RAJ PAL AND ANR

v.

STATE OF HARYANA

APRIL 27, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860; Ss. 34 & 302/Code of Criminal Procedure, 1973; S. 313:

Murder—Right to private defence—Held: Accused allegedly gave a lathi blow and a pharsi blow on the head of the deceased—A pharsis causes an incised wound, however, no incised wound found on the body of the deceased as is evident from the post mortem report—Thus, there is a clear inconsistency between ocular version and medical version—Accused admitting that they did attack the deceased but they did so in their self-defence—Prosecution failed to explain the injury on the accused –Non—explanation of injuries is certainly an important circumstance which has to be taken into consideration by the Court while deciding that benefit of doubt should go to the accused—Statement of accused as recorded under Section 313 as used in self—defence certainly throws reasonable doubt upon the entire prosecution version—Hence, the benefit of doubt has to be given to the accused—Directions issued.

According to the prosecution, on 5.8.1990, the complainant, PW 10 and another were smoking "huqqa", in front of the baithak of one 'S'. In the afternoon, when the deceased was returning in his house after grazing buffaloes and reached in front of 'P's house, accused persons armed with pharsi and lathi respectively threatened him with dire consequences for suspecting them as the thieves of buffaloes. One of them gave a pharsi blow and another gave a lathi blow on the head of the deceased, and he fell on the ground. But the accused continuously gave 2-3 more lathi blows which hit him on his back. Seeing this, PW 9, PW 10 and another person reached the spot and rescued the victim from the clutches of accused. In the rescuing process, one of the accused also received injuries. The accused thereafter fled away from the spot with their respective weapons. The victim was taken to a Hospital, where he succumbed to his injuries. On receipt of the

A information, a Sub-Inspector of Police reached the hospital and sent the dead-body of the victim for post-mortem examination. A case against the appellants was registered vide formal FIR. Later, accused were arrested, and in pursuance of disclosure statement, weapons used in committing the crime were recovered. After completion of investigation, charge-sheet against the accused persons was filed by the Police. Trial Court found both the accused B guilty of offence under Section 302 read with Section 34 I.P.C and sentenced them to life imprisonment. Appeal filed against the judgment of the trial Court was dismissed by the High Court. Hence the present appeal.

On behalf of the accused-appellant, it was contended that admittedly one C of the accused caused the injury on the back of the deceased with a jelly and another accused was not present; that the injuries on the person of the deceased was a self-defence; that the report of the local commissioner clearly reveals that it was not possible for the eye witnesses to have seen the occurrence while sitting at the place as mentioned as the place of occurrence; that there is a clear contradiction between the eye witnesses and the medical evidence; D that the delay in lodging the FIR also shows that it is a concocted false story; that the injuries on the person of the accused are totally unexplained by the prosecution and they are in conformity with the defence version; that the motive attributed to the accused was stale and the theft of buffalo of deceased and another was only the suspicion which had taken place a long time back and was no reason to commit a serious crime as murder; and that the FIR is E the result of consultation and deliberation as the special report was received by the Magistrate at 6.55 p.m. even though his residence is only 100 yards from the police station.

Allowing the appeal, the Court

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HELD: 1.1. In this case the benefit of doubt has to be given to the accused and it is possible that it is a case of *bona fide* self-defence. [Para 18] [764-F]

1.2. In the FIR, it has been stated that one of the accused gave a pharsi blow on the head of the deceased while another accused gave a lathi blow on G his head. The same is the statements in Court of the alleged eye witnesses PW 9 and PW 10. A pharsi is a weapon which causes an incised wound like an axe. However, there is no incised would on the body of the deceased as is evident from the post mortem report. There are four injuries on the dead body of the deceased as found in the post mortem report. One of these wounds was a lacerated wound on the head while the other wounds are contusions on the H shoulder. There is no incised wound. Thus, there is a clear inconsistency

between the ocular version and the medical version. [Para 11] [764-C-E] A

1.3. The prosecution version is that the pharsi was used lathi wise by its blunt edge. It seems to be a tutored version when the prosecution realized that there was a clear inconsistency between the ocular version and the medical version. In fact in his statement, PW 9 stated that he did not state to the police in his statement under Section 161 Cr.PC that the pharsi blow was B given lathi wise. Thus, his statement in the court appears to be a clear improvement over the statement given to the police. [Para 12] [762-F]

1.4. Another contradiction between the ocular version and the medical version is that according to the FIR version and deposition of the eye witnesses before the trial court two blows were given on the head of the deceased by the C accused persons. However, in the post mortem report only one injury (lacerated wound) was found on the head of the deceased. [Para 13] [762-G-H]

2.1. While there is no absolute rule that merely because the prosecution has failed to explain the injuries on the accused *ipso facto* the prosecution case should be thrown out, the non-explanation of the injuries on the accused D is certainly an important circumstance which has to be taken into consideration by the Court in deciding whether the benefit of doubt should go to the accused. [Para 20] [764-G-H; 765-A]

Bishna v. *State of West Bengal,* [2005] 12 SCC 657, relied on.

