



From the Judgment & Order dated 26.04.2013 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. D-953-DB of 2008.

Balaji Srinivasan, Vaishali Dixit, Mayank Kshirsagar, Srishti for the Appellant.

Vikas Sharma, Dr. Monika Gusain for the Respondent.

The following Order of the Court was delivered

**ORDER**

1. This appeal by way of special leave, at the instance of the sole accused, is directed against the judgment of the Division Bench of the High Court of Punjab and Haryana at Chandigarh dated 26.4.2013 in Criminal Appeal No.D-953-DB of 2006 in and by which the conviction and sentence imposed on the appellant by the Trial Court dated 27.10.2006/30.10.2006 in Sessions Case No.33 of 6.6.2003/11.5.2006 came to be confirmed. The appellant was convicted for offence punishable under Section 302 for causing murder of Shri Ram and Suraj Mal. He was also found guilty and convicted for the offence punishable under Section 27 of the Arms Act for misusing his licensed gun. He was sentenced to undergo imprisonment for life, apart from payment of fine of Rs.20,000/- with the default clause to undergo further rigorous imprisonment for two years. For the offence under Section 27 of the Arms Act imprisonment of two years' rigorous imprisonment was imposed. The sentences were directed to run concurrently. The co-accused/Jai Bhagwan was acquitted of the charges framed against him. However, other co-accused Neeraj, was also implicated in the crime along with the appellant and being a juvenile was dealt with by the Juvenile Justice Board independently.

2. The case of the prosecution was, on 19.3.2003 at about 6-7 P.M. Sandeep (PW.10) and the juvenile accused-Neeraj were quarreling after celebrating Holi in the street in front of the

A house of Suraj Mal, the deceased, is the father of the complainant-Mukesh. Mukesh was examined as PW.9, who attempted to separate Neeraj and Sandeep but Neeraj kept on abusing consistently. In the meantime, on hearing the noise in the street Krishan, another deceased and the father of juvenile Neeraj and Jai Bhagwan son of Krishan, also reached there and also started quarreling with Mukesh (PW.9) alleging that he threatened Neeraj, son of Krishan. The complainant's father Suraj Mal and his uncle Shri Ram also stated to have joined the place of occurrence.

C 3. The deceased Krishan called his brother Rajinder Singh, the appellant herein and asked him to bring his gun as otherwise it would have no use. The appellant brought his double barrel gun and fired a shot from the corner of the street, which hit Suraj Mal in the chest and the second fire shot hit on the left eye of his uncle Shri Ram. The juvenile Neeraj alleged to have beat the complainant-Mukesh (PW.9) with a brick on his head. By receiving the assault the complainant stated to have fell down on the ground while Ravinder son of Shri Ram and Guru Dutt son of Narain Dutt arrived at the spot and by the time the whole occurrence have come to an end. It was further alleged by the Complainant (PW.9) that the appellant went to his house but kept on firing along with his brother and other family members. One Bhupender stated to have lifted Suraj Mal and Shri Ram. The deceased got treatment at PGIMS, Rohtak while the complainant (PW.9) went to the Civil Hospital where the doctor referred him to go to PGIMS, Rohtak. After reaching PGIMS, Rohtak, Complainant (PW.9) learnt that his father and uncle, namely, Suraj Mal and Shri Ram died of firearm injuries. It was based on the above narration of events, the FIR came to be registered on 19.3.2002.

H 4. On the side of the prosecution PWs.9 and 10 were examined as eye witnesses to the occurrence. The sketch was drawn by the Investigating Officer-PW.7 (Exhibit P15). Be that as it may, according to the appellant on the fateful day i.e. on

19.3.2003 in the evening his nephew Neeraj, the juvenile son of Krishan and Sandeep (PW.10) after celebrating Holi scuffled with each other and thereafter when Complainant (PW.9) intervened, juvenile Neeraj gave a hit on the head of Complainant (PW.9) with a brick and ran to the house of the appellant, where other deceased Krishan was also present. It was further alleged that after some time Complainant (PW.9) came to the house of the appellant armed with pistol accompanied by Sandeep, Vijay, Davinder, Ram Dia, Suraj Mal and Shri Ram with the country made pistol- guns, jaili etc. shouting that they will not spare Neeraj. When Krishan tried to stop them PW.9-Complainant and PW.10 started firing with their weapon, namely, country made pistol. A bullet hit Krishan, simultaneously, the deceased Shri Ram and Suraj Mal also started firing from their pistols upon which Krishan fell down. It was at that time finding no other go the appellant in his self-defence opened fire from his licensed gun towards the accused persons, thereupon all of them ran away from the spot. It was specifically contended that DW.1- Santosh Kumari wife of Krishan and Smt. Chameli wife of late Ram Krishan were also present at the spot and witnessed the above-said occurrence. The appellant also claimed that after the occurrence, he went to Police Station Sadar Rohtak narrated the whole incident to the Station House Officer and also deposited his licensed gun in the police station. He further stated that while he was sitting in the police station PW.10 was also present there and that he also learnt that Suraj Mal and Shri Ram died due to bullet injuries. With the above allegations, the appellant preferred the complaint before the Judicial Magistrate, First Class, Rohtak in Criminal Complaint No.682/03/04 on 26.5.2003/6.4.2004. In the said complaint the appellant stated that his statement to the Police Station Sadar Rohtak was not recorded and that the police only registered FIR No.62 dated 19.3.2003 against the appellant and other co-accused. The complaint preferred by the appellant stated to have been ultimately rejected by the concerned Court.

