

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-NO.1178-SB OF 2004

DATE OF DECISION : 29TH SEPTEMBER, 2015

Ranbir Singh & others

.... Appellants

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. S. S. Narula, Advocate for the appellant.

Mr. Baljinder Singh Virk, Deputy Advocate General,
Haryana.

* * * *

SURINDER GUPTA, J.

1. Accused Ranbir Singh son of Zile Singh, Amar Nath son of Deep Chand (since deceased), Rohtash son of Amar Nath, Inder son of Ratia (appellant), Satyawar son of Inder Singh (since deceased), Zile Singh son of Chandgi (since deceased), Surja son of Ghasi, Prem son of Pirthi, Dilbagh son of Amar Nath, Ranbir Singh son of Inder Singh and Ram Dhari son of Giani Ram faced trial for offence punishable under Sections 307, 506, 324, 325, 323, 341 read with Sections 148 and 149 IPC and trial court (Additional Sessions Judge, Panipat) recorded conviction of the appellants along with Satyawar and Zile Singh for offence punishable under Sections 325, 324, 323, 506 read with Section 148 and

149 IPC. Regarding the remaining accused it was observed in para 12 as follows:

“In these circumstances, I am of the considered view that the involvement of the accused other than Amar Nath, Rohtash, Inder, Zile Singh Ranbir and Satyawar is not proved on the record. There is no such clinching evidence on the record which may show that these persons were involved in the incident.”

2. FIR No.80 dated 01.04.1995 was registered at Police Station Matloda, District Panipat on the statement of Jagbir Singh-complainant as the injured Zile Singh was declared unfit for making statement. In his statement Jagbir Singh has stated that his father Zile Singh was elected Sarpanch of the Village Adiana for the tenure 1994-95. Amar Nath son of Deep Chand appellant and others, who belong to the party of Mahabir Singh, Ex-Sarpanch, were nursing grudge against his father and have also involved him (Zile Singh) in many cases. Due to party faction in village his father started living with the complainant at Panipat. On previous night before the occurrence his uncle Ajmer Singh came to the village to fix the date of marriage of his brother and on receiving this news Zile Singh also came to the village. At about 7.00 am Ajmer Singh and Zile Singh had gone towards Dange Wala fields to answer the call of nature and the complainant and his brother Ranbir were following them. On the

way Amar Nath son of Deep Chand armed with *Gandasa*, Rohtash son of Chandgi armed with *Jailly*, Inder son of Ratia, Zile Singh son of Chandgi, Ranbir Singh son of Zile Singh, Satyawar son of Inder all armed with *lathis* with their common intention, came to the spot and attacked Zile Singh causing him injuries with their respective weapons and also raised *lalkara* to teach him lesson for becoming Sarpanch of the village. Zile Singh fell on the ground in an unconscious state. The complainant and his brother reached the spot at which the assailants ran away from there. When they tried to pick up their father they found that his left arm and left hip have got fractured. On reaching the Village, Amar Nath and others raised *lalkara* and many people reached the spot which include Balbir son of Sarupa, Ranbir son of Kidara, Raj Singh son of Meer Singh, Suba son of Makhan, Satyawar son of Masudi and they tried to take injured Zile Singh in hospital in a jeep. Amar Nath and other blocked the passage of the jeep near the Village pond and caused injuries to Balbir Singh and others. Complainant turned their jeep and taking *kucha* passage in the village reached Government Hospital, Panipat where Zile Singh was got admitted.

3. Dr. C. V. Singh (PW-3) conducted medical examination of Zile Singh and found following injuries on his person:

1. A lacerated wound 6.5 X 0.5 cm bone deep on the right side of scalp 7 cm above right pinna. Clotted blood was present. Injury was advised X-ray.

