

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-272-SB of 2003
Date of Decision : 22.02.2019

Teja Singh and othersAppellants

VERSUS

State of Punjab Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Deepanshu Mehta, 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/ appellant</i>	<i>Under Section</i>	<i>Sentence</i>
Mangal Singh and Madan Singh	304 IPC	Rigorous imprisonment for ten years each and fine ₹ 1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months each.
Teja Singh, Fauja Singh and Joginder Singh	304/149 IPC	Rigorous imprisonment for seven years each.
Mangal Singh, Madan Singh, Teja Singh, Fauja Singh and Joginder Singh	148 IPC	Rigorous imprisonment for one year each.
Joginder Singh	324 IPC	Rigorous imprisonment for 18 months and fine of ₹ 500/-, in default of payment of fine, to further undergo rigorous imprisonment for one month.

<i>Name of the accused/ appellant</i>	<i>Under Section</i>	<i>Sentence</i>
Mangal Singh, Madan Singh, Teja Singh and Fauja Singh	324/149 IPC	Rigorous imprisonment for one year each.
Mangal Singh, Teja Singh and Fauja Singh	323 IPC	Rigorous imprisonment for six months each.
Madan Singh and Joginder Singh	323/149 IPC	Rigorous imprisonment for six months each.

All the sentences were ordered to run concurrently.

It may be noticed that during the pendency of the instant appeal, appellant Fauja Singh (appellant No.2) expired and appeal qua the said appellant stands abated vide order dated 07.02.2019.

The facts of the case are that both the complainant party as well as the accused party were co-villagers and there had been long pending land dispute between them for the past many years. A litigation had been going on between them qua 25 kanals of agriculture land which attained finality on 30.03.1998 in favour of the accused party. Prior to the said civil litigation attaining finality, it had been decided and settled between both the parties that 2 kanals out of the aforementioned 25 kanals of land which was lying vacant, would go to the party in whose favour the Court gave its verdict.

On 6.8.1998 at about 8:00 A.M. complainant Machhu Singh PW8 accompanied by his brother PW9 Dula Singh, PW13 Buta Singh, wife of Dula Singh namely Chhindo Bai (since deceased) and their cousin PW12 Beant Singh were standing in their fields. Chhindo Bai went to the 2 kanals of vacant land and found the same being irrigated by the accused party which led to an argument between Chhindo Bai and the accused party. The verbal altercation between them attracted the complainant Machhu Singh and others to the spot. On reaching there, the complainant party found that appellants Madan Singh armed with a spade,

Teja Singh armed with a Tirangal, Fauja Singh, Phalak Singh and

Mangal Singh armed with sticks and Joginder Singh armed with a Kulhari were attacking Chhindo Bai with their respective weapons. The complainant and his brothers rushed to the rescue of Chhindo Bai and tried to intervene but they too were inflicted injuries by the appellants with their respective weapons. On a hue and cry being raised, the accused party fled from the spot along with their respective weapons. On going closer, the complainant and his brothers found that Chhindo Bai had died on the spot. The occurrence was reported to the police and thereafter an FIR (Ex.P26) was registered against the appellants on the statement of complainant Machhu Singh. The injured including complainant Machhu Singh were removed to the hospital where they were medically examined and treated.

On completion of the investigation the appellants were charged for offences punishable under sections 302/324/323/148 read with section 149 of the Indian Penal Code and as they pleaded not guilty, were brought to trial.

The prosecution in support of its case, examined as many as 14 witnesses. All the incriminating circumstances appearing against them under Section 313 Cr.P.C. were put to the accused wherein they denied the charges and pleaded that they had been falsely implicated in the case. As per appellants they were working in their fields at the time of occurrence when the complainant party armed with deadly weapons descended on their land and attacked them resulting in injuries being caused to them. Chhindo Bai, who was cutting fodder nearby, intervened and tried to separate the warring sides but unfortunately in the process received some injuries including one on her head which led to her death. Appellants caused some injuries to the complainant party in self defence for which a separate case against the complainant party for causing injuries including a grievous one on the person of Chiman Singh, Bhajan Singh, Fauja Singh and Mangal Singh was got registered. Accused Madan Singh and Phalak Singh

been falsely implicated.

