UMRAO

v.

STATE OF HARYANA AND ORS.

MAY 12, 2006

[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

Penal Code—Sections 149 and 302—Murder with common object—Fight over removal of electric motor on a tube well—Some accused also suffering injuries—Before death, deceased discharged from hospital but admitted again on same day, and expiring after being operated upon—Conviction of accused by Trial Court—High Court finding that accused did not have common intention and acquitting them as injuries to accused were not explained and injury that ultimately proved fatal was caused to deceased after discharge from hospital—Correctness of—Held—As self defence was pleaded and there was possibility of accused version being correct, injuries on their person had to be explained—It was established that electric motor belonged to one of the accused and prosecution laid a false claim there over, and they cannot be said to have committed any offence if they were removing it from the well jointly owned by parties—Accused had no common object to cause death of deceased—Evidence of doctor was suggestive of possibility that deceased suffered head injury after discharge from hospital could not be ruled out, hence accused could not be found to be guilty of causing death of deceased.

The appellant lodged FIR alleging that when he went to the tube well owned by his brother R, along with his son, the deceased, they found that the accused persons were removing the electric motor therefrom. On their asking the accused persons not to do so, fight broke out between the parties. Some of the respondents also suffered injuries. His son was admitted in the Civil Hospital. He was discharged from the said hospital but was again admitted in the hospital on the same day. He was operated upon by a doctor, P.W.8. and expired subsequently. The accused, respondents Nos. 2 to 6, were tried for alleged commission of various offences, and thereupon convicted by Trial Court. For causing the death of deceased under Section 302/149 I.P.C. they were sentenced to undergo imprisonment for life and to pay a fine, and furthermore sentenced to undergo rigorous imprisonment for four years under Section 307/149 I.P.C. for attempt to murder R. They were

A also convicted under Section 148 I.P.C. and sentenced.

On an appeal by the respondents the High Court set aside the conviction of respondents under Sections 148/149, 307/149 and 302/149 I.P.C. It was found that the injuries on the person of some of the respondents had not been explained. It was, therefore, concluded that
B there must have been a free-fight between the parties in which persons from both the sides were injured. It was also held that the injury which ultimately proved fatal was caused to deceased after the discharge from the Civil Hospital, but before his re-admission on the same night, that this injury could not have been caused on the date of the occurrence.

C

Appellant contended that (i) the defence story that deceased had another fall from the staircase has been disbelieved by Trial Court by assigning cogent and sufficient reason (ii) seven injuries were found on the person of R and thus, there was a possibility that the said injuries could prove to be dangerous to life (iii) it was not necessary on the part
D of the prosecution to explain the injuries on the person of the respondents.

Respondents contended that the injuries inflicted on the deceased as also upon the appellant and R in exercise of their right of self-defence.

E Dismissing the appeals, the Court

HELD : 1. It may not be necessary for the prosecution to explain the injuries on the person of the accused in all circumstances, but, it is trite that when a plea of self defence is raised and the court opines that the version of the accused persons may be correct, the explanation of
F injuries on the person of the accused cannot be put to a back seat or cannot simply be ignored. [612-G-H]

2. The findings of the High Court to the effect that the respondents had not formed any common intention cannot be said to be suffering from any legal infirmity. The fact that both parties caused injuries to
G the members of the other side is not in dispute. The fact that the well was situated on the land of the respondent, is also not in dispute. It has been found as of fact that the electric motor installed in the well belonged to one of the respondents. The prosecution laid a false claim. It is in this situation, the respondents cannot be said to have committed
H any offence if they had been removing the motor, which was installed

by them, from the well, which is said to be jointly owned by the parties. If, on the other hand, defence version is to be accepted, the appellant and the other witnesses having no right over the said motor, could not have removed the same from the well. In any view of the matter, the dispute was in regard to removing of the motor from the well. The High Court, thus, cannot be said to have committed any error in arriving at the finding that the respondents had no common object either to cause death of the deceased or to attempt to cause murder of R. If two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below. Upon examination of the materials on record and in particular, evidence of P.W. 8, the view taken by the High Court is a possible view. [613-E-H, 614-A]

