

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

Crl. Appeal D-967-DBA of 2002
Date of Decision : January 07, 2016

State of Haryana

.....Appellant

VERSUS

Sube Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present : Mr. Dhruv Dayal, Deputy A.G., Haryana
for the appellant-State.

Mr. Tapan Kumar Yadav, Advocate
for the respondents.

Mr. Surinder Gandhi, Advocate
for the complainant.

T.P.S. MANN, J.

The respondents alongwith Lakhi Ram were charged for committing the offences punishable under Sections 148 and 307/325/324/323/149 IPC. Lakhi Ram was also charged for the offence punishable under Section 27 of the Arms Act. During the pendency of the trial, Lakhi Ram died on 10.5.1999 and the proceedings against him were dropped on 1.7.1999. Vide judgment dated 11.6.2002, learned Additional Sessions Judge, Rohtak while holding that the prosecution case against the respondents had become doubtful, gave benefit of doubt to them

and, accordingly, acquitted them of the charges against them.

Aggrieved of the impugned judgment of acquittal, the State filed the present appeal. Complainant-Jai Singh also preferred Criminal Revision 2315 of 2002 for challenging the acquittal of respondents No. 1 to 5 of the charges against them. As the appeal and the revision arise out of the same judgment of acquittal passed by the trial Court, they are being disposed of by a common judgment.

The prosecution case, in brief, is that on 17.6.1997 at about 11.30 a.m., complainant-Bani Singh son of Deep Chand, resident of village Marodhi Rangran, his wife Krishna and brothers Jai Singh and Raj Singh were working in killa No. 77/10. The land in question belonged to Shakuntla wife of Om Parkash, resident of Marodhi Rangran and Bimal Kumar son of Kanshi Ram, resident of Anaj Mandi, Rohtak but was in cultivating possession of complainant-Bani Singh and others. A civil suit was also pending between the parties. Om Pakash son of Mange Ram, Sube Singh son of Jhunda Ram and his son residents of village Makroli Khurd came there. Om Parkash was having a *jaili*, Sube Singh having a *lathi* and Sube Singh's son was carrying a *jaili*. Sube Singh and Om Parkash gave blows with their *lathi* and *jaili* on the head, arms and legs of complainant-Bani Singh. Complainant's wife Krishna and his brother Jai Singh were also

assaulted by the accused. In the meantime, Hera Singh alongwith his co-villagers and two persons of village Makroli and Ram Dhan, Sarpach of village Marodhi Rangran also came there with guns. All four of them fired from their guns. Complainant-Bani Singh suffered gun shot injury on the right side of his back. The alarm raised by complainant-Bani Singh and others attracted Randhir and Hoshier Singh, who rescued them from the hands of the accused. While causing injuries, the assailants were proclaiming that no one had concern with their field.

Further case of the prosecution is that Krishna wife of Bani Singh, Bani Singh son of Deep Chand and Jai Singh son of Deep Chand were taken to PGIMS, Rohtak where they were admitted. On receiving VT message, ASI Ishwar Singh reached there and collected ruqa alongwith the medico-legal reports of the three injured persons. He then recorded the statement of complainant-Bani Singh on 17.6.1997 at 11.10 p.m. and as the statement revealed commission of offences under Sections 324, 323 and 307 IPC, he, after making necessary endorsement, sent the same through Constable Lakhi Ram to the Police Station for registration of the case. Accordingly, on its basis, FIR came to be registered at Police Station Kalanaur on 18.6.1997 at 12.30 a.m. (midnight). He also recorded the statements of Krishna and Jai Singh.

Further case of the prosecution is that on 18.6.1997, ASI Ishwar Singh met accused Sube Singh at Kalanaur and recorded his statement. On this statement, cross-case was registered. ASI Ishwar Singh then went to the spot and prepared rough site-plan. He recorded the statements of witnesses on 19.6.1997. When the injuries on the person of complainant-Bani Singh were declared grievous, offence under Section 325 IPC was added. Statements of the Patwari and the Kanungo were recorded. Sube Singh, Lakhi Ram, Chand Singh and Joginder were arrested on 21.7.1997. Licensed gun of Lakhi Ram alongwith its licence was taken into possession. Papers regarding lease of the land in question were collected by him. He also arrested Hera Singh and Om Parkash on 9.8.1997.

