

(2007) 07 P&H CK 0192

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 785-DB of 1997

Om Parkash

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 30, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 302, 303, 304, 304

Citation: (2007) 4 RCR(Criminal) 75

Hon'ble Judges: Mehtab S. Gill, J; A.N. Jindal, J

Bench: Division Bench

Advocate: R.S. Ghai and Mr. Vinod Ghai, for the Appellant; Kulvir Narwal, A.A.G. Haryana assisted by Mr. R.N. Lohan, for the Respondent

Final Decision: Dismissed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment dated 27.10.1997/29.10.1997 of the learned Additional Sessions Judge (I), Jind, whereby he convicted Om Parkash son of Jai Karan u/s 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs. 1,000/-. In default of payment of fine to further undergo R.I. for six months. He was also convicted under 27 of Indian Arms Act and was sentenced to undergo R.I. for five years and to pay a fine of Rs. 500/-. In default of payment of fine to further undergo R.I. for three months. Both the sentences were ordered to run concurrently.

2. DDR No. 4 was recorded on 25.11.1996 at 9.20 a.m. on the statement of Vir Bhan Sarpanch PW7.

3. The case of the prosecution is unfolded by the statement Ex.PA of Smt. Daya Pati w/o Zile Singh given to SI Hoshiar Singh on 25.11.1996. Daya Pati stated, that her father-in-law Gohlu son of Chandu got 19 kanals of land in consolidation. Her

husband Zile Singh had three brothers namely Mihan Singh, Raghbir Singh and Ram Phal. Both Ram Phal and Om Parkash had a common mother, as after the death of the father of Om Parkash, mother of Om Parkash contracted Karewa marriage with Gohlu. Gohlu did not give any land to Zile Singh, her Jeth and Devar and he wanted to give his entire land to Om Parkash and Ram Phal. On 25.11.1996 the complainant party came to know that Om Parkash, Ram Phal, Jagrup son of Dhanna and Gohlu son of Chandu were cultivating the land with a tractor. Daya Pati along with her Devar's wife Sewa Pati, her husband's elder brother's wife Chander Mukhi, her Jeth Mihan Singh and her Devar Raghbir went to the fields. Her husband Zile Singh was also along with them. A tractor, which had been hired, was ploughing the land. Zile Singh asked Om Parkash to convene a panchayat, but her Jeth Om Parkash fired a shot from his double barrel licenced gun, which hit the abdomen of Zile Singh. Zile Singh died on the spot. Om Parkash tried to fire another shot, but his gun did not function. Mihan Singh over-powered Om Parkash and Raghbir snatched the gun from Om Parkash. After the gun was snatched, Ram Phal, Jagrup and Gohlu exchanged blows with the complainant party. In the scuffle, Om Parkash also received injuries from the hands of Raghbir. A case regarding the land was pending in the Civil Court. On the basis of this statement, FIR Ex.PA/2 was recorded on 25.11.1996 at 11.40 a.m. and the special report reached the J.M.I.C., Jind on the same day at 3.10 p.m.

4. The prosecution to prove its case brought into the witness box Smt. Daya Pati PW1, Raghbir Singh PW2, Natha Singh PW3, Kitab Singh PW4, Satbir Singh PW5, Fakir Chand PW6, Vir Bhan PW7, Mohinder Singh Sub Inspector PW8, Dharamvir Singh ASI PW9, Dr. K.C. Jain PW10, Mohinder Singh PW11, Dharam Singh SI PW12 and Hoshiar Singh SI PW13.

5. Learned Counsel for the Appellant has argued, that it is the admitted case of the prosecution, that Appellant Om Parkash was ploughing the land with a hired tractor. Zile Singh did not want the land to be transferred by Gohlu to Om Parkash and Ram Phal. The complainant party and Om Parkash were present in the field. Occurrence had taken place 20/30 acres away from the village and as it was close to the village, the question of forcible ploughing of the land by the Appellant could not be done so; number of persons from the village would have collected and intervened. Raghbir Singh PW2 has admitted in his testimony, that his wife and others were armed with lathis. A fight did take place, but Appellant Om Parkash fired from his DBBL gun Ex.P10 in self defence and at the most, a case of exceeding the right to self defence can be made out against the Appellant.

