

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

-:-

Crl. Appeal-S-2429-SB of 2009
Date of Decision : May 06, 2016

Mahender Singh & Ors.

..... Appellants

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : Mr. Ashwani Bhardwaj, Advocate, for
Mr. Aditya Sanghi, Advocate, for the appellants.

Mr. Vijesh Sharma, DAG, Haryana.

None for remaining respondents.

A.B. CHAUDHARI, J.(Oral)

The appellants being aggrieved by the judgment and order dated 06.10.2009 passed by the Additional Sessions Judge (Fast Track Court), Bhiwani, by which they were convicted for the offences punishable under Sections 307, 323, 324, 325, 341 and 148 read with Section 149 IPC and were sentenced to undergo rigorous imprisonment ranging from 03 months to 05 years with a fine ranging from ₹500/- to 5000/- on various grounds had filed this appeal in this Court.

Facts:-

In brief, the case of the prosecution is that on 16.03.2008, the Assistant Sub Inspector Balbir Singh received a medical ruqa and proceeded to General Hospital, Bhiwani to obtain opinion of the doctor regarding

fitness of the injured to make statements. The doctor declared the injured fit for making statement and accordingly, ASI Balbir Singh recorded the statement of Balwan S/o Jai Lai, wherein he stated that on 15.03.2008 at about 8:30/9:00 hours when he had gone to his house for changing the fuse in the electric transformer, appellant Mahender S/o Shree Ram having lathi caught hold of him asking him as to why he was changing the fuse and delivered a lathi blow on his head and also called his boys and wife, whereupon Anoop, Sanjay having lathies, Pawan having axe, Saroj w/o Anoop, Vikas s/o Anoop, Santro w/o Mahender, Angoori w/o Pawan having dandas came there. They gave lalkara as a result of which Balwan's family members Renu, his daughter, wife Kamlesh, mother Samran, Sunita daughter of Harchand, Dhapan wife of Rajesh came there. In the meantime, Pawan gave an axe blow, which hit on his left hand and when his family members tried to save him Pawan delivered a blow of Axe on the head of Sunita while Sanjay gave a lathi blow on the head of Renu and they all started beating him and his family members with weapons. His brother and uncle Harchand upon hearing the noise came there and saved them from the assault by the accused, who by that time fled away from the spot alongwith their weapons. The FIR was registered and investigation commenced. Thereafter, the challan was presented upon completion of investigation. The trial Judge committed the trial to the Sessions Court. During the trial in the Sessions Court, the prosecution examined its witnesses 11 in number and also filed documents. Thereafter, the trial Judge heard the parties and recorded the conviction and sentence as above.

In support of the appeal, learned counsel for the appellants submitted that as a matter of fact there was a free fight between the two groups as is evident from the evidence if carefully seen. It is in that context the complainant-party was also prosecuted by the police and charge-sheet was also filed against them and the complainant-party was tried before the Sessions Court, who found them guilty of the offences of causing hurt to the appellants and his relatives and instead of sentencing them released them on probation. That order of Sessions Court releasing them on probation is under challenge at the behest of the present appellants in Criminal Revision No. 550 of 2010. According to the learned counsel for the appellants, trial Judge committed error in convicting the accused persons for the offences punishable under Sections 307 and 148 IPC when the evidence itself indicated that there was no unlawful assembly from the beginning. On the contrary, the evidence shows that initially only appellant Mahender and complainant Balwan were on the spot near electric transformer and it is after quite some time, the other accused persons arrived on the spot. It was wrong to conclude that there was any common object in order to constitute unlawful assembly. The conviction under Sections 323, 324, 325 and 341 IPC read with Section 148 IPC is also wrong and illegal for the same reason of absence of common object. The learned counsel for the appellant, therefore, contends that all the appellants are required to be acquitted. In the alternative, he submitted that the trial Judge exercised the discretion of releasing the convicted women on the other side on probation in the other trial in Sessions Case No. 158 of 2008 by exercising power under Section 4

(1) of the Probation of Offenders Act, 1985 (hereinafter referred to as 'the Act'), but same benefit was not given to the appellants some of who are the women. He then contended that the other appellants have undergone the sentence ranging from 04 months to 01 year and conviction in their case could only be under Section 324 IPC and therefore, the sentence undergone by them should be enough particularly in the light of the fact that the incident had taken place in the year 2008 and both the parties are residing in the same village.

Per contra, the learned Deputy Advocate General, Haryana supported the impugned judgment and order and submitted that the trial Judge made no error in convicting the appellants for the offences as aforesaid and imposing sentence which is fair and therefore, the same does not call for any interference. He thus prayed for dismissal of the appeal.

Consideration:-

I have heard learned counsel for the rival parties at the length and perused the entire evidence recorded before the trial Judge. I have seen the reasons recorded by the learned trial Judge for convicting the appellants.

