

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-287-SB of 2004

DATE OF DECISION: JANUARY 27, 2016

PIARA SINGH

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

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

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

PRESENT: MR. L.S.SIDHU, ADVOCATE FOR THE APPELLANT.
MR. PREMJEET SINGH HUNDAL, AAG, PUNJAB.

M. JEYAPPAUL, J.

1. Accused Piara Singh and his wife Mohinder Kaur faced the trial before the Addl.Sessions Judge, Fast Track Court, Ferozepur who convicted only Piara Singh and acquitted Mohinder Kaur. Piara Singh has challenged the conviction and sentence passed as against him under Section 324 and 452 read with Section 34 IPC.

2. It is the brief case of the prosecution that accused Piara Singh who was armed with .12 bore single barrel gun opened fire arm on Surjit Singh and caused fire arm injuries to him. Land dispute was the genesis of the occurrence as per the case of the prosecution.

3. On the side of the prosecution, PW4 Surjit Singh who sustained fire arm injuries at the hands of accused Piara Singh was examined. PW5 Kuljit Singh who sustained injury at the hands of the minor son of accused Piara Singh was examined as PW5. PW2 Dr.Rajnish Jindal spoke of the injuries sustained by PW4 and PW5 after medico-legally examining them.

PW13 Dr.Nirmal Dass spoke of the outcome of the X-ray taken by him.

4. It was submitted by learned counsel appearing for the appellant Piara Singh that the prosecution failed to establish with the interested testimony of PW4 and PW5 the charges attributed to accused Piara Singh.

5. *Per contra*, learned counsel for the State referring to the evidence of PW2, PW4, PW5 and PW13 submitted that the charges framed as against accused Piara Singh was established beyond reasonable doubt.

6. PW4 Surjit Singh and PW5 Kuljit Singh are found to be the injured witnesses. Inasmuch as they are found to be injured in the occurrence, their testimony cannot at all be doubted. Further, no sane person would choose to implicate an unconnected person leaving the real culprit. Therefore, there is no reason to disbelieve the evidence of PW4 and PW5 which were amply supported by the medical testimony that PW4 was shot-at by accused Piara Singh with his .12 bore gun and as a result of which PW4 sustained injuries.

7. As far as the offence under Section 452 IPC is concerned, there is no evidence to establish that accused Piara Singh ever entered into the house of PW4. It is very strange that the trial Court had convicted accused Piara Singh with the aid of Section 34 IPC, just because the son of accused Piara Singh entered into the house of PW4. In my considered view, Section 452 IPC can be invoked only when an accused committed trespass. Punishing an accused who had not trespassed upon the house of another one with the aid of Section 34 is not at all justifiable.

8. In view of the above, I have no hesitation to uphold the conviction recorded by the trial Court against accused Piara Singh under

Section 324 IPC. But the conviction recorded by the trial Court against accused Piara Singh for the offence under Section 452 read with Section 34 IPC stands set aside.

9. Coming to the quantum of sentence imposed on accused Piara Singh, it was submitted by learned counsel appearing for the appellant that the sentence imposed on accused Piara Singh may be reduced to the period already undergone by him. Of course, the trial Court has imposed a sentence of 1½ years on accused Piara Singh for the offence under Section 324 IPC. The fact remains that the occurrence had taken place on 17.5.2002. 18 years have elapsed from the date when the occurrence was unfolded. In other words, the accused-appellant has faced the ordeal of trial for a long duration. Though accused Piara Singh was armed with .12 bore gun, he had caused simple injury on PW4. In my considered view, if the sentence is reduced to 6 months, interest of justice would be met.

10. In view of the above, acquitting the accused of the charge under Section 452 read with Section 34 IPC, the conviction passed by the trial Court under Section 324 IPC is confirmed and the sentence of imprisonment imposed thereunder is reduced to 6 months R.I. But the fine amount of ₹1000/- imposed thereunder is enhanced to ₹10,000/-. Failure of payment of fine amount will invite R.I. for another 3 months.

11. The appeal is disposed of accordingly.

January 27, 2016
Gulati

(M. JEYAPPAUL)
JUDGE