

Before : S. S. Dewan & S. S. Grewal, JJ.

MANJIT SINGH,—Appellant.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 231-DB of 1987.

6th October, 1988

Code of Criminal Procedure (II of 1974)—S. 313—Plea of accused in his statement under S. 313—Reliance on such plea by prosecution—Whether inculpatory part alone can be relied.

Held, that in a statement under S. 313 of the Code of Criminal Procedure, the accused had admitted that he was responsible for inflicting all the injuries to the deceased. The plea of the accused which is in the nature of admission or confession has to be accepted or rejected as a whole, and the same cannot be dissected, or, partially relied upon, in respect of inculpatory part alone. The onus would still be on the prosecution to prove its case beyond any reasonable doubt.

(Para 9)

Appeal from the Order of the Court of Shri J. C. Aggarwal, 1st Addl. Sessions Judge, Faridkot dated 20th March, 1987 convicting and sentencing the appellant:—

Charges and Sentences:—RI for two years and fine of Rs. 200 under Section 452, IPC; In default of payment of fine for further RI for four months, and Imprisonment for life and fine of Rs. 500 under Section 302 IPC; In default of payment of fine further RI for six months. Both the substantive sentences were ordered to run concurrently.

M. L. Merchea, Advocate with M. P. Gupta, Advocate, for the Appellants.

P. S. Kang, Advocate, for Punjab State.

JUDGMENT

S. S. Grewal, J.

(1) This appeal is directed against the order of Additional Sessions Judge, Faridkot, dated 20th March, 1987 whereby Manjit Singh alias Pappi appellant was convicted under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life

and to pay a fine of Rs. 500 or in default of payment of fine to suffer rigorous imprisonment for six months. He was further sentenced under Section 452 of the Indian Penal Code to undergo rigorous imprisonment for two years and to pay a fine of Rs. 200 or in default of payment of fine to further suffer rigorous imprisonment for six months. Both the substantive sentences were ordered to run concurrently. Jagdev Singh, Amarjit Singh alias Teja Singh, Malkiat Singh and Jangir Singh accused were acquitted by the trial Court.

(2) In brief, facts of the prosecution case are, that on 15th June, 1986, at about 11 P.M., Harjinder Singh, first informant, his brother Balwinder Singh, sister-in-law Gurmail Kaur and his wife Balwinder Kaur were lying on the cots in their courtyard and were talking to each other. Electric light in their courtyard as well as on their gate was on. His father Sardara Singh was sitting on a cot in front of the gate. All of a sudden the electric supply went off. His uncle Jangir Singh and latter's son Manjit Singh alias Pappi accused went on the roof of their adjoining kotha, started abusing the complainant party alleging, that they had switched off their light, and, the video programme in their house had been disrupted. Both the said accused threw brick-bats in the courtyard of the complainant party. Meanwhile the electric supply was resumed. Shortly thereafter Amarjit Singh accused armed with a spade, his brothers Jagdev Singh armed with a Kasauli, Malkiat Singh armed with a Daang and Manjit Singh alias Pappi armed with a Daang came near the outer gate of the house of Harjinder Singh P.W. Sardara Singh deceased requested the accused party to desist from quarrelling and further requested them to talk about this matter in the morning. Jangir Singh accused raised Lalkara to finish the complainant party. Immediately thereafter Malkiat Singh, Jagir Singh and Pappi alias Manjit Singh accused dragged Sardara Singh and threw him on the ground near the lane. Amarjit Singh accused gave two Kahi blows to Sardara Singh hitting him on his forehead and back side of his head. Jagdev Singh accused gave a Kasauli blow on the left arm of Sardara Singh deceased. As a result thereof his arm was fractured. Jagdev Singh accused gave another blow with Kasauli on the back of the deceased. Malkiat Singh and Manjit Singh alias Pappi accused gave blows with their respective Daangs to the deceased on his face, legs and hands. Amarjit Singh accused gave a Kahi blow on the right cheek and left finger of Harjinder Singh P.W. Malkiat Singh accused then gave a Daang blow to Balwinder Singh P.W. on his right leg. The complainant party also caused simple injuries to the accused in

Manjit Singh and Pappi v. State of Punjab (S. S. Grewal, J.)