It is also the case of the prosecution that on 10.8.1997, SI Gulzar Singh interrogated accused Hera Singh, who disclosed that he was having a *lathi* but the same was snatched from him by some person. Om Parkash accused was also interrogated, who disclosed that he had kept his *jaili* in a room containing wheat husk regarding which he had exclusive knowledge and could get the same recovered. In pursuance of his disclosure statement, he got recovered the *jaili*. On 21.8.1997, ASI Subhash Chand arrested Ram Dhan accused. He collected scaled site-plan from the Patwari on 15.11.1997. On

completion of investigation, final report under Section 173 Cr.P.C. was prepared by SI Ram Parkash, Station House Officer and presented before the Ilaqa Magistrate, who committed the case to the Court of Sessions. The respondents and Lakhi Ram were then charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In the trial that proceeded against the respondents, the prosecution examined as many as twelve witnesses.

PW1 ASI Karan Singh deposed that on receipt of ruqa from ASI Ishwar Singh, he recorded the first information report Ex. PA.

PW2 SI Ram Parkash testified that on completion of investigation and formalities, he prepared final report under Section 173 Cr.P.C.

PW3 ASI Subhash Chander testified that on 21.8.1997, he had arrested Ram Dhan accused and on 15.11.1997, collected scaled site-plan from the Patwari.

PW4 Surinder Kumar, Patwari deposed that on 15.11.1997 he reached the spot and prepared scaled site-plan Ex.PB on instructions of complainant-Bani Singh. He also stated that the fields belonged to Smt. Shakuntla wife of Om Parkash.

PW5 Dr. Rajiv Malhotra testified that he radiologically examined complainant-Bani Singh on 17.6.1997 and observed

fracture in the lower end of left radius in the fore arm. There were two radio-opaque foreign body of metallic density in the right lung. He also deposed that on the same day, he had radiologically examined Smt. Krishna and observed fracture in acromion process of left scapula.

PW6 Constable Satbir Singh testified that on 21.7.1997 he joined investigation of the case and in his presence, .12 bore licenced gun alongwith its licence was taken into possession from Lakhi Ram accused and a *lathi* and a *jaili* from Chand accused.

PW7 Bani Singh and PW8 Jai Singh testified about the occurrence in which they alongwith Smt. Krishna had received injuries.

PW9 ASI Om Parkash, PW10 Inspector Gulzar Singh, who was posted as SI on 10.8.1997 and PW11 ASI Ishwar Singh testified about the investigation part of the case.

PW12 Dr. Manoj Lamba testified that on 17.6.1997, he had medically examined Bani Singh and found the following injuries on his person:-

- “1. A Lacerated wound on vertex of skull size 3x 1x2 cm.
2. Small round in shape injuries alleged to be a shot gun wound at infra scapular right side size .5 x .5 cm. X-ray and surgical opinion

was sought. Skin deep injury.

3. Incised wound with clear edges on back of right scapula 3x .5 cm. into skin deep. X-ray was advised.
4. A lacerated wound on front of left shin 5 cm. below patella. Advised X-ray.
5. Swelling on front of right shin 10 cm. above ankle. X-ray advised.
6. Contusion 7 x 3 cm. on back of right elbow with swelling. X-ray advised.
7. Contusion on dorsal surface on left forearm with swelling. X-ray was advised.
8. A lacerated wound on medial surface of left forehead 1 cm. x .5 cm. skin deep. X-ray was advised.”

Probable duration of injuries was within six hours.

Injury No.3 was caused by a sharp edged weapon, injuries No.1 and 4 to 7 by a blunt weapon and for injuries No. 2 and 8 opinion was to be given after X-ray and specialist opinion.

On the same day, he medically examined Jai Singh and found the following injuries:-

- “1. 3 incised wounds of sizes 1 cm. x 2cm. x skin deep on left forearm and hand as shown in the diagram. Advised X-ray and Ortho opinion.
2. Incised wound on medial side of left forearm size 4 cm. x 1 cm. x skin deep. Advised X-ray

and ortho opinion.

3. Abrasion on front of left thigh 5 cm. above patella. Advised X-ray and ortho opinion.
4. Abrasion with swellings on back of right hand. Advised X-ray.
5. Contusion 4 cm. x 2 cm. on top of right shoulder with swelling. Advised X-ray.
6. A lacerated wound 2 cm. on back of scalp skin deep. Advised X-ray.”