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2.2. The injuries on the accused include an injury on the head, which is a vital part of the body. Ordinarily self-inflicted injuries are on non-vital parts. The injury on the head of the accused required stitches. It is difficult to believe that this was self-inflicted. Moreover, in the present case, there are very important discrepancies in the prosecution version. It is true that minor discrepancies will not necessarily lead to the rejection of the prosecution case, F but when there are major discrepancies and unexplained injuries on the accused it is an important factor to be taken into account.

[Para 21] [765-B-C]

2.3. In their statements under Section 313 Cr.PC, the accused persons G accepted that they did attack the deceased but said that they did so in their self-defence. In these statements the accused pleaded innocence and false implication by the witnesses. Further, one of the accused has stated that the deceased had forcibly opened a door towards his plot. Since he opposed this there was a quarrel on this issue. Thereupon the deceased and another attacked him and he tried to run away, but they overpowered him near the H

A **house of one 'P' where he picked up a jelly and used it in his self-defence. [Paras 14 and 22] [763-A-B; 765-C-D]**

2.4. Though it cannot be said that the version of the accused is necessarily correct, but it certainly throws a reasonable doubt upon the entire prosecution version when it is coupled with other circumstances. Thus, benefit
B **of doubt has to be given to the appellants. [Paras 23 and 24] [765-E-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 639 of 2007.

From the Judgment and Order dated 8.12.2005 of the High Court of
C Punjab and Haryana at Chandigarh in Crl. A. No. 67-DB 1997.

K.B. Sinha, Kawaljit Kochar and Kusum Chaudhary for the Appellants.

Rajeev Gaur 'Naseem' and T.V. George for the Respondent.

D The Judgment of the Court was delivered by

MARKANDEY KATJU, J. Leave granted.

1. This appeal has been filed against the impugned judgment dated 8.12.2005 passed by the Punjab & Haryana High Court in Criminal Appeal No.
E 67-DB/1997.

2. Heard learned counsel for the parties and perused the record.

3. The prosecution case is that Raj Pal and Jai Pal appellants are brothers *inter-se,* being sons of Hari Chand. A panchayat was held in the
F village, in the month of February 1990, in connection with the theft of buffaloes of Yad Ram. Hira Lal complainant, Karan Singh, and Kure Ram had also attended the Panchayat, in which Sohan Lal (@ Melha) deceased, who was uncle of Yad Ram, had suspected the appellants to be the thieves. It is alleged that since then the appellants had been nourishing a grudge against Sohan Lal.
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4. On 5.8.1990, Hira Lal complainant, PW 10 Zile Singh and one Diwan Singh were smoking "huqqa", in front of the baithak of Shadi Lal. At about 1.00 p.m. Sohan Lal was returning to his house after grazing buffaloes in his fields. When he reached in front of Parshadi's house, Jai Pal and Raj Pal
H appellants who were armed with pharsi and lathi respectively came near him

and said that they would teach him a lesson for suspecting them as the thieves of buffaloes. Jai Pal then gave a pharsi blow and Raj Pal gave a lathi blow on Sohan Lal's head. He fell on the ground. Even in fallen condition, Raj Pal gave 2-3 more lathi blows which hit him on his back. Seeing this, Hira Lal (PW 9), Zile Singh (PW 10), and Diwan Singh reached the spot and rescued Sohan Lal from the clutches of appellants. In the rescuing process, Jai Pal also received injuries. The appellants, thereafter, fled away from the spot with their respective weapons. Zile Singh and Surender son of Hans Lal removed Sohan Lal (injured) from the spot, in a car, to the General Hospital, Gurgaon, where he succumbed to his injuries. On receipt of this information, in the form of medical ruqqa, Ex. PA, about the death of Sohan Lal, Sub-Inspector Suraj Bhan reached the hospital, where Hira Lal complainant and Bis Ram were found sitting near the dead-body of Sohan Lal. He recorded the statement of Hira Lal, Ex. PH, and sent it to the police station with his endorsement, Ex.PH/1, thereon, on which the case against the appellants was registered vide formal FIR, Ex PH/2. He prepared inquest report, Ex. PL, and sent the dead-body for post-mortem examination. He visited the place of occurrence, prepared rough site plan thereof, Ex. PM, and also called the photographer who took photographs, Exs. P3 and P4 (negatives Exs. P1 and P2) , of the scene of occurrence. He also took into possession blood-stained earth from there vide memo, Ex. PN, after making it into a sealed parcel. He searched for the appellants but could arrest them only on 10.8.1990, as earlier they remained absconding. On 12.8.1990, Raj Pal appellant got a lathi recovered in pursuance of his disclosure statement. Ex. PO, and the same was taken into possession vide memo, Ex.PO/1. Similarly, Jai Pal appellant also got recovered a 'pharsi' in pursuance of his disclosure statement, Ex. PP, and the same too, was taken into possession vide memo, Ex. PP/1.

