Supreme Court of India
Wassan Singh vs The State Of Punjab on 28 November, 1995
Equivalent citations: 1996 SCC (1) 458, JT 1995 (8) 434
Author: M S.B.
Bench: Majmudar S.B. (J)

PETITIONER:
WASSAN SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT28/11/1995

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
MUKHERJEE M.K. (J)

CITATION:
1996 SCC (1) 458 JT 1995 (8) 434
1995 SCALE (6)653

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B. Majmudar. J.

Appellant, Wassan Singh has brought in challenge his conviction and sentence as imposed upon him by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No.637-DB of 1981. While allowing his appeal against conviction under Section 302 Indian Penal Code (in short `IPC') the High Court has convicted him for the lesser offence under Section 304 Part I, IPC and sentenced him to undergo rigorous imprisonment for 10 years. The appellant's grievance is that he is not liable to be convicted even under the said provision.

In order to appreciate the grievance of the appellant a few relevant facts leading to this appeal deserve to be noted at the outset.

BACKGROUND FACTS :

The appellant who was accused no.1 along with two other accused Piara Singh and Charan Singh were charged with offences under Sections 302, 307, 325, 324, 323 read with Section 34 of the IPC on the allegation that on 11th January 1981 at about 6.00 p.m. in the area of village Nizamwala, in furtherance of their common intention which was to commit the murder of one lady Smt. Bholan, the appellant did commit murder of the aforesaid Mst. Bholan by intentionally causing her death whereas the other two accused committed offences under Section 302 read with Section 34 of the IPC. Accused Piara Singh was also charged with an offence under Section 307 IPC for having fired a gun shot at one Hazara Singh with such intention and under such circumstances that if by that act he had caused the death of Hazara Singh he would have been guilty of murder while the appellant was charged with an offence under Section 307 read with Section 34 IPC. It was also alleged that at the same time and place in furtherance of their common intention accused Charan Singh Voluntarily caused hurt to Hazara Singh by means of a `gandasa', which is an instrument of cutting, and thereby committed an offence punishable under Section 324 IPC whereas appellant and Piara Singh accused were alleged to have committed offences punishable under Section 324 read with Section 34 of the IPC. They were similarly charged for an offence for having caused hurt to one Bachan Singh by means of a `gandasa', which is an instrument of cutting. Appellant was also charged along with other co-accused for having committed an offence under Section 325 read with Section 34 of the IPC for having voluntarily caused grievous hurt to one Jagir Singh. Appellant was lastly charged with an offence under Section 27 of the Arms Act on the allegation that on the same date, time and place he had in his possession a single barreled 12 bore gun with intent to use the same for an unlawful purpose, that is, to commit the murder of Mst. Bholan and that he actually used it for the above-said purpose thereby committing an offence under Section 325 of the IPC.

The prosecution story briefly is to the effect that accused Charan Singh is the sister's son of Piara Singh accused and the appellant who belongs to village Baghewala, is their partyman. That prosecution witnesses, Bachan Singh and Hazara Singh, are the real brothers and Mst. Bholan deceased was the wife of Hazara Singh and Jagir Singh is the nephew of Bachan Singh, Piara Singh is the cousin of Hazara Singh and Jagir Singh is the nephew of Hazara Singh. That PW Bachan Singh was to celebrate Lohri festival in connection with the birth of his grand-child. He went to Jagir Singh at village Akku Masteke on 10th January 1981 to request him (Jagir Singh) to join the celebration of Lohri festival at his house. On 11th January 1981 at about 9.00 a.m. Jagir Singh came to the house of Bachan Singh and remained there upto 6.00 p.m. in connection with the distribution of sweets on the occasion of the birth of his (Bachan Singh's) grand- child. At about 6.00 p.m. Hazara Singh, his wife Mst. Bholan, his brother Bachan Singh came out of the house along with Jagir Singh to see the letter off. They were standing in front of the gate of his (Hazara Singh's) house. At that time electric light which was fitted at his house, was illuminating in which a human being could be identified. Jagir Singh was going to connect his tractor with his trolley. Meanwhile, Piara Singh accused armed with his D.B.B.L. gun, Wassan Singh accused armed with a single barrelled gun and Charan Singh accused armed with `grandasa' came to the house of Hazara Singh and Bachan Singh raising `lalkaras'. Charan Singh accused raised a `lalkara' that he and his companion co-accused were going to teach Hazara Singh and others a lesson for parking the tractor trolley in the lane. Piara Singh accused opened the attack by firing from his D.B.B.L. gun towards Hazara Singh. However, the fire missed the target as he (Hazara Singh) had knelt down to save himself and the fire passed over his head. Thereafter appellant fired from his single barrelled gun

