

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : May 22, 2017

+ CRL.A.306/2001
PRADIP YADAV & ANR. Appellants
Through: Mr.N. Hariharan, Sr. Adv. with
Mr.Varun Deswal, Adv., Mr.S.S.
Yadav, Adv., Mr.Aditya Singh, Adv.
& Mr.Dhananjay, Adv. for appellant
No.1/Pradip Yadav.

Mr.Sandeep Sethi, Sr. Adv. with
Mr.Rajesh Yadav, Adv., Ms.Ruchira
Arora, Adv., Mr.Dhananjay
Mehlawat, Adv. for appellant
No.2/Rajesh Yadav.

versus

STATE Respondent
Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State.

+ CRL.A. 307/2001
BRAHM PRAKASH & ANR. Appellants
Through: Mr.K.K. Manan, Sr. Adv. with
Mr.Ankush Narang, Adv., Ms.Anjali
Rajput, Adv., Ms.Shweta Sain, Adv.
& Ms.Devyani Khosla, Adv. for
Appellant Brahm Prakash.

Mr.Sandeep Sethi, Sr. Adv. with
Mr.Rajesh Yadav, Adv., Ms.Ruchira
Arora, Adv., Mr.Dhananjay
Mehlawat, Adv. for appellant
No.2/Jagdish.

versus

STATE Respondent
Through: Mr.Panna Lal Sharma, Additional

Public Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The present appeals have been preferred against a common judgment of conviction dated 12.04.2001 and common order on sentence dated 16.04.2001, therefore, with the consent of counsel for the appellants in both appeals, the same are heard together and are being disposed of together by this common judgment.

2. The appeal bearing Crl.A. No.306/2001 has been filed by appellants – Pradeep Yadav and Rajesh Yadav, whereas Crl.A. No.307/2001 has been filed by the appellants – Jagdish and Braham Prakash. The appellants have preferred their present appeals being aggrieved by the judgment of conviction dated 12.04.2001 passed by the learned Additional Sessions Judge, Delhi convicting the appellants – Pradeep Yadav, Rajesh Yadav, Jagdish and Braham Prakash for the offences under Sections 147/148/149/326/427/506 of IPC, and section 27 of the Arms Act. The appellants have also challenged the order on sentence dated 16.04.2001 whereby the appellants have been sentenced to undergo rigorous imprisonment for three years with fine of Rs.10,000/- each, in default to undergo further simple imprisonment for three months for the offence under Sections 149/326 of IPC; rigorous imprisonment for six months and fine of Rs.5,000/- and in default to further undergo simple imprisonment for one month for the offence under Section 427/149 of IPC; and rigorous imprisonment for

six months with fine of Rs.5,000/- each and to further undergo simple imprisonment for three years with fine of Rs.10,000/- each and in default to undergo further simple imprisonment for three months for offence under Section 149/506 of IPC.

3. The FIR in the present case was registered on the statement of the Complainant – Narain Singh Yadav. In his statement he stated that there was a dispute / litigation regarding the land at village Samaipur Badli, bearing Khasra No.6/19/2, admeasuring 4 bighas 18 biswas. On 04.06.1990, SDM of Punjabi Bagh had given judgment in his favour regarding title of the land on the basis of the order dated 11.06.1990 of Addl. District Judge whereby Mahinder Singh Yadav was restrained to interfere in his possession and from interfering in the filling of the land with soil. It is stated that on 26.06.1990 at about 4 PM when he was getting soil filled up in the land, his brothers – Zile Singh and Hukam Singh alongwith Birju and six labourers were present at the spot. In the meanwhile accused Mahinder Singh Yadav (since deceased) alongwith Ramesh – Pradhan of village Libaspur, Charan Singh and Dharampal came in his car followed by another car in which accused Sadan Kumar, Rajinder, Pradeep, Yogesh alongwith other persons came there. There were trucks behind those cars and tempo, wherein various persons armed with rifles, revolvers, jellies, hockey or sticks, lathies were present. Tractor was being driven by Deepu. Mahinder Singh immediately getting down from the car, fired two shots in the air from his revolver and on his instigation, his associates got down from their vehicles and damaged their cars, motor

