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HARDIAL SINGH AND OTHERS

v.

STATE OF PUNJAB

APRIL 9, 1996

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[M.K. MUKHERJEE AND G.B. PATTANAIK, JJ.]

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*Indian Penal Code, 1860—Sections 302, 326/149, 148, 326—Prosecution of 5 accused for offences under—Acquittal of two accused—Conviction of three accused by applying Sec. 149 IPC—Whether sustainable—Held, No—Individual overt acts of appellants to be considered.*

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The three appellants alongwith the two acquitted accused were prosecuted for offences u/Ss. 148, 302/149 IPC on the allegation that they came armed with guns and rifles and fired at the deceased as well as the injured PW 5 and other members of the informant party who were cultivating the land. All the five accused were related to each other. The Two accused were acquitted, giving them benefit of doubt on a conclusion that the prosecution evidence did not prove the charge against them beyond reasonable doubt. The three appellants were convicted differently, He was convicted u/s 302, 148, 326/149 IPC, appellant u/s 148, 302/149 and 326 IPC and appellant G u/s 148, 302/149 IPC. High Court confirmed their convictions. This appeal had been filed against the judgment of the High Court.

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The appellants contended that five known persons being charged u/s 302/149 IPC and two of them having been acquitted of the charge the conviction of the three appellants by taking recourse to Section 149 IPC was unsustainable; that the entire prosecution case based on the evidences of PWs 4 and 5 should not be accepted in view of inherent inconsistencies accepted in their statements and their evidence being contrary to the medical evidence; that it being a case of free fight, the individual accused persons might thus be liable for their individual acts and could not be made conjointly liable; that appellant H having sustained serious injuries in course of the incident, the only conclusion possible was that he had fired from his gun in private defence of his person and therefore, he could not be held liable for the offence of murder.

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The respondent State submitted that in view of the acquittal of the two accused persons, provision of Section 149 IPC could not be applied

and though under law it was possible for a court to convict the accused persons charged u/s 302/149 IPC by altering it to one u/s. 302/34 IPC but in this case on the evidence on record it being difficult to convict the three appellants u/s 302/34 IPC, the individual overt acts of the appellants had to be considered and that in view of the positive evidence of PWs 4 and 5 conviction of appellant H u/s 302 IPC and of two other appellants u/s 326 IPC was unassailable and could not be interfered with.

Allowing the appeals in part, this Court

HELD : 1.1. The death of deceased was on account of the gun shot injury on his chest which in turn had been caused on account of firing from the gun of appellant H. So far as the two other appellants were concerned, the gun shot from the appellant G had caused an injury on the right forearm of the deceased and the gun shot from the appellant U had caused an injury on the thigh of P.W. 5. The evidence of P.Ws. 4 and 5 had been believed by the two courts below and there was no ground to discard that testimony. Appellant H had sustained one lacerated inlet wound on the posterior medical aspect of right leg having a corresponding lacerated outlet wound, the injury was grievous in nature as the X-ray report indicated that the right fibula had been fractured. But that by itself cannot be basis to establish a claim of right of private defence of person. The land in question was admittedly in cultivation of the informant party and the accused persons reached the place fully armed with guns and rifles. As stated by P.W. 4 when the informant party did not stop the ploughing, it was accused G who first fired which hit the right arm of the deceased and then in self defence P.W. 5 fired two shots from his gun and thereafter accused H fired from his gun which hit the chest of the deceased. Accused U also had fired from his rifle which hit the left thigh of P.W. 5. It was the accused persons who must be held to be aggressor and the plea of right of private defence of person could not be available to them. It was the gun shot from two firings made by PW5 in self defence which had caused the injury on accused H. When the accused persons came armed to the place of occurrence which was in lawful possession of the informant party and who had obtained injunction from the court of law, the question of claim of right of private defence by the accused did not arise and more so in the sequence of events as narrated by P.Ws. 4 and 5. [120B-C; E-H; 121-A-B]

1.2. The conviction of appellant H u/s 302 IPC and the sentence of

- A** imprisonment for life thereunder are upheld. The conviction of appellant u/s 326 IPC and sentence of R.I. for two years on that score and that of appellant G u/s 326 IPC and sentence of R.I. for two years are confirmed.

[121-E-G]

- B** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 117-18 of 1986.

From the Judgment and Order dated 12.9.83 of the Punjab & Haryana High Court in CrI. A No. 388-DB of 1983.

R.L. Kohli, M.S. Hondal and R.C. Kohli for the Appellants.

