

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

(1) CRA-D-407-DBA-2003 (O&M)

State of Punjab

...Appellant(s)

Versus

Pappu and others

...Respondent(s)

(2) CRA-S-1452-SB-2002 (O&M)

Gurmit Singh and another

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

Date of decision: 06.11.2019

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

Present: Mr. A.A. Pathak, Addl. A.G., Punjab
for the appellant(s) in CRA-D-407-DBA-2003 and
for the respondent(s) in CRA-S-1452-SB-2002.

Ms. Sakshi Singh, Advocate/Amicus Curiae
for the appellant(s) in CRA-S-1452-SB-2002.

H.S. MADAAN, J.

Briefly stated facts of the case as per prosecution story are
that on 12.10.1996 at about 9.00 am, Pooran Singh, Gulzar Singh, Massa
Singh, Balkar Singh son of Chanchal Singh, Balkar Singh Sarpanch son
of Harbans Singh, Avtar Singh, residents of Village Padhri, were
canvassing in connection with SGPC elections and when they had

reached near clinic of Dr. Ajit Singh son of Sawinder Singh, then Pooran Singh son of Mohinder Singh armed with a kirpan, Kashmir Singh having a gandasi, Balbir Singh son of Mohinder Singh having a knife, Mohinder Singh son of Sahib Singh having a dang, Gurmit Singh, Swaran Singh accused having dangs, Pappo and Billu having sotas, Jagtar Singh relative of Pooran Singh Ex.Sarpanch, Piara Singh and Salwant Singh accused empty handed came across them coming from the side of Gurudwara. Pooran Singh Ex.Sarpanch raised a lalkara exhorting his co-accused to teach a lesson to Balkar Singh and others for the previous quarrel with them and saying that he gave a kirpan blow to Pooran Singh on his head, Kashmir Singh accused gave a gandasi blow on his right leg, when Gulzar Singh tried to intervene, Balbir Singh son of Mohinder Singh gave a knife blow on his back, right forearm and left arm, Mohinder Singh gave a dang blow on forearm of Pooran Singh, Pappo gave a sota blow on the right forearm of Pooran Singh, Billu gave a sota blow on his left arm, Jagtar Singh, Piara Singh and Salwant Singh continued instigating their co-accused that Pooran Singh and his companions be not spared. Massa Singh, Avtar Singh and Balkar Singh Sarpanch son of Harbans Singh besides several other persons were there, who intervened to save Pooran Singh and others from the accused and then the assailants ran away with their respective weapons. The injured were taken to Civil Hospital at Attari, where they were medico-legally examined. The motive for the incident was that prior to the incident, there was a dispute between the parties of Pooran Singh, Ex. Sarpanch and

Balkar Singh, the current Sarpanch and for that reason, injuries had been caused. On receipt of MLRs of the injured, ASI Partap Singh (for short 'the IO') went to PHC Attari and he recorded statement of Pooran Singh injured. Since formal FIR had already been registered on the basis of statement of Pooran Singh son of Mohinder Singh and version of Pooran Singh son of Mangal Singh also related to that incident, therefore, separate FIR was not registered. Investigation of this case started. The IO went to the place of occurrence and prepared rough site plan thereof. He recorded statements of witnesses. Accused were arrested in this case. While being interrogated, accused Kashmir Singh and Billu suffered disclosure statements on 04.12.1996 and got recovered gandasi and dang from their possession, which was seized by the IO.

After completion of investigation and other formalities, the challan against the accused was prepared and filed in the Court of Illaqa Magistrate at Amritsar. Such Magistrate supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C and then finding that the offence under Section 307 IPC for which the accused had been booked was exclusively triable by the Court of Sessions, vide detailed commitment order, committed the case to the Court of Sessions, from where, it was assigned to Addl. Sessions Judge (Adhoc), Amritsar.

Finding a prima facie case, charge for offences under Sections 148, 307, 326, 323 and 149 IPC was framed against the accused, to which, they pleaded not guilty and claimed trial. It may be mentioned

here that Mohinder Singh son of Sahib Singh had already died and proceedings against him stood abated.

During the course of prosecution evidence, it examined PW1-Dr. Vikramjit Singh, PW2-Dr. Baljit Singh, PW-3 ASI Partap Singh, PW-4 Pooran Singh son of Mangal Singh, PW5 Gulzar Singh, PW-6 ASI Sakkattar Singh and PW-7 SI Gulpinder Singh.

