

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

**CRM-A-62-MA of 2016
Date of decision : 18.5.2016**

Gurwant Singh and another **.....Applicants**

v.

Gurmehar Singh and others **.....Respondents**

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

Present : Mr. M.S. Khillan, Advocate
for the applicants

RAMENDRA JAIN, J.

Respondents No.1 to 15 (in short “the private respondents) were booked and tried under Sections 148, 323, 324, 326 and 307 read with Section 149 IPC, besides respondents No.3 and 10 under Section 27 of the Arms Act on the allegations that in the election of members of Youth Congress held on 2.10.2012 in village Chhajjupur, respondent No.1-Gurmehar Singh was defeated by Sukhdev Singh - cousin of complainant Gurwant Singh. As a result thereof around 8.40 p.m. on 3.10.2012 a quarrel took place in between them in which the private respondents caused injuries to the winning candidate Sukhdev Singh and complainant Gurwant Singh with their deadly weapons like; double barrel guns, lathis, barchhas (spear), gandasi, dandas, .315 bore rifles, takua (sharp pointed iron rod) and shaver etc. with an intention to kill them

On appraisal of evidence, the trial Court did not find itself fully convinced with the story put-forth by the prosecution and resultantly, acquitted

respondents No.1 to 3, 6, 7, 9 to 11 and 14 (nine accused) while convicting respondents No. 4, 5, 8, 12, 13 and 15 (six accused) under Sections 148/323/324/326 read with Section 149 IPC vide impugned judgment dated 31.10.2015 and sentenced them to undergo as under :

<i>Sr. No.</i>	<i>Name of convict</i>	<i>U/S of IPC</i>	<i>Sentence</i>	<i>Fine (Rs.)</i>
1	Partap Singh	148	RI for one year	1000/-
		323/149	RI for one year	1000/-
		324/149	RI for two years	2000/-
		326/149	RI for three years	5000/-
2	Simranjeet Singh	148	RI for one year	1000/-
		323/149	RI for one year	1000/-
		324/149	RI for two years	2000/-
		326/149	RI for three years	5000/-
3	Yadvinder Singh	148	RI for one year	1000/-
		323/149	RI for one year	1000/-
		324/149	RI for two years	2000/-
		326/149	RI for three years	5000/-
4	Gursher Singh	148	RI for one year	1000/-
		323/149	RI for one year	1000/-
		324/149	RI for two years	2000/-
		326/149	RI for three years	5000/-
5	Mukhtiar Singh	148	RI for one year	1000/-
		323/149	RI for one year	1000/-
		324/149	RI for two years	2000/-
		326/149	RI for three years	5000/-
6	Buta Singh	148	RI for one year	1000/-
		323/149	RI for one year	1000/-
		324/149	RI for two years	2000/-
		326/149	RI for three years	5000/-

All the sentences were ordered to run concurrently.

Being aggrieved, the complainant and his cousin injured Sukhdev Singh have filed the instant application under Section 378 (4) Cr.P.C. seeking leave to file the accompanying appeal for setting aside the acquittal of respondents No. 1 to 3, 6, 7, 9 to 11 and 14 and further to convict all the respondents under Section 307 IPC and Section 27 of the Arms Act.

Learned counsel for the applicants contended that the impugned judgment is based on surmises and conjectures. The trial Court has erred in acquitting respondents No. 1 to 3, 6, 7, 9 to 11 and 14 giving them benefit of doubt without appreciating the gravity of the injuries suffered by the complainant party coupled with recovery and seizures of deadly weapons. The ocular version of the prosecution was supported by medical evidence and thus, all the respondents ought to have been convicted under Section 307 IPC and Section 27 of the Arms Act, besides conviction of the acquitted respondents under Sections 148, 149, 323, 324, 325 and 326 IPC. It was well proved from the Forensic Science Laboratory Report that seized empties were fired from the recovered guns. Thus, the finding of the trial Court that Sukhdev Singh injured had not received any fire arm injury is palpably wrong. Even otherwise, the respondents in huge numbers had formed an unlawful assembly and caused injuries, which was sufficient to conclude that they had every intention to commit murder of the complainant party.