cycle and over turned them. Thereafter accused Mahinder Singh Yadav instigated his associates in loud voice to demolish the room and take possession of the land. Driver of tractor – Deepu drove the tractor on the land and his associates demolished the room. It is further alleged by the complainant that when his labourers came running to him, the accused party started pelting stones and firing shots at them. In the meanwhile, police force alongwith SHO and ACP came to the spot. Warning from the policy party was given but with no result. Thereafter ACP fired in the air and controlled the crowd. Police arrested the accused persons Braham Prakash and Jagdish with swords; accused Pradeep Yadav was arrested with double barrel gun alongwith belt of 12 rounds, accused Dharampal Yadav was arrested with a country made pistol with one live round, accused Rajesh Yadav was arrested with a gupti. Though attempt was made to arrest accused Mahinder Singh Yadav but somehow he managed to escape. During the process of pelting stones and firing shots, his brother-in-law (sadhu) Ramesh, son of Charan Singh and labour Sidh Nath and Ram Adhar received injuries. Many persons while running away, left their weapons at the spot which were seized by the police. Used cartridges were also seized from the spot and vehicles standing at the spot were seized. Mahinder Singh Yadav alongwith his associates had come with a firm determination to take forcible possession of land and attacked them and caused damage.

4. After recording the aforesaid statement of the complainant, the case was registered; injured persons were taken to the hospital and

medically examined; accused persons were apprehended; case property was deposited in Malkhana and sent to CFSL; report was obtained and after completion of investigation, charge sheet against the accused persons was filed for the offence punishable under Sections 147/148/149/307/506/323/427/447/511 of IPC read with Section 25/27/59 of Arms Act and Section 5 of TADA (P) Act, to which the accused persons did not plead guilty and claimed trial.

5. In support of its case, the prosecution examined 11 witnesses i.e. Sub-Inspector Tej Singh (PW-1); Head Constable Ram Darash (PW-2); Constable Attar Singh (PW-3); Narain Singh (PW-4); Dr. L.C. Sunda (PW-5), brother of the complainant - Zile Singh (PW-6); Hukam Singh (PW-7); Shri K.V. Singh (PW-8), Injured and brother in law – of complainant - Ramesh Kumar (PW-9), Inspector R.P. Sharma (PW-10); and ACP - S.B.S. Tyagi (PW11).

6. During the pendency of trial, accused Deep Chand alias Deepu and Dharampal passed away.

7. After conclusion of prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C. Accused persons in their defence, examined Dr. P.N. Gupta (DW-1) and Head Constable Mahinder Singh (DW-2).

8. All the appellants were held guilty and sentenced as mentioned above. Therefore, the appellants have filed the instant appeals challenging the aforesaid judgment on conviction as well as order on sentence. During pendency of the present appeals, the sentence

imposed upon the appellants was suspended vide order dated 07.05.2001.

9. It is worthwhile to mention that an appeal bearing Crl.A./ 305/2001 was filed by accused Mahender Singh but since he died during the pendency of the appeal, the proceedings against him stood abated.

10. Learned senior counsel appearing on behalf of the appellants – Pradeep Yadav and Rajesh Yadav (in Crl. A. No. 306/2001) had urged that the main dispute between the complainant and the appellants was over a piece of land measuring 2 bhigas and 18 biswas, situated at Samaipur Badli, Delhi and the motive for committing the offence is introduced that on the date of incident i.e. on 26.06.1990 the appellants had come to forcibly take possession of the land in question. The learned Additional Sessions Judge had assumed on its own that the possession of the land was with the complainant in the light of the ex-parte stay order passed by learned ADJ on 11.06.1990. However, in fact the complainant was neither in possession of disputed property nor had a title over the disputed property. Learned senior counsel for the appellants drew attention towards the contradictory testimonies of the relevant witnesses. It is stated that the prosecution has mainly based its case on the testimonies of PW-4 Narain Singh and PW-6 Zile Singh both brothers, while PW-4 says that immediately after their arrival, Mahinder Singh fired several shots aiming at them and one bullet hit Ramesh in his left hand finger; and PW-6 says that Mahinder Singh after getting down from the vehicle

