

Babulal Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-12-1976

Reported in : 1977CriLJ59

Judge : V.P. Tyagi, A.C.J.; and M.L. Shrimal, J.

Appellant : Babulal

Respondent : The State of Rajasthan

Judgement :

M.L. Shrimal, J.

1. This appeal has been directed against the judgment dated November 26, 1974 of the learned Additional Sessions Judge No. 2, Jodhpur wihereby the accused-appellant Babulal, son of Moolchand Sadh was convicted for the murder of Babulal, son of Chhotu Ram Harijan, under Section 302, I.P.C, and sentenced to imprisonment for life and to pay a fine of Rs. 2,000/- and in default of payment of which he was to undergo rigorous imprisonment for a further period of one year.

2. The prosecution story in a nutshell is that on April 27, 1974 between 4.30 P.M. to 5.30 P.M. Babulal Harijan (since deceased) had gone to the hotel owned and managed by the brother of the accused. At that time the author of the first information report P.W. 6 Kamal happened to come to the shop to take tea. The accused asked Babulal Harijan (since deceased) why he was not being seen near

the hotel in those days. He replied that he had not gone anywhere out of Jodhpur, whereupon the accused further enquired, what made him to bully the hotel boys. The deceased protested and denied the allegations which annoyed the accused, who in turn told that he would make him forget his 'Dadagiri' (scoundrelism). Uttering these words the accused picked up a pair of scissors in his hand which was lying on the counter. He caught hold of the neck of Babulal Harijan (since deceased) and thrust the pair of scissors in his chest. Pulling the pair of scissors out, he rushed towards his house. At the time when the accused was pulling out the pair of scissors from the chest of Babulal Harijan (deceased), two police constables P.W. 3 Kailash Lal and P.W. 4 Rewat Singh happened to come towards the hotel to take tea, and both of them witnessed the accused pulling out the pair of scissors from the chest of Babulal (since deceased). They also saw the accused sprinting towards his house. The above-mentioned two constables followed him but they could not catch hold of him on the way. The accused went inside his house. After wearing the bush-shirt and placing the pair of scissors inside his house, he came out and was apprehended by the two constables. The injured Babulal Harijan (deceased) placing his hands on the chest moved towards the Thana but owing to profuse bleeding, he fell down on the way. In the meantime Kamal (P.W. 6) went to the Police Station, Udey Mandir and lodged the first information report which was reduced into writing. The first information report is Ex. P-12. The Station House Officer, P.W. 8 Bhagwan Das registered the case against the accused under Section 307, I.P.C. He saw the injuries of Babulal Harijan (since deceased) and sent him to to, the Mahatma Gandhi Hospital, Jodhpur and thereafter arrested the accused Babulal Sadh. The arrest memo is Exhibit P-4. As the 'Tehmad' Art. 3 and the bush-shirt Article 2 worn by the accused were stained with blood, he seized them vide seizure memo Ex. P-4. He also found an injury in between the thumb and the index finger of the accused. He got the blood removed on a piece of cotton. He seized and sealed the same and also made the note of this fact in Exhibit P-4. He inspected the Ate, prepared the site memo Exhibit P-3 and the site-plan Exhibit P-15 in the presence of the Motbirs. Thereafter, he went to the hospital, but on his arrival he found the injured Babulal Harijan dead. The autopsy on the dead body of the deceased was performed by the Medical Jurist P.W. 7 Dr. P. Dayal. The postmortem report is Ex.

P-13. The accused expressed his desire to get the weapon of offence discovered from the place of concealment. The information was reduced into writing. It has been marked Ex. P-16. The recovery memo is Ex. P-11. The pair of scissors is Art. 1. The pair of scissors was sealed in the presence of the Motbirs, and was sent to the Director of Police Forensic Science Laboratory, Rajasthan, Jaipur. The Tehmad Article 3, worn by the accused, at the time of occurrence, and the pair of scissors Article 1 were found to be stained with blood. The report of the office of Director, Police Forensic Science Laboratory, Rajasthan, Jaipur is Ex. P-17. The Police after usual investigation submitted a challan against the accused-appellant in the Court of Additional Munsiff and Judicial Magistrate, No. 2, Jodhpur who after taking proceedings under Section 209, Criminal P.C. committed the accused to the Court of Sessions Judge, Jodhpur to stand trial for the alleged offence. The learned Sessions Judge transferred the case to the Court of Additional Sessions Judge No. 2, Jodhpur by his order dated June 7, 1974.