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A 5. In the above-stated background Mr. Balaji Srinivasan,  
learned counsel appearing for the appellant, contended that  
there were very many incongruities in the evidence of the  
prosecution, both, oral as well as documentary in order to hold  
B party. In his endeavour to support such a stand, learned counsel  
took us through the complaint lodged by Complainant (PW.9),  
the sketch drawn by PW.7, the Criminal Complaint No.682/03/  
04 preferred by the appellant in the Court of Judicial  
Magistrate, First Class, Rohtak, the FSL Report (Exhibit P.63),  
C the evidence of PW.10, who was eyewitness to the occurrence  
as well as that of DW.1-Santosh read along with the conclusion  
made by the Trial Court in the judgment impugned as regards  
the death of the deceased, Krishan.

D 6. As against the above submissions, Mr. Vikas Sharma,  
learned counsel appearing for the respondent-State, in his  
submission contended that going by the FSL Report itself it was  
crystal clear that the bullet found in the body of the deceased  
Suraj Mal and Shri Ram as well as Krishan could have been  
E fired only from the double barrel gun which was admittedly  
possessed by the appellant who fired the shots on the date of  
the occurrence, at least towards the deceased Suraj Mal and  
Shri Ram. Learned counsel further contended that the juvenile  
Neeraj having perpetrated the crime by fighting with Sandeep  
F (PW.10) who was supported by appellant along with the  
deceased Krishan and the other accused Jai Bhagwan and in  
that process, at the instance of the deceased-Krishan, appellant  
used his firearm which killed two persons, the offence found  
proved against him does not call for interference.

G 7. Having heard learned counsel for the appellant as well  
as the learned counsel for the respondent and having perused  
the various materials placed before us, we find force in the  
submission of the learned counsel for the appellant in  
contending that the case pleaded by the appellant that it was  
H in self-defence, the appellant was forced to use his double

barrel licensed gun, and therefore, the conviction for the offence under Section 302 or for the offence under Section 27 of the Arms Act cannot be sustained. The appellant can at best could have been dealt with under Exception 4 of Section 300 IPC, for which the punishment would fall under Part-II of Section 304 IPC.

8. When we consider the submission of learned counsel for the appellant, we find substantial support in the stand of the appellant from the evidence on record. The occurrence had taken place near the residence of the appellant and not near the place of the residence of the Complainant (PW.9). When we examined the stand in the Complaint (Exhibit P.10) the complainant himself, while narrating the starting point of the incident has stated that at 6 O'Clock in the evening in the street i.e. in front of their house he found PW.10 and juvenile Neeraj quarreling with each other after celebrating Holi. When we perused the evidence of PW.10, in particular, in cross-examination, he had stated in uncontroverted terms that after causing the brickbat injury to Complainant (PW.9), juvenile-Neeraj went to the house of his uncle Rajinder Singh i.e. the appellant. Thereafter fight took place between Rajinder, Neeraj and Krishan and others on the one side and Suraj Mal (deceased) and Shri Ram (deceased), Mukesh (PW.9) and himself (PW.10) on the other side. Fist blows were also exchanged during the occurrence.

9. Therefore, it is quite apparent that after the initial quarrel as between the juvenile Neeraj and Sandeep (PW.10) in front of the house of Complainant (PW.9), Neeraj stated to have hit Complainant (PW.9) on his head with the brick and rushed back to the house of the appellant, where the complainant party, namely, PWs.9 & 10, Suraj Mal and Shri Ram, both deceased, as well as PW.10 followed juvenile Neeraj to settle their score, where in continuation of the earlier quarrel, fight broke out in which the fire shots have been exchanged between both the parties which resulted in the death of deceased Suraj Mal and

A Shri Ram on the side of the complainant party and that of Krishan on the side of the appellant.