fired two rounds in the air with a revolver. He does not whisper about Mahinder Singh firing at them or one of the bullets hitting Ramesh, rather he deposed that when the accused attacked them with lathis, jellys etc., Ramesh's right hand finger was cut. It is further urged that PW-9 Ramesh has deposed that he did not know who had fired upon him to cause injuries on his finger. Though his clothes were blood stained and the blood was oozing out from his finger, but neither the police seized the clothes nor he himself handed over the same to the police. He further deposed in his statement that he himself had narrated the incident to the doctor giving him first aid, but MLC falsifies his stance. It is further stated that Narain Singh (PW-4) deposed that he was not hit by any bullet on the day of the incident, while Zile Singh (PW-6) deposed that Narain Singh had received pellet injury and he was taken for necessary treatment. While adverting to the deposition of PW-6 Zile Singh, it is further argued that PW-6 stated in his examination in chief that our labourers had left the spot immediately after the two rounds were fired in air by Mahinder when he had come there, however, he again said that their labourer Sidhnath while running had also received pellet injury in the chest from the shot fired by Pradeep. Likewise, attention of court was drawn to the cross-examination of Narain Singh in which he had deposed that his statement was recorded by the police at about 5/6 pm and he did not know at what time the statement of his brother was recorded. However, PW-6 Zile Singh says that the police had controlled the situation by 8-9 PM. It is therefore urged as to how the statement of Narain Singh could be recorded before controlling the situation. It is

further deposed by PW-6 that police took into possession the weapon of offence from the accused and also did the writing work in the absence of Narain Singh, when he was away for treatment, then how his signatures appear on the seizure memos and other documents. More so, PW-6 deposed that in his presence police had not recorded any statement and that they left the spot at about 10-11 pm. With regard to recovery of weapon of offence, it is urged that the prosecution case is that while one Head Constable Dhan Raj was trying to apprehend Mahinder Singh, his revolver fell on the spot and was seized, however, PW-10 says that the revolver of Mahinder was recovered from the spot same day when they were searching the plot for discovery of any other weapon of offence. It is further argued that the seal which was used for making the seizures at the spot had initials 'RK', however PW-10 deposed that the seal neither belonged to the Investigating Officer nor to him. More so, none of the police official's name (who had visited the spot) starts with the initials 'RK'. It is further stated that none of the seizure memos mention the place where the same were prepared. It is further stated that .12 bore DBBL gun was sent for forensic examination, six cartridges were fired but only three could be linked. Similarly, from .315 bore made pistol, 10 cartridges were fired but only one could be linked. It is urged that the CFSL report was not proved and the ballistic expert was not examined by the prosecution and even the source of the cartridges which could not be linked to the alleged weapons was not traced. It is further urged that the Head Constable Chand who apprehended the accused Pradeep; Constable Prem Singh, who apprehended the accused