3. The accused-appellant pleaded not guilty to the charge. The prosecution in support of their case examined 8 witnesses out of whom P.W. 1 Ramnarayan. P.W. 2 Roshanlal, and P.W. 6 Kamal were examined as eye-witnesses of the occurrence. Both P.W. 1 Ramnarayan and P.W. 2 Roshanlal refused to have seen the occurrence and both of them were declared hostile by the prosecution. P.W. 6 Kamal supported the story given by him in the first information report but made improvements regarding the fact as to how the quarrel started and stated that the deceased was aggressor who made two attempts to inflict the injuries on the person of the accused with a knife, and thereafter the accused thrust the pair of scissors into the chest of Babulal Harijan (deceased). This improvement was made by the witness in order to support the theory of self defence of person of the accused. The prosecution was allowed to put leading questions to this witness and cross-examined him. P.W. 3 Kailash Lal and P.W. 4 Rewat Singh are the police constables who saw the accused pulling out the pair of scissors from the chest of Babulal Harijan (deceased). P.W. 7 Dr. P. Dayal is the Medical Jurist who performed the autopsy on the deceased, and P.W. 8 is the Investigating Officer in this case. The accused in his statement admitted his presence on the scene of occurrence and stated that as the deceased used to menace and reprove the hotel boys, he asked him to behave properly and not to terrorise the boys on which the

deceased pushed him and using invectives called him filthy names. He asked the deceased to get out of the hotel. The deceased got infuriated, took out a 'Rampuri' knife from the pocket of his pants. The blade of the knife was 8' to 9'. The deceased made two attempts to cause injuries to the accused with the knife. The accused got perplexed, lifted the pair of scissors from the counter and thrust it into the body of Babulal Harijan (deceased) in exercise of his right of self defence of his person. He said that he had no previous quarrel or enmity with the deceased. He did not examine any witness in support of his defence. The learned Additional Sessions Judge found that the prosecution case against the accused was proved beyond any shadow of doubt. He partly believed the statement of P.W. 6 Kamal and placing reliance on the statement of P.W. 3 Kailashlal, and P.W. 4 Rewat Singh as well as the discovery of the pair of scissors, and after considering a portion of the statement of the accused in consideration of the other evidence led by the prosecution found him guilty and convicted the accused appellant under Section 302, I.P.C. and sentenced him as mentioned above.

4. Aggrieved with the aforesaid judgment the convicted accused-appellant has challenged his conviction and sentence by this appeal. The appeal raises the question of self defence to person for the offence under Section 302, I.P.C.

5. It cannot be disputed that the pair of scissors was thrust into the chest of Babulal Harijan (deceased) on the date of occurrence and consequently he died later on. P.W. 7 Dr. P. Dayal who conducted the autopsy on the dead body of Babulal Harijan (deceased) found the following injuries :

Incised wound 3.5 cm. X 1 cm. situated 5 cm. lateral to the midline and 3.5 cm. below the nipple on left side of chest. The lateral edge of the wound was lacerated. The fifth inter-coastal muscle has been cut. The left pleura was perforated. There was a perforation of the pericardium and the left ventricle of heart 1.7 cm. from the apex of the heart, clotted and partially clotted blood about 1000 cc. was present in the thoracic cavity. The perforation of the heart measured 1 cm.X 0.5 cm. and it was communicating with the ventricular cavity.

6. The death of Babulal Harijan. (deceased) in the opinion of P.W. 7 Dr. P. Dayal was caused by shock as a result of perforation of heart and internal haemorrhage.

He further opined that the injury was ante-mortem in nature, and was sufficient to have caused the death in the ordinary course of nature. The injuries could have been caused by the blades of the scissors Art. 1.

