

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 12, 2018

1. Criminal Appeal No.1316-SB of 2003 (O&M)

Mukhtiar Singh & others

...Appellants

Versus

State of Haryana

...Respondent

2. Criminal Revision No.2136 of 2003 (O&M)

Mukhtiar Singh

...Petitioner

Versus

Mehtab Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sudhir Sharma, Advocate,
for the appellants in CRA No.1316-SB of 2003.

Mr. Ram Krishan Rana, Advocate,
for the petitioner in CRR No.2136 of 2003.

Mr. Anil Mehta, DAG, Haryana,
for the State.

AMIT RAWAL, J.

This order of mine shall dispose of two cases, i.e., Criminal Appeal No.1316-SB of 2003 and Criminal Revision No.2136 of 2003 as the same have arisen out of common judgment. The facts are being taken from Criminal Appeal No.1316-SB of 2003.

The present appeal has been filed by the appellants against the judgment of conviction dated 08.07.2003 and order of sentence dated

11.07.2003, whereby the appellants-accused have been sentenced to undergo the following sentences:-

Offence under Section	Sentence	Fine	In default
307 read with 149 IPC	RI for seven years	₹ 1000/- each	SI for one year
148 IPC	RI for two years	₹ 500/- each	SI for six months
323 IPC read with 149 IPC	RI for six months	₹ 250/- each	SI for one month

However, it was made clear that all the sentences would run concurrently.

The facts of the prosecution case are that on 11.07.1996, on receipt of the ruka from the doctor, statement of Gulab Singh injured was recorded to the effect that he was employed in PWD (B&R) Department at Tosham. He along with Prem Singh and Mehtab Singh were going to their village Tosham at 8.30 AM. When they reached near Bus Stand Saral, they found one tractor was coming from back side in which Suresh, Attar Singh and Satyavan armed with Barchha, accused Balwan armed with jelli, accused Jai Parkash armed with axe were sitting. They stopped the tractor near Mehtab Singh. In furtherance of their common intention, they raised a lalkara that Mehtab Singh be taught a lesson for party fraction and indulging in the litigation, upon which they attached Mehtab Singh with their respective weapons. On account of the injuries, he fell down. Due to this, his gun fell down and the same was broken by the accused. Accused Satyavan and Jai Parkash also attacked the complainant on different parts of the body. Complainant party raised noise, on which a number of persons gathered at the spot and on seeing them, accused persons fled from the spot. Mehtab Singh was shifted to PHC Tosham where he was medically examined.

On completion of the formalities, on 13.02.1997 the accused were charge sheeted under Sections 307/323/148/149 of IPC, to which they did not plead guilty and claimed trial.

The prosecution in support of its case, examined PW-1 Subhash Chander, PW-2 Dr.N.C.Gaba, PW-3 Dr.P.K.Charaya, PW-4 Dr.Rajiv Aggarwal, PW-5 Dr.S.C.Batra, PW-6 Sheo Dutt, PW-7 Rajinder Singh, PW-8 Bhup Singh, PW-9 Gulab Singh, PW-10 Mehtab Singh, PW-11 SI Ran Singh and PW-12 Dr.Rajiv Malhotra and also tendered into evidence documentary evidence.

Statements of accused under Section 313 of the Code of Criminal Procedure was recorded, wherein they denied all the incriminating evidence/material put to them and also denied the allegations levelled against them. They were called upon to lead their evidence, but no evidence in defence was led.

The trial Court, on preponderance of oral and documentary evidence, convicted and sentenced the accused, as noticed above.

Mr. Sudhir Sharma, learned counsel representing the appellants submitted that the trial court erred in law and facts in recording the conviction of the appellants as there was inordinate and unexplained delay in lodging the FIR. This serious infirmity in the prosecution case has been overlooked. Mukhtiar Singh appellant had also received fire-arm injuries at the hands of the complainant party. The said injuries remained explained either in the FIR lodged by Gulab Singh or by Mehtab Singh.

