

**Amar Singh Vs. the State**

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**Court :** Delhi

**Decided On :** May-14-1996

**Reported in :** 1996CriLJ3848

**Judge :** Arun Kumar and; Mohd Shamim, JJ.

**Acts :** Indian Penal Code, 1860 - Sections 34, 96, 97, 99, 100, 102, 105, 108, 302, 307, 325 and 335; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154, 161, 173 and 313; [Evidence Act, 1872](#) - Sections 105

**Appeal No. :** CrI. Appeal No. 191 of 1992

**Appellant :** Amar Singh

**Respondent :** The State

**Advocate for Def. :** H.J.S. Ahluwalia, Public Prosecutor

**Advocate for Pet/Ap. :** Jitender Sethi and; Sandeep Sethi, Advs

**Judgement :**

**Mohd. Shamim, J.**

1. These are two appeals bearing Nos. 191/92 and 199/92 preferred by Amar Singh and Ram Singh, real brothers, convicts/ appellants (hereinafter referred to as the appellants for the sake of convenience) against the judgment and order

dated September 19, 1992 passed by an Additional Sessions Judge whereby he found them guilty under Sections 302/34 and 307/34 of the Indian Penal Code. Both of them were sentenced to undergo imprisonment for life under Section 302/34 IPC with a fine of Rs. 500/- each. In case of default of payment of fine they were further directed to undergo RI for six months each. They were further sentenced to undergo RI for four years with a fine of Rs. 500/- each under Section 307/34 of the Indian Penal Code. In case of their failure to clear the fine they were further directed to undergo RI for six months each. The two appeals are being taken up together as they arise out of the same judgment and order.

2. The case of the prosecution as adumbrated in the F.I.R., the report under Section 173 Cr.P.C. and the evidence led by the prosecution is as under; that PW 22 Khem Singh is a father of two daughters. The said daughters are married to Ram Chander and Bhole. DW 2 Mool Chand is the brother of the aforesaid Ram Chander and Bhole. His daughters were being ill-treated by their respective husbands, adverted to above. Nain Singh is the paternal uncle of the above named persons. Mool Chand with the said Nain Singh approached PW 22 Khem Singh and requested him to send his daughters to their matrimonial homes. He declined to do so. Subsequently, Lal Singh s/o Nain Singh lodged a false report with the police against him and his son Puran Singh, Onkar Singh (PW 1) and the deceased Raju are his nephews. PW 1 Onkar Singh whenever went to Meerut he always stayed with Khem Singh and thereby incurred the displeasure of Ram Chander and Bhole. PW 23 Nathi, maternal uncle of deceased, on February 5, 1984 went to Fazalpur District Meerut. He was having his ancestral house over there. Ram Chander and Mool Chand met him over there and told him that he would convey to Onkar that in case he continues to visit the house of Khem Singh they would break his legs. He conveyed this fact to his sister Smt. Madan Wati (PW 3), mother of the deceased Raju and PW 1 Onkar Singh when she called on him.

3. March 17, 1984 was the day of festival Holi. It was about 12.30 p.m. Tek Chand (PW 13), father of PW 1 Onkar Singh and the deceased Raju was sitting on a platform near Shiv Mandir which is quite close to his house. The above-named Mool Chand (PW 21) reached there and met PW 1 Onkar Singh. Onkar Singh