2. A lacerated wound 0.75 X 0.5 cm bone deep oval shape on the left elbow joint on the lateral aspect. Clotted blood was present and the injury was referred for X-ray examination.
3. A contusion 12 X 2.5 cm on posterior aspect of left arm, start from elbow joint and going upward. Reddish colour was present.
4. A contusion 6 X 2 cm on lateral aspect of left arm. 6.5 cm above the elbow joint. Reddish colour was present.
5. A contusion 5X3 cm on lateral aspect of left arm 3 cm above the injury No.4. Reddish colour was present.
6. A contusion 11 X 2.5 cm on posterior aspect of left forearm of lower part of wrist. Reddish colour was present. Advised X-ray.
7. A contusion 6.5 X 2.5 cm on posterior aspect of left forearm of lower part of wrist. Reddish colour was present. Advised X-Ray
8. An incised wound 4.5 X 0.5 cm on anterior aspect of left leg. 2.2 cm below the knee joint. Clotted blood was present. Advised X-ray.

9. A lacerated wound 1 X 0.5 X 0.5 cm on anterior aspect of left leg in the middle. Clotted blood was present.
10. A contusion 10 X 3 cm on lateral aspect of right leg in the middle. Reddish colour was present.
11. A contusion 10 X 2.5 cm on posterior aspect of right forearm. 7 cm above the wrist joint. Reddish colour was present.
12. A contusion 6 X 4 cm on posterior aspect of right elbow. Reddish colour was present. Advised X-ray.
13. A contusion 17 X 25 cm on lateral aspect of right thigh. 14 cm above the knee joint. Reddish colour was present.
14. A contusion 18 X 4 cm on lateral aspect of right thigh, start from the middle of injury No.13, going upward and laterally. Reddish colour was present.
15. A contusion 14 X 2.5 cm on lateral aspect of left thigh on upper part and hip joint. Reddish colour was present X-Ray advised.
16. A contusion 12 X 2.5 cm on lateral aspect of left thigh and buttock, 3 cm lateral to the injury No.13. Reddish colour was present X-ray advised.

17. A contusion 5 X 2 cm on lateral aspect of left buttock, 7 cm lateral to the injury No.16. Reddish colour was present. Advised X-Ray.
 18. A contusion 16 X 2.5 cm on lateral aspect of let side of abdomen. Reddish colour was present.
 19. A contusion 11 X 2.5 cm right scapular region. Reddish colour was present.
 20. A contusion 25 X 2.5 cm right side of back in the middle. Reddish colour was present.
 21. A contusion 15 X 2.5 cm on back of right shoulder. Reddish colour was present.
 22. A contusion 19 X 3 cm on back of left shoulder joint. Reddish colour was present.
4. Injuries No.1, 2 7, 8, 12, 15, 16 and 17 were kept under observation subject to X-ray examination, while injuries No.3 to 6, 9 to 11, 13, 14 and 18 to 22 were declared simple in nature. In the opinion of Doctor injury No.8 was caused with sharp edged weapon and injury No.2 was caused with blunt pointed weapon, while remaining injuries were caused with blunt weapons. Dr. C.V. Singh prepared the Medico Legal Report (MLR) Ex. PD with regard to injuries of Zile Singh. He sent ruqa Ex. PE to the Police Station Bus Stand, Panipat regarding the injuries received by Zile Singh. The Police reached hospital and moved application Ex. PF seeking opinion regarding fitness of Zile Singh to

make statement and Doctor given his opinion vide Ex. PF/1 that he was not fit for making statement.

5. On the same day Dr. C. V. Singh medically examined injured Dalbir Singh son of Sarupa, Raj Singh son of Meer Singh, Sube Singh son of Makhan Singh, Raghbir Singh son of Kidara, Satyawar son of Masudi, Mahavir son of Dei Ram and found following injuries on their person:

Dalbir Singh (MLR Ex.PG)

1. Four abrasions 0.5 x 0.5 to 0.5 x 0.3 cm in size on anterior aspect of right leg, 1 cm away to each other. Clotted blood was present.
2. Painful tender diffuse swelling on anterior aspect of right thigh in the middle. Reddish colour was present.
3. A contusion 4 x 2.5 cm on the middle of chest just above the epigastria region. Reddish colour was present.
4. A contusion 8 x 2.5 cm on left side of chest, 3 cm above the nipple. Reddish colour was present. Advised X-ray.