and the shot hit Mst. Bholan deceased near he pelvic region. On receipt of this injury, she fell down on the ground. Thereafter Charan Singh accused dealt a `gandasa' blow on the head of Bachan Singh from its sharp side. Meanwhile Piara Singh accused dealt blow with the butt of his gun on the left hand of Jagir Singh and another blow from the said butt on his right ear. Then Charan Singh accused dealt a `gandasa' blow on the head of Bachan Singh from its reverse side. Thereupon Hazara Singh, Bachan Singh and Jagir Singh raised `raula' and on this, the accused decamped with their weapons. Before that, Bachan Singh and Hazara Singh also caused injuries on the person of appellant in their self- defence. Thereafter the PWs arranged a car in which Bholan was placed. Bachan Singh and Hazara Singh accompanied her to Civil Hospital, Forezepore, at a distance of 14/15 kilometers. The car left village Nizamwala at about 6.45 p.m. but Bholan died on the way at a distance of 6/7 miles near village Sodhiwala on their way to the Hospital.

On receipt of telephonic message, Inspector Balvinder Singh of Police Station Mallanwala went to the Civil Hospital, Ferozepore, and recorded the statement of Hazara Singh, which formed the basis of the First Information Report. The inspector held inquest and sent the dead body of Smt. Bholan to the mortuary for autopsy. Thereafter, he went to the spot, lifted blood-stained earth and recovered one empty catridge case from there. The accused were arrested on 17th January 1981 and their weapons were taken into possession.

After investigation the appellant along with his co- accused were chargesheeted and ultimately their case was committed to the court of Sessions for trial. The learned Trial Judge after recording evidence and hearing the rival versions took the view that appellant was guilty of an offence under Section 302 of the IPC for killing Smt. Bholan and ordered him to undergo imprisonment for life and to pay a fine of Rs.3,000/- or in default to further undergo rigorous imprisonment for one and a half years, while Piara Singh and Charan Singh accused were sentenced under Section 302 read with Section 34 of IPC and were directed to undergo imprisonment for life and to pay a fine of Rs.1,000/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each. Piara Singh accused was sentenced under Section 307 IPC and was directed to undergo rigorous imprisonment for one and a half years and to pay a fine of Rs.300/- and in default of payment of fine to further undergo rigorous imprisonment for two months while the appellant and another accused Charan Singh were sentenced under Section 307 read with Section 34 IPC and were directed to undergo rigorous imprisonment for six months each and to pay a fine of Rs.100/- each and in default of payment of fine to further undergo rigorous imprisonment for one month each. Appellant was also sentenced under Sections 324 and 325 read with Section 34 for the injuries caused to the concerned PWs as mentioned in the charge. He was sentenced to undergo rigorous imprisonment for six months under Section 27 of the Arms Act.

The aforesaid decision of the Sessions Court resulted in criminal appeal moved by the appellant and the other two accused Piara Singh and Charan Singh in the High Court of Punjab & Haryana at Chandigarh. The Division Bench of the High Court after hearing the contesting parties came to the conclusion that the co-accused Piara Singh and Charan Singh deserved to be acquitted of the offences with which they were charged and the appeal qua them was fully allowed while so far as the appellant was concerned, he was acquitted of offences under Section 302, Section 307 read with Section 34, Sections 324 and 325 read with Section 34 I.P.C. However, he was held guilty of an

offence under Section 304 Part I, IPC. He was sentenced as aforesaid. His conviction and sentence under Section 27 of the Arms Act were also maintained. That is how the appellant is before us in the present appeal.