7. Mr. Bhimraj, learned Counsel for the accused-appellant has urged that there are some outstanding features of the case, which according to him, are sufficient to throw doubt on the entire prosecution case. There is no evidence of motive for commission of the crime by the accused-appellant. At best, the prosecution evidence shows that the accused appellant Babulal Sadh did not like that Babulal Harijan (deceased) should go on threatening the employees of the hotel but that does not envisage that there was enmity between the two or there was any immediate cause that the accused would take into his head to commit the murder of Babulal (deceased). The learned Counsel urged that P.W. 6 Kamal failed to explain in the first information report as to how the quarrel started. The story given in the first information report is most unnatural. It does not stand to reason that though Babulal Harijan (deceased) did not give any cause to the accused to be enraged and mildly stated that he had neither threatened nor rebuked the hotel boys and yet the accused took a pair of scissors in his hand and thrust it into the chest of Babulal Harijan (deceased). It could not have happened unless the Court is prepared to hold that the accused had become demented. The story narrated in the first information report itself suggests that some material facts have been suppressed. P.W. 6 Kamal in his statement on oath has stated that when the accused questioned Babulal (deceased) as to what made him to terrorise and rebuke the hotel boys, the deceased got enraged and began calling filthy names to the accused-appellant, and simultaneously took out a 'Rampuri' knife from his pocket and attempted twice to inflict injuries with it on the person of the accused-appellant, on which the accused thrust a pair of scissors into the chest of the deceased. According to the learned Counsel the above-mentioned version of the incident given by P.W. 6 Kamal is natural and truthful and there is no reason why it should be discarded specially when the accused has also given the same version of the case. A portion of the statement of this witness which is unsuitable to the prosecution cannot be discarded simply because it supports the defence of the accused. The witness in the same breath has stated that the deceased made an attempt to inflict two injuries with a knife on the person of the accused, and

thereafter the accused inflicted an injury with a pair of scissors in order to save his life. Both these portions form integral part of the same sentence. They are inextricably mixed up with each other and cannot be disjuncted with the other. The statement of the witness must be read as a whole and should not be read out of the context. The accused also sustained injuries and the prosecution has failed to explain them. The accused had inflicted an injury on the deceased in exercise of the right of self defence. If the statement of this witness is discarded the genesis of the occurrence is shrouded in deep mystery which is sufficient to demolish the entire prosecution case. There is no other witness who can focus light on the fact as to how the quarrel started. The prosecution did not come out with the true version of the nature and the origin of the occurrence. They cannot blame either the accused or the Court if the entire version presented by them is rejected. After discarding the statement of P.W. 6 Kamal, the prosecution has not any reliable evidence on the record to show what exactly transpired at the incident and who acted as aggressor. The statements of P.W. 3 Kailash Lal and P.W. 4 Rewat Singh are not sufficient to bring home the guilt to the accused-appellant and if all the three statements of P.W. 3 Kailash Lal, P.W. 4 Rewat Singh and P.W. 6 Kamal are read, together alone with the statement of the accused, a clear case of self defence to person is made out in favour of the accused-appellant. When the deceased made two attempts to inflict injuries on the person of the accused with a 'Rampuri' knife, it was not possible for the appellant to weigh the blow in the golden scale. He used the pair of scissors only once and the appellant was fully entitled to the exercise of right of self defence to his person.

8. The learned Additional Government Advocate appearing on behalf of the State has urged with matching vehemence that the first information report in this case was given within 5 minutes of the occurrence. The true version of the happenings as seen by the witness P.W. & Kamal was given in the first information report. The charge was framed by the learned Additional Sessions Judge against the accused on June 8, 1974. In reply to the charge the accused did not raise any plea of self defence. No question suggesting the plea of self defence was put to P.W. 1 Ramnarayan and P.W. 2' Roshanlal, the two hostile witnesses, even though they were out and out to oblige the defence. The plea of self defence was first of all raised when the accused was successful in persuading P.W. 6 Kamal to introduce

the facts supporting the theory of self-defence, who obliged the accused and introduced a false theory of Babulal (deceased) taking out a knife from his pocket and making an attempt to assault the accused. P.W. 6 Kamai under cross-examination submitted that prior to his statement recorded on November 6, 1974 he had not stated to anybody that Babulal Harijan (since deceased) made two attempts to inflict injuries on the person of the accused. Thus it is crystal clear that this improvement was made by the witnesses to oblige the defence and no credence should be given to this portion of the statement of this witness. The bald statement of the accused under Section 342, Criminal P.C. is not sufficient to discharge the burden of proof of self defence, which squarely rests on the accused. It is simply an afterthought. The Additional Government Advocate further urged that it is within the competence of the Court to dissect a part of the statement of a witness and discard that portion which has been proved to be false and place reliance on the rest of the evidence. The case is not based on the solitary statement of P.W. 6 Kamal as suggested by the learned Counsel for the accused but there is other unimpeachable evidence on record on the basis of which the guilt has been brought home to the accused. The learned trial Court after a careful analysis of the evidence of the witnesses and after separating the grain from the chaff has held the accused guilty and there is no reason to reverse the finding of guilt arrived at by the trial Court which had the advantage of watching the demeanour of the witnesses in the witness box.