asked him as to why did he threaten to break his legs in case he called on his uncle i.e. PW 22 Khem Singh at Meerut. Mool Chand denied the said fact. It led to a flaming row in between the two. Whereupon Onkar Singh left for his house in order to verify the said fact from his mother Smt. Madan Wati and call her to the spot to confront Mool Chand. When he returned he found Mool Chand missing from the spot where he had left him. He concluded that Mool Chand must have hidden himself in the nearby house of the appellants herein and their another brother Bhikan (acquitted by the lower Court vide the impugned judgment and order). The house of the appellants is located at No. 16/T-29, Anand Puri Chowk, Tank Road, Karol Bagh, Delhi, under police station Anand Puri. Consequently, he went to the above said house and shouted from outside that house that the appellants and Bhikan should produce the said Mool Chand. On hearing the same wives of Ram Singh and Amar Singh came out and started hurling abuses at him. His brother Raju (hereinafter referred to as the deceased), mother Madan Wati (PW 3), father Tek Chand (PW 13) and a relation known as Bala Devi also reached there. The appellants Along with their brother Bhikan also came out. They also abused him. The deceased intervened and asked them not to do so. He thereby incurred their wrath. Amar Singh appellant caught hold of the deceased. Bhikan exhorted the appellant Ram Singh who was wielding a knife to kill the rascals. Ram Singh appellant thereupon gave knife blows to the deceased on his person which resulted in injuries on his chest, right side of the abdomen and on his back. Onkar (PW 1) wanted to come to the rescue of his brother Raju, the deceased. However, he was not allowed to do so as he was caught hold of by Bhikan. Ram Singh Appellant also gave him a knife blow on his right hand. He gave another blow on his left arm pit. He further hit him with the said knife on the lower side of the back and on his shoulder. PW 6 Bala Devi tried to snatch the knife from Ram Singh. After having sustained the injuries the deceased fell down at the spot. Onkar (PW 1) in order to save himself fled from the spot. PW11 Puran Chand, his uncle, met him on the way and took him to the R.M.L. hospital and got him admitted there. He came to know later on that Raju and succumbed to the injuries sustained at the hands of the appellant Ram Singh.

4. PW9 Hari Ram, Assistant Sub Inspector of Police, was on his usual patrol duty on March 17, 1984 Along with constables Satbir Singh (PW 24) and Bhag Singh

(PW 8). He in this connection was present at the water tank, Tank Road. He saw an injured person i.e. PW 1 Onkar Singh being taken in a three-wheeled scooter. He further found that another injured person i.e. Raju was being taken in a car to the hospital. Consequently he informed the police post Prasad Nagar. The said information was recorded by PW 21 Constable Nafe Singh at Sr. No. 20 in the daily dairy vide Ex. PW 31/A. After having informed the police he set out for the place of occurrence.

5. SI Devinder Singh (PW 10) of the Crime Branch was deputed on April 3, 1984 for preparing a scaled site plan. He did so (vide Ex. PW 10/A).

6. Inspector Ranbir Singh (PW 25) conducted the inquest proceedings with regard to the death of the deceased (vide Ex. PW 25/A). He moved an application before the Police Surgeon for the purposes of post mortem on the dead body of the deceased. Autopsy on the dead body of the deceased was conducted by Dr. Bharat Singh (PW 6). His report in this regard is Ex. PW6/A. Inspector Ranbir Singh recorded the statement of ASI Kishan Lal (PW 15). Udit Narain, Lab Technician, (PW 17) and SI Ram Singh and Mir Singh, Moharir Malkhana.

7. On receipt of the information (vide Ex. PW 31/A), the in charge of the police post SI Ram Singh (PW 31) arrived at the place of occurrence. He found that constables Bhag Singh (PW 8) and Satbir Singh (PW 24), were present at the spot. He also came to know that the injured Onkar Singh and deceased Raju had already been removed to the hospital. He issued directions to ASI Hari Ram (PW 9) and Constables Satbir Singh (PW 24) and Bhag Singh (PW 8) to guard the place of occurrence. After having issued the said instructions he left for RML hospital with Constable Ishwar Singh. He secured from the hospital MLC in respect of injured Onkar Singh vide Ex. PW 2/A. On making enquiries he was informed that Raju was declared dead by the hospital authorities. The injured Onkar Singh (PW 1) was found fit to make the statement. Hence he recorded his statement vide Ex. PW 1/A. He sent the same along with his endorsement vide Ex. PW 31/B to the police station for registration of an F.I.R. through Constable Ishwar Singh at about 3.45 p.m. On receipt of the said statement F.I.R. was recorded by SI Chetan Dass, Duty Officer (PW 14) vide Ex. PW 14/A. He took into

