

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 18.09.2015

CRA-D No.559-DB of 2015

Anand & others

...Appellants

Versus

State of Haryana & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Shilak Ram Hooda, Advocate, for the appellants.

HEMANT GUPTA, J.

Aggrieved against the judgment of conviction and order of sentence dated 31.10.2014 rendered by the Additional Sessions Judge, Sonapat, the appellants have preferred the instant appeal seeking conviction of respondent Nos.2 to 6 under Sections 307, 325, 506, 148 & 149 IPC as well as enhancement of sentence awarded to respondent Nos.2 to 4 under Sections 323, 324 & 326 IPC.

The prosecution case was initiated on the basis of statement of Ramesh (since deceased) made to ASI Ramesh on 14.05.2010 after the Doctor declared Ramesh – injured fit to make statement. In his statement, Ramesh stated that on 13.05.2010 at about 2.00 PM, he alongwith his father Karan Singh, brother Anand, wife Usha, Seema wife of Ram Niwas and Pushpa wife of Anand were sowing Jawar crop with tractor in two acres of agricultural land falls in Daharwala Khet, which was taken by them from his uncle Prem son of Mauji Ram for cultivation. He stated that accused Umed Singh son of Harke had filed a

case pertaining to the said land, which he has lost. In the meantime, Umed, his sons Rakesh & Rajesh, his wife Chanderpati and one son of Rakesh's uncle alongwith 5-7 other persons reached at the spot armed with lathi, jelly, sword & axe etc. and started giving beatings to him (complainant) and his family. Apart from giving the description of the different injuries suffered by him, his father and brothers, Ramesh stated that on hearing their cries for help, his wife Usha, Pushpa wife of Anand, Seema wife of Ram Niwas, his uncle Ishwar and cousin Rajesh, who were working in the fields, rushed towards the spot and rescued them. Thereafter, all the accused left the spot alongwith their respective weapons. He also stated that on receipt of information about the incident, his brother Rameshwar reached at the spot and removed the injured persons to CHC, Kharkhoda in his tractor from where they were referred to PGIMS, Rohtak and Government Hospital, Sonapat. On the basis of such statement, initially a case under Sections 148, 149, 323, 324 & 506 IPC was registered, but later on offence under Section 307 IPC was also added. After the arrest of the accused and on completion of necessary formalities, they were made to stand trial.

To prove its case, apart from examining the complainant as PW-6 Ramesh Kumar and other injured persons i.e. PW-9 Anand, PW-10 Karan Singh; PW-11 Rajesh & PW-12 Pushpa, the prosecution has examined PW-7 ASI Ramesh Chander and PW-16 Inspector Manvir Singh, who deposed with regard to the investigations carried out by them. The prosecution has also examined PW-3 Dr. Harminder Singh, MO, CHC, Kharkhoda, who medico legally examined Ramesh, Anand, Ishwar, Karan and Rajesh, as well as PW-8 Dr. Inderjeet, MO, CHC, Kharkhoda, who medico legally examined Pushpa and Usha.

All the incriminating circumstances appearing in the prosecution evidence were put to the accused/respondent Nos.2 to 6 while recording their statements under Section 313 Cr.P.C., but they pleaded false implication. In their defence, they tendered documents Exs.D-1 to D-42 as well as Mark D.

After examining the entire evidence led by the parties, the learned trial Court found that it is case of version and cross-version. The learned trial Court noticed that as per the complainant party, they were sowing jawar in the Daharwala field, whereas as per the accused party, the land in question belongs to them and the complainant party wanted to take forcible possession of the land from them. Thus, it was found that both the parties assert their respective possession over the land in question, where the alleged occurrence took place. The trial Court considered the revenue record taken into possession by PW-16 Inspector Manvir Singh from Narender Kumar, Patwari and found that the land in question vests in *Shamlat Thola Kalalan* as per Jamabandi for the year 2003-04 and one Prem Singh son of Mauji is shown to be in cultivating possession as co-sharer. As per khasra girdawari pertaining to October, 2008 to March, 22009, the land in question is shown under the ownership of *Shamlat Thola Kalalan Hasab Rasad Rakba Khewat* and one Prem Singh son of Mauji is shown to be in cultivating possession. Thus, it was found that neither the complainant party nor the accused persons had any connection with the land in question either as owner or as cultivator. The trial Court, after noticing that the accused persons have failed to lead any evidence to show as to how they came into possession of the land in question, came to the conclusion that neither the complainant nor the accused party were owner in possession of the land in question, so neither of the parties can be held to be in the lawful possession. The trial Court concluded that it is a case of free fight in which both the parties received injuries at the hands of

