

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S No.1287-SB-2004
Decided on : 17.05.2019

Bhim Sain & ors. Appellants

Versus

State of Punjab Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Gagan Mohini, Advocate
for the appellants.

Ms. Jaspreet Kaur, AAG, Punjab.

Manjari Nehru Kaul, J.

Custody certificates of all the appellants filed in Court today
are taken on record.

1. The instant appeal has been preferred against the impugned
judgment of conviction and order of sentence dated 03.06.2004 passed by
Addl. Sessions Judge, Bathinda vide which the accused-appellants were
convicted and sentenced as under:

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Mandar Singh Sona Devi Bhim Sain Raja Singh Satta Singh Megha Singh Mitthu Singh	148 IPC	Rigorous imprisonment (RI) for 01 year		

<i>Name of Convict</i>	<i>Offence</i>	<i>Period of sentence</i>	<i>Fine imposed</i>	<i>Period of sentence in default of payment of fine</i>
Mandar Singh Sona Devi Bhim Sain Raja Singh Satta Singh Megha Singh Mitthu Singh	450 IPC	RI for 2½ years	₹ 1,500/-	Imprisonment for 01 year
Mandar Singh	307 IPC	RI for 05 years	₹ 2000/-	Imprisonment for 01 year
Sona Devi	307 IPC read with Section 149 IPC	RI for 2½ years	₹ 1000/-	Imprisonment for 06 months
Bhim Sain Raja Singh Satta Singh Megha Singh Mitthu Singh	307 IPC read with Section 149 IPC	RI for 4½ years	₹ 1,500/-	Imprisonment for 01 year

All the sentences were ordered to run concurrently.

2. The facts of the prosecution case in brief are that complainant Amrik Singh (PW-1), after being declared fit to make a statement by the doctor vide endorsement Ex.PM/2, got recorded his statement Ex.PA before PW-5 Inspector Mohinder Kumar wherein he stated that on 07.08.1999 at about 10.00 pm, he along with his family members namely injured Hardial Singh, Harpal Singh (PW-3), injured Kewal Singh was sleeping on the roof of their house, they were awakened by loud lalkaras and abusive language in the street. On looking into the street, they saw that the accused-appellants namely Sona Devi, Bhim Sain, Dev Raj, Megha Singh, Raja,

Mitthu Singh and about 15 other persons, all armed with lethal weapons while accused Mandar Singh and one unidentified person armed with .12 bore gun were threatening to teach the complainant party a lesson for taking into possession the plot of land belonging to the Bania community. The complainant party came down to counsel and pacify the accused party but the appellants Bhim Sain and Dev Raj exhorted their accomplices to fire shots. Appellant Mandar Singh then fired at the complainant party with his fire arm as a result of which the complainant party suffered fire arm injuries. Due to the hue and cry, injured Jagtar Singh and Kulwinder Singh (PW-4) were attracted to the spot but they too were not spared by the accused-appellant Mandar Singh. On the instigation of appellants Sona Devi, Dev Raj and Bhim Sain, appellant Mandar Singh fired towards them and injured them as well. The other persons accompanying the appellants thereafter barged into the house of the complainant party and demolished the inner wall of the house. As per the complainant, the motive behind the occurrence was a dispute pertaining to a plot of land, which had been given to the complainant as part of a settlement in lieu of some amount of money, which the accused party owed to the complainant party and at the time of handing over possession of the said plot, an assurance had been given by the accused party that the sale deed would be executed later on. Since the accused party went back on their assurance, panchayats were convened to effect a compromise between them but in vain.

3. On the basis of statement Ex.PA/1, a formal FIR Ex.PA/2 was registered. During investigation, the blood stained clothes having gun shot

injuries of the injured witnesses were taken into possession. Two empty cartridges of 12 bore gun were also taken into possession from the place of occurrence by the Investigating agency vide recovery memo Ex.PQ/5. Accused-appellant Mandar Singh subsequent to his arrest suffered a disclosure statement Ex.PS in pursuance to which the recovery of a .12 bore gun and license was effected, which were taken into police possession vide recovery memo Ex.PT. After completion of investigation, challan was presented. The charges were framed under Sections 307, 450, 452, 148 and 149 IPC against the accused to which they pleaded not guilty. In support of their case, the prosecution examined as many as 9 witnesses including the stamped witnesses.

4. All the incriminating circumstances/evidence were put to the appellants-accused under Section 313 Cr.PC to which the appellant Sona Devi pleaded innocence and false implication. She stated that in fact it was the complainant party, which had attacked her with a view to take illegal possession of her plot. She further stated that the complainant party was not residing in the plot and the complainant party being rich and influential persons had concocted a false story. She stated that not only was she inflicted injuries by the complainant party but injuries were also inflicted on the person of one Billu Singh. The plea of appellants Raja Singh, Satta Singh and Megha Singh was that they had been falsely implicated in the instant case. Accused Bhim Sain pleaded innocence and gave a statement on similar lines as his mother appellant Sona Devi besides making a mention of the civil litigation pending between the parties qua the plot in

dispute. Appellants Mandar Singh and Mitthu Singh took a similar plea inter alia stating that they had been attracted to the house of appellant Sona Devi on hearing her shrieks and it was on humanitarian grounds that they came to her rescue as she was being assaulted by the complainant party.

5. The accused party examined DW-1 Kartar Singh in their defence and tendered all the relevant documents in support of their case. Learned trial Court convicted all the accused and sentenced them as already detailed above.

