

Pyare Lal and Another Vs State of Haryana**Criminal Appeal No. 370-DB of 2002**

Court: High Court Of Punjab And Haryana At Chandigarh**Date of Decision:** May 14, 2012**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Penal Code, 1860 (IPC) â€” Section 300, 302, 304, 34#Punjab Excise Act, 1914 â€” Section 61(1)(a)

Citation: (2012) CriLJ 3474**Hon'ble Judges:** Hemant Gupta, J; A.N. Jindal, J**Bench:** Division Bench**Advocate:** Hemant Bassi, for the Appellant; Shubhra Singh, DAG, Haryana, for the Respondent**Final Decision:** Dismissed

Judgement

A.N. Jindal, J.

Pyare Lal and Purkha Ram accused-appellants were convicted vide judgment dated 26/28.2.2002 passed by the learned

Additional Sessions Judge, Fatehabad and were sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 5000/- each u/s 302

read with Section 34, I.P.C. A brief resume of facts is that the houses of Pyare Lal and Purkha Ram as well as Mohan Singh complainant (herein

referred as, "the complainant") and his brother Om Parkash are situated in the same vicinity, divided by a street of village Kirdhan. Pyare Lal was

irritating the family of the complainant by urinating from the roof top while facing towards the house of the complainant, about which, wife of the

complainant protested to her husband on 7.7.2000 and thereafter on 8.7.2000. She complained to the mother of Pyare Lal and then on

10.7.2000, when Pyare Lal again urinated by standing on the roof top of his house, Pushpa wife of the complainant again brought this fact to the

notice of the complainant. At this, Om Parkash suggested that a complaint could be lodged against Pyare Lal in the police station. The complainant

replied that he would first raise the protest before Purkha Ram so that Pyare Lal could be reprimanded by his father. Thereafter, Om Parkash

came across Pyare Lal and abused him for this mischievous act.

2. On 10.7.2000, at about 8.00 p.m., Pyare Lal armed with wooden stick came to the house of the complainant and tried to attack him, but he

warded off the blow, whereupon, Chhabila and another inhabitant intervened and separated them. After a while i.e. at about 9.00 p.m., Om

Parkash told Pushpa that he was going to lock the shop (being run in their own house) from outside. As soon as he went outside the house, in the

street, Pyare Lal and Purkha Ram armed with Bellies (wooden sticks) came in the street and started causing injuries to him. The complainant

exhorted to prevent them from doing so. However, within his sight, Pyare Lal inflicted injury on the head of Om Parkash with the said wooden

stick. Resultantly, Om Parkash fell down and they (accused) after exhorting ""chak leja tere sher nu"" (lift and carry your lion) left the spot with their

respective weapons. The complainant, after arranging jeep owned by Barhma Ram, took Om Parkash to Bhattu Kalan where doctor advised him

to take the injured to General Hospital, Hisar. However, Om Parkash succumbed to the injuries on the intervening night of 10/11.7.2000 at Hissar.

3. On the basis of the aforesaid statement Ex. PC made by the complainant, F.I.R. Ex. PC/1 was registered at 10.00 a.m. on 11.7.2000. Med

Singh Investigating Officer prepared the inquest report Ex. PQ and dispatched the dead body for autopsy. He prepared the rough site plan of the

place of occurrence and took into possession the belonging of the accused as handed over by C. Harish Chand, vide memo Ex. PE. He also lifted

the blood stained earth and also took into possession the blood stained shirt of the deceased into possession vide memo Ex. PF. On 13.7.2000,

Inspector Shingara Singh (P.W. 12) arrested the accused Pyare Lal and got recovered the wooden stick (Ex. P4) from his fodder room, pursuant

to the disclosure statement Ex. PK made by him.

4. On 17.7.2000, accused Purkha Ram was arrested and he also produced wooden stick (Ex. P5), which was taken into possession vide memo

Ex. PO. On receipt of the report of the Forensic Science Laboratory, Madhuban, Karnal, challan was presented in the court.

5. The accused were charged u/s 302 read with Section 34, I.P.C., to which they pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution examined as many as thirteen witnesses. SI Parkash Chand (P.W. 1) has sought the opinion of the

doctor on the application Ex. PA as to whether the injury No. 1 on the person of Om Parkash could be caused by the wooden stick. Balwant

Singh Draftsman (P.W. 2) has proved the scaled site plan of the place of occurrence Ex. PB. C. Kesav Dutt (P.W. 3) has proved the F.I.R. Ex.

