

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-651-MA-2015 (O&M)

Date of decision: 24.08.2015.

Gurmail Singh

..... Appellant

Vs.

Harbans Singh and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

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?

Argued by: Mr. Dhirinder Chopra, Advocate
for the appellant.

RAJ RAHUL GARG.J.

This is an appeal against acquittal filed by Gurmail Singh. There were in all five accused in this case out of whom, vide impugned judgment dated 16.02.2015, only accused Harwinder Singh, was convicted for committing offence punishable under Section 307 of Indian Penal Code (for short 'IPC') whereas the remaining accused namely Harbans Singh, Sukhdev Singh, Nirmal Singh and Jagdeep Singh, were acquitted of the charges framed against them.

On 17.08.2008, Gurmail Singh complainant, his wife Parminder Kaur and his mother were present in their house. On the back-side of their house, there is a field comprising of *khasra* No.199/16, owned and possessed by complainant's wife namely Parminder Kaur. He had sown

chari and paddy crop in that field. That field also had a boundary wall. At about 3-4 p.m., the aforesaid accused came there in order to forcibly occupy the aforesaid field. All of them damaged the wall and iron gate affixed by the side of road. They also destroyed *chari and paddy* crops. Complainant and his mother Jangir Kaur, by hiding themselves behind wooden gate, had tried to stop them. On their resistance, accused Harbans Singh, had given sword blow on the person of complainant. Complainant went backwards, in that process, toe of sword had hit his forehead. Jangir Kaur, his mother has tried to save complainant, then Jagdeep Singh, had given sword blow on her person by its reverse side, which had hit her nose. At that time, Harwinder Singh, accused was armed with gun, Sukhdev Singh was armed with *gandasa* and Nirmal Singh was armed with double barrel gun. All of them had exhorted Harwinder Singh and Nirmal Singh, shouting that they should kill complainant and finish the matter for all times to come. At this, Harwinder Singh, fired a shot from his gun towards complainant and pellet had crossed just nereby his ear. In order to save his life, he had hidden himself behind wooden gate. Nirmal Singh and Harwinder Singh, accused had shot more fires to kill complainant but luckily he was saved. Pellets from shots, fired by accused, had hit the wall. Karnail Singh, son of Kehar Singh, had also reached the spot and saw the occurrence. Thereafter, other people from village had also collected there, upon which accused had run away from the spot with their respective weapons. The matter was reported to the police but no action was taken. It is also the case of the complainant that he and his mother were falsely involved in case FIR No.79 dated 17.08.2008, under Sections 323/324 read with section 34 IPC.

In the case in hand, the police had presented the challan under Sections 427 and 336 of IPC and under Section 27 of the Arms Act against accused Harwinder Singh alone, after investigations, regarding this occurrence. That case was also decided along with the present complaint vide impugned judgment.

After recording preliminary evidence, all the accused were ordered to be summoned under Sections 307/324/323/427/148 and 149 IPC and under Section 25 of the Arms Act. As the offence under Section 307 IPC was exclusively triable by the Court of Session, therefore, the complaint case as well the police challan case were committed to the Court of Session, for trial.

Finding a prima facie case against the accused, they were charge-sheeted for committing offence punishable under Sections 148/307/427/324/323 read with Section 149 IPC, to which they did not plead guilty but claimed trial.

After taking entire evidence of the complainant, statement of accused under Section 313 Cr.P.C. were recorded wherein accused denied each allegation of the prosecution appearing against them and pleaded their innocence.

Each one of the accused has taken defence. The defence taken by accused Harbans Singh is like this; that complainant Gurmail Singh had tried many times to falsely implicate him in criminal cases before filing of present complaint. Alleged story of complainant is false. *Khasra* No. 199/16 measuring 08 kanals was not in possession of complainant at the time of alleged occurrence rather out of said land 03 kanals 07 marlas of the

land has been in his possession since 1999. He had sold the land in the Month of July, 2008. He was not present at the place of occurrence. Complainant has falsely implicated him in this case because he wants to take possession of his land measuring 03 kanals 07 marlas. Complainant has concocted story to grab above-said land. Complainant had filed many civil cases against him which have been decided in his favour by the concerned Courts.

Accused Sukhdev Singh, pleaded by way of defence that he has no concern with the land, sale or any other transaction or incident in question. He has been falsely involved being brother of Gurmail Kaur. In the days of alleged occurrence, he was posted as Branch Manager, State Bank of India, Agricultural Development Branch, Kotkapura and he was busy in recovery follow ups, loans and pre-sanction surveys etc. along with Shri Lahori Ram, Field Officer and Shri Amarjit Singh, Business Facilitator in area of village Dheemawali etc. right from morning to evening in official taxi. Police had verified the same and did not challan him.

