

Kashmiri Lal And Others

Vs

State of Punjab

Criminal Appeal No. 184 of 1980

(Faizanuddin, Sujata V. Manohar JJ)

29.08.1996

JUDGMENT

FAIZAN UDDIN, J. –

1. The four appellants, namely, Kashmiri Lal, Ravinder Kumar, Manmohan Rai and Mool Chand were charged and tried along with the co-accused Chander Prakash for offences punishable under Sections 302, 307, 326,452 read with Section 149 IPC by the Additional Sessions Judge, Ludhiana, in Sessions Case No. 30 of 1978 (Trial No. 8 of 1978), who by his judgment dated 11-5-1978 acquitted the co-accused Chander Prakash, but convicted and sentenced the four appellants herein as under :

#-----	Name of the accused
Section(s)	Sentence-----
Kashmiri Lal 326/34 IPC	RI for 5 years and a fine of Rs 300, in default of payment of fine to further undergo RI for three months. 323 IPC RI for three months. 452 IPC RI for two years.All the sentences to run concurrently.-----
-----Ravinder Kumar 326/34 IPC	RI for three years and a fine of Rs 200, in default of payment of fine to further undergo RI for two months. 452 IPC RI for two years.Both the sentences to run concurrently.-----
-----Manmohan Rai 326/34 IPC	RI for three years and a fine of Rs 200, in default of payment of fine to further undergo RI for two months. 324 IPC RI for one year. 452 IPC RI for two years.All the sentences to run concurrently.-----
-----Mool Chand	302 IPC Imprisonment for life. 307 IPC RI for seven years and a fine of Rs 300, in default of payment of fine to further undergo RI for three months. 326 IPC RI for six years. 452 IPC RI for two years.All the sentences to run concurrently.-----
-----##	

2. The High Court in Criminal Appeal No. 593 of 1978, decided on 18-12-1979, upheld the conviction and sentences imposed on Appellant 4, Mool Chand. The High Court also upheld the convictions of the remaining Appellants 1 to 3 under various counts, as indicated above, but reduced the period of their sentences to that already undergone by each of them. In addition, the High Court imposed payment of fine of Rs 1000 on Appellant 1, Kashmiri Lal, in default of payment of fine to undergo further RI for six months.

3. Admittedly, the incident had occurred on 6-1-1978 at about 11 p.m. in the house belonging to the appellant Kashmiri Lal, the first floor of which was tenanted by him to the deceased Gurbachan

Singh. The appellant Kashmiri Lal and his family occupied the ground floor of the said house and a room in the ground floor is said to be in possession of one Krishan Lal, PW 14. The appellant Kashmiri Lal had initiated eviction proceedings against the deceased Gurbachan Singh, who had also filed a suit for injunction against the appellant Kashmiri Lal.

4. The prosecution case was that on the aforesaid date and time, the four appellants along with the acquitted-accused Chander Prakash were attempting to break open the lock of the room in the ground floor which was in possession of Krishan Lal, PW 14 and, therefore, the deceased Gurbachan Singh directed his son Manmohan Singh, PW 12, to go and inform Krishan Lal about the same. It was alleged that when Manmohan Singh, PW 12, came down and was in the courtyard of the ground floor, Appellant 1 Kashmiri Lal armed with an axe, Appellant 4, Mool Chand armed with a sua, Appellant 2, Ravinder Kumar armed with a sota and Appellant 3, Manmohan Rai armed with a knife and the acquitted-accused Chander Prakash armed with a hammer were seen there, when the appellant Kashmiri Lal is said to have raised a lalkara that Manmohan Singh should not be allowed to escape. Thereupon, Manmohan Singh, PW 12, was assaulted by the appellants. On sustaining the injuries Manmohan Singh ran back to the first floor but the appellants as well as the acquitted-accused chased him up to the first floor where the appellant Kashmiri Lal inflicted an axe blow on the head of Gurbachan Singh, as a result of which he fell down. Thereafter, the appellant Mool Chand inflicted repeated sua blows on his back. When Mohinder Singh, PW 8, came forward to save Gurbachan Singh from further assaults, the appellant Mool Chand inflicted sua blows on his left arm. At this stage, when other inmates of Gurbachan Singh tried to intervene, they were also assaulted by the appellants. According to the prosecution, the complainant party also inflicted injuries on the appellants in exercise of their right of self-defence. On hearing the hue and cry the witness Gurdev Singh, PW 19, and other neighbours rushed to the scene and then the appellants and the acquitted-accused went away down the stairs.

