (A-1) and Suraj Dev (A-3) who, later on, were arrested. It was further case of the prosecution that on 12.03.1993, pursuant to the disclosure statement Ex.PK made by A-3, the Police recovered one blood-stained 'Rambi' concealed in an iron box meant for keeping clothes from his house. 'Rambi' (Ex.P1) was taken into possession through Memo (Ex.PK/2). On completion of the investigation, charge sheet was presented against the appellants A-1, A-2 and A-3 in the Court of Illaqa Magistrate, who committed the same to the Court of Sessions. The learned Sessions Judge, Ferozpur, charge-sheeted A-3 Suraj Dev under Section 302 IPC, while A-1 Babu Ram and A-2 Indraj were charged under Section 302 read with Section 34 of the IPC. The appellants pleaded not guilty to the offence and claimed to be tried.

4. In support of its case, the prosecution examined Dr.Lal Chand Thakral as PW-1, Sohan Lal as PW-2, Ram Pratap as PW-3, Het Ram as PW-4 and A.S.I. Hardev Singh as PW-5. In their statements recorded under Section 313 of the Code of Criminal Procedure, the appellants Babu Ram (A-1) pleaded as under:-

"I am innocent. I have love affairs with Kant daughter of Sohan Lal. I have produced letters Mark D.1 to D.8 which are in her own hand-writing and I have been falsely involved due to this reason."

Indraj (A-2) pleaded as under:-

"I was preparing shoes by cutting leather with the Rambi. Ant Ram came there and started abusing me for not supporting Sohan Lal. We exchanged abuses and a quarrel started. In the meanwhile, my wife also came there. Ant Ram had a Kapa with him. He gave blows to me and my wife with Kapa from its sharp and blunt side. In order to defend me and my wife, I gave a Rambi blow to him. Police helped the deceased party as brother of Ant Ram, i.e. Main Pal is working in the Police Department. Babu Ram and my son Suraj Dev have been falsely implicated. Eye-witnesses Sohan Lal and Ram Pratap are made up witnesses."

5. A-3 Suraj Dev pleaded that he is innocent and has been falsely implicated in the case being the son of A-2 Indraj. In their defence, the appellants have examined Dr. Prithvi Raj (DW-1), who medico legally examined A-2 Indraj and also his injured wife Smt. Maya. Dr. R.K. Arora (DW-2) radiologically examined Smt. Maya (DW-3).

6. The Trial Court, on appreciation of the evidence, held the appellants guilty of the murder of Ant Ram and, accordingly, convicted and sentenced them as aforesaid.

7. The appellants preferred an appeal under Section 374 (2) of the Cr.P.C. before the High Court, whereas PW-2 Sohan Lal filed Criminal Revision No.306 of 1997 claiming compensation to the heirs of the deceased. The High court, as stated above, confirmed the conviction and sentence imposed upon the appellants, but dismissed the Criminal Revision of the complainant.

8. The appellants are, thus, before us by Special Leave to Appeal.

9. Mr. K.B. Sinha, learned counsel for the appellants, assailed the judgment of the High Court inter alia on two following grounds:-

- (a) that the genesis of the occurrence is shrouded in mystery and the prosecution has failed to explain the injuries on the person of the appellant-Indraj and his wife DW-3 Smt. Maya, therefore, the conviction of the appellants suffers from infirmity and perversity;
- (b) that the injury, which was found fatal to the deceased Ant Ram, was caused by the appellant-Indraj in his self-defence and also to protect the body of his wife Smt. Maya from further assault by the deceased. Thus, the appellants are entitled to the benefit of doubt.

10. Learned counsel for the respondent\026State, on the other hand, submitted that the reasons given by the Trial Court as well as by the High Court regarding the order of conviction of the appellants are based upon proper appreciation of the evidence led by the prosecution in the case. According to him, the evidence of PW-2 and PW-3, the eye-witnesses of the incident, is cogent and satisfactory with the hypothesis of the guilt of the accused and the accused had no right of private defence to cause the grievous injury on the vital part of the body of the deceased with sharp edged weapon and, therefore, the plea of the right of private defence of accused Indraj is not tenable and acceptable.

11. Before advertng to the arguments advanced by the learned counsel, we shall, at the threshold, point out that the incident, which resulted in the death of Ant Ram, is not in dispute. We have reappraised and scrutinized the evidence of the eye-witnesses as well as medical evidence of PW-1 Dr. Lal Chand Thakral who, at the relevant time, was posted as Medical Officer, Civil Hospital, Abohar. Dr. Lal Chand Thakral conducted the post-mortem on the dead body of Ant Ram on 04.03.1993 at 11.00 a.m. and found the following injuries on his body:

1. A stab incised wound 2.5 cm X 1.5 cm present on the front of the chest on left side 4.5 cm below, the overlying shirt and vest.