Learned advocate appearing for the appellant contended that when the High Court came to the conclusion that the appellant had a right of private defence of body having received number of injuries in the incident, the High Court instead of carrying this conclusion to its logical end, wrongly assumed that the appellant had exceeded his right of private defence of body as his reasonable apprehension could be of having caused simple hurt at the hands of the complainant party and, therefore, he had a right to give only grievous hurt but could not have caused any fatal injury by the use of his firearm. It was vehemently contended that looking to the evidence on record the aforesaid finding of the High Court is not well sustained. Learned counsel for the respondent State of Punjab on the other hand tried to support the reasoning and the final conclusion to which the High Court reached. In our view the decision of the High Court to the effect that the appellant had exceeded the right of private defence cannot be supported on the evidence on record. It will be profitable to extract what the High Court has said in this connection in the penultimate paragraph of its judgment at page 15 :

> "...Wassan Singh appellant and Dalip Singh had sustained as many as 12 injuries and out of them 2 injuries on the person of Wassan Singh and one injury on the person of Dalip Singh were on the vital parts of their bodies. In such a situation, the accused party could legitimately harbour the apprehension that the complainant party would cause them simple hurt. But Wassan Singh appellant had over stepped the legal limits of the defence of person by firing a shot from his gun which hit Smt. Bholan and proved fatal. The occurrence appears to have taken place all of a sudden and it was not a pre- planned attack. When Wassan Singh appellant apprehended simple hurt at the hands of the compainant party, he had the right to give a grievous hurt but he obviously exceeded the right of private defence of his person and caused one fire arm injury, which proved fatal. Consequently Wassan Singh is found guilty for an offence under section 304 Part I, Indian Penal Code..."

Now it must be noted that according to the High Court the appellant had a right of private defence as he had sustained number of injuries in the incident. So far as his injuries are concerned, Dr. Jaspal Singh, PW.1 has described the injuries by stating as under :

"I conducted medico legal examination on the person of Wassan Singh accused and found the following injuries on his person:-

1. Incised wound of the size 5.5 cm x 1 cm bone deep at the right front pariental region 9.5 cm from the right eye-brow, obliquely placed and 8 cm from the right pinna. Blood clot was present.

X-ray was advised.

2. Swelling of the size 3.5 cm x 3.5 cm on the left side of the fore-head 1.5 cm above the left eye-brow. X-ray was advised.

3. Reddish swelling of the size 5 cm x 3.5 cm with overlying abrasion 2 cm x 0.5 cm, at the back and upper part of left fore-arm.

4. Swelling of the size 2.5 cm x 2.5 cm with overlying lacerated wound 0.75 cm x 0.25 cm back and middle of left middle finger of hand. X-ray was advised.

5. Swelling 1 cm x 1.5 cm at the tip of middle finger of left hand. X-ray was advised.

6. Abrasion 0.5 cm x 0.5 cm on medical aspect and middle of left index finger.

7. Reddish contusion 5.5 cm x 2 cm at the upper and lateral aspect of right upper arm. X-ray was advised.

8. Reddish contusion 5 cm x 3 cm on the front and middle of right upper arm.

9. Abrasion 3 cm x 2 cm on front of right elbow joint.

The patient was conscious. Pulse was 72 per minute. B.P. 130/70. Nature of the injuries. Injuries nos :

1,2,3,4,5 and 7 were kept under observation for X-ray. Injuries nos:

3,6,8 and 9 were declared simple. The probable duration of the injuries was within six hours. The weapon declared for injury no.1 was sharp edged. Rest all by blunt weapon. On receiving X-ray report No.10/60, dated 13.1.1981, injuries nos : 1,2,4,5, and 7 were declared simple."

