

Hari Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-13-1991

Reported in : 1992CriLJ3168; 1991(2)WLN402

Judge : V.S. Dave and; Mohini Kapur, JJ.

Acts : Indian Arms Act - Sections 3, 25 and 27; ;Probation of Offenders Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 96,97, 100, 147, 148, 149, 300, 302, 304, 307, 323 and 324; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 174 of 1989

Appellant : Hari Ram

Respondent : State of Rajasthan

Advocate for Def. : K.N. Garg and; K.N. Sharma, Advs.

Advocate for Pet/Ap. : Ganpat Ram,; Biri Singh and; R.S. Rathore, Advs.

Judgement :

V.S. Dave, J.

1. This appeal is directed against the judgment of Additional Sessions Judge, Kishangarh (Alwar) dated 25th April, 1989 in Sessions Case No. 49/1988, State v. Hari Ram and others convicting and sentencing the accused-appellant

as under:

Under Section 302, IPC Life Imprisonment and a fine of Rs. 500/-, in default of payment of fine to further undergo 6 months S.I.

Under Section 307, IPC Four years' simple imprisonment and a fine of Rs. 250/- in default thereof 3 months' simple imprisonment.

Under Sections 3/25 & 27 of Indian Arms Act One year's simple imprisonment and a fine of Rs. 250/- in default thereof to further undergo 3 months' S.I.

All the sentences were made to run concurrently.

2. Brief facts giving rise to this appeal are that one Charan Singh Goojar, P.W. 1, lodged a report on 17th June, 1988 at 8.05 a.m. at police station Bhiwadi, District Alwar wherein it was alleged by him that in village Shanthal nearabout the Johad Ki Pal there is a Kudi (husk of mustard plants) for dumping cow dungs etc. Towards the way is Surjaram's Bada for the same purposes and thereafter Hansaram's Bada. Way passes through a pucca well of Nihalsingh and through Surjaram's Bada. On 17-6-1988 at about 7.15 a.m. Ratiram was obstructing the way by putting shrubs on the way for going to Hansaram's Bada. At that place Surjaram, Krishan and Shriram were standing armed with lathies. Charan Singh and Hansaram Master asked them not to obstruct the way. On this Surjaram and Shriram hit Hansaram by lathies on his waist. Ratiram gave a Jely blow on the shoulder of Hansaram, as a result of which Hansaram fell down on the ground. Surjaram, Ratiram, Shriram and Krishan left towards their verandah and just then Karan Singh came there empty handed and told. Surjaram why they should pick up the quarrel with children. On this protest Ratiram, Surjaram, Shriram and Krishan returned back and started quarrelling with Karan Singh. Krishan gave a lathi blow on the shoulder of Karan Singh and Hansaram Master tried to intervene and requested them by folded hands not to fight. Charan Singh also turned for returning home by pushing Surjaram. Just then Hariram came out in his varendah with a sten-gun and fired on Karan Singh, as a result of which he fell down and died. Hariram thereafter fired towards Hansaram Master which hit the latter on his hand. Hariram thereafter ran away and he was followed by Surjaram, Ratiram,

Shriram and Krishan. It was also mentioned in the report that Karan Singh is lying dead on the spot, while villagers have taken Hansaram to the hospital. On receipt of this report a case for offence under Sections 147, 148, 149 and 302, I.P.C. was registered vide F.I.R. No. 46/88 and investigation commenced. Shri Premchand, S.H.O., P.W. 15, after taking down the report immediately started for the place of occurrence and prepared the site plan Ex. P.2. He also prepared inquest reports Exs. P.3 and P. 4. He also collected the blood stained earth from the place of occurrence and also recovered four empty cartridges of 9 mm which he seized and sealed vide seizure memo Ex. P.7. He also recovered one blood stained Jely with four horns. He arrested the accused persons Hariram, Surjaram, Shriram, Krishan and Ratiram and recovered one 12 Bore gun from roof of a room, one sten-gun with two magazines loaded, on the information and at the instance of accused Hariram from his house. He also recovered lathies. The post-mortem of the deceased Karan Singh was got conducted. His postmortem report is Ex.P.31. Injury report of Hansaram was also obtained. After completing the investigation a charge-sheet against the accused-appellant Hariram and four others, namely, Ratiram, Surjaram, Shriram and Krishan was submitted in the Court of Judicial Magistrate, Tijara. They all were committed to the Court of Session. Learned Sessions Judge framed charge for offence under Sections 302 and 307, I.P.C. along with Section 3 read with Sections 25 and 27 of the Indian Arms Act against accused-appellant Hariram. He also framed charges for offence under Sections 324 and 323, I.P.C. and Section 3/25 of the Arms Act against Ratiram and for offence under Section 323, I.P.C. against Surjaram, Shriram and Krishan. All the accused pleaded not guilty and claimed to be tried.

