

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

CRA-S-2483-SB-2006 (O&M)

Date of decision: 07.01.2020

Jagroop Singh and others

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Baltej Singh Sidhu, Advocate for the appellant.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J. (Oral)

Accused Jagroop Singh, Hardev Singh, Manjit Singh, Dalbir Singh, Jarnail Singh and Chinda Singh were booked by police of Police Station Sadar, Sri Muktsar Sahib in FIR No.295 dated 29.11.2002 for offences under Sections 307, 148, 149, 427 IPC and Section 27 of the Arms Act.

Briefly stated facts of the case are that criminal machinery in this case was set into motion by complainant Dal Singh son of Hamir Singh, resident of Village Bhagsar, District Sri Muktsar Sahib by making a statement to the police in which he contended that he has another brother by name of Jagroop Singh who is elder to him. In the year 1972, their father Hamir Singh had owned about 30 acres of

agricultural land. Out of the said land, Sh. Hamir Singh retained 10 acres with him as his share and gave 10 acres each to both his sons, namely Dal Singh and Jagroop Singh. At that time, Hamir Singh was residing with the complainant, since 05 acres of land share of Hamir Singh was to go to Jagroop Singh, so on 05.05.1997, Hamir Singh agreed to sell 37K-15M of land which was to go to share of Jagroop Singh in favour of Sarabjit Singh, son of the complainant, receiving Rs.95,000/- which he had handed over to Jagroop Singh. The remaining amount was deposited with the bank on account of installments of tractor of Jagroop Singh. Jagroop Singh had consented to that arrangement. After receiving the full consideration amount, Hamir Singh suffered a Civil Court decree with regard to 10 acres of agricultural land in favour of Sarabjit Singh on 01.08.1987. However, in the year 1996, Sh. Hamir Singh started residing with his other son Jagroop Singh and at his instance, he challenged the Civil Court decree which he had suffered in favour of Sarabjit Singh. Accordingly, the said decree was set aside by the Court. Sarabjit Singh son of the complainant had preferred an appeal against that judgment before District Judge, Sri Muktsar Sahib and an order directing the parties to maintain status quo was passed.

On 28.11.2002, the complainant accompanied by his son Sarabjit Singh, Kulwinder Singh son of Anup Singh and Gurmeet Singh son of Lachman Singh was present in his land adjoining the

disputed land. At about 8/9.00 PM, electric bulb of the tubewell room was glowing, then Jagroop Singh armed with a gandas, Manjit Singh son of Jagroop Singh, Hardev Singh son of Jagroop Singh armed with Barchas and Dalbir Singh son of Hardev Singh armed with a Toka, Jarnail Singh son of Jangir Singh armed with a double barrel licensed gun, Chinda Singh armed with a gandas accompanied by some other persons arrived there in a tractor trolley HMT 2511 belonging to Jarnail Singh. They started raising lalkaras. Jarnail Singh opened the attack and fired shots from 12 bore gun aiming those towards the complainant Dal Singh with an intention to kill him. The shots went past his ear. They also damaged his jeep bearing registration No.PAA-5800. All the accused raised lalkaras to kill them to get the possession of the land in dispute. When the complainant and other family members retaliated, then accused persons left the tractor trolley there and ran away. According to the complainant if he and persons along with him had not retaliated, then the accused/assailants might have caused injuries to them. Efforts for arriving at compromise between the parties were made but those did not prove to be fruitful. As such, the complainant informed the police in that regard.

After recording of the FIR, the matter was investigated. SI Gurcharan Singh along with other police officials went to the spot and took into possession jeep and tractor vide separate recovery memos. Site plan of the place of incident was prepared. Statements of witnesses

were recorded. Subsequently, the investigation conducted was verified by DSP, Sub Division, Sri Muktsar Sahib and he found Chinda Singh son of Jangir Singh to be innocent. He further observed that offence under Section 307 IPC was not attracted. Accused were arrested. 12 bore DBBL gun was recovered from Jarnail Singh which was taken into police possession vide recovery memo.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate, who 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 offence under Section 307 IPC was exclusively triable by the Court of Sessions, vide detailed commitment order, committed the case to Court of Sessions and it was assigned to Addl. Sessions Judge, Sri Muktsar Sahib.

