

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal D-917-DB of 2012
Date of Decision : July 25, 2016

Gurcharan Singh @ Billu

.....Appellant

VERSUS

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. T.S.Sangha, Senior Advocate with
Mr. Narinder Singh, Advocate
for the appellant.

Mr. S.S.Dhaliwal, Addl. A.G., Punjab.

Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for respondents No. 2 to 36.

T.P.S. MANN, J.

Complainant-Gurcharan Singh @ Billu has fled the present appeal against the judgment dated 29.3.2012 passed by learned Additional Sessions Judge, Bathinda whereby the accused, who are respondents No. 2 to 36 herein stood acquitted of the charges under Section 436 read with Section 149 IPC, Section 435 read with Section 149 IPC, Section 429 read with Section 149 IPC, Section 427 read with Section 149 IPC, Section 450 read with Section 149 IPC, Section 506 IPC and Section 148 IPC.

According to the prosecution, the complainant, namely, Gurcharan Singh @ Billu made statement before SI

Manjit Singh, Station House Officer, Police Station Maur on 30.4.2006. The said statement is reproduced here-below:-

“Stated that I am the resident of above said address. My father Pritam Singh has been performing the duty as Sewadar (Mahant) in the Gurdwara Sahib Patshahi Nauvi, Maur Kalan for the last about 40/45 years. Yesterday on 29.04.06 at about 12.30 (noon), I along with my father Pritam Singh, son Inderjit Singh, Labh Singh, r/o Kuttiwal, Jagga Singh r/o Khiala Khurd, Darshan Singh, r/o Khiala Khurd etc. was present in the residential house which is with the balcony of the Gurdwara at upper storey. Then, a huge crowd of about 2000/2500 persons armed with swords, Gandasas, Cans containing inflammable oil and they were being led by Kulwant @ Kailasa, r/o Maur Kalan, Bhupinder Singh @ Bhinda Bijliwala son of Mit Singh, r/o Maur Kalan, Jagdip Singh Master s/o Gurtej Singh, r/o Maur Kalan, Harjinder Singh s/o Bindri son of Gurdev Kali, r/o Maur Kalan, Vijay Kumar MC, r/o Maur Mandi, Karamjit Singh s/o Kulwant Singh, r/o Maur Kalan, Malkit Singh, r/o Ghuman Kalan Bijliwala raising slogans and lalkaras, entered the Gurdwara Sahib and were saying that on that day, after ousting Mahant Pritam Singh and his companions from the Gurdwara Sahib, the possession of the Gurdwara Sahib will be taken and Pritam Singh and his companions will be burnt alive. Out of them, Kailasa set on fire the wheat chaff hall below the residential hall and Vijay

Kumar MC, Bhupinder Singh Bijliwala, Jagdip Singh Master, Harjinder Singh, Karamjit, Malkit Singh etc. came forward from the mob and set on fire the vehicles, Tata Sumo, Maruti Car, Motor Cycle, Scooter, Cycles parked in the back side of Gurdwara Sahib and wheat chaff room on the back side and closed our path leading to back side with the intention to burn us alive and taking the possession of the Gurdwara Sahib. When Hardip Singh etc. started climbing stairs to the upper storey and seeing the danger to our life, we opened fire from our weapons. In case, we had not fired shots, they would have killed all of us. Then with your help, we have been saved from this mob who have been apprehended. In this regard, I was earlier frightened. Now, I have disclosed the complete facts. I have got recorded my statement and the same is correct.

Attested
Sd/- in English
PS Maur
Date 30.4.06.”