9. We have given our anxious consideration to the rival contentions advanced by the parties. P.W. 6 Kamal was not declared hostile by the trial Court. The trial Court allowed the prosecution to put questions to him which might be put in the cross-examination by the other party. If a witness is clever enough to introduce some facts in a subtle way in a statement which may in fact have the effect of contradicting what he stated earlier or which has been introduced with a design to help the party other than the person calling him to make the statement, the party calling him to make the statement can be permitted to put such questions to the witness which can be put in cross-examination. The fact that such cross-examination was permitted does not imply that the witness who was cross-examined is for all purposes an untrustworthy witness, and no part of his statement can be regarded as representing the truth. The question before the

Court in such a case would be to decide which part of his testimony is false, and which part of his evidence is true, provided there is the required degree of conviction in the mind of the Court that a particular part of the testimony of a witness whether it forms a part of the examination-in-chief or cross-examination is true. There is nothing which can impede the Court in acting upon such evidence in support of its conclusion. That being the true position, the fact that the prosecutor himself sought permission to cross-examine P.W. 6 Kamal would be no reason for altogether discarding the testimony of P.W. 6 Kamal. It is open to us to say even after he was permitted to be cross-examined that some part of his testimony was acceptable while other was not.

10. P.W. 6 Kamal stated that on the date of occurrence nearly at 4.30 P.M. he had gone to the hotel of the accused to take tea. At the time when he was sitting inside the hotel Babulal Harijan (deceased) appeared on the scene of occurrence and stood near the counter. Babulal (since deceased) asked the witness to offer him tea but as the witness had no money he refused to oblige him. At that time the accused asked Babulal Harijan (deceased) why he was not being seen for a pretty long time. The deceased replied that he had not gone out and was very much in Jodhpur. Thereafter the accused questioned Babulal Harijan (deceased) as to why he threatened the hotel boys. Such an act on his part would not be appreciated. On this Babu Harijan (deceased) got infuriated and he took out a 'Rampuri' knife from his pocket, attempted twice to inflict the injuries on the person of the accused. The first attempt was warded off by the accused who enjoined Babu (deceased) truculently not to behave in that manner, but the deceased could not be desisted and he made a second attempt to inflict an injury on the person of the accused with the knife. The accused got perplexed and enraged. He picked up a pair of scissors, and thrust it into the chest of Babu Harijan (deceased). After being injured Babu Harijan (deceased) walked towards the Thana but could not go for long and collapsed on the way. He further stated that he did not lodge any first information report at the Police Station but admitted that Ex. P-12 (first information report) bore his signatures A to B, and those signatures were made regarding the occurrence of murder, but the contents of Ex. P-12 were not read over to him. At this stage the Public Prosecutor sought permission of the Court to put leading questions to the witness which was permitted and the witness admitted that the

story regarding Babu Harijan (deceased) making an attempt to assault Babu Lal accused with a knife was narrated by him for the first time in the Court on that day. He admits that he did not narrate this fact to anybody prior to that day. Thus it is crystal clear that this witness has introduced the theory of the accused making two attempts to cause an injury to Babu (deceased) in the right of private defence to his person, for the first time after the expiry of more than ten months from the date of occurrence (sic). It is difficult if not impossible to believe that if really such an important happening was noticed by him he would not talk about it to any other person for so long i.e. upto November 6, 1974. This part of the story does not find any place in the first information report. The first information report of this occurrence was given within 5 minutes of the occurrence. P.W. 6 Kamal admitted his signatures on it. P.W. 8 Bhagwan Das has proved that Ex. P-12 (first information report) was given by P.W. 6 Kamal. The importance of the prompt giving of the first information report cannot be minimised. It is the earliest version of the prosecution case and in the circumstances it can be very safely said that the author of the first information report namely P.W. 6 Kamal at that time had no opportunity to embellish the prosecution story. The absence of the story regarding the deceased making two attempts to inflict injury with the knife on the person of the accused from the first information report is of great significance, and it can be used to contradict the statement of P.W. 6 Kamal. A close reading of the first information report and the statement of the witness given in the Court suggest that the portion of the statement of the witness that the deceased first made two attempts to inflict injuries on the person of the accused is an afterthought. Two police constables P.W. 3 Kailash Lal and P.W. 4 Rewat Singh appeared on the scene of occurrence just at the time when the accused was pulling out the pair of scissors from the chest of Babulal Harijan (deceased). Thereafter Babulal Harijan (deceased) walked towards the Thana, but fell down at a little distance. If the deceased had been armed with a knife at the time of occurrence then these two witnesses would have observed a knife either in his hand or lying nearby. These witnesses have been cross-examined at length. P.W. 3 Kailash Lal stated in his cross-examination that he had never seen any knife with Babulal Harijan (deceased) at any time, he had no knowledge whether he used to keep the knife with him or not. P.W. 4 Rewat Singh stated under cross-examination that neither