Duration of injuries was within six hours. Injuries No. 1 and 2 were caused by a sharp edged weapon while the rest of the injuries by a blunt weapon.

On the same day, he also medically examined Smt.Krishna and found the following injuries on her person:-

- “1. Contusion on top of left shoulder 6 cm. x 2 cm. X-ray advised.
2. Abrasion on dorsal surface right wrist. X-ray advised.
3. Complained of pain and tenderness at middle of the back spine. No external mark of injury. X-ray was advised.”

Duration of injuries was within six hours caused by blunt weapon.

On 21.6.1997 he gave opinion Ex. PS/1 to the effect that injury No.2 on the person of Bani Singh could be by fire arm

and injury No. 8 by a blunt weapon.

When examined under Section 313 Cr.P.C., Hera Singh, Ram Dhan and Chand Singh denied the material brought on record by the prosecution and claimed to be falsely implicated. The three other accused, namely, Om Parkash, Sube Singh and Joginder, however, took the stand that Shankutla, wife of Om Parkash, and Bimal Kumar had purchased the land in the year 1991 and they were in cultivating possession of the same since then. In the year 1997, the land was given on lease to Lakhi Ram accused vide three lease deeds Exs.D1 to D3. The Khasra Girdawari regarding khasra No. 77/10 was also corrected in their favour. Their possession was shown in the jamabandis and khasra girdawaris since then. Though Om Parkash stated that he was not present at the time of the occurrence, Sube Singh and Joginder accused, further, pleaded that on 17.6.1997 at about 9.00 a.m., they were ploughing the land with a tractor driven by Joginder. At that time, Bani Singh, his wife Krishna and Jai Singh arrived there after trespassing into their land. They prevented them from cultivating the land and opened the attack upon them. At that time, Lakhi Ram was sitting under a tree with a gun. He fired a shot in the air to scare away the assailants. They threw brick bats at the assailants in self defence.

In their defence, the accused examined two

witnesses.

DW1 Dr. Pawan Kumar deposed that while posted as Medical officer, CHC, Kalanaur, he had medically examined Sube Singh accused and found the following injuries on his person:-

- “1. A lacerated wound 3 cm. x 4 cm. and muscle deep at right side of the scalp 4 cm. above the right pinna covered with clotted blood and on cleaning fresh bleeding starting oozing. X-ray skull advised.
2. A bruise 5 cm. x 3 cm. in red colour with tenderness was present on left hand on base of the thumb. Movements of the thumb were restricted. X-ray advised.”

According to him, injuries were caused by a blunt weapon and within duration of twenty four hours. He also deposed that he had X-rayed the injuries on the person of Sube Singh accused but did not find any bony injury.

DW2 Ram Raji, Assistant Complaint Clerk, SP Office, Rohtak deposed that the record of the complaint made by Ram Dhan and others on which DSP Meham had conducted an enquiry, was not available as such record is destroyed after three years.

While tendering copies of revenue record, copy of order, judgment and decree-sheet Exs. D4 to D16, all the accused closed their defence evidence.

After hearing learned counsel for the parties and on going through the record, the trial Court acquitted the accused/respondents of the charges against them.

At the outset, it may be noticed that respondent No.1- Sube Singh had died during the pendency of the appeal. Accordingly, the appeal as well as the revision filed for challenging his acquittal would stand disposed of as having abated.

After hearing learned counsel for the parties and on going through the record with their able assistance, this Court finds that the occurrence in question had admittedly taken place in killa No. 77/10. As per the jamabandi Ex. PZ for the year 1985-86, Raj Singh son of Deep Chand was recorded as tenant at will on 5 kanals 14 marlas out of said killa. It is also the case of the prosecution that the land was purchased by Smt. Shakuntla and Bimal Kumar. An application was, thereafter, moved by them for correction of khasra girdawari. In his statement dated 21.9.1993 (Ex.D8), in those proceedings, Raj Singh admitted that Shakuntla Devi and Bimal Kumar had purchased 5 kanals 14 marlas out of the land in killa No. 77/10, two years back. He also admitted that a year later they had forcibly cultivated the land in question. To the same effect was the statement of Raj Singh's witness Ved Pal. In view of the same, the application for correction of khasra

