

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**CRA-S-582-SBA of 2003.
Date of Decision: 15.12.2016.**

Gurjeet Singh

....Appellant-complainant.

VERSUS

Chand Singh alias Harchand Singh and others

....Respondents-accused.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Angel Sharma, Advocate for the appellant.

Mr. Ankur Jain, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Gurjeet Singh assailing the judgment dated 24.09.2002 recorded by learned Additional Sessions Judge, Rupnagar whereby respondents-accused were acquitted in Sessions case No.RT 31 dated 23.09.2000/ 12.08.2002 i.e. the criminal complaint filed by the appellant against the respondents-accused under Sections 323, 504, 506, 441, 447, 380 read with Section 34 of the Indian Penal Code (for short, "IPC").

The case of the appellant-complainant as enumerated by learned trial Court in Para No.2 of the judgment is as under:-

"In nutshell, Gurjeet Singh filed complaint against accused Chand Singh alias Harchand Singh, Binda alias Balwinder Singh, Bugga alias Sarabjit Singh, Rania alias Ran Singh, under Sections 323, 504, 506, 441, 447, 380 read with Section 34 IPC on the allegations that Maha Singh was great-

grand father of the complainant, had four sons, namely, Arjan Singh, Sarwan Singh, Gurdit Singh and Amar Singh, out of whom Amar Singh was grandfather of the complainant; that all the joint property situated within the lal lakir of the village had been partitioned about 30 years ago in the family settlement amongst the said four brothers according to which the house property bounded as North: Rasta (passage); South: House of Gulzar Singh; East: House of Amrik Singh; West: Rasta (passage) fell to the share of Amar Singh and Arjan Singh; that the share of Arjan Singh after the death was inherited by Gurbachan Singh, father of the complainant and uncle Pal Singh; that the said property thus became the ownership of Amar Singh, Gurbachan Singh and Pal Singh; that the complainant alongwith his direct lineal ascendants and collaterals, had been in possession of the same; that the property in dispute had become dilapidated but part of the existing construction over it, was still intact and the plot was being used for building material such as girders, shateer and the half built boundary wall of bricks was in existence; that the accused with the help of members of their family, were on the look out of the opportunity to take forcible possession of the suit property and to remove the building material therefrom; that on 03.06.1996 at about 9:00 a.m. complainant was informed that the accused had stolen girders and shateers from the suit property at about 8:30 a.m.; that complainant Gurjit Singh rushed to the property in dispute and noticed that girders and wooden shateers had already been removed by the accused; that the complainant was in the process of collecting the chaff when accused Harchand Singh armed with soti (stick), accused Binda alias Balwinder Singh armed with gandasi, accused Sarabjit Singh carrying with brick-bat and accused Rania alias Ran Singh armed with kulhari (axe) came to the spot raising lalkaras (exhortation) that the complainant should not be spared; that accused Ran Singh was claiming that they had sale deed in their favour of the property in dispute and the complainant claimed that the suit property belonged to them and, therefore, nobody else could execute the sale deed of the property in dispute; that accused Balwinder Singh gave a blow with gandasi which landed on the head of the complainant; that accused Sarabjit Singh gave brick bat blow, resulting into injury on the left side of the chest of the complainant; that accused Ran Singh dealt with kulhari blow from the reverse side which landed on the right shoulder of the complainant; that accused Harchand Singh gave a soti blow resulting in injury on the right elbow of the complainant; that accused Balwinder Singh gave another gandasi blow and the complainant in order to ward off the blow, intercepted it by raising his left hand and the blow landed on the palm of the complainant; that accused Sarabjit Singh then gave another brick bat blow, at the back of the complainant; that the complainant raised alarm which attracted Bhag Singh, Attar