the saw Babulal (deceased) holding a knife in his hand nor did he see him running after the accused. The Police Station is situated near the place of occurrence. In between there is a small lane. The Station House Officer Bhagwan Das appeared on the scene of occurrence within few minutes of the occurrence. He has categorically stated that he did not find any knife either with Babulal (deceased) or at the place of occurrence. It is pertinent to note that the occurrence took place in the day time on a thoroughfare. If the deceased had made any attempt to inflict injuries on the person of the accused with a knife prior to his receiving the injury at the hands of the accused the persons standing nearby or at least the brother of the accused, or bell boys or employees of the hotel would have narrated this fact to the Station House Officer. Neither the Station House Officer nor were P.W. 3 Kailash Lal and P.W. 4 Rewat Singh cross-examined on this point, and no suggestion had been made to them. Not only this, such a suggestion was not even made to P.W. 1 Ramnarain and P.W. 2 Roshan-Lal, the two hostile witnesses who were out and out to support the defence. P.W. 8 Bhagwan Das was examined on November 21, 1974 and P.W. 6 Kamal was examined on November 6, 1974, yet no suggestion was made on behalf of the accused to Bhagwan Das that at the time of the occurrence Babu Harijan (deceased) was armed with a knife and made two unsuccessful attempts to inflict injuries on the person of the accused and such a fact was brought to his notice, during investigation. All these facts stated above are sufficient to hold that P.W. 6 Kamal later on made a volte-face and was persuaded after nearly six months of the occurrence to falsely state that at the time of occurrence prior to the accused criminally assaulting Babulal Harijan (deceased), the deceased had attempted twice to inflict injuries on the person of the accused with a knife. The portion of his statement, 'that Babulal (deceased) made two attempts to inflict injuries on the person of the accused' is severable from the other portion of his statement and it can be dissected very well. We must observe that even if a witness has been persuaded to introduce some unreliable facts in his statement and the prosecution has been permitted to cross-examine with the leave of the Court, his evidence cannot be treated as altogether washed off. What is required to be seen is whether the credit of the witness has been completely shaken. We have read the statement of this witness and have considered it with the caution and care in the light of the criticism levelled by the

learned Counsel for the accused-appellant. Except the portion of the evidence regarding the deceased making two attempts to assault the accused with a knife, rest of his statement can be relied upon, and it is creditworthy and can be acted upon to the extent it stands corroborated by other reliable evidence. Reference may be made to *Bhagwan Singh v. State of Haryana*. : 1976 CriLJ203 . Their Lordships of the Supreme Court laid down the law as under:

But the fact that the Court gave permission to the Prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant.

The maxim *falsus in uno falsus in omnibus* (false in one thing false in every thing) is neither a rule of law nor a rule of practice. It is not a sound rule to apply, looking to the conditions in this country, and so it is the duty of the Court in cases where the witness has been found to have given unreliable evidence in regard to certain particulars to scrutinise the rest of his evidence with care and caution and if the remaining evidence is trustworthy and the substratum of the prosecution case remains unimpaired on the whole the Court should uphold the prosecution case to the extent it is considered safe and trustworthy. The statement of P.W. 6 Kamal after excluding the portion in his statement 'that the deceased first made an attempt to assault the accused twice with a knife' stands corroborated by the first information report Ex. P-12. A part of the statement of a witness can be relied upon by the prosecution. Reference may be made to *Jethamal v. Assistant Collector of Customs, Bombay* : 1974 CriLJ621 . It is pertinent to note that the first information report lodged in the case on hand at the Police Station, within a few minutes of the occurrence contained all the material facts and in our opinion this

