

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

Criminal Appeal S-2258-SB of 2003

Date of Decision: August 23, 2016

Kulwant Singh @ Bhinda and others	Appellants
Versus	
State of Punjab	 Respondent

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

Present : Mr. D.S.Pheruman, Advocate
for the appellants.

Mr. Vikram Bishnoi, Asstt. Advocate General, Punjab.

Mr. Navjeet Sodhi, Advocate
for the complainant.

T.P.S.MANN, J. (Oral)

The appellants, namely, Kulwant Singh @ Bhinda, Tarlok Singh and Gurmit Singh @ Geeta, residents of village Nimana, Tehsil and District Gurdaspur have filed the present appeal for challenging the judgment and order dated 17/18.11.2003 passed by learned Additional Sessions Judge (Adhoc) Fast Track Court, Gurdaspur.

Vide impugned judgment and order, the trial Court convicted Kulwant Singh @ Bhinda under Section 307 IPC and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- and in default of

payment of fine, to further undergo rigorous imprisonment for a period of one year whereas Tarlok Singh and Gurmit Singh @ Geeta were convicted under Section 307 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months. Kulwant Singh @ Bhinda was also convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.3,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of six months whereas Tarlok Singh and Gurmeet Singh @ Geeta were convicted under Section 326 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for one year and six months and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month. Gurmit Singh @ Geeta was further convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for a period of one year and six months whereas Kulwant Singh @ Bhinda and Tarlok Singh were convicted under Section 324 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of one year and six months each. Finally, Tarlok Singh was

convicted under Section 323 IPC whereas Kulwant Singh @ Bhinda and Gurmit Singh @ Geeta were convicted under Section 323 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of one year each. All the substantive sentences were ordered to run concurrently. The period already undergone by them during the trial was ordered to be set off against the substantive sentences of imprisonment.

Before proceeding any further in the matter, it may be noticed that during the pendency of the appeal Tarlok Singh appellant died on 27.10.2009. Copy of the death certificate issued by the Registrar, Births and Deaths, Municipal Council, Batala, already stands placed on record. The factum of death of Tarlok Singh appellant has also been duly verified and in that regard learned State counsel has placed on record the report dated 30.4.2015 prepared by the Station House Officer, Kahnuwan. Tarlok Singh appellant had deposited the amount of fine imposed upon him before he was granted *interim* bail by the trial Court in order to enable him to file an appeal against his conviction and sentence. The present appeal qua him survives only regarding his challenge to the substantive sentence of imprisonment imposed upon him. As Tarlok Singh has since expired, the appeal qua him stands abated. The appeal now survives qua Kulwant Singh @

Bhinda and Gurmit Singh @ Geeta.

According to the prosecution, on 24.10.1999, complainant-Jagdish Singh borrowed scooter of his brother-in-law Parkash Singh and went to his village along with his brother Harjit Singh. Both of them, later on left for taking a round of their fields. At about 4.00 p.m., when they reached near tubewell of accused Tarlok Singh, they were confronted by Tarlok Singh, Gurmit Singh and Kulwant Singh, who were armed with a dang, kirpan and gandasa/datar respectively. All the three accused stood in front of the scooter of the complainant. Tarlok Singh raised a lalkara to catch hold of the complainant party and to teach them a lesson for taking possession of their land. Kulwant Singh @ Bhinda pushed the scooter being driven by Jagdish Singh with Harjit Singh on the pillion seat. Both Jagdish Singh and Harjit Singh fell down from the scooter. Kulwant Singh @ Bhinda gave a datar blow to Jagdish Singh with intention to kill him, which landed in between his forehead and head. When Harjit Singh came forward to intervene, Kulwant Singh @ Bhinda gave a datar blow on his left leg. Tarlok Singh gave a dang blow on the left forearm of Jagdish Singh. Gurmit Singh @ Geeta gave a kirpan blow from its reverse side to Jagdish Singh and in order to ward off the same, Jagdish Singh raised his left hand and the kirpan landed

on the fingers of his left hand. Kulwant Singh @ Bhinda gave a datar blow from its reverse side hitting him near the right shoulder. Tarlok Singh gave a dang blow on the left arm of Harjit Singh and another blow on his right thumb. Gurmit Singh @ Geeta gave a kirpan blow from its reverse side to Harjit Singh which hit on his hand and fingers of left hand. On an alarm being raised, complainant's father Jaswant Singh and one Gulzara Singh reached the spot. The accused ran away from the spot while carrying their respective weapons. Both Jagdish Singh and Harjit Singh were, thereafter, taken to Civil Hospital, Kahnuwan from where they were referred to Civil Hospital, Gurdaspur. Both of them were medico-legally examined.