3. P.W. 8, doctor in his evidence, stated that the possibility of deceased having received head injury after the discharge at 8 A.M. on 25.9.1992 and before his re-admission on the same day at 9 P.M. in the Civil Hospital, cannot be ruled out. On his re-examination by the prosecution P.W. 8 categorically stated that as there was a head injury, he did not go into the detail. The evidence of P.W. 8 whereupon Trial Judge, *inter alia,* relied upon is suggestive of the fact that the possibility of the said deceased suffering a head injury after he was discharged from the hospital could not be ruled out. It is not in dispute that X-ray of the head of the deceased was taken when he was admitted in the hospital on 17.9.1992 but no such injury was detected. The subsequent explanation offered by the prosecution that a small fracture might not have been noticed in the X-ray machine, is a matter of surmise and conjecture. P.W. 8, who had operated upon the deceased, categorically stated that the fracture was significant. Even according to the doctor such a fracture might have been suffered by the deceased after he was discharged from the hospital. [612-H, 613-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1387 of 1999.

From the Final Judgment and Order dated 4.7.1997 of High Court of Punjab & Haryana at Chandigarh (Crl. Side) in Crl. Appeal No. 661-DB/ 1995.

WITH

Criminal Appeal No. 1388 of 1999.

A R.K. Kapoor, M.K. Verma, S.S. Yadav, Govind Kaushik and Anis Ahmed, Advs. for the appellant in Crl. A. No. 1387/1999 and Dr. Gajinder Chouhan & T.V. George, Advs. for the appellant in Crl. A. No. 1388/1999 and for the respondents in Crl. A. No. 1387/1999.

B Anoop G. Chaudhary, Sr. Adv., Rishi Malhotra and Prem Malhotra, Advs. with him for the Respondents in Crl. A. Nos. 1387 & 1388 of 1999.

The Judgment of the Court was delivered by

C **S.B. SINHA, J. :** The appellant before us in Criminal Appeal No.1387/99 is the first informant of First Information Report (FIR) No.386 lodged on 17.9.1992 at Narnaul Police Station in Tehsil Narnaul in relation to an occurrence which took place at about 6/6.30 A.M. on that day wherein the respondent Nos.2 to 6 in Criminal Appeal No.1387/99, respondents in Criminal Appeal No. 1388/99, along with one Ram Dayal, were arrayed as D accused for alleged commission of an offence punishable under Sections 148, 302/149, 307/149, 325/149 and 506/149 of the Indian Penal Code ('I.P.C.', for short). In the said FIR, it was alleged by the appellant herein, Umrao, that at the said hour, i.e., 6/6.30 A.M. he went to the tubewell owned by his brother Rewti, along with his son-Rajinder and his brother. They E found that the accused persons were removing the electric motor therefrom. On their asking the accused persons not to do so, Yad Ram hurled a blow by the reverse side of "kassi", which he was carrying in his hand, on the head of Rajinder (since deceased). Rajinder is son of the appellant. He further hurled a blow with the said "kassi"on the head of the deceased, who fell down. The accused-respondent No.2-Babu Lal and respondent No.3-Ram F Swarup also hurled several blows with "jelly" and "lathi" respectively, on the waist and back side of shoulders of the deceased. Respondent No.5-Golu Ram caused one injury on the head while respondent No.6-Ramji Lal caused one injury on the left elbow and another on left rib of the appellant-Umrao by giving several lathi blows. Yad Ram again inflicted a "kassi" blow from G its reverse side on the right rib of Rewti. Ram Dayal caused injuries on the waist and one injury each on both the hands of Rewti.

It is not disputed that some of the respondents also suffered injuries. Rajinder (since deceased) was admitted in the Civil Hospital, Narnaul on H 17.9.1992. He was discharged from the said hospital on 25.9.1992 at about

8 A.M. He was again admitted in the hospital on the same day. At about 9.25 P.M. on 28.9.1992 he was operated upon by Dr. Sanjeev Dua (P.W.8). Rajinder expired on 30.9.1992. A

After the deceased was admitted to the hospital, an information was sent to the Narnaul Police Station, whereupon the P.W.12-Anishi Lal, Head Constable visited the hospital and recorded the statement of the appellant at about 2.30 P.M. The FIR was lodged on the same day at 2.40 P.M. on the basis of the said statements. B