Sd/- in Punjabi.
Gurcharan Singh above said

On the basis of the aforementioned statement, DDR No. 31 dated 30.04.2006 was recorded at Police Station Maur. However, as the local police did not arrest the accused nor presented the challan against them in the Court but instead presented the challan against the complainant party, the complainant filed criminal complaint under Sections 307, 435, 436, 427, 429, 450, 506, 148, 149, 120-B IPC, Section 11 of the

Prevention of Cruelty to Animals Act and Sections 3 and 4 of the Prevention of Damage to Public Property Act. The said complaint is reproduced here-below:-

“That the complainant Gurcharan Singh @ Billu son of Mahant Pritam Singh is the resident of Gurdwara Sahib, Nauvi Patshahi, Maur Kalan, Tehsil Talwandi Sabo, District Bathinda, now in custody of Central Jail, Bathinda.

That, my father Mahant Pritam Singh, Chela Mahant Basant Singh has been performing the service as Mahant at Gurdwara Nauvi Patshahi Maur Kalan for the last 40/45 years and he was assigned the service of Mahanti for looking after the Gurdwara Sahib Patshahi Nauvi by Jathedar Baba Santa Singh Nihang of 96th Karori Budha Dal, S. Gian Singh, Rare Wale, S. Bhupinder Singh Mann, Minister, S. Teja Singh, Ex-minister S. Kartar Singh, President, Shiromani Committee and with the consent of Panchayats of villages. This is a historical Gurdwara and having great significance. About 150 acre land is in the name of this Gurdwara Sahib. Mahant Pritam Singh incurred the expenditure of earnings of this Gurdwara on recitals (paths) of Kotri Sahib, death anniversaries of Mahants and assistance to the poor, providing langar (food) at all the times and religious functions and ran the Kar Seva of Gurdwara Sahib and Mahant Pritam Singh incurred the expenditure on the same from the income of the land of Gurdwara Sahib.

That this Gurdwara has been notified as

Patshahi Nauvi Sikh Gurdwara vide Punjab Govt. Notification dated 10.7.1959. In this regard, case has been decided in the Court between Shiromoni Gurdwara Parbandhak Committee, Amritsar and Mahant Basant Singh and Mahant Pritam Singh, which was decided in favour of Mahant Basant Singh and Mahant Pritam Singh by the Bathinda Court and Hon'ble Justice Hemant Gupta, Punjab and Haryana High Court has decided the in favour of Mahant Pritam Singh on 11.8.2004. Attested copy of the same is enclosed herewith.

That, above said accused accompanied by other miscreants of village intended to take the possession of Gurdwara Sahib forcibly as the Gurdwara Sahib is having great importance. Being a historical Gurdwara Sahib and lucrative income of Gurdwara Sahib, they wanted to take illegal possession of the land of Gurdwara Sahib as well as Gurdwara Sahib forcibly and announced publicly in the village through loud speaker regarding this illegal possession. After going at Gurdwara (Titar Sahib), above said persons took oath and constituted committee consisting of 51 members which is published in Magazine (Sikh Shahadat), Page No. 17 to 19, Volume June 2006. Photocopy of the magazine is enclosed herewith and they say that after burning Mahant Pritam Singh Granthis and helpers (Sewadars) alive, and ousting Mahant, Granthis and helpers from the Gurdwara Sahib, possession of Gurdwara Sahib and land is to be taken. Due to this, we called the respectable persons of the area, namely, Mithu Singh son of Jarnail Singh,

resident of Maur Kalan, Darshan Singh son of Sunder Singh, resident of Khiala, Labh Singh son of Mohair Singh, resident of Kuttiwal Kalan, Harnek Singh son of Arjun Singh, resident Maur Kalan, Rajinder Singh son of Jaswant Singh, resident of Jodhpur Pakhar, Baldev Singh son of Kartar Singh, resident of Ghuman Kalan, Kabul Singh son of Jangir Singh, resident of Maur Khurd on 29.4.2006 for satisfying the people and indulging in the compromise. I, and my son namely Inderjit Singh and my father Pritam Singh @ Mahant were already present in the Gurdwara Sahib being our residence and other helpers (Sewadars) and Granthies were also present there.

