

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

CRA-S-293-SB-2004

Date of decision: May 13, 2019

Gurmail Singh and others

....Appellants

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Hundal, Advocate and
Ms. Dolly Shivani, Advocate (Legal Aid Counsel)
for the appellants No.1 and 3.

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer made in this appeal is for setting aside the judgment of conviction dated 17.1.2004 passed by the Additional Sessions Judge (*Ad hoc*), Fast Track Court, Ludhiana, vide which the appellants were held guilty for the offence punishable under Sections 323, 326, 367/34 IPC as well as the order of sentence of the even date, vide which they were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month each. All the sentences were ordered to run concurrently.

Brief facts of the case are that complainant-Jarnail Singh was an agriculturist and had purchased one Bigha of land from his sister Nihal Kaur and took the possession of the same, which was earlier in possession of his other brother Mukhtiar Singh. On 11.7.2001, accused-Mukhtiar Singh

and Zora Singh stopped him from ploughing the land. On 12.7.2001, a Panchayat was convened at the spot and a compromise was got effected but the complainant refused to put his signatures on the written compromise till the preparation of the 'Common Watt'. At about 5.00 p.m. when the complainant reached near the fields of Saudagar Singh, accused- Mukhtiar Singh, Zora Singh and Gurmail Singh, who were on a tractor, waylaid him. Mukhtiar Singh exhorted other accused to catch-hold the complainant and that he should not be spared. Mukhtiar Singh then hit the tractor against the complainant, who fell down. Accused-Gurmail Singh was having 'Dah' in his hand and he tried to gave a blow on the head of the complainant, who raised his left hand to ward off that blow but the 'Dah' struck against the left middle finger of the complainant. Zora Singh accused then gave fist blow on the eye of the complainant. All the accused then gave fist blows to the complainant, tied his arms and made him to sit on the tractor. Complainant raised an alarm. Harnam Singh, while raising alarm, also ran after the tractor but the accused carried the complainant to a distance of about 1 killa and then threw him on the ground. The injured was then shifted to Civil Hospital, Sidhwan where he was medico-legally examined.

Counsel for the appellants has argued that in the cross-examination of the victim i.e. PW2 Jarnail Singh, it has come that he has made drastic improvements in his statement. The operative part of the cross-examination reads as under :-

"I had stated to police that Gurmail Singh and Zora Singh came on a tractor to the place where Panchayat was convened. Attention of the witness is drawn to his statement Ex.PC, where it is not so recorded. I had

mentioned in my statement Ex.PC that police has made the entry in DDR of my application which was moved on 11.7.2001. Attention of the witness is drawn to the statement Ex.PC, where it is not so recorded. I had stated to police that on 12.7.2001, HC Lakha Singh had visited our police. Confronted with the statement Ex.PC, where it is not so recorded. I had stated to police that when we were coming back, Harnam Singh had gone to answer the call of nature. Confronted with his statement Ex.PC where it is not so recorded. I had stated to police that Gurmail Singh had put my legs on tractor and Zora Singh sat on my chest and gave blows to me. Attention of witness is drawn towards Ex.PC, where it is not so recorded. My other fingers did not receive any injury. My second finger has become short even from the index finger and third finger.”

Counsel for the appellants has, thus, argued that at each point this witness was making improvements and when he was confronted with his statement recorded under Section 161 Cr.P.C. Ex.PC, therefore, his deposition made in the Court is not correct as per Ex.PC. Counsel has further argued that even as per the statement of PW1 Dr. Kulwant Singh, Medical Officer PHC, Sidhwan in the cross-examination it is admitted that it can not be ruled out that the possibility of the injury No.1 can be self inflicted.

Counsel for the appellants has next argued that the appellants are facing the agony of criminal prosecution for the period of more than 18 years and ultimately, considering the fact that the father of complainant Jarnail Singh, i.e. Mukhtiar Singh, victim is real brother of the father of appellant No.1 and there was a dispute regarding the ‘Common Watt’ of the

agriculture field and the possibility of false implication of the appellants on that count cannot be ruled out.

During the pendency of the appeal, the sentence of the appellants was suspended on 9.2.2004, while admitting the appeal. Thereafter, on 31.10.2018, it was noticed that one of appellants, i.e. Mukhtiar Singh has died and PW2 Jarnail Singh, the victim who had received the injuries in the occurrence, was summoned by the Court. On 4.12.2018, statement of Jagraj Singh was recorded by this Court to this effect, which is reproduced as under :-

“Stated that in an occurrence which had taken place on 12.7.2003, Jarnail Singh, father of the deponent had received injuries. Subsequently, on the basis of statement made by Jarnail Singh, FIR No.110 dated 13.7.2001 was registered at Police Station Sidhwan Bet.

The trial of the case ended with the conviction of the three accused i.e. Gurmail Singh, Mukhtiar Singh and Zora Singh. Aggrieved of their conviction and sentence, the three convicts filed the aforementioned appeal which is pending before this Court.

The dispute between the parties was in relation to the ‘Common Watt’. Both the parties are collateral and residents of the same village. During the pendency of the appeal and at the intervention of the respectables and common relatives, the parties have amicable settled the dispute. Therefore, I have no objection if any relief arising on account of the compromise is extended to the convicts-Gurmail Singh and Zora Singh, who are the surviving appellants whereas Mukhtiar Singh appellant has died during the pendency of the appeal.

As my father had passed away on 14.7.2011, I am making the aforementioned statement regarding the compromise arrived at between the parties. I, hereby, produced the photocopy of the death certificate. In order to establish my identity, I, hereby, produce photocopy of my Aadhaar Card.”

On the last date of hearing, the case was referred to the Mediation and Conciliation Centre to explore the possibility of some amicable settlement between the parties. The parties have appeared before the Mediation and Conciliation Centre of this Court and the Mediator has recorded the statement of Jagraj Singh, son of the complainant, which is reproduced as under :-

“Stated that my father late Sh. Jarnail Singh had received injuries on 12.7.2001 and on the basis of his statement FIR No.110 dated 13.7.2001 was registered at Police Station, Sidhwan BET against Gurmail Singh, Mukhtiar Singh and Zora Singh. The dispute between the parties was in relation to common watt. Both the parties are collateral and residents of the same village and with the intervention of the respectables and common relatives, the parties have amicably settled the dispute. My father had passed away on 14.7.2011 and I am making this statement presently today regarding the compromise arrived at between the said parties and I have no objection if the present appeal is allowed by the Hon’ble Court.”

In view of the statements of the only victim, it is apparent that the parties have amicably settled the dispute. Considering the fact that they are the residents of the same village and are close relatives, it is apparent that the compromise has been arrived at between the parties for the purpose

of maintaining peace and harmony between the families of the appellants and the victim. It is also worth noticing that the incident pertains to the year 2001 and the appellants were convicted on 17.1.2004. Almost a period of 15 years have been passed and in the meantime, no such incident is repeated by the appellants as is evident from the custody certificate filed by the learned State counsel on 19.12.2018, according to which, the appellants have undergone 23 days of actual sentence.

In view of the above, this appeal is allowed, the judgment of conviction dated 17.1.2004 passed by the Additional Sessions Judge (Ad hoc), Fast Tract Court, Ludhiana as well as order of sentence dated 17.1.2004 are set aside and the appellants are acquitted of the charges.

The appeal stands disposed of, accordingly.

May 13, 2019
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No