6. The learned trial Court has rightly held, that the tractor does not connect the Appellant with the crime and the testimony of Natha Singh PW3 has rightly not been believed by the learned trial Court.

7. The complainant party is in fact suppressing the genesis of the occurrence. Daya Pati PW1 has stated, that the distance between both the complainant and the

Appellant party was 10/11 feet. Dr. K.C. Jain PW10 in his testimony before the Court found three wads in the body of the deceased, showing that the gun shot was fired from a close range. As per the medical report, the gun shot injury is passing from the umbilicus, upwards.

8. The injuries on the person of Om Parkash have not been explained. They are grievous injuries and Om Parkash stayed in the hospital from 25.11.1996 to 2.12.1996 in P.G.I. M.S., Rohtak. At the most, an offence u/s 304 Part I IPC is made out.

9. Learned Counsel for the State has argued, that there is no delay in lodging of the FIR. Occurrence had taken place on 25.11.1996 at 7.00/7.15 a.m. DDR No. 4 dated 25.11.1996 was recorded at 9.20 a.m. on the statement of Vir Bhan Sarpanch. FIR Ex.PA/2 was recorded on the statement of Daya Pati PW1 on the same day at 11.40 a.m. and by 3.10 p.m. the special report had reached the J.M.I.C., Jind. The prompt recording of the FIR itself, goes a long way in proving the case of the prosecution.

10. Appellant Om Parkash in his statement u/s 313 Code of Criminal Procedure has admitted, that he was ploughing the fields and he fired from his DBBL gun Ex.P10 in self defence. This itself also shows, that Appellant Om Parkash was the one, who created the mischief and after hiring the tractor from Natha Singh PW3, he started ploughing the disputed land.

11. Injuries on the person of Appellant Om Parkash have been explained, as Daya Pati PW1 and Raghbir Singh PW2 have stated, that injuries were inflicted on him, when the gun was being snatched. If the injuries had not been inflicted in self defence and the gun Ex.P10 had not been snatched, Appellant Om Parkash would have used the gun to injure someone also.

12. We have heard the learned Counsel for the parties and perused the record with their assistance.

Pedigree table of the parties is as under:

13. Jai Karan son of Chandu, father of the Appellant died a natural death and his wife Mansha performed Karewa marriage with Gohlu. Khazana son of Chandu died a natural death and his wife Jinna also performed Karewa marriage with Gohlu.

14. Occurrence in this case had taken place on 25.11.1996 at 7.00/7.15 a.m. FIR Ex.PA/2 came into existence on the same day at 11.40 a.m. and the special report reached the J.M.I.C., Jind on the same day at 3.10 p.m. Before the FIR Ex.PA/2 had come into existence, Vir Bhan PW7 recorded DDR No. 4 at 9.20 a.m. in Police Station Garhi. The promptness in lodging FIR Ex.PA/2 itself goes a long way in proving the case of the prosecution.

15. Daya Pati PW1 and Raghbir Singh PW2 have stated, that Zile Singh, the husband of Daya Pati PW1 was not agreeing to the transfer of 19 kanals of land by Gohlu, her

father-in-law to Appellant Om Parkash and Ram Phal. Daya Pati PW1 along with Raghbir Singh PW2, Chander Mukhi w/o Mihaan Singh, Sewa Pati w/o Raghbir Singh, her husband Zile Singh and Mihaan Singh on coming to know that Appellant was ploughing the disputed piece of land went there to stop him. Zile Singh asked the Appellant not to cultivate the land and to settle it in the panchayat. Appellant Om Parkash was armed with a DBBL gun Ex.P10 and he fired at Zile Singh in his stomach. Raghbir Singh PW2 gave injuries to Appellant Om Parkash by which the gun fell down. Mihaan Singh took Om Parkash in his arms and Raghbir Singh PW2 picked up the gun. Daya Pati's father-in-law Gohlu, Jagrup and Ram Phal wanted to snatch the gun from the hands of Raghbir Singh, but they could not succeed. (The learned trial Court had acquitted Gohlu, Jagrup and Ram Phal and as such, they are not arrayed as party before us).

