

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1299-SB of 2004

DATE OF DECISION: NOVEMBER 17, 2015

AMAR SINGH & OTHERS ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

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

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. SIDHAKMEET SINGH, ADVOCATE
& MR. NAVDEEP CHHABRA, LEGAL AID COUNSEL,
FOR THE APPELLANTS.

MR. Y.K. GUPTA, AAG, PUNJAB.

M. JEYAPPAUL, J.

1. The accused-appellants have challenged the following
conviction and sentence passed by the trial Court:-

Name of accused	Under Section	Rigorous Imprisonment	Fine (in ₹)	In default of payment of fine to under R.I.
Jaswant Singh	308 IPC	3 years	1000/-	3 months
	325/149 IPC	2 years	500/-	1 month
	323/149 IPC	6 months	-	-
	148 IPC	1 year	200/-	1 month
Jarnail Singh	308/149 IPC	3 years	1000/-	3 months
	325 IPC	2 years	500/-	1 month
	323/149 IPC	6 months	-	-
	148 IPC	1 year	200/-	1 month

Name of accused	Under Section	Rigorous Imprisonment	Fine (in ₹)	In default of payment of fine to under R.I.
Amar Singh	308/149 IPC	3 years	1000/-	3 months
	325/149 IPC	2 years	500/-	1 month
	323 IPC	6 months	-	-
	323/149 IPC	6 months	-	-
	148 IPC	1 year	200/-	1 month
Jeeto	-do-	-do-	-do-	-do-
Nimo	-do-	-do-	-do-	-do-
Bagga Singh	-do-	-do-	-do-	-do-
Kulwant Singh	-do-	-do-	-do-	-do-

All the sentences were ordered to run concurrently.

2. As against the acquittal of accused Nirmal Singh and Balwinder Singh, no appeal has been preferred by the State.

3. It is the case of the prosecution that on 8.6.2002, PW5 Sumer Chand alongwith his friend PW6 Jagir Singh proceeded to Civil Hospital, Jalalabad to see the paternal uncle, brother and sister of PW6 Jagir Singh who were admitted to the said hospital for treatment. At about 11.00 p.m. when they proceeded after taking their meals to Civil Hospital, Jalalabad, they were attacked by accused Amar Singh, Jeeto, Nimo, Jarnail Singh, Bagga Singh, Jaswant Singh and Kulwant Singh and Nirmal Singh. Accused Jarnail Singh was armed with sabbal while the remaining accused were armed with sotas. Accused Jarnail Singh raised a lalkara that they should be taught a lesson for helping the persons who were admitted to hospital. Accused Jarnail Singh gave a sabbal blow on the right knee of Sumer Chand, accused Amar Singh gave sota blow on the nose of Sumer

Chand, accused Jeeto and Nimo gave sota blows to the nose and lips of Sumer Chand, accused Bagga Singh gave sota blow on the right side of the head of Jagir Singh, accused Jaswant Singh gave dang blow on upper side of right ear of Jagir Singh and accused Kulwant Singh gave dang blow on the left elbow of Jagir Singh. Thereafter, all the accused fled away alongwith their respective weapons.

4. PW1 Dr.Parveen Kumar Garg who treated PW5 and PW6 spoke about the injuries sustained by them. PW2 Dr.Amarjit Singh and PW3 Dr.Rahul Jassi have deposed about the operation conducted on PW6 Jagir Singh who sustained injury on his head.

5. On the side of the defence, DW1 Dr. S.P.Kataria, Radiologist, Civil Hospital, Ferozepur was examined to prove the injury sustained by accused Jarnail Singh on his left index finger and middle phalanx of left middle finger. He also spoke about the injury sustained by Kulwant Singh on his left parietal region and multiple abrasions on the left side of back and right side of abdomen. He also examined accused Balwinder Singh and found lacerated wound on his right parietal region and left shoulder. He also noted two abrasions on the middle of his back and multiple superficial abrasions over the left forearm and lateral middle area of his right upper arm.

6. DW2 Dr.Renu Singla, Medical Officer attached to Civil Hospital, Ferozepur had medico-legally examined accused Jeeto wife of Bagga Singh and found lacerated wound on the right forearm of her right elbow and right wrist and front side of the chest.

7. The trial Court relying mainly on the evidence of injured eye witnesses PW5 Sumer Chand and PW6 Jagir Singh arrived at a conclusion that the accused having formed an unlawful assembly attacked PW5 and PW6 and caused injuries. The trial Court also held that accused Jaswant Singh attacked PW6 Jagir Singh and committed culpable homicide not amounting to murder punishable under Section 308 IPC while accused Jarnail Singh caused grievous injury on the right leg of PW5 and thereby, they committed an offence punishable under Section 325 IPC. The other accused caused multiple injuries as per the findings recorded by the trial Court.