Now it becomes at once clear that the appellant had received as many as nine injuries out of which first two injuries were on a very vital part, namely, on his head and injury no.1 was an incised wound which was caused by a sharp-edged weapon. Under these circumstances if the appellant fired one shot from his gun in his self-defense it could not be said that he had exceeded the right of private defence as the nature of assault by the complainant party which left him with the aforesaid injuries certainly could be said to have caused a reasonable apprehension in his mind that grievous hurt would otherwise be the consequence of such an assault. In this connection it will be profitable to look at Section 100 of the Indian Penal Code which reads as under :

> "100. When the right of private defence of the body extends to causing death.-- The right of private defence of body extends, under the restrictions mentioned in the last preceding section, to the Voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :- First:- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of

such assault;

Secondly:- Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; Thirdly.- An assault with the intention of committing rape;

Fourthly.- An assault with the intention of gratifying unnatural lust; Fifthly.- An assault with the intention of kidnapping or abducting; Sixthly.- An assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release."

It is not the case of the prosecution that any of the restrictions mentioned in Section 99 can be invoked by the prosecution against the appellant. Once that is so, clause `secondly' of Section 100 would squarely get attracted. It is difficult to appreciate the reasoning of the High Court that the reasonable apprehension in the mind of the appellant who had received two injuries on his head and seven other injuries on his body would be the apprehension that only simple hurt would be caused to him and not grievous hurt. It is true that the first injury caused on his head had fortunately not resulted into a fracture but when it was caused with a sharp cutting instrument on the vital part of his body, namely, right side of head, it cannot be gainsaid that at least a reasonable apprehension would arise in his mind at the spur of the moment that if he does not retaliate by using his weapon, namely, the gun with which he was armed he would certainly suffer at least a grievous hurt as a consequence of the assault by the c party. Under these circumstances the right of private defence of body available to the appellant would extend to even causing death. It is of course true that his, gun shot unfortunately hit an innocent person like Smt. Bholan who was present on the scene of occurrence but as at the very same time and place the appellant had suffered an assault at the hands of the assailants comprising of the complainant party, right of private defence of body which would extend to even causing death of the assailant would arise in favour of the appellant on the facts of the present case and in exercise of that right if death is caused not of the assailant but of any other person it cannot be said that the right of private defence extending up to causing death of the assailant would not be available to the accused qua even an innocent party which got fatally hurt on account of the exercise of such a right of private defence which ensured for the appellant under Section 100 clause secondly of the IPC. It is obvious that if an accused with an intention to kill his victim fires a shot at him which misses the target and hits any other innocent person fatally he would remain guilty of an offence of murder but if the accused had no such intention and was protected by right of private defence under the situation and circumstances in which it could extend to even causing death of assailant as laid down by Section 100 and if in exercise of that right of private defence the blow fatally falls on an innocent person the action would still remain protected under Section 100 of the IPC. In this connection we may refer to Section 301, IPC which reads as under :

"301. Culpable homicide by causing death of person other than person whose death was intended.- If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose

> death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause."

For applicability of that Section the act must amount to culpable homicide in the first place. If the act is not culpable at all, then even if it results into homicide of an innocent person, in view of Section 100 IPC as in the present case, Section 301 will have no operation.

While judging the nature of apprehension which an accused can reasonably entertain in such circumstances requiring him to act on the spur of moment when he finds himself assaulted, by number of persons, it is difficult to judge the action of the accused from the cool atmosphere of the court room. Such situations have to be judged in the `light of what happens on the spur of the moment on spot and keeping in view the normal course of human conduct as to how a person would react under such circumstances in a sudden manner with an instinct of self-preservation. Such situation have to be judged from the subjective point of view of the accused concerned who is confronted with such a situation on spot and cannot be subjected to any microscopic and pedantic scrutiny. In this connection it is profitable to refer to two decisions of this Court. In the case of Mohd. Ramzani v. State of Delhi (1980 Supp. SCC 215), a Division Bench of this Court speaking through Sarkaria, J. made the following pertinent observations :

> "...the onus which rests on an accused person under Section 105, Evidence Act, to establish his plea of private defence is not as onerous as the unshifting burden which lies on the prosecution to establish every ingredient of the offence with which the accused is charged, beyond reasonable doubt. It is further well established that a person faced with imminent peril of life and limb of himself or another, is not expected to weigh in `golden scales' the precise force needed to repel the danger. Even if he in the heat of the moment carries his defence a little further than what would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it..."