Singh and Pal Singh, who came to the spot and even in their presence the accused exhorted that they they would kill the complainant in case he failed to vacate the possession of the property; that the accused committed criminal trespass over the property of the complainant and also caused injuries on his person and committed theft of girders and shateers; that the complainant was taken by Bhag Singh and Pal Singh to Sector-16, General Hospital, Chandigarh; that the statement of the complainant was recorded by Head Constable Harbhajan Singh but no action was taken by the police and rather the complainant was falsely challaned alongwith Pal Singh, Mohinder Singh, Bhagwant Singh and Baljit Singh; that the grandfather of the complainant, father and uncle had also filed a civil suit against the accused on 05.06.1996 which was pending for trial and in the said case order of status quo was passed and the local commissioner, Shri Iqbal Singh, Advocate, inspected the spot on 05.06.1996 at about 5:30 p.m., who submitted his report regarding the factual position of the property in dispute holding the complainant to be in possession of the same.”

After recording preliminary evidence of the appellant-complainant, the respondents-accused were summoned by learned trial Court for commission of offence under Sections 323, 506, 447, 380 read with Section 34 IPC. There being a cross case titled 'State vs. Pal Singh' registered on the statement of Harchand Singh (respondent No.1) under Sections 326, 450, 325, 324, 323, 148 read with Section 149 IPC with regard to the occurrence in question, the complaint case was eventually sent to the Court of Sessions for trial alongwith the said cross case by learned Judicial Magistrate.

Considering the material available on record, while Chand Singh alias Harchand Singh and Rania alias Ran Singh were charge-sheeted under Section 323 IPC, Binda alias Balwinder Singh and Bugga alias Sarabjit Singh were served charge-sheet under Section 323 read with Section 34 IPC and charge under Section 506 IPC was also framed against all the respondents, however, the respondents pleaded not guilty and

In order to prove the charges, the appellant examined as many as eight witnesses.

After closure of evidence of the appellant, statement of the respondents-accused under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") were recorded by putting to them the incriminating evidence available on record, to which they pleaded innocence and false implication.

In their defence, the respondents-accused examined DW1 Dr. Vijay Kumar Singla and DW2 A.S.I. Harmesh Kumar.

Analyzing the evidence available on record and the submissions made by learned counsel for the appellant-complainant, learned Addl. Public Prosecutor for the State and learned counsel representing the respondents-accused, learned trial Court extending the benefit of doubt to the respondents acquitted them of the charges levelled against them.

Feeling aggrieved by the impugned judgment dated 24.09.2002 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. Angel Sharma, learned counsel representing the appellant and Mr. Ankur Jain, learned Assistant Advocate General for the State of Punjab have been heard.

As per allegations of the appellant incorporated in the complaint, he alongwith his direct lineal ascendants and collaterals, was in established possession of the land/plot where, according to him, the occurrence took place. It was also his accusation that on 03.06.1996 at about 9:00 a.m., he was informed that the respondents (accused) had stolen the garder, shateer etc. lying in the disputed plot. He immediately rushed to the plot and found the articles missing and was in the process of collecting

the chaff when Harchand Singh armed with a stick, Binda alias Balwinder Singh armed with Gandasi, Sarabjit Singh carrying a brickbat and Rania alias Ran Singh holding an axe reached the spot raising exhortation that his (complainant's) life should not be spared and caused injuries to him with their respective weapons. The alarm raised by him attracted Bhag Singh, Attar Singh and Pal Singh to the spot in the presence of whom also the accused exhorted and threatened him of dire consequences in case the plot was not vacated.

Learned counsel for the appellant argued that the testimony of appellant-complainant Gurjeet Singh was corroborated by PW2 Pal Singh and PW4 Bhag Singh who had witnessed the occurrence and being residents of the same village had personal knowledge with regard to settled possession of the appellant on the disputed plot since the time of his forefathers. In addition to their deposition was the report (Ex.PB) of PW5 Shri Iqbal Singh, Advocate, who was appointed as local commission in the civil suit filed by the complainant party. The report of PW5 Iqbal Singh affirmed the contention of the appellant that he was in possession of the disputed plot.