The defence of the respondents as regards the death of the said Rajinder was that after his discharge from the hospital on 25.9.1992, he fell down from the staircase of his house at about 7.15 in the evening as a result whereof he sustained head injuries leading to his death. C

The accused persons, respondents Nos.2 to 6 herein, together with said Ram Dayal were put on trial for alleged commission of the said offences. The Additional Sessions Judge, Narnaul, by reason of his judgment dated 30.11.1995 convicted them for commission of offences under Sections 148, 302/149, 307/149 and 325/149 of I.P.C., but, acquitted them of the charges under Section 506/149 I.P.C. The learned Trial Judge passed the judgment acquitting Ram Dayal having regard to his age. D E

For causing the death of Rajinder, under Section 302/149 I.P.C. the respondent Nos.2 to 6 herein were sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- each. They were furthermore sentenced to undergo rigorous imprisonment for four years under Section 307/149 I.P.C. for attempt to murder Rewti and sentenced to undergo rigorous imprisonment for two years for causing grievous hurt to the appellant herein. They were moreover convicted under Section 148 I.P.C. and sentenced to undergo rigorous imprisonment for six months. In default of payment of fine, the accused were to undergo further rigorous imprisonment for one year. All the sentences were, however, directed to run concurrently. The learned trial judge, while recording the judgment of conviction and sentence, relied upon the evidence of the appellant herein (examined as P.W.9.) and one Har Dhian (P.W.10) who were eye-witnesses to the occurrence. The learned Trial Judge also noticed that the deceased had suffered the following *ante-mortem* injuries: F G H

A "1. A lacerated wound 8.3 x 1 cms. On the right parietal temporal region. Bone deep. Edges were irregular and contused.

2. A lacerated wound 3 x 1 cms on the left parietal region. It bled on cleaning.

B 3. A lacerated wound 3 x 1 cms on the left shoulder. It was muscle deep and there was an abrasion in continuation of 3 cms size.

4. A reddish contusion 5 x 1.5 cms on the left shoulder on its C lateral aspect. Swelling was present.

5. A reddish contusion 8 x 1.5 cms on the left scapular region, 4 cms from injury No.4.

6. Multiple abrasions five in number from 1.2 x .5 cms to 1 x D 1 cm. on the left side of scapular region. Oozed blood was clotted.

7. A reddish contusion 10 x 1.5 cms on the left scapular region, 5 cms from injury No.5.

E 8. A reddish contusion 15 x 1.5 cms on the left scapular region.

9. A reddish contusion 20 x 1.5 cms on the left side of the chest, 4 cms from injury No.8.

F 10. A reddish contusion 14 x 1.5 cms on the right scapular region.

11. 13 x 1.5 cms reddish contusion on the right side of loin swelling was present."

G The Trial Judge further noticed that the appellant and the said Rewti had suffered the following injuries on their person:

"Injuries sustained by the appellant-Umrao :

1. A lacerated wound 3 x 1 cms on the left front parietal region. H It was bone deep. Edges were irregular and contused.

2. A lacerated wound 1.5 x 1 cms on the left scapular region. It was having an abrasion of 7 x .3 cms in the continuation of injury downwards. A

3. A reddish contusion 5 x 3 cms on the left hand. Swelling was present on metacarpal region. B

4. Complained of pain on the left side of the chest with redness on the lower half on chest.

5. A reddish contusion 2 x 2 cms on the left elbow." C

"Injuries sustained by Rewti :

1. A reddish contusion 14 x 1 cms on the left side of chest. It was also present on scapular region. Swelling was present.