Rajesh; ASI Jai Singh who apprehended the accused Braham Prakash; ASI Mahesh Pal who apprehended the accused Jagdish and Head Constable Dhan Raj, who tried to apprehend the accused Mahender Singh have not been examined by the prosecution. Likewise, PW-11 deposed that he took service revolver of Head Constable Mahavir Singh and then fired, but HC Mahavir Singh was not examined. In the respectful submission of learned counsel for the appellants, neither the fact that HC Mahavir gave his revolver to PW-11 ACP Shri S.B.S. Tyagi was proved nor the fact that the revolver belonged to HC Mahavir is proved. Even the jamatalashies of the accused persons do not bear the names of the persons apprehending the accused and moreover, Hari Prakash, the person who took the rukka to the Police Station was not examined. Lastly, it is contended that Brahaspat Misra is happened to be the only independent witness to the prosecution case, and even he was not examined, nor his name was mentioned in the rukka or the charge sheet. In support of his submissions, learned counsel for the appellants relied on the judgments of the Supreme Court in *Kailash Gour and others vs. State of Assam*, (2012) 2 SCC 34; *State of Punjab – Gurmej Singh vs. Jit Singh and Another*, 1995 SCC (Cri) 156; *Balrej Singh vs. The State of Punjab*, 1976 Cri.LJ 1471 and submitted that the appeals filed by the appellants be allowed and the impugned judgment and order on sentence passed by learned Additional Sessions Judge be set aside.

11. Learned senior counsel appearing on behalf of the appellants – Braham Prakash and Jagdish (in CrI. A. No. 307/2001) had urged that

though the appellants Brahm Prakash and Jagdish were claimed to be present at the spot duly armed with swords by the prosecution but no specific role in causing any injury is attributed to the appellants and nor is there any opinion of the doctor on the MLC of Ram Adhar (Ex.PW-5/A) and Ramesh Kumar (Ex.PW-5/B) that the injuries caused by them is by sword. It is further argued that the injured Ram Adhar and Sidh Nath were not examined as the prosecution witnesses and only Ramesh Kumar appeared as PW-9, but he neither deposed anything regarding presence of the appellants at the spot nor did he allege any injury being received with sword. In fact, out of four purported eye witnesses of the case, i.e., complainant – Narain Singh (PW-4), Zile Singh (PW-6), Hukum Singh (PW-7) and Ramesh Kumar (PW-9), PW-7 and PW-9 did not even depose regarding the presence of the appellants at the spot. Even the then ACP S.B.S. Tyagi (PW-11) has not mentioned about the presence of the appellants at the spot nor did he depose that he found any person armed with sword. Adverting to the deposition of Inspector R.P.Sharma (PW-10) it is contended that he did not mention about the presence of appellant – Jagdish. Though he deposed about the presence of appellant – Brahm Prakash at the spot but did not mention that he was armed with any sword or recovery of sword from him. As far as recoveries of swords, learned counsel for the appellants contended that the recovery memos i.e., Ex.PW-4/H – recovered from appellant – Brahm Singh and Ex. PW-4/J – recovered from appellant – Jagdish, do not bear the signature of the respective appellants and even no sketches of the swords were prepared. It is further contended that earlier also the

complainant (PW-4) made a false complaint and got a case registered against accused Mahinder Singh and his family members and as per the inquiry report conducted in the said matter, proved by DW-2, it was concluded that the allegations leveled by PW-4 were false. So far as presence of Zile Singh (PW-6) at the spot and his identification of the appellants, it is contended that PW-9 did not mention about the presence of PW-6 at the spot and he specifically deposed that during his cross-examination that he came from his office later. Contradictions in the version of PW-4 and PW-6 were highlighted on behalf of the appellants. It is stated that PW-4 deposed that around 100 police persons surrounded the accused however PW-6 stated the number of police persons to be between 10-15. Complainant (PW-4) deposed that Ramesh Kumar (PW-9) received fire arm injury, however PW-6 deposed that nobody received FIR arm injury. On the other hand, PW-6 deposed that PW-4 also received injuries, however PW-4 denied having being injured and nor was it in the prosecution case. As per PW-6, Sidh Nath had received pellet injury, however, no such injury was found during medical examination of Sidh Nath. Apart from the aforesaid contradictions, it is submitted that even the conduct of PW-6 in not providing medical help to the injured and not taking them to hospital, points towards his absence at the spot. It is further urged that there is no independent corroboration to the version of the complainant. Chowkidar, who as per PW-9 was present at the spot, was neither examined nor was his identity established. Further it is urged that neither the beat constables nor the constables who were posted near the spot nor the PCR officials were examined in the case