3. The prosecution in support of its case examined 17 witnesses. The accused denied the occurrence as alleged by the prosecution. Accused Hariram in his statement under Section 313, Cr. P.C. submitted an explanation that his brother Ratiram and son Krishan were being beaten by Hansaram, Karan Singh, Budhram and Shamser Singh by lathies and Furcies. Karan Singh was armed with a Furci, his brother and son both were loudly crying for help. He heard the sound at his residence and when he came out he saw them inflicting lathi and Furci blow on his brother and son. He protested as to why they were beating and despite Phoolsingh's intervention Karan Singh did not stop beating and he therefore, had

no option but to open fire in defence and to save his brother and son. The learned trial Court held that it is established from the statement of P.W. 1 Charan Singh, P.W. 13 Hansaram and P.W. 6 Balkishan corroborated by the statements of P.W. 16 Dr. Pooranmal Gupta that Hansaram and Karan Singh sustained injuries by gun fire by accused-appellant Hariram, as a result of which Karan Singh died. He held that it was borne out from the statement of the investigating officer that Ratiram and Krishan sustained injuries which were found on their persons at the time of their arrest which had been shown in arrest memo Ex. P. 17. But regarding Ratiram's arrest memo and recovery of the gun at his instance were disbelieved by the learned Judge. Learned Judge also came to the conclusion that there are latches in investigation as well. He came to: a categorical finding that Ratiram inflicted injuries on the person of Shiram and Krishan by Jely and on the person of Hansaram and Surjaram inflicted blows by lathies. Then Karan Singh came and thereafter Hariram fired with Stengun, as a result of which Karan Singh died and Hansaram sustained injuries. Learned Judge convicted and sentenced the accused-appellant Hariram as indicated above. He however found the case proved for offence under Section 323, I.P.C. against Shriram, Surjaram and Krishan and under Section 324, IPC against Ratiram and extended to them benefit of the provisions of Probation of Offenders Act. Aggrieved by the aforesaid conviction and sentence the accused-appellant Hariram has preferred this appeal.

4. Mr. Ganpat Ram appearing on behalf of the accused-appellant submitted that the trial Court has grossly erred in not extending the benefit of right of private defence to the appellant when it is fully borne out that the complainant party were the aggressor and the accused-appellant had no option but to open fire when he saw that his son Krishan and his brother Ratiram were being mercilessly beaten by deceased Karan Singh and his party men. It is submitted that the accused when had come with a specific case and same was also borne out from the prosecution evidence, it was obligatory on the trial Court to have considered the case of the accused-appellant in accordance with the principles laid down by their Lordships of the Supreme Court time and again, that right of private defence is a defensive right and not punitive or restrictive and that when a person exercises his right of private defence and opens fire the same cannot be weighed in golden's scales to see up to what extent the person should have used the weapon. It is

submitted that the accused appellant had a Stengun with him and the circumstances indicate that he had fired only once and it is only one pull of the trigger that the magazine has been unloaded causing multiple injuries on the person of the deceased and a straight bullet hit the injured Hansaram. The submission of the learned counsel is that it is a spree of bullets which come out from an automatic fire arm like the Stengun. It had either a belt of cartridges or a magazine attached to it and as soon as trigger is pressed till it is released the fire mark continues the fire till the magazine is exhausted. It is not pressing the trigger each time that the shots come out of it. It is submitted that the trial Court has not tried to understand the mechanism of a Stengun and reason as to why it had been used. It is submitted that from the circumstances as well as from the oral evidence placed before the Court itself the case of the defence is made out to the hilt despite the fact that prosecution has time and again tried to suppress the material facts inasmuch as even the investigation of the case itself is not fair. It is submitted that no independent witness of the locality has been produced in this case and even the names of the witnesses did not find place in the F.I.R. except that of Bal Kishan. It is then submitted that entire case of the prosecution is based on the statement of three witnesses, namely, P. W. 1 Charan Singh, P.W. 6 Bal Kishan and P.W. 13 Hansaram and all these witnesses have given evasive answers in their cross-examination and the defence story has been put to them. It is lastly submitted that at any rate since the prosecution witnesses have not explained the injuries found on the person of Ratiram and Krishan Kumar, the statements of the prosecution witnesses should not be relied upon.

5. Shri Garg appearing for the State and Shri Rathore appearing on behalf of the complainant supported the judgment of the trial Court and submitted that there was no justification worth the name for accused-appellant Hariram to have gone and brought out Stengun in the facts and circumstances of their cases. Their submission is that even if it is proved that the complainant party caused injuries on the person of Ratiram and Krishan even then it is not a case where Stengun could at all be used. It is submitted that a reckless firing has been done by the accused-appellant causing multiple gun fire wounds on the person of the deceased and also making an attempt to kill Hansaram. In these circumstances it cannot be said that the fire arm was used in self-defence and at any rate it is a case of exceeding

the right of private defence.