2. On probing, the direction of wound was downwards medically and upwards. On dissection clotted blood was present in underlying tissues, 5th rib was cut. On further dissection the pericardium was out and left ventricle arterially was cut. There was about 700 CC of blood was present on the left side of the chest cavity. Heart was empty. The injury was ante-mortem in nature.

12. In the opinion of the Doctor, the cause of death of Ant Ram was hemorrhage, shock and injury to heart which was sufficient to cause death in due course of events.

13. PW-2 Sohan Lal and PW-3 Ram Pratap, the alleged eye-witnesses of the occurrence, are interested witnesses. They are brother and nephew respectively of the deceased. The prosecution has not examined any other witness in support of its case though it has come in the evidence of PW-3 Ram Pratap that large number of persons including Chunni, Banwari and Chhotu were present at the scene of occurrence, who witnessed the incident. The defence of the accused Indraj corroborated by the evidence of his wife DW-3 appears to be

more plausible than the rival version of the evidence of PWs-2 and 3.

14. DW-1 Dr. Prithvi Raj was BMO posted at Civil Hospital, Abohar, at the relevant time. He medico-legally examined the accused-Indraj on 03.03.1993 at 10.45 p.m. in the hospital and found the following injuries on his person:

"1. There was an incised wound 2 x 0.5 cm bone deep sent on arteries lateral aspect of left forearm, just above the wrist joint. Fresh bleeding was present. X-ray was advised.

2. There was an incised wound 2 x 0.5 cm bone deep present on back right forearm 5 cm below elbow on process. Fresh bleeding was present. X-ray was advised.

3. There was an unscabbed abrasion 1 x 1 cm over bridge of nose. X-ray was advised.

4. There was an abrasion 1.5 x 1 cm on right side of face below right eye adjacent to nose.

5. There was an abrasion 3 x 1cm on back of right forearm on its upper part, 3 cm below injury no.2.

6. There was an abrasion 1.5 x 1 cm on lateral side of right forearm on its lower part.

7. There was an abrasion 4 x 3 cm on front of left knee. Injuries No.1, 2 and 3 were kept under observation and the remaining injuries were declared as simple. The probable duration of the injuries was within six hours. Injuries No.1 and 2 were caused by sharp edged weapon while the remaining was caused by blunt weapon. I have brought the original MLR today in the court. Exh.D is the certified copy of the MLR of Indraj and Exh.DA/1 is the pictorial diagram showing the seat of injuries."

As per the opinion of Dr. Prithvi Raj, the above said injuries on the person of accused Indraj were found simple in nature after X-ray examination.

15. On the same day, Dr. Prithvi Raj medico-legally examined DW-3 Smt. Maya, wife of the accused Indraj, and he found following injuries on her person:-

1. There was a reddish contusion 2 x 1.5 cm with underlying swelling 5 x 3 cm on dorsum of right hand on medical side. X-ray was advised.

2. There was a reddish contusion 6 x 1.5 cm on lateral side of right arm on its middle.

3. There was an abrasion 3 x 2 cm on medical side of the left forearm on its upper part.

In the opinion of the Doctor, Injury Nos. 2 and 3 were found simple in nature, whereas Injury No.1 was declared grievous in nature caused by blunt weapon within the duration of six hours.

16. DW-2 Mr. R.K. Arora was S.M.O., Civil Hospital, Abohar, at the relevant time. Dr. Arora conducted X-ray examination of Smt. Maya on 04.03.1993 and found fracture of the base of proximal phalyn of right little finger.

17. DW-3 Smt. Maya stated in her deposition that on the day of occurrence her husband Indraj was cutting leather for making shoes with a 'Rambi' when Ant Ram came in front of their house and without any cause he started abusing her husband. Ant Ram was armed with 'Kapa' with which he gave 6-7 blows to her husband from sharp and blunt side of the weapon. She tried to save her husband from further assault, but Ant Ram inflicted grievous injuries on her arms with 'Kapa'. She stated that her husband Indraj was carrying a 'Rambi' in his hand with which he inflicted injury to Ant Ram to save himself as well as her body. She further stated that she went to the hospital along with her injured husband where Doctor medically examined them. She narrated the entire incident to the police, but the police did not listen to her version as the nephew of the deceased is posted as a Constable in the Police Department. Despite searching lengthy cross-examination, the prosecution has failed to elicit any material to shatter and discredit her testimony. She categorically denied the suggestion of the prosecution that the occurrence had taken place in the street in front of the house of PW-3 Ram Pratap. Further suggestion that all the three accused persons committed murder of Ant Ram was categorically denied by her. The plea of the prosecution that she and her husband Indraj were given slaps and fist blows by the general public, who collected at the scene of the occurrence, has been specifically denied by her. Dr. Prithvi Raj has categorically opined that the injuries on the person of accused Indraj and his wife Smt. Maya could be caused by sharp and blunt weapon and not by slaps and fist blows.

