

Before Rajiv Sharma & Harinder Singh Sidhu, JJ.

HARDWARI LAL AND OTHERS—Appellants

versus

STATE OF HARYANA—Respondent

CRA-D No.455-DB of 2004

December 07, 2018

Indian Penal Code, 1860—Ss.302 and 304 Part I—Fight on spur of moment—Case of accused does not fall under Section 302 IPC—Held, act of accused not premeditated—Since accused used farsis, jellis while attacking complainant party, they had intention to kill family members of complainant—Thus, case would fall under Section 304 Part I, IPC—Appeal partly allowed.

Held that, Hardwari Lal had given *farsi* blow on the head of the deceased. Vijay had given *farsi* blow on the head of deceased. Ramesh had given *jelli* blow on the chest of deceased. Hazari had given *lathi* blow on backside of palm of right hand of deceased. Balbir had given *farsi* blow on the nose of the deceased. Sumit had given *farsi* blow on the left shoulder of Shish Ram. Bhup Singh had given *farsi* blow on the forehead of deceased. Suraj Bhan had given *farsi* blow on the head of PW-2 Beer Singh. Sumit and Bimla had caused injuries to Shish Ram. The appellants had used *farsis* and *lathis* as weapon of offence. The act of the appellants is not premeditated. The fight has taken place on the spot on the spur of moment to take over possession of the land. They had no information that the complainant side would be present on the spot. Only PW-1 Kanwar Singh was present on the spot. He informed his father and uncles, who reached on the spot. Thereafter the appellants attacked the complainant party which led to the death of Rura Ram. The case of the appellants would not fall under Section 302 IPC.

(Para 33)

Further held that, since the appellants had used *farsis*, *jellis* while attacking the complainant party, they had intention to kill the family members of the complainant. They came on tractor armed with *farsis* and *lathis*. Thus the case would fall under Section 304 Part-I IPC.

(Para 41)*Further held that*, appeal is partly allowed. The conviction of the appellants is altered from Section 302 IPC to Section 304 Part I IPC. The conviction and sentence of the appellants qua remaining offences is upheld. The appellants are on bail. They are ordered to surrender before the Court to hear them on the quantum of

sentence.

(Para 42)

R.S.Cheema, Senior Advocate with
Sumanjeet Kaur, Advocate
for the appellants
in CRA-D-455-DB-2004 &
for respondents no.1 to 12
in CRR-1414-2004.

B.S.Saroha, Advocate
for the petitioner
in CRR-1414-2004.

Vishal Garg, Addl.A.G. Haryana.

RAJIV SHARMA, J.

(1) Since common questions of law and facts are involved in the aforesaid appeal and revision petition, therefore these are taken up together and disposed of by a common judgment.

(2) This appeal has been instituted against the judgment and order dated 31.03.2004 and 02.04.2004 rendered by the Additional Sessions Judge, Rewari, in Sessions case no.58 of 2002 whereby the appellants were charged with and tried for offences punishable under Sections 148, 149, 323, 324, 326, 302 Indian Penal Code (in short 'IPC'). The appellants were convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.250/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days for offence punishable under Section 148 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month for offence punishable under Sections 323/149 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months for offence punishable under Sections 324/149 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of two years and six months and to pay a fine of Rs.1500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months for offence punishable under Sections

325/149 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of four months for offence punishable under Sections 326/149 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months for offence punishable under Sections 302/149 IPC. All the sentences were ordered to run concurrently.

(3) The complainant has also filed criminal revision no.1414 of 2004 for enhancement of sentence and compensation.

(4) The case of the prosecution in a nutshell is that on 06.06.2001 at about 1.30 P.M. when the police party headed by SI/SHO was present at Sir Chhotu Ram Chowk, Bawal, in connection with the general patrolling, complainant Kanwar Singh got recorded his statement. According to averments in the complaint, his father had two brothers namely Rura Ram and Budh Ram and one sister Smt.Sharbati. Sharbati was married in village Mau. She had died. The land owned by Smt.Sharbati was inherited by her two sons Raja Ram and Mauji Ram. They sold this land measuring 23 kanals 8 marlas on 21.05.2001 to Suraj Bhan, Balbir and Ramesh etc. residents of their village. This land was not partitioned. His father Shish Ram used to cultivate the entire joint khewat. They had also installed a tubewell. The land of Suraj Bhan etc. abuts their tubewell. About 5 days prior to the occurrence, they had sown *Guwar* crop in two acres of land. On 06.06.2001 at about 8.00 A.M., the accused persons armed with *farsis* came on the spot. They were also armed with *jellis* and *lathis*. They started to destroy the *Guwar* crop. Kanwar Singh went to his house. He informed his father and uncles. His father and uncles came on the spot. Rura Ram requested the appellants not to destroy the crop. Appellant Harwari Lal gave a *farsi* blow on the head of Rura Ram. Bhup Singh gave a *farsi* blow on the forehead of Rura Ram. Balbir gave a *farsi* blow on the nose of Rura Ram. Vijay gave a *farsi* blow on the middle of the head of Rura Ram. Rura Ram ran towards Shish Ram and Budh Ram to save himself. Rura Ram collapsed. Sumit inflicted *farsi* blow on the left hand of Shish Ram. Ramesh inflicted *jelli* blow on the chest of Rura Ram. Hazari gave a *lathi* blow on the wrist of the left hand of fallen Rura Ram. His family members reached at the spot after hearing the noise. Many villagers also assembled on the spot. The appellants fled away from the spot. The injured were taken to the hospital. They were

examined by PW-7 Dr. Ashok Kumar. He proved the medical report. The appellants were arrested. They made disclosure statements. The weapons of offences were recovered at their instances. The dead body of Rura Ram was sent for post-mortem examination. The FIR was registered. The matter was investigated and challan was put in the Court after completing all the codal formalities.

(5) Prosecution examined a number of witnesses. The statement of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants have also produced defence witnesses. According to them, they had purchased the land in accordance with law. The appellants were convicted and sentenced as noticed hereinabove. Hence this appeal.

(6) Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

(7) Learned counsel appearing on behalf of the State has supported the judgment and order dated 31.03.2004 and 02.04.2004.

(8) Learned counsel for the complainant has also argued that sentence be enhanced and his client be paid compensation.

(9) We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

(10) PW-1 Kanwar Singh testified that his father had two brothers and one sister. His aunt was married at village Mau. She died. Her name was Sharbati. The land was inherited by her sons Mauji Ram and Raja Ram. They sold the land to Suraj Bhan, Balbir, Ramesh etc. They had joint land. His father used to cultivate the whole land. They had installed a tubewell. The possession of share of land which came to the share of Mauji Ram and Raja Ram was never handed over to Suraj Bhan etc. They had sown *guwar* crop in the land abutting tubewell. At about 8.00 A.M. on 06.06.2001 he was present in the fields. The appellants reached the spot armed with *farsis*, *lathis* and *jellis*. They ploughed their field. They tried to take forcible possession of the field. He informed his father and uncles about this incident. His uncles Rura Ram, Budh Ram and father Shish Ram came at the spot. He also accompanied them. Rura Ram requested the appellants not to take forcible possession till their shares were determined. Hardwari inflicted a *farsi* blow on the head of his uncle Rura Ram. Bhoop Singh gave a *farsi* blow on the forehead of Rura Ram. Balbir Singh gave a *farsi* blow on the nose of Rura Ram. Vijay inflicted *farsi* blow in the middle of

head of Rura Ram. Rura Ram tried to escape himself. He was chased and beaten up again. His other family members were also injured. They were taken to hospital. In cross-examination he has admitted that at the time of execution of sale deed, Raja Ram and Mauji Ram had handed over the possession of the land to vendees. He could not tell the age of deceased Rura Ram. He could not also tell the age of his father.

(11) PW-2 Beer Singh testified that he was present in his home. He reached the spot after hearing the noise. Hardwari, Balbir, Ramesh etc. were ploughing the field of Shish Ram. Kanwar Singh, Rura Ram, Shish Ram were also present. He had seen that Rura Ram had sustained injuries on his head and the same were inflicted by the accused persons. Rura Ram tried to escape. He saw Vijay inflicting *farsi* blow on the head of Rura Ram. He tried to rescue Rura Ram. Suraj Bhan gave a *farsi* blow on his head. He became unconscious. In cross-examination, he deposed that he could not tell who had started fight. He also could not tell that who had caused injuries to the person of deceased except one caused by Vijay Singh.

(12) PW-3 Suresh testified that his father had two brothers and one sister namely Sharbati. He has corroborated the statement of PW-1 Kanwar Singh about the manner in which the appellants had inflicted various injuries to Rura Ram and his family members. In his cross-examination, he had admitted that the land in dispute had fallen in the share of Raja Ram and Mauji Ram, his cousins. He also deposed that they had normal relations with the accused persons prior to the incident.