6. We have given our thoughtful consideration to the rival contentions and have perused the entire record.

7. For appreciating the points raised by learned counsel for the parties regarding right of private defence and whether it has been exceeded it would be appropriate first to discuss the entire evidence which has come on record. According to P. W. 1 Charan Singh at about 7.00 a.m. he and his brother Master Hansaram had gone to the Tube-well for taking bath and he was going for getting himself injected. Surjaram, Rati Ram, Shiram and Krishan all the four were obstructing the way leading to Hansaram's Kudi which was in Sewaichak. Hansaram objected to it on which Surjaram, Ratiram, Shriram and Krishan beat Hansaram. Ratiram was armed with a Jely with four horns and with it he caused injuries to Hansaram. He therefore, ran to the spot. Karan Singh also arrived and he told the accused as to why they had beaten Hansa and he asked them not to fight. On this four accused who were going returned back and beat Karan Singh. Krishan gave a lathi blow on his shoulder. By that time Hariram came out from the house with a Stengun and fired on Karan Singh which resulted in injuries on eye, chest, abdomen and thigh of Karan Singh who fell down and died. Hansarm also received a bullet injury on his left hand. Hansaram's son Vikram Singh was sent to Nihal Singh who brought a jeep and took Hansaram to the Doctor and he himself went to lodge the report. In cross-examination the witness admitted that Ratan and Harchandi also saw the occurrence but they had not been named in the F.I.R. He admitted that all the witnesses produced in the case, namely, Surendra Singh, Prabhati, Ram Ballabh, Bal Kishan, Harchandi Hansaram are belonging to one family being grand-son of Kallu. He could not assign the reason for not mentioning the names of independent witnesses Ratan and Harchandi in the F.I.R. He admitted that he had gone to the police station in a jeep which was carrying Hansaram to hospital and when he went to the police station the police accompanied him to the place of occurrence and it was at that time that he asked Surendra to write down a report which was handed over to the police on the place of occurrence. He stated that Karan Singh had an injury on his shoulder which was inflicted by Krishan by a lathi. He has admitted that all the accused were arrested same day from their

houses at 10.00 a.m. and the police had also recovered the weapons of offence. He has stated that he had not seen any injury on the person of Ratiram or Krishan Kumar. According to him Hand-pump is in the way which goes from Harchandi to Mansingh. There is no way for going to Surja's Bada on this side. He admitted that one day prior to this incident he had removed the Kudi from the Bad and had been thrown in the field. He thereafter denied the suggestion that, Karan Singh and Hansaram were forcibly opening a right of way from Surja Ram's Bada and it was objected to by the accused persons. He admitted that Ratiram's wife Santra goes to Surja's bada but denied the suggestion that Karan Singh had kept her in the Bada on this morning. It is also denied that Ratiram and Krishan came to their rescue and Karan Singh and Hansaram beat them. He also denied the suggestion that Hariram fired in order to save Ratiram and Krishan. He admitted that Karan Singh deceased and witnesses Rambal, Prabhati, Meharchand and Nihal all were in Army. The distance between the house of Hariram and the place where the deceased died was said to be 8 to 10 paces. The witness admitted that he tried to pacify from a distance but did not come closer.

8. P.W. 2 Nihal Singh arrived with his Jeep a little later and had carried the injured to the hospital and dropped P.W. 1 Charan Singh at the police station.

9. P.W. 3 Surendra Singh is the scribe of the report Ex. P.1. According to him he was at the field at 7.30 in the morning where Hansaram's son Vikram Singh came and told that his uncle Karan Singh had been shot-dead and his father Hansaram has also sustained injuries, he therefore, rushed on the spot. Charan Singh dictated in the report and wrote down whatever was told to him. Thereafter he along with his father Nihal Singh and Hansaram went and lodged a report. He admitted that the police had arrived on the spot and interrogated the witnesses. Thereafter on 18-6-88 he was again interrogated at Phoolbag shop and his statement was recorded which is Ex.D.1. Regarding the report he stated that after reaching the spot they decided to write a report so a report was written and it was thereafter that he, Hansaram, Charan Singh etc. had gone towards the hospital and the police station. Thus, according to this witness the report was lodged in the presence of Hansaram injured at the place of occurrence which runs contrary to the statement of P.W. 1 Charan Singh.

