

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Appeal No.S-516-SB of 2003 (O&M)

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Date of decision:9.1.2015

Bhikhu Ram and others

...Appellants

v.

State of Haryana

...Respondent

....

(2) Criminal Revision No.1099 of 2003

.....

Bharat Singh

...Petitioner

v.

Bhikhu Ram and others

...Respondents

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mr. R.N. Kush, Advocate for the appellants in Criminal Appeal No.S-516-SB of 2003 and respondents No.1 to 17 in Criminal Revision No.1099 of 2003.

Mr. Surender Singh Pannu, Deputy Advocate General, Haryana for the respondent-State in Criminal Appeal No.S-516-SB of 2003 and respondent No.18-State in Cr. Revision No.1099 of 2003.

Mr. Rahul Vats, Advocate for the complainant in Cr. Appeal No.S-516-SB of 2003 and for the petitioner in Cr. Revision No.1099 of 2003.

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**Inderjit Singh, J.**

This judgment will dispose of above criminal appeal and criminal revision as these arise out of the same judgment and order dated 24.2.2003 passed by Additional Sessions Judge, Bhiwani.

The above criminal appeal and criminal revision have been filed against the impugned judgment of conviction and the order of sentence dated 24.2.2003 passed by Additional Sessions Judge, Bhiwani, whereby accused-appellants have been held guilty and convicted for the offences under Sections 148, 323, 324, 325 read with Section 149 of the Indian Penal Code (hereinafter referred to as 'IPC'). They have been sentenced to undergo rigorous imprisonment for nine months each and to pay a fine of ₹300/- each and in default of payment of fine to further undergo rigorous imprisonment for three months each for the offence under Section 148 read with Section 149 IPC. They have also been sentenced to undergo rigorous imprisonment for three months each for the offence under Section 323 IPC read with section 149 IPC. They have also been sentenced to undergo rigorous imprisonment for two years each and to pay a fine of ₹500/- each and in default of payment of fine to further undergo rigorous imprisonment for six months each for the offence under Section 324 read with Section 149 IPC. They have also been sentenced to undergo rigorous imprisonment for three years each and to pay a fine of ₹700/- each and in default of payment of fine to further undergo rigorous imprisonment for nine months each for the offence under Section 325 read with Section 149 IPC. However, all the sentences have been ordered to run concurrently.

During the pendency of the appeal appellant No.7 Amar Singh and appellant No.17 Bhagwan Singh died and the appeal qua them has been abated as per order dated 15.5.2013 passed by this Court.

The brief facts of the prosecution case are that the FIR in the present case has been registered on the statement Ex.PB of Bharat Singh (PW-1). It is stated by the complainant that he was having some civil litigation with Bhagwan Singh Saini regarding four acres of agricultural land. The complainant party succeeded in their case through out upto the Hon'ble Supreme Court in the year 1991. They also obtained the possession of the disputed land from the accused party on 21.2.1996. The occurrence took place on 2.3.1996 at 3.00 p.m., when the complainant and his family members had gone to cultivate the disputed land, whereupon all the accused armed with Lathis, Jellies, Pharsa, Gandasa and stones came there. Accused Fakir Chand was having a Pharsa in his hand, Bhagwan Singh was having a Gandasa, Ram Singh, Mange Ram, Lila Ram and Ramesh were having stones and remaining accused were having Lathis in their hands. They gave a 'Lalkara' to the complainant party for teaching them a lesson for cultivating of the land and whereupon, Suresh gave a Lathi blow on the left side of the head of the complainant. Ram Singh gave a stone blow on his head. Fakir Chand inflicted Pharsa injury on his right shoulder, Jhandu Ram gave a Lathi blow on his left hand. Bhagwan gave a Gandasa blow on the head of Ram Sarup. Accused Mahabir and Suresh inflicted injuries on the left and right shoulders of complainant by their respective Lathis. Accused Mange Ram gave a Lathi blow on the