Learned counsel urged that the respondents on the other hand could produce no independent and substantive evidence to prove their possession on the disputed plot except for a sale deed that they had got executed in their favour from one Ranjit Singh. No evidence was produced to prove how Ranjit Singh had the authority to execute the sale deed qua the disputed plot.

It was further emphatically argued by learned counsel that the

help the respondents' party had shifted the place of occurrence from the disputed plot to the *Chaubara*/ house of Sarabjit Singh. Although the statement of the appellant was recorded by Head Constable Harbhajan Singh at General Hospital, Sector-16, Chandigarh where the complainant had been admitted for treatment of his injuries and on the basis of the statement, Daily Diary Report No.15 (Ex.PA) was recorded, but no action was taken by the police against the respondents on which the appellant had no option but to file the instant complaint.

There appears no merit in the arguments of learned counsel for the appellant in the light of the judgment dated 08.04.2002 (Ex.D6) passed by learned Civil Judge (Junior Division), Kharar whereby the civil suit filed by Amar Singh, Gurbachan Singh and Pal Singh for permanent injunction in respect of the disputed plot against Ran Singh and others (respondents in the present appeal) and some other persons, was dismissed. In other words, after trial of the civil suit, learned Civil Court held that the complainant party was not in possession of the disputed plot, rather the respondents were proved to be in possession of the same on the basis of the sale deed executed in their favour by Ranjit Singh.

It was not the case of the appellant and was not asserted during arguments before this Court as well, that the said findings of learned Civil Judge/trial Court had been reversed by the appellate Court in the appeal, if any, filed by the appellant. Needless to say that the findings of the Civil Court on merits with regard to possession of the disputed plot are binding on the Criminal Court. When the very basis of the accusation of the appellant that he was in established possession of the disputed plot when the

respondents had committed theft of any article from the disputed plot or had attacked on him in order to take forcible possession gets demolished from the roof itself.

In addition to the above, a scrutiny of the deposition of PW4 Bhag Singh shows that he was a procured and unreliable witness. He admitted that he was having long standing litigation with the respondents-accused party. Needless to say that he had an hostile attitude towards the respondents. Introducing such a person as a witness adds to the dent in the conduct of the appellant. Similarly, the statement of PW2 Pal Singh also does not appear to be consistent and trustworthy on material particulars. In that manner, the story/deposition of the complainant and his witnesses was completely unreliable.

In their defence, the respondents proved that on the statement of Harchand Singh (respondent No.1) with regard to the occurrence in question, a case under Sections 450, 326, 325, 324, 323 read with Section 149 and 148 IPC had been registered against the appellant and his companions for causing injuries to respondents Harchand Singh and Sarabjit Singh and two ladies of their family namely Ajaib Kaur and Amar Kaur. Copy of statement of Harchand Singh is Ex.D5 on the basis of which First Information Report Ex.D6 was registered. DW1 Dr. Vijay Kumar Singla proved the medico legal reports Ex.D1 of Harchand Singh, Ex.D2 of Sarabjit Singh, Ex.D3 of Ajaib Kaur and Ex.D4 of Amar Kaur and deposed that two incised wounds inflicted with sharp edged weapon were found to have been suffered on the head by Ajaib Kaur. These were the injuries which were ultimately declared grievous and hence attracted Section 326

folk support the version of respondent No.1 recorded in First Information Report (Ex.D6) and establish that the appellant and his companions were, in fact, the aggressors. They trespassed into the residence of the respondents and inflicted grievous and simple injuries on them with deadly weapons. The simple injuries, if at all suffered by Gurjeet Singh at the hands of the respondents, were result of exercise of right of private defence by the respondents.

As a consequence to the above discussion, the judgment of acquittal dated 24.09.2002 passed by learned trial Court is affirmed and there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

15.12.2016.
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes