

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

Sr. No. 305

CRA-S-437-SB-2003 (O&M)
Date of decision : 01.07.2019

Tarun Kumar @ Ganesh and anothers Appellants

VERSUS

State of Punjab Respondent

2

CRA-S-590-SB-2003 (O&M)

Shiv Kumar and another Appellants

VERSUS

State of Punjab Respondent

3

CRA-S-1410-SBA-2003 (O&M)

The State of Punjab Appellant

VERSUS

Ranjit Singh and others Respondents

4

CRR-1586-2003 (O&M)

Shiv Kumar Petitioner

VERSUS

Ranjit Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Bipan Ghai, Sr. Advocate with
Mr. Deepanshu Gupta, Advocate, for the appellants.

Mr. H.S. Sullar, DAG, Punjab.

Mr. H.S. Dhandi, Advocate, for the complainant
in CRA-S-590-SB-2003 and CRA-S-437-SB-2003 and
for the respondents in CRA-S-1410-SBA-2003 and
CRR-1586-2003.

SUDHIR MITTAL, J.

This judgment shall decide aforementioned appeals and revision petition as the same are the outcome of version and cross-version of the same occurrence. CRA-S-437-SB-2003 and CRA-S-590-SB-2003 have been filed by the convicted persons and CRA-S-1410-SBA-2003 has been filed by the State of Punjab, challenging the acquittal of the accused in cross-case. CRR-1586-2003 has been preferred by convict Shiv Kumar, challenging the acquittal of the accused in the cross-case. The judgment dated 27.1.2003, has been impugned in all the abovementioned appeals and revision petition.

2. On 21.5.2000, an incident took place between the families of Shiv Kumar on one side and Ranjit Singh on the other. The accused persons belonging to the family of Shiv Kumar are Shiv Kumar himself, his wife Shanti Devi and his three sons namely, Mohan Lal, Tarun Kumar @ Ganesh and Pushpal @ Pal, whereas the accused belonging to the family of Ranjit Singh are Ranjit Singh himself, his brother Harvinder Singh @ Kukla and Soni. FIR No.81 dated 22.5.2000, was registered under sections 323/148/149 of the Indian Penal Code (85 of 1860) (for short 'IPC') on the statement of Shiv Kumar and cross-case was registered under sections 307, 325, 323, 148 and 149 IPC. Evidence in version and cross-version was recorded separately and the same were decided by separate judgments.

3. The statement of Ranjit Singh was recorded at Civil Hospital, Nabha on 27.5.2000 by the Investigating Officer ASI Thura

Ram. According to the statement, on 21.5.2000 at around 8.45 p.m., said Ranjit Singh was at home when the door bell rang. He answered the door and saw that Shiv Kumar was standing in the street. Said Shiv Kumar called him out and when he reached near him, his wife Shanti Devi gave two blows with an iron rod on the back side of his head. Meanwhile, Mohan Lal reached the spot holding an iron rod and he gave a blow on the right side on the head of Ranjit Singh. His shouts for help attracted his brother Harvinder Singh @ Kukla, who was also assaulted by Tarun Kumar @ Ganesh by a sota. Shiv Kumar also inflicted a blow with a sota on the head and forehead of Ranjit Singh who became unconscious. He was got admitted at Civil Hospital, Nabha by his father and later on, he came to know that his brother Harvinder Singh @ Kukla and friend Gurmit Singh son of Labh Singh had also received injuries at the hands of the aforementioned accused persons.

4. As mentioned above, FIR No.81 dated 22.5.2000 was registered on the statement of accused Shiv Kumar. According to the statement, said Shiv Kumar was assaulted on 21.5.2000 at around 8.45 p.m. by Ranjit Singh, Harvinder Singh @ Kukla, Soni, Gurmit Singh and 15-16 other unknown persons all of whom were under the influence of liquor and were armed with sticks and kirpans. Ranjit Singh allegedly gave a blow with his kirpan on the left side of the head of Shiv Kumar and Harvinder Singh @ Kukla and Soni gave blows with rod and stick on the chest and legs. He fell down on the ground and the other persons gave blows to him on various parts of his body. His cries attracted his wife Shanti Devi and son Mohan Lal, who rescued him. His brother Ramesh

Kumar and son Tarun Kumar @ Ganesh took him hospital. The injuries were inflicted on account of enmity due to a civil dispute pending between the parties. The parties are neighbours and there is an ongoing dispute regarding a house because of which Shiv Kumar had obtained a stay order from the civil Court, Nabha.

