A HUKAM CHAND

v.

STATE OF HARYANA

OCTOBER 23, 2002

B [UMESH C. BANERJEE AND Y.K. SABHARWAL, JJ.]

Penal Code, 1860; Sections 302, 304 Part II & 323:

Murder—Right to self-defence—Held, since injury received by the accused
C *persons is not serious, it negates the aggression theory—Hence right of self-defence not available—Accused inflicted injury on the deceased by deadly weapon and the severity of blow was sufficient for causing his death—Hence Section 302 rightly invoked and not Section 304 Part II.*

D **On the fateful day, PW12 and his brother went to the field for thrashing wheat. Members of accused party picked up 'khes' belonging to PW12 without his consent and when he asked to return the khes there started some altercation between the two groups. Accused persons called their relative, accused-appellant, for help, who arrived armed with deadly weapon, a Pharsa, and inflicted a blow on the head of the deceased who**
E **fell down. Other accused persons inflicted lathi and Ballam blow on PW12. Injured were shifted to hospital where one of them, brother of PW12, died. Post-mortem was conducted. Medical Officer opined that the injury inflicted on the head of the deceased was sufficient to cause death in the ordinary course of nature.**

F **Trial Court convicted accused-appellant under Sections 302 and 323 IPC and sentenced him to life imprisonment. High Court affirmed the conviction and sentence. Hence this appeal.**

On behalf of the appellant, it was contended that the injuries inflicted
G **on the deceased by the accused-appellant was in self defence; and that the conviction should have been under Section 304 Part I and not under Section 302 IPC.**

Dismissing the appeal, the Court

H **HELD: 1. A bare perusal of the injury report of accused-appellant,**

as a matter of fact, negates the theory of aggression, as introduced by the defence. No serious injuries have been shown to have been received by any of the accused persons and the pretended explanation as set up under Section 313 Cr.P.C. that the deceased received the fatal blow on his head from his own arms cannot but be termed to be otherwise not creditworthy neither acceptable. [207-D-E]

2. Though there was only one blow but the medical evidence on record definitely indicates that the severity of the blow was such that it was sufficient for causing death. Accused-appellant was in the house. He was called in and he arrived at the scene and place of occurrence with a Pharsa which by all means is a deadly weapon and it is this Pharsa which was used to hit the deceased at his head resulting in his immediate collapse and subsequent death. The factum of bringing in the Pharsa at the place of occurrence by accused from his house cannot be ignored. It definitely indicates the intent to use it and thereby cause death. Hence the accused was rightly convicted under Section 302 and not under Section 304 Part II. [208-E, F, G, H; 209-A-D]

Pularu **v.** *State of Madhya Pradesh,* **AIR (1993) SC 1487, distinguished.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 147 of 2002.

From the Judgment and Order dated 16.5.2001 of the Punjab and Haryana High Court in Crl. A. No. 832 DB of 1997.

Shiva Pujan Singh, Mrs. Nidhi Pandey and R.P. Khatana for the Appellant.

J.P. Dhanda, Ms. Raj Rani Dhanda, K.P. Singh and D.S. Nagar, for the Respondent.

The Judgment of the Court was delivered by

BANERJEE, J. The appellant by the grant of special leave of this Court is in appeal from the order of the Punjab and Haryana High Court affirming conviction for an offence under Section 302 IPC and sentence to undergo imprisonment for life and further to pay a fine of Rs. 50,000. The appellant has further been convicted under Section 323 IPC and sentenced to imprisonment of six months and both the sentences, however, were directed

A to be concurrent.

Two principal issues stand canvassed for consideration in the appeal. Firstly, the order of conviction as confirmed by the High Court remains wholly unwarranted, since injuries inflicted on the deceased cannot but be termed to be in self-defence and secondly having credence on the entire B prosecution story at the most the conviction should have been under Section 304 Part I and not under Section 302 IPC on the state of evidence available on record.

It is at this juncture, certain factual backdrop ought to be noticed. On C 6th May, 1989, around 7.00 in the morning, PW.12 Kishori Lal son of Devi Sahai and his brother Udai Chand (since deceased) went to the fields of Chatur Bhuj, where a wheat thrasher had been installed for thrashing the wheat. A cart belonging to Kishori Lal was standing nearby from where Mani Ram and Tuhia @ Varinder picked up a Khes and started filling the fodder in the tractor trolley by laying the fodder on Khes. The complainant D side asked them to return the Khes and there was by reason whereof some altercation between the two groups : whilst altercations, however, were on, Mani Ram asked his son Tuhia to inform his uncle so that he can come to lend support to Mani Ram's group. It is in pursuance of such a call that Hukam Chand arrived but armed with a Pharsa and it is this Pharsa by which Hukam Chand did inflict a blow on the head of Udai Chand and the latter E on receipt of the same fell down. Whereas Mani Ram gave a Lathi blow on the head of Kishori Lal, Tuhia being the son of Mani Ram inflicted a Ballam blow on the right shoulder of Kishori Lal. The latter was also given a Ballam blow by Dayawati, wife of Hukam Chand and it is on the hue and cry that some other persons arrived on the spot and Udai Chand was removed to the F Government Hospital, Mandkola and subsequently to B.K. Hospital, Faridabad and then to Safdajung Hospital in New Delhi.