We have given our thoughtful consideration to the above submissions and find the present appeal completely meritless for the reasons to follow.

i) It is a case of free fight between the complainant party and the respondents. The injuries received by the respondents prove that the complainant party also did not sit idle, rather had caused injuries to the respondents. Both the sides had inflicted injuries to its opponent party. However, there are contradictions qua weapons allegedly brought by the respondents in the statement Ex.P1 made by complainant Gurwant Singh to the police and as PW1. In his

complaint Ex.P1, complainant attributed lathi blows to respondents No. 1, 5, 7 and 8. But as PW1, he testified that respondents No.1, 3 and 5 were armed with guns. Similar other variation qua arms between the complaint Ex.P1 and deposition of the complainant as PW1 are mentioned by the trial Court in paras No. 76 and 77 of the impugned judgment which are fatal to the prosecution case.

(ii) The incident took place on 4.10.2012. PW17 Investigating Officer ASI Sukha Singh testified that on the date of occurrence itself, he had visited the spot and had prepared rough site plan Ex.P53. Hence, he had every opportunity to collect the empties or cartridges from the spot on that very day. However, the same were seized on 7.10.2012, that too were handed over by the complainant party. The above factor is a major flaw in the prosecution story, more particularly, when respondent No.3 had handed over his fire arm vide memo Ex.P27 at the time of his arrest on 19.4.2013 i.e. after about more than six months. Though FSL report shows that the empties were fired from the gun allegedly handed over by respondent No.3 to the police, but the prosecution has still failed to establish that whether the empties were fired by respondent No.3 or by any other respondent.

(iii) As per the prosecution story the respondents had fired upon the complainant and his cousin with an intention to kill them. However, as per medical evidence none of them received any fire arm injury. Even otherwise, the prosecution did not produce any opinion of the treating doctor or otherwise that the injuries suffered

by Sukhdev Singh were dangerous to life or were sufficient to cause death.

It is pertinent to mention here that complainant Gurwant Singh had received simple injuries. Admittedly, no pellet was collected from the spot nor any bullet of fire arm or any part thereof was traced in the body of injured Sukhdev Singh by the treating doctor. Injuries found on the person of Sukhdev Singh were opined to have been caused with a sharp edged weapon or pointed stone. The applicant-complainant as PW1 has testified that at the time of incident, for 5-7 minutes stones were pelted by the respondents. In the absence of any specific opinion about the injury on the person of Sukhdev Singh that it was suffered by fire arm, the observation of the trial Court that it might have been suffered by stones is perfectly correct.

(iv) At the time of occurrence only three persons from the complainant side i.e. complainant himself, Sukhdev Singh and Iqbal Singh were present against 15 persons from the respondent side. It is quite unbelievable and unnatural that when 15 persons would attacked on three persons, no injury would be inflicted to Iqbal Singh and only five simple injuries in total will be inflicted to Gurwant Singh and Sukhdev Singh. Moreover, none of the injury on the person of Gurwant Singh and Sukhdev Singh was found on any vital part of their body.

(v) In view of the discussion above, use of fire arm and any injury through the same is not proved by the prosecution. Non causing of

any dangerous to life injury on vital part of the complainant party shows that there was no intention to commit murder of any of them and thus, the commission of offence under Section 307 IPC has rightly been held not proved against any of the respondents.

(v) PW1- complainant testified that three injuries on his person were caused by Simran Singh- respondent No.15 with lathi, Gursher Singh- respondent No.12 with danda and Partap Singh- respondent No.4 with stone. PW2 Injured Sukhdev Singh testified that gun shot injury was caused to him by some unknown person and sword injury was caused to him by Yadvinder Singh- respondent No.13 and another injury by Mukhtiar Singh- respondent No.8. Thus, in all the prosecution at the most could prove the involvement of six respondents i.e. respondents No. 4, 5, 8, 12, 13 and 15. Since no injury has been attributed to any of the remaining respondents nor there is any such evidence on the record, therefore, they have rightly been acquitted by the trial Court.

(vi) Admittedly, the respondent side has also received injuries. The prosecution did not furnish any explanation about the same, therefore, it can safely be inferred that the complainant party did not come out with true facts. Even otherwise, there are various contradictions and discrepancies in the testimonies of the prosecution witnesses out of whom some have been pointed above.

Learned counsel for the applicant has miserably failed to put any dent in any of the findings of the Court below. We have also gone through the impugned judgment and found no illegality or perversity in the same.

Accordingly, the application being completely devoid of any merit,
is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

18.5.2016
Ashwani