possession the clothes of the deceased vide Ex. PW 7/A. He recorded the statements of Constables Sultan Singh (PW 7), Tek Chand (PW 13) and Puran Chand (PW 11). He thereafter returned to the place of occurrence. He summoned the photographer known as Kali Ram (PW 12) of the Crime Team for the purposes of taking the photographs. Kali Ram (PW 12) took the photographs of the place of occurrence and the place in front of a general store situated on the Tank Road where the blood was found lying. The said photographs are Ex. 2/1-8 and Ex. PW 12/9-16. He also took into possession a sandal Ex. P1 vide EX. PW 19/A. He also seized from the place of occurrence blood sample and control earth and transferred them into separate vials. The control earth and the sample of blood which were lifted from in front of the general store on Tank Road was taken into police custody vide Ex. PW 9/B. He prepared a rough site plan at the instance of Madan Wati (PW 3) vide Ex. PW 31/C. He recorded the statements of PW 3 Madan Wati, PW 8 Bhag Singh, PW 5 Bala Devi, PW 19 Gopi Chand and Kishori Lal. He also seized a saree (Ex. P6) belonging to Smt. Bala Devi with blood stains thereon vide Ex. PW 5/A. PW 3 Madan Wati and PW 5 Bala Devi were sent to the hospital for medical examination as they had sustained injuries on their persons. The injury sheets in connection therewith are Ex. PW 31/D and Ex. PW 31/E. He also recorded the statement of Smt. Kesari Devi, mother of the accused persons. He arrested the accused Ram Singh. His personal search memo is EX. PW 19/B. The injury sheet prepared in respect of accused Ram Singh is Ex. PW 31/H. Clothes of the accused i.e. Shirt and pant (Ex. P7 & P8) were taken into police custody vide memo Ex. PW 19/E as the same were found to be stained with blood. The blood was also found on the chest of Ram Singh. The same was scratched and seized vide Ex. PW 19/D. The other appellant known as Amar Singh was arrested on March 19, 1984. His person was searched vide Ex. PW 31/K. His clothes were also taken into police custody vide Ex. PW 31/1. Every possible effort was made to search out the weapon of offence, but to no avail.

8. He took the accused Ram Singh to Police Hospital where the blood was drawn from his person for the purposes of sample and the same was taken into possession vide Ex. PW 17/A.

9. He also went to Meerut in connection with the investigation of the present case. He recorded over there the statements of Khem Singh (PW 22), Nathi (PW 23), maternal uncle of the deceased, Ram Saran Sharma (PW 30) and of Smt. Kesar Devi vide Ex. PW 31/DA.

10. Bhikan surrendered before the court on May 17, 1984. He was thereafter formally arrested. During the course of investigation he made a disclosure statement (vide Ex. PW 24/A) which led to the recovery of his blood stained clothes from a canister in a house. The same were taken into police custody vide Ex. PW 20/A. The case property was sent to CFBL for Chemical analysis. The reports of the analyst are Ex. PW 31/N-1 to N-5. After completion of the investigation a charge sheet was submitted before the Magistrate concerned.

11. The learned Magistrate was of the view that the present case was exclusively triable by the Court of Session. He thus committed the appellants and the accused Bhikan to the Court of Session for standing trial under Sections 302/34 and 307/34 of the Indian Penal Code.

12. The learned Additional Sessions Judge after appraisal of the evidence came to the conclusion that the prosecution has failed to bring home the guilt against the accused Bhikan beyond any shadow of doubt as a corollary whereof he was acquitted of the charges leveled against him. However, the appellants herein were found guilty and thus sentenced to different terms of imprisonment, alluded to above. It was in the above circumstances that the appellants preferred the present appeals.

13. Learned counsel for the appellants Mr. Sandeep Sethi and Mr. Jitender Sethi have vehemently contended before this Court that there is absolutely no evidence worth the name on record to warrant a finding of conviction against the appellants. It has been urged for and on behalf of the appellants that the FIR is not spontaneous as the same was not lodged immediately without any loss of time. The substance of the FIR was not recorded in the daily diary. The inquest report does not give the brief facts and the names of witnesses.