In the case of Deo Narain v. The State of U.P. (1973 (1) SCC

347), this Court was concerned with a situation where the accused had received a blow on head by a `lathi' and in self-defence he had used his spear in retaliation. While holding that the accused was entitled to the right of private defence extending to even causing death, in such a case, he was acquitted of the offence under Section 302 IPC. In this connection Dua, J., speaking for this Court in paragraph 5 of the Report has made these pertinent observations :

> "In our opinion, the High Court does seem to have erred in law in convicting the appellant on the ground that he had exceeded the right of private defence. What the High Court really seems to have missed is the provision of law embodied in Section 102, I.P.C. According to that section the right of private defence of the body commences as soon as a reasonable apprehension of dager to the body arises from an

attempt or threat to commit the offence, though the offence may not have been committed, and such right continues so long as such apprehension of danger to the body continues. The threat, however, must reasonably give rise to the present and imminent, and not remote or distant danger. This right rests on the general principle that where a crime is endeavored to be committed by force, it is lawful to repel that force in self- defence. To say that the appellant could only claim the right to use force after he had sustained a serious injury by an aggressive wrongful assault is a complete misunderstanding of the law embodied in the above section. The right of private defence is available for protection against apprehended unlawful aggression and not for punishing the aggressor for the offence committed by him. It is a preventive and not punitive right. The right to punish for the commission of offences vests in the State (which has a duty to maintain law and order) and not in private individuals. . ..... the approach of the High Court that merely because the complainat's party had used lathis, the appellant was not justified in using his spear is no less misconceived and insupportable, During the course of a marpeet, like the present, the use of a lathi on the head may very well give rise to a reasonable apprehensions that death or grievous hurt would result from an injury caused thereby. It cannot be laid down as a general rule that the use of a lathi as distinguished from the use of a spear must always be held to result only in milder injury. Much depends on the nature of the lathi, the part of the body aimed at and the force used in giving the blow. Indeed, even a spear is capable of being so used as to cause a very minor injury. The High Court seems in this connection to have overlooked the provision contained in section 100, I.P.C. We do not have any evidence about the size or the nature of the lathi. The blow, it is known, was aimed at a vulnerable part like the head. A blow by a lathi on the head may prove instantaneously fatal and cases are not unknown in which such a blow by a lathi has actually proved instantaneously fatal. If, therefore, a blow with a lathi is aimed at a vulnerable part like the head we do not think it can be laid down as a sound proposition of law that in such cases the victim is not justified in using his spear in defending himself. In such moments of excitement or disturbed mental equilibrium it is somewhat difficult to expect parties facing grave aggression to cooly weigh, as if in golden scales, and clamly determine with a composed mind as to what precise kind and severity of blow would be legally sufficient for effectively meeting the unlawful aggression. No doubt, the High Court does seem to be aware of this aspect because the other accused persons were given the benefit of this rule. But while dealing with the appellant's case curiously enough the High Court has denied him the right of private defence on the sole ground that he had given a dangerous blow with considerable force with a spear on the chest of the deceased though he himself had only received a superficial lathi blow on his head. This view of the High Court is not only unrealistic and unpractical but also contrary to law and indeed even in conflict with its own observation that in such case the matter cannot be weighed in scales of gold."

The facts of the present case are almost parallel to the facts of the aforesaid case. Consequently it must be held that the appellant had a right of private defence of body which extended to even causing death and in exercise of that right if he fired one gun shot which unfortunately killed an innocent person that is, Smt. Bholan, it cannot be said that he was guilty of an offence even under Section 304 Part of the IPC on the ground that he had exceeded his right of private defence. Consequently the conviction of the appellant under Section 304 part I, IPC as pendered by the High Court is quashod and set aside. The High Court has already acquitted the appellant of charges under Sections 307, 324 and 325 of the IPC. So far as his conviction under Section 27 of the Arms Act is concerned even that would not survive as it could not be said that he has used his gun of any unlawful purpose, that is to commit culpable homicide of Mst. Bholan not amounting to murder. The appeal is accordingly allowed. Accused is no bail. His bail bound shall stand discharged.