PC/1 and sent the special report through C. Mahabir Singh to the Illaqa Magistrate, Superintendent of Police and Deputy Superintendent of

Police. C. Mahabir Singh (P.W. 4) has taken the special report to the Illaqa Magistrate. Dr. Joginder Kapur (P.W. 5) has conducted the post-

mortem examination on the dead body of Om Parkash. Hari Chander (P.W. 6) has produced the parcel containing belongings of the deceased

before the Investigating Officer and has also proved the seizure memo Ex. PE. Mohan Singh (P.W. 7) is the complainant. Pushpa (P.W. 8) is the

eye-witness of the occurrence. HC Om Parkash (P.W. 9) is the formal witness. Dr. B.L. Bagri (P.W. 10), Medical Officer has conducted the

medico-legal examination of the deceased Om Parkash and found the following injuries on his person :--

1. A lacerated wound 5 x 1/4 cm. on the anterior part of left parietal region. Fresh bleeding was present and vertically placed. X-ray was advised

and referred to the Surgeon.

2. Left eye was closed. It was referred to Eye Specialist.

3. Abrasion 2 x 1/2 cm. was on the anterior and mid of left ear.

4. Lacerated wound 1 cm. x 1 cm. on the posterior and lower 1/3rd of left ear.

5. Reddish bruise 12 x 1 cm. on the left shoulder. Swelling around was present. X-ray was advised and referred to the Ortho Surgeon.

7. Dr. B.L. Bagri (P.W. 10) while proving the MLR Ex. PM and ruqa Ex. P1, second ruqa Ex. PJ sent at 2.15 a.m. informing the police about the

death of Om Parkash, has also proved the opinion Ex. PA/1 on the application Ex. PE to the effect that the injury No. 1 on the person of the

deceased Om Parkash could be possible by wooden stick (Ex. P4). Dalip Singh (P.W. 11) is a witness to the disclosure statement for recovery of

the wooden stick. Inspector Shingara Singh (P.W. 12) and Inspector Med Singh (P.W. 13) are the Investigating Officers.

8. When examined u/s 313. Cr. P.C. both the accused denied all the incriminating circumstances appearing against them and pleaded their false

implication.

9. In defence, the accused examined C. Balram (D.W. 1) who has placed on file copy of the F.I.R. No. 235 dated 27.5.2002 u/s 9 of the Opium

Act registered against the deceased Om Parkash. He has also proved copy of the F.I.R. No. 290 dated 10.8.1997 (Ex. DC) registered against

Om Parkash u/s 61 (1) (a) of the Punjab Excise Act.

10. The trial resulted into conviction.

11. Arguments heard. Record perused.

12. In order to establish the innocence of the accused, the first contention raised by Mr. Hemant Bassi, Advocate is that there is an inordinate

delay in lodging the F.I.R. which has led to raise suspicion with regard to implication of the accused. In this regard, it would be suffice to say that

there is no such material delay which may effect the substratum of the prosecution case. The tempers of the parties were rising high since 7.7.2010

due to the continued mischief committed by Om Parkash. But the accused was bold enough, not to be afraid of the complainant party and

continued playing mischief while going on the roof top facing towards the house of the complainant. He did not mend himself despite the protest

lodged by Pushpa with his mother and he was also remonstrated. The occurrence had started about 8.00 p.m. on 10.7.2000. However, the

temper did not cool as both the accused were still in the street and trapped Om Parkash as soon as he came to lock the shop from out side.

13. The occurrence had taken place at 9.00 p.m. Detecting that amongst five injuries, there was a serious injury in the head, the injured was first

taken to Bhattu Kalan from where the deceased was advised to be shifted to the General Hospital, Hisar where Om Parkash had expired. In the

meantime, on receipt of the ruqa from General Hospital, Hisar, SI Med Singh reached the hospital, Hisar and recorded statement of the

complainant as Om Parkash was not fit to make the statement. The F.I.R. was registered at 10/ 10.30 p.m. and it reached the Illaqa Magistrate at

Fatehabad on 11.7.2000 at 1:00 p.m. The utmost concern of the complainant was to save his brother and not to run after lodging the complaint.

Consequently, we have no hesitation to hold that the F.I.R. is a quite genuine document and is free from any fabrication and consultation.

14. The other contention raised by the learned counsel for the appellants is that though the case of the complainant is that they had taken the

injured to the Civil Hospital, Bhattu Kalan but no doctor of the said hospital was examined, therefore, the story with regard to taking him to Civil

Hospital, Bhattu Kalan is false.