5. Three persons belonging to the party of Ranjit Singh received injuries. Ranjit Singh himself received total of 19 injuries out of which injury No.2 to 7 were collectively declared dangerous to life vide supplementary report Ex.PD given by Dr. Rakesh Kumar PW1. Harvinder Singh @ Kukla received total of 14 injuries out of which injury No.1 was declared grievous and Gurmit Singh received 01 injury which was simple in nature. From the family of Shiv Kumar, only Shiv Kumar received injuries totaling 08 in number. All of them were simple in nature except for one, which was fracture of the second rib on the left side. Vide the impugned judgment, the trial Court convicted Shiv Kumar, his wife Shanti Devi and sons Mohal Lal and Tarun Kumar @ Ganesh and acquitted Pushpal @ Pal son of Shiv Kumar. It found these persons to be the aggressors and held that the injuries suffered by Shiv Kumar were received in self-defence. Thus, Ranjit Singh, Harvinder Singh @ Kukla and Soni were accordingly, acquitted in the FIR case.

6. Learned senior counsel for the appellants has submitted that injuries have been received by convict Shiv Kumar also, but the prosecution has failed to explain the same. Under the circumstances, the defence taken by the accused is rendered more probable and thus, the accused are entitled to be acquitted. In the alternative, it is submitted that

the parties are neighbours and no other incident has taken place after the present incident which pertains to the year 2000. They have been living peacefully for about 19 years now. Shiv Kumar and Shanti Devi are now aged more than 65 years and Tarun Kumar @ Ganesh is a practicing Advocate at Patiala. Considering these facts as well as the fact that all of them have undergone a protracted criminal prosecution, the conviction may be maintained, but they may be sentenced to the period already undergone.

7. Learned counsel for the complainant-Ranjit Singh supports the impugned judgment. He however, does not dispute the statement made by learned senior counsel for the appellants that the parties have been peacefully co-existing for the last about 19 years.

8. Learned State counsel submits that a free fight took place between the parties and both sides were liable to be convicted.

9. I am taking up the issue of acquittal of Ranjit Singh and persons belonging to his party, first. The trial Court has found that if Ranjit Singh etc. had been the aggressors, Ranjit Singh would not have received as many as 19 injuries some of which were declared dangerous to life collectively and Harvinder Singh @ Kukla would not have received a grievous injury because according to the version set up by Shiv Kumar, he was alone and unarmed when Ranjit Singh etc. attacked him. It has further been found that in the facts and circumstances of the present case and on the basis of evidence on record, even though, accused Shiv Kumar had received some injuries, it is clearly established that Shiv Kumar etc. were the aggressors and that the prosecution has proved its

case against Shiv Kumar etc. beyond reasonable doubt. Learned senior counsel for the convicted appellants as well as the learned State counsel has not been able to attack these findings successfully and thus, the same are affirmed. Accordingly, CRA-S-1410-SBA-2003 against acquittal of Ranjit Singh etc. and CRR-1586-2003 filed by Shiv Kumar also against acquittal of Ranjit Singh etc. are dismissed. For the same reasons, CRA-437-SB-2003 and CRA-S-590-SB-2003 against conviction are also dismissed.

10. In support of his argument of reduction of sentence to the period already undergone, learned senior counsel for the convicted appellants has placed reliance upon **‘Tejinder Singh @ Kala Vs. State of Punjab, 2003 (1) RCR (Criminal) 330’** and **‘Gulab Singh and another Vs. State of Punjab, 2004 (1) RCR (Criminal) 756’**. In the case of **Tejinder Singh** (supra), learned single Judge of this Court had reduced the sentence from RI for a period of 05 years to RI for a period of 01 year in a case of conviction under section 307 IPC, keeping in view the fact that the convict therein had suffered criminal prosecution for about 16 years. In **Gulab Singh’s case** (supra) also, there was a conviction under section 307 IPC and sentence was modified to the period already undergone keeping in view the fact that the appellant therein had undergone a lengthy criminal prosecution as also the fact that he was not a previous convict and had not indulged in any criminal activity thereafter. In this case also, it is apparent that the incident took place on account of some civil dispute between the parties regarding their boundaries as they are neighbours. During the pendency of their appeals,

sentence of the convicted appellants has been suspended and now, the parties are residing peacefully in the same neighbourhood. They have reconciled their differences. Custody certificates places on record by the learned State counsel show that out of maximum sentence of RI for a period of 05 years, the convicted appellants have undergone actual custody of varying periods, but in excess of 01 year and 02 months and no other criminal case has been registered against them. The judgments of **Tejinder Singh's case** (supra) and **Gulab Singh's case** (supra) are thus, squarely applicable to the present case as well.

11. The sentences of the convicted appellants are thus, modified and they are sentenced to the period already undergone by them.

12. Copy of this judgment be sent to the successor Court of the trial Court concerned, for compliance.

13. A photocopy of this judgment be placed in the file of the other connected case.

(SUDHIR MITTAL)
JUDGE

01.07.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No