

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

CRM A-2181-MA of 2016

Date of Decision : October 24, 2017

Gurnam Singh

.....Applicant

VERSUS

Jangir Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Harkaran Singh, Advocate for
Mr. B.S.Bhalla, Advocate
for the applicant.

T.P.S. MANN, J.

The complainant, namely, Gurnam Singh, has filed the present application under Section 378(3) of the Code of Criminal Procedure seeking leave of the Court to appeal against the judgment dated 1.10.2016 passed by learned Additional Sessions Judge, Moga whereby accused/respondents No.1 to 7 were acquitted of the charges under Sections 148, 302, 302 read with 149, 324, 324 read with 149, 427 read with 511 IPC.

According to the complainant, his father Dalip Singh, uncle Jaswant Singh and cousin Saroop Singh were working in their fields across the river on 3.11.2013 at about 10.00 a.m. when the accused/respondents No. 1 to 8 duly armed came

there. Dalip Singh and Jangir Singh-accused raised a *lalkara* not to spare the complainant and others for taking the possession of the land. Paramjit Kaur, Sheelo and Bhajan Kaur accused started sowing wheat in the land. When the complainant and others restrained them from doing so, Jangir Singh-accused gave a Toki blow on the left hand of Jaswant Singh. Bagicha Singh-accused gave a kirpan blow on the head of Jaswant Singh. Balbir Singh dashed his tractor against the complainant's father Dalip Singh and, thereafter, ran the tractor over him. The cultivator attached to the tractor pierced the right jaw of Dalip Singh and he was dragged to a long distance. The complainant and others raised an alarm and the accused went away with their respective weapons but left their tractor at the spot. When the complainant and others pulled Dalip Singh from the cultivator, they found that he had died. On the basis of statement made by the complainant, FIR No. 66 dated 3.11.2013 under Sections 302, 324, 447, 511, 148 and 149 IPC was registered against the accused/respondents at Police Station Fatehgarh Panjtoor. During the investigation of the case, enquiry was conducted by Shri Sukhdev Singh Brar, DSP, Dharamkot on the basis of application submitted by Paramjit Singh, son of Jangir Singh-accused, who found Paramjit Kaur, Sheelo, Bhajan Kaur, Jangir Singh son of Kartar Singh and Daljit Singh son of Jangir Singh to be innocent. The challan was presented against Jangir Singh son

of Dhara Singh, Bagicha Singh and Balbir Singh.

After the framing of charges and examination of two witnesses of the prosecution including complainant-Gurnam Singh as PW2, learned trial Court summoned the aforementioned five accused, who were initially found innocent, to face trial alongwith others under Section 319 Cr.P.C.

After hearing learned counsel for the parties and on going through the evidence available on the record including the revenue records and the civil litigation, the learned trial Court held that the land in question was in the possession of the accused and, therefore, the version of the prosecution that on the day of the occurrence, Dalip Singh etc. were in possession of the land in question and the accused came to the said land to take forcible possession thereof could not be accepted. It was the complainant party which went to the land in question to take possession thereof and, therefore, the accused/respondents could not be said to be the aggressors. Accordingly, right of private defence was available to respondent No.8-Balbir Singh but it did not extend to causing the death. As such, while exercising his right, Balbir Singh exceeded the same by causing the death of Dalip Singh and, therefore, he could not be convicted under Section 302 IPC and, instead, liable for committing the offence under Section 304 Part-I IPC. The remaining accused, i.e. respondents No.1 to 7 were, however, acquitted of the

charges against them.

This Court has heard learned counsel for the applicant and also perused the record of the trial Court which stood requisitioned.

According to the prosecution, the complainant party was in possession of the land in question and the accused entered the said land in order to take its possession forcibly. In order to prove the possession of the complainant party, the prosecution relied upon the jamabandies for the year 2005-06 Ex.P3, testimony of PW3 Naib Singh, Patwari and Panchayatnama Ex. PY. On the other hand, the accused relied upon the entries in the copy of jamabandi Ex. P3, copy of injunction order dated 12.7.2013 Ex. DA, copy of injunction order dated 10.10.2014 Ex. DB, copy of the judgment dated 5.1.2015 Ex. DC and copy of the decree-sheet dated 5.10.2016 Ex. DC/1. The entries in the jamabandi Ex.P3 depicted that the land in question was initially owned by Harbhajan Kaur and others but they gave the said land to the Government in exchange. The accused are shown to be in possession of the said land. The plea of the prosecution is that the entries in the jamabandi were incorrect but no attempt was made to question PW3 Naib Singh, Patwari regarding possession over the land in question. In his cross-examination, he voluntarily stated that the possession of the land was with Dalip Singh. Even otherwise, jamabandi

related to the year 2005-06 whereas the occurrence had taken place in November 2013. There are a number of documents available on the record showing the possession of the accused over the land in question. The accused party had filed a suit against the complainant party on 11.7.2013 for permanent injunction being in possession of the land in question. Copy of the plaint Ex. PX is available on the file. In the said suit, the defendants put in appearance and filed written statement Ex. PZ. The Civil Court passed an *ex parte* injunction order dated 12.7.2013 Ex. DA in favour of the accused party. The said injunction order was confirmed by the Civil Court vide order dated 10.10.2014 Ex.DB and, thereafter, the suit was decreed on 5.1.2016. The Civil Court while decreeing the suit held the accused party to be in possession of the land in question. The Panchayatnama Ex.PY is of no help to the prosecution and, therefore, cannot be read in evidence. The prosecution did not examine any of the signatories to the said Panchayatnama to depose before the Court. Under these circumstances, no fault can be found with the approach of the learned trial Court to hold that it was the accused party which was in possession of the land in question at the relevant time.

Even if the accused party was in possession over the land in question, respondent No.8-Balbir Singh had no right to commit the murder of Dalip Singh. At the same time, the right of

private defence of property extended only upto causing of injury and not death. In such a situation, he could not have been convicted under Section 302 IPC. Instead, his case was covered by exception 2 to Section 300 IPC which made him liable for culpable homicide by exceeding the right of private defence. As such, Balbir Singh accused/respondent No.8 could be convicted under Section 304 Part-I IPC instead of Section 302 IPC. Consequently, respondents No. 1 to 7 did not commit any offence.

In view of the above, no case is made out for any interference in the impugned judgment passed by the learned trial Court to the extent of acquitting accused/respondents No. 1 to 7 of the charges under Sections 148, 302, 302 read with 149, 324, 324 read with 149, 427 read with 511 IPC.

The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

October 24, 2017
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No