10. P.W. 6 Bal Kishan is yet another eyewitness who happened to pass through the way on that morning. He stated that Ratiram, Surjaram, Shriram and Krishan were placing Chhadies near Surjaram's Kudi which was objected to by Hansaram on which Ratiram gave blow on Hansaram. Surjaram and Shriram also gave lathi blows on Hansa's back. Hansaram fell down and Krishan gave On him lathi blow while he was lying down. Just then Karan Singh arrived who was contorting rope and wearing Kachha and Banian only. He supported them on which Krishan gave a lathi push on his shoulder. Master Hansaram also arrived there with folded hands and said kindly do not fight. Thereupon Hariram came with a Stengun. He fired on Karan Singh. One shot fired on the eye, one on the right arm-pit abdomen etc. He again fired which hit Hansaram on his left hand. Just then whole village collected and the accused ran away. The witness denied the suggestion that there was already no way existing but admitted that there are two ways to go to Surjaram's Gwada. He showed his ignorance on the point whether Ratiram and Krishan also sustained injuries? He then said, he had not seen any injury. He admitted that he did not try to intervene but saw the occurrence from distance and was shouting from there. He is unable to say wherefrom Hariram came. He also admitted that Hansaram had removed his Kudi one day before the occurrence. He stated that before that there was some quarrel on this issue but Nihal Suraj's nephew had whipped some wooden sticks. According to this witness Hansaram was empty handed and only orally intervened. According to him when Karan Singh and Hansaram had already fallen down with injuries, Karan Singh did not protest as to why Hansaram had been beaten. It is at that time that Krishan gave lathi blow on Karan Singh and Hariram arrived with Stengun. He also admitted that Ratiram, Krishan, Sriram and Surja had left the place of occurrence after beating Hansaram and when they had left the place Karan Singh arrived. He denied the suggestion that Hansaram might have been armed with a lathi and Karan Singh with Fursi. He further denied that when Ratiram and Krishan were being beaten and were surrounded by complainant party Hariram fired the Stengun. He also denied that he is a false witness and is giving the statement because he is relation of the complainant.

11. P.W. 7 is Vikram Singh who had arrived much later than the occurrence. P.W. 10 Rambal who has also been cited as eye-witnesses, has not been relied upon

by the learned Sessions Judge himself as he was not named in the F.I.R. and his statement was recorded by the police much after the incident. This witness has also not been relied upon for the same reason and so also Meharchand. We have gone through the statements of these witnesses despite the fact that they were not relied upon by the trial Court and in our opinion they have rightly been disbelieved, firstly because their names do not appear in the F.I.R. They are highly interested witnesses as they belong to the same family and there are serious contradictions in their statements. Then comes the statement of Hansaram.

12. P.W. 13 Hansaram is an injured eyewitness and thus is most important witness in this case. According to his statement he used to dump his manure (Kudi) near Johar Ki Pal which is a common land. On the other side of it is the Kudi of Nihal Singh, Harchandi, Charan Singh and Surja Ram accused, way to his Gwada is through Surjaram's Gwada. On the morning of 17-6-1988 at 7.00 a.m. he and Charan Singh were going to take bath. On the Way they found Ratiram Surjaram, Sriram and Krishan obstructing his way by putting shrubs. He objected as to why they were doing so on which they started abusing. Ratiram gave a blow on his head and shoulder. Surjaram and Sriram also inflicted the lathi blows on his waist, Krishan too gave an injury on his elbow on which he fell giddyness and he lied down on the floor. Just then Karan Singh arrived. When he was lying down Krishan gave lathi pushes. Karan Singh told Surjaram as to why he had made the children fight. He thereafter also got up and went near them. Just then Hariram came out from his varendah with his Stengun and started firing. First bullet hit his brother Karan Singh and then he also received a bullet injury on his left hand. Both of them fell down and Hariram went away. The other four accused also followed Hariram. According to this witness when he was being taken to the hospital they passed through the police station where a report was handed over which was written earlier. He admitted that their manure had already been put in their field on 15th and 16th June, 1988 and his statement which he has given in the Court was erroneous. He however denied the suggestion that the way had been closed when he had arrived, but when he arrived on the spot it was they who closed. He admitted that before that he had told to the police that the way had already been obstructed. He also admitted that shrubs were already lying before in their Bada. He stated how could he see Charan Singh while he was being beaten. According

to him he made no cries and no villagers came to their assistance. He has admitted that all the witnesses are the grandchildren of Kallu. He denied the suggestion that when they were going to bring manure they destroyed all the shrubaries and while Ratiram and Krishan were removing it he and Karan Singh arrived there with lathies and Fursies and inflicted injuries on Ratiram and Krishan and thereafter Hariram came out and told, would you kill the children today and even on his call they did not stop beating Krishan and Ratiram, he fired Stengun. He has stated that he had not seen any injury on the person of Krishan and Ratiram. He has denied the existence of the way also.