14. According to the learned counsel for the appellant Ram Singh, appellant caused injuries on the person of the deceased Raju in order to save his own life. The learned counsel for the appellant contends, had the appellant not done so he would have lost his own life. Thus, the appellant was justified in the circumstances of the present case to have done so whatever he did in order to save himself. The appellant took resort to force in order to repel force.

15. It has been urged on behalf of the other appellant known as Amar Singh that he was not at all present at the time of the occurrence. No blood of the deceased was found on his clothes. Thus no liability can be fastened on his head by any stretch of imagination. The learned counsel thus urged that the learned Sessions Judge fell into a grave error by recording a finding of conviction against the appellants.

16. The learned Public Prosecutor, Mr. H. J. S. Ahluwalia has argued to the contrary. He has urged that the right of private defense could be made available only in those discerning few cases to a person when the assault is of such a nature that in case he does not defend himself it may result in his death or grievous hurt to his person. There is nothing on record to show or even to remotely suggest that at any point of time there was any such apprehension inasmuch as the deceased Raju and the injured Onkar were not armed.

17. We have heard the learned counsel for the appellants and learned Public Prosecutor at sufficient length and have very carefully examined their rival contentions and have given our anxious thoughts thereto.

18. The learned counsel for the appellants have argued that there was considerable delay in lodging the FIR. Thus the FIR in the instant case was lodged after much deliberations and this led to fabrication and concoction. It got bereft of the advantage of spontaneity and thus the Court was deprived of the actual version of the case of the prosecution. The learned counsel in support of their arguments placed reliance on the observations of the Hon'ble Supreme Court as : 1972 CriLJ1296 , Thulia Kali v. The State of Tamil Nadu, .....' First information report in a criminal case, is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The

importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after thought. On account of delay. The report not only gets bereft of advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.'

19. We are sorry we are unable to agree with the contention of the learned counsel. The occurrence in the instant case as is manifest from the FIR took place at 12.30 p.m. on March 17, 1984. A report in connection therewith in the, form of statement of PW 1 Onkar Singh was dispatched by SI Ram Singh (PW 31) at 3.45 p.m. on the same day and FIR was recorded on the basis of the same at 4.15 p.m. (vide Ex. PW 14/A). Thus it is true as canvassed by the learned counsel for the appellants that there was a delay in lodging the FIR of nearabout 3.45 hours. However, the question which arises for adjudication in the instant case is as to whether the said delay is fatal to the case of the prosecution

20. It is a well established principle of law that delay by itself is not fatal and the prosecution case is not liable to be flung to the winds on the said score if the prosecution is in a position to give a satisfactory Explanationn of the said delay as is manifest from the observations of the Hon'ble Supreme Court, alluded to above. Admittedly, a precious life was lost in the instant case inasmuch as a young man known as Raju succumbed to the injuries sustained at the hands of the appellant Ram Singh. PW 1 Onkar Singh, brother of the deceased, also sustained grievous injuries in the said occurrence which was opined to be dangerous by the doctor on his medical examination (vide Ex. PW 4/C and Ex. PW 2/A). Even the mother of the deceased namely, Smt. Madan Wati (PW 3) and a relation of the deceased Smt. Bala Devi also sustained injuries (vide Ex. PW 31/F and Ex. PW 31/B). Thus there was no one in the family except the father Shri Tek Chand (PW 13) who was