Accused Nirmal Singh, pleaded by way of defence that Gurmail Singh-complainant is his brother-in-law, who had solemnized second marriage with Parminder Kaur, without obtaining divorce from his sister Gurmail Kaur. Gurmail Kaur has one daughter and one son namely Jagdeep Singh (accused). Gurmail Singh-complainant is harassing them on one pretext or the other as to why they were on visiting terms with Gurmail Kaur and Jagdeep Singh. In the present case, they were found innocent by the police. Accused Jagdeep Singh, son of complainant, has also taken similar plea as taken by Nirmal Singh-accused.

Accused Harwinder Singh, pleaded by way of defence that he has a plot at Badhndi Kalan, adjoining the house of Gurmail Singh-complainant. On 17.08.2008, he was constructing wall in the said plot. Gian Singh @ Giani was working as mason for the construction of that wall. At about 4:00 pm, Gurmail Singh-complainant armed with *kirpan* and his mother Jangir Kaur had come there. Jangir Kaur had exhorted Gurmail Singh by saying that let Gian Singh @ Giani be taught a lesson for construction of wall upon which Gurmail Singh has caused sword blow on the person of Gian Singh @ Giani, which has hit him on his right elbow. Gurmail Singh had also given other *kirpan* blows on the person of Gian Singh @ Giani, which had hit on back of his shoulder, as a result of which Gian Singh @ Giani had fallen down. He had tried to intervene. Then Gurmail Singh and his mother had run away from the spot with sword. He had got admitted Gian Singh in Civil Hospital, Nihal Singh Wala from where he was referred to Civil Hospital, Moga, where he was medico legally examined. On the statement of Gian Singh @ Gaini, case FIR No. 79 dated 17.08.2008, under Sections 324/323 read with section 34 IPC was registered against Gurmail Singh and his mother. In order to rescue themselves from legal action, Gurmail Singh had lodged a false complaint against him and others.

Accused also led their oral as well as documentary evidence by way of defence.

After hearing both the sides and appraising the entire evidence and material coming on record, the learned trial Court convicted accused Harwinder Singh, alone for committing offence punishable under Section

307 IPC whereas acquitted all other accused holding that the prosecution has failed to prove its case against them. Harwinder Singh was punished vide order of sentence dated 16.02.2015.

We have heard learned counsel for the appellant besides going through the record of this case.

From perusing the impugned judgment, it becomes evident that parties are not at issue on certain facts regarding relationship; that complainant was earlier married to Gurmail Kaur and had two children from her out of which Jagdeep Singh-accused is his son. Sukhdev Singh and Nirmal Singh are the real brothers of Gurmail Kaur.

Sukhdev Singh and Nirmal Singh accused are the maternal uncle of Jagdeep Singh (accused). Harbans Singh-accused was one of the co-sharers in disputed property comprised *khasra* No. 199/16. He along with Balbir Singh has sold 03 kanals 07 marlas land of the aforesaid *khasra* number to Harwinder Singh, which is the root cause of this case. It is the case of the complainant that Parminder Kaur, his second wife, owned and possessed *khasra* No. 199/16 and had also raised boundary wall around it and also fixed iron gate. He had also sown *chari and paddy* crops therein.

It is a fact that FIR No. 79 dated 17.08.2008, was registered against Gurmail Singh and his mother Jangir Kaur. On the complaint of Gurmail Singh, the matter was investigated and, thereafter, challan was filed only against Harwinder Singh-accused under Sections 324/323/336/427 of IPC and under Section 27 of the Arms Act, whereas the remaining accused were found innocent by the police and thus, they were not challaned in this case.

Gurmail Singh, during the course of his cross-examination, admitted the factum of filing of criminal cases by him as well as by his wife against him. He admitted that Jagdeep Singh is his son. Nirmal Singh and Sukhdev Singh-accused are the real brothers of Gurmail Kaur, his wife. Gurmail Kaur had filed a complaint under Section 494 of IPC and he was convicted by the lower Court but acquitted by the Appellate Court and appeal is pending before this court. He also admitted that he has daughter Pardeep Kaur from Gurmail Kaur. Pardeep Kaur and Jagdeep Singh are residing with Gurmail Kaur since childhood in their paternal house. He further admitted that he had filed complaints against accused in the year 1992 and 1993. Even, he evaded answer to the question that Karnail Singh, the alleged eye witness of this occurrence, has been cited by him as his witness in every case. He further admitted that he had filed three complaints against accused and others in the Court and all those complaints have been quashed by this Court. Certified copies of the orders Exs.D7 to Ex.D9, passed by this Court, proved the fact that three complaints filed by Gurmail Singh against accused and others, have been quashed holding that complaints were filed with *mala-fide* intention only to harass his wife, son and close relatives. Even civil suit filed by Gurmail Singh and others regarding *khasra* No. 199/16 was dismissed by Civil Judge (Sr. Division, Moga). Appeal against that judgment was also dismissed by the Court of Additional District Judge, Moga. In that case, it was held that Gurmail Singh and Jangir Kaur have been left with no share in the suit property while Parminder Kaur and Jagdeep Singh were found to be owners in possession of 2/3rd share out of suit property. As such, the finding recorded