first information report lends considerable corroboration to the statement of P.W. 6 Kamal. Besides this the part of the statement of P.W. 6 Kamal relied upon by this Court and the trial Court stands corroborated in material particulars by the statements of P.W. 3 Kailashlal and P.W. 4 Rewat Singh. Both these witnesses have stated that the accused Babulal is the brother of Govind, owner of the hotel, the venue of the occurrence. At the relevant time they were going to the hotel to take tea from the Police Station, which is situated nearby. As soon as they came out they saw the accused pulling out the pair of scissors from the chest of Babulal Harijan (deceased). Both of them saw the accused sprinting towards his house and when he came out of the house, they apprehended him. Neither of these two witnesses noticed a knife with Babulal (deceased). On the same day of the occurrence a pair of scissors Art. 1 was got recovered by the accused from the place of its concealment vide Ex. P-11 and the information memo is Ex. P-16. This pair of scissors was found to be stained with blood by the Director of Police Forensic Science Laboratory, Jaipur vide Ex. P-17. Thus the discovery of the bloodstained pair of scissors at the instance of the accused also corroborates the statements of P.W. 6 Kamal, P.W. 3 Kailashlal and P.W. 4 Rewat Singh.

11. Thus from the above evidence it can be safely said that the prosecution have succeeded in proving that the accused voluntarily caused an injury to Babulal Harijan (deceased) with a pair of scissors, which resulted in his death.

12. The accused in his statement recorded under Section 313, Criminal P.C. on November 22, 1974 has raised a plea of self defence to his person. He has pleaded that on the date of occurrence he asked Babulal Harijan (deceased) as to what made him scold, and terrorise the hotel boys. Instead feeling apologetical he refuted that he had no business to ask him, and vituperatively called slurring names to the accused, and drawing out a 'Ram-puri' knife from his pocket he made two attempts to inflict injuries on his person, The accused became nervous and he picked up a pair of scissors lying on the counter and inflicted an injury on the person of Babulal Harijan (deceased) in order to save his life. The burden of proving the existence of the circumstances bringing the case within any of the general exceptions in the Indian Penal Code is upon the accused. Where the accused person claims that his act which would otherwise be an offence is not an

offence as it was done in the exercise of his right of private defence, the burden is on him to prove the same. The standard of proof required to discharge the burden of proof resting on an accused person who pleads a right of private defence is undoubtedly not as strict and heavy as the standard of proof necessary for the prosecution to establish that the accused committed the offence but it is clear that the accused must at least, make out a case out of which a plea of right of private defence might arise, and the burden can be discharged by showing preponderance of probabilities in favour of that plea, on the basis of material on the record. In the instant case, in our opinion, the burden of establishing plea of self defence was not discharged in any manner by the appellant even applying the test of preponderance of probabilities in favour of that plea. After excluding the portion of the statement of P.W. 6 Kamal 'regarding Babulal Harijan (deceased) making two attempts to inflict injuries on the person of the accused with a knife' the only evidence which remains on the record is the bald statement of the accused, recorded under Section 313, Criminal P.C. It has come in evidence that Govind Hotelwala, the brother of the accused, was present on the scene of occurrence. Neither Govind nor were any of the employees of the hotel or other persons examined by the accused to lend support to his plea. The statement of the accused is against the probabilities of the case. If the deceased Babulal was armed with a knife and if he made two attempts to inflict injuries on the person of the accused prior to his thrusting the pair of scissors into the chest of Babulal Harijan (deceased), it does not stand to reason why the accused did not come out with such a defence for a period of six months after the date of occurrence. No question suggesting the plea of self defence was asked to P.W. 1 Ramnarayan and P.W. 2 Roshanlal. On the contrary P.W. 3 Kailash Lal and P.W. 4 Rewat Singh, as already discussed above, stated that they did not notice any knife with the deceased. P.W. 8 Bhagwan Das has stated that he did not find any knife on the person of the deceased or at the place of occurrence. The occurrence took place in the day light in a busy market and thoroughfare. The accused is not a rustic innocent villager. He is a city dweller running the business of a hotel. In such circumstances it does not stand to reason why the plea of self defence could not be raised for such a long time and why the Station House Officer was not informed of this fact during investigation and why this fact was not adduced to the

Investigating Officer when he came on the spot. The preponderance of the evidence and the circumstance of the case suggest that it is only an afterthought and the learned trial Court was right in rejecting it for good and sufficient reasons. Applying the test of preponderance of probabilities in favour of the plea it can be safely said that the accused has not been able to prove it or create reasonable doubt about it. For the reasons already mentioned above we hold that the plea that 'Babulal Harijan (since deceased) first attempted twice to inflict injuries with a knife on the person of the accused' is inherently improbable in the proved circumstances of the case. Considering the statement of the accused in the light of the other evidence on the record which prove the guilt of the accused beyond, reasonable doubt, we hold that the trial Court did not commit any error of law in rejecting a part of the statement of the accused recorded under Section 313, Criminal P.C.