not injured. PW 13 Tek Chand is admittedly a patient of asthma as is manifest from his statement and the observations of the Court dated August 5, 1986 given at the bottom of his statement. Thus, Tek Chand must have been awfully busy in pulling each and every nerve to save the precious life of his both sons, one of them i.e. the deceased was removed to the hospital by him, the other person i.e. the injured was taken to the hospital by PW 11 Puran Chand. Thus it was a peculiar type of case in which each and every member of the family sustained injuries except Tek Chand. Hence there is nothing strange that no action was taken to lodge the FIR. Admittedly, the life of a man is a much more important thing than bringing an occurrence to the notice of the police to set the ball rolling in their Court. However, even then there is evidence on record that PW 9 ASI Hari Ram informed the police with regard to the incident at 1.30 p.m. i.e. within an hour of the incident. The said information was recorded at D.D. No. 20 on March 17, 1984 (vide Ex. PW 31/A). Thus we are of the view that the delay in the instant case has been satisfactorily explained and no adverse inference can be drawn in this behalf against the case of the prosecution. We are tempted here to cite a few lines from an authority : 1974 CriLJ1393 , Lalai alias Dindoo v. State of U.P., ..... 'The only other ground on which Radhey Shyam's evidence was challenged is that though the incident took place at about 10.30 p.m. on the 24th it was not until 11 a.m. on the 25th that Radhey Shyam lodged the First Information Report. This undoubtedly is an important circumstance but the Sessions Court and the High Court have given a reasonable Explanationn of the delay. The night was dark, the road was rough and the assault so fierce that Radhey Shyam could not have collected his wits to proved straightway to the Police Station. There is no indication in the evidence that the names of the appellants were incorporated in the First Information Report as a result of any confabulation.'

21. Learned counsel for the appellants have then contended that there was a delay in the dispatch of the FIR to the higher authorities, including the Magistrate. The learned counsel thus want us to conclude there from that it casts serious doubts with regard to the authenticity of the case of the prosecution. The contention of the learned counsel, we feel, does not hold any water. A perusal of the record reveals that the special report was dispatched to the Magistrate through Constable Bhag Singh (PW 8). There is a carbon copy of the FIR placed on record

which reveals that the Magistrate received the same at 6.00 p.m. on the same date i.e. March 17, 1984. Thus we feel that there was no delay in forwarding a special report in connection with the occurrence to the learned Magistrate. However, we still feel that the delay by itself cannot be so detrimental as to dislodge the case of the prosecution on the said ground alone if otherwise it is worth placing the reliance.

22. The Hon'ble Supreme Court faced with the same situation observed in : 1976 CriLJ1757 Sarwan Singh v. State of Punjab, ..... ' Apart from this, it is well settled that mere delay in dispatch of the FIR is not a circumstance which can throw out the prosecution case in its entirety. The matter was considered by this court in Pala Singh v. State of Punjab, : 1973 CriLJ59 where this Court observed as follows :

'But when we find in this case that the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to our notice, then, however, improper or objectionable the delayed receipt of the report by the Magistrate concerned, it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.'

23. It was next contended for and on behalf of the appellants that the substance of the FIR was not recorded in the daily diary as required under Section 154 Cr.P.C. It is true that the substance of the FIR in the instant case was not recorded in the daily diary. However, we feel that that is simply a lapse on the part of the police authorities and by itself is not sufficient enough to throw away the case of the prosecution. It can be attributed at the most to the incompetence of the police authorities. If the Court in a given case comes to the conclusion that the prosecution version is true and worth placing reliance in that eventuality the Court would be justified in ignoring the lapse, if any, on the part of the investigating agency.

24. Similarly, an argument was raised that the names of the prosecution witnesses do not find a mention in the inquest report dated March 18, 1984. The learned counsel want us to conclude there from that no witnesses were available. We feel the above contention is of no avail to the appellants, the reason being that the

ocular witnesses who have been examined in the instant case are all injured persons except Tek Chand (PW 13). Thus the non-mentioning of the names in the inquest report can at the most be said to be a lapse or incompetence on the part of the Investigating Officer.

25. The above view was given vent to by their Lordships of the Supreme Court as : 1995 CriLJ4173 Karnal Singh v. State of M.P. ....' In case of defective investigation it is not right to acquit the accused as it would be tantamount to playing into hands of investigating officer if the investigation is designedly defective ...'

26. Learned counsel for the appellants has then argued that the appellant Ram Singh inflicted injuries on the person of the deceased Raju in exercise of his right of private defense. According to the learned counsel the deceased was armed with a knife. He wanted to attack the appellant Ram Singh with the same. Thus there was a reasonable apprehension in his mind that in case the deceased succeeded in causing injuries on his person which may result either in grievous hurt or his death. Hence he snatched the knife from the deceased and inflicted the injuries on the person of the deceased which resulted in his death.

