

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal S- No. 349-SB of 2002 (O&M)

Date of decision : September 15, 2015

Mohinder Lal and othersAppellants

Versus

State of Haryana and othersRespondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. G.S. Sidhu, Advocate
for the appellants.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Criminal Revision No. 1598 of 2002 (O&M)

Basant Kumar Petitioner

Versus

State of Haryana and othersRespondent

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Sandeep S. Mann, Sr.DAG, Haryana.

Mr. G.S. Sidhu, Advocate
for respondents No. 2 to 7.

LISA GILL, J.

This judgment shall dispose of Criminal Appeal S- No.

349-SB of 2002 (Mohinder Lal and others versus State of Haryana and others) and Criminal Revision No. 1598 of 2002 (Basant Kumar Versus State of Haryana and others).

Criminal Appeal S-No. 349-SB of 2002 has been preferred by the appellants – Mohinder Lal, Dharam Chand and Arjun Dev impugning judgment and order dated 12.02.2002 and 14.02.2002 passed by learned Additional Sessions Judge, Sirsa whereby they have been convicted and sentenced to undergo rigorous imprisonment for five years besides a fine of ₹1,000/- each and further rigorous imprisonment for six months in default of payment of fine for the offence punishable under Section 307 read with Section 34 IPC; to undergo rigorous imprisonment for five years besides a fine of ₹2,000/- each and further rigorous imprisonment for six months in default of payment of fine for the offence punishable under Section 304 Part-1 read with Section 34 IPC; to further undergo rigorous imprisonment for three months besides a fine of ₹500/- each and further rigorous imprisonment for six months in default of payment of fine for the offence punishable under Section 324 read with Section 34 IPC and to pay a fine of ₹500/- each for the offence punishable under Section 323 read with Section 34 IPC.

Brief facts as unfolded in FIR 236 dated 19.09.1999 Ex. PA/2 registered on the statement of Basant Kumar are that he is eldest of three brothers. Hans Raj is younger to him and Chander Parkash is the youngest. One Ashok Pardhan resident of Delhi owned 6 acres of land in village Dhanoor over which they were tenants for the last 32/33 years. Ashok Pardhan executed a sale

deed in respect of this land in favour of Kaka Singh resident of Sherpur, Punjab about four years ago. Mutation was, however, not sanctioned. Appellants – Arjun Dev, Mohinder Lal and Dharam Chand sons of Kalu Ram and Kaushalya widow of Tara Chand Kamboj procured the forged relinquishment deed in respect to this land allegedly executed by the complainant party for a sum of ₹20,000/-. Arjun Dev and others wanted to forcibly occupy this land. Prior thereto, a quarrel had taken place between them and Arjun Dev etc. in the year 1993 over this land. They had instituted civil case against Arjun Dev and others before the court of Sessions and before this Court, which was decided in their favour. On 18.09.1999 at about 6.00 p.m., he alongwith his brothers Chander Parkash, Hans Raj, mother Krishna Devi and father Jammu Ram were present in their fields when the accused Arjun Dev and Mohinder Lal armed with swords, Dharam Chand armed with gandasa, Madan Lal son of Arjun Dev armed with double barrel gun and Tilak Raj son of Wasawa Ram carrying kassia arrived. They exhorted that they would get the possession of the land. In the meantime, Madan Lal fired a shot from the gun he was carrying while aiming at them. On hearing the sound of the fire, his mother Krishna and brothers Hans Raj and Chander Parkash fled from the spot. Dharam Chand inflicted two gandasi blows on the fingers on his left hand and another blow from its reverse side on his back. His father Jammu Ram tried to intervene on which Arjun Dev and Mohinder Lal inflicted sword blows upon his father as a result of which his father fell down and while he was lying on the floor, Dharam Chand and Tilak Raj caused injuries with their