5. The injured Gurbachan Singh died on the way when he was being taken to the Civil Hospital, Ludhiana. The Police Inspector Bua Das, PW 21, on receiving the information, reached the Civil Hospital where he recorded the statement of Surinder Singh, PW 7, at about 1.30 a.m. on 7-1-1978 on the basis of which a report of the incident was lodged in the Police Station, Ludhiana at 1.45 a.m. Dr Gurcharan Kaur, PW 2, performed an autopsy on the dead body of Gurbachan Singh, who found three lacerated wounds, four punctured wounds on various parts of the body of the deceased, besides a few abrasions. Injury 5, a punctured wound on the left back was found chest cavity-deep. The pleura was punctured on left side under Injury 5 and left lung was also punctured and heart was punctured through and through in left auricle. In the opinion of the doctor death was due to shock and internal haemorrhage as a result of injury to the lung and heart due to Injury 5 which was individually sufficient in the ordinary course of nature to cause death.

6. The injured witness Mohinder Singh, PW 8 was also examined by Dr Ashwani Kumar, PW 3, at 7 p.m. on 7-1-1978 who found seven abrasions of simple nature on his person. The injured Manmohan Singh, PW 12, was examined by Dr Anand Prakash, PW 4, at 1 a.m. on 7-1-1978 and seven injuries were found on his person, out of which five were incised wounds besides one abrasion and a contusion. Dr Anand Prakash also examined Smt Kartar Kaur, wife of the deceased at 12.45 a.m. on the same night and found five incised wounds, two lacerated wounds, three swellings and two abrasions with pain in abdomen.

7. As said earlier, according to the prosecution case, the complainant party had also caused injuries to the four appellants in exercise of their right of self-defence, who were medically examined by Dr Anand Prakash, PW 4, on the same night. The appellant Kashmiri Lal had sustained two lacerated

wounds, Mool Chand had sustained five lacerated wounds and four abrasions - three injuries being on his scalp. The appellant Manmohan Rai had sustained one lacerated wound and one contusion while the appellant Ravinder Kumar had also sustained one lacerated wound and one abrasion. According to the appellants, Shashi Prabha, daughter of the appellant Kashmiri Lal had also sustained one lacerated wound, one contusion and swelling on the same night. She was also examined by the same doctor.

8. During the course of investigation, on the disclosure statement made by the appellant Kashmiri Lal, an axe was seized and on the disclosure statement made by the appellant Manmohan Rai a knife was seized.

9. At the trial, the appellant took the plea that at about 9/10 p.m. when they were in their courtyard, the deceased Gurbachan Singh and his son Manmohan Singh, PW 12, came there armed with sticks and each dealt a blow on the head of appellant Kashmiri Lal and when the appellant Mool Chand came to his help, he was also hit on the head. Mool Chand grappled with Gurbachan Singh and threw him down. The appellant Ravinder Singh picked up a thapi lying in the courtyard and hit Gurbachan Singh with the same on the head and when Manmohan Singh, PW 12, turned towards him, then the appellant Manmohan Rai, who had brought a small sua gave a blow on the back of Gurbachan Singh who lay over the appellant Mool Chand. Manmohan Singh, PW 12, dealt blows on the head of the appellants Ravinder Kumar and Manmohan Rai and then Smt Kartar Kaur, wife of the deceased Gurbachan Singh also came down and picked up the stick and when Shashi Prabha came out of the kitchen to help the appellants, Smt Kartar Kaur beat her with a stick and on seeing this the appellant Manmohan Rai gave sua blows to Smt Kartar Kaur. Mohinder and Surinder, sons of the deceased Gurbachan Singh broke open the doors with their hockey sticks as well as the shutters. The appellants took the defence that in fact the incident had taken place in their courtyard and that the complainant party itself was the aggressor.

10. The trial court on evaluation of the evidence on record rejected plea of defence that the complainant party was the aggressor and that the incident had occurred in the courtyard of the appellants. The trial court recorded the finding that the appellants themselves were aggressors and the incident had occurred upstairs in the first floor which was in occupation of deceased Gurbachan Singh and his family where the deceased and other persons were assaulted by the appellants resulting into the death of Gurbachan Singh. The trial court also recorded the finding that the complainant party had also assaulted the accused persons in exercise of their right of self-defence. With these findings, the trial court, while giving the benefit of doubt to the co-accused Chander Prakash, convicted and sentenced the four appellants, as said above, which has been further confirmed by the High Court, against with this appeal has been preferred.

11. The main contention advanced by Shri Lalit, the learned Senior Counsel for the appellants in assailing the concurrent findings recorded by the Sessions Court and the High Court are that the very genesis of the prosecution case is extremely doubtful inasmuch as the prosecution deliberately shifted the scene of occurrence from the ground floor to the first floor with a view to confer the right of private defence to the complainant party who were themselves aggressors and to deprive the appellants who were the actual victims and were entitled to right of private defence of their person, the incident having occurred at the doorstep of the appellants' house in the ground floor. In order to substantiate his aforementioned contention and to show that the complainant party itself was the aggressor, the learned counsel strenuously urged that the following facts and circumstances stated hereinbelow indicated that the incident had in fact occurred in the ground floor and not in the first floor occupied by the deceased and the complainant party.

