

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)	CRA-D-286-DB of 2003
Sadda Singh and others	...Appellants
Versus	
The State of Haryana	...Respondent
(2)	CRR-967-2003
Nishan Singh	...Petitioner
Versus	
Sadda Singh and others	...Respondent
(3)	CRA-S-313-SB-2003
Balkar Singh and others	...Appellants
Versus	
State of Haryana	...Respondent
(4)	CRR-1157-2003
Balraj Singh	...Petitioner
Versus	

CRA-D-286-DB of 2003;
CRR-967-2003;
CRA-S-313-SB-2003; and
CRR-1157-2003

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Balkar Singh and others

...Respondents

Date of decision:18.11.2019

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. K.D.S.Hooda, Advocate
for the appellants in CRA-D-286-DB-2003 and
for respondents No.1 to 5 in CRR-967-2003 and
for petitioner in CRR-1157-2003.

Mr.Ashwani Bhardwaj, Advocate for
the appellants in CRA-S-313-SB-2003 and
for the respondents No.1 to 5 in CRR-1157-2003 and
for the petitioner in CRR-967-2003.

Mr.Vikrant Pamboo, DAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two appeals
i.e. CRA-D-286-DB of 2003 filed by appellants Sadda Singh and others
and CRA-S-313-SB of 2003 filed by appellants Balkar Singh and others
and two criminal revisions i.e. CRR-967-2003 filed by petitioner Nishan
Singh and CRR-1157 of 2003 filed by petitioner Balraj Singh.

Briefly stated, facts of the case are that two ruqas were
received at Police Station Sadar, Sirsa on 17.7.1997 that several injured
persons belonging to two different party factions of village Mallekan
were admitted in General Hospital, Sirsa in injured condition; one ruqa
was with respect to injured Virsa Singh son of Sadda Singh and Jagraj
Singh, Sukhvinder Singh and Balraj Singh sons of Bawa Singh of one

faction and other was relating to Kala Singh and Niranjan Singh sons of Jagir Singh, Nishan Singh son of Kala Singh and Jagraj Singh son of Banta Singh of other faction; the police party went to the said hospital and obtained opinion of the attending doctor regarding fitness of the injured to make statement but the doctor declared all of them unfit to make statement; out of them one injured, namely, Kala Singh had been referred to Medical College and Hospital, Rohtak keeping in view his serious condition; the police party went to General Hospital, Sirsa again on 18.7.1997 and after getting opinion of the attending doctor recorded statement of Balraj Singh son of Bawa Singh, who *inter alia* stated that he is joint in cultivation with his brothers, namely, Jagraj Singh and Sukhvinder Singh and cousin brother Virsa Singh; on 17.7.1997 at about 10:00 a.m. while he was present at the tubewell in his fields, whereas Jagraj Singh, Sukhvinder Singh and Virsa Singh were taking out weeds from the standing crops at a distance of about three killas; in the meanwhile accused Balkar Singh and Jagraj Singh carrying guns, Nishan Singh carrying a pistol, Niranjan Singh and Kala Singh armed with gandasas and Satnam Singh armed with a Kirpan arrived there and raised a *lalkara* (exhortation) that the complainant party be taught a lesson for getting water for irrigation to their fields, though it was turn of accused to do so; Balraj Singh went near his brothers/cousin brother and then all the accused arrived there; Balkar Singh, Jagraj Singh and Nishan Singh started firing shots from their firearms; resultantly the complainant along with other persons with him suffered pallet injuries; they left that place and took shelter behind a tree; the accused taking cover of another tree continued firing shots at them; when the

ammunition in possession of accused got exhausted, then the complainant party went to them; Kala Singh, Niranjana Singh and Satnam Singh gave injuries to Balraj Singh and his brothers with *gandasas* and *kirpan*; the complainant party also caused injuries to the accused in self defence.

The Investigating Officer appended his endorsement below such statement of Balraj Singh and sent ruqa to Police Station on the basis of which formal FIR No.413 dated 18.7.1997 for the offences under Sections 307, 326, 324, 323, 148 and 149 IPC and 25/27 of the Arms Act was registered with Police Station Sadar, Sirsa.

