

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

Sr. No.311

CRA-S-776-SB-2004 (O&M)

Date of decision : 24.5.2019

Fakru and others

..... Appellants

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kunal Dawar, Advocate, for the appellants.

Mr. Arun Beniwal, DAG, Haryana.

SUDHIR MITTAL, J. (Oral)

On 26.7.2000, a police party headed by SI Narender Singh received information that accused Khurshid, an accused in another criminal case, was present in his village Tikri Khera. The police party raided his house and arrested him. However, he managed to escape from custody, but was again caught. On the second occasion, he raised a hue and cry and 25-30 persons armed with lathis and stones collected at the spot. Allegedly, they attacked the police party with lathis and stones and accused Khurshid took the lathi from one of them and gave a blow on the left and right feet of constable Rajinder. Shots were fired in the air to disperse the unlawful assembly, whereafter all of them ran away. The injured persons were taken to hospital for treatment and FIR No.331 dated

26.7.2000, was registered at Police Station Sadar Ballabgarh, under sections 148, 149, 353, 332, 333, 186, 506, 224 and 225 of the Indian Penal Code (45 of 1860) (for short 'IPC'). The other accused persons were arrested on various dates thereafter.

2. The injured police personnel were examined by PW-7 Dr. D.S Rathi. Constable Manoj Kumar had suffered two injuries, both simple in nature. Constable Rajinder also suffered two injuries, one of which was grievous in nature as he had suffered fracture of right ankle. Thus, apart from Constable Rajinder, all the other police personnel received simple injuries. The grievous injury is attributed to accused Khurshid. The trial Court vide order dated 3.4.2004 convicted the accused persons and sentenced each of them as follows:-

Section of IPC	RI	Fine	I/D of payment of fine
148	02 years each	--	--
353	01 year each	--	--
332	02 years each	--	--
333	05 years each	Rs.1000/- each	03 months imprisonment each
506	01 year each	--	--
186	--	Rs.500/- each	02 months imprisonment each

Sentences were to run concurrently.

3. Appellant No.2 Ayub son of Isak died during pendency of the appeal and his death certificate had been placed on record as is apparent from interim order dated 11.3.2015. Thus, instant appeal qua him stands abated.

4. Learned counsel for the appellants submits that the offence under section 333 IPC, is attributed only to accused Khurshid. The other

accused did not have the common object of causing such an injury nor were they aware that such an injury would be caused. All of them had only collected at the spot with the intention of preventing the arrest of Khurshid and with that intention they pelted stones resulting in simple injuries like abrasion and lacerated wound. All the injured have received one injury each apart from Constable Manoj Kumar, who received an abrasion and a lacerated wound. Thus, their conviction under section 333 IPC with the aid of section 149 IPC, is bad in law. So far as accused Khurshid is concerned, he has undergone actual custody of more than 08 months. He has also undergone a protracted trial of 04 years and for the past 15 years, there is neither any complaint against him nor any criminal case has been registered. Thus, his sentence may be reduced to the period already undergone.

5. Custody certificates prepared by Sh. Kuldeep Kumar, Deputy Superintendent, District Prison (Gurgaon), have been filed by the learned State counsel in Court and the same are taken on record. According to the custody certificate of Khurshid, he has undergone actual custody of 08 months and 09 days and there are 04 other criminal cases pending against him. One conviction and one acquittal are also recorded. The other accused have undergone actual custody in excess of 08 months and a couple of criminal cases are shown to be pending against them, pertaining to the year 2000 or before. No criminal case has been registered against any of the accused after the registration of the present FIR.

6. Learned State counsel submits that the appellants have committed a serious offence by attacking a police party and thus, they are not entitled to any leniency.

7. Section 149 IPC provides for same punishment to all members of unlawful assembly in case one of them, commits an offence and it can be established that the said offence was committed with a common object. In the present case, the common object of the unlawful assembly was to prevent the arrest of Khurshid. Stones were pelted on the police party which resulted in simple injuries. However, Constable Rajinder sustained a grievous injury i.e. fracture of right ankle, due to a lathi blow given by Khurshid. From the evidence on record, it does not flow that the unlawful assembly had the common objective of causing this kind of an injury. Thus, the conviction of the appellants except Khurshid under section 333 IPC with the aid of section 149 IPC, is illegal and the same is set aside.

8. Keeping in view the custody periods undergone by the appellants and also the fact that no criminal case has been registered against them after registration of the present FIR as well as the fact that a period of 19 years, has elapsed since the date of the incident, I deem it appropriate to sentence the accused to the period already undergone. So far as, appellant Khurshid is concerned, he is burdened with compensation of Rs.1 lac to be paid to the injured Constable Rajinder, within a period of 30 days, from the date of receipt of a certified copy of this judgment.

9. With the above observations and modification in the order of sentence, the impugned judgment of conviction of appellant Nos.1 and 3 to 6 except offence under section 333 r/w 149 IPC, is maintained and their appeal stands partly allowed, whereas appeal qua appellant No.7 is dismissed.

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

11. The appeal is accordingly, partly allowed.

(SUDHIR MITTAL)
JUDGE

24.5.2019

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No