

## Sham Sunder vs Puran And Anr on 21 September, 1990

**Equivalent citations:** 1991 AIR, 8 1990 SCR SUPL. (1) 662, AIR 1991 SUPREME COURT 8, 1990 (19) DRJ 338, 1990 CRIAPPR(SC) 364, 1990 (4) SCC 731, 1991 (1) SCC(SUPP) 68, 1990 (2) UJ (SC) 695, 1991 (5) JT 19, 1991 UP CRIR 102, (1990) 2 RECCRIR 611, (1990) 2 ALLCRILR 302, 1991 SCC(CRI) 38, 1990 (4) JT 165, (1991) EASTCRIC 155, (1991) 1 CRIMES 165, (1991) SC CR R 131, (1991) MAD LJ(CRI) 31, (1991) CRICJ 94, (1991) 1 CRILC 468, (1990) 2 CHANDCRIC 115, (1991) 1 ALLCRILR 24, (1991) 1 CURLJ(CCR) 563

**Author: M. Fathima Beevi**

**Bench: M. Fathima Beevi, S.R. Pandian**

PETITIONER:

SHAM SUNDER

Vs.

RESPONDENT:

PURAN AND ANR.

DATE OF JUDGMENT 21/09/1990

BENCH:

FATHIMA BEEVI, M. (J)

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FATHIMA BEEVI, M. (J)

PANDIAN, S.R. (J)

CITATION:

1991 AIR 8 1990 SCR Supl. (1) 662

1990 SCC (4) 731 JT 1990 (4) 165

1990 SCALE (2) 612

ACT:

Indian Penal Code, 1860: Sections 302, 304 Part-I--Conviction --Life imprisonment--Second appeal--Converted to one under section 304 Part I and sentence reduced--No particular reasons given--Validity of the conviction--Sentence--Whether adequate.

Sentence: Awarding punishment--Relevant factors to be taken into account--Measure of punishment to be proportionate to gravity of offence.

HEADNOTE:

Respondent 1 is the son of Respondent No. 2. Including Respondent No. 1 Respondent No. 2 had 4 sons. Respondent No. 2 owned a sugarcane field adjoining the wheat field of one P. One of the sons of Respondent-2 had burnt sugarcane patties causing damage to the wheat crop of P, against which P protested before the respondents. The protest was turned down. Shortly thereafter the respondent and the family members reached the house of P. They were all armed. Respondents attacked P and he fell down. On the way to hospital P died. Most of the accused as well as the family members of P sustained injuries. On a complaint, F.I.R. was registered. After investigation, Prosecution filed a case before the Additional Sessions Judge. Two eye-witnesses were produced by the prosecution. They were relatives of the deceased and there was no independent witness.

The Additional District Judge convicted the respondent for offences under sections 302 IPC and 323, 325 read with 149 IPC. Both were sentenced to imprisonment for life and a fine Rs.500 each under section 302 IPC. They were also sentenced to rigorous imprisonment ranging from six months to one year for the other offences. The other accused were convicted for minor offences and released on probation. The respondent appealed against the conviction and sentence. The High Court acquitted the respondents of the major charge under section 302IPC and recorded the conviction under section 304 Part-I reducing the sentence of life imprisonment to the term already undergone, and enhanced the sentence of fine. No appeal was preferred by the State. However, the complaint filed an appeal by special leave.

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Disposing the appeal, this Court,

HELD 1. There is the evidence of only the interested witnesses who have the tendency to exaggerate and involve even innocent persons. Most of the accused have sustained injuries and in explaining the same, the prosecution witnesses have not come forward with a truthful account. In the melee that ensued on account of the aggressive attitude of the respondents and other members of the family who participated and used force against P and his associates. in all probabilities in the exercise of right of private defence. However, the circumstances did not warrant the causing of death and the respondents must be deemed to have exceeded their right. The nature of the injuries indicate that they were sufficient in the ordinary course of nature to cause death and had been inflicted intentionally. In such circumstances, the act of the respondents squarely fails under section 304 Part-I, IPC. The High Court has not given any cogent or clear reasons for its conclusion and whatever reason has been stated is erroneous. It is on the basis of the statement given in the course of investigation by a person who was not examined in the case that the High Court has drawn its conclusion. However. the conviction under

section 304 Part-I, IPC is maintained.

2. The High Court has reduced the sentence to the term of imprisonment already undergone, and enhanced the fine. The respondents have undergone imprisonment only for a short period of less than six months and, in a grave crime like this, the sentence awarded is rather inadequate. No particular reason has been given by the High Court for awarding such sentence. The Court in fixing the punishment for any particular crime should take into consideration the nature of the offence, the circumstances in which it was committed, and the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. The sentence is enhanced to one of rigorous imprisonment for a period of five years.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 195 of 1984.

From the Judgment and Order dated 30.11. 1982 of the Punjab & Haryana High Court in CrI. Appeal No. 425 D.B./1982.

O.P. Soni, Ms. Kamlesh Datta and S.K. Sabharwal for the Appellant.

U.R. Lalit and Uma Datta for the Respondents. Mahabir Singh for the State of Haryana.

The Judgment of the Court was delivered by FATHIMA BEEVI, J. The respondents Puran and Tara Chand along with Ved, Balwan, Dhapan, Jagdish and Lal Chand were tried before the Additional Sessions Judge, Sonapat, for the murder of one Partap Singh and causing injuries to others. The learned Judge by judgment dated 18.5. 1972 convicted these respondents for offences under section 302, I.P.C., and sections 323,325 read with 149, I.P.C. They were sentenced to undergo imprisonment for life and ordered to pay a sum of Rs.500 each under section 302, I.P.C., R.I. for one year under section 148, I.P.C., R.I. for one year under section 325 and R.I. for six months under section 323, I.P.C. The other accused were convicted for the minor offences and released on probation under sections 360/36.1, Cr. P.C. The respondents appealed against the conviction and sentence. The High Court by the impugned judgment dated 30.11. 1982 disposed of the appeal thus:

"Admittedly there was no prior enmity between the parties. The quarrel arose out of a very insignificant matter like the burning of dry sugarcane leaves on the common boundary of the fields of the two parties. The ensuing altercation would probably have been forgotten had Partap Singh deceased not died. Even when there is an altercation arising out of a minor incident there is some tendency on the part of the prosecution witness to exaggerate matters. The three-eye-witnesses have of course fully supported the prosecution case but the investigating officer recorded statement

of one Paras Ram at the time of making the inquest report which gives a somewhat different version. The learned trial judge has himself found that the object of the unlawful assembly was not to commit the murder of the deceased. It is precisely for this reason that five accused persons have been released on probation and only two accused, i.e., Puran and Tara Chand appellants, have been convicted under section 302, I.P.C. We do not propose to go into the details of the controversy and in the peculiar circumstances of this case convert the conviction of Puran and Tara Chand appellants into one under section 304. Part I, 1. P.C., on the basis that in view of the statement made by Paras Ram at the time when the investigating officer made the inquest report a somewhat different version was given. This Paras Ram was not produced as a witness by the prosecution. Since there was no prior enmity between the parties, we order that sentence already undergone by Puran and Tara Chand appellants will meet the ends of justice. They are, however, ordered to pay a fine of Rs. 12,000 each. In default of payment of this fine, the defaulter is ordered to undergo rigorous imprisonment for five years. The sentences of imprisonment imposed upon Puran and Tara Chand appellants on other counts are also reduced to that already undergone by them. The total fine, if realised, shall be paid to the next heirs of Partap Singh deceased as compensation."

(emphasis supplied) The High Court has, by this Cryptic order, acquitted respondents of the major charge under section 302, I.P.C., and recorded their conviction under section 304 Part-I reducing the sentence of life imprisonment to a term of imprisonment already undergone while enhancing the sentence of fine. The State has not preferred any appeal against the order of acquittal or reduction of sentence. The respondents, it appears, have accepted the judgment. Sham Sunder, the de facto complainant, however, being aggrieved approached this Court under Article 136 of the Constitution. This Court has granted special leave to appeal.

The High Court, exercising power under section 386, Cr. P.C., in an appeal from a conviction may reverse the finding and sentence and acquit the accused or alter the finding maintaining the sentence or with or without altering the finding after the nature or the extent or the nature and extent of the sentence but not so as to enhance the same. The powers of the High Court in dealing with the evidence are as wide as that of the trial Court. As the final court of facts, the High Court has also duty to examine the evidence and arrive at its own conclusion on the entire material on record as to the guilt or otherwise of the appellants before it.

It is true that the High Court is entitled to reappraise the evidence in the case. It is also true that under Article

136. the Supreme Court does not ordinarily reappraise the evidence for itself for determining whether or not the High Court has come to a correct conclusion on facts but where the High Court has completely missed the real point requiring determination and has also on erroneous grounds discredited the evidence and has further failed to consider the fact that on account of long standing enmity between the parties, there is a tendency to involve innocent persons and to exaggerate and lead pre-judged evidence in regard to the occurrence, the Supreme Court would be justified in going

into the evidence for the purpose of satisfying itself that the grave injustice has not resulted in the case.

