

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-132-SB of 2003
Date of Decision : 22.02.2019

Machhu Singh and othersAppellants

VERSUS

State of Punjab Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. M.S.Sidhu, Advocate
for the appellants.

Ms. Jaspreet Kaur, AAG, Punjab.

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MANJARI NEHRU KAUL, J.

The instant appeal has been filed against the order dated 24.12.2002 passed by the Additional Sessions Judge Ferozepur vide which the accused/appellants were convicted and sentenced as under:-

<i>Name of the accused/ apellant</i>	<i>Sentence</i>
Machhu Singh	i) Rigorous imprisonment for three years and a fine ₹ 1,500/-, in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 326 IPC. ii) Rigorous imprisonment for one year and a fine ₹ 500/-, in default of payment of fine, to further undergo rigorous imprisonment for two months under Section 325 read with Section 149 IPC. iii) Rigorous imprisonment for one year under Section 324 read with Section 149 IPC. iv) Rigorous imprisonment for one year under Section 323 read with Section 149 IPC. v) Rigorous imprisonment for one year under Section 148 IPC.

<i>Name of the accused/ apellant</i>	<i>Sentence</i>
Mula Singh	i) Rigorous imprisonment for two years and a fine ₹ 500/-, in default of payment of fine, to further undergo rigorous imprisonment for three months under Section 326 read with Section 149 IPC. ii) Rigorous imprisonment for one year and a fine ₹ 500/-, in default of payment of fine, to further undergo rigorous imprisonment for two months under Section 325 read with Section 149 IPC. Iii) Rigorous imprisonment for one year and a fine ₹ 1000/-, in default of payment of fine, to further undergo rigorous imprisonment for two months under Section 324 IPC. iv)Rigorous imprisonment for one year under Section 323 read with Section 149 IPC. v) Rigorous imprisonment for one year under Section 148 IPC.
Surjit Singh	i) Rigorous imprisonment for two years and a fine ₹ 500/-, in default of payment of fine, to further undergo rigorous imprisonment for three months under Section 326 read with Section 149 IPC. ii) Rigorous imprisonment for one and a half year under Section 325 IPC. Iii) Rigorous imprisonment for six months under Section 324 read with Section 149 IPC. iv) Rigorous imprisonment for one year under Section 323 read with Section 149 IPC. v) Rigorous imprisonment for one year under Section 148 IPC.
Darshan Singh, Buta Singh, Dilawar Singh alias Dule, Beant Singh @ Kala, Gurdeep Singh, Boor Singh, Daulat Singh, Nihal Singh and Gurbachan Singh	i) Rigorous imprisonment for two years each and a fine ₹ 500/- each, in default of payment of fine, to further undergo rigorous imprisonment for three months each under Section 326 read with Section 149 IPC. ii) Rigorous imprisonment for one year each under Section 325 read with Section 149 IPC. iii) Rigorous imprisonment for one year each under Section 324 read with Section 149 IPC. iv) Rigorous imprisonment for one year each under Section 323 read with Section 149 IPC. v) Rigorous imprisonment for one year each under Section 148 IPC.

All the sentences were ordered to run concurrently.

It may be noticed that during the pendency of the instant appeal, appellant Nihal Singh (appellant No.10) expired and appeal qua the said appellant already stood abated vide order dated 17.08.2015.

The prosecution case against the accused appellants is that on 6.8.1998 at about 8:30 P.M. complainant Chiman Singh was irrigating their paddy crop along with Mangal Singh PW5, Fauja Singh and Bhajan Singh. The accused party comprising of Moola Singh armed with a sword, Machho Singh armed with

a Gandasa and others all armed with sticks reached their fields after raising lalkara

to teach the complainant party a lesson for irrigating the land. Thereafter, appellants inflicted injuries on the person of complainant Chiman Singh and Mangal Singh with their respective weapons. As a result of hue and cry, Fauja Singh and his son Bhajan Singh (PW3) who were working in their fields were attracted to the spot and they too were not spared by the accused party who inflicted stick blows on Bhajan Singh and Fauja Singh. When an alarm was raised by the injured, the accused party fled from the scene of occurrence with their respective weapons. The injured were immediately rushed to PHC Guru Harsahai where they were medico-legally examined.