The factual score further depicts that the Primary Health Centre sent a Ruqa to the local police station and ASI, Rajinder Singh, upon a visit to the village Mandkola, came to know that the injured had been admitted in B.K. G Hospital, Faridabad and subsequently to Safdarjung Hospital, New Delhi on 9.5.1989. The condition of Udai Chand, however, was rather serious, by reason wherefor no statement could be obtained but Kishori Lal's statement was recorded (Ex.PL). Subsequently, Udai Chand died on 12th May, 1989. Dr. A.K. Sharma (PW.2) conducted the post-mortem on the body of the H deceased Udai Chand on 13.5.1989 and found a stitched wound of the length

of 15 cm with 12 stitches placed anterio posteriorly above the middle of the head. Its anterior and being 6 cm above the root of the nose and posterior end was also 6 cm above the occipital protuberance. On opening the stitches, it was bone deep, margins were clean cut. The doctor also found that effusion of blood was present in whole of the scalp region. Cut fracture of the skull was present in the middle of the frontal bone and continued backwards all along the saggital suture, its anterior and continued in the floor of the skull in the right side of the anterior cranial fossa. It encloses two small depressed fractures one at the middle level of saggital suture as shown in the post mortem report and another just at the anterior end of the saggital suture. Anterior end of the cut fracture in the frontal bone also encloses small depressed fracture. Duramatter was cut anterio posteriorly just underneath the cut fracture. Extra dural haemotoma 0.3 cm in thickness and 3 cm of width present all along with underneath the cut fracture. Thick subdural and patchy sub arachnoid haemorrhage present all over the both cerebral hemi sphere. Contusion laceration present along the inner margins of the anterior half of both the cerebral hemi sphere.

In the opinion of the doctor the death was due to cranio-cerebral damage consequent upon being hit on the head by a heavy sharp cutting weapon and injury No.1 was sufficient to cause death in the ordinary course of nature.

Records depict that apart from the injury inflicted on to the deceased Udai Chand, Kishori Lal on the complainant side also suffered some injuries and Dr. A. Ahmad, PW.1 medico legally examined Kishori Lal, PW.12 on 6.5.1989 at about 9.45 a.m. and found the following injuries on his person:-

1. Lacerated wound 4 cm x 0.4 cm x 0.3 cm on the middle of scalp, 10 cm above from occipital protuberance. There was slight bleeding.
2. Lacerated wound 3 cm x 0.4 x 0.3 cm, 0.7 cm from injury No.1 towards left side. There was slight bleeding.
3. Superficial abrasion 7 cm on the right arm anterio laterally.
4. Superficial abrasion 3.5 cm on the middle of back of right fore-arm.
5. Superficial abrasion 1 cm x 1 cm on the back of left elbow.

All the injuries in the opinion of the doctor were simple in nature caused by blunt weapon.

A It has also come in evidence that both Hukam Chand and Baljit, being accused persons also suffered some injuries, whereas Hukam Chand's injury is a lacerated wound 1 cm x 1 cm x 0.5 cm on the back of left side of scalp, 5 cm above left to occipital protuberance and X-ray was advised. Baljit being the other accused person was found to have suffered the following injuries on his person :

B

(1) Lacerated wound 3.5 cm x 0.5 cm x 0.3 cm on the right side of scalp 7 cm above pinna of right ear. Wound was surrounded by contusion. Slight bleeding was present.

C (2) Superficial abrasion 8 cm on the right shoulder. Both the injuries were simple in nature caused by blunt weapon. Ex.DB is the copy of the medico legal report.

Incidentally, all the weapons, namely, Lathi, Pharsa and Ballam with blood-stained marks thereon were duly recovered at the instance of the accused D persons. Presently, we are concerned with the appellant only and as such evidence pertaining to the involvement of the accused is required to be seen and considered.

Hukam Chand at the trial stated in his statement under Section 313 as below :

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"I am innocent. My co-accused Mani Ram has filed a cross-case, which is pending in the court of JMIC, Palwal, wherein, our complete version has been given and Devi Sahai and Kishori PW have been summoned as accused. Harchandi, my uncle is a bachelor and he resides with us and is very much attached with Tuhia co-accused and F treats him as his son. The complainant party i.e. Devi Sahai and his sons are jealous of Tuhia and are always looking out to give beating to Tuhia and his father, and his father Mani Ram on 6.5.1989 my co-accused Mani Ram and his son Tuhia went to the field of Chattarbhuj PW where we have stored our fodder, with a tractor trolley and had G started putting fodder on the Khes, belonging to us which was in our trolley. Devi Sahai, Kishori PWs and Udai Chand reached near the field of Chatterbhuj with a bhansa buggi and snatched/pulled the Khes from our trolley and on being confronted by Mani Ram they gave beating to Mani Ram and Tuhia on which Tuhia slipped away with our tractor and informed me and my brother Baljit about the H same on which I along with my brother Baljit went to the field of

