

JAGAT SINGH

v.

STATE OF H. P.

(Criminal Appeal No. 1145 of 2010)

JANUARY 3,2011

[HARJIT SINGH BEDI, P. SATHASIVAM AND
CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860:

s.323 – Altercation between two sides over a land dispute – Free fight between them – One person on complainant’s side died of ‘Gaṭra’ injuries inflicted by two out of the four accused – Complainant as also the accused received injuries – Acquittal by trial court – Appeal by State – One accused died pending appeal – High Court convicting one of the accused u/ss 302 and 307 r/w s.34 IPC and acquitting the remaining two – HELD: Trial Court has rightly observed that a free fight had taken place in which members of both the sides got injured and one died – Considering the medical evidence as regards the injuries sustained by the deceased, the complainant and the appellant-accused, and the statements of the accused u/s 313 CrPC that they inflicted injuries in self defence, trial court has rightly held that there was no requisite intention u/s 300 to kill the deceased – The main blow in the chest of the deceased was given by the accused who died pending appeal and other two have been acquitted by the High Court – In the circumstances conviction of appellant is converted from s.302 to s. 323 – He has served about one year and seven months of sentence – Considering his age being 82 years and other ailments, the period already undergone would be sufficient – Code of Criminal Procedure, 1973 – s.313.

The appellant (A-1) along with three others (A 2 to A-

A 4) was prosecuted for commission of offences punishable u/ss 302/34 and 307/34 IPC. The prosecution case was that A-1 had a land dispute with P.W.1 and on the date of occurrence when the Assistant Settlement Officer accompanied by the Kanungo and the Patwari
B went to the village to demarcate the land, A-1 and A-2 as also P.W.1 and his brother 'BS' reached there. An altercation between the parties took place upon which the officials left the place. Thereafter, A-1 and A-2 took out their respective 'Gatras' and stabbed 'BS' on his chest.
C When P.W.1 tried to save his brother, he was also injured by both the accused by 'Gatras'. Accused A-3 and A-4 gave fist blows to 'BS'. Meanwhile the family members of the victims reached the scene and all the accused fled away. PW1 and 'BS' were taken to the hospital, but 'BS' died on the way. The trial court acquitted all the accused.
D During the pendency of the appeal before the High Court, A-2 died. The High Court convicted and sentenced A-1 u/ss 302 and 307 read with s.34 IPC. The appeal filed by the State was dismissed as regards A-3 and A-4. Aggrieved, A-1 filed the appeal.
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Allowing the appeal in part, the Court

F HELD: 1.1. The trial court has rightly observed that a perusal of the statements of PWs 1 and 3 and the doctors leave no scope for doubt that a free fight had taken place in which members of both sides got injured and one person succumbed to the injuries. The statements recorded u/s 313, CrPC, more particularly, the statement of appellant-A-1 has thrown light as to in what manner the fight ensued and ended. It is also clear and
G as narrated by the accused u/s 313 that both A1 and A2 happened to be baptized Sikhs and as per religious necessity they have to carry 'Gatra' on their persons. In order to save themselves from the clutches of the deceased and the complainant, free blows were
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exchanged through 'Gatras'. It is also seen from the evidence that the main blow on the chest of the deceased was caused by A-2 who died during the pendency of the appeal before the High Court. [para 7] [10-D-H] A

1.2. Considering the evidence of the doctor with regard to the injuries sustained by the deceased, the complainant (PW-1) as well as the appellant/ accused and the evidence of the doctor (DW-1) who examined the accused, the trial court has rightly observed that the accused had no requisite intention to kill the deceased as envisaged u/s 300 IPC. On account of meddling with the enquiry conducted by the ASO, both the parties sustained injuries out of which the deceased succumbed to the injuries. [para 7] [10-H; 11-A-B] B C

1.3. From the materials placed by the prosecution as well as the defence, taking note of the fact that the trial court has acquitted A-3 and A-4 and (A-2) died during the pendency of the appeal before the High Court, considering the nature of the injuries sustained by the deceased as opined by the doctor (PW-15), and the injuries sustained by the appellant (A-1) as explained by the doctor (DW-1), it would be evident that at the most, the appellant could be held guilty for offence punishable u/s 323 IPC for causing hurt on the person of the deceased. There is no acceptable evidence to the fact that he had voluntarily caused hurt on the person of the deceased. Considering all these events and taking note of the fact that the persons in both the groups, namely, the complainant and the accused sustained injuries in a free fight and also the fact that the appellant alone is before this Court, the ends of justice would be met by altering the conviction from s. 302 to s. 323 IPC. It is brought to the notice of the Court that the appellant had served about a year in prison (pending trial) and is in prison for approximately seven months after conviction D E F G H

A by the High Court; he is aged about 82 years and is also suffering from asthma and other old age ailments. In the circumstances, the period undergone is sufficient. [para 8] [11-C-G]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1145 of 2010.