8. Learned counsel appearing for the appellants would vehemently submit that the prosecution has completely suppressed the injuries sustained by accused Jeeto, Jarnail Singh and Kulwant Singh. The defence has established the injuries sustained by the accused by examining DW1 and DW2, the Doctors who served at Civil Hospital, Ferozepur. Therefore, it is his submission that the question of invoking the provisions under Sections 148 and 149 IPC to convict the accused in a case where there was a clash between two groups does not arise for consideration.

9. *Per contra*, learned counsel for the State submitted that the accused never whispered anything about the injuries sustained by them during the course of cross-examination of the witnesses examined on the side of the prosecution. Nor have they spoken anything about the injuries sustained by them when they were examined under Section 313 Cr.P.C. Therefore, it is his submission that the accused who allegedly sustained

injury in the previous occurrence, which had no bearing on the present occurrence, cannot be permitted to project the injuries sustained by them to get away from the charges for the offence under Sections 148 and 149 IPC.

10. On a thorough perusal of the entire evidence on record, I find that the evidence of PW5 Sumer Chand and PW6 Jagir Singh who sustained injuries in the occurrence, in the background of the evidence of PW1 Dr.Parveen Kumar Garg and PW2 Dr.Amarjit Singh establishes that accused Jarnail Singh attacked PW5 on his right leg with iron rod and caused grievous injuries. Accused Jaswant Singh attacked PW6 Jagir Singh with a sota (wooden log) on his head and caused an injury which was dangerous to life. In other words, accused Jaswant Singh had made an attempt to commit culpable homicide not amounting to murder. The prosecution also established through the aforesaid ocular testimony and medical evidence that accused Amar Singh caused simple injury on the elbow of PW5 with a iron rod, accused Jeeto and Nimo caused simple injury on the nose of PW5 with a stick, accused Bagga Singh caused simple injury on the forehead of PW6 with a stick and accused Kulwant Singh gave simple injury on the left elbow of PW6 with a stick.

11. The question that arises for consideration is whether the accused can be convicted for an offence under Sections 148 and 149 IPC when they were also the victims of the attack launched by the other side in the very same occurrence.

12. The medico-legal report produced by the Doctors examined on the side of the defence would go to establish that accused Jeeto, Jarnail

Singh, Kulwant Singh, Balwinder Singh had sustained injuries in the occurrence that took place on 8.6.2002 at 11.00 p.m. Firstly, I find that the prosecution completely suppressed the attack launched by the prosecution witnesses on the accused party. The medical evidence adduced by the accused would go to establish that the prosecution party also was armed with weapons and attacked accused Jeeto, Jarnail Singh, Jaswant Singh and Balwinder Singh and caused injuries to them. It is found that both the parties had clashed with each other and caused injuries to the respective parties. In other words, it is not the accused party alone who arrived at the scene of occurrence and formed an unlawful assembly with weapons and attacked the prosecution party, but the prosecution party also was armed with weapons and equally charged on the accused party and caused injuries. It is a well settled proposition of law that in a case of free fight, each of the persons involved therein can be held for his individual act and not for the act of others under vicarious liability. Therefore, the conviction of the accused under Sections 148 and 149 IPC cannot at all be sustained.

13. In view of the above facts and circumstances, the accused-appellants are acquitted of the charges under Section 148/149 IPC. Accused Jarnail Singh is convicted under Section 325 IPC and sentenced to undergo 1 year R.I. and to pay a fine of ₹1000/- and in default, to undergo a further period of 3 months R.I. Accused Jaswant Singh is convicted under Section 308 IPC and sentenced to undergo 1 year R.I. and to pay a fine of ₹1000/- and in default, to undergo a further period of 3 months R.I. The remaining accused-appellants, namely, Amar Singh, Jeeto, Nimo, Bagga Singh, and

Kulwant Singh are convicted under Section 323 IPC and are sentenced to the period already undergone by them. With the above modification in the matter of conviction and sentence passed by the trial Court, the appeal is dismissed.

14. Accused-appellant Jarnail Singh and Jaswant Singh are on bail. Their bail bonds stand cancelled. They shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Ferozepur who shall send them to jail to undergo the remaining part of their sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Ferozepur shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of their sentence.

November 17, 2015
Gulati

(M. JEYAPPAUL)
JUDGE