

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-1376-SB of 2001**

DATE OF DECISION: OCTOBER 28, 2015

KARTAR SINGH & OTHERS ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

2. **CRR-292-2002**

DATE OF DECISION: OCTOBER 28, 2015

LEKH RAJ ...PETITIONER

VERSUS

KARTAR SINGH & OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? No

PRESENT: MR. AKSHAY SINGLA, ADVOCATE
FOR MR. ASHOK SINGLA, ADVOCATE
FOR APPELLANTS NO.2 TO 4 IN CRA-1376-SB-2001 .
AND FOR RESPONDENTS NO.2 TO 4 IN CRR-292-2002.

NONE FOR APPELLANT NO.5 IN CRA-S-1376-SB-2001.
AND RESPONDENT NO.5 IN CRR-292-2002.

MR. J.S.THIND, ADVOCATE
FOR THE COMPLAINANT IN CRA-1376-SB-2001.

MR. R.S.RANDHAWA, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Aggrieved by the judgement of conviction and sentence passed
by the trial Court, the accused have preferred CRA-S-1376-SB of 2001.

The complainant aggrieved by the quantum of sentence has filed CRR-292-

2002 praying for enhancement of punishment. Accused Kartar Singh had died and as a result of which the appeal qua accused Kartar Singh abated.

2. PW2 Lekh Raj, the complainant, PW4 Bharawan Bai, the mother of the complainant and PW5 Milakh Raj, the other brother of the complainant are the injured witnesses in this case. It is their testimony that on 24.6.1994 at about 4.00 a.m. when PW2, PW5 and others were proceeding for digging a bore, accused Kartar Singh, Gurbachan Singh, Rattan Singh and Bhupinder Singh alongwith many other persons were found transplanting paddy in the fields of PW2. Accused Sukhdev Singh was driving a tractor at that point of time. PW2 and his companions prevented the accused party from transplanting paddy in the fields of the complainant. All the accused who were armed with gandasa and sticks attacked the complainant party. Accused persons tied the complainant alongwith his brothers and mother with a rope and put them into trolley of tractor with an intention to kill them. The accused also went on inflicting injuries on PW2, PW4 and PW5 and others. Earlier, Goma Ram, father of PW2 and PW5 was kidnapped by accused Kartar Singh and others and got an agreement for sale forged. FIR was registered based on the complaint given by Goma Ram.

3. PW1 Dr.J.C.Garg medico-legally examined PW2, PW4 and PW5 and issued medical reports. PW1 also medico-legally examined accused Gurbachan Singh and found one grievous injury on his person and issued MLR Ex.D1.

4. On the side of the defence, DW1 Inder Singh Saini, Document Writer was examined to prove the execution of agreement for sale dated

12.5.1994 by Goma Ram. DW2, Sanjiv Kumar was examined to prove the lease deed dated 23.4.1994 executed by Goma Ram. DW3 Jagdev Singh was the attesting witness to the agreement for sale executed by Goma Ram. DW4 Kala Ram was the attesting witness to the lease deed executed by Goma Ram. DW5 was the Ahlmad of the Civil Court who spoke about the Civil Suit No.109-1 of 18.4.1995/99 Gurbachan Singh vs. Goma Ram decided on 24.8.2001 by the Civil Judge (Jr.Division), Fazilka. DW6 Balbir Ram was a labourer who spoke about the attack launched by the complainant party.

5. The trial Court having adverted to the evidence on record, returned a finding that the accused committed the offences as stated supra.

6. The entire evidence was thoroughly perused by me. Learned counsel appearing for the appellants submitted that the trial Court had erred in holding that the accused party were aggressors, whereas the documentary evidence would go to establish that it was only the complainant party who were the aggressors. Learned counsel appearing for the complainant as well as learned Addl.A.G., Punjab submitted that the subject property was in fact in possession of the complainant party and therefore, the accused party had to file a suit not only for specific performance, but also for possession. They also referred to the revenue documents and submitted that the complainant party was actually in possession of the property which was in dispute.

7. The larger question which has arisen for determination in the criminal appeal and the criminal revision is, who actually was the

aggressor? If the Court finds that the accused were the aggressors, there is no escape from confirming the judgement of conviction and sentence passed by the trial Court. If the accused could establish that it was only the complainant party who were the aggressors, then the accused are entitled to acquittal.

8. Firstly, I find that the prosecution failed to explain the grievous injury sustained by accused Gurbachan Singh. PW1 Dr. J.C.Garg had to speak about the grievous injury sustained by accused Gurbachan Singh only during the course of cross-examination done by the accused. In fact, the MLR concerning accused Gurbachan Singh was exhibited by the accused through PW1 Dr. J.C.Garg. Non-explanation of the grievous injury sustained by the accused by the prosecution creates a doubt in the case of the prosecution.

9. The prosecution witnesses have unambiguously admitted that lease deed dated 23.4.1994, as spoken to by DW2 and DW4, was executed by Goma Ram in favour of accused Gurbachan Singh. As per the terms of lease deed, accused Gurbachan Singh had started enjoying about 12 acres of land owned by Goma Ram on and from 23.4.1994. Thereafter, an agreement for sale dated 12.5.1994 as spoken to by DW1 and DW3 was executed by Goma Ram in favour of accused Gurbachan Singh. Agreement for sale speaks of delivery of possession of about 51 kanal 15 marlas of land in favour of accused Gurbachan Singh pursuant to the above agreement for sale.

10. True it is that certain revenue documents had been produced by

the complainant party to show that they continue to be in possession of the property. One important aspect will have to be noted down by the Court of Law. Within a span of 2 months from the date of lease deed, the occurrence had taken place. Therefore, the revenue documents created for the purpose of the case cannot be seriously looked into by the Court of Law. Based on such revenue documents, the Court cannot jump to a conclusion that the party who was shown to be in possession in the revenue documents was really in occupation of the property.

11. It is also true that accused Gurbachan Singh had filed a suit not only for specific performance of agreement for sale, but also for possession. It is a normal practice for the agreement holder to file such a suit even if possession was delivered to him. But in the instant case, delivery of possession was actually under challenge by the complainant party. No wonder, accused Gurbachan Singh chose to file a suit for possession as well while canvassing for the relief of specific performance of agreement for sale in order to avoid any future litigation at the instance of Goma Ram. The fact remains that the suit filed by accused Gurbachan Singh for specific performance for agreement for sale has attained finality.

12. For all these reasons, I am of the considered view, that the accused party were in fact in possession of the said property not only based on the lease agreement, but also based on the agreement for sale subsequently executed. The criminal case launched by Goma Ram that he was kidnapped and agreement for sale was forged, ended in fiasco. The complainant party is found to be the aggressor who made an attempt to bully

the accused party who were transplanting paddy in the fields in their possession as a matter of right. The accused party have exercised their right of private defence to protect their property when there was an onslaught from outsiders.

13. In my considered view, the trial Court has wrongly held that the accused party was in possession of the subject property despite voluminous evidence to show that they were the aggressors. Therefore, the accused are entitled to acquittal.

14. In the result, the judgment of conviction and sentence passed by the trial Court qua Sukhdev Singh, Gurbachan Singh, Rattan Singh and Bhupinder Singh stands set aside. They are found not guilty of the charges framed against them. Consequently, the appeal qua appellants Sukhdev Singh, Gurbachan Singh, Rattan Singh and Bhupinder Singh is allowed. Their bail bonds stand discharged.

15. In view of the decision arrived at by this Court in CRA-S-1376-SB of 2001, CRR No.292 of 2002 fails and it stands dismissed.

October 28, 2015
Gulati

(M. JEYAPPAUL)
JUDGE