From the Judgment & Order dated 5.5.2010, 26.5.2010 of the High Court of Himachal Pradesh at Shimla, in Criminal Appeal No. 270 of 1998.

C R.K. Kapoor, H.C. Pant, Rajat Kapoor, Anis Ahmed Khan for the Appellant.

Kiran Bala Sahay, M.P. Jha for the Respondent.

D The Judgment of the Court was delivered by

E **P. SATHASIVAM, J.** 1. This appeal is filed against the final order and judgment dated 05.05.2010/26.05.2010 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 270 of 1998 whereby the High Court reversed the order of acquittal of the appellant passed by the Sessions Judge, Una and convicted him under Sections 302 and 307 read with Section 34 I.P.C.

F 2. The brief facts leading to the filing of this appeal are as follows:

G (a) Vikram Singh, the complainant (PW-1), his brother Bachittar Singh (since deceased) and Jagat Singh, appellant/accused (A-1), are residents of village Dehlan. Vikram Singh had a land dispute with the accused for the last 4/5 years. Rattan Singh – accused No.2 filed an application before the Assistant Settlement Officer (in short "ASO"), Una for demarcation of the land in dispute. On H 29.04.1997, the ASO accompanied by Kanungo and Patwari had come to the spot for carrying out the

demarcation of the said land. Jagat Singh (A-1), and Rattan Singh (A-2) also reached there. The field which was to be demarcated was situated by the side of the house of one Sehdev Singh. On learning that the accused have brought the ASO for demarcating the disputed land which has already been settled in the Court, Vikram Singh, the Complainant (PW-1), and his brother Bachittar Singh (the deceased), also reached there. On seeing them, Jagat Singh (A-1) and Rattan Singh (A-2) started abusing them. At that stage, the ASO left the place and the demarcation of the land did not take place.

(b) As soon as ASO left the place in a jeep, Jagat Singh (A-1) and Rattan Singh (A-2) took out their respective 'Gatras' and stabbed the deceased on his chest. On seeing this, when Vikram Singh – the Complainant (PW-1), stepped forward to save his brother, Jagat Singh (A-1) stabbed him on the elbow of his right arm. Rattan Singh (A-2) also gave a blow on the right side of his chest. In the meanwhile, Avtar Kaur-wife, Gurdeep Kaur-daughter, Sarabjit Kaur-daughter-in-law of the deceased accompanied by Harnek Singh – son of Vikram Singh (PW-1) reached the place of incident. On seeing them, the accused persons ran away from the spot. Bachittar Singh and Vikram Singh were taken to the District Hospital, Una at about 3.30 p.m. However, Bachittar Singh died on the way while he was being taken to the hospital at Una. The complainant - (PW-1), after being given medical first aid was referred to Dayanand Medical College, Ludhiana. The matter was reported to the police over telephone. The police recorded the statement of Vikram Singh (PW-1) and on that basis, FIR was registered at Police Station, Una. During the course of investigation, one Gatra was recovered pursuant to the confession made by Jagat Singh (A-1). Another Gatra was handed over to the Investigator of the case by Gurdip Kaur, daughter of the deceased.

A (c) On completion of the investigation, the final report was filed in the Court of Chief Judicial Magistrate, Una on 24.07.1997. On 03.11.1997, the trial Court framed the charges against the accused for committing offences punishable under Sections 302, 307, 324 read with Section 34 I.P.C. The trial Court, by judgment dated B 01.04.1998, acquitted all the accused persons.

(d) Against the judgment of acquittal passed by the Trial Judge, Una, the State of H.P. filed an appeal before the High Court of Himachal Pradesh at Shimla. The High Court, by the impugned judgment dated 05.05.2010, set aside the order of acquittal passed by the Sessions Judge, Una and convicted Jagat Singh (A-1) and Rattan Singh (A-2) under Sections 302 and 307 read with Section 34 I.P.C. However, the appeal filed by the State against Parminder Singh (A-3) and Balwant Singh (A-4) was dismissed. On 26.05.2010, the High Court, while passing the order with regard to the quantum of sentence, sentenced Jagat Singh (A-1) to undergo imprisonment for life and to pay a fine of Rs. 2000/- and in default to undergo imprisonment for a further period of six months for the offence punishable under Section 302 read with Section 34 I.P.C. As regards the offence under Section 307/34 I.P.C., the appellant shall undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for a further period of six months. Since A-2 was expired on 29.03.2009, the appeal against him was abated. Against the said order of conviction and sentence, the appellant (A-1) has filed this appeal before this Court.