13. A perusal of the record shows that on the person of the accused two injuries were found at the time of his arrest. P.W. 1 Dr. P. Dayal has stated that the abrasion found on the index finger of the accused could be caused by handling of Article 1, pair of scissors, and injury No. 2 on the foot could be caused by friction while moving or running. Thus both these injuries found on the person of the accused stand explained, and they are of no avail to the accused to establish the plea of self defence to his person.

14. Lastly, it was urged that the accused is entitled to benefit of doubt. The benefit of doubt to which the accused can claim consideration should be a reasonable doubt and not the doubt of a vacillating mind. Reference may be made to Himachal Pradesh Administration v. Om Prakash : 1972 CriLJ606 . Their Lordships of the Supreme Court have laid down the law as under:

the maxim that the accused should be given the benefit of doubt becomes pivotal in the prosecution of offenders which in other words means that the prosecution must prove its case against an accused beyond reasonable doubt by a sufficiency of credible evidence. The benefit of doubt to which the accused is entitled is reasonable doubt - the doubt which rational thinking men will reasonably, honestly and conscientiously entertain and not the doubt of a timid mind which fights shy -

though unwittingly it may be - or is afraid of the logical consequences. If that benefit was not given or as one great Judge said it is 'not the doubt of a vacillating mind that has not the moral courage to decide but shelters itself in a vain and idle scepticism'. It does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the offence. If that were so the law would fail to protect society as in no case can such a possibility be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. It is for this reason the phrase has been criticised. Lord Goddard C.J. in *Rex v. Kritz*, (1950) 1 KB 82 at p. 90 said that when in explaining to the juries what the prosecution has to establish a Judge begins to use the words 'reasonable doubt' and to try to explain what is a reasonable doubt and what is not, he is much more likely to confuse the jury than if he tells them in plain language 'It is the duty of the prosecution to satisfy you of the prisoner's guilt'. What in effect this approach amounts to is that the great possible care should be taken by the Court in convicting an accused who is presumed to be innocent till the contrary is always in the accusatory system, on the prosecution. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt.

This case was followed in *State of U.P. v. Iftikhar Khan* : 1973 CriLJ636 .

15. In our opinion, the evidence of the prosecution and the statement of the accused read together do not create any reasonable doubt in favour of the accused-appellant.

16. Now the question remains as to what offence has been made out against the accused. The crime was committed without premeditation. The accused could not have known that Babulal Harijan (deceased) will appear on the scene of occurrence at the relevant time. The quarrel arose all of a sudden. Only one injury was caused and that also with a pair of scissors, which is not usually a weapon of offence for committing a murder or for causing the injuries. The appellant has not taken any undue advantage or acted in a cruel or unusual manner. Verbal altercation took place before the accused inflicted the injury on the person of the

deceased Babulal. As the injury was caused in the heat of passion the case of the accused appellant comes within exception IV to Section 300, I.P.C, with the result that the offence committed was culpable homicide not amounting to murder. The appellant could not therefore be convicted of having committed an offence under Section 302, I.P.C.

17. It now remains to consider whether the offence which the appellant has committed falls within the first part or second part of Section 304, I.P.C. When the fatal injury was inflicted by the appellant on the chest of Babulal (deceased) by only one blow in the manner alleged by the prosecution, it could as well be that the act by which the death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause the death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. We accordingly allow the appeal to this extent that the conviction of the accused-appellant Babulal under Section 302, I P.C. and the sentence of life imprisonment and a fine of Rs. 2,000/- awarded to him are set aside, but the appellant is convicted of having committed an offence under Section 304, Part II, Indian Penal Code and is sentenced to five years' rigorous imprisonment, and a fine of Rs. 500/-; in default of the payment of which to further suffer imprisonment for a period of six months.