- C** H.M. Singh for R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

- D** **G.B. PATTANAİK, J.** The three appellants being unsuccessful in the appeal filed by them in the High Court and their conviction and sentence passed by the learned Additional Sessions Judge, Amritsar, having been confirmed have approached this Court. These three alongwith the acquitted Amar Singh and Dalip Singh stood their trial in the Court of Additional Sessions Judge, Amritsar under Sections 148, 302/149, 326/149 I.P.C. on the allegation that they came armed with guns and rifles and fired at the deceased as well as the injured P.W. 5 and other members of the informant party who were cultivating the land belonging to Khazan Singh in village Rekh Jhitan. It is to be noted that all the five accused persons are related to each other, accused Dalip Singh being the father and the rest four are his sons. The learned Additional Sessions Judge acquitted accused Dalip Singh and Amar Singh giving them benefit of doubt on a conclusion that the prosecution evidence does not prove the charge against them beyond reasonable doubt. But so far as the three appellants are concerned, the learned Additional Sessions Judge convicted them and sentenced them differently. Appellant Hardial Singh was convicted under Section 302 IPC and was sentenced to imprisonment for life. He was also convicted under Section 148 I.P.C. and sentenced to R.I. for one year and under Section 326/149 I.P.C. was sentenced to R.I. for two years. Appellant Uttam Singh was convicted under Section 302/149 IPC and was sentenced to imprisonment for life. He was also convicted under Section 148 IPC and was sentenced to R.I. for one year and convicted under
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- H** Section 326 IPC and was sentenced to R.I. for two years. Appellant

Gurnam Singh was also convicted under Section 302/149 IPC and was sentenced to imprisonment for life. He was also convicted under Section 148 I.P.C. and sentenced to R.I. for one year and convicted under Section 326/149 IPC and sentenced to R.I. for two years. The sentences of imprisonment of each of the appellants were ordered to run concurrently. They moved the High Court against the conviction and sentence in Criminal Appeal No. 388 of 1983 but the High Court dismissed the appeal and confirmed the conviction and sentence and, hence, the present appeal.

Prosecution case in nutshell is that a piece of land belonging to one Khazan Singh of village Rekh Jhitan was being cultivated by Kulwant Singh P.W.4 and his father Gulzar Singh P.W. 10, Amar Singh and Harbans Singh for the last so many years. The appellants' family became interested in dispossessing Kulwant Singh and his father and apprehending forcible eviction by the appellants, said Gulzar Singh P.W. 10 filed a Civil Suit and had obtained an order of injunction on December 24, 1980. On the date of occurrence, on 31st of October 1981 Kulwant Singh P.W. 4 had made arrangements for getting the land ploughed with a tractor and accordingly approached P.W. 9 who was also distantly related to Kulwant Singh. The further prosecution case is that the said P.W.9, Jagir Singh the deceased, P.W. 4 and 5 were ploughing the land and P.W. 5 had brought his licensed gun as they were apprehending trouble from the accused persons. While the ploughing operation was going on the accused persons armed with rifles and guns appeared at the spot and Gurnam Singh gave a lalkara not to plough further. P.W. 4 Kulwant Singh, however, asked P.W. 5 Jagir Singh to continue ploughing operation. Gurnam Singh then told his other companions that the people should be taught a lesson for ploughing land. The appellants then took their position behind the paddy straw ridge and Gurnam Singh fired from his rifle which hit P.W. 5 who was operating the tractor. Said P.W. 5 then rushed towards the boundary to pick up his 12 bore gun and at that point of time appellant Uttam Singh fired a shot which hit P.W. 5 on his left thigh. P.W. 5 then fired two shots in his defence. Appellant Hardial Singh fired another shot which hit the deceased Jagir Singh on his chest and he fell down. Amar Singh and Dalip Singh also fired shots from their respective weapons and none of the shots hit any of the complainant party. The appellants and their companions then left the place with their respective weapons. Kulwant Singh P.W. 4 immediately went to Police Station Jandiala at a distance of 8 kms from the place of occurrence and lodged the FIR at 11 A.M. P.W. 15 the Investigating Officer recorded

A the First Information Report and left for the place for investigating into the offence. At the place of occurrence he prepared the Inquest Report and sent the dead body of deceased Jagir Singh for Post Mortem examination. The Investigating Officer also sent the injured P.W. 5 to Hospital at Amritsar for treatment and medical examination. The Investigating Officer

B collected some blood stained earth from the place where the deceased Jagir Singh was lying and collected some empty cartridges from that place. From another place also he seized six empties and some live cartridges and recorded that statement of some of the witnesses under Section 161 of the Code of Criminal Procedure. On completion of investigation he finally submitted the chargesheet and on being committed the accused persons