respective weapons. They cried for help upon which Veer Bhan, Lambardar of the village Jhorarnali and a resident of nearby hamlet came to their rescue. Krishan, Bhagirath sons of Boota Ram, Bawaria all followed him. When they reached at the spot, Arjun Dev and Mohinder Lal caused injuries to Veer Bhan with their respective weapons, who also fell to the ground. Said persons then inflicted injuries upon his father Jammu Ram and Veer Bhan with their respective weapons. On seeing Krishan and Bhagirath approaching, all the accused persons fled from the spot with their respective weapons. Complainant's brother Hans Raj arranged for transport and shifted him as well as Veer Bhan and their father Jammu Ram to the Civil Hospital, Sirsa. Veer Bhan succumbed to his injuries on reaching the hospital. Motive for the occurrence is the dispute regarding agricultural land. He prayed for legal action to be taken.

On this statement, formal FIR 236 dated 19.09.1999 was registered. Inquest report Ex. PT was prepared. Dead body of Veer Bhan was sent for autopsy. PW11 Ram Avtar Inspector/SHO P.S. Garhi deposed that he visited the place of occurrence and prepared the rough site plan Ex. PU. Blood stained earth was recovered vide memo Ex. PV. A piece of cloth stained with blood, a pair of shoes and one single shoe were recovered vide memo Exs. PV/1 and PV/2 respectively. Accused Tilak Raj was found innocent in the investigation conducted by the Inspector Banarsi Das and DSP Ramphal Gautam.

Report under Section 173 Cr.P.C. was presented against the other accused on completion of investigation for the offences

punishable under Sections 302, 307, 323, 324, 147, 148 read with Section 149 IPC as well as Section 25 of the Arms Act. Tilak Raj was thereafter summoned on finding sufficient material against him. Charge was framed against all the above accused.

Prosecution examined 13 witnesses to prove its case. All the accused pleaded innocence and false implication while denying incriminating material put to them in their statements under Section 313 Cr.P.C..

Specific stand was taken by the accused that they have been falsely implicated by Basant Kumar and his father Jammu Ram. Appellant - Mohinder Lal alleged that land was infact in their actual physical cultivating possession. Relinquishment deed dated 16.12.1992 had been executed in their favour for consideration of ₹20,000/- by PW10 Jammu Ram. They thereafter purchased the land for valuable consideration in the year 1993. In reality Basant Kumar, Jammu Ram and deceased Veer Bhan (who was infact a mercenary) had collected some other persons and proceeded to take forcible possession of the land. Their move was resisted by Dharam Chand and his mother. Dharam Chand was seriously injured at the hands of assailants in this incident. He was unlawfully confined in the room by these persons while his mother rushed to the village to inform about the plight of her son Dharam Chand. Villagers rushed to the spot, attacked the culprits i.e. Jammu Ram, Basant Kumar and Veer Bhan. Injured never suffered injuries at the hands of the complainant. All the accused persons except Dharam Chand have alleged that they were not present at the spot.

In defence, 10 witnesses were examined by the accused.

Learned trial Court while examining the evidence on record and taking into consideration the entire facts and circumstances concluded that the prosecution had been able to prove its case beyond reasonable doubt against present appellants - Dharam Chand, Mohinder Lal and Arjun Dev but failed to prove the guilt of the accused Madan Lal, Gandhi Ram and Tilak Raj who were accordingly, acquitted. However, it was concluded that the said appellants are guilty for the offence punishable under Section 304 part-1 read with Section 34 IPC and not under Section 302 IPC. They were, accordingly, convicted for the offences punishable under Sections 304 Part-1 read with Section 34, Section 307 read with Section 34 IPC, Section 324 read with Section 34 IPC and Section 323 read with Section 34 IPC and sentenced as detailed above. Aggrieved therefrom, present appeal has been filed.

Criminal Revision No. 1598 of 2002 has been preferred by complainant - Basant Kumar challenging the acquittal of Madan Lal, Tilak Raj and Gandhi Ram with a further prayer for convicting all the accused for the offences punishable under Section 302, 307, 323, 324, 147, 148 read with Section 149 IPC as well as Section 25 of the Arms Act as well as Section 25 and 27 of the Arms Act.

