

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-21-SB of 2005**

DATE OF DECISION: DECEMBER 17, 2016

SUSHIL AND ANOTHER ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

2. **CRA-S-2470-SB of 2004**

JIYA LAL ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

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

PRESENT: MR. JITENDER DHANDA, ADVOCATE
FOR THE APPELLANTS IN CRA-S-21-SB-2005.

MR. HEMANT BASSI, ADVOCATE
FOR THE APPELLANT IN CRA-S-2470-SB-2004.

MR. ASHOK MUTHREJA, DAG, HARYANA.

M. JEYAPPAUL, J.

1. Appellant-accused Sushil and Kamal have jointly preferred CRA-S-21-SB of 2005 and accused Jiya Lal has filed CRA-S-2470-SB of 2004, aggrieved by the conviction under Section 332 read with Section 149 IPC and the sentence of 3 years R.I. thereunder, conviction under Section 148 IPC and sentence of 2 years R.I. imposed thereunder and conviction under Section 225 read with Section 149 IPC and the sentence of 2 years R.I. imposed thereunder.

2. The case, in brief, of the prosecution is that on 18.5.2000 at about 7.00 p.m. Subhash son of Birsala was arrested in FIR No.297 dated

18.5.2000 under Section 25/54/59 of the Arms Act registered at Police Station Sadar Hisar and was brought to police post Balsmand. Accused Subhash was also wanted in other criminal cases. At about 8.00 p.m., about 150 persons came from village Balsmand to release the arrested accused Subhash from the police custody. The police officials closed the main gate from inside the police post. Accused-appellants alongwith other accused raised lalkara and attacked the police post. Several persons climbed upon the roof of the chowky with an intention to cause death of police officials. Accused Jiya Lal gave lathi blow near the eye brow of PW11 ASI Jaibir Singh. Accused Sushil delivered brick-bat blow on the chest of PW10 Constable Om Parkash. Accused Kamal gave brick-bat blow to PW6 HC Dharambir. Ultimately, the mob forcibly rescued accused Subhash @ Fauji who was in handcuffs. The mob including accused Subhash @ Fauji damaged the telephone and wireless sets in the police post.

3. PW1 Dr. Ajay Kumar Gupta, Medical Officer, Civil Hospital, Hisar medico legally examined PW10 Constable Om Parkash on 18.5.2000 at about 10.00 p.m. and found an incised wound on the left parietal region. Om Parkash also complained of pain in his chest. The incised wound was caused by sharp edged weapon. PW1 also medico-legally examined PW6 HC Dharambir and found a contused abrasion on the left ankle. Dharambir complained of pain in his left scalp region. He also medico-legally examined PW11 ASI Jaibir Singh and found lacerated wound on the forehead, an abrasion on the left side forehead just above the eye brow and an abrasion over the nose. Jaibir Singh also complained of pain in his chest,

right hip and left eye.

4. The trial Court having adverted to the evidence on record returned a verdict of conviction as stated supra.

5. I heard the elaborate submissions made by learned counsel appearing for the appellants and learned DAG, Haryana.

6. PW6 HC Dharambir, PW10 Constable Om Parkash and PW11 ASI Jaibir Singh who lodged the complaint and set the law in motion were the star witnesses in this case. They had sustained injuries in the occurrence as detailed by PW1 Dr. Ajay Kumar Gupta.

7. It is the case of the prosecution that PW11 ASI Jaibir Singh was attacked by accused Jiya Lal just below his eye brow with a lathi. Let me individually analyze the evidence of above three witnesses, PW6 HC Dharambir and PW10 Constable Om Parkash and PW11 ASI Jabir Singh as regards the charges framed against accused Jiya Lal. PW6 HC Dharambir and PW10 Constable Om Parkash have deposed that accused Jiya Lal gave lathi blow near the eye brow of PW11 ASI Jaibir Singh. But on a thorough analysis of the evidence of PW6, PW10 and PW11, I find that it was only PW6 HC Dharambir and PW10 Constable Om Parkash who would say that accused Jiya Lal delivered a lathi blow near the eyebrow of PW11, whereas PW11 who sustained injury attributes the injury sustained just below his eyebrow to accused Sunder who was acquitted by the trial Court. In other words, PW11 does not even refer to the presence of accused Jiya Lal at the scene of crime. Therefore, despite the fact that PW1 Dr. Ajay Kumar Gupta had noted down the injury sustained by PW11 just below his eye brow,

inasmuch as PW11 ASI Jaibir Singh had not attributed the said injury to accused Jiya Lal, it would be a travesty of justice, if accused Jiya Lal is convicted under Section 332 read with Section 149 IPC based on the evidence of PW6 and PW10. In my considered view, primacy will have to be accorded to the evidence of PW11 ASI Jaibir Singh who allegedly sustained injury just near his eyebrow. Therefore, it is held that the prosecution failed to establish that accused Jiya Lal attacked PW11 ASI Jaibir Singh and caused injury just above the eyebrow and thereby he committed an offence punishable under Section 332 read with Section 149 IPC.