13. P.W. 15 is Shri Premchand, S.H.O., who recovered four empty cartridges from the place of occurrence and also other weapons of offences. He also recovered the Stengun with two loaded magazines vide Ex.P.19 and sent the same to Ballistic Expert. In cross-examination he has stated that he was informed at 8.00 a.m. that Hansaram was admitted in the hospital but he did not himself go to the hospital and came at the place of occurrence leaving a constable in the hospital. He did not try to record the statement of Hansaram. He reached the spot at 8.30 a.m. and the Circle Officer also arrived at 10.00 in the morning. None of the accused had tried to escape and they were arrested from their residence without any resistance. Accused at that time had also a loaded Stengun and was seen in great anger therefore, he had taken police force with him. All the accused were greatly agitated. He has admitted that the house was not searched at the time of arrest and the stengun was not with the accused at the time of his arrest. All the accused were on roof. The witness admitted that he got Krishan and Ratiram medically examined. He sent them to Bhiwadi hospital as they had sustained injuries. According to his investigation they had sustained six injuries. He admitted that he had obtained medical injury reports in respect of both but he did not file them with the charge-sheet as he did not consider it proper. He admitted that he had not even mentioned about this fact in the entire file. The witness in reply to the Court questions stated that before arrest of the accused he had only the statement of the complainant and the circumstances available from the site inspection. He has admitted that as soon as he arrested the accused he learnt that they had sustained injuries in the same incident but he did not interrogate any of the witnesses in this respect. He also admitted that he has not even mentioned in his

case diary about the injuries on the persons of the two accused.

14. P.W. 16 Dr. Pooranmal Gupta has conducted the post-mortem on the deadbody and found the following injuries on the person of the deceased :

1. Fire arm wound, of entry oval in shape at the noel of nose in left side material side of left eye with the blackening around the wound blood is coming from the wound. Wound of exit lacerated wound 3 cm x 2 1/2 cm on the head in right occipital region 15 cm from right ear, blood is coming from the wound.
2. Fire arm wound-entry wound oval in shape at the root of neck just above joint of two clavicals with blackening wound the oval wound blood is coming from the wound. Exit lacerated wound on back of right chest and capular region 3 cm x 2 1/2 cm 9 cm from the right shoulder joint 4 1/2 cm on medial side of lateral border of right scapula. Blood is coming from the wound.
3. Fire arm wound -- Entry oval in shape at right itriac crast 27 cm from umblicus with blackening 3 1/2 cm x 2 cm. laterally on right side of umblicus.
4. Wound of entry at right itriac crast 27 cm from Umblicus oval with blackening around the wound.

On opening the deadbody following injury was found: '

Perintranim wound 2 1/2 cm x 1 1/2 cm at right itriac posses with blackening. Perintramic treaced 3 cm x 1 1/2 cm near Umblicus 2 cm laterally on right side.

According to his opinion the cause of death was narogemic and haemorrhagic shock due to injury of brain and excessive loss of blood.

15. P.W. 16 Dr. Pooranmal Gupta also examined the injuries of Hansaram soon after the incident and he found the following injuries on his person :

1. Incised would 1 1/2 cm x 1 cm on head on left side 1 cm above left ear.
2. Fire arm wound oval with black out left hand 6 cm (wound of entry) ring along it below left elbow.

3. Fire arm wound lacerated 3 1/2 cm on left hand 1 cm below left elbow on left side (wound of exit 7 cm x 2 1/2 cm).
4. Bruise 6 cm x 4 cm on medial side at right hand 1 cm below elbow.
5. Bruise 3 cm x 2 cm on back of right scapular region.
6. Bruise 3 1/2 cm x 2 cm on back at left scapular region.
16. Injury No. 2 on X-ray was found to be grievous as it had caused a fracture.
17. On the same evening i.e. at about 7,30 p.m. on June 17, 1988 Dr. Pooranmal Gupta examined the accused Krishan Kumar and Ratiram. Their injury reports are Ex. D.3 and Ex. D.4. Following injuries were found on their person:

Krishan Kumar :

1. One incised wound 1 1/2 cm x 1/2 cm on right hand on posterior side 12 cm above right wrist, simple in nature by sharp object.
2. Bruise 6 cm x 4 cm on right hand 10 cm below right elbow, simple in nature by blunt object.

Ratiram:

1. Lacerated wound 4 cm x 1/2 cm on head 12 cm above right ear, simple in nature by blunt object.
2. Incised wound 1 cm x 1/2 cm x 1/2 cm on head 12 cm above right ear 3 cm in front of above injury.
3. Bruise 6 cm x 3 cm on right forearm posteriorly 4 cm above right wrist, simple in nature by blunt object.
4. Bruise 8 cm x 4 cm back side of chest 3 cm below left scapula, simple in nature by blunt object.
5. Bruise 6 cm x 3 cm on left thigh, simple in nature by blunt object.