Raj Singh (MLR Ex.PH)

1. Painful tender diffuse swelling on the left ankle joint with a contusion 5 x 2 cm on middle aspect of ankle joint on the mallows. Reddish colour was present. Advised X-ray.

2. Complain of pain on right side of back.

Sube Singh (MLR Ex.PJ)

1. A contusion 4 x 2.5 cm on anterior aspect of right leg. 3 cm above the ankle joint. Reddish colour was present.
2. A contusion 7 x 3cm lateral anterior aspect of left knee joint with diffused swelling. Reddish colour was present. Advised X-ray.

Raghbir Singh (MLR Ex.PK)

1. A contusion 6.5 x 2 cm on anterior lateral aspect of left leg, 7 cm above the ankle joint. Reddish colour was present.
2. A contusion 5.5 cm 3 cm on lower part of abdomen, just left lateral to middle line. Reddish colour was present.
3. complain of pain on left hand.
4. A contusion 5 x 3 cm on dorsal aspect of left foot on lateral part, Reddish colour was present.

Satyawan (MLR Ex.PL)

1. An abrasion 1 x 0.3 cm skin deep on dorsal aspect of proximal interphalgal joint of left drink (sic ring) finger. Clotted blood was present. Advised X-ray.
2. Complain of pain on right side of thigh, but no external mark of injury was present.

Mahavir (MLR Ex.PM)

1. A contusion 4 x 2 cm on right side of chest, medial to nipple. Reddish colour was present.

6. In the opinion of Doctor injuries of the above persons were caused with blunt weapon.

7. The accused namely Rohtash, Dilbagh, Prem, Satyawar, Inder Singh, Zile Singh son of Chandagi, Surja and Satya Narayan were produced before SI Dhoop Singh, Investigating Officer of the case at the bus stand of village Adiana by Ram Kishan, Balbir and Randhir. Accused Rohtash produced *Jailly* Ex.P8 which was taken into possession vide memo Ex PN, while remaining accused produced their respective *lathis* Ex.P-2 to P-7 which were also taken into possession vide Ex. PN/1 to PN/6. On 09.04.1995 Ram Kishan produced accused Amar Nath and Ramdhari before SI Dhoop Singh. On disclosure statement of Amar Nath Ex.PS a *gandasa* Ex.P9 was recovered which was taken into possession vide memo Ex.PS/2. On 16.04.1995 accused-Ranbir Singh son of Inder Singh was produced by Ram Kishan who was also arrested and a *lathi* was produced by him was taken into possession vide Memo Ex.PT.

8. On completion of investigation challan against the appellants and other accused was presented in the Court.

9. As the offence under Section 307 IPC was disclosed, the case was committed to the Court of Sessions for trial.

10. Finding a prima facie case the appellants and other accused were chargesheeted for offence under Sections 307, 314, 323, 506 read with Section 149 and 148 to which they pleaded not guilty and claimed trial.

11. Satyanarain against whom challan had not been presented by the police, was ordered to be summoned on the application of the prosecution under Section 319 Cr.P.C. by the trial Court vide order dated 30.11.2000. On his appearance he was also chargesheeted.

12. In support of its case prosecution examined complainant-Jagbir Singh as PW-1, injured Raj Singh as PW-2, Dr. C.V.Singh as PW-3, Zile Singh as PW-5, SI Dhoop Singh, Investigating officer as PW-6, Dr. S. S. Wadhwa as PW-8, formal witnesses Balbir as PW-4, ASI Mahinder Singh, who had written FIR Ex. PQ/2 as PW7, Patwari Jagmohan Lal, who had prepared the rough site plan as PW-9. While PWs Ranbir, Ajmer, Randhir, Head Constable Om Parkash, Constable Roshan Lal, ASI Ram Phal and Head Constable Surat Singh were given up as unnecessary.

13. On the conclusion of evidence of prosecution, statement of appellants under Section 313 Cr.P.C. were recorded wherein they denied the allegations levelled against them and pleaded their false implication. The accused examined Abhe Ram as DW-1 in their defence.