6. Learned counsel for the appellants vehemently argued that it is a case of version and cross-version and the learned trial Court was in error in failing to appreciate the cogent and consistent evidence adduced during the trial. Learned counsel further urged that it was in fact a case of free and sudden fight wherein the accused party too suffered injuries. He further submitted that the learned trial Court erred in not appreciating that the plot on which the alleged occurrence took place was a disputed piece of land and the ownership of which was in the name of appellant Sona Devi. Hence, it was the complainant party, who were the aggressors and had launched the attack on the accused party. It was also vehemently argued by the learned counsel that none of the injuries on the person of the complainant party were declared to be dangerous to life and version of Billu Singh, who too suffered injuries in the said occurrence, was not taken into consideration by the trial Court at the time of recording a finding of conviction.

7. Per contra learned State counsel urged that the ocular testimony of the witnesses found complete corroboration with the medical evidence.

There were as many as eight stamped witnesses, who not only supported the case of the prosecution in its entirety but the seat and nature of injuries suffered by each of them clearly indicated that it was the accused party, who had launched on unprovoked attack on the complainant party due to the grudge which they were nourishing against them qua the plot of land. Learned State counsel further vehemently argued that the complainant party could not be held to be aggressors because admittedly, they were in possession of the plot, on which the occurrence took place.

8. Heard learned counsel for the parties and perused the evidence as well as material available on record.

9. Learned State counsel has produced the death certificate in original in respect of appellant-Sona Devi issued by the office of Local Registrar, Birth and Death, Rampur Phul, Bathinda, which is taken on record. According to the Death Certificate, appellant Sona Devi expired on 24.11.2005 during the pendency of this appeal. Hence, appeal qua her stands abated.

10. It is not disputed by either of the parties that:

- i) there was indeed some dispute between the parties in respect of a plot of land qua which the Civil Court too had been approached.
- ii) the complainant party received fire arm injuries in the occurrence in question as has been reflected and proved on record by the medical evidence.

11. PW-2 Dr. Rakesh Goyal, who medico-legally examined all the

injured witnesses PW-1 Amrik Singh, Kewal Singh, Hardial Singh, Satnam Singh, PW-4 Kulwinder Singh, Jagtar Singh and PW-3 Harpal Singh found fire arm injuries on seven stamped witnesses besides other injuries. The injuries were opined to be caused within a probable duration of 12 hours, which coincided with the time of occurrence. Looking to the nature and the cause of injuries, they could not be said to be self suffered ones.

12. In the above background, it would have to be seen which out of the two versions, one by the prosecution and the other by the defence, would be more probable.

13. Admittedly, there was some dispute qua a plot between the parties. Fact of the matter is that as per statement Ex.DX/1, given by the counsel for the appellant Bhim Singh in the Civil appeal preferred by the complainant party, proved on record, the complainant, who was plaintiff, had withdrawn that appeal on the basis of statement of accused party themselves i.e. Ex.DX/2 that they would not interfere in the possession of the complainant party. Hence, one fact, which emerges is that the possession was with the complainant party otherwise there was no occasion for the accused party to make such a statement. In this background, the plea of the defence that it was the complainant party, who were the aggressors and wanted to forcibly take possession of the plot in which the appellant Sona Devi along with her daughter was residing, is unconvincing and deserves to be rejected. Moreover, the plea of the defence that it was the complainant party, who aggressed upon the plot in question and caused injuries to appellant Sona Devi on the face of it too does not inspire

confidence inasmuch as a bare perusal of the medical evidence on record shows only superfluous injuries and that too simple injuries having been suffered by the appellant Sona Devi. As far as injured Billu Singh is concerned, though he has been shown to have been medically examined and had received 19 injuries in all including one grievous injury, none of the injuries as per the MLR have been shown to be fire arm injuries. The defence no doubt has tried to make a lot of hue and cry about the injuries suffered by Billu Singh but the same would not help the cause of the accused in any manner as firstly Billu Singh is not an accused in this case and secondly, he was not even examined by either of the parties in the Court.

14. Coming to the next submission of the learned counsel for the appellants Mandar Singh and Mitthu Singh that they intervened in the free fight between the parties on humanitarian grounds does not convince the conscious of the Court at all. It would be pertinent to notice that in pursuance to the disclosure statement of appellant Mandar Singh, the recovery of fire arm was effected and further as per the FSL report Ex.Py, the pellets recovered from the spot had been fired from the fire arm which was recovered from the appellant Mandar Singh. It is indeed very strange that the appellant Mandar Singh, who was armed with a fire arm and came to the rescue of the old lady i.e. appellant Sona Devi but did not suffer any fire arm injury much less even a bruise on his person at the hands of the complainant party, who allegedly as per the defence were armed with fire arm and were the aggressors.

15. In the instant case, I have no hesitation in holding that the prosecution has been able to prove its case against the accused party beyond reasonable doubt. All the stamped witnesses have fully corroborated the case of the prosecution on all material aspects. The injuries suffered by the stamped witnesses cannot by any stretch of imagination be said to be self suffered or fabricated injuries. The consistent case of the prosecution is that it was the accused party, who had come armed with lethal weapons including fire arms to their house and that too at odd hours of the night. Moreover, the accused did not dispute the prosecution version that the prosecution witnesses had suffered fire arm injuries in the occurrence in question. The onus was on the defence which they miserably failed to discharge as to how, why and in what circumstances they came armed with various weapons including fire arms resulting in the injuries to the complainant party.

16. As a sequel to the above discussion, the present appeal is dismissed.

(MANJARI NEHRU KAUL)
JUDGE

17.05.2019

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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No