2. A reddish contusion 6 cms x 1.5 cms on the right side of scapula. D

3. A reddish contusion 6 x 1 cms on the left side of lion regions. Swelling was present. E

4. A reddish contusion 8 x 2 cms on the right side of lion. Swelling was present.

5. A reddish contusion 6 x 2 cms on the lateral aspect right side of chest. Swelling was present X-ray was advised for ribs. F

6. Abrasion 10 x .5 cms on the medical side of left forearm.

7. An abrasion 1 x 5 cms on the posterior of right middle finger."

On an appeal being preferred from the said judgment of conviction G and sentence by the respondents herein, the High Court set aside the conviction of respondents under Sections 148/149, 307/149 and 302/149 I.P.C. The High Court, however, convicted Ramji Lal for causing grievous and other injuries to the appellant and sentenced him to undergo one year's rigorous imprisonment for commission of an offence punishable under H

A Section 325 I.P.C. and two years' rigorous imprisonment for an offence punishable under Section 326 I.P.C. The High Court furthermore convicted Golu Ram for causing injuries to the appellant and sentenced him to undergo one year rigorous imprisonment for the offence punishable under Section 325 I.P.C. and two years' rigorous imprisonment for the offence punishable under Section 326 I.P.C., Babu Lal and Ram Swarup were sentenced to undergo rigorous imprisonment for two years for commission of the offence punishable under Section 326 I.P.C.

The High Court set aside the conviction and sentence of Yad Ram under Section 148, 325/149, 307/149 and 302/149 and sentenced him to undergo C rigorous imprisonment for five years under Section 304 Part-II I.P.C. for causing injury on the head of Rajinder and directed him to pay a fine of Rs.5000/-, in default whereof, to further undergo rigorous imprisonment for one year and also sentenced him to undergo two years rigorous imprisonment under Section 326 I.P.C. for causing grievous injury to Rewti. It was directed D that out of the amount of fine of Rs.5,000/-, which was to be deposited by accused-Yad Ram, a sum of Rs.1,000/- to be paid to Rewti by way of compensation and the balance of Rs.4,000/- to be paid to the appellant herein.

The High Court, in its judgment, opined that the claim of the appellant that he and Ramji Lal had dug well was not borne out from his statement E before the police. His statement that he had installed the electric motor in the well was also found to be not correct.

As regards the defence of the respondents was that the said well was dug by them in their own land and it was Ram Dayal who installed the said F motor and obtained an electric connection. Before the trial court, defence witnesses were also examined to show that the electric connection was obtained by Ram Dayal in respect of the motor in question. The defence, however, contended that it was in fact the complainant and other witnesses who were removing the electric motor from the well and when they forbade them from doing so, they were attacked. It was concluded that on the date G when the accused Babu Lal, Ram Swarup and Yad Ram came to know that the appellant herein and the others were removing the motor, they came to the place of occurrence and asked them not to do so. But, not only they did not pay any heed thereto, but also attacked and caused injuries to Babu Lal, Ram Swarup and Yad Ram, who, in exercise of their right of self-defence, H caused some injuries to the prosecution party.

The High Court recorded:

> ".....From the evidence available on record, we are of the view that the occurrence must have been the result of a sudden quarrel between these two parties, and that it was not a pre-meditated incident, because, even in the F.I.R. itself it has been stated that when the complainant-party forbade the accused Babu Lal took jaily, accused Yad Ram took a kassi and the other accused took a lathi each and attacked them (complainant party)."

The High Court opined that it was the complainant-party who came to the land of Ramji Lal where the well was situated, which was a joint well belonging to both the parties. The High Court was also of the view that the appellant along with his Rewti and his son had gone to the fields for no special purpose and thus there was no question of respondents' forming an unlawful assembly with the object of killing Rajinder and inflicting injuries to the complainant-Umrao and Rewti. It was held:

> ".....This is obviously so because the accused-Ramji Lal could not have expected these persons to come to the place of occurrence at that time. It is clear from the evidence that accused Ram Dayal had secured an electric connection for the motor on 3.9.1992 i.e. a few days prior to the date of occurrence whereas, even in November 1991 the service connection in the name of Rewti was disconnected. Therefore, it is seen that disputes had arisen between the parties with regard to the motor which had been installed by Ram Dayal. Obviously, the accused-party would not remove the motor belonging to Ram Dayal or even Rewti. The complainant party must have been aggrieved since Ram Dayal had installed a motor and obtained a separate service connection also, while they were not able to use the motor and because of this, there should have arisen a dispute leading to a sudden quarrel between both the parties without any pre-arranged plan, in which both the sides had sustained injuries."