C stood their trial as already stated. In support of the prosecution case a large number of witnesses were examined of whom P.Ws. 4 and 5 are the eye-witnesses to the occurrence. P.W. 2 is the Doctor who had examined the injured P.W. 5. as well as the injured accused Hardial Singh. The other Doctor was examined as P.W. 1 had conducted the Post Mortem examination on the dead body of deceased Jagir Singh. Relying upon the statement of P.Ws 4 and 5 and being of the opinion that the medical evidence corroborates the ocular statement, the learned Additional Sessions Judge convicted the three appellants as already stated but since there was no prosecution evidence to establish that Dalip Singh and Amar Singh had fired any shot which hit any of the members of the prosecution party, they were given benefit of doubt and were acquitted. No appeal had been filed against the said order of acquittal of Dalip Singh and Amar Singh but the appellants' appeal against their conviction and sentence was dismissed by the High Court on a reappraisal of the evidence of P.Ws. 4 and 5 as well as the medical evidence.

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Mr. Kohli, the learned senior counsel appearing for the appellants contended that five known persons being charged under Section 302/149 IPC and two of them having been acquitted of the charge the courts below committed gross of law in convicting the rest three accused persons by taking recourse to Section 149 IPC. He further contended that the entire prosecution case as unfolded through the evidence of P.Ws. 4 and 5 should not be accepted in view of inherent inconsistencies in their statements and in view of the fact that their evidence is contrary to the medical evidence. Mr. Kohli further urged that from the narration of facts it must be held that it was a case of free fight and, therefore, the individual accused

G persons may thus be liable for their individual acts and cannot be conjointly

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liable. According to Mr. Kohli, if the prosecution case is examined from this angle and taking into consideration the serious injuries which appellat Hardial had sustained in course of the incident, the only conclusion possible is that said Hardial had fired from his gun in private defence of his person and, therefore, he cannot be held liable for the offence of murder. Learned counsel appearing for the State fairly submitted that in view of the acquittal of the two accused persons provision of Section 149 IPC could not have been pressed into service and the courts below committed error on that score. He further stated that though under law it is possible for a court to convict the accused persons who were charged under Sections 302/149 I.P.C., if that charge fails by altering it to one under Sections 302/34 I.P.C., but in the case in hand on the evidence on record it will be difficult to convict the appellants Uttam Singh, Gurnam Singh and Hardial Singh under Section 302/34 IPC and necessarily therefore, the individual overt-acts of the appellants have to be considered. According to the learned counsel for the respondent, in view of the positive evidence of P.Ws. 4 and 5 conviction of appellant Hardial Singh under Section 302 IPC is unassailable and cannot be interfered with. So far as the two other appellants are concerned, according to him their conviction under Section 326 IPC remains unassailable. We find sufficient force in the submission of the learned counsel appearing for the State.

P.W. 4 Kulwant Singh had stated in his evidence that while they were cultivating the land in question accused Gurnam Singh challenged them and asked them not to plough the land. But when notwithstanding the said order of Gurnam Singh P.W. 5 continued the ploughing of the land, said Gurnam Singh fired from his rifle which hit the deceased on his right arm, at that point of time P.W.5 lifted his gun and fired two shots in self defence. Uttam Singh fired from his rifle which hit the witness Jagir Singh P.W. 5 then Hardial Singh fired from his rifle which hit the deceased Jagir Singh on his chest and the deceased fell down. Thereafter when they raised alarm the accused persons left the place. P.W. 5 substantially corroborates the aforesaid version of P.W.4. It is thus apparent that the shot alleged to have been fired by Gurnam Singh hit the right arm of the deceased and the gun shot which had been fired by Hardial Singh hit the chest of the deceased. The gun shot fired by Uttam Singh hit the left thigh of Jagir Singh P.W. 5. P.W. 1 who had conducted the Post Mortem examination on the dead body of the deceased found one inlet wound as well as outlet wound on the right forearm of the deceased and both those injuries correspond with each other. He also found an inlet wound of 1 cm x 3/4 cm oval in shape on the