B The above-said conclusion is well supported, when we perused the sketch marked before the Trial Court in Exhibit P.15 which clearly sets out the exact place where the occurrence had taken place, which has also been marked. It discloses that the occurrence had taken place close to the residence of the appellant and not that of the complainant (PW.9).  
C Apart from noting the above relevant feature as to the place of occurrence where the exchange of shooting had taken place between both the parties, as alleged by the appellant, when we perused the FSL Report (Exhibit P.63) it discloses that there were two sets of cartridges recovered, namely, C/1 to C/6,  
D which were recovered from the body of the deceased Suraj Mal and Shri Ram as well as one sent for FSL Report under Parcel No.XII, which was recovered from the body of deceased-Krishan. The one found in the parcel, which was related to the deceased-  
E Krishan was size No.9, while C/1 to C/6 were of size No.1. It is significant to note that the only weapon which was recovered was that of the appellant's, namely, double barrel gun (W1). No other weapon was recovered either from the appellant or from any  
F of the other accused or from the complainant party. It is also necessary to note that no expert was examined to speak about Exhibit P.63. The only incriminating factor which was relied upon by the prosecution was that para No.3 in the result column  
G of Exhibit P.63 which stated as under:-

H "Pellets contained in Parcel No.VIII and X were found to be size 1 and pellets contained in Parcel No.XII were found to be of size 9 and are normally loaded in shot gun cartridge including 12 bore cartridge of type C/1 to C/6."

10. By relying upon the said Report contained Exhibit P.63, it was sought to be contended that the appellant having admitted the use of his double barrel gun, the Report having stated that with that very gun even a bullet of size No.9 could have been shot, the appellant alone can be held responsible for the killing of the deceased-Suraj Mal and Shri Ram as well as Krishan. It must be stated that except a very sketchy unsupported material in the form of FSL Report, there was no other legally supporting acceptable evidence to show that the appellant was in any way responsible for killing of his own brother Krishan with the aid of his double barrel gun, in which the bullets of size No.1 is recovered under C/1 to C/6 were used apart from one another unused bullet, which was found and recovered from the cartridge case of the said weapon, namely, double barrel licensed gun of the appellant.

11. One other relevant material evidence which is to be borne in mind is that of the evidence of DW.1, namely, Santosh, wife of the deceased Krishan, the reading of which sufficiently discloses that the manner in which the case pleaded by the appellant was true and that it was at the instance of the complainant party, the latter part of the occurrence which resulted in the death of Suraj Mal, Shri Ram and Krishan occurred.

12. In order to find out as to what was the evidence laid before the Trial Court to ascertain as to the manner in which the death of Krishan had taken place, we find a very nebulous observation made by the Trial Court in paragraph 27 of its judgment, wherein it is stated to the effect that the case pleaded by the defence that the injury on the person of Krishan could not have been caused if accused Rajinder was firing in the air indiscriminately. The said injury was intentional and that was caused by Rajinder-accused. It was further stated that the reason for causing such injury could have been due to the fact that having murdered two persons on the asking of Krishan and in fit of anger he might have killed the Krishan. It was further stated that when two persons were killed by him, he apparently

A wanted to manufacture the story of self-defence and with that  
view he killed his own brother Krishan. It must be stated that  
such a conclusion is highly speculative and we fail to  
understand how the Trial Court could have imagined such a  
theory without there being any sort of evidence to support the  
B said conclusion. On the one hand, going by the evidence of  
DW1 as well as Exhibit P.63 the spot at which the occurrence  
had taken place as noted in Exhibit P.15 and the evidence of  
PW.10 himself, we find that the case pleaded by the appellant  
could have been the manner in which alone the whole  
C occurrence had taken place and none else. If the said  
conclusion is inevitable then the plea of self-defence pleaded  
by the appellant has to be necessarily accepted.

13. Consequently, we are convinced that since the death  
D of Suraj Mal and Shri Ram had occurred due to the firing  
resorted to as part of his self-defence, the same would amount  
to culpable homicide not amounting to murder, which was  
committed without any pre-meditation in a sudden fight in the  
heat of passion upon a sudden quarrel and that the offender  
did not take undue advantage or acted in a cruel or unusual  
E manner, which would normally fall under Exception 4 of Section  
300 IPC. Consequently, at best, conviction of the appellant can  
only be under Part-II of Section 304 IPC for which he could have  
been inflicted with a punishment of ten years. For the very same  
reason, the conviction imposed under Section 27 of the Arms  
F Act cannot also be sustained. It is stated that the appellant is  
suffering the sentence in jail and has so far suffered eleven  
years. The conviction is modified into one under Section 304  
Part-II and the sentence already suffered by the appellant is held  
to be more than sufficient. Having regard to the said factors,  
G holding that the sentence already suffered by the appellant is  
sufficient enough for the modified conviction now imposed. The  
appeal stands partly allowed, the appellant shall be set at liberty  
forthwith, if his detention is not required in any other offence.