Learned counsel for the appellants-accused vehemently argues that once it has been held by the trial Court that possession of the disputed land was with the accused Dharam Chand and others, there was no question of convicting the accused persons especially as the complainant party was proved to be aggressor. It is

submitted that no offence under Section 304 Part 1 or Sections 307, 324 IPC is made out. It is proved on record that the deceased Veer Bhan was a hired mercenary. He was admittedly not a resident of the village nor related to any of the villagers, therefore, he had no business being present, until and unless he had been called for a specific purpose. In the alternate, learned counsel for the appellants submits that all the appellants have undergone actual sentence of about two years and eight months. There has been no dispute or acrimony between the parties ever since. So many years have passed by and they are all living peacefully in the same village. Therefore, it would be in the interest of justice to reduce the sentence imposed upon the appellants to that of the one already undergone by them.

Per contra learned counsel for the State as well as learned counsel for the complainant while refuting the averments on behalf of the appellants submit that there is sufficient and cogent evidence on record to sustain the conviction of the appellants.

Learned counsel for the complainant submits that there is no scope whatsoever for reduction of the sentence imposed upon the appellants which in any case is on the lower side. Furthermore, in the facts and circumstances of the case other accused who have been acquitted, should also be convicted for the offences punishable.

I have heard learned counsel for the parties and gone through the record with their assistance.

Reference to the decision of the First Appellate Court and this Court in favour of the complainant party in civil proceedings

does not afford much benefit to the complainant party to suggest that they were in possession of the suit land. It is a matter of record that suit filed by the accused - Arjun Dev, Mohinder Lal and Dharam Chand was decreed in their favour by the learned Civil Judge, Senior Division, Sirsa. It is borne out from the record that PW10 Jammu Ram had filed a suit for permanent injunction for restraining the defendants from interfering in his possession of the disputed land in the year 1993. This suit Ex. PQ was dismissed by the trial Court on 29.01.1998. It is thereafter that learned Additional District Judge, Sirsa had allowed the appeal filed by Jammu Ram on 10.12.1998 primarily on the ground that there appeared to be no occasion for executing the relinquishment deed in favour of the present appellants and that too in favour of the appellants and not the actual land owner. It is this decision which was upheld by this Court in RSA No. 3927 of 1988. Perusal of the record shows that PW1 Basant Kumar and PW10 Jammu Ram have indeed made material improvements on basic foundational facts of the case. No fault can be found with the finding of the trial Court that possession of the accused over the land in question is revealed from the evidence on record. PW1 Basant Kumar has admitted that Girdawaries prepared by the canal authorities in respect of the land in question are in favour of the accused right from the year 1992. It is admitted by him that the accused were paying land revenue to the State since then.

In the present case, DW5 Dhoop Singh, Revenue Patwari of the area has proved the daily diary report No. 161 dated 30.11.1992 Ex. DJ depicting handing over the possession of the land

to the accused persons. Said witness is sought to be discredited on the ground that he was convicted and sentenced for a matter under the Prevention of Corruption Act but admittedly it is not in the present case. There is nothing on record to prove that this report is factually incorrect.

DW7 Balbir Singh, a person whose jeep had been used for shifting the injured to the hospital subsequent to the incident, has deposed that Tilak Raj had approached him between 8.30 to 9.00 p.m. with a request to shift the injured to the hospital. He had taken Jammu Ram and Veer Bhan in a jeep to the Civil Hospital, Sirsa. DW7 is a Lambardar of the village. He had been receiving Canal Revenue (Abiana) from the accused Arjun Dev etc. in respect of the land in question. Land was in possession of the accused Arjun Dev.