27. Since we are concerned with the construction of Sections 96 and 97 of the Indian Penal Code which deal with the right of private defense of person and property, the provisions of the said Sections can be adverted to with profit. They are in the following words :-

'96. Things done in private defense.- Nothing is an offence which is done in the exercise of the right of private defense.

97. Right of private defense of the body and of property. Every person has a right, subject to the restrictions contained in Section 99, to defend -

First. - His own body, and the body of any other person, against any offence affecting the human body;

Secondly - The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of

theft, robbery, mischief or criminal trespass.

Section 99 deals with the extent to which the right can be exercised it is as under :-

'99. - The right of private defense in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defense..;'

Section 100 envisages situations when the right of private defense extends to causing death. It is in the following words :-

'100. - The right of private defense of the 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 assaults;

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 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.'

Section 102 throws light as to when the right of private defense would commence and when it would come to an end. It lays down as under :-

'102. - The right of private defense of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.'

28. Section 105 of the Evidence Act deals with the burden of proof. It provides as under :-

'105. - When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (XLV of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.'

Illustration (c) appended to the said Section is in the following words :-

'(C) Section 325 of the Indian Penal Code (XLV of 1860) provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under Section 325. The burden of proving the circumstances bringing the case under Section 335 lies on A.'

29. It is crystal clear from these provisions of law, alluded to above, that a man may cause the death of an assailant in case there is a reasonable apprehension that if he fails to do so the assailant may cause his death or grievous hurt to his person. It is also fully manifest from above that a man is in no way entitled to cause more harm than what it is required for the purpose of his defense. The underlying idea behind the enactment of the above provisions of law is that there may arise situations in one's life when one is not in a position to have recourse to the lawful authorities to defend one's person and property. Thus the legislators in their wisdom thought it fit and proper to bestow on the members of the public certain rights when faced with such a situation, to defend their person or property, when they have got no other means and time, such as to approach the authorities, to defend themselves by taking recourse to force to repel force.

30. We are supported in our above view by the observations of their Lordships of the Hon'ble Supreme Court as : 1952 CriLJ648 , Amjad Khan v. The State ..... 'For one thing the right does not arise if there is time to have recourse to the protection of the public authorities, and for another, it does not extend to the infliction of more

harm than is necessary for the purpose of defense. Another limitation is that when death is caused the person exercising the right must be under reasonable apprehension of death, or grievous hurt, to himself or to those whom he is protecting; and in the case of property, the danger to it must be of the kinds specified in S. 108. The scope of the right is further explained in Ss. 102 and 105, Penal Code.'

31. With the above background let us now examine the facts of the present case in order to ascertain as to whether the appellants found themselves in such a situation where there was no alternative except to take recourse to force to repel force. In other words, was there any reasonable apprehension in their mind that in case they did not act in their self-defense in that eventuality there was a likelihood of a grievous hurt being caused to their persons which may result in their death

32. It is in the statement of PW 1 Onkar Singh that the appellants Along with their brother Bhikan and the members of their family came out of their house and abused him whereupon his brother deceased Raju took exception to the same and told them not to do so. Amar Singh appellant on hearing the same went into his tantrum. He caught hold of the deceased Raju. Appellant Ram Singh was armed with a knife at that time. The third accused Bhikan exhorted his brothers 'kill the rascals'. Appellant Ram Singh then attacked Raju with the said knife inflicting two or three blows on his person. He tried to come to the rescue of his brother Raju deceased. However, Ram Singh attacked him also with the said knife causing injuries on several parts of his body (vide Ex. PW 27/A).