15. In this regard, it may be mentioned that the deceased was having a serious head injury as well as serious injury in his eye and it is also a matter

of common experience that there remains no sufficient infrastructure and adequate apparatus to treat the injured in small hospitals, therefore, the

doctor at Civil Hospital, Bhattu Kalan must have issued a reference slip in order to avoid wastage of time and in the interest of the injured,

therefore, to prove the record of the Civil Hospital, Bhattu Kalan was not essential as he was mainly treated at General Hospital, Hisar. But

testimonies of Dr. Joginder Kapur (P.W. 5) and Dr. B.L. Bagri (P.W. 10) reveal that the injured had reached the General Hospital, Hisar at mid

night when he was medico-legally examined and he died there at 2.15 a.m. on 11.7.2000. Joginder Kapur (P.W. 5) had conducted the post-

mortem examination upon the deceased. As such, mere non-proof of the entry regarding the arrival of the injured at Civil Hospital, Bhattu Kalan,

being insignificant feature hardly affects the prosecution case.

16. We are also not in consonance with the argument advanced by the learned counsel for the appellants that there is a discrepancy in the injury

report made by Dr. B.L. Bagri (P.W. 10) at the time of conducting medical examination and Dr. Joginder Kapur (P.W. 5) at the time of

conducting autopsy on his body, because such discrepancy in the circumstances of the case is bound to occur.

17. Before we discuss the discrepancies, we need to reproduce the injuries as recorded by Dr. B.L. Bagri (P.W. 10), which reads as under :--

1. A lacerated wound 5 x 1/4 cm. on the anterior part of left parietal region. Fresh bleeding was present and vertically placed. X-ray was advised

and referred to the Surgeon.

2. Left eye was closed. It was referred to Eye Specialist.

3. Abrasion 2 x 1/2 cm. was on the anterior and mid of left ear.

4. Lacerated wound 1 cm. x 1 cm. on the posterior and lower 1/3rd of left ear.

5. Reddish bruise 12 x 1 cm. on the left shoulder. Swelling around was present. X-ray was advised and referred to the Ortho Surgeon.

18. However, Dr. Joginder Kapur (PW 5), at the time of conducting autopsy observed the following injury on the person of the deceased Om

Parkash :--

There was a compound fracture of the temporal parietal bone and frontal bone on the right side. Brain matter was coming out. Extra dural

haematoma was present on the left side of the skull.

19. On close scrutiny of the injuries, it transpires that the doctor who conducted the postmortem examination might have left the minor injuries No.

3, 4 and 5 un-noticed for the reason that they were minor bruise, abrasion or laceration. The injury No. 2 was inside the eye which was due to the

impact of the injury No. 1, therefore, obviously injury No. 2 could not be noticed. However, the main injury which was the cause of death was

recorded by both the doctors.

20. We are also not in concurrence with the argument that there are discrepancies with regard to seat of injury as mentioned by both the doctors.

According to Dr. B.L. Bagri. (P.W. 10) the injury was on the left parietal region whereas according to Dr. Joginder Kapur (P.W. 5), the injury

was on the right side of the parietal bone.

21. Having pondered over the contention, it appears that there is no dispute that the injury was on the parietal region as detected by both the

doctors. It is also not in dispute that the injury was the result of blunt weapon as opined to by both the doctors. The mere fact that one doctor

judged it to be on little right side and the other doctor judged on the left side of the head is too petty a matter to be given undue importance

because some times these mistakes occur while standing on a particular direction. Again this injury is quite consistent with the ocular version as

given by both the witnesses, namely, Mohan Singh (P.W. 7) and Pushpa (P.W. 8). Both of them have consistently stated that the accused Pyare

Lal had caused the fatal blow on the head of the deceased.

22. We are also not in agreement with the contention of the learned counsel for the appellants that it was a night time occurrence and the presence

of the accused is doubtful as it is not established on the record that who caused the other four injuries, because both the witnesses have

consistently stated that on hearing the cries of Om Parkash, when they came, they found that both the accused were causing injuries and in their

sight Pyare Lal gave a balli (wooden stick) blow on the head of Om Parkash and thereafter both the accused escaped. It is also significant to

mention here that injury No. 2 was the result of injury No. 1, therefore, the injury No. 2 could also be attributed to Pyare Lal. Since both the

witnesses in their statements have not stated as to who caused the injuries No. 3, 4 and 5, therefore, as an abundant caution, the benefit could be

extended to Purkha Ram. Since the witnesses have uttered the truth that they had seen Pyare Lal causing injury on the head, therefore, their

presence at the spot cannot be doubted being improbable and unnatural.