Chattarbhuj with Tuhia on tractor but unarmed and on reaching there asked the complainant party i.e. Devi Sahai, Kishori to return the Khes but Udai Chand armed with a Pharsa, Kishori armed with a ballam and Devi Sahai armed with lathi opened attack on us. Kishori PW gave injuries to Tuhia by Ballam lathiwise. Devi Sahai PW gave injuries to Baljit with his lathi and Udai Chand armed Pharsa and gave Pharsa blow on my head with blunt side and when Udai Chand wanted to hit a second blow of pharsa to me I grappled with Udai Chand in order to disarm and in that process Udai Chand received injury on his head. The occurrence was witnessed by Hari Chand and Kishan sons of Ramji Lal. Charanjit son of Man Singh and Kanwar Pal son of Chattarbhuj who intervened and separated us. I and my co accused were medically examined by Dr. Krishan Kumar and Dr. A. Ahmad, Medical Officers of PHC Mandkola at 9.00 A.M. on 6.5.89 but we were all detained by the police in police lock up on 6.5.89 itself and initiated one sided challan against us illegally."

Hereinbefore in this judgment the first issue pertains to a question as to whether the complainant party can be termed to be aggressors or not ? The learned Sessions Judge negated it and so did the High Court. A bare perusal of the injury report of Hukam Chand as a matter of fact negates the theory of aggression, as introduced by the defence. No serious injuries have been shown to have been received by any of the accused persons and the pretended explanation as set up under Section 313 that Udai Chand received the fatal blow on his head from his own arms cannot but be termed to be otherwise not creditworthy neither acceptable. On the wake of the aforesaid the aggression theory completely fails and we answer the first issue thus in negative.

Mr. Shiva Pujan Singh, learned Advocate appearing in support of the appeal, however, very strongly laid emphasis on conversion of the offence from Section 302 to Section 304 Part I.

Before proceeding with the matter further, it be noticed that the other accused persons Mani Ram, Baljit and Tuhia @ Varinder were convicted under Section 323 and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine in the sum of Rs. 1,000 each and this appeal stands filed by Hukam Chand only.

Coming back to the issue raised as regards the invocation of Section 304 Part II IPC, strong reliance was placed on to a decision of this Court in

A *Pularu* v. *State of Madhya Pradesh,* AIR (1993) SC 1487, wherein K. Jayachandra Reddy, J., as His Lordship then was, speaking for the Bench in paragraph 7 of the Report stated :

> "7. That takes us to the nature of the offence. All the three eye-witnesses have spoken that the appellant dealt only one blow with the
B agricultural implement. Having regard to the time and the surrounding circumstances it is difficult to hold that he intended to cause the death of the deceased particularly, when he was not armed with any deadly weapon as such. As an agriculturist he must have been having a tabbal in his hands and if in those circumstances he dealt a single
C blow it is difficult to convict him by invoking clause (1) or (3) of Section 300, I.P.C. It cannot be said that he intended to cause that particular injury which unfortunately resulted in the fracture of bones. Therefore, the offence committed by him would be one amounting to culpable homicide punishable under Section 304, Part II, I.P.C. We accordingly set aside the conviction of the appellant under Section
D 302, I.P.C. and sentence of imprisonment for life awarded thereunder. Instead we convict him under Sec. 304, Part II, I.P.C. and sentence him to undergo Rigorous Imprisonment for seven years. The appeal is partly allowed to the extent indicated hereinabove."

While it is true that there was only one blow but the medical evidence
E on record definitely indicates that the severity of the blow was such that it was sufficient for causing death. In *Pularu* (supra) the appellant dealt only one blow with an agricultural implement. This Court having regard to the fact that Pularu was an agriculturist came to a conclusion that question of there being any intent to cause death of the deceased would not arise since
F he was not armed with any deadly weapon as such. Presently, however, the situation is slightly different. Hukam Chand was in the house. He was called in and he arrived at the scene and place of occurrence with a Pharsa which by all means is a deadly weapon and it is this Pharsa which was used to hit the deceased at his head resulting in immediate collapse and subsequent death. The story set up by the appellant, as noticed hereinbefore belies the
G incident and cannot but be ascribed to be a totally fabricated one. Injuries suffered by Udai Chand, the deceased, cannot be said to be inflicted as a matter of chance while grabbling with each other. The nature of the injuries, as noticed hereinbefore, depicts it otherwise. If that be the case which stands to reason that there was in fact a deliberate Pharsa blow on the deceased,
H then and in that event, a simple question by itself would negate the plea of

the accused, namely as to the reason why Hukam Chand arrived at the place of occurrence with a Pharsa in his hand. The factum of bringing in the Pharsa at the place of occurrence from his house when he was sent for cannot be ignored. It definitely indicates the intent to use it and thereby cause death. A

On the wake of the aforesaid, we are unable to record our concurrence on the second count as well, as addressed by the appellant. B

In that view of the matter, we do feel it expedient to record that judgment impugned does not warrant any interference. The appeal thus fails and is dismissed.

S.K.S. Appeal dismissed. C