33. To the same effect are the statements of PW 3 Madan Wati, PW 5 Bala Devi and PW 13 Tek Chand. There is absolutely nothing in their cross-examination to render their testimony unworthy of credence. All of them have stated with one voice that the deceased was caught hold of by appellant Amar Singh which rendered him immobilised and facilitated the other appellant Ram Singh to cause injuries on his person which resulted in his death. Their presence at the spot can in no way be doubted inasmuch as all of them sustained injuries at the time of occurrence except PW 13 Tek Chand. The said fact is abundantly clear from the injury sheets placed on record in connection therewith. Ex. PW 27/A is the injury

sheet in respect of PW 1 Onkar Singh. The doctor on duty who examined him opined the injuries to be dangerous. The other injury sheet in respect of PW 3 Madan Wati, mother of the deceased, is Ex. PW 31/F. Smt. Bala Devi (PW 5) also sustained injuries (vide Ex. PW 31/G) when she tried to snatch the knife. According to her, from the appellant Ram Singh.

34. The appellants have not led any evidence in support of their defense version in order to show even prima facie that the deceased Raju was armed with a knife. There is also not even an iota of evidence to remotely suggest that the deceased Raju assaulted any of the appellants or even their relations. The appellants have contented themselves by examining two witnesses in their defense known as DW 1 Shri Ram Niwas, Record Clerk, R.M.L. Hospital, who proved the injury sheet in respect of Smt. Kesar Devi, mother of the appellants (vide Ex. DW 1/A). The other witness examined by the appellants is DW 2 Mool Chand who has deposed to the fact that he never visited Delhi on March 17, 1984 i.e. the ill-fated day when Raju lost his life and Onkar Singh (PW 1) sustained grievous injuries. Thus, there is absolutely nothing on record to substantiate even remotely the contention of the learned counsel for the appellants that it was the deceased Raju who was armed with a knife and the appellant Ram Singh snatched away the knife from him and thereby caused the fatal injuries on the person of the deceased with the said knife.

35. The learned counsel for the appellants have urged that an accused is under no obligation to lead the evidence in defense. In fact, a duty has been cast of the shoulders of the Court if it comes to the conclusion on the basis of the evidence led by the prosecution that the accused acted in self-defense and if the accused succeeds in making out a probable and plausible version of his defense he will be entitled to the benefit of the same. The learned counsel in support of his arguments has led us through the observations of the Hon'ble Supreme Court as : 1974 CriLJ1035 , State of U.P. v. Ram Swarup, ... 'Unlike in a civil case, it is open to a criminal Court to find in favor of an accused on a plea not taken up by him, and by so doing the Court does not invite the charge that it has made out a new case for the accused. The accused may not plead that he acted in self-defense and yet the Court may find from the evidence of the witnesses examined by the prosecution and the circumstances of the case either that what would otherwise be

an offence is not one because the accused has acted within the strict confines of his right of private defense or that the offence is mitigated because the right of private defense has been exceeded.'

36. Furthermore, the appellant Ram Singh has not put forward the said defense even in his statement under section 313 Cr.P.C. He has simply contended himself by stating in reply to question No. 43 that he was innocent. PWs Onkar Singh, Bala Devi, Madan Wati, Tek Chand and others attacked him and inflicted serious injuries on his person and that of his mother. Curiously enough there is no evidence on record that such injuries were ever caused to the appellant and his mother. Moreover, the name of the deceased is missing from the said reply. The appellant has nowhere stated in reply to the said question that the deceased was armed with a knife and he snatched the said knife from the deceased. This defense was suggested only to PW 3 Smt. Madan Wati. According to the said suggestion the appellant Ram Singh tried to disarm Raju and in this scuffle injuries were sustained. In this connection we would like to refer to the injuries sustained by the appellant Ram Singh. The injury sheet in connection therewith is Ex. PW 31/J dated March 18, 1984. The doctor on examination of the appellant found minor incised wound on the palmer aspect of left forearm. He however, found no corresponding cut mark on his shirt. The second injury was on the right palm. The said injuries were opined to be superficial in nature. The doctor was further of the view that the said injuries could be self-sustained. Admittedly, while inflicting the injuries on the body of the deceased the appellant must have wielded the weapon of offence in his right hand. The injuries caused on the body of the deceased were very severe and dangerous in nature. Injury No. 1 had entered the right side chest cavity after cutting the 6th and 7th ribs (costal cartilage) and then it had cut the lower border of the upper lobe of the right lung through and through. Similarly, injury No. 3 was an incised wound on the right side of the chest. According to the doctor, injuries No. 1 and 3 were sufficient to cause death in the ordinary course of nature. Thus, the appellant must have used considerable force and the impact of the said force was that he himself sustained a superficial injury on the palm of his right hand which he used in inflicting the said injury.