23. While taking the case from another angle, the houses of the accused and the deceased adjoin each other. The blood was boiling between the

parties since 7.7.2000 when Pyare Lal invited the quarrel after urinating from the roof top while facing towards the house of the complainant. He

after being remonstrated did not mend his ways, rather he turned violent. The occurrence had taken place in the street in front of the house of the

deceased, therefore, obviously both Mohan Singh (P.W. 7) and his wife Pushpa (P.W. 8) being present in the house, their presence cannot be said

to be doubtful. Both the witnesses have consistently made statement with regard to time, place and the manner in which the occurrence had taken

place. Barring minor discrepancies, which are bound to occur in the statements of the rustic villagers, and truthful witnesses with the passage of

time and lapse of memory but they have withstood the test of cross-examination. Their statements, if gone through completely, do not suggest of

any tutoring or an afterthought.

24. The argument that, had they been present at the spot, then they would have intervened in the matter and they would have also caused injuries

to the accused is not acceptable. In this regard. Mohan Singh (P.W. 7) has categorically stated that he did not try to intervene out of fear. In any

case, it was a night time, the witnesses when came out were unarmed, whereas, the accused were armed with wooden sticks and the witnesses

could expect damage to them to any extent if they would have intervened.

25. While taking the case from another angle, as soon as the witnesses came out, the accused after causing injuries on the head and exhorting had

run away. The occurrence took place within no time, therefore, the witnesses had no occasion to intervene in order to save the deceased. Even

otherwise the court has to bear in mind that different persons react differently under different situation. Some people on seeing the occurrence feel

threatened and rendered helpless; they became speechless; some start evading and some flee away out of fear and those are only few people, who

put themselves into trouble and have the courage to face the attack. It depends upon individual to individual, but the fact that the presence of the

witnesses could be weighed on the ground that had he been present, he would have intervened, is no ground to disbelieve his presence. To support

this view, a reference if any could be made to the judgment delivered in case Lila Ram (dead) through Duli Chand v. State of Haryana, 1994 (4)

R.C.R. (Criminal) 588.

26. Having scrutinized the testimony of these two witnesses and the corroborative medical evidence, we have no reason to discard their

testimonies on the ground that they being relative or interested witnesses would not speak the truth. They may be relatives but were having no such

enmity or hostility to involve them for such a heinous crime while leaving the real culprits.

27. The next contention raised by the learned counsel for the appellants is that assuming the story of the prosecution to be truthful, the accused and

the deceased were the neighbours. The occurrence had taken place on a petty issue and this solitary injury was not caused with the intention to

cause death so as to take the case within the purview of Clause thirdly of Section 300, I.P.C., therefore, the offence, if any committed by the

accused is covered by the 2nd proviso to Section 300, I.P.C.

28. Having pondered over the contention, we do not find ourselves persuaded by the same. The facts and circumstances of the case transpires that

the accused and the complainant party were at daggers drawn for the reasons that the accused Pyare Lal was urinating from the roof top facing

towards the house of the complainant which annoyed the latter. The repeated remonstrations did not bear any fruit. Pyare Lal had gone to the

house of the accused with wooden stick and tried to cause injuries to the complainant but he warded off the same. Thereafter, both the accused

armed with wooden sticks, with an intention to cause more injuries to the complainant party, were hiding themselves in the street. As soon as Om

Parkash came out to lock the shop from out side, Pyare Lal appeared at the scene and caused injuries and thereafter exhorted in a taunting way

that they should take their loun, clearly make out the intention of the accused to cause death. In the similar circumstances, the Apex Court in case

Gudar Dusadh Vs. State of Bihar, observed that in case of even single injury, where the intention to cause death is present the offence falls within

the clause thirdly of Section 300, I.P.C. The relevant observations are reproduced as under:--

7...The circumstances of the case thus show that the assault was premeditated and the blow on the head of Ramlal was not accidental. The fact

that the appellant gave only blow on the head would not mitigate the offence of the appellant and make him guilty of the offence of culpable

homicide not amounting to murder. The blow on the head of Ramlal with lathi was plainly given with some force, and resulted in a 3''' long fracture

of the left parietal bone. Ramlal deceased died instantaneously and as such, there arose no occasion for giving a second blow to him. As the injury

on the head was deliberate and not accidental and as the injury was sufficient in the ordinary course of nature to cause death, the case against the

appellant would fall squarely within the ambit of clause ""3rdly"" of section 300, Indian Penal Code. According to that clause, culpable homicide is

murder if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary

course of nature to cause death. Section 300 also provides for some exceptions but we are not concerned with them in this case.