We have extracted the material portion of the judgment of the High Court to indicate that the line of approach adopted by the High Court is wholly wrong. There is no discussion of the evidence much less any reasoning. The respondents herein along with five others had been found guilty by the trial court accepting the testimony of the two eye-witnesses and other material evidence on record. A brief resume of the facts is necessary. Lal Chand and Tara Chand are brothers. Ved Singh, Puran, Balwan and Ishwar are the sons of Tara Chand and Dhapan is his wife. Jagdish is the son of Lal Chand. Partap and Bhim Singh are brothers. Sham Sunder is the son of Bhim Singh. Roshan is the son of Partap. Tara Chand owns sugarcane field adjoining the wheat field of Partap. On 10.3. 1981 in the morning, Ved Singh burned sugarcane patties causing damage to the wheat crop. The protest raised by Roshan was not heeded. Bhim Singh arrived at the scene and altercation ensued. Partap later raised protest before Tara Chand. His grievance was not redressed. At about 6.00 P.M. Partap raised the protest before Puran who also turned down the same. Shortly thereafter Puran and the other members of his family including his wife, brother and their children all numbering about eight reached in front of the house of Partap. They were armed and attacked Partap. The allegation is that the respondents Tara Chand and Puran had attacked Partap with jailies, first they gave jailies blows from the prong side in the chest and when Partap fell down, they gave jailies blows like lathi on his head, back and shoulder. Partap died on his way to the hospital. It is further alleged that in the course of the incident Lal Chand and Jagdish caused injuries to Roshan; Ishwar caused injuries to Dhapan wife of Partap; Puran, Ved, Balwan caused injuries to Sham Sunder. It has come out in evidence that Ved, Dhapan, Lal Chand, Puran and Ishwar also received injuries in the course of the incident. Sham Sunder and Roshan are the two eye-witnesses, besides Smt. Dhapan the wife of deceased Partap. There had been no independent witness. Sham Sunder and Roshan said that they had caused injuries to the members of the opposite party in self-defence. They do not however state in what circumstances they had to use force. The evidence does not disclose the genesis of the occurrence; how it developed and culminated in fatal injuries to Partap. There had been no enmity between the two groups. The immediate provocation for the quarrel is the damage to the wheat crops. It is admitted that Partap raised his protest right from the morning till the arrival of Puran who was employee of the Medical College, Rohtak. The prosecution has, it appears, given a twist when they say that at 6.00 P.M. Partap met Puran who turned down his request and went home and after 15 minutes all the members of his family including the womenfolk reached the house of Partap and started the assault. It is significant to note that the women and even the minor children of both families were present and received injuries recording their presence at the place. It would therefore appear that it was a continuous transaction and when Partap persistently raises the protest and started abusing Puran, other members of his household had come out. The quarrel had taken a serious turn and in the course of further development fatal injuries had been caused to Partap. The plea of the respondents was that they did not cause any injury, that there was a Panchayat where a large crowd assembled and there had been brick-battling and altercation. The plea of private defence was not specifically set up. However, if there are material in evidence to indicate that the incident could not have happened in the manner spoken to by the eye-witnesses and in all probability the respondents had used the force exercising the right of private defence, then accused are entitled to the benefit thereof. Whether the respondents have in such circumstances exceeded their right and

are justified in causing death, has necessarily to be considered. In the absence of a full discussion of the evidence by the High Court, we have been constrained to consider the materials on record. We have seen that there is the evidence of only the interested witnesses who have the tendency to exaggerate and involve even innocent persons. We have seen that most of the accused have sustained injuries and in explaining the same, the prosecution witnesses have not come forward with a truthful account. We are led to draw the inference that in the melee and ensued on account of the aggressive attitude of Partap, the respondents and other members of the family participated and used the force against Partap and his associates in all probabilities in the exercise of right of private defence. However, the circumstances did not warrant the causing of death and the respondents must be deemed to have exceeded their- right. The nature of the injuries indi-

cate that injuries sufficient in the ordinary course of nature to cause death had been inflicted intentionally. In such circumstances., the act of the respondents squarely falls under section 304 Part-I, EP.C. While we agree with the conclusion arrived at by the High Court, we record that the High Court has not given any cogent or clear reasons for its conclusion and whatever reason has been stated is erro- neous. It is on the basis of the statement given in the course of investigation by a person who was not examined in the case that the High Court has drawn its conclusion. We, however, maintain the conviction under section 304 Part-I, I.P.C.

The High Court has reduced the sentence to the term of imprisonment already undergone while enhancing the fine. It is pointed out that the respondents have undergone only imprisonment for a short period of less than six months and, in a grave crime like this, the sentence awarded is rather inadequate. No particular reason has been given by the High Court for awarding such sentence. The court in fixing the punishment for any particular crime should take into consid- eration the nature of the offence, the circumstances in which it was committed- and the degree of deliberation shown by the offender. The measure of punishment should be propor- tionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of opinion that to meet the ends of justice, the sentence has to be enhanced.

In the result, we maintain the conviction of the re- spondents but enhance the sentence to one of rigorous im- prisonment for a period of five years. The respondents should surrender to the bail to undergo the unexpired por- tion of the sentence. The fine, if paid, shall be refunded to the respondents 1 and 2.

The appeal is disposed of as above.

G.N.  
Of.

Appeal disposed