each other allegedly in exercise of right of self-defence. Both the parties fought freely on the land in question, therefore, neither of the parties can be termed to be the aggressor, as there is no reliable evidence on record to come to a conclusion as to who dealt the first blow.

While examining the act/role attributed to each of the accused, the learned trial Court found that the Doctor, who treated PW-9 Anand, in respect of injury No.2 has not been examined. The trial Court found that admittedly PW-3 Dr. Harminder Singh, who had conducted MLR of Anand – injured, was not the treating doctor and has merely observed the injured externally, therefore, any opinion regarding injuries No.2 & 3 on the person of Anand – injured to be dangerous to life cannot be held to be of much significance in the absence of examination of the concerned treating doctor. PW-3 Dr. Harminder Singh has stated that he has not given his opinion regarding injuries No.2 & 3 as to whether the same were dangerous to life or not while preparing MLR of the injured. The trial Court found that as per MLR (Ex.PC/1) of Anand – injured, injuries No.2 & 3 are lacerated wounds and are stated to be caused by blunt weapon, but accused Rakesh had not used the sharp-edged side of Kulhari while assaulting the injured. The trial Court also found that to attract the provisions of Section 307 IPC, the intention or requisite knowledge to cause death are the essential ingredients and that intention and knowledge are to be interfered from the entire facts and circumstances of the case. Consequently, the trial Court convicted and sentenced accused Umed for an offence punishable under Section 323 IPC and accused Rakesh and Rajesh for the offences under Sections 324 & 326 IPC, whereas acquitted Chanderpati and Bhim Singh of the charges leveled against them.

Having heard learned counsel for the appellants at length, we find

that the complainant party asserts to be in possession of the land in question

through their uncle Prem son of Mauji Ram. However, as per the revenue record produced by the prosecution, the land is *Shamlat Thola Kalalan*, but in possession of Prem Singh son of Mauji as a co-sharer. There is no document that the complainant party was in lawful possession under the said Prem. The Civil Court judgments have not been produced on record. In the absence of finding of possession from the competent civil court, it cannot be said that whether the complainant or the accused were the aggressor party. The trial Court has rightly found that it is a case of free fight, where both the parties reached at the place of occurrence armed with lathi, jelly, sword & axe etc. In a case of free fight, each of the accused is liable for his part of the role.

Respondent Nos.5 & 6 i.e. Bhim Singh and Chanderpati have been acquitted of the charges leveled against them. No serious argument was raised regarding their acquittal. However, what was seriously disputed was acquittal of respondent Nos.2 to 6 for an offence under Section 307 IPC. It was contended that in view of the medico legal report (Ex.PC/1) of Anand, injury No.2 on the head is dangerous to life, therefore, the accused could not have been acquitted of the charges under Section 307 IPC.

The prosecution has examined PW-3 Dr. Harminder Singh. Admittedly, he is not the Doctor, who has given the report to the effect that injury No.2 is dangerous to life. There is no other medical evidence to show that injury No.2 on the person of Anand – injured is dangerous to life. Therefore, we find that the prosecution has failed to prove that the accused were the aggressors or that injury No.2 on the person of Anand was dangerous to life. The findings recorded by the learned trial Court convicting Umed under Section 323 IPC and accused Rakesh and Rajesh under Sections 324 & 326 IPC are the possible

the learned trial Court cannot be said to be arbitrary, unjust and irrational, which may warrant any interference by this Court in the present appeal.

Consequently, we do not find any merit in the present appeal. The same is dismissed.

(HEMANT GUPTA)
JUDGE

18.09.2015
Vimal

(HARI PAL VERMA)
JUDGE