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5. After completion of investigation, challan was filed in court against the appellants by Inspector Jag Parvesh PW5.

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6. On receipt of the case, by way of commitment, the trial court charged the appellants under Section 302 read with Section 34 I.P.C. and since they pleaded not guilty, the case was committed for trial.

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7. The witnesses examined by the prosecution, in support of their case, are PW 1 Dr. B.M. Bhatnagar, PW 2 Dr. Sushil Goyal, PW 3 Mool Chand Punia, PW 4 Balwant Rai Bhatia, PW 5 Inspector Jag Parvesh, PW 6 Constable Maheshswar, PW 7 Jai Singh, PW 8 Head Constable Murari Lal, PW 9 Hira Lal, PW 10 Zile Singh and PW 11 Sub-Inspector Suraj Bhan.

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A 8. After consideration of the evidence on record the trial court by its judgment dated 7.12.1996 found the appellant Raj Pal and Jai Pal guilty of offence under Section 302 read with Section 34 I.P.C and sentenced them to life imprisonment.

9. Against the said judgment the accused filed an appeal before the B High Court which was dismissed by the impugned judgment, and hence this appeal.

10. We have carefully perused the evidence and material on record and we are of the opinion that the benefit of doubt has to be given to the accused.

C 11. In this connection it may be mentioned that in the FIR dated 5.8.1990 it has been stated that the accused Jai Pal gave a pharsi blow on the head of Sohan Lal while Rajpal gave a lathi blow on his head. The same is the statements in Court of the alleged eye witnesses PW 9 Hira Lal and PW 10 Zile Singh. A pharsi is a weapon which causes an incised wound like an axe. D However, there is no incised wound on the body of Sohan Lal as is evident from the post mortem report. There are four injuries on the dead body of Sohan Lal as found by Dr. Sushil Goyal's post mortem report conducted on 5.8.1990 at 6.05 p.m. One of these wounds was a lacerated wound on the head while the other wounds are contusions on the shoulder. There is no incised wound. Thus, there is a clear inconsistency between the ocular version and E the medical version.

12. The prosecution version is that the pharsi was used lathi wise by its blunt edge. It seems to us that this appears to be a tutored version when the prosecution realized that there was a clear inconsistency between the ocular version and the medical version. In fact in his statement in Court PW F 9 Hira Lal stated that he did not state to the police in his statement under Section 161 Cr.PC that the pharsi blow was given lathi wise. Thus, his statement in the court appears to be a clear improvement over the statement given to the police. As regards the other witness PW 10 Zile Singh, he has not stated in his evidence that the pharsi blow was given to Sohan Lal lathi wise.

G 13. Another contradiction between the ocular version and the medical version is that according to the FIR version and deposition of the eye witnesses before the trial court two blows were given on the head of Sohan Lal, a pharsi blow by Jai Pal and a lathi blow by Raj Pal. However, in the post mortem report only one injury (lacerated wound) was found on the head of H Sohan Lal.

14. In their statements under Section 313 Cr.PC the accused Jai Pal and Raj Pal accepted that they did attack Sohan Lal but said that they did so in their self-defence. In these statements the accused pleaded innocence and false implication by the witnesses. They stated that a wrestling bout had taken place in their village on the occasion of Raksha Bandhan in the year 1989. Wrestlers of Rohtak and Bandhwari had opposed each other, at that time Hansraj Sarpanch was married in the village Bandhwari and he had sided with the wrestlers of that village whereas in fact they were not winning. Rajpal used to organize that wrestling bout with the help of villagers, and at that time, he, Hira Lal, Diwan Singh, Zile Singh and Karan Singh had a wordy duel. Raj Pal was telling that wrestlers of Rohtak had won whereas they were opposing them and on that account they have been falsely implicated in this case. Aforesaid Hans Raj, Diwan Singh, Hira Lal, Zile Singh and Karan Singh belong to different parties. Ram Chand is also stated to be their companion and was always opposed to them.