It was further found that the injuries on the person of the respondents-Babu Lal, Ram swarup and Yad Ram had not been explained. It, therefore, came to the conclusion that there must have been a free-fight between the parties in which persons from both the sides were injured.

A It was concluded:

> "These circumstances go to show that the contention of the prosecution that the accused had formed themselves into an unlawful assembly with the common object of killing Rajinder and causing injuries to Umrao and Rewti cannot be accepted."

B On the aforementioned premise the High Court took into consideration individual roles played by the respondents herein. It also considered the question as to whether death of Rajinder took place as a result of injuries suffered by reason of injuries inflicted by the respondents or whether the defence version was true.

C The High Court, upon analysing the materials on record came to the conclusion that when Rajinder was admitted in the hospital on 17.9.1992, no fracture was found on his head. His condition was found to be normal throughout his treatment. No abnormality was detected in his condition, but, when he was re-admitted in the evening of 25.9.1992, he was stated to have D shown history of vomiting after taking food. He was also found to be vomiting at the time of his admission in the hospital. He was found to be in a delirious condition. After he was brought to the hospital on that day, an X-ray was taken and a fracture of the size of 3 cm x 0.4 cm on his head was detected. The C.T. Scan examination also revealed that there was a large E intra cerebral haemotoma.

The High Court noticed:

> ".....The evidence of Dr. Sanjeev Dua (PW-8) shows that as per C.T. Scan report a very large intra cerebral haemotoma was found and F there was also large collection of blood in the brain. He specifically stated that it is unusual for the patient to remain conscious after sustaining injury like this. Therefore, if there was such an injury on the head of Rajinder on 17-9.1992 itself leading to the above said consequences, it is improbable that he could have been conscious throughout the period from 17-9-1992 to 25-9-1992 when he was G discharged finding no abnormality in him."

As regards the explanation offered by the prosecution that such head injuries might not have been found in the X-ray taken and furthermore the death might have taken place due to delayed complication, the High Court H opined:

"In view of our findings above that the injury, which ultimately proved fatal, was caused to Rajinder after the discharge from the Civil Hospital, Narnaul but before his re-admission on the same night, that this injury could not have been caused on the date of the occurrence namely, 17-9-1992, that the accused had not constituted an unlawful assembly with the common object of killing Rajinder or attacking the other injured, that a sudden quarrel had ensued between the parties in which Yad Ram had inflicted two blows on the head of Rajinder, and also in view of the fact that Yad Ram had only used the reverse side of the kassi, we are of the view that none of the accused could be convicted of an offence under section 148 or under section 302 read with section 149 of the Indian Penal Code."

Mr. R.K. Kapoor, learned counsel appearing on behalf of the appellant took us through the judgment of the learned Trial Court to contend that the defence story that the deceased-Rajinder had another fall from the staircase at about 7/7.15 on 25.9.1992 has been disbelieved therein on assigning cogent and sufficient reason therefor. In this behalf our attention has also been drawn to the following findings of the learned trial Judge:

".....I do not find any merit in the contention of the learned counsel for the accused. It is true that Rajinder was admitted to the Civil Hospital, Narnaul, on 17-9-1992 and was discharged on 25-9-1992 at 8 A.M. Dr. Vijay Singh PW-1, has stated in cross-examination that Rajinder was re-admitted on the same date and was referred to the Medical College & Hospital, Rohtak, on his advice. He has further explained that he has the experience of delayed head-injury complications taking place within a period of two years. Dr. M.P. Lomoria PW-2, who had radiologically examined Rajender, has stated that he is not an expert radiologist and that the X-ray machine installed at Narnaul in the hospital is small one and sometimes bone injuries are not detectable. As per copy of the MLR Ex.PN of Rajender, as many as 11 injuries were found on his person, out of which two were lacerated wounds on the parieto temporal regions. One injury was bone deep. Rajender was operated upon by Dr. Sanjeev Dua PW-8 on 28-9-1992 and he was testified that had found blood collection inside the brain. He has also stated that Rajender had died on 30-9-1992 because of the hemorrhage in the

A brain. In cross-examination he stated that as per C.T. report there was very large intra-cerebral haematoma with rupture of blood in the ventricle and there was a fracture in his skull. He also stated that the possibility of having received the head injury by Rajender after his discharge on 25-9-1992 and before his re-admission on the same date could not be ruled out. From the evidence of the aforesaid Medical Officers it is clear that the fracture of skull of Rajender was not detected by Dr. M.P. Lomoria PW-2, when he had radiologically examined him. It was for this reason that Rajender was discharged from the hospital on 25-9-1992, but on the same day he developed complications because of the head injury. There was no external injury on the head at the time of re-admission in the hospital as stated in re-examination by Dr. Vijay Singh PW-1."