8. Let me now take the role of accused Sushil. PW10 Constable Om Parkash deposed that accused Sushil gave brick-bat blow on his chest. It is to be noted that PW6 and PW11 also speak about the presence of accused Sushil at the scene of crime. But they have not supported the version of PW10 that Sushil gave brick-bat blow on the chest of PW10. Let me turn to the medical evidence adduced by PW1 Dr. Ajay Kumar Gupta. PW1 had not noted any injury on the chest of PW10. It appears that PW10 had complained of chest pain.

9. Learned counsel appearing for accused-appellant Sushil rightly submitted in the above context that if at all accused Sushil had used brick-bat to attack PW10 on his chest, at least some bruises would have been found on the chest of PW10. In my considered view, as rightly submitted by learned counsel for the accused-appellant Sushil, the very fact that no injury was found on the chest of PW10 leaves an ample doubt as regards the

charge that accused Sushil caused injury on the chest of PW10. Therefore, no offence under Section 332 read with Section 149 IPC was established beyond reasonable doubt against accused-appellant Sushil.

10. It is the case of the prosecution that accused Kamal attacked PW6 HC Dharambir with brick-bat on his head. It is the case of the prosecution that accused Kamal attacked PW6 HC Dharambir and caused injury to him. PW6, of course, deposed that Kamal gave brick-bat blow to him. PW10 Constable Om Parkash and PW11 ASI Jaibir Singh have not attributed any role to accused Kamal as regards the injury sustained by PW6.

11. To top it all, PW1 Dr. Ajay Kumar Gupta, deposed that PW6 HC Dharambir complained of pain on his head. Of course, there was a left ankle injury noted down by PW1 on the person of PW6. Coming to the head injury attributed to accused Kamal, I find that the prosecution has come out with an exaggerated version as regards the role of accused Kamal with regard to the pain encountered by PW6 on his head.

12. Counsel for accused-appellant Kamal rightly pointed out that if at all accused Kamal had used brick-bat on the head of PW6, at least bruises would have been found on the head of PW6. The absence of any bruise on the head due to the impact of brick-bat blow creates a doubt in the case of the prosecution that accused Kamal attacked PW6 and caused injury on his head. Therefore, in my view, the prosecution also failed to establish the charge under Section 332 read with Section 149 IPC framed against accused Kamal as well.

13. Let me now take up the charge under Section 148 IPC framed as against the accused-appellants. Of course, the evidence of PW6, PW10 and PW11 would go to establish that these accused also were present at the scene of crime alongwith other villagers. But the version of the prosecution that the accused-appellants being members of unlawful assembly were armed with deadly weapons is highly doubtful as their specific role attributed by the prosecution as regards the injury caused by them with brick-bats and lathi was not at all established. Therefore, in my considered view, the charge under Section 148 IPC framed against these accused-appellants also stood not established beyond reasonable doubt.

14. Let me now take up the last charge under Section 225 read with Section 149 IPC as against the accused-appellants. The evidence of the star witnesses, namely, PW6, PW10 and PW11 categorically establishes that the accused-appellants were very much present in the mob gathered at the police post with the common object of releasing accused Subhash son of Birsala. It is established by the prosecution that accused Subhash was arrested and detained by the police force in connection with FIR No.297 dated 18.5.2000 under Section 25/54/59 of Arms Act registered at Police Station Sadar Hisar. It is also in evidence that the mob consisted of these accused-appellants made a successful attempt and rescued accused Subhash who was taken in lawful custody by the police in connection with the crime committed by him. Therefore, I find that the prosecution has established beyond reasonable doubt that accused-appellants, namely, Jiya Lal, Sushil and Kamal have committed the offence punishable under Section 225 read

with Section 149 IPC.

15. In the above facts and circumstances, accused-appellants Jiya Lal, Sushil and Kamal are acquitted of the charges under Section 148 and Section 332 read with Section 149 IPC. But they are convicted under Section 225 read with Section 149 IPC. The occurrence had taken place way-back in the year 2000. For 16 long years, the accused-appellants had faced the ordeal of trial. Therefore, the sentence imposed on these accused-appellants, namely, Jiya Lal, Sushil and Kamal are reduced to the sentence already undergone by them for the offence under Section 225 read with Section 149 IPC.

16. With the above modification, both the appeals stand disposed of.

December 17, 2016
Gulati

(M. JEYAPPAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

No