A front and left side of chest 6 cm above left nipple. On dissection he found that the bullet after piercing the chest had entered the third intercostal space and then piercing the left pleura and upper lobe of the left lung had also ruptured the heart. The bullet was found in the right cavity. In his opinion the death was due to haemorrhage as a result of the injury to heart, left lung, liver and mesenteric vessels which had been caused on account of the gun shot injury on the chest. It would thus be crystal clear that the death of deceased Jagir Singh was on account of the gun shot injury on his chest which in turn had been caused on account of firing from the gun of appellant Hardial Singh. So far as the two other appellants are concerned, the gun shot from the appellant Gurnam Singh had caused an injury on the right forearm of the deceased and the gun shot from the appellant Uttam Singh had caused an injury on the thigh of P.W. 5. At this stage, it would be appropriate for us to examine the contention of Mr. Kohli, the learned counsel for appellant with regard to the so-called right of private defence of person of appellant Hardial Singh and whether the evidence of P.Ws. 4 and 5 should at all be believed or not. So far as the testimony of P. Ws. 4 and 5 is concerned on a thorough scrutiny of the same we have not found anything in their cross examination to impeach their veracity. On the other hand, both of them have narrated the occurrence which also gets ample corroboration from the medical evidence as discussed earlier. The evidence of those two witnesses have been believed by the two courts below and we see no ground to discard that testimony. The submission of Mr. Kohli to discard their evidence, therefore, cannot be sustained. Coming to the question of claim of right of private defence of appellant Hardial Singh, it is no doubt true that Hardial Singh had sustained one lacerated inlet wound 1 cm x 3/4 cm on the posterior medical aspect of right leg having a corresponding lacerated outlet wound as found by the Doctor P.W. 2 and the injury was grievous in nature as the X-ray report indicated that the right fibula had been fractured. But that by itself cannot be the basis to establish a claim of right of private defence of person. The land in question was admittedly in cultivation of the informant party and the accused persons reached the place fully armed with guns and rifles. As stated by P.W. 4 when the informant party did not stop the ploughing, it is accused Gurnam Singh who first fired which hit the right arm of the deceased and then in self defence P.W.5 fired two shots from his gun and thereafter Hardial Singh fired from his gun which hit the chest of the deceased. Accused Uttam Singh also had fired from his rifle which hit the left thigh of P.W. 5. This being the sequence of the events, it is the accused persons who must be held to be aggressor and the plea of right of private defence of person cannot be available to them. It is then gun shots from two firings

made by P.W. 5 in self defence which had caused the injury on Hardial Singh. When the accused persons come armed to the place of occurrence which was in lawful possession of the informant party and who had obtained injunction from the court of law, the question of claim of right of private defence by the accused does not arise and more so in the sequence of events as unfolded through the evidence of P.Ws. 4 and 5. It is difficult for us to accept the plea of right of private defence of person of accused Hardial Singh. Necessarily, therefore, on the evidence of the Doctor P.W. 1 and the evidence of P.Ws. 4 and 5 it must be held that the charge under Section 302 IPC so far as appellant Hardial Singh is concerned is proved beyond reasonable doubt and the conviction and sentence of appellant Hardial Singh on that score cannot be interfered. But so far as the conviction of two other appellants under Section 302/149 IPC, as stated earlier, the same cannot be sustained nor is it possible on the facts and circumstances of the case to convict them even under Section 302/34 IPC for their overt acts. In fact as already stated, the learned counsel appearing for the respondent State fairly submitted that their conviction under Section 302/149 IPC cannot at all be sustained. But for their individual act for the injuries caused on the right arm of the deceased as well as on the thigh of P.W. 5 their conviction under Section 326 IPC and the sentence passed thereunder has to be maintained. So far as the conviction under Section 148 IPC is concerned, the same also cannot be sustained as the prosecution has failed to establish an "unlawful assembly" of the accused persons.

In the premises as aforesaid, the conviction of appellant Hardial Singh under Section 302 IPC and the sentence of imprisonment for life thereunder is upheld. His conviction under Section 148 IPC as well as 326/149 IPC and the sentence passed thereunder are set aside. The conviction of appellant Uttam Singh under Section 302/149 IPC and the sentence passed thereunder are set aside but his conviction under Section 326 IPC and sentence to undergo R.I. for two years on that score are confirmed. Conviction of appellant Gurnam Singh under Section 302/149 IPC and the sentence passed thereunder are set aside and his conviction under Section 326 IPC and sentence to R.I. for two years are confirmed. So far as the appellant Hardial Singh is concerned, his bail bond stands cancelled and he is directed to surrender for serving the balance period of sentence. So far as the other two appellants are concerned, Mr. Kohli appearing for them submitted that they have already undergone the period of sentence of two years but from the records of this Court it is not possible to come to that conclusion since they were granted bail by order dated

- A 10.2.1986. In that view of the matter we direct that in case they have already undergone the sentence of two years, the question of their surrendering again would not arise but in case they have not undergone the sentence of two years they must surrender to serve the balance period. These appeals are accordingly allowed in part.
- B R.A. Appeal allowed.