girdawari moved by Shakuntla Devi and Bimal Kumar was allowed vide order dated 4.10.1993 (Ex. D6). Subsequent thereto, the parties remained in litigation regarding the land in question as is reflected in documents Exs. D10 to D16. The sale of the land in favour of Shakuntla Devi and Bimal Kumar was challenged by Raj Singh by way of pre-emption. Though the suit was dismissed but the appeal came to be accepted. Subsequent thereof, the pre-emption money was deposited. However, in view of the order of High Court staying the execution of the decree, which fact was admitted by Raj Singh, brother of the complainant, Shakuntla Devi and Bimal Kumar came in possession of the land. Lakhi Ram and others took this land on lease from Shakuntla Devi and Bimal Kumar and, therefore, Raj Singh, brother of the complainant ceased to occupy the same.

In view of the above, the prosecution has not been able to establish that on the date of the occurrence, the possession over the land in dispute was that of complainant-Bani Singh or his brother Raj Singh. Rather, it is shown to be in possession of its owner or lessee on his behalf.

According to the prosecution, complainant-Bani Singh was fired at by Hera Lal, Ram Dhan and others and as a result he had suffered gun shot injury on his back. When complainant-Bani Singh was medico-legally examined, eight injuries were found on

his person. One of those injuries was found to have been caused by a sharp edged weapon and five were by a blunt weapon. Regarding the remaining two injuries i.e. injuries No. 2 and 8, no opinion was given. Rather the opinion was to be given after X-ray and the opinion of the specialist. On 21.6.1997 on police application Ex.PS, PW12 Dr. Manoj Lamba gave opinion Ex. PS/1 to the effect that injury No. 2 on the person of Bani Singh could be by fire arm while injury No. 8 by a blunt weapon. During his cross-examination, he admitted that injury No.2 on the person of Bani Singh about which he had opined that the possibility of use of fire arm in causing that injury could not be ruled out, what he meant was that it could be by a fire arm or by some other weapon. Injury No.2 was found to be in the shape of a small round and only skin deep. Once the injury was only skin deep, the pellet would not have entered the lung. This becomes clear when PW5 Dr. Rajiv Malhotra, who had radiologically examined Bani Singh, admitted that the register in which he had made mention of two radio opaque foreign bodies of metallic density in the right lung was his personal record. He also admitted that originally he had mentioned in his register that the lung field was clear. However, he made cutting in this observation and added that he saw two radio opaque foreign bodies of metallic density in the right lung. Thus, it is highly doubtful if any fire arm injury was

received by complainant-Bani Singh.

PW7 Bani Singh had testified that the accused were armed with *jaili* also and caused injuries with the same. Though the *jaili* is a sharp pointed weapon yet it would not cause an incised wound. At the most, it may cause a scratch or a lacerated injury. It would not have caused incised wounds as noticed by PW12 Dr. Manoj Lamba on the person of Bani Singh and Jai Singh. He also could not deny the possibility of injury No.1 on the person of Jai Singh being self suffered. He also admitted that other injuries of Bani Singh and others could be caused by brick bats.

PW8 Jai Singh testified that he and his brothers were living separately and it was not a case of joint tenancy over the land in question of Raj Singh, Bani Singh and Jai Singh as it was Raj Singh alone who was pursuing the litigation. It is also the case of the prosecution that Raj Singh was present at the time of the occurrence. He had not suffered any injury in the entire occurrence. Therefore, his presence at the spot was highly doubtful. Moreover, Raj Singh being the most material witness in the case, ought to have been examined by the prosecution in support of its case. His non-examination before the trial Court also makes the prosecution case highly doubtful.

In view of the above, no case is made out for any

interference in the impugned judgment passed by the trial Court to the extent of acquitting respondents No.2 to 6 of the charges against them.

Resultantly, the appeal as well as the revision qua acquittal of respondent Sube Singh are disposed of as having abated. The appeal qua the acquittal of respondents No.2 to 6 i.e. Chand Singh, Joginder, Hera Singh, Om Parkash and Ram Dhan is without any merit and, therefore, dismissed. The revision against the acquittal of respondents No. 3 to 6 therein i.e. Chand Singh, Joginder, Heera Singh and Om Parkash is also dismissed.

**(T.P.S. MANN)
JUDGE**

**(RAMENDRA JAIN)
JUDGE**

January 07, 2016
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