(i) The genesis of the prosecution case was that the lock of the tenant Krishan Lal, PW 14, was being broken, but there is no evidence that the said room was occupied by Krishan Lal on the date of occurrence and strangely enough neither the said broken lock nor the goods having been left in the room, were seized or shown to Krishan Lal.

(ii) Admittedly, Shashi Prabha, daughter of Appellant 1 Kashmiri Lal had sustained injuries and was medically examined by the doctor the same night along with the appellants while the prosecution witnesses admitted that Shashi Prabha did not go upstairs at all during the course of occurrence.

(iii) Substantial blood was found in the courtyard of the ground floor and near the staircase in an area of about 2/3 yards. The spectacles of Manmohan Singh, PW 12, had also fallen there.

(iv) All the appellants had sustained injuries while Appellant 4 Mool Chand had sustained serious injuries which could not be explained by the prosecution.

(v) The door/shutter in the ground floor in occupation of the appellants was broken.

12. We have carefully and closely examined the evidence and material on record through the assistance of the learned counsel for the parties with regard to the aforementioned points raised by the learned counsel for the appellants for our consideration. As regards the contention with regard to the possession of a room in the ground floor by the witness Krishan Lal PW 14, it is sufficient to point out the evidence of Sub-Inspector Bua Das, PW 21 who deposed that when he reached the place of occurrence he noticed the lock of the room lying broken at the spot, which fact supported the statement of Manmohan Singh PW 12 who was directed by his deceased father Gurbachan Singh to go and inform Krishan Lal PW 14 that the appellants were trying to break down the lock of his room. The second circumstance about the injuries having been sustained by Shashi Prabha who did not go upstairs is also of no assistance to the appellants in view of the evidence on record. First of all, it may be pointed out that Shashi Prabha was a major girl aged about 18 years and could have been the best person to state as to how, in what manner, by whom and at what place, under what circumstance, she sustained the injuries, but she was not produced as a witness. Shashi Prabha is said to have sustained three simple injuries. No questions were put up to any of the prosecution witnesses that Shashi Prabha had sustained these simple injuries in the same occurrence. That being so, no advantage can be derived by the appellants on the mere fact that there were simple injuries on the person of Shashi Prabha which could not be explained by the prosecution.

13. The recovery of the spectacles of Manmohan Singh, PW 12, from a place near the staircase and the presence of substantial blood in the courtyard of the ground floor in occupation of the appellants and opposite to the staircase in an area of 2-3 yards has been sought to be capitalised on by the appellants to substantiate the contention that the complainant party was the aggressor, as according to the appellants, the complainant party attacked them while they were in their apartment in the ground floor.

14. Apparently, these submissions appear to be very attractive and sound but when we go deep into the revealing facts, the fascinating arguments disappear in thin air and the same turn out to be arguments without merit. It may be stated here that according to the prosecution case, the incident had occurred when Manmohan Singh, PW 12, had gone down to the ground floor in order to go and

inform Krishan Lal that the lock of his room was tried to be broken by the appellants and at the point of time he was assaulted by the appellants in the courtyard. According to the medical evidence of Dr Anand Prakash, PW 4, Manmohan Singh had sustained extensive injuries on his person out of which five were incised wounds and, therefore, the blood must have flowed and dropped in the courtyard of the ground floor where he was assaulted. This fact has been fully testified by Manmohan Singh, PW 12, himself and there is no reason to doubt his testimony which is corroborated by the medical evidence. That being so, the blood found in the courtyard and in an area of 2-3 yards near the staircase would be the blood out of the injuries sustained by Manmohan Singh. The spectacles belonging to Manmohan Singh and found in the courtyard also would have fallen at that point of time when Manmohan Singh was assaulted by the appellants in the courtyard. It has been stated in the earlier part of this judgment that several members of the complainant party had sustained multiple injuries on their person and the four appellants had also sustained injuries. If, in fact the incident had occurred in the courtyard of the house occupied by the appellants the blood would be found scattered in the entire courtyard, which is not the case here. It is, therefore, difficult to accept the submission that the incident had occurred in the courtyard of the ground floor.