After the prosecution evidence was closed, statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them but they denied the same, contending that they were innocent.

During their defence evidence, the accused examined Dr. Gurmanjit Rai as DW1, Dr. Jagdish Gargi as DW2 and Darshan Singh as DW3.

DW1 Dr. Gurmanjit Rai proved copy of statement made by him in the cross case against Balkar Singh and others as Ex.DA.

DW2 Dr. Jagdish Gargi stated that a medical board was formed to ascertain the cause of death of Mohinder Singh and he was Chairman of the Board. He proved copy of the statement which was made by him in the cross case as Ex.DB.

DW3 Darshan Singh stated that the summoned record was not in his custody.

After hearing arguments, the trial Court convicted accused Pooran Singh and Gurmit Singh for offences under Sections 326 and 323 IPC respectively and sentenced accused Pooran Singh to undergo

rigorous imprisonment for 04 years and to pay a fine of Rs.2000/- and in default of payment of fine, to undergo further RI for 02 months under Section 326 IPC and accused Gurmit Singh was sentenced under Section 323 IPC to undergo rigorous imprisonment for 01 year, whereas, other accused were acquitted of the charge framed against them, vide judgment dated 07.09.2002.

Both the accused/convicts aggrieved by judgment of their conviction and sentence have filed an appeal before this Court, notice of which was issued to the State and it has put in appearance through counsel. It may be mentioned here that the State has also approached this Court under Section 378(3) Cr.P.C for permission to file an appeal being aggrieved by the verdict of acquittal in favour of the remaining accused. Such leave was granted and notice was given to the accused/respondents who have put in appearance through counsel.

Learned counsel, who had filed appeal on behalf of the appellant/convicts did not cause representation and Ms. Sakshi Singh, Advocate was appointed amicus curiae to assist the Court on behalf of the appellant/convicts in CRA-S-1452-SB-2002 in the forenoon session. A complete set of paper book was supplied to her and the matter was taken up for hearing in the afternoon sitting at the end of the cause list.

We have heard learned counsel for the parties besides going through the record.

The reasons given by the trial Court for arriving at the conclusion are as follows:-

- As per prosecution story and defence version, the incident had taken place on the fateful day at 9.30 am near clinic of Dr. Ajit Singh, pointing out thereby that both the parties had conflicted with each other and were locked in a free fight, leading to the inference that both the parties were aggressors.
- There being discrepancies between statements of PWs Pooran Singh and Gulzar Singh with regard to the accused, who had inflicted injuries, as such inconsistency in their statements on material points.
- Absence of evidence that injuries were inflicted by Pooran Singh with an intention and knowledge to cause death and injury No.3 alleged to be dangerous was not of such type, which could result in death of the injured, since it was incised wound 3 x 1 cm, depth of which was not probed on right side of forehead. In that way, nature of such injury could taken to be grievous.
- There being no evidence supported by X-ray report that injury No.4 was grievous.

The reasoning given by the trial Court is appropriate and convincing. The judgment passed by the trial Court is well reasoned and does not have any content of perversity, having any element of arbitrariness or any violation of settled judicial principles. In such an eventuality, interference by this Court, while exercising appellate

jurisdiction, in our view is not called for. Accused Pooran Singh and Gurmit Singh were rightly convicted for offence under Sections 326 and 323 IPC respectively. The sentence imposed upon them is certainly not on the higher side. Learned counsel for the appellants has vehemently argued that the matter had since been compromised between the parties; they belong to the same village; the incident had taken place about 23 years ago and they had not been involved in any other quarrel thereafter, therefore, the quantum of sentence be reduced and they be sentenced to imprisonment already undergone by them in this case, which is stated to be of 5/6 months only. But we are not inclined to accept that contention and reduce the sentence for such like reasons, lest that should send a wrong message in the society of being let off lightly for committing serious offences in such a manner. Therefore, the appeal filed by accused/convicts lacks merit and is dismissed. As far as appeal filed by the State against acquittal of other accused, we do not find any ground to interfere with the verdict of the trial Court in that regard and convert the acquittal of such accused into conviction and sentence. Therefore, the appeal filed by the State is also dismissed.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

06.11.2019

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Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No