On that very day, Nishan Singh son of Kala Singh also made a statement to the Investigating Officer while being admitted in General Hospital, Sirsa. In the said statement Nishan Singh stated that on 17.7.1997, it was his turn to take water for the purpose of irrigation of agricultural land, which he had taken from one Shobh Raj for cultivation; the turn was from 1:00 p.m. to 1:50 p.m.; his father Kala Singh had gone to the head minor at 11:00 a.m. and thereafter he (Nishan Singh) turned the flow of water in his fields at 1:00 p.m. and then went to the head of minor to enquire about the well being of Kala Singh; he observed that Virsa Singh son of Sadda Singh, Sadda Singh, Jagraj Singh, Sukhvinder Singh and Balraj Singh sons of Bawa Singh had picked up a quarrel with Kala Singh; Niranjana Singh, an uncle of the complainant Nishan Singh as well as Jagraj Singh son of Banta Singh also arrived at that place; Virsa Singh etc. opened attack on Kala Singh with their respective weapons; when Nishan Singh, Niranjana Singh and Jagraj Singh son of Banta Singh tried to intervene, they were caused

injuries. According to Nishan Singh, they had also inflicted injuries to the members of the other party i.e. Sadda Singh etc. in self-defence. Thereafter, the accused/assailants left the spot with their respective weapons and while leaving, they took away with them a gun belonging Kala Singh. The injured came to their house and were then taken to General Hospital, Sirsa in a jeep. On the basis of statement of Nishan Singh, a case was registered for the for the offences under Sections 147, 148, 323 and 324 IPC. Subsequently, an offence under Section 307 IPC was added. However, since Kala Singh had succumbed to the injuries after seven days and postmortem examination was conducted, therefore, offence under Section 302 IPC was added.

Accused in both the cases were arrested. Recoveries of weapons were got effected, which were taken into possession. Statements of witnesses were recorded. After completion of investigation, challan against the accused in the main case as well as in the cross case was prepared and filed in the Court of Additional Chief Judicial Magistrate, Sirsa.

On presentation of separate challans in the Court of Additional Chief Judicial Magistrate, Sirsa, he supplied copies of documents relied upon in the challans to all the accused in both the cases free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 302 and 307 IPC in CrI.Case No.382 of 1997 and offence under Section 307 IPC in CrI.Case No.381 of 1997 are exclusively triable by the Court of Sessions, learned Additional Chief Judicial Magistrate, Sirsa vide his separate orders dated 19.11.1997 committed the cases to the Court of learned Sessions Judge, Sirsa, from

where both the cases were entrusted to Additional Sessions Judge, Sirsa.

On receipt of cases in the Court of learned Additional Sessions Judge, Sirsa, he observing that charge for offences under Sections 148 IPC, 302, 324, 323 read with Section 149 IPC was disclosed against all the accused in Sessions Case No.63 of 1997/2001 and charge for the offences under Sections 148 IPC, 307, 326, 324 and 323 read with Section 149 IPC was disclosed against all the accused in Sessions Case No.79 of 1997/2001, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The cases were then fixed for evidence of prosecution.

The prosecution led evidence in both the cases. Statements of accused were recorded under Section 313 Cr.P.C. The accused were also afforded ample opportunities to lead their evidence.

After hearing arguments in Sessions Case No.63 of 1997/2001, learned trial Court convicted all the accused namely Sadda Singh, Sukhwinder Singh, Balraj Singh, Jagraj Singh and Virsa Singh for the offences under Sections 148 IPC and 302, 324 and 323 read with Section 149 IPC and sentenced them as under:

Offence under Section	Sentence Awarded
Section 148 IPC.	Rigorous imprisonment for three years each.
Section 302 read with Section 149 IPC.	Imprisonment for life and to pay a fine of Rs.10,000/- each and in default thereof, to further undergo imprisonment for one year each.
Section 324 read with Section 149 IPC	Rigorous imprisonment for three years each.
Section 323 read with Section 149 IPC	Rigorous imprisonment for one year each.

All the sentences were ordered to run concurrently.

Whereas after hearing arguments in Sessions Case No.79 of 1997/2001, learned trial Court convicted all the accused namely Balkar Singh, Niranjn Singh, Nishan Singh, Satnam Singh and Jagraj Singh for the offences under Sections 148 IPC and 307, 326, 324, 323 read with Section 149 IPC and sentenced them as under:

Offence under Section	Sentence Awarded
Section 148 IPC.	Rigorous imprisonment for three years each.
Section 307 read with Section 149 IPC.	Rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo imprisonment for six months each.
Section 326 read with Section 149 IPC	Rigorous imprisonment for five years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo imprisonment for six months each.
Section 324 read with Section 149 IPC	Rigorous imprisonment for three years each.
Section 323 read with Section 149 IPC	Rigorous imprisonment for one year each.

Accused Balkar Singh was also convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo further imprisonment for six months.

All the sentences were ordered to run concurrently.