and even DD entries with regard to the incident and the PCR log book were not proved. It is further contended that the complainant did not have the possession of the disputed land and in fact he was a trespasser and it is not the prosecution case that the order of stay was ever conveyed to accused Mahinder Singh. It is further contended that though the presence of appellants at the spot is not admitted, but even for the sake of argument if they were present at the spot, there was an imminent danger to the property of Mahinder Singh and the present case is one which is protected by virtue of the provision of Section 97 of IPC. Further, it is contended that no photographs or the site plan in respect of the place of incident is proved to show any room or damage to it. It is contended that there was neither any mischief nor criminal trespass nor any attempt to obtain possession by criminal force nor any resistance to execution of any legal process, therefore, there was no unlawful assembly, as defined in section 141 of IPC, as such no offences under Section 147/148/149 of IPC are made out against the appellant. It is further contended that there is no evidence of criminal intimidation to make out any case under Section 506 of IPC. It is further urged that there is no sanction under Section 39 of the Arms Act was obtained to make out a case under Section 25 of Arms Act and also, there are no allegations to make a case under Section 27 of Arms Act. In light of the aforesaid submissions, learned counsel for the appellants submitted that the appeal filed by the appellants is liable to be allowed.

12. Per contra, learned Additional Public Prosecutor for the State

has vehemently argued that the injured witnesses have duly supported the case of the prosecution. The weapons of offence were recovered from the spot. The testimony of injured witnesses has duly been corroborated by medical evidence. There is enough and sufficient evidence on record to hold the appellants guilty of the offences with which they were charged. It is further submitted that there is no illegality or infirmity in the judgment passed by the trial court and the appeals filed by the appellants are liable to be dismissed.

13. Arguments advanced by the learned counsel for the appellants as well as learned APP for the State were heard.

14. To prove the guilt of the accused, evidence of injured and eye-witnesses corroborated with the medical evidence are the crucial and material witnesses. In the present case, the FIR was registered on the statement of Complainant – Narain Singh Yadav (PW-4), let his statement be scrutinized first.

15. Narain Singh (PW-4) deposed in his testimony that in 1989, some matter was pending regarding land measuring 2 bighas 18 biswas under Section 85 of the Delhi Land Reforms Act between him and the accused Mahinder Singh (since deceased), which was decided by the SDM in his favour. Accused Mahinder Singh and his supporters started quarreling with him and thereafter he obtained a stay order against him from the civil court. On 26.06.1990 at about 4 PM, he was present on the said land with two brothers Hukam Singh and Zile Singh and one employee Birju. Some daily wage labourers

including Sidh Nath were also present there. At that time accused Mahinder Singh, Dharam Pal, Pradeep, Rajesh, Braham, Jagdish, Ramesh, Katti, Yogesh, Charan Singh, Rajinder and Deep Chand and many others came there in one tempo, three trucks one tractor and three/four cars. He further deposed that accused Mahinder had a revolver with him, with which he fired several shots aiming towards him and one bullet hit Ramesh in his left hand finger. Accused Mahinder Singh exhorted other accused persons to kill him and to destroy his property and vehicles. Thereafter his vehicles were hit with swords and lathis and room on the said land was demolished by the accused as they wanted to take possession thereof. Accused Mahinder was caught by police officials but he succeeded in escaping but his revolver had been snatched by that policeman. The revolver and six empty cartridges which were snatched from accused Mahinder were taken into possession. In his cross-examination, he deposed that police guard was posted at the place of occurrence much prior to the date of incident and the police officers used to remain on duty round the clock at the place of occurrence. ACP S.B.S. Tyagi arrived at the spot alongwith more than 100 police officers and announced on the mike to stop firing and at that time accused Mahinder Yadav was present. Police fired about 4-5 rounds. He further deposed that he was not hit by any bullet on the day of incident.