During investigation the accused/appellants were arrested and case registered under Sections 326, 325, 324, 323 148 read with Section 149 IPC against them. It may be pointed out that this case constitutes a cross version of the main case arising out of FIR No. 111 of 6.8.1998 Ex.P3.

On completion of the investigation, the appellants were charged for offences punishable under sections 326, 325, 323, 324, 148 read with section 149 of the Indian Penal Code and as they pleaded not guilty, were brought to trial.

In support of their case, the prosecution produced and examined 5 witnesses. All the accused when examined under Section 313 Cr.P.C. denied the charges and stated that a dispute regarding 25 kanals of agriculture land had been pending between the parties since long. On 6.8.1998 the complainant party tried to forcibly occupy the disputed land and when they were prevented from doing so, the complainant party attacked and inflicted grievous injuries on the person of accused/appellants Beant Singh, Buta Singh, Dula Singh and Chhindo Bai leading to her death.

In defence the appellants examined DW1 Kharaiti Ram and DW2 DSP Manminder Singh.

evidence on record.

The learned counsel for the appellants has argued that the prosecution has miserably failed to prove their case and in fact the present case has been registered against the appellants as a counter-blast to the case which was registered by the accused/appellants against the complainant party for causing grievous injuries to them including the death of Chhindo Bai in the same occurrence. The learned counsel further submitted that the learned trial Court failed to appreciate that there was a delay on the part of the complainant party in reporting the incident to the police which was used by them to come out with a fabricated version.

The learned State counsel on the other hand submitted that the accused/appellants attacked the complainant party by forming an unlawful assembly and inflicted injuries on them with deadly weapons which they were carrying at the time of occurrence. The injured witnesses have duly supported the case of the prosecution on all material aspects of the case and the same also is well corroborated from the medical evidence.

It is not disputed by either of the parties that there was indeed a dispute going on between them for the past many years over a chunk of land comprising 25 kanals. A perusal of the evidence on record reveals that the long pending dispute had attained finality in favour of the complainant party inasmuch as the appeals filed by the accused party had been dismissed upto the High Court. Hence, in view of the same it cannot be disputed that at the relevant time of occurrence, the complainant party was in possession of the land. Once it stands established that it was the complainant party which was in possession of the land and the same was being cultivated by them on the date of occurrence, the assertion of the accused party that the complainant party forcibly tried to occupy the land in dispute and when they were checked, the latter inflicted injuries on them including

fatal injuries on Chhindo Bai, falls flat on the face. Another fact which cannot be overlooked is that admittedly injuries were suffered by both the parties. Be that as it may, even assuming that the complainant party was forcibly trying to take possession of the disputed land for the purposes of irrigation, the accused party had the remedy of immediately reporting the matter to the authorities concerned rather than taking law into their own hands by forming an unlawful assembly and inflicting injuries on the complainant party for the simple reason that as per the accused party themselves it was a vacant land and there was, thus, no apprehension qua any loss to standing crops. The appellants in the facts and circumstances of the case cannot use the shield of right of private defence as they themselves invited the attack upon themselves by their own provocation and threatened attack on the complainant party, which would have definitely culminated in the death of the other.

I have no hesitation in holding the appellants to be aggressors as the civil litigation between the parties already stood decided against the appellants and that too many months prior to the occurrence in hand.

The evidence on record along with the consistent testimonies of all the prosecution witnesses come across as trustworthy and the same finds corroboration with the medical evidence as well.

Coming to the next contention of the learned counsel for the appellants qua the delay in reporting the matter to the police, the same is devoid of any merit in view of the fact that the injured complainant Chiman Singh along with injured Mangal Singh, Fauja Singh and Bhajan Singh had been removed to the nearest hospital at the earliest and by 10:30 A.M. i.e. just after an hour or so of the occurrence had been medico-legally examined by PW1 Dr. Hardeep Singh Sethi who in turn had sent a Ruqa to the police station. Once the Ruqa had reached the concerned police station, soon after the admission of the injured in the

hospital, if the police failed to act promptly in reaching the hospital and recording the statement of complainant Chiman Singh, the complainant party cannot be faulted with, on account of the alleged delay.

Resultantly, I do not find any merit in the appeal and the same is dismissed. The judgment of conviction and order of sentence dated 24.12.2002 passed by the Additional Sessions Judge Ferozepur is affirmed. The accused appellants are on bail. Their bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure their custody.

(MANJARI NEHRU KAUL)
JUDGE

22.02.2019

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Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No