The learned senior counsel for the appellants has vehemently argued that the learned trial Court erred in concluding that the appellant party exceeded their right of private defence despite the fact that the appellants were in possession of the land in question. He further contended that the appellant party had suffered grievous injuries in the occurrence and the same had not been appreciated by the learned trial Court in its right perspective. He urged that even an apprehension of being caused grievous hurt was sufficient for the appellants to have caused the death of Chhindo Bai. Hence, in this background the trial court was in grave error in holding that the appellants had exceeded their right of self defence when it was a matter of record that two appellants had suffered grievous injuries at the hands of the complainant party. The learned senior counsel further contended that the injuries on the person of the deceased Chhindo Bai which were attributed to appellant Madan Singh were simple in nature and only a single head injury on the deceased Chhindo Bai had been attributed to accused appellant Mangal Singh which according to the opinion of PW3 Dr.M.S.Teena was found to be fatal. Hence, in this background, the conviction of appellant Madan Singh under Section 304 IPC was erroneous. He concluded his arguments by contending that the conviction of appellants Teja Singh, Fauja Singh, Joginder Singh, Mangal Singh and Madan Singh with the aid of section 149 IPC was inherently unsustainable once it stood proved on record that the occurrence had taken place in the fields of the appellants and the trial court had held that the complainant party was in fact the aggressor.

The learned State counsel on the other hand prayed for the dismissal of the appeal as there was enough cogent evidence on record against the appellants which stood well corroborated by medical evidence as well.

both the parties as well as all the evidence and material on record.

In the case in hand, the occurrence having taken place on 6.8.1998 at about 8:00 A.M. cannot be disputed. It is not even in dispute that both the parties i.e. the complainant party as well as the accused party suffered injuries in the said occurrence and Chhindo Bai belonging to the complainant party lost her life in the unfortunate occurrence. The factum of the accused party having suffered grievous injuries in the occurrence is borne out from the testimony of PW1 Dr. Hardip Singh Sethi who medico-legally examined appellants Chiman Singh, Mangal Singh, Fauja Singh and Bhajan Singh on 6.8.1998 at 10:30 A.M. It is also a matter of record that a cross case was registered against the complainant party under Sections 326, 325, 324, 323, 148 read with Section 149 IPC on the basis of the statement of complainant Chiman Singh.

It is an admitted case of both the parties that there had been a long pending civil dispute between them pertaining to 25 kanals 18 marlas of land and it had also been decided between them that whosoever out of the two emerged victorious in the civil litigation would get the possession of 2 kanals of vacant land. It is a matter of record that the accused party succeeded in the civil litigation and they were held to be entitled to be in possession of the land by the civil court. Somuch so that the appeal filed by the complainant party before the Additional District Judge was dismissed and thereafter the second appeal preferred by the complainant party impugning the judgment and decree dated 30.03.1998 of the appellate court was dismissed by the High Court in limine. Hence, in this background one fact which clearly emerges is that on the date of occurrence i.e. on 6.8.1998, not only was there no civil dispute regarding this land pending between the parties but the land on which the occurrence took place was in the possession of the accused party as can be noticed from Ex.P25 which is the site plan prepared

relevant time of occurrence any crops were standing on the land. In fact, at that point of time it was a vacant piece of land and even as per the complainant party the land was just being irrigated.

In this background, I have no hesitation to endorse the findings of learned trial Court that the complainant party was in fact the aggressor and initiator of the occurrence. The questions thus that need determination are (i) Whether appellants Teja Singh, Joginder Singh, Mangal Singh and Madan Singh could have been convicted under Section 148 IPC?, (ii) Whether all the appellants could be convicted under Section 304 read with Section 149 IPC and (iii) Whether the accused party exceeded their right of private defence in causing injuries to the complainant party, resulting in the death of Chhindo Bai?

I am in agreement with the submissions of the learned senior counsel for the appellants that the trial court erred in convicting Teja Singh, Joginder Singh, Mangal Singh and Madan Singh with the aid of Section 149 IPC as an offence under Section 304 IPC is unsustainable with Section 149 IPC and under Section 148 IPC.