14. I have heard learned counsel for the appellants and learned State counsel and have perused the paper book and the lower Court record with their assistance.

15. Learned counsel for the appellants has argued that as per the case of the prosecution appellant Rohtash was armed with *jailly* while Ranbir and Inder Singh were armed with *lathis*. Ranbir has been

attributed simple injuries on the person of Raj Singh. The appellant Inder has not been attributed injury to anyone. Rohtash has been attributed injury on the left elbow of Zile Singh which was a fracture injury. The main injuries were attributed to appellant Amar Nath, who has since died. Regarding the grievous injuries on the person of Zile Singh, there is no evidence as to who has caused the same. This fact is not proved that all the appellants have come to the spot with common intention to cause injuries to Zile Singh. The incident is of year 1995. A period of 20 years has lapsed thereafter. Appellant Ranbir Singh and Rohtash were in their 20s at the time of incident, while Inder Singh was an aged person more than 85 years. Learned counsel for the appellant has further argued that the prosecution has failed to prove that injuries on the person of the Zile Singh were caused with common intention. The prosecution has failed to prove its case against appellant-Inder Singh, who was not attributed any specific injury. It is not proved that fracture on the left elbow of Zile Singh was caused due to the injuries attributed to Rohtash Singh. The injury attributed to Ranbir was a simple injury. In the absence of any specific injury attributed to the appellant their conviction for offence under Sections 325, 324, 323, 341 read with Section 148 and 149 IPC is bad in the eyes of law. He has relied upon the observation made in the cases of *Shaji and others versus State of Kerala, 2011(5) SCC 423*; *Radha Kishan Yad Ram and others versus The State, 1969, AIR*

(Punjab) 204 and Baldev Singh and another versus State of Punjab, 1995(3) RCR (Criminal), 750.

16. The learned State counsel has argued that injured Zile Singh had received 22 injuries. The incident had taken place at two places. Firstly, when Zile Singh was pounced upon by Amar Nath and others and caused injuries and again near the village pond when the Jeep in which Zile Singh was being taken to the hospital, was surrounded by the appellants and their associates and injuries were caused to seven other persons. Mere fact that the details of injuries caused by each assailant have not been given, is no reason to discard the prosecution version. It is specifically stated that the appellants were present at the spot and caused injuries to Zile Singh with their respective weapons. When the injuries are caused by several assailants it is not possible to give a mathematical account as to who caused the injury on which part of the body of the injured. The prosecution has examined the complainant, injured Zile Singh and injured Raj Singh, whose testimony is unshattered, unblemished and without any motive. The medical evidence was corroborated by the ocular evidence and the trial Court has rightly observed that the prosecution has proved the case for offence punishable under Sections 325, 324, 323, 341, 506 read with 149 and 148 IPC against the appellants.

17. The star witness of the prosecution case is Zile Singh son of Ramu Ram injured who appeared as PW-5 and has stated that on the day

of occurrence i.e. 01.04.1995 he along with his brother-in-law had gone towards the fields to answer the call of nature. His son Jagbir and Ranbir were following them due to the tension prevalent in the village. When they reached the end of Gholi Garden, Amar Nath (since deceased) armed with *gandasa* and other accused armed with their respective weapons as fully mentioned in the FIR, reached the spot and raised *lalkara* to teach lesson to him for becoming the village Sarpanch. Ajmer Singh tried to prevail upon the accused person who gave him a push. Amar Nath gave blow with his *gandasa* from the sharp side which hit on the left leg below the knee. Rohtash gave trust wise blow with *jailly* on the left elbow of his arm. Amar Nath gave another blow from reverse side of the *gandasa* on his head, as a result of which he fell down and thereafter Inder Singh, Satyawar, Ranbir Singh and Zile Singh (all accused) caused him injuries with their *lathis* all over his body, resulting in fracture of his arms, legs and hip. He was subjected to lengthy cross-examination but his testimony could not be shattered by the defence. The fact that all the accused have reached the *kucha* passage, when the injured Zile Singh was going to the fields, shows that they had come there with their common intention. It is nowhere the case of the accused appellants that they have their houses on the way or they were standing there and an altercation took place. The complainant as well as the injured have specifically alleged that after Zile Singh became Sarpanch his opposite party was nursing grudge and have implicated him in several criminal cases. It was due to the tension in the