The injuries on these persons were about 12 hours old and in his cross-examination Dr. Pooranmal Gupta admitted that the injuries of the accused and that of Hansaram could have been caused in the same incident.

18. We having carefully looked into the statements of the main witnesses in the case and the injuries received by two persons on either side, deem it appropriate to look into the site plan Ex. P.2 to have an idea about the place where the incident took place. In village Santhalka, where the incident took place, the road going from east to west is intercepted by another road which joins this main road from the southern side. Near this juncture there is a Bada of Harchandi and near it, is the Bada of Surjaram and then that of Hansaram. A small lane is said to be the approach lane to the Bada of Hansaram. These Badas are used for the purpose of dumping manure. The house of deceased Karan Singh is further down south. On the northern side of the main road there is the house of Harchandi and Surjaram and beyond these houses are the residential houses of the accused. The case of the prosecution is that the Bada of Surjaram is on the road side while that of Hansaram is behind this and the way to Hansaram's Bada passes through the Bada of Surjaram. At the time of incident, allegation is that Ratiram was blocking the way of Hansaram by planting sticks by Jely and the other accused, namely, Surjaram, Krishan and Shriram were standing armed with lathies. When Hansaram reached there and asked them not to block the way, then the incident occurred. We have already narrated about the infliction of the blows hurled by the accused to Hansaram and the subsequent firing of Stengun by the appellant Hariram at Karan Singh.

19. Before dealing with the contentions raised by learned counsel for both the sides, it would be relevant to look into the statement under Section 313 Cr. P.C. given by the appellant Hariram. It may be mentioned here that four other persons who were tried along with the appellant Hariram, viz, Ratiram, Surjaram, Shriram and Krishan, who have been convicted for offences under Sections 323/324 IPC, were ordered to be released on probation of good conduct and no appeal has been preferred by them, hence the case of Hariram alone is to be considered. Accused Ratiram and Krishan have given their versions that Hansaram and Karan Singh were up-rooting their Bad and Karan Singh attacked them with a Farsi and

Hansaram with lathi and thus they were beaten. Accused Hariram in his statement categorically stated that there was enmity between the two families and he has been falsely implicated. His brother Ratiram and his son Krishan Kumar were being beaten by Hansaram, Karan Singh, Budharam and Shamser Singh with lathies and Farsies. Karan Singh was armed with Farsi. His brother and son were crying for help. When he heard at his residence and saw his son and brother being beaten by lathies and farsies, he asked them to stop but they continued beating hence in order to have their lives he fired at them. He stated that had he not fired they would have killed his brother and son.

20. Thus the theory of right of private defence of person was specifically raised by the accused-appellant, however, it may be stated that he did not examine any witness in support of his theory of defence. Accused wants to derive help from the prosecution case itself in order to make out a case of exercise of right of private defence.

21. Learned Sessions Judge discussed the evidence of the witnesses and believed the case of the prosecution. He has not considered the defence of the appellant at all.

22. Learned counsel for the appellant has first of all attacked the correctness of the time at which the FIR was lodged and according to him it was actually lodged at a later time, but is shown to have been lodged within 40 minutes of the incident. His other contention is that in that incident which occurred the aggressor was the complainant party and the accused acted in exercise of right of private defence. In order to justify the use of Stengun, it has been contended that at a time when the appellant had an apprehension that his brother or son could be killed, he had to use the weapon on which he could immediately lay his hands upon and the use of Stengun is like triggering one shot and it cannot be said that he has fired again and again so as to say that the right exercised by him cannot be justified. According to the submission of Mr. Ganpat Ram, learned counsel for the appellant, once the appellant decided to fire Stengun, he could not control it as cartridges keep coming out of the barrel, unless the finger is removed from the trigger and the Stengun is an automatic fire arm wherefrom there is a rapid rate of

firing in as much as 300 to 1800 shots go out per minute, depending upon whether a magazine is attached or a chain is attached to the gun. It is only as long as the trigger is kept pressed the Stengun continues to fire, it may be till the magazine chain is exhausted. It is submitted that as only 5 cartridges could come out accused has acted with great restraint. On the basis of this it is contended that the appellant cannot be said to have exceeded his right of private defence. To consider this submission of Mr. Ganpat Ram it will be essential to understand the mechanism of the Stengun. Shri B.R. Sharma, Director, Forensic Science Laboratory, Chandigarh in his book on Firearms 'Criminal Investigation and Trials' has dealt with the automatic Firearms. The distinction drawn by him in Semi-automatic and fully automatic Firearm is that in former trigger must be released and pressed afresh for each shot, when in the latter as long as the trigger is kept pressed, the firearm continues to fire till the magazine is exhausted. The rate of fire is about five to thirty shots per second. The author has said that this rapid rate of fire is inconvenient and it is difficult to hold the arm in position and aim it properly. Besides, at this rate the cartridges in the magazine will finish in a fraction of a second. The author reiterates that in machine-gun the rate of fire is very rapid -- 300 to 1800 shots per minute depending upon the feeding system. A reading of the aforesaid makes it clear that once the trigger is pressed in an automatic Stengun the user of it has no control and by the time which may be a split of a second, he removes his finger from the trigger a number of cartridges may come out and secondly there cannot be a fixed aim and range of hitting would not be that accurate.