(13) PW-6 Shish Ram deposed that after the death of his sister Sharbati, the property was inherited by her two sons Raja Ram and Mauji Ram. The total land which came to their share was 23 kanals and 8 marlas. Raja Ram and Mauji Ram sold this land to Suraj Bhan etc. The appellants reached the spot and gave fatal blow to Rura Ram. He also narrated the manner in which the complainant party was given beatings. He has admitted in his cross-examination that in the revenue record the possession and mutation was recorded in the name of Sharbati and after her death, in the name of his two sons Raja Ram and Mauji Ram. He also admitted that Rura Ram had already disposed of his land before the occurrence. He had also sold 2/3 killa of land out of the khewat.

(14) PW-7 Dr. Ashok Kumar had medically examined the injured Lado. He noticed the following injuries on the body of Lado:-

1. "An incised wound of size 6 x 1.5 cm clean cut margin,

sickle shaped, it was bony deep. Injury was bleeding. It was located on the left side of the scalp.

2. Lacerated wound of size 5 x 1.5 cm irregular shape, muscular deep, bleeding was there. It was bony deep and was located on the middle of scalp.

3. Bruise of size 8 X 2 cms lenear, vertically placed, reddish in colour, present over the right side of back, in the middle of back.

4. Bruise of size 6 x 2 cm leniar, vertically placed, reddish in colour, present on the left side of the back, in the middle.

5. Complaint of pain over the left side of the chest in the middle. Tenderness was present.”

(15) He also medically examined Chhano and noticed the following injuries on her person:-

1. “Lacerated wound of size 1 x 1.5 cm irregular shape, muscular deep, bleeding and it was on the left side of the scalp.

2. Lacerated wound of size 1 x 1 cm irregular shape, muscular deep, bleeding and it was on the right side of the scalp.

3. Lacerated wound of size 1 x 1.2 cm irregular shape, muscular deep, bleeding and it was on the left scapular area.

4. Incised wound of size 3 x 1 cm obliquely placed with regular margins, bony deep, with bleedings over left index finger.

5. Bruise of size 4 x 2 cm lenear obliquely placed reddish in colour, tenderness was present and it was present on the lateral side of left thigh.”

(16) He also medically examined Bir Singh and noticed the following injuries on his person:-

“1. Incised wound of size 4 x 1 cm leniar in shape, clear margins, muscular deep, with bleeding, present over the middle of scalp.

2. Swelling of size 2 x 1 cm irregular shape, with tenderness present over the lateral side of right side of scalp over the temporal area.”

(17) He also medically examined Suresh and noticed the following injuries on his person:-

1. “Lacerated wound of size 3 x 1 cm, irregular margin,

- muscular deep, with bleeding present over middle of the scalp.
2. Lacerated wound of size 4 x 1 cm, leniar with irregular margin, muscular deep, with bleeding present over the middle of the scalp.
3. Defuse swelling with tenderness, present over the medial and dorsum of left forearm, near wrist joint.
4. Bruise of size 8 x 6 cm, reddish colour, with tenderness present over the left scapular area.
5. Bruise of size 5 x 2 cm reddish in colour with tenderness over the left shoulder joint.
6. Bruise of size 8 x 2 cms, obliquely placed reddish in colour with tenderness over left side of back at the level T-8 to 10.
7. Bruise of size 6 x 2 cms obliquely placed, reddish in colour with tenderness over the left side of back at the level of T-12 to L-2.
8. Complaint of pain with tenderness over the left side of foot.”

(18) He also medically examined Bharpai and noticed the following injuries on her person:-

- “1. Complaint of pain with tenderness over the lower part of chest on left side and upper part of abdomen.
2. Bruise of size 4 x 2 cms leniar, reddish in colour over left side of the hip.”

(19) He also medically examined Shish Ram and noticed the following injuries on his person:-

1. “Abrasion of 1 x 1 cm superficial with bleeding present over right side of face.
2. Abrasion of 1 x 1 cm superficial with bleeding over right shoulder.
3. Lacerated wound of size 3 x 1 cm irregular shape, muscular deep with bleeding over the right forearm on the dorsum.
4. Lacerated wound of size 3 x 1 cm irregular shape, muscular deep, with bleeding over the right forearm on the dorsum.
5. Abrasion of size 6 x 1 cm with bleeding, superficial over the dorum of left forearm.
6. Lacerated wound of size 2 x 1 cm irregular shape, muscular deep, with bleeding present over palmer side of left hand.
7. Defuse swelling with tenderness present over the dorsum of left hand near the base of index finger.”

(20) He also medically examined Sube Singh and noticed the following injuries on his person:-

- “1. Lacerated wound of size 2 x 1 cm, irregular shape, muscular deep, with bleeding present on the anterior side of right leg in the middle.
2. Bruise of size 3 x 1 cm reddish, irregular shape present over anterior side of right arm in upper part.”