At the outset, I find that the electric transformer was stored in the premises of the complainant, but the appellants were given right to utilise the electricity from the transformer for operating their tubewell. It appears that over the said issue there was a dispute amongst the complainant-party as well as the appellants. It is in the above-background namely that appellant-Balwan Singh S/o Jai Lai had gone to install fuse in

order to have electricity when the appellant No.1 had challenged him and in that the quarrel took place will assume importance . It is the evidence of the prosecution that after the encounter between Mahender Singh and the complainant-Balwan Singh had already taken place, the other accused persons came to the spot so also the family members of Balwan and then quarrel started and as such the persons were injured. The trial Judge did not record any categorical finding that there was any common object or the agreement between the appellants with a view to form any unlawful assembly, or to cause injuries to the complainant-party. A perusal of the record to my mind on the background of facts as narrated above does not show any semblance of evidence about any common object being shared by the appellants for assaulting the complainant-party. On the contrary, initially there was only an encounter between Balwan and Mahender Singh and it is thereafter the family-members from both the sides arrived on the spot. It is, therefore, not possible to draw an inference that there was any unlawful assembly with the common object of making assault in order to constitute offence under Section 148 IPC. I, therefore, hold that the prosecution had failed to prove existence of any unlawful assembly.

Having disposed the aspect of non-existence of any unlawful assembly, I then find that the role of each appellant will have to be examined carefully. In so far as accused-Pawan is concerned, he assaulted PW-2 Sunita on her head by means of Axe. Sunita received serious injury on her head resulting into depressed fracture of skull. However, she was discharged from the hospital within about 12 days after undergoing

operation. It was only Pawan, who had given the axe blow on her head resulting into the said serious injury. The appellant-accused Pawan, thus, must be deemed to know that assault by him by means of axe on her head with force would result into the death of Sunita. He must be, therefore, held guilty of attempt to commit murder within the meaning of Section 307 IPC. The finding of conviction against him, therefore, will have to be confirmed for offence under Section 307 IPC. The plea raised by learned counsel for the appellant to reduce the sentence from 05 years does not appeal to me looking to the serious injuries caused to PW-2 Sunita by him. His appeal, therefore, must be dismissed.

Now coming to the case of other appellants, I find from the evidence so also the reasons recorded by the learned trial Judge that the appellants Mahender Singh, Anoop, Sanjay, Saroj, Santro and Angoori had also assaulted the other injured persons. But then a perusal of the medical reports in respect of other injured persons do not show any injury caused by these accused persons on any vital part of the body. The injuries were caused on legs and hands of other injured. The injuries in the case of PW-3 Kamlesh though on the head also does not show any fracture but is superficial and further looking to the injuries received by all other persons, I am of the opinion that since these appellants were having the lathis and other weapons they must be held guilty of offence under Section 324 IPC. I thus hold that Mahender, Anoop, Sanjay, Saroj, Santro and Angoori must be held guilty of the offence under Section 324 IPC.

The above appellants have undergone sentence ranging from 05

months to 01 year. The instant appeal is of the year 2008. Both the parties are living in the same village and it is only over the right of both the parties to obtain electricity from the common electric transformer the dispute arose. In that view of the matter, I think the appellants Mahender Singh, Anoop and Sanjay should be sentenced to the one already undergone by them and to pay fine if not already paid as ordered by the trial Judge.

In so far as the three women, namely, Smt. Saroj, Smt. Santro and Smt. Angoori are concerned looking to their participation in the assault it is seen that they merely acted in the incident with no clear defined role, nor they caused any serious injury to anybody. The trial judge had in the sister case against the complainant- Balwan and others i.e. women members from his family had given the benefit of 4(1) of the Prohibition of Offenders Act. I think I should also give the same benefit to three women accused instead of now pushing them in jail for offence under Section 324 IPC.

To sum up the following order is made:-

ORDER

1. Crl. Appeal-S-2429-SB of 2009 is partly allowed.
2. The impugned judgment and order of conviction and sentence dated 06.10.2009 of appellant-accused Pawan S/o Mahender for the offence 307 IPC only is confirmed and the judgment and order of conviction and sentence in respect of Pawan for other offences i.e. 323, 324, 325, 341 and 148 IPC is set aside.
3. The impugned judgment and order of conviction and sentence

for the offences under Section 307, 323, 325, 341 and 148 IPC is set aside in respect of Mahender Singh, Anoop, Sanjay, Saroj, Santro and Angoori and instead they are convicted for offence under Section 324 IPC.

4. Appellants, Mahender, Anoop and Sanjay are sentenced to undergo rigorous imprisonment under Section 324 IPC, which they have already undergone but shall pay fine ordered by the trial Court within three months.

5. Appellants Saroj, Santro and Angoori are ordered to be released on probation of good conduct under Section 4(1) of Probation of Offender's Act, 1958, on their furnishing personal bonds in the sum of ₹5000/- each to the satisfaction of the trial Court for a period of two years with a condition to appear and receive sentence of fine of Rs.1000/- each when called upon during the period of two years and in the meantime to keep the peace and be of good behaviour.

The bail bonds of all the appellants stand cancelled.

(A.B. CHAUDHARI)
JUDGE

May 06, 2016
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