their self defence. On hearing alarm, all the accused ran away from the spot along with their respective weapons. Thereafter, Balwinder Singh P.W. brought car in which Sardara Singh was removed to Civil Hospital, Baghapurana. Sardara Singh succumbed to his injuries in that hospital. On receipt of *ruqa* from the hospital, Inspector Ajit Singh went there, prepared inquest report, and, sent the dead body of Sardara Singh for autopsy. He recorded the statement of Harjinder Singh, which, was completed on the next morning of the occurrence at 3.30 A.M., and, on its basis formal FIR was subsequently registered at the police station at 3.35 A.M. Special report reached the Ilaqa Magistrate at 7.30 A.M. The said Inspector inspected the spot, lifted blood stained earth, and brick-bats lying scattered in the courtyard of the house of the deceased. After the arrest of the accused, and, completion of investigation, all the accused were challaned. Manjit Singh alias Pappi accused was convicted and sentenced as indicated above, whereas, other co-accused were acquitted.

(3) Autopsy on the dead body revealed presence of 11 injuries which included three incised wounds on the head and forehead of the deceased, and, an abraded contusion on the right cheek, which, subsequently was declared grievous, as the underneath bone was found fractured.

(4) Accused when examined under Section 313 of the Code of Criminal Procedure denied the prosecution allegations appearing in evidence against them except their relationship *inter se*, and, pleaded false implication. Manjit Singh accused pleaded *bonafide* exercise of right of self defence. According to him, on the evening of the occurrence, their electric supply was cut by the complainant party. He alone went to Sardara Singh deceased and lodged a protest and there was exchange of abuses. Sardara Singh accused then gave a *gandasi* blow from the reverse side on the right shoulder of Manjit Singh. As the deceased tried to repeat the blow, Manjit Singh accused gave injuries to him with sharp and reverse side of the *Gandasi* in self defence. Harjinder Singh and Balwinder Singh P.Ws. fabricated the injuries on their person, and falsely implicated the accused. He further stated that he was arrested on 16th June, 1986 and his formal arrest was shown later on. In their defence Bakhshish Singh appeared as D.W.-1, Amarjit Singh as D.W.-2 and Jaswant Singh Driver as D.W.-3. Thereafter, the accused closed their defence.

(5) Manjit Singh alias Pappi accused has filed the present appeal, whereas, Harjinder Singh and Balwinder Singh filed Criminal Revision No. 582 of 1987. Both the appeal as well as the revision shall be disposed of by one judgment.

(6) We have heard the learned counsel for the parties and perused evidence on the record with their help.

(7) The ocular account of Harjinder Singh and Balwinder Singh P.Ws. sons of Sardara Singh (deceased) has mainly been assailed on the ground that their presence at the spot at the time of the occurrence is highly doubtful. P.W. 1 Dr. T. C. Aggarwal, who conducted medico-legal examination of both these witnesses on the next morning of the occurrence at about 3.50 A.M. has opined, that their injuries could be result of fall or, friction against a hard surface. One of the injuries received by Harjinder Singh on his right cheek is an abrasion, whereas, his other two injuries are on the left hand middle and ring fingers. It is difficult to believe that injury on the right cheek of Harjinder Singh measuring 2 cm. × .75 cm. could be the result of a fall. Chances of a person falling on the right cheek would be quite remote. In that eventuality other parts of the person of Harjinder Singh touching the ground, would, also receive corresponding injuries. The absence of such like injuries belies the opinion given by Dr. Aggarwal referred to above. Injury on the cheek of Harjinder Singh normally cannot be self-suffered, or, self-inflicted. Similarly injury on the person of Balwinder Singh is an abrasion on lateral aspect of right knee joint. In case this injury has been caused by a fall Balwinder Singh was likely to receive injuries on other parts of the body touching the ground. It is quite obvious that the opinion of the medical expert is certainly not of that conclusive nature, which, can be safely relied upon to contradict the ocular account given by the two close relations of the deceased.

(8) Recovery of earth stained with human-blood from the lane just opposite the house of the deceased, is, helpful in fixing the place of occurrence. Both Harjinder Singh and Balwinder Singh P.Ws. were present inside their house. Taking into consideration the fact that the occurrence took place at about 11.00 PM., presence of both these witnesses in their house at the time of the occurrence is quite natural, probable and convincing. As far as testimony of these two witnesses concerning presence and participation of Manjit

Manjit Singh and Pappi v. State of Punjab (S. S. Grewal, J.)