village that Zile Singh left the village and started living at Panipat. Jagbir Singh the complainant and eye witness of the occurrence has also supported and corroborated the statement of injured Zile Singh who was also subjected to very lengthy cross-examination, but nothing could be derived to shatter his testimony. Injured Zile Singh was put in a Jeep and was taken to civil hospital when on the way the accused again surrounded the Jeep to halt it from proceeding towards the hospital. Raj Singh PW-2, who had reached the spot on coming to know about the injuries caused to Zile Singh has named all the accused and stated about the incident that took place when the jeep was stopped. He has stated that when he, Balbir Singh, Suba, Raghbir Singh, Bheera, Satyawar etc. asked the accused persons to allow them to take the injured to the hospital for treatment, the accused hurled abuses and caused injuries to them and gave *lathi* blows on his left ankle. In all seven persons were injured.

18. The medical examination of all the injured was conducted at Civil Hospital, Panipat without any delay.

19. On analyzing the statements of complainant, injured and eye witness the trial court concluded as follows:

- (i) Appellants alongwith accused Satywan and Zile Singh formed an unlawful assembly and were armed with deadly weapons.
- (ii) Common object of them was to cause grievous injury to Zile Singh.

- (iii) In furtherance of their common intention they firstly caused injuries to Zile Singh and then to Balbir, Raj Singh and other when Zile Singh was being shifted to hospital.
- (iv) Accused are residents of village Adiana and complainant was well acquainted with them.
- (v) Intention of appellants and other accused was not to murder Zile Singh but to cause him grievous hurt.

20. While deciphering the intention of appellants Satyawar and accused Zile Singh trial Court has also made reference to injuries on the person of Zile Singh (injured) and observed as follows :

“This takes me to the second question as to whether accused had made a murderous attack on the injured. At the outset, this deserves to be mentioned that neither Dr. C.V. Singh (PW3) nor Dr. S. S. Wadhwa (PW8) have deposed that the injuries on the persons of Zile Singh were dangerous to life. Be that as it may, a look at the testimony of Dr. C.V.Singh (PW3) would show that Zile Singh had suffered as many 22 injuries. Except injury no.1, all other injuries were caused on non vital parts of his body. As per Dr. S. S. Wadhwa (PW8), he had conducted the radiological examination on Zile Singh and had found that there

was no fracture on the scalp. However, there was a fracture of lower end of left humerus and there was also fracture of lower end of left ulna and fracture of lower end of left radius. There was also fracture of the upper end of right ulna. There was also fracture of acetabulum. There was also fracture of interior ramus of the left pubic bone. I am of the considered view that on the basis of the evidence on the record it appears that the intention of the accused was to cause grievous injuries to the injured and not to cause his murder. Murder is a very serious offence. There should be clear evidence on the record that the intention of the accused was to cause the murder. In order to hold a person guilty under Section 307 IPC, it is necessary that there should be clear evidence on the record that accused had the requisite intention to cause the murder of the injured. I am of the considered view that this part of the evidence is totally lacking in this case.”

21. The trial court has rightly given the benefit to the accused, who were not initially named by the complainant whose names were added later on. Keeping in view the party faction in the village and the

deep rooted enmity between the parties the benefit of acquittal to accused Amar Nath, Rohtash, Inder, Zile Singh, Ranbir and Satyawan, was given. However, this in no manner mitigate the gravity of offence committed by appellant, who caused 22 injuries to Zile Singh which included six fractures, as deposed by Dr. S. S.Wadhwa (PW8).