23. We have seen the injuries sustained by deceased Karan Singh and Hansaram and we find that the wounds of entry on Karan Singh are on the head, neck and iliac-crest and the wound of entry on Hansaram is on the elbow. The Stengun thus could not maintain a fixed aim and in this case the gun moved vertically and caused several injuries to the deceased. The main emphasis of the learned counsel for the appellant is that firing of a stengun is like firing a simple gun and in this case the appellant had a right to act in private defence and a single firing made by him is justified.

24. The learned counsel for the complainant and the learned Public Prosecutor have contended that in order to claim a right of private defence the accused persons should not be the aggressor and in this case there is evidence to show that Ratiram was armed with a Jely and others were armed with lathies and that they had attacked Hansaram. Karan Singh was not amongst the persons fighting. Actually he had come to intervene but the appellant fired on him, who was unarmed. It is contended that there can be no right of private defence against an unarmed person. It is also contended that non-explanation of the injuries of the accused, namely, Ratiram and Krishan, will not make the whole prosecution case false and the accused persons who were duly armed and were blocking the way would not become the aggrieved instead of the aggressor.

25. Having looked into the contentions raised on behalf of both the sides, first of all we have to consider as to who was the aggressor party. If the accused persons were the aggressor, then the right of private defence cannot be said to be available to them. Here is a case wherein two of the accused have received as many as 7 injuries between them out of which two are incised wounds, but these injuries have not been explained by the prosecution. These injuries were found on their person when they were arrested and their medical examination was got done by the investigating officer. In spite of this the prosecution witnesses say that they did not see any injuries on Ratiram and Krishan. This means that they are not coming out with a full truth and are concealing their own role in the incident. In an occurrence the genesis of the same is very important. It is on the basis of the genesis that it has to be decided as to which party was the aggressor. It is the misfortune of the criminal prosecutions in this country that the correct version of an incident hardly ever comes before the court as both the sides give contrary stories and investigation too is (not...Ed.) impartial in placing true picture of the incident. It is from the one-sided versions that the courts have to weave out a story by taking threads from both the sides and even then it becomes a very (sic) task to find out as to which party gave the first blow. Sometimes, the Site Inspection Reports do come to the rescue, in such circumstances but often the important points are overlooked while preparing the site-plan and it becomes difficult to arrive at any conclusion. There is no doubt that the accused persons caused injuries to Hansaram and then the appellant Hariram fired a Stengun which caused injuries to

Karan Singh and Hansa Ram, but at the same time some one caused injuries to Ratiram and Krishan and this could be Hansaram and some one else and/or Karan Singh or some other associate of Hansaram. In absence of evidence in a categorical manner as to how the occurrence started the benefit of doubt is to be given to the accused and it may be accepted that they were not the aggressors and on being attacked they had a right of private defence.

26. We have gone through the provisions about the right of private defence in order to find out whether the appellant Hariram can be said to have acted within the limits of the right available to him. According to Section 96 of the I.P.C., nothing is an offence which is done in exercise of the right of private defence. It may be stated here that normally the accused must plead the right of private defence and one who raises this plea has to prove it. If this defence is raised, then a full account of the occurrence must be given in evidence so that all the circumstances are before the court and it may be possible for the court to arrive at a conclusion about the existence of the right and also whether the right has been exercised within limits or not. It may be stated that even if the right of private defence is not specifically raised, then too the accused can claim the benefit of it, if the right is established even by the evidence of the prosecution. Section 97 of the I.P.C. provides that every person has a right to protect or defend his own body and the body of any other person against any offence affecting the human body and also protect property against any offence such as theft, robbery, mischief or criminal trespass. While exercising the right of private defence only that much harm should be caused as is necessary to avert the attack or the offence which the other person is likely to commit. Under Section 100 IPC, the right of private defence of the body extends to voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of right is of any description enumerated in this section. The law undoubtedly authorises a man who is under a reasonable apprehension that his life or the life of another is in danger or there is risk of grievous hurt, to inflict death upon the assailants, but the apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self defence. It must be proportionate and commensurate with the quality and character of the act it is intended to meet and what is done in excess is not protected.