That, on 29.4.2006 at about 12:30 P.M. of the day, we all were discussing about the compromise, while sitting in the room of Darbar Sahib. In the meantime, heard the noise of very big mob and we all went by running in the residential room at the roof of Gurdwara Sahib and closed the door of stairs. We saw from the top that above said all accused armed with swords, rifles, sticks and cans containing inflammable oil, small cylinders came inside the Gurdwara accompanied by the crowd of 2000/2500 persons by raising lalkaras and saying that after ousting Mahant Pritam Singh and his companions from the Gurdwara Sahib, possession is to be taken and Pritam Singh and his companions are to be set on fire alive. If anyone from the companions of Mahant tried to run away then will set them on fire. In the meantime, Kulwant Singh @ Kailasa set on fire wheat chaff room below the residential rooms and Jagraj Singh son of Kulwant

Singh, Kulwant Singh @ Kailasa, Jagdeep Singh Master, Atma Singh Master, Gurcharan Singh son of Kartar Singh, Hardeep Singh, Bhupinder Singh @ Bhinda, Jaswinder Singh, Gursewak Singh, Harjinder Singh @ Bindri, Kulwinder Singh and Makhan Singh etc. came up through stairs with the intention to kill us, after setting on fire our car Tata Sumo parked in the back side of Gurdwara Sahib and Motor Cycles, Scooter and cycles. Some crowd came following them and some crowd encircled us from all sides. Harjinder Singh, Karamjit Singh, Malkit Singh, Bhola Singh etc. set on fire the remaining rooms of wheat chaff and Contessa Car, Cow and Horse and closed our way for running to back side and due to this, Cow and Horse died and our cars and motor cycles and chaff reduced to ashes by burning.

That, when above said accused were coming as climbing the stairs and breaking the grills, then, due to fear, I released fires with my 12 bore gun in the air for protecting my own life as well as other respectable people. When they did not withdraw, then I released 2/3 fires, due to which some person who were climbing the stairs from the crowd, were injured.

That, if I did not fire from my gun, then, after climbing on our residence at upper storey, above said accused would have taken the lives of mine, my family and respectable person came for making the compromise there. Therefore, after considering the danger to our lives, I started firing with my gun.

That ground of grudge is this that above said all accused have committed the whole action with the

intention to take the possession of Gurdwara Sahib and land of Gurdwara Sahib.

That, S.1. Manjit Singh, SHO, PS Maur called more force from Bathinda and Talwandi Sabo through wireless message for rescuing us and on this, S.S.P. Sahib, Bathinda, S.P. Sahib, Bathinda, D.S.P. Sahib Talwandi Sabo and S.D.M. Sahib Talwandi Sabo reached there on the spot. After coming, they removed the crowd from there and stairs. Press reporter also reached at the spot. Jeevraton Singh was also one of them. They took the photographs of the spot with their cameras. Same have been enclosed herewith.

That, if officials and civil officers do not help us at that time by coming there, then this crowd must have killed all of us by burning. Above said officers rescued us from them and arrested us there only. In this regard, I got recorded my statement with S.I. Manjit Singh, S.H.O., PS Maur on 30.4.2006 and report number 31 dated 30.4.2006 of the same has been registered in the PS Maur. In this regard, the police recorded the statements of our all witnesses and prepared the memos of burnt vehicles Tata Sumo, Maruti Car, Motor Cycle Hero Honda, Scooter Bajaj Chetek and 2 cycles and car make HM-18 GLX black colour etc. Photo copies of the same and photographs have been enclosed herewith. On the ground of this report, after apprehending, the police made them to sit. Cans of inflammable oil, swords, gandasas, guns were taken into police possession from their possession vide memos and after that, all the accused were released.

That, till date, local police was saying us that we will get above said accused arrested and will present their challan in the court. But the police has now presented the challan of our alone party and has clearly refused to present the challan of the opposite party. Today, the applicant has filed the complaint in the Honourable Court with out any delay.