Another aspect of the matter is that as per site plan Ex. PU prepared by Sub Inspector Ram Avtar, Investigating Officer in this case, occurrence had taken place in the courtyard located outside kacha road. Blood was lifted by the investigating officer from inside the room as well. Site is marked by letter 'A' in the site plan. It is to be noted that appellant - Dharam Chand has raised a specific defence that he had been confined in the room after he was injured in the incident. Ex. PAA/2 is site plan of the scene prepared by the District Inspector after recovery of the gun. This room is admittedly owned by appellant Arjun Dev. It is situated in the agricultural fields of Arjun Dev. It has, thus, been rightly held that the occurrence indeed took place on the land possessed by the accused. Doubtlessly the civil Court has returned the finding in favour of the complainant party that

the relinquishment deed was never executed by them but in criminal proceedings allegations have to be proved independently notwithstanding the said adjudication in civil proceedings. Once it is established that occurrence took place on land which was in possession of the appellants at the relevant time, prosecution case that there was pre-mediated attack on the complainant party for obtaining forcible possession is clearly not made out. However, there is evidence on record to show that a fight indeed ensued between PW10 Jammu Ram, his son Basant Kumar at one side and the present appellants on the other.

It has been rightly held by the trial Court that the deceased Veer Bhan had no interest in the subject matter of the dispute. He did not belong to the village nor was related to anyone there. He was disclosed to be a resident of village Jhorarnali. Therefore, it cannot be conclusively held that the accused had pre-mediated intention to kill Veer Bhan. In the fight which took place, fatal injuries were nevertheless inflicted upon Veer Bhan thereby making the appellants liable to be convicted for the offence punishable under Section 304 Part 1 IPC. Injuries on the person of the deceased Veer Bhan as listed in the Post Mortem Report are proved by PW7 Dr. Yogesh Sangwan. Veer Bhan suffered about 10 injuries, six of them being incised wounds and three abrasions as well as one lacerated wound.

Another relevant factor to be noticed is the presence of the injuries on the person of appellant - Dharam Chand. Injuries received by him were proved by PW2 Dr. B.L. Gupta, then Medical

Officer, CHC, Rania as under:-

1. Incised wound 3 cms x ½ cm x bone deep on the right occipital bone with clotted blood and serum deposited at the scene of injury. I had advised x-ray.
2. Incised wound 2 cms x 1/3 bone deep on posterior aspect of left index finger middle phalanx. Clotted blood and serum were deposited.
3. Reddish contusion 8 cms x 3 cms on the back of right hand with swelling.
4. Reddish contusion 11 cms x 3cms on the left side of back just above iliac crest.

PW2 has specifically ruled out possibility of injury No. 1 and 2 being suffered by a friendly hand. There is no explanation at the very outset by the complainant party in respect to these injuries. It is only subsequently that an effort has been made by the complainant and Jammu Ram to suggest that injuries had been caused to Dharam Chand in their self defence.

Injuries sustained by Jammu Ram were proved by Dr. G.S. Somani PW8 as per report Ex. PN. Jammu Ram suffered fracture of the right parietal bone.

In view of the facts and circumstances as above, there is no infirmity in the conviction of all the three appellants for the offences punishable as detailed above. However, I do not find any merit in the arguments raised on behalf of the complainant that the other accused should also be convicted for the offences as charged. For the reasons mentioned above, no ground is made out for conviction of the present appellants for the offences punishable under Section 302 IPC.

Learned counsel for the complainant is unable to deny the material improvements made by Jammu Ram and complainant Basant Kumar which raise a serious doubt upon the involvement of the other three accused persons. A clear cut attempt has been made by the said witnesses to bring their testimonies in line to project the guilt of the remaining three accused.

Learned counsel for the complainant is unable to point out any perversity, infirmity or illegality in the impugned judgment qua acquittal of the said accused persons. It is settled position of law that acquittal of an accused is not to be set aside only on the ground that another view may be possible in the factual matrix of the case. There have to be substantial, compelling and strong reasons for setting aside the acquittal of the accused. Learned counsel for the complainant is unable to point out any reason much less any substantial or compelling factor which would warrant interference qua acquittal of said three accused persons.

There is no merit in the contention of learned counsel for the appellants that the sentence imposed upon them should be reduced to the one already undergone by them. There are no mitigating circumstances which warrant such a relief.

For the reasons as discussed above, both criminal appeal Criminal Appeal S- No. 349-SB of 2002 and Criminal Revision No. 1598 of 2002 are dismissed.

September 15, 2015
rts

(Lisa Gill)
Judge