The cause of the occurrence was that there was a dispute between the parties regarding land, measuring 3 Kanals and 7 Marlas, which stood decided in favour of the complainant by the Civil Court, but even then the accused wanted to take this land forcibly.

During the investigation of the case, site plans of the place of the occurrence were prepared and the datar used by Kulwant Singh @ Bhinda were recovered. Upon completion of the investigation, Tarlok Singh and Gurmit Singh @ Geeta accused were found innocent and by mentioning their names in column

No. 2 of report under Section 173 Cr.P.C., challan was presented against Kulwant Singh @ Bhinda. The case was, thereafter, committed to the Court of Sessions where Kulwant Singh @ Bhinda was charged for committing offences punishable under Sections 307, 326, 325, 324 and 323 IPC. Subsequently, vide order dated 22.9.2000, the application filed by the prosecution under Section 319 Cr.P.C. was accepted by the trial Court and both Tarlok Singh and Gurmit Singh @ Geeta were summoned for facing trial. The charges under Sections 307/326/324/323/34 IPC were framed against all the three accused, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Jagdish Singh, PW2 Harjit Singh, PW3 SI Skattar Singh, PW4 LC Sudhir Kumar, PW5 Dr. J.S.Pannu, PW6 Dr. Jagjiwan Lal, PW7 Vinod Saroop, PW8 SI Swinder Singh, PW9 Inspector Raj Kumar, PW10 ASI Balkar Singh and PW11 Sewa Singh.

When examined under Section 313 Cr.P.C., the accused denied the incriminating evidence brought on record by the prosecution and pleaded that they were innocent and falsely implicated in the case.

After going through the evidence brought on record and hearing the learned counsel for the parties, the trial Court

convicted and sentenced the appellants, as mentioned above.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that complainant Jagdish Singh and his brother Harjit Singh while appearing before the trial Court as PW1 and PW2, respectively, described the manner, in which, the occurrence had taken place and both of them had received injuries on their respective persons. Those injuries are duly corroborated by the medical evidence by way of testimony of PW5 Dr. J.S. Pannu. This evidence is sufficient enough to uphold the conviction of Kulwant Singh @ Bhinda. However, as Gurmit Singh @ Geeta appellant was found innocent during the investigation of the case and even otherwise, he was said to have used the kirpan from its reverse side and injuries said to have been caused by him could very well be caused by Kulwant Singh @ Bhinda appellant, there is every likelihood of his being falsely implicated in the case. As such, it would not be safe to sustain his conviction and sentenced, as recorded by the trial Court.

The occurrence in question had taken place on 24.10.1999. Ever since then, Kulwant Singh @ Bhinda has been facing the agony of criminal prosecution. As per the custody certificate produced by the learned State counsel, Kulwant Singh

@ Bhinda has already undergone an actual period of one year, nine months and sixteen days. Besides, he has earned remission of two years, three months and five days. The total custody including the remission, thus, comes to four years and twenty one days. In addition, it may be noticed that during the pendency of the appeal, the parties have amicably settled the matter between themselves. In this regard, copies of the compromise deed and affidavit of Harjit Singh injured are already available on record as Annexures P2 and P3, respectively. It may be worthwhile to mention here that complainant Jagdish Singh has died during the pendency of the appeal and for that matter his widow Narinder Kaur, son Arishdeed Singh and daughters Sharanjit Kaur, Kamaljeet Kaur, Rajwinder Kaur, Ajit Kaur and Sandip Kaur have signed the compromise deed.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending Kulwant Singh @ Bhinda behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be amply met, if his substantive sentence of imprisonment on all the counts are reduced to the one already undergone by him.

Resultantly, the appeal of Tarlok Singh is disposed of

as having abated whereas the appeal of Gurmit @ Geeta is accepted and he is acquitted of the charges against him. His conviction and sentence, as recorded by the trial Court is set-aside. As regards Kulwant Singh @ Bhinda, his conviction as recorded by the trial Court is upheld. However, his substantive sentences of imprisonment on all the counts are reduced to the one already undergone by him. The sentences of fine alongwith their default clauses, are maintained. His appeal is disposed of accordingly.

August 23, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No