G 3. Heard Mr. R.K. Kapoor, learned counsel for the appellant and Ms. Kiran Bala Sahay, learned counsel for the respondent-State.

H 4. The prosecution case, as narrated by Vikram Singh (PW-1) is that he had a land dispute with the accused for the

past four or five years. The second accused i.e Rattan Singh (A-2) filed an application for demarcation of the land in dispute before the ASO. It is not in dispute that on 29.04.1997, the ASO accompanied by Kanungo and Patwari had come to the spot for carrying out the demarcation of the said land. At that time, the Complainant, PW-1, his brother - Bachittar Singh (the deceased), his son Harnek Singh and all the four accused were present there. As soon as the ASO started for demarcation, A-1 and A-2 started abusing the complainant and his brother. On seeing the wordy quarrel, the ASO left the scene of occurrence. Immediately after his departure, Jagat Singh (A1) and Rattan Singh (A2) took out their respective Gatras and the other two accused, namely, Parminder Singh (A3) and Balwant Singh (A4) gesticulated towards the complainant party with their fists. In the course of such event, Jagat Singh A-1 and Rattan Singh A-2 inflicted blows with their respective Gatras on the chest of the deceased. On seeing the deceased being stabbed, the complainant - (PW-1) stepped forward to save him. Rattan Singh (A-2) gave a blow to the complainant with his Gatra on the right side of his chest. Jagat Singh (A-1) also gave a blow with his Gatra on his right elbow. A-3 and A-4 gave fist blows to the deceased. On seeing him crying, his wife, Avtar Kaur, daughter, Gurdeep Kaur, daughter in law Sarbjit Kaur and complainant's son Harnek Singh (PW-3) reached the place of incident. On seeing these persons, all the accused ran away from the spot. The deceased, who was bleeding profusely and the complainant were taken to District Hospital, Una at about 3.30 p.m. However, Bachittar Singh succumbed to the injuries suffered by him on way to the hospital. The complainant, after being given medical first aid was referred to Dayanand Medical College, Ludhiana. Thereafter, the matter was reported to the police by the complainant and on that basis, FIR was registered being FIR No. 243 of 1997 at Police Station, Una. After trial, by order dated 01.04.1998, the trial Court acquitted all the accused. In the appeal filed by the State, (A-1) alone was convicted, as (A-2) died during the pendency of the case and the appeal against (A-3) and (A-4) was dismissed.

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A 5. Before considering the case of the prosecution, as
discussed by the trial Court and the High Court, it is useful to
refer the stand of the appellant-Jagat Singh (A1) from his
statement made under Section 313 of the Code of Criminal
B that he was working in the field when the ASO accompanied
by Kanungo and Patwari came to their village. His brother
Rattan Singh (A-2) had filed an application in which he had
complained against the members of the staff of the Settlement
Department. The ASO enquired his brother Rattan Singh. When
C the ASO was enquiring his brother, Bachittar Singh (the
deceased) and Vikram Singh (PW-1) came there and started
using abusive language against them. On seeing the situation,
the ASO along with his staff left the village, however Vikram
Singh and Bachittar Singh did not leave the courtyard of one
D Sehdev Singh and they continued using abusive language
against them for about 20 minutes. Thereafter, Bachittar Singh
pounced upon Rattan Singh (A-2), Vikram Singh (PW-1) had
pounced upon him. Though he wanted to run away he found
himself overpowered. Vikram Singh (PW-1) laid him down on
the ground and started throttling him. He requested Vikram
E Singh to release him from his clutches but of no use. He
continued throttling him. Since he is an asthma patient and
realizing that Vikram Singh was not going to release him then
he took out his gatra Ext.P-12 and tried to frighten him by
showing it to him but he did not release him. When he
F apprehended that Vikram Singh may kill him, he gave a Gatra
blow, firstly, on his shoulder then on his chest but he continued
to throttle him. Then he inflicted some more blows on his
person. After receiving the blows, his grip loosened on his neck
and then he managed to get up and ran away. Though similar
G statements were made by other accused, there is no need to
refer the same.