16. Appellant Om Parkash in his statement u/s 313 Code of Criminal Procedure has stated as under:

It is incorrect. Golu has given his land in equal share to his sons namely Zile Singh, Raghbir, Miyaan Singh and Ramphal. However, he has retained his own share as well as the shares of his four daughters.

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It is incorrect. I have no concern with the land of Golu. On the day and time of alleged occurrence I was present in my fields which is situated near the fields of Girdhala. I was armed with my licenced gun Ex.P10. Because some civil litigation in respect of that land is there with Girdhala and that litigation is still pending in the court of Addl. Distt. Judge (II), Jind. On that day Girdhala, Subhash, Sanjit, Kali, Dhano w/o Girdhala, Miyaan Singh, Krishan s/o Miyaan Singh, Kala son of Miyaan Singh, Zile Singh (since deceased), Rajesh, Sinder sons of Zile Singh, Raghbir and his wife Sewapati come to that land to take the possession forcibly to be given to Girdhala. They all opened attack on me, therefore, in scuffling, my gun was fired resulting into the death of Zile Singh. They caused injuries to me with gandasas, lathi and jali and my gun was snatched by one of them. I became unconscious and was shifted to G.H. Narwana and there after I was referred to M.C.H. Rohtak. I remained admitted in M.C.H. Rohtak for 17 days and I also remained in G.H. Jind for one month and 13 days and still I am under treatment. My co-accused were not with me on that day.

17. Both the prosecution witnesses i.e. Smt. Daya Pati PW1 and Raghbir PW2 and Appellant have admitted, that the occurrence had taken place in the disputed piece of land, which was to be transferred by Gohlu to Appellant Om Parkash. The aggrieved party was the complainants and especially deceased Zile Singh, who was stopping Gohlu, his father from transferring the land. Further Daya Pati PW1 and Raghbir PW2 have stated, that they inflicted injuries on the person of Appellant Om Parkash and snatched his gun.

18. As per the statement of Dr. K.C. Jain PW10, the injury on the person of Zile Singh was a punctured wound circular in shape 2 x 2 cm. It had inverted margins on the abdomen above the umbilicus slightly left to the midline. The wound was going upwards, backward. It had caused laceration on the medial surface of spleen and it was going upward and backward piercing through the diaphragm. Thereafter, injuries were detected on the left lung. Multiple pellets were present in the left lung. Three wads were present in the left lung. A rectangular card-board was also present in the left thoracic cavity. The medical evidence clearly shows, that the injury was going upward. This probably was caused, when the deceased was trying to snatch the gun from the Appellant. Doctor has further opined, that the injury on the person of the deceased was caused by a fire-arm from a close range and it could be caused in a scuffle.

19. Further Dr. K.C. Jain PW10 has stated, that he prepared the MLR of Appellant Om Parkash. He was admitted in hospital on 25.11.1996 at 10.00 a.m. and was discharged on 2.12.1996 from P.G.I. M.S., Rohtak. The injuries on the person of Appellant Om Parkash are Mark A, as Dr. K.C. Jain PW10 had not brought the original record, he was not asked to do so.

20. It is clear from the statements of the witnesses, that a scuffle had taken place and in that scuffle, Zile Singh received a gun shot injury fired from the gun of Appellant Om Parkash. The complainant party was armed with lathis and Appellant in self defence fired at Zile Singh, as the complainant party, who were not less than five in number, had come close to him, all being armed. Appellant though could have left the place or could have fired in the air to scare away the complainant party. Appellant exceeded his right of private defence. Appellant fired at Zile Singh from a very close range, which hit Zile Singh in the stomach.

21. With the above observations and discussion, we modify the conviction of the Appellant from Section 302 to 304 Part I IPC. Sentence of the Appellant is also modified from life imprisonment to five years R.I. Fine shall remain intact.

22. With the above modification in conviction and sentence, appeal is dismissed.