(21) He also medically examined Kirpa and noticed the following injuries on her person:-

- “1. Lacerated wound of size 2 x 1 cm, irregular shape, muscular deep with bleeding over the right side of scalp.
2. Bruise of size 3 x 2 cm irregular shape, reddish in colour with tenderness present over the right shoulder joint.
3. Bruise of size 2 x 1 cm irregular shape, reddish in colour with tenderness present over right forearm on the dorsum.”

(22) He also medically examined Budh Ram and noticed the following injuries on his person:-

- “1. Lacerated wound with swelling size 3 x 1 cm, irregular shape with bleeding present over the dorsum of right hand.
2. Bruise of size 3 x 1.5 cm leniar reddish in colour with tenderness present over the left shoulder.”

(23) He also conducted post-mortem examination on the body of Rura Ram. The cause of death according to his opinion was due to coma due to head injury. All the injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. The probable duration between injury and death was few minutes and between death and post-mortem examination as 6 to 24 hours.

(24) In cross-examination, he deposed that he also medically examined Bedo wife of Balbir Singh. He noticed following injuries on her person:-

1. Defuse swelling of a regular shape with tenderness present over the middle of right forearm.

(25) He also medically examined Saroj and noticed the following injuries on her person:-

1. “Lacerated wound of size 3 x 1.5 cm irregular shape with surrounding swelling, muscular deep with bleeding present over posterior side of scalp in the middle.

2. Defuse swelling with abrasion of size 2 x 1.5 cm with fresh bleeding present over medial side of right forearm.
3. Defuse swelling with tenderness was present over the dorsum of right foot.
4. Bruise of size 4 x 2 cm reddish coloured with tenderness present over lateral side of left thigh.”

(26) He also medically examined Bimla and noticed the following injuries on her person:-

1. “Swelling of size 3x2.5 cm irregular shape with tenderness was present over the dorsum of right forearm.
2. Bruise of size 6x2 cm leniar, reddish in colour with tenderness was present over the left side of the back at lumbar area.
3. Bruise of size 4x2 cm, leniar reddish colour with tenderness was present over back on the left side at the lumbar area.
4. Bruise of size 3 x 2 cm linear reddish in colour present over the dorsum of left leg in the middle.”

(27) He also medically examined Suraj Bhan and noticed the following injuries on his person:-

- “1. Lacerated wound of size 3x1 cm irregular shape, muscular deep with bleeding present over the middle of scalp.
2. Bruise of size 4x1 cm irregular shape, reddish in colour, tender present over the left side of the left shoulder.”

(28) He also medically examined Sudesh and noticed the following injuries on her person:-

- “1. Amputated distal part of left middle finger, muscular deep associated with part of nail. Bleeding was present.
2. Lacerated wound of size 1.5 cm x 1 cm irregular shape, muscular deep with bleeding present over ventral side of left forearm in the middle.”

(29) PW-10 Sat Narain brought vasika register pertaining to year 2001. As per entry at serial no.178 dated 21.05.2001 of the register, Raja Ram and Mauji Ram vendors had sold the land in question for Rs.4,24,000/- in favour of Suraj Bhan, Balbir, Rajesh, Vijay Kumar, Mukthair and Lila Ram. He proved the sale deed Ex.PY.

(30) PW-12 Krishan was also one of the investigating officers. He obtained the copy of the sale deed Ex.P5 from the office of Sub

Registrar, Bawal. According to him, 4 accused surrendered in the Court of Illaqa Magistrate on 27.09.2001. He arrested them.

(31) PW-14 HC Bhoop Singh deposed that pursuant to the disclosure statement dated 08.06.2001, accused Suraj Bhan took the police party to the fields. He got recovered a *farsi*. Hardwari also got recovered a *farsi*. Ramesh got recovered a *jelli* Ex.P3. Vijay also got recovered a *farsi* Ex.P4. All the recovered articles were seized. Hardwari made a disclosure statement on the basis of which a *lathi* was recovered. Lila Ram also got recovered tractor. Hazari also got recovered a *lathi* from the field of Hardwari on the basis of his disclosure statement.

(32) PW-15 Prithvi Singh had interrogated the appellants on the basis of which disclosure statements were recorded and weapons of offence were recovered.

(33) PW-17 Rajender Singh prepared the inquest report. He took the injured to the hospital and recorded their statements. According to disclosure statement, Suraj Bhan got *farsi* recovered from the field. Vijay also got *farsi* recovered from his workshop. Similarly Ramesh also made a disclosure statement on the basis of which *jelli* was recovered. At the instance of Hardwari, *farsi* was recovered.