8. Clause ""3rdly"" consists of two parts. Under the first part, it has to be shown that there was an intention on the part of the accused to inflict the

particular injury which was found on the body of the deceased. The second part requires that the bodily injury intended to be inflicted was

sufficient in the ordinary course of nature to cause death. So far as the first part is concerned, the court has to see whether the injury which was

found on the deceased was the one intended by the accused or whether it was accidental without his having intended to cause that bodily injury.

Once it is found that the injury was not accidental and that the accused intended to cause the injury which was actually inflicted and found on the

body of the deceased, the first part shall be satisfied. The court would then go into the second part of the clause and find in the light of medical

evidence as to whether the bodily injury inflicted was sufficient in the ordinary course of nature to cause death. If the court finds that the

requirements of both the parts have been satisfied, the case shall be held to be covered by clause ""3rdly"" unless it falls within one of the exceptions.

9. In the present case, both parts of the clause ""3rdly"" have been satisfied. As observed earlier, the injury which was inflicted by the accused on the

head of Ramlal was not accidental. It is not the case of any one that the appellant aimed a blow on some other part of the body and because of

some supervening cause like sudden intervention or movement of the deceased the lathi struck the head of the deceased. The fact that the appellant

aimed a blow on the head of Ramlal with the lathi would go to show that it was the intention of the appellant to cause the precise injury which was

found on the head of the deceased. The evidence of Dr. R.S. Singh who performed post-mortem examination shows that the above injury was

sufficient in the ordinary course of nature to cause death and actually resulted in the death of the deceased., The case of the appellant would thus

be covered by clause ""3rdly"" of section 300 and he would be guilty of the offence of murder.

29. Similarly, the Apex Court again discussed the case of solitary injury in case *Namdeo v. State of Maharashtra*, 2007 (2) R.A.J. 538 : (AIR

2007 SC (Supp) 100) and observed as under:--

38. Finally, we are unable to uphold the argument of the learned counsel for the appellant-accused that the case falls u/s 304, II, I.P.C.

Considering the nature of weapon used by the accused (axe) and the vital part of the body (head) of the deceased chosen by him, it was clear that

the intention of the accused was to cause death of Ninaji. P.W. 4 Dr. Jaiswal in his deposition stated that injury No. 1 was sufficient in the ordinary

course of nature to cause death of the victim. In the circumstances, both the Courts were right in holding that the case was covered by Section

302, I.P.C.

30. In this case also, the accused had administered one axe blow in the head of his father. Thus, in that situation, the Apex Court observed that

keeping in view the weapon of offence, part of the body chosen and the nature of injury, the Court was right in upholding the conviction of the

accused u/s 302, I.P.C.

31. The crux of the matter is that before the nature of offence is determined, the court has to see the intention, motive, part of the body chosen,

type of weapon used, the force with which the injury has been caused, nature of injury and cumulative effect of these factors. The Apex Court in

case *Singapagu Anjaiah v. State* of A.P., 2010 (4) Recent Apex Judgments (R.A.J.) 315, also elaborated these factors while observing as

under:--

16. In our opinion, as nobody can enter into the mind of the accused, its intention has to be gathered from the weapon used, the part of the body

chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crow bar as the weapon of offence. He has further

chosen a vital part of the body i.e. head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which

the appellant had used the weapon. The cumulative effect of all these factors irresistibly lead to one and the only conclusion that the appellant

intended to cause death of the deceased.

32. The Apex Court in another case *Murli and another v. State of Rajasthan*, 2010 (2) Cri LJ 2228 : (AIR 2010 SC (Supp) 333) observed that

since the intention and the motive to commit crime stands proved and it is also established that the accused had taken part in the assault and their

presence at the spot and overt act attributed to them stands established, the offence u/s 302, I.P.C. could be treated as established.

33. As such, while putting the facts and circumstances of the present case to the parameters of the aforesaid judgments we are of the view that the

single injury on the head caused by the accused Pyare Lal which proved fatal being sufficient to cause death in the ordinary course of nature,

certainly is covered by clause thirdly of Section 300, I.P.C., punishable u/s 302, I.P.C. Since no specific injury has been attributed to Purkha Ram

and the witnesses had also not stated if Purkha Ram had caused any specific injury, therefore, benefit of doubt is being extended to him.

Resultantly, this appeal is partly allowed, impugned judgment is set aside qua Purkha Ram and he is acquitted of the charges framed against him,

whereas, the appeal qua accused Pyare Lal is dismissed.