For holding the appellants guilty under Section 148 IPC they should not only have been a member of an unlawful assembly but must have been shown to have used force in prosecution of their common object coupled with being armed with a deadly weapon which on being used was likely to cause death. In the facts and circumstances of the case, their assembly cannot be termed as an unlawful assembly. Hence, the applicability of Section 148 IPC itself would be questionable. The appellants Teja Singh, Joginder Singh, Mangal Singh and Madan Singh could not have thus been convicted for offence under Section 148 IPC. The appellants Teja Singh, Joginder Singh, Mangal Singh and Madan Singh deserve benefit of doubt and are accordingly acquitted of the charges under

Coming to the second question whether the appellants could be convicted under Section 304 read with Section 149 IPC, it would be relevant to reproduce Section 149 IPC which reads as under:-

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object: If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

A bare reading of this Section makes it evident that for attracting the provisions of this Section, the formation of an unlawful assembly and knowledge of the persons thereof about the consequences which may follow have to be present. The emphasis, as is evident on a bare reading of the Section is, on common object and not on common intention. In this background once it stands proved on record that the appellants were in possession of the land on which the occurrence took place, then there could not have been any question of them, constituting an unlawful assembly. Moreover, to attract culpability under Section 149 IPC, it must be kept in mind that Section 149 IPC does not create any independent or new offence but deals with the vicarious liability of the members of the unlawful assembly for acts which they must have done in prosecution of a common object for which, inference qua their intention, if any, will have to be gathered from the nature of the assembly, arms used by them and behavior of the assembly during the occurrence and just prior to the same. In cases like the one in hand, specially when the complainant party emerges as the aggressor it would not be just in convicting the accused with the aid of Section 149 IPC. The appellants

acts. I have, therefore, no hesitation in holding that appellants Teja Singh and Joginder Singh could not be held liable and convicted under Section 304 read with the aid of Section 149 IPC. Accordingly, they are acquitted of the charge under Section 304/149 IPC. The appellants Teja Singh and Joginder Singh could at best be convicted only for the injuries caused by them by their individual acts. Accordingly, conviction of appellant Teja Singh is maintained under Section 323 IPC and conviction of appellant Joginder Singh is maintained under Section 324 IPC. The sentence of appellant Teja Singh under Section 323 IPC and the sentence of appellant Joginder Singh under Section 324 IPC is reduced to the period already undergone by them under the respective Sections.

Coming to the next submission of the learned counsel whether the accused party exceeded their right of private defence, in my view, looking at the facts and circumstances of the case and the injuries suffered by both the parties, the accused party did exceed their right of private defence inasmuch as the deceased Chhindo Bai, a lady, was unarmed and did not cause any injury to anyone from the accused party. Thus there was no threat perception from her side atleast.

A moot question which would arise is whether the appellant had the intention to cause such injuries to the deceased Chhindo Bai so as to cause her death? A perusal of the sequence of events leading to the occurrence in hand and ultimately the manner in which Chhindo Bai met her end indicates the absence of any intention specially when it was the complainant party who had aggressed upon the land in the possession of the accused party. A distinction shall have to be drawn between the roles attributed to appellants Madan Singh and Mangal Singh who inflicted injuries on deceased Chhindo Bai. It was appellant Mangal Singh who inflicted a single blow on the deceased as against appellant Madan Singh who

appellant Mangal Singh, who could be held liable and that too for an offence punishable under Section 304-II IPC, for having knowledge that his act could lead to the death of Chhindo Bai.

However, so far as appellant-Madan Singh is concerned, it is to be noticed that he allegedly inflicted only a single blow on the deceased which was simple in nature, therefore, he cannot be held liable for the offence punishable under Section 304 IPC. Accordingly, appellant-Madan Singh is acquitted of the charge under Section 304 IPC, however, he is convicted for the offence punishable under Section 323 IPC. He stands sentenced to the period already undergone by him for the offence under Section 323 IPC

In the present case, I am of the opinion that the intention of the appellant-Mangal Singh to kill the deceased, if any, has not been proved beyond a reasonable doubt and the appellant is thus entitled to the benefit of doubt. It would therefore not be possible to sustain his conviction under Section 304 IPC once the complainant party has been held to be an aggressor. In the circumstances, the appeal is partly allowed and conviction of appellant-Mangal Singh is altered from one under Section 304 to Section 304-II IPC.

In this view of the fact that the occurrence took place almost 21 years ago and he has already undergone the agony of protracted trial, the sentence imposed upon appellant-Mangal Singh is reduced to rigorous imprisonment for 06 years without any alteration in the fine imposed by the trial Court. The accused/appellant-Mangal Singh is on bail. His bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure his custody.

22.02.2019

(MANJARI NEHRU KAUL)
JUDGE*rupi***Note:** Whether speaking/reasoned
Whether Reportable:

Yes / No

Yes / No