That, this above said occurrence is of Maur Kalan and falls under the Police Station Maur and above said occurrence comes under the jurisdiction of Honourable Court.

Therefore, after presenting this complaint, it is requested that suitable punishment be given to the above said accused as per law and justice be provided to the applicant. You will be very kind of the same.

Date: 09.09.2006

Applicant.

Sd/- in Punjabi.

Gurcharan Singh @ Billu son of Mahant Pritam Singh Chela Mahant Basant Singh Resident of Gurdwara Nauvi Patshahi Maur Kalan, Tehsil Talwandi Sabo, District Bathinda, Now in custody of Central Jail, Bathinda.”

After recording preliminary evidence, learned Ilaqa Magistrate summoned all the accused under Sections 435, 436, 427, 429, 450, 506, 148, 149 IPC. Subsequently, the complaint against Balkaran Singh-accused was dismissed as withdrawn whereas proceedings against Jarnail Singh-accused abated as he had died. After procuring the presence of the accused,

learned Ilaqa Magistrate committed the case to the Court of Sessions it being cross case of the main case arising out of FIR under Section 302 IPC and allied offences of IPC. Subsequently, charges under Sections 436, 435, 429, 427, 450 read with Section 149, 506 and 148 IPC were framed against the accused, who are respondents No.2 to 36 herein to which they pleaded not guilty and claimed trial.

In support of his case, the complainant himself stepped into the witness box as PW1. Complainant also examined Kabal Singh PW2, Jivrattan Dass Chela Jiwan Dass PW3, SI/SHO Manjit Singh PW4. Learned counsel for complainant gave up PWs Malkit Singh, Darshan Singh, Mahant Pritam Singh and Labh Singh as unnecessary. Counsel for complainant also tendered documents and closed the evidence.

Statements of accused under Section 313 Cr.P.C were recorded. The incriminating evidence appearing against the accused were put to them. They denied the same. Accused pleaded their false implication and innocence. Some of the accused pleaded that Pritam Singh was Granthi in a historical Gurudwara. He was misappropriating and embezzling the accounts of said Gurudwara and was not spending a penny for welfare of the Gurudwara. A committee was constituted for welfare of the Gurudwara and for rendition of accounts from Granthi Pritam Singh. Kulwinder Singh, Hardeep Singh,

Gursewak Singh. Makhan Singh, Jaswinder Singh, Gurcharan Singh, Kulwant Singh @ Kailasha all injured, Jagraj Singh since deceased and his father Kulwant Singh and Zora Singh were members of the committee. One week prior to 29.4.2006 on the pretext of rendition of accounts of Gurudwara, Pritam Singh Granthi called them in the Gurudwara. On the asking and assurance given by Pritam Singh Granthi, Jaswinder Singh. Kulwinder Singh, Hardeep Singh, Gursewak Singh, Makhan Singh, Kulwant Singh @ Kailasha, Gurcharan Singh all injured and Jagraj Singh since deceased and his father Kulwant Singh and Zora Singh were empty handed. They were not having any lethal weapons like swords, kerosene cans etc. When they went there Pritam Singh Granthi along his son Gurcharan Singh @ Billu, Inderjit Singh, Narinder Singh, Mithu Singh, Kabul Singh, Malkit Singh, Harbhajan Singh, Charanjit Singh, Gora Singh, Jagnandan Singh, Jagga Singh, Rajinder Singh who were armed with 12 bore guns, mousers, swords, sticks, brick etc were found standing on the roof top of Chobara of Gurudwara Sahib at Maur. On seeing them Gurcharan Singh and others above mentioned fired shots at them. They received gun shot injuries. Jagraj Singh died due to receipt of gun shot injuries. They were removed to different hospitals for medical treatment. In order to save and screen them from punishment of main State case, the

complainant of this case Gurcharan Singh and other accused after due deliberations and consultation, Gurcharan Singh complainant got recorded false statement on the basis of which DDR No.31 dated 30.4.2006 was registered at PS Maur but same was found false after deep and thorough inquiry conducted by the then DSP, Talwandi Sabo. The instant complaint was filed on the concocted version after unexplained delay of four months and ten days.