15. There is yet another strong piece of evidence which belies the stand taken by the appellants regarding the place of occurrence and that in the evidence of an independent witness Gurdev Singh, PW 19, who was the neighbour of the complainant party and the appellants. He deposed that at about 11.00 p.m. on the date of occurrence, when he heard the noise he went to the house of the appellant Kashmiri Lal. According to him, the noise was coming from the upper storey and when he approached the house he noticed that the appellant Kashmiri Lal armed with an axe, appellant Mool Chand armed with a sua, appellant Ravinder Kumar armed with a sota, appellant Manmohan Rai armed with a knife and the acquitted-accused Chander Prakash armed with a hammer were seen coming down from the staircase. The witness Gurdev Singh, PW 19, further stated that when he went upstairs he found Gurbachan Singh lying unconscious and his sons Manmohan Singh and Mohinder Singh, and wife Kartar Kaur having injuries on their person. In the presence of such a positive and convincing evidence there is hardly any scope to contend that the incident had occurred in the courtyard of the ground floor in order to hold the complainant party as aggressor.

16. As regards the contention about the door and shutter of the appellants' house in the ground floor having been broken to support the contention that the incident had occurred in the ground floor, we find that the same is without any substance for the reason that Gurdev Singh, PW 19, made a categorical statement that he did not see the doors of the room broken at the time when he reached the house immediately after the occurrence. He also deposed that after 2-3 days he noticed that the doors were broken. The evidence of Sub-Inspector Bua Das, PW 21, also goes to show that he did not see the shutters in a broken condition. This evidence goes to show that the door appears to have been broken sometime later and not at the time of occurrence.

17. It is no doubt true that nothing is an offence which is done in exercise of right of private defence of person or property, for purpose of repelling an unlawful aggression within certain limits. Strictly speaking the right of private defence under the Penal Code is entirely a preventive measure provided to a person or party who is unlawfully attacked by another person or party, to dispel such attack. But there is no such right of private defence available under the Code against an act which is in itself an offence. The law does not confer a right of self-defence on a person who invites an attack on himself by his own attack on another. The principle of right of self-defence cannot legitimately be utilised as a shield to justify an act of aggression. A person who is unlawfully attacked has every right to counteract and attack upon his assailant and cause such injury as may be necessary to ward off the apprehended danger or threat.

18. In the instant case before us, as discussed above, we have conclusively found, on the basis of positive evidence, that the incident had occurred in the first floor occupied by the complainant party and the appellants themselves were the trouble-shooters and the aggressors having attacked the complainant party and the deceased in their dwelling apartment and, therefore, no right of private defence was available to them because the law does not confer a right of self-defence on such persons who invite an attack on themselves by their own high-handedness, threat or attack on another.

19. The learned counsel for the appellants next contended that the weapons of offence which the appellants are said to have been armed with and said to have been used in the crime are not the conventional weapons of offence or instruments of attack and, therefore, no knowledge or any intention to skill the victim could be inferred by use of such weapons. He submitted that all the injuries found on the person of the deceased were on his back, but no assault on neck or head was made to show that the appellants had any (sic no) intention to kill the victim. He, therefore, urged that the case does not fall within the purview of an offence of murder under Section 302 IPC, but it would be only an offence punishable under Section 304 Part II of the Penal Code. After overall consideration of the facts and circumstances of the present case, particularly the serious injuries inflicted on several persons of the complainant party and the fatal injuries caused to the deceased, it is difficult to persuade ourselves to concede to the aforesaid submissions. As already stated earlier, besides Mohinder Singh, his brother Manmohan Singh, PW 12, and his mother Kartar Kaur, PW 13, had sustained serious injuries. Manmohan Singh, PW 12, had sustained five incised wounds on the back of the left side chest, in the scapular region, left upper arm besides an abrasion and a contusion. Similarly, Kartar Kaur had sustained as many as 13 injuries on her person. If we look to the evidence of lady Dr Gurcharan Kaur, PW 2, she found five punctured wounds besides other injuries on the dead body of the deceased. Pleura was punctured under Injury 5 and left lung was also punctured. Pericardium was also punctured on the left side. The heart was punctured under auricle. These injuries were caused to the deceased when he had fallen down with his face downwards and was totally in a helpless condition. The repeated assaults made on the back of the deceased causing massive damage to the vital organs indicate the mind of the assailants that they were determined to do away with the victim.

20. The injuries discussed above, the weapon of offence, the part of the body chosen to inflict such injuries and the nature and gravity thereof coupled with the circumstances in which they were caused clearly establish the requisite ingredients of clause Thirdly of Section 300 IPC and the act of the appellants was nothing short of a murder. From the evidence on record it distinctly emerges out that there were bodily injuries on the deceased sufficient in the ordinary course of nature to cause death. It is also evident from the material on record that there was an intention to inflict those particular bodily injuries which were neither accidental nor unintentional. Consequently the acts of the appellants squarely fall within the purview of Section 300 Thirdly punishable under Section 302 IPC.

21. We, therefore, find that the conviction of the appellants as recorded by the Sessions Court and upheld by the High Court is fully justifiable and no interference is called for. Consequently, the appeal fails and is hereby dismissed.