It was urged that the High Court committed a serious error in holding that no offence under Section 307/149 I.P.C. was made out for causing injuries to Rewti, in view of the clear findings of the learned Trial Judge relying on or on the basis of the deposition of Dr. A.K. Chhakkar (P.W.7). According to the learned counsel seven injuries were found on the person of Rewti and thus, there was a possibility that the said injuries could prove to be dangerous to life. It was also urged by Mr. Kapoor that the High Court also committed an error in arriving at the finding that there was a free-fight between the parties, in view of the fact that it was not necessary on the part of the prosecution to explain the injuries on the person of the respondents herein.

In the instant case, we are only concerned with the question as to whether the respondents had any intention to cause the death of the deceased Rajinder and attempt to murder Rewti.

The fact that the parties were armed, is not in dispute. The plea of the respondents was that the injuries were inflicted on the deceased Rajinder as also upon the appellant and Rewti in exercise of their right of self-defence. It may not be necessary for the prosecution to explain the injuries on the person of the accused in all circumstances, but, it is trite that when such a plea is raised and the court opines that the version of the accused persons may be correct, the explanation of injuries on the person of the accused cannot be put to a back seat or cannot simply be ignored. We have perused the evidence of Dr. Sanjeev Dua, who examined himself as P.W.8. Dr. Dua,

in his evidence, stated that the possibility of Rajinder having received head injury after the discharge at 8 a.m. on 25.9.1992 and before his re-admission on the same day at 9 P.M. in the Civil Hospital, cannot be ruled out. On re-examination by the prosecution Dr. Dua categorically stated that as there was a head injury, he did not go into the detail. The evidence of Dr. Dua, whereupon the learned Trial Judge, *inter alia*, relied upon is suggestive of the fact that the possibility of the said deceased Rajinder suffering a head injury after he was discharged from the hospital could not be ruled out. It is not in dispute that X-ray of the head of the deceased was taken when he was admitted in the hospital on 17.9.1992 but no such injury was detected. The subsequent explanation offered by the prosecution that a small fracture might not have been noticed in the X-ray machine, is a matter of surmise and conjecture. We have noticed hereinbefore that Dr. Sanjeev Dua-P.W.8, who had operated upon the deceased, categorically stated that the fracture was significant. Even according to the doctor such a fracture might have been suffered by the deceased after he was discharged from the hospital.

Evidently, the High Court was right in its finding that the respondents could not be found to be guilty for causing the death of the deceased Rajinder.

Similarly, the findings of the High Court to the effect that the respondents had not formed any common intention, therefore, cannot be said to be suffering from any legal infirmity. The fact that both parties caused injuries to the members of the other side is not in dispute. The fact that the well was situated on the land of the respondent, is also not in dispute. It has been found as of fact that the electric motor installed in the well belonged to one of the respondents.

The prosecution laid a false claim thereover. It is in this situation, the respondents cannot be said to have committed any offence if they had been removing the motor, which was installed by them, from the well, which is said to be jointly owned by the parties. If, on the other hand, defence version is to be accepted, the appellant and the other witnesses having no right over the said motor, could not have removed the same from the well. In any view of the matter, the dispute was in regard to removing of the motor from the well. The High Court, thus, cannot be said to have committed any error in arriving at the finding that the respondents had no common object either to cause death of the deceased Rajinder or to attempt to cause murder of Rewti.

A It is now well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below.

We are satisfied upon examination of the materials on record and in particular, evidence of P.W.8, that the view taken by the High Court is a possible view.

B

We, therefore, find it difficult to interfere with the impugned judgment of the High Court. Accordingly, the appeals are dismissed.

V.S. Appeals dismissed.