(34) DW-1 Chand Ram deposed that he was working as cleaner with one Baliya Ram. They loaded the vehicle at Azadpur vegetable market at 12.00 AM (night) on the same day. They reached at Hisar at about 4.00 A.M. on 06.06.2001. It took about two hours to get the vehicle unloaded.

(35) DW-2 Hazari deposed that Bhoop Singh met with him at the residence of his brother Udai Ram on 05.06.2001 at about 5.00 P.M. He also saw him in their village on 06.06.2001.

(36) The case of prosecution is that the appellants had forcibly ploughed the field. PW-1 Kanwar Singh informed this incident to his father and uncles. His father Shish Ram and uncles Rura Ram and Budh Ram reached at the spot. His uncle Rura Ram asked the appellants not to take forcible possession of the field. Thereafter fight ensued. Rura Ram was given *farsi* blow on the head and other family members also received injuries. Rura Ram succumbed to injuries. This incident was seen by PW-2 Beer Singh, PW-3 Suresh, PW-6 Shish Ram. They were medically examined by PW-7 Dr. Ashok Kumar. Post-mortem examination on the body of Rura Ram was also conducted. As per PW-7 Dr. Ashok Kumar, the cause of death was due to coma as a result

of head injury. The injuries were ante mortem in nature. The complainant party have received 42 injuries and 8 fractures. There was one fracture of Bedo as per medical report.

(37) The genesis of the fight is the piece of land. According to the complainant they were cultivating the land. However the fact of the matter is that Sharbati died. The land was inherited by Mauji Ram and Raja Ram. They had sold the land to Suraj Bhan, Balbir and Ramesh vide sale deed Ex.PY. According to the contents of the sale deed, the possession was also handed over to the vendees. This fact has already been admitted by PW-1 Kanwar Singh in his cross-examination that at the time of execution of sale deed, Raja Ram and Mauji Ram had handed over the possession of the field to the vendees. PW-3 Suresh in his cross-examination has admitted that the land where the incident had taken place fell in the share of Raja Ram and Mauji Ram (his cousins). The relations between the appellants and him was cordial. PW-6 Shish Ram has admitted in his cross-examination that the mutation and possession was recorded in the name of Sharbati and after her death, in the name of her two sons Raja Ram and Mauji Ram. They came to know about the sale of land only after the execution of the sale deed. He also admitted in the cross-examination that Rura Ram had already disposed of his land before the occurrence.

(38) Learned counsel appearing on behalf of the appellants has vehemently argued that it was a free fight. The fight has ensued due to sudden and grave provocation. His clients had a right to defend the possession of their land. The appellants have also received injuries.

(39) The fact of the matter is that Hardwari Lal had given *farsi* blow on the head of the deceased. Vijay had given *farsi* blow on the head of deceased. Ramesh had given *jelli* blow on the chest of deceased. Hazari had given *lathi* blow on backside of palm of right hand of deceased. Balbir had given *farsi* blow on the nose of the deceased. Sumit had given *farsi* blow on the left shoulder of Shish Ram. Bhup Singh had given *farsi* blow on the forehead of deceased. Suraj Bhan had given *farsi* blow on the head of PW- 2 Beer Singh. Sumit and Bimla had caused injuries to Shish Ram. The appellants had used *farsis* and *lathis* as weapon of offence. The act of the appellants is not premeditated. The fight has taken place on the spot on the spur of moment to take over possession of the land. They had no information that the complainant side would be present on the spot. Only PW-1

Kanwar Singh was present on the spot. He informed his father and uncles, who reached on the spot. Thereafter the appellants attacked the complainant party which led to the death of Rura Ram. The case of the appellants would not fall under Section 302 IPC.

(40) Learned counsel appearing on behalf of the appellants have vehemently argued that the case falls under Section 304 Part II IPC.

(41) However, since the appellants had used *farsis*, *jellis* while attacking the complainant party, they had intention to kill the family members of the complainant. They came on tractor armed with *farsis* and *lathis*. Thus the case would fall under Section 304 Part I IPC.

(42) Accordingly the appeal is partly allowed. The conviction of the appellants is altered from Section 302 IPC to Section 304 Part I IPC. The conviction and sentence of the appellants qua remaining offences is upheld. The appellants are on bail. They are ordered to surrender before the Court to hear them on the quantum of sentence.

(43) List on 14.12.2018 for hearing on quantum of sentence.

(44) In view of the reasons recorded hereinabove, the criminal revision filed by the petitioner (complainant) for enhancement of sentence and compensation is dismissed.

Angel Sharma