right hand of Ram Sarup. They also inflicted injuries to complainant's wife Kamla and mother Mam Kaur. The complainant raised an alarm to which PWs Khazan Singh, Badri Parshad and Bhim Singh were attracted, who witnessed the occurrence. It is further case of the complainant side that they also inflicted injuries upon the accused party in the right of private defence. It is also stated by the complainant that the accused also caused damage to three tractors belonging to the complainant party. Their tyres were deflated. The complainant has also alleged that accused party had caused injuries to them with their intention to kill them. As per the MLR Ex.PE, complainant Bharat Singh suffered four injuries. Injury No.1 was declared to be dangerous to life as per report Ex.PL/1, whereas other injuries were found to be simple in nature. Ram Sarup suffered three simple injuries with blunt weapon as per MLR Ex.PD. Mam Kaur suffered five simple injuries with blunt weapon. Kamla sustained two simple injuries with blunt weapon. During investigation three tractors along with their harrows, trolleys etc. were taken into Police possession. Broken parts of the tractors and empty cartridge of 12 bore gun were also taken into possession. Statements of PWs were recorded. After necessary investigation, the challan was presented in Court.

On presentation of challan, the trial Court finding prima facie case against the accused-appellants framed charges for the offences under Sections 148, 324, 325, 323 and 307 read with Section 149 IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined the witnesses and closed its evidence.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent.

After going through the evidence on record, the learned trial Court vide its impugned judgment and order convicted and sentenced the accused-appellants for the offences as mentioned above. Aggrieved against the judgment/order, the present appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that no specific injury has been attributed to appellants Sher Singh, Bhagwan Singh, Bhikhu Ram, Jarnail Singh, Mani Ram, Ramesh Kumar, Lila Ram and Amar Singh (since deceased). Ram Singh, Fakir Chand, Suresh, Mange Ram, Bhagga Devi, Jhandu Ram alias Jarnail Singh and Suresh son of Hazari have been attributed injuries. Learned counsel for the appellants argued that all the injured from the complainant side have suffered only 12 injuries mainly which are simple injuries and injury No.1, which was stated to be dangerous to life by the doctor PW-2 and it was a hair line fracture were specifically stated by PW-2 that it cannot be dangerous to life in any way. Therefore, he argued that the learned trial Court has correctly held injury No.1 as not dangerous to life. Therefore, he argued that the two injures have been declared only as grievous injuries with blunt weapon. Learned counsel for the appellants further argued that

the accused side suffered 39 injuries and 16 persons were injured from the accused side, but no cross-version has been recorded by the Investigating Officer, which itself shows that the investigation is tainted one. He further argued that even the accused side had suffered fracture of skull etc. and more serious injuries including fire arm injuries have been suffered by the accused. Therefore, he argued that the complainant side is aggressor. Out of 17 accused persons, 16 persons belong to one family, who are residing near the place of the occurrence. Appellant No.17-accused is also owner of the adjoining land. There is no evidence on the record that the accused side was armed with deadly weapons or they hatched any conspiracy. He further argued that, in no way, the accused side can be held as aggressors. In the present case injuries on the persons of the accused have not been explained. The mere one line statement that they caused injuries in private defence cannot be believed. There is no evidence to prove the private defence. He further argued that the complainant side was in possession over the suit land and had sown the crop. Even Court question was asked to PW-1 Bharat Singh-complainant, who regarding the possession over the suit land on 21.2.1996 i.e. about 8 days earlier to the occurrence and he had specifically stated that on 21.2.1996 there was gram crop, which was sown by the accused party. He argued that the possession of four acres land was not delivered to the complainant party, but only a paper transaction was done by the revenue officials in connivance with the complainant party. He next argued that genesis of the occurrence has been concealed. The complainant party had

come on the land to take possession forcibly on three tractors and they in the course of taking forcible possession caused 39 injuries to 16 persons. Learned counsel for the appellants argued that he has filed an application under Section 391 Cr.P.C. but the counsel for the complainant has made statement before the Court that he has no objection if the MLRs of the complainant side, which are on the trial Court file, be read for the purposes of injuries. Therefore, he argued that for the purpose of deciding this appeal this fact may be taken into notice that 39 injuries have been caused by the complainant side to the accused side.

On the other hand, learned Deputy Advocate General, Haryana appearing for the respondent-State and learned counsel appearing for the complainant/revision petitioner argued that the accused are aggressors. They caused injuries to complainant side. The possession of the land had been taken as the accused side failed in the civil litigation. When the complainant side went to cultivate the land, then the accused attacked them and caused injuries and in self-defence the complainant side also caused injuries to the appellants. It is also argued that there is no merit in the appeal and the same should be dismissed.