The judgments of conviction and orders of sentence left the accused/convicts of both the cases aggrieved and they have filed

separate appeals before this Court praying that the same be accepted, the impugned judgments of their conviction and sentence be set aside and they be acquitted of the charge framed against them. The complainant in both the cases have also filed separate criminal revision petition for enhancement of compensation and awarding of adequate compensation.

We have heard learned counsel for the appellants-accused-convicts and learned Deputy Advocate General for the State of Haryana besides going through the record.

The incident in this case is not much in dispute since persons from both the sides had suffered injuries. The crucial issue to be determined/seen is as to which party was aggressor. The trial Court has not determined this point adequately. However, we find that accused Balkar Singh, Niranjana Singh, Nishan Singh, Satnam Singh and Jagraj Singh accused in Sessions Case No.79 of 1997/2001 along with Kala Singh(since deceased) were aggressors. While coming to this conclusion, we have taken into consideration various facts, firstly that the incident had taken place in/near the fields of opposite party i.e. Sadda Singh, Sukhvinder Singh, Balraj Singh, Jagraj Singh and Virsa Singh; secondly three persons from the opposite side namely Virsa Singh, Balraj Singh and Jagraj Singh had suffered gun shot injuries, wherein none from the side of Balkar Singh, Niranjana Singh, Nishan Singh, Satnam Singh and Jagraj Singh had suffered any gun shot injuries, though Kala Singh had suffered several injuries with sharp edged weapons on his head; thirdly three of the persons from the side of deceased including deceased himself, Nishan Singh and Balkar Singh were statedly carrying firearms, whereas from the other side only Sadda

Singh was statedly having a gun but no shot was fired therefrom had hit any person from the side of the deceased. If we see the report received from FSL, Madhuban shots were opined to have been fired from two guns recovered from the persons from the side of deceased and one gun from the other side. That clearly shows that the deceased and other persons accompanying him were aggressors and under the circumstances, the other side definitely had a right of private defence. Section 96 of the Indian Penal Code provides that nothing is an offence, which is done in the exercise of right of private defence. There is nothing to show that the accused themselves had provoked the attack. As it comes out, they had a genuine apprehension of physical harm being caused to the accused and their property. It does not come out that they had any reasonable time left with them to inform the police so as to get action initiated against the aggressors. However, it also transpires that the accused had exceeded the said right of private defence. If we see the postmortem report of deceased Kala Singh, there were in as many as eight incised wounds on the person of the deceased, most of those on vital parts including skull.

Under the circumstances the conviction of accused, Sadda Singh, Sukhvinder Singh, Balraj Singh, Jagraj Singh and Virsa Singh in Sessions Case No.63 of 1997/2001 under Section 302 IPC is not sustainable, rather the offence disclosed against them is one under Section 304 Part I IPC.

It may be mentioned here that after verification, the State counsel has informed that appellants Sadda Singh and Balraj Singh have expired. Therefore, CRA-D-286-DB of 2003 qua them abates. Whereas

qua the remaining appellants/accused, the appeal is accepted partly and their conviction under Section 302 read with Section 149 IPC is set aside and they are convicted under Section 304 Part I read with Section 149 IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo further rigorous imprisonment for a period of one year each. Their conviction and sentence qua the remaining offences is left as such.

On the other hand, CRA-S-313-SB-2003 filed by appellants/accused Balkar Singh, Niranjana Singh, Nishan Singh, Satnam Singh and Jagraj Singh in Sessions Case No.79 of 1997/2001 is not shown to have any merit since in view of the detailed discussion above, they have been found to be aggressors and three persons from the opposite side had suffered firearm injuries. Injury No.1 on the person of Balraj Singh was declared to be grievous in nature. Injuries No.1 and 2 on the person of Jagraj Singh were also declared to be grievous in nature. Therefore, there is no reason to interfere with the judgment of conviction and order of sentence passed in Sessions Case No.79 of 1997/2001.

It may be mentioned here that the State counsel has informed that appellants Jagraj Singh son of Banta Singh and Satnam Singh son of Kala Singh have expired. Therefore, the appeal qua Jagraj Singh son of Banta Singh and Satnam Singh son of Kala Singh stands abated.

Whereas the appeal filed by the remaining appellants stands dismissed.

Learned counsel for the petitioners in both the Criminal

CRA-D-286-DB of 2003;
CRR-967-2003;
CRA-S-313-SB-2003; and
CRR-1157-2003

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Revision petitions i.e. CRR-967-2003 and CRR-1157-2003 state that they be permitted to withdraw the same

Permission granted.

CRR-967-2003 and CRR-1157-2003 are dismissed as withdrawn.

A copy of this judgment be sent to Sessions Judge, Sirsa for information and further necessary action.

18.11.2019	(JITENDRA CHAUHAN)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No