22. I have perused the judgment in the case of ***Shaji and others versus State of Kerala (supra)***, which relates to the common intention of several persons, who had formed an unlawful assembly and attacked the deceased and it was observed that only one accused had inflicted fatal injury on the head of the deceased with chopper and no role had been attributed to other accused. It was observed that in the absence of a finding of any overtact on the part of the other accused persons, the mere fact that they were armed, would not be sufficient to prove their common object to commit offence of murder. In this case there is direct evidence that all the accused have caused injuries on different parts of body of Zile Singh and also to other seven injured, as such, the observations in the above case are not applicable to the facts and circumstances of this case. I have also perused the other two citations i.e. ***Radha Kishan Yad Ram and others versus The State*** and ***Baldev Singh and another versus State of Punjab (supra)***, which are based on different set of facts and circumstances and are also not applicable to the facts of this case.

23. Argument of learned counsel for the appellants that all the appellants had not reached the spot in furtherance of their common

intention to cause injuries to Zile Singh, requires to be discarded in the facts and circumstances of this case. On perusal of the lower court record and the judgment of the trial Court, I find no factual or legal infirmity therein calling for interference. As such, conviction of the appellants as recorded by the Courts below is maintained.

24. On the quantum of sentence learned counsel for the appellant has argued that the incident had taken place twenty years back. The purpose of criminal law justice is not only to punish erring individuals but also to reform him. Keeping in view the agony faced and the role of the appellants in the occurrence, a lenient view be taken qua the quantum of sentence. No useful purpose will be served by sending them to undergo imprisonment after twenty years of the occurrence. He has relied upon the observations made in the cases of *Surjit Singh versus State of Punjab, 2008(1) RCR (Criminal) 600*; *Gulzar Singh & others versus State of Punjab, 1987(2) RCR (Criminal) 215*; *Tota Singh and others versus State of Punjab, 2003(3) AICLR 400* and *Jaspal versus State of Haryana, 2007(3) RCR (Criminal) 16*.

25. Learned State counsel has argued that in view of the circumstances of the case, the nature and number of injuries caused to Zile Singh and the motive behind causing the injuries, the appellants do not deserve any lenient view to be taken even after expiry of twenty years of the offence. Arrogance and their defiance to the rule of law is writ large from the fact that when the injured Zile Singh, who had received

serious injuries, was being shifted to hospital they stopped the jeep carrying him and also caused injuries to the person who have pleaded with them to give way to take Zile Singh to the hospital.

26. In this case Zile Singh was caused 22 injuries including six fractures without any provocation, when he was unarmed. This coupled with the fact that when he was being taken to the hospital the appellants again came in the way, stopped the jeep and caused injuries to the persons pleading with them to allow the injured to be taken to the hospital, show the arrogance and defiance of the appellants. No doubt the purpose of criminal law justice is not only to punish the erring individual but also to reform him. When a convict is awarded sentence, the purpose is not only to punish him but also to convey a message to the society that the rule of law prevails and any person or rowdy element who takes the law in his hand and create terror by his act, will not go un-punished. The main accused in this case Amar Nath, who caused injuries on the person of Zile Singh with *Gandasa*, has since died but at the same time the role of the appellants was no less as they were assisting and helping him in his evil design.

27. I have perused the citations referred by learned counsel for the appellants on the question of awarding of sentence. The benefit of reduction of sentence was given in those cases keeping in view the lapse of the period, age of the accused and other factors.

28. In this case the only factor which weighs in favour of the appellants is that occurrence had taken place twenty years back. Keeping in view the above facts, the sentence awarded to the appellants for offence punishable under Sections 325 and 506 read with Sections 149 IPC is modified from rigorous imprisonment for 4 years to rigorous imprisonment for 2 years. The sentence awarded for offence punishable under Sections 324, 323, 341 read with Section 148 IPC and sentence of fine are however maintained. The appellants shall also pay ₹20,000/- each as compensation to Zile Singh for the injuries caused to him.

29. The appeal stands disposed of with modification of the sentence.

30. The bail bond and surety bond of the appellants furnished under orders dated 29.07.2014 suspending their sentence, are cancelled. The appellants be taken into custody and sent to jail to undergo remaining sentence of imprisonment awarded to them.

29th September, 2015
'raj'

(SURINDER GUPTA)
JUDGE