by the learned trial Court that the accused have been falsely implicated on account of old enmity and matrimonial discord between Gurmail Singh and Gurmail Kaur, cannot be said to be perverse or mis-reading of evidence in any manner. However, the appeals are pending before Hon'ble Supreme Court of India. He further admitted that the complaint under Sections 504 and 506 IPC was filed by him against Jagdeep Singh, Gurmail Kaur, Sukhdev Singh and Nirmal Singh and that complaint was dismissed by SDJM, Nihal Singh Wala. He also admitted that he had filed a complaint against Jagdep Singh and employees of Electricity Department, which is still pending.

In view of all the above-mentioned admissions made by Gurmail Singh, in his cross-examination, it is established on the file that Gurmail Singh is having inimical relations with the accused party as they are related to his wife Gurmail Kaur, with whom, he is having litigation. Not only this, even he has filed complaints against accused of this case which have been quashed by this Court. Even accused Jagdeep Singh, real son of the complainant, has filed a complaint against him which is still pending. Under these circumstance, a heavy duty is cast upon the Court to sift the grain from the chaff. Regarding this very incident, the complainant had lodged a rapat with the police which was duly investigated by the police and all the accused except Harwinder Singh, were found innocent. Even after the trial, the learned trial Court also recorded the findings that the prosecution had failed to prove its case against accused.

This is an appeal against acquittal as such the matter would have to be examined in the light of the observations of the Hon'ble Apex

Court in *Ashok Kumar Vs. State of Rajasthan, 1991 (1) SCC, 166*, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal was perverse or based on misreading of the evidence and merely because the Appellate Court was inclined to take a different view, could not be a reason calling for interference.

As per Ex. D6, copy of *jamabandi* for the years 2008-09, accused Harwinder Singh has been shown in possession of 03 kanals 07 marlas land out of *khasra* No. 199/16min. Thus, the case of complainant that his wife Parminder Kaur, is the owner in possession of entire *khasra* No. 199/16min, is not sustainable.

Under these circumstances, the very basis of the complaint that all the accused armed with deadly weapons, entered into the aforesaid land, belonging to Parminder Kaur, for taking forcible possession, has no ground to hold.

Accused Harwinder Singh, in fact, has purchased the aforesaid land from Harbans Singh and Balbir Singh. As such, the defence taken by Harbans Singh, that he has got no concern with the land in question, seems probable. Harbans Singh is the vendor, who sold the land to Harwinder Singh. As such, complainant is having grouse against Harbans Singh as well. Sukhdev Singh and Nirmal Singh are the brothers of Gurmail Kaur and as such, complainant is inimical to them.

Regarding presence of accused Sukhdev Singh, Gurmail Singh stated that he does not remember, if during the days of occurrence, accused Sukhdev Singh has been working as Chief Manager with State Bank of India, Branch Kotkapura. Parminder Kaur, also stated in tune with the

complainant. Prabh Dayal, Head Messenger, State Bank of India, ADB Branch, Kotkapura (DW1) and Amarjit Singh, Business Facilitator, State Bank of India, ADB Branch, Kotkapura (DW2), Exs. D3 and D4, documents also belie the presence of Sukhdev Singh at the time of occurrence.

Though, Gurmail Singh has supported his case as contained in the complaints regarding infliction of injuries by the accused to the complainant party yet complainant admitted during the course of his cross-examination that in rapat Ex.P1, he did not mention that Jagdeep Singh had given a sword blow from reverse side, on the person of Jangir Kaur, which had hit on her nose. He also admitted that in Ex.P1, it is not mentioned that Nirmal Singh-accused, had fired a shot.

Thus, with this evidence on the file as well the factum of recording of FIR No. 79 dated 17.08.2008, against Gurmail Singh and his mother Jangir Kaur and then non-challaning of accused in this case, disprove the case of the prosecution.

For the reasons recorded above, we are of the opinion that the impugned judgment of the trial Court dated 16.02.2015, whereupon, the accused Harbans Singh, Sukhdev Singh, Nirmal Singh and Jagdeep Singh, were acquitted, is neither perverse nor the result of mis-reading of any evidence so as to warrant interference of this Court. Thus, finding no merit in this appeal, it is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

24.08.2015

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