H 6. We have to find out whether the act of the appellant
along with the other accused was deliberate and pre-planned
in order to do away the life of the deceased or the offences

alleged to have been committed have arisen from a free fight which had erupted at the spur of the moment. It is also relevant to ascertain whether the accused exceeded their right of private defence. It is not in dispute that in the fight between the persons belonging to the complainant and the accused, Bachittar Singh lost his life. Vikram Singh (PW-1) sustained injuries on his chest. The offences alleged to have been committed are the result of the same sequence of events which took place on 29.04.1997 at 2.30 p.m., near the house of Sehdev Singh at Village Dehlan. There is no dispute that the accused Jagat Singh (A-1) had filed a suit for permanent injunction against Vikram Singh (PW-1), Bachittar Singh (the deceased) and Smt. Thakri widow of Dina Nath. The said suit was compromised to the effect that none of the parties shall raise any construction over the land measuring 4 Marlas comprising of Khasra No. 2857 till the same is partitioned. When the ASO came to the spot in order to rectify wrong settlement work as claimed by the parties, a heated wordy quarrel started which ended with loss of life of one person. There is no controversy that during the course of fight, Bachittar Singh (the deceased) sustained injuries on account of which he died. The post-mortem examination of the dead body of the deceased was performed by Dr. R.S.Dadhwal (PW-15) and he opined that the deceased died due to shock resulting from massive hemorrhage and injuries on the vital organs. The doctor noticed six wounds on the person of the deceased, on the nose, below the tip of left shoulder, posterior, on the right of the midline of the chest, on the left side of the chest and on the interior to the left axilla on the mid axillary line. Apart from the above injuries of the deceased as well as PW1, it is also relevant to note that the appellant Jagat Singh (A-1) and his brother Rattan Singh (A-2) also sustained injuries in the same commotion. Dr. Mrs. S. Sharma (DW-1), medically examined all the four accused and copies of which are marked as Exs. DA to DD respectively. Here again, we are concerned with the injuries on the person of Jagat Singh-appellant alone.

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- A 1. There was a reddish brown small bruise of the size of 2 cms x 1 cm on the chest on the left side of the lower one third of sternum.
- B 2. There was bluish bruise on the left hip of the size of 8 cm x 7 cm.
- 3. There was bluish bruise 10 cm x 1/3cms with intervening healthy area on the left side of the abdomen 5 cms above the left iliac crest.
- C 4. He had complained of pain on the right fore-arm. The injured was referred for treatment of bronchial asthma."

D 7. As rightly observed by the trial Judge, the perusal of the statement of PWs 1 and 3 and the doctors leave no scope for doubt that a free fight had taken place in which members of both sides got injured and one person succumbed to the injuries. We have already adverted to the statement recorded under Section 313 of the Code, more particularly, the statement of the appellant-Jagat Singh which have thrown light that in what manner the fight ensued and ended. We have already mentioned that from the evidence of prosecution side as well as the statement by the accused recorded under Section 313 of the Code, it is very much clear that a free fight had taken place. It is also clear and as narrated by the accused under F Section 313 of the Code that to save themselves, they stabbed the deceased and the complainant. Both A1 and A2 happened to be baptized Sikhs and as per religious necessity they have to carry Gatra on their persons and in order to save them from the clutches of the deceased and the complainant, free blows were exchanged through Gātras. It is also seen from the G evidence that the main blow on the chest of the deceased was caused by Rattan Singh who died pending appeal before the High Court. (A-3) and (A-4) were acquitted by the trial Court and the High Court dismissed the appeal against them. H Considering the evidence of the doctor with regard to the

injuries sustained by the deceased, the complainant (PW-1) as well as the appellant/ accused and the evidence of (DW-1) who examined the accused, the trial Court has rightly observed that they had no requisite intention to kill the deceased as envisaged under Section 300. As discussed earlier, on account of meddling with the enquiry conducted by the ASO, both the parties sustained injuries out of which the deceased succumbed to the injuries.

8. From the materials placed by the prosecution as well as the defence, taking note of the fact that the trial Court has acquitted (A-3) and (A-4) and (A-2) died during the pendency of the appeal before the High Court, considering the nature of the injuries sustained by the deceased as opined by Dr. R.S. Dadhwal, (PW-15), and the injuries sustained by the appellant (A-1) as explained by Dr. Mrs. S. Sharma (DW-1), we hold that at the most, the appellant could be held under Section 323 IPC for causing hurt on the body of the deceased. We are also of the view that there is no acceptable evidence to the fact that the appellant had voluntarily caused hurt on the person of the deceased. Considering all these events and taking note of the fact that the persons in both the groups, namely, complainant and the accused sustained injuries in a free fight and also of the fact that the appellant A1 alone is before us, we feel that the ends of justice would be met by altering the conviction from Section 302 to Section 323. It is brought to our notice that he had served about a year in prison (pending trial) and is in prison for approximately seven months after conviction by the High Court, aged about 82 years and also suffering from asthma and other old age ailments. Considering all these aspects, we feel that the period undergone is sufficient and he be released forthwith if he is not required in any other offence. The appeal is allowed to this extent.

R.P.

Appeal partly allowed.