16. From the deposition of PW4, there is nothing on the record to connect the appellants. As per his testimony, it was accused Mahinder Singh (since deceased) who fired gun shots at him and others on the

day of incident. Though he has stated that the appellants and other accused persons were accompanying accused Mahinder Singh on the day of incident, but he has not attributed any role to any of the appellants. It has been stated by this witness that these appellants were armed with weapons at the time of incident, but he has not stated anything to the effect that whether they assaulted him or any other injured at that time. Therefore, the testimony of this witness is of no help to the prosecution to base the conviction of the appellants.

17. Another alleged eye witness of the incident is Zile Singh (PW-6) who had deposed that there was dispute over the land between accused Mahinder Singh (since deceased) and PW4-Narain Singh and on 26.06.1990 at about 4 PM, when he alongwith Narain Singh and Hukam Singh were present at the plot alongwith some labourers for getting the nala cleaned, accused Mahinder Singh, Charan Singh, Dharampal and Umesh came in their vehicle; Rajender, Sadan, Pradeep and Uggesh came in another vehicle of make Toyota. Besides them, 4-5 other persons came in another vehicle of make Maruti Car and 10-15 people came in trucks, tractor and tempo with lathi sticks in the vehicles and were armed with Gupti, swords, jelly etc. Mahinder Singh fired two rounds in the air with a revolver and asked his persons to take possession of the land and demolish the room in the plot. The room was demolished by them. Pradeep was having a gun and fired 3-4 rounds on us but none of them received any bullet injury. However, one finger of right hand of Ramesh was cut. One labourer - Sidh Nath while he was running also received pellet injury in the chest from the

gun of Pradeep. Police reached there at about 5 PM. ACP S.B.S. Tyagi also reached the spot at about 5.30 PM and fired 3-4 rounds in the air. Dharampal, Brahm Prakash, Pradeep, Rajesh, Deep Chand and Jagdish were arrested and other persons ran away from the spot leaving their vehicles at the spot. At the time of arrest of the accused, Brahm Prakash had a sword; Pradeep, a gun; Dharampal had a loaded Katta and Jagdish was armed with a sword; Rajesh was armed with Gupti. In his cross-examination, he deposed that the police controlled the position at the spot by 8.00 or 9.00 PM. There was no street light around the spot. He further deposed that during this quarrel, one finger of right hand of Ramesh was cut at the spot.

18. Another eye witness to the incident Hukam Singh (PW-7) has deposed in his statement that he was present at the spot on the date of incident with Narain Singh, Zile Singh, Billoo and 2-3 other persons. Those 2-3 persons were cleaning the drain adjoining the plot. Meanwhile a tractor, trucks in which accused Mahinder Singh and his men armed with arms and ammunition reached the plot and started firing from their arms on them, one of the bullet hit on the right hand of Billoo. In his cross-examination he deposed that associates of accused Mahinder demolished the room built on the plot. He also deposed that none of the assailants was apprehended by the police in his presence as he had already left the spot.

19. The other relevant witness is, injured - Ramesh Kumar (PW-9) who deposed in his testimony that on 26.06.1990 he was present at the place of incident when at about 4 PM accused Mahinder Singh came

there in a vehicle. Many other persons with arms and ammunition also came in many vehicles; they were 200-300 in number; all of them stopped their vehicles near that plot. Accused Mahinder Singh came down from his vehicle and fired from his revolver in the air exhorting his companions who came in other vehicles to grab the land. Those persons who were accompanying Mahinder Singh, had also fired and one of the bullets hit on his left hand index finger causing injuries. However, he did not name any body. In the meanwhile PCR officials came and he was taken to Hindu Rao Hospital for medical examination where he was medically examined and after treatment, he was discharged on the same day. In his cross-examination, he had deposed that he had told the doctor in the hospital as to how he had received the injuries and also about the incident having taken place at the spot. He reached the hospital at about 5 PM and remained there for two and a half hours. He further deposed that Narain Singh and Mahinder Singh are on inimical terms with each other. In his cross-examination, he deposed that at the relevant time, only he and Narain Singh alongwith other 8 or 10 labourers were present at the spot. He alongwith Narain Singh had run away from the spot alongwith the labourer and Hukam Singh had come from his office.