15. Jai Pal accused further elaborated in his 313 Cr.PC statement that Ram Chander had forcibly opened a door towards his plot. He opposed it, and hence they quarreled on that issue also. Ram Chander, Sohan Lal, Karan Singh came there with lathis and opened attack on him. He ran away but they overpowered him near the house of Parshadi. He then picked up a three pronged jelly from that place and used it in self-defence. A blow of his jelly hit the back of Sohan Lal. He fell down. A brick was lying on the ground. The peg for tethering cattle (Khunta) was also in existence at that place. Since Sohan Lal fell down he got a chance and escaped therefrom. The police arrested him, his brother and his father on the evening of 5th of August 1990. He narrated the incident to the police. Despite that, the police implicated him falsely. He had sufficient injuries in this accident but the police did not arrange for his Medico Legal Report till 10th of August 1990. The police even did not produce them in the Court. Only on the application moved by his brother Shiv Raj, they were produced in the Court. The entire prosecution case is false and concocted. If one is sitting on the chabutra of Shadi Lal, then the house of Parshadi Lal was not visible and this proves that Raj Pal, and his brother were not present, at all, at the time of the aforesaid incident.

16. In their defence evidence the accused examined DW-1 Dr. S.P. Singh. He stated that on 18.8.1990 at about 8.00 p.m. he medically examined Jai Pal and found the following injuries on his person :-

(1) Already dissected and stitched wound, over the left parietal

A eminence, length 1-1/4".

(2) Complaint of pain back. No mark of external injury was seen. There was no swelling.

(3) Complaint of pain left calf, muscles. There was no mark of external injury. There was no swelling.

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Learned counsel for the appellant has submitted that Jai Pal, the appellant has honestly admitted that he caused the injury on the back of the deceased with a jelly and his brother Raj Pal was not present. He submitted that the injuries on the person of Jai Pal was in self-defence. He further submitted that the report of the local commissioner clearly reveals that it was not possible the C for eye witnesses Hira Lal and Zile Singh to have seen the occurrence while sitting at the place in front of Shadi Lal's Baithak as the place of occurrence, that is the house of Prashadi Lal, is not visible from there. He further submitted that there is a clear contradiction between eye the witnesses and the medical evidence (details of which have already been mentioned above). The delay D in lodging the FIR also shows that it is a concocted false story. The injuries on the person of Jai Pal are totally unexplained by the prosecution and they are in conformity with the defence version.

17. Learned counsel further stated that the motive attributed to the accused was stale and the theft of buffalo of Yad Ram and Sohan Lal was E only a the suspicion which had taken place a long time back and was no reason to commit a serious crime as murder. Learned counsel further submitted that the FIR is the result of consultation and deliberation. The special report was received by the Illaqa Magistrate at 6.55 p.m. even though his residence is only 100 yards from the police station.

F 18. We are of the opinion that in this case the benefit of doubt has to be given to the accused and it is possible that it is a case of *bona fide* self-defence.

19. In *Bishna* v. *State of West Bengal,* [2005] 12 SCC 657 one of us (Hon. G S.B. Sinha, J) have discussed in great detail the law of private defence and the effect of non-explanation by the prosecution of the injuries on the accused.

20. While there is no absolute rule that merely because the prosecution has failed to explain the injuries on the accused *ipso facto* the prosecution case should be thrown out, the non-explanation of the injuries on the accused H is certainly an important circumstance which has to be taken into consideration

by the Court in deciding whether the benefit of doubt should go to the accused. In *Bishna's* case (supra) the entire law on the point has been discussed in great detail, and hence it is unnecessary to repeat it here. A

21. The injuries on the accused include an injury on the head, which is a vital part of the body. Ordinarily self-inflicted injuries are on non-vital parts. The injury on the head of the accused Jai Pal required stitches. It is difficult to believe that this was self-inflicted. Moreover, in the present case, as noticed above, there are very important discrepancies in the prosecution version. It is true that minor discrepancies will not necessarily lead to the rejection of the prosecution case, but when there are major discrepancies and unexplained injuries on the accused it is an important factor to be taken into account. B C

22. In his statement under Section 313 Cr.PC, Jai Pal has stated that Ram Chander had forcibly opened a door towards his plot. Since Jai Pal opposed this there was a quarrel on this issue. Thereupon Ram Chander, Sohan Lal and Karan Singh attacked Jai Pal and he tried to run away, but they overpowered him near the house of Parshadi where he picked up a jelly and used it in his self-defence. D

23. While we are not in a position to say that the version of Jai Pal is necessarily correct, it certainly throws a reasonable doubt upon the entire prosecution version when it is coupled with other circumstances (such as major discrepancies between the ocular version and the medical evidence) which have already been referred to above. E

24. In view of the above discussion, we are of the opinion that the benefit of doubt has to be given to the appellants. The appeal is allowed. The impugned judgments of the trial court and the High Court are set aside. The appellants shall be released forthwith unless required in some other case. F

S.K.S. Appeal allowed.