The complainant-revision petitioner has filed criminal revision petition for enhancement of the sentence and for compensation as well as to convict respondents No.1 to 17 in the criminal revision for the offence under Section 307 IPC.

From the evidence on record and from the arguments, I find merit in the appeal. The complainant side has received only 12 injuries

out of which 10 injuries are stated to be simple with blunt weapon and two injuries are with blunt weapon falling under Section 325 IPC. Mam Kaur mother of the complainant has not been examined, who is stated to have suffered five simple injuries. Kamla Devi wife of the complainant has suffered two simple injuries. Bharat Singh-complainant suffered four injuries including grievous injury falling under Section 325 IPC. Ram Sarup suffered three injuries only whereas as per the cross-examination of PW-2 Dr. N.C. Gauba, the accused side has also suffered injuries. PW-2 Dr. N.C. Gauba has radiologically examined Ram Sarup, Bharat Singh, Mam Kaur. In the cross-examination, he stated that he also radiologically examined Ramesh Kumar on 2.3.1996 and there was fracture on left clavicle lateral head. He radiologically examined Ram Singh. There was a radio opaque shadow of metallic density seen. He also stated that he radiologically examined Mange Ram. There were radio opaque shadow of metallic density seen in the areas of right shoulder, right elbow and right leg upper part, one in each area. Radio opaque shadows of metallic density in the case of Ram Singh and Mange Ram are possible due to fire arm injury. He also stated that he radiologically examined Suresh, Fakir Chand and Sher Singh, they all had no fracture.

A perusal of the statement of PW-3 Dr. Mahender Kumar Gangwani, Medical Officer, PHC, Jamalpur, shows that the injuries suffered by Mam Kaur and Kamla Devi are mainly swelling. PW-3 Dr. Mahender Kumar Gangwani also explained the injuries on the person of accused Ram Singh, who had suffered six injuries and Suresh who had

suffered five injuries. The MLRs of other injured are also placed on the trial Court record.

In view of the evidence on record, it is clear that the accused side had suffered injuries including the fractures and fire arm injuries. As per the prosecution version no person from the accused side was armed with any fire arm weapon. As per the evidence, the possession is stated to have been delivered as per the revenue officials on 21.2.1996 and this occurrence took place on 2.3.1996 i.e. just after 7-8 days. Till 21.2.1996, accused side was in possession of the disputed land. The arguments of the learned counsel for the appellants are that no physical possession was got delivered and it was only a paper transaction and the accused side were in actual possession. From the evidence on record, a reasonable doubt exists regarding the genesis of the occurrence. The occurrence had not taken place as per the prosecution version. If the complainant side had already taken the possession and already gram crop had been sown on the land, then what was the necessity to come on three tractors. As per the prosecution version, only four persons from the complainant side were present out of which two are the ladies i.e. wife and mother of the complainant, which means that only two other male persons remained on the spot. Two persons cannot cause 39 injuries to 16 persons, which means that there were more persons from the complainant side, who caused injuries. Further, I find that there is no cogent evidence on record as to how they caused the injuries to the accused side in private defence by saying one line that the complainant side also caused injuries to the

accused. It is insufficient to prove the private defence. The complainant side is alleging private defence. Therefore, they are to prove the same by leading evidence but there is no cogent evidence to prove the private defence. Otherwise also, the complainant side has suffered 12 injuries out of which about 10 injuries are simple and with blunt weapon and only two injuries are grievous falling under Section 325 IPC. What was the occasion to cause fire arm injuries to the accused? All this shows that the accused party cannot be held as aggressor and the prosecution has concealed the genesis of the occurrence intentionally. The injuries on the person of the accused are not explained by the prosecution by leading cogent evidence. A reasonable doubt exists in the prosecution version and the benefit of doubt is to go to the accused-appellants.

Therefore, by giving benefit of doubt to the appellants, I find merit in the appeal filed by them. Therefore, the same is accepted. The appellants are acquitted of the charges as framed against them. The impugned judgment of conviction and the order of sentence are set aside.

In view of the above findings, as the appeal of the appellants has been accepted, there is no merit in the criminal revision petition and the same is dismissed.

As the sentence of the appellants has been suspended and they are on bail, their bail/surety bonds stand discharged.

January 9, 2015.

**(Inderjit Singh)**  
**Judge**

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