27. Four conditions therefore, must have existed before taking of the life of a person, on the plea of self defence, firstly, the accused must be free from fault in bringing about the encounter, secondly, there must be present an impending peril to life or of great bodily harm, either real or so apparent as to create honest belief of an existing necessity, thirdly, there must be no safe or reasonable mode of escape by retreat and fourthly, there must have been a necessity for taking life.

28. Thus, for the purposes of the present case, the right of private defence will be available to the extent of causing death to Hariram if it could be said that the assault on Ratiram and Krishan could have reasonably caused apprehension in the mind of the appellant that death or grievous hurt would be the consequence of the assault. The appellant has to show that he had a reasonable apprehension that death or grievous hurt could be the result of the assault upon Ratiram and Krishan and that this apprehension was reasonable. No doubt Krishan and Ratiram have received a few injuries which are all simple in nature and one injury on each of them is by a sharp edged weapon, but both these persons were also armed, Ratiram had a Jely with four iron claws and Krishan had a lathi. They had also inflicted injuries on Hansaram. As seen above, it could even be possible that they were in the wrong when the occurrence started but in absence of explanation of the injuries of the accused the right of private defence has been allowed to the accused-appellant, but there are no circumstances to conclude that this right extended to causing the death of Karan Singh. Here Hariram heard cries of his brother and son and went inside his house and came out with Stengun pressing the trigger to send a few shots, knowing fully well that this act of his would result in the death of the person, who would be hit by the shots. It has been argued vehemently that while exercising the right of private defence the accused cannot weigh in a golden scales as to how much force he should use and in this it has been contended that the accused-appellant did as little as possible as could be done while using an automatic weapon which when once pressed/triggered fires continuously till all ammunition is exhausted. Here he removed the finger from the trigger probably less than a second after he had pressed it. The substance of the argument is that it should not be taken that the appellant fired five times and, therefore, exceeded the right of private defence. It may be said that this theory of regulating the force would be applicable when the accused uses a weapon like

lathi or similar other weapon which can cause different kinds of injuries, if used by less or more pressure. It may cause a simple injury or a grievous injury or even death. The proposition is that at the time of inflicting the blow the person may not be able to judge as to how much pressure he should exert to ward off an attack. But here is a case of using a Stengun and once it is used it hits the target, it will cause the death of another and it cannot be said that the accused could not have known the consequence of his act. In judging whether the action of the accused in causing the death of the victim in the purported exercise of right of self-defence is justified or not, one has to look into the bona fides of the accused in using the Stengun and causing the injuries. In case where there is marginal excess of the exercise of such right, it may be possible to say that the means he uses could not be weighed in golden scales in judging whether or not the right of private defence would exceed. However when the mode of exercise of the right of private defence is such for which there cannot be any justification and the injury inflicted is clearly in excess of the right of private defence, then exception 2 to Section 300 IPC would be applicable and the offence would be culpable homicide not amounting to murder.

29. In the present case we may again look into the circumstances in which the appellant fired the Stengun. Karan Singh and Hansaram on the one hand and Ratiram and Krishan on the other, had a quarrel which could probably be the cause, the latter two were obstructing the way of Hansaram. Deceased Karan Singh came to intervene. Blows had been inflicted by Hansaram also to Ratiram and Krishan when the appellant Hari Ram came out with his Stengun. One thing appears to be important which is that Ratiram and Krishan were not quite near to Karan Singh and Hansaram when the appellant fired, otherwise they would have also been hurt by the gun shots. Besides this, had they been within range and had the attack by either party been in progress, the appellant possibly would not have fired. Obviously the two sides had separated when the appellant sent a volley of shots which hit Karan Singh and Hansaram. In using a weapon like Stengun at a point of time when parties were apart causing death of Karan Singh cannot be said to be a justified action and only conclusion can be that he exceeded the right. Having exceeded the right available to him he is guilty of culpable homicide not amounting to murder. His case would fall under Section 304 Part I IPC because

his act, by which the death was caused, was committed with intention of causing such bodily injury as was likely to cause death.

30. In view of the aforesaid finding, we partly allow this appeal and alter the conviction of the appellant from Section 302 IPC to Section 304 Part I IPC. His conviction and sentence for offence under Section 302 IPC is set aside and instead he is convicted for offence under Section 304 Part I IPC. For offence under Section 304 Part I IPC he is sentenced to seven years' rigorous imprisonment and a fine of Rs. 500/-. In default of payment of fine he will undergo rigorous imprisonment for further six months. The conviction and sentence under Section 3/25 and 27 of the Arms Act is maintained. Both the sentences shall run concurrently.

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