Singh accused is concerned, the same has been consistent throughout, and, finds independent corroboration from the medical evidence on the record. Mere fact that Jangir Singh, Jagdev Singh, Malkiat Singh and Amarjit Singh alias Teja Singh accused have been acquitted by the trial Court is, no ground to disbelieve the testimony of Harjinder Singh and Balwinder Singh PWs. as far as presence and participation of Manjit Singh alias Pappi accused is concerned, who, himself has admitted his presence at the spot, at the time of the occurrence.

(9) The main point which arises for determination is as to whether the plea of *bonafide* exercise of right of private defence set up by Manjit Singh accused has been established on the record or not. Sardara Singh deceased received as many as 11 injuries. Apart from that four other injuries were received by Harjinder Singh and Balwinder Singh PWs. Medico-legal examination of Manjit Singh alias Pappi accused conducted on 21st June, 1986 reveals presence of red scar on his right shoulder. The doctor has given the duration of this injury from 4 to 7 days. According to the prosecution case, Balwinder Singh PW. hurled brick-bats in self defence. Manjit Singh alias Pappi accused received injury in that process. The nature and extent of the injury does not support the defence plea that the same was received by Manjit Singh alias Pappi accused at the hands of Sardara Singh deceased from reverse side of *Gandasi*. Number, nature and extent of injuries of the deceased do not indicate that the same could be result of sharp and blunt side of the same *Gandasi*. During the occurrence specific injury on the face of the deceased with a *daang* has been attributed to Manjit Singh accused. This injury tallies with injury No. 4, i.e., abraded contusion on the right side of the cheek in the middle, underneath which bone was found fractured. The other three injuries on the head have been specifically attributed by two eye-witnesses produced by the prosecution to Amarjit Singh accused, whereas, Jagdev Singh and Malkiat Singh accused were attributed other injuries. As far as infliction of injuries by the accused other than Manjit Singh accused is concerned, the State has not filed any appeal against their acquittal. Thus it is not necessary for the purpose of this appeal to deal with the injuries on the deceased other than those attributed to Manjit Singh accused. Sardara Singh deceased was an old man in his 70, whereas, Manjit Singh alias Pappi accused is a youngman in his teens. As already discussed earlier, the place of occurrence is in front of the house of the deceased, and, the accused party was the aggressor, when, it went armed in order to teach a lesson to the deceased and

other members of the complainant party. The number, nature and seat of injuries received by the deceased and Balwinder Singh and Harjinder Singh PWs. clearly indicate, that Manjit Singh accused was the aggressor, and, not the complainant party. No right of self-defence would accrue to Manjit Singh alias Pappi accused in the circumstances of the case. The learned trial court has erred in convicting Manjit Singh alias Pappi accused under Section 302 I.P.C. mainly on the ground that in his statement under Section 313 of the Code of Criminal Procedure he has admitted that he was responsible for inflicting all the injuries to the deceased. The plea of the accused which is in nature of admission, or, confession has to be accepted or rejected as a whole, and the same cannot be dissected, or, partially relied upon, in respect of inculpatory part alone. The onus would still be on the prosecution to prove its case beyond any reasonable doubt.

(10) Since the fatal injury is not attributed to Manjit Singh accused, his conviction under Section 302 of the Indian Penal Code cannot be sustained, and the same is hereby set aside. The prosecution has only been able to bring home charge under Section 325 of the Indian Penal Code and 452 of the Indian Penal Code against Manjit Singh alias Pappi accused beyond reasonable doubt. As Manjit Singh alias Pappi accused is undergoing imprisonment since 21st June, 1986 the substantive sentence of imprisonment is reduced to that already undergone by him both under Section 325 of the Indian Penal Code, as well as under Section 452 of the Indian Penal Code. However, under Section 325 I.P.C. Manjit Singh alias Pappi accused is sentenced to pay a fine of Rs. 2,000 and in default of payment of fine he shall undergo rigorous imprisonment for six months. The sentence of fine or in default thereof imposed by the trial Court under Section 452 I.P.C. is also maintained. The entire fine, if realised, shall be paid as compensation to the nearest legal heirs of Sardara Singh deceased. This appeal as well as Revision No. 582 of 1987 preferred by Harjinder Singh is partly allowed to the extent indicated above.

S.C.K.

Before : Ujagar Singh, J.
 RANBIR SINGH,—Appellant.
versus
 STATE OF HARYANA,—Respondent.
 Regular First Appeal No. 185 of 1988
 11th May, 1989

Code of Civil Procedure, 1908—S. 149, O. 6, Rl. 17—Compensation for land acquired assessed by High Court at higher rate—Owner