37. This brings us to the injuries alleged to have been sustained on the person of Smt. Kesar Devi, mother of the appellants. Smt. Kesar Devi who is alleged to have been present at the time of the incident was not produced before the Court in order to substantiate the defense version. However, the Investigation Officer recorded her statement under Section 161 Cr.P.C. (vide Ex. PW 31/DA). Astonishingly she has not uttered even a single word in support of the defense version. According to her there was a quarrel in between PW 1 Onkar Singh and his father PW 13 Tek Chand. She intervened and asked them not to quarrel whereupon Tek Chand, Kishori and Omi threw bricks on her which hit her on her forehead and on the right side of her face. There is no evidence on record to show that the bricks were thrown at the spot which hit Smt. Kesar Devi. The prosecution has placed on record the photographs which show bricks lying arranged in an orderly manner except one brick which is lying at the threshold of the house of appellants. Thus she has got a different tale to tell.

A perusal of the injury sheet (Ex. DW 1/A) reveals that the doctor found the injuries to be simple in nature.

38. So, in view of the above the said version cannot be relied upon particularly when there is no evidence except the statement under Section 161 Cr.P.C. which is no evidence in the eye of law.

39. PW 3 Smt. Madan Wati has explained through her statement on oath as to how did she sustain the said injuries. According to her, she pushed out Kesar Devi when she tried to catch hold of her when she wanted to come to the rescue of her son Raju deceased and on account of the said push her head struck against the door sill.

40. To the same effect are the statements of PW 5 Smt. Bala Devi and PW 13 Shri Tek Chand.

41. Furthermore, there is another aspect of the matter. The appellants in the instant case have not confined themselves to the defense alluded to above only. It was suggested to PW1 Onkar Singh that he and the deceased and their women folk trespassed into the house of the appellants and thereby caused grave and

sudden provocation and thus compelled him to act in the manner he did. The said defense we feel is contradictory to and inconsistent with the aforesaid defense inasmuch as it would nullify the above version that the deceased was armed with a knife and the appellant disarmed him by snatching the said knife and then inflicted the injuries on the person of the deceased Raju and PW1 Onkar Singh in self-defense.

42. The appellants yet took the third defense during the course of cross-examination of PW 13 Shri Tek Chand when it was suggested to him, which he denied, that the injuries were sustained by both the sides in a melee. The said suggestion falsifies the earlier defense version that the injuries were inflicted either in self-defense or on a grave and sudden provocation.

43. In the above circumstances we find that the right of self-defense never accrued to the appellants. Thus there was absolutely no occasion, whatsoever, for the exercise of the same.

44. This brings us to the defense of alibi put forwarded by the appellant Amar Singh. Surprisingly enough the appellant has not led any evidence in connection therewith. This fact has been conceded with commendable fairness by the learned counsel for the appellant Mr. Jitender Sethi. No evidence, oral or documentary, was led to show and prove that the appellant Amar Singh was not present on the spot at the time of occurrence. Admittedly, the burden was on the appellant to show that he was somewhere else other than the place of occurrence at the time of the incident.

45. The Hon'ble Supreme Court while dealing with the plea of alibi observed in JT 1996 (2) SC 140, Hari Chand v. State of Delhi, ..... 'It is well established that it is for the accused to prove the case of alibi to the hilt. The aforesaid evidence of alibi led on behalf of both the appellants does not meet this test. It must therefore be held that the defense has failed to establish the plea of alibi concerning the present appellants.'

46. In the aforesaid circumstances we find no merit in the present appeals. Consequently, the same are hereby dismissed.

47. Appeal dismissed.

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