20. In the testimony of injured witness PW9-Ramesh Kumar, only the name of accused Mahinder Singh (since deceased) has been figured. This witness had not stated the name of any of the appellants or the role played by them in causing injury to him or in the alleged incident of unlawful assembly.

21. From the perusal of testimony of PW7, there is nothing in the same to connect the appellants with the commission of alleged crime on the day of incident. PW7 had deposed that on the day of incident, accused Mahinder Singh (since deceased) along with his associates came to the plot of Narain Singh, but he had not named any of the appellants being the persons who had accompanied accused Mahinder Singh. Neither the name of the appellants has been given by PW7 nor any role played by them has been mentioned by this witness nor any act done by the appellants has been alleged by this witness. Therefore, there is nothing in the testimony of PW7 to base the conviction of the appellants.

22. So far as the testimony of PW6 is concerned, though he has deposed the role of the appellants, but his testimony is full of contradictions regarding the time and role played by the appellants on the day of incident. PW6 has deposed that on the day of incident, all the appellants were accompanying their associates and accused Mahinder Singh (since deceased) and assaulted the complainant by firing the gun shots, giving beatings and injuring them with sword, knife and lathis. But the testimony of PW6 has been contradicted by PW4 Narain Singh who is the complainant of the present case. PW4 had not named any of the appellants as the persons who had assaulted any person belonging to the complainant party. Even the witness PW7 who is claimed to be another eye witness of the alleged incident had contradicted the testimony of PW6. PW7 had not even named any of the appellants being the perpetrators of the offence alleged. The public

witness PW-9 Naresh Kumar had also controverted the testimony of PW-6 by not deposing the name of any of the appellants being the perpetrators of the offence and had attributed the role of accused Mahender Singh (since deceased) only. There are apparently material contradictions and inconsistencies in the testimony of public witnesses including in the testimony of PW6 which creates doubt about his testimony made in the Court and the same cannot be said to be reliable and trustworthy to base the conviction of the appellants.

23. There is no other evidence in the form of public witness on record against the appellants. Apart from PW4, PW6, PW7 and PW9, rest of the witnesses are either the police officials or the formal witnesses who have proved the documents and proceedings conducted and they are not in any way related to the incident, therefore, their testimonies are of no consequence to base the conviction of the appellants.

24. The case of the prosecution is that the main motive of the accused Mahinder Singh (since deceased) and his associates to attack the complainant was that there was a dispute with regard to property in question and it was in the possession of PW4 Narain Singh on the day of incident which led to the incident as alleged against the accused persons. There is no basis in this contention of the prosecution for the reasons that during the pendency of the present appeals, certain documents were called to ascertain the possession of the property in question and some documents were placed on record, but it has not been convincingly brought on record that who was in actual

possession of the property in question.

25. In view of the above discussed evidence, facts and circumstances mentioned, this Court is of the considered opinion that the prosecution has failed to establish its case against the appellants beyond reasonable doubt. Therefore, while extending the benefit of doubt, the appellants are entitled for acquittal.

26. As discussed above in detail, the appeals filed by the appellants are allowed and the judgment of conviction and order on sentence passed against the appellants are set aside. Appellants are on bail. Their bail bonds and surety bonds stand discharged. All the appellants are hereby acquitted of the charges framed against them.

27. A copy of this order be sent to the Trial Court for information.

28. With aforesaid directions, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

MAY 22, 2017
pkb/dd