18. It is a well-settled law that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:-

1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

3. that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the

prosecution case. [See Lakshmi Singh v. State of Bihar; AIR 1976 SC 2263]

19. Further, it is important to point out that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

20. In the present case, the prosecution has not explained the injuries on the person of the accused Indraj and his wife Smt. Maya Devi. It has come in the evidence of PW-5 S.I. Hardev Singh, the Investigating Officer, that the accused Indraj was admitted in the hospital and he was arrested on 08.03.1993 after discharge from the hospital. The Investigating Officer has also collected the MLRs of the accused Indraj and his wife Maya on the intervening night of 03rd/04th March 1993 at about 12.30 a.m. The occurrence had taken place on 03.03.1993 at about 7.30 p.m. as per the prosecution version itself. The evidence of Dr. Prithvi Raj would show that the duration of the injuries suffered by the accused Indraj and his wife Smt. Maya was within duration of six hours. The evidence of DW-Smt. Maya, corroborated by the medical evidence of Dr. Prithvi Raj, is more probable, satisfactory and convincing than the evidence of PWs. 2 and 3 who are interested witnesses and who have not given true genesis and origin of the occurrence in their testimony. Thus, non-explanation of the injuries on the person of the accused Indraj and his wife Smt. Maya supports the version of the defence that the accused Indraj inflicted single blow with 'Rambi' on the person of Ant Ram in private defence of his body and also the person of his wife who had suffered several injuries at the hands of Ant Ram with a weapon called 'Kapa', though the injury received by the deceased Ant Ram was turned out to be fatal in nature but it was not inflicted by the accused with the intention of causing death of the deceased or with the intention or knowledge that the injury would, in all probability, cause his death.

21. We do not agree with the courts below that the accused Indraj had no right of private defence to his body or to the person of his wife. It is established on record by DW-3 that Ant Ram came in front of their house and for no cause he started abusing her husband. Ant Ram gave 6-7 blows to her husband with sharp as well as blunt side of 'Kapa' which he was holding in his hand. Ant Ram also inflicted injuries on the arms of DW-Maya and it was at that time and in that process that 'Rambi' blow was given to Ant Ram by her husband to save himself and his wife from further blows. A 'Kapa' is capable of causing simple as well as fatal injuries to the accused Indraj and his wife Smt. Maya. We are of the view that in such a situation the accused Indraj could necessarily apprehend danger to his life and to the life of his wife at the hand of Ant Ram and in that process if one blow was inflicted by the accused on the person of Ant Ram which has proved fatal, the accused had the right of private defence to his body as well as to the person of his wife Smt. Maya. The injuries on the person of the accused Indraj were simple in nature, whereas one injury found on the person of his wife Smt. Maya by the Doctor was grievous in nature. The evidence of DW-3, corroborated by the medical evidence, is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy that it has to be relied upon and accepted vis-à-vis the evidence of the prosecution.

22. Having given our careful consideration to the submissions made by the learned counsel for the parties and in the light of the evidence and in the background of the well-settled proposition of law and in view of the improbabilities, the serious omissions and infirmities, the interested nature of the evidence and other circumstances, it was clear that the prosecution has failed to prove the case against the appellants beyond reasonable doubt. The High Court was in error in brushing aside serious infirmity in the prosecution case regarding non-explanation of the injuries sustained by the accused Indraj and his wife DW-Smt. Maya and also not accepting the plea of the right of defence of the accused on unconvincing premises.

23. For the reasons given above, we allow the appeal, set aside the conviction of the appellants-Babu Ram and Indraj under Section 302 read with Section 34 of the IPC and Suraj Dev under Section 302 of the IPC. The appellants are, accordingly, acquitted.

24. Appellants-Babu Ram, Indraj and Suraj Dev, who are presently in jail, shall be set free forthwith if they are not required in any other case. Fine imposed by the Trial court, if realized from the appellants, shall be paid back to them.