It was next contended that the trial court had committed error in placing reliance upon the prosecution evidence, particularly the statements of Gulab Singh PW-9 and Mehtab Singh PW-10, who were not

only interested but materially discrepant as they were also facing trial in the cross-case under Sections 307, 323 and 34 IPC and 27 of Arms Act. PW-9 and PW-10 made improvements from their police statements, therefore, rendering unreliable. Injuries allegedly received by Mukhtiar Singh remained explained by the prosecution, thus, established that PW-9 and PW-10 were aggressors. The trial court acted illegally in not giving the benefit of self-defence to the appellants.

The name of Mukhtiar Singh appellant is not mentioned in the FIR Ex.PM/3, therefore, his involvement is not made out but falsely implicated in the present case. There was a strong motive for the complainant party to attack the appellants. The medical evidence did not support or corroborate the ocular testimony rather falsifies the same. No overt act has been attributed to Mukhtiar Singh appellant and he was falsely shown to be driving the tractor at the relevant time.

The appellants, as per the custody certificates, have already undergone the following period including custody as under trial:-

<i>Sr.No.</i>	<i>Name of the appellant</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
1	Mukhtiar Singh	1	0	8
2	Suresh	2	1	19
3	Balwan	0	10	25
4	Mangal Singh	1	10	9
5	Satyawan	1	8	1
6	Jai Parkash	3	6	18

On the other hand, Mr. Anil Mehta, learned Deputy Advocate General, Haryana supported the prosecution story by stating that the injuries suffered by Gulab Singh and Mehtab Singh have been duly proved by medical evidence and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the court below and of the view that there is no force

and merit in the submissions of the learned counsel for the appellants, for, the prosecution proved the involvement of the appellant-accused in the commission of the offence. Mehtab Singh PW-10 gave the version of the incident which has gone un-rebutted. After receiving injuries, he became unconscious but regained consciousness in Medical College, Rohtak where the police recorded his statement. The application submitted by the ASI has been proved as Ex.PM/1. In the process of rescuing, Mehtab Singh also suffered injuries, though in the statement of Gulab Singh recorded by the police in the Hospital, it did not find mentioned that Mukhtiar Singh accused was driving the tractor but under Section 161 Cr.P.C. stated that Mukhtiar Singh was driving the tractor.

The incident is of 11.07.1996 at 8.30 AM. The appellant-accused have not been able to make out a case of self-defence as the injuries allegedly suffered by them remained unproved, for, when the complaint at the instance of Mukhtiar Singh was lodged, the alleged injuries inflicted upon him by Mehtab Singh and Gulab Singh have not been mentioned. Copy of the MLR Ex.PD and the diagram Ex.PD/1 showing the location of the injuries has been proved. Injuries No.3, 4 and 5 were declared dangerous to life and could have caused death in the ordinary course of life if the victim was not operated upon. Opinion of the doctor is Ex.PE/1.

Mehtab Singh was operated on 12.07.1996 by Neuro Surgeon vide Bed Head Ticket Ex.PC, which has been identified by Dr.Rajiv Aggarwal PW-4. He was discharged on 21.07.1996. If at all, Mukhtiar Singh accused had received injuries in the same very altercation, why he was not shifted to the hospital immediately. As per MLR, he was brought to CHC Tosham at 5.20 PM and was medically examined at 5.35 PM. Such

delay cannot be attributed to the defence. There was a huge gap as the incident allegedly occurred at 8.30 AM.

However, keeping in view the fact that appellants have already undergone the period of sentence aforementioned and nothing has been attributed to their behaviour in the jail, the ends of justice shall be met if the appellants are sentenced to the period already undergone by them. The appellants were enlarged on bail by this Court vide order dated 09.08.2004 and they have been awarded maximum sentence of seven years. So, while upholding the conviction of the appellants, they are sentenced to the period already undergone by them. Criminal Appeal No.1316-SB of 2003 is disposed of in the aforementioned terms. Consequently, Criminal Revision No.2136 of 2003 is also dismissed.

October 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No