In defence, accused examined Sarabjit Singh DW1, Babu Singh DW2, Sh. Gurmeet Singh SP(D) DW3, SI Dinesh Kumar DW4. HC Paramjit Singh produced the inquiry file regarding DDR No.31 dated 30.4.2006. The accused gave up DW Gian Singh being unnecessary and closed the defence evidence.

After considering the arguments of the learned Additional Public Prosecutor assisted by learned counsel for the complainant and learned counsel for the accused, learned Additional Sessions Judge, Bathinda came to the conclusion that the complainant had failed to prove his case and, accordingly, acquitted respondents No.2 to 36 of the charge against them.

Having heard learned counsel for the parties and on going through the evidence available on the record, it is made out that the present case is cross version of case FIR No. 40 dated 29.4.2006, Police Station Maur under Sections 302, 307, 148,

149 IPC and Sections 25, 27 and 30 of the Arms Act. The complainant is one of the accused in the case initiated on police report. While in the witness box as PW1, he admitted that the respectable persons, who were called on the day of the occurrence were his own relatives besides servants of the Gurudwara. He admitted that in the magazine (Sikh Shahadat) Ex.DB, there were photographs of deceased Jugraj Singh @ Raju and injured Kulwant Singh @ Kailasha, Jaswinder Singh, Gurcharan Singh and Makhan Singh but he himself had fired in defence of the above said persons. PW2 Kabul Singh deposed that one gate was installed on the staircase which could be bolted from inside as well as outside. That gate was closed by him and his party men. He also admitted that none could climb the roof of the Gurudwara as the gate was closed by them. He further admitted that in the occurrence, Raju had died and 6/7 other persons were injured. None of them received injuries at the hands of the accused party. He also admitted that DDR recorded on the statement of the complainant was found to be false. Subsequently, private complaint was instituted by the complainant. PW3 Jivrattan Dass stated in cross-examination that none of the accused in the photographs were shown to be carrying guns, pistols, sticks, cans etc. He admitted that he was Mahant of Dera Baba Jiwan Dass which dera owned 7 killas of

land. He was not related to the complainant but it was his neighbour who was related. PW4 SI Manjit Singh also stated in cross-examination that the photographs exhibited in the State case bore date and time but photographs placed on record of the complaint did not bear time and date. He did not find any fire arm marks on the wall of the chaubara constructed on the roof of the Gurudwara. At the backside of the chaubara, there was no boundary wall and rather it was open field towards that side. He also deposed that the accused arrested in the State case were not having any injury or scratch on their body. Therefore, none of the accused was armed with any weapon. On the other hand, the complainant and others were armed with fire arms and present at the first floor. No weapon was recovered from the spot. Some of the accused received gun shot injuries. Jugraj Singh @ Raju had died due to receipt of gun shot injuries. On the other hand, the complainant and others were arrested from the chaubara while they were carrying guns, pistols and mousers. Kulwant Singh-accused had immediately got recorded his statement with the police.

In the case in hand, none of the accused was armed with any weapon. While some of them had received gun shot injuries, Jugraj Singh @ Raju had succumbed to the fire arm injuries received by him. The complainant and other persons, who had assembled in the Gurudwara had come from different

villages. Dispute was already going on regarding rendition of accounts. Villagers were asking Mahant Pritam Singh, father of the complainant to give details of the accounts and for that purpose the complainant and others had assembled at the Gurudwara. Besides, they had invited the villagers. When the villagers had gone to ask for accounts, the complainant and others immediately fired shots and caused injuries to them. It was followed by certain articles being put on fire. The complainant has failed to prove that the shots were not fired by the accused in self defence.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

July 25, 2016
ajay-1

(GURMIT RAM)
JUDGE