Formal charge against the appearing accused was framed to which they pleaded not guilty and the trial began, during the course of which, the prosecution moved an application under Section 319 Cr.P.C. to summon Chinda Singh as an additional accused and he put in appearance. Thereafter, the charge for offences under Sections 148, 307, 427 read with Section 149 IPC and Section 27 of the Arms Act was framed against all the accused, who pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution

examined the following witnesses:-

PW1-Gurmeet Singh provided eye witness account of the incident.

PW2-Dal Singh complainant gave ocular version of the incident.

PW3-HC Sukhmandar Singh proved recovery of 12 bore DBBL gun along with armed licence from Jarnail Singh which was converted into a sealed parcel.

PW4-Constable Swaran Singh, a formal witness submitted his affidavit Ex.PC in which he contended that on 23.12.2002, MHC Surinder Singh had handed over a 12 bore gun in order to deposit it with the Forensic Science Laboratory, Chandigarh and that he was handed over 10 cartridges for that purpose and he had not tampered with the case property till it remained in his possession.

PW5-Ashwani Kumar Sharma, Photographer proved photographs of the place of occurrence so taken by him along with negatives as Ex.MO-1 to MO-16.

PW6- SI Gurcharan Singh (retired) who had carried out the investigation in this case deposed in that regard.

PW7-Gurmail Singh Patwari had submitted khasra girdawari for Sauni 2002 as Ex.PH, Jamabandi for the year 1999-20 Ex.PJ, Jamabandi for the year 1999-20 Ex.PL.

PW8-Darshan Singh Clerk, DC Office, Faridkot proved the

Arms Licence issued to Jarnail Singh by District Magistrate, Faridkot vide order dated 12.01.1980.

PW9-Surinder Pal Singh, Clerk, DTO Office, Sri Muktsar Sahib proved photocopy of RC of jeep bearing registration No.PAA-5800 as Ex.MO-17 and entry regarding its registration Ex.PW-9/A.

Thereafter, evidence of prosecution was closed

Statements of the accused was 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 are innocent and have been falsely involved in this case. They placed on record copy of judgment dated 30.07.2002 as Ex.D1, decree sheet dated 30.07.1987 as Ex.D2, copy of judgment dated 01.08.1987 as Ex.D3 and decree sheet dated 01.08.1987 as Ex.D4.

After hearing arguments, the trial Court had convicted the accused for offences under Sections 148 and 427 IPC, whereas, acquitted them of the charge for offence under Section 307 read with Section 149 IPC and Section 27 of the Arms Act. Resultantly, the accused were sentenced to undergo imprisonment for a period of one year and to pay fine of Rs.500/-, in default of payment of fine to undergo further imprisonment for a period of one month under Sections 148 and 427 IPC, vide judgment dated 25.11.2006.

The accused/convicts felt aggrieved by the said judgment and have approached this Court, by way of filing an appeal, notice of

which was issued to the State, which has put in appearance through counsel.

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

Here, it needs to be noticed that learned Addl. Sessions Judge, Sri Muktsar Sahib disbelieved the prosecution story to a major extent as regards offences under Sections 307 and 149 IPC and convicted the accused for offence under Sections 427 and 148 IPC only. I find that the entire approach of the trial Court was wrong and erroneous. Six persons armed with dangerous weapons, one of them having a 12 bore DBBL gun having a common intention and common object, trespassing in the fields of complainant after having made due preparation, would go away without even causing a scratch to the complainant and persons accompanying him, seems somewhat difficult to believe. Furthermore, it seems highly improbable that so many persons having dangerous weapons would simply cause damage to jeep and then go away. It needs to be mentioned here that the parties are related closely and a dispute has been there between them with regard to the landed property which might have provided a motive for the complainant party to lodge FIR against the accused as a pressure tactic. It has further been pointed out by learned counsel for the appellants that though the accused/convicts do not accept any criminal liability, but the matter has been compromised between the parties,

vide written compromise Annexure C1, which is dated 20.08.2016. Under Section 320 Cr.P.C., offence under Section 427 IPC can be compounded by a person to whom damage has been caused. Therefore, for such reason also, the accused are entitled to earn an acquittal.

Even otherwise, I find that the prosecution has been unable to prove its charge against the accused beyond a shadow of reasonable doubt with regard to offences under Sections 427 and 148 IPC. The evidence adduced by the prosecution that the accused had caused damage to the jeep is not very convincing or reliable. Therefore, the conviction of the accused/convicts/appellants for offences under Section 427 and 148 IPC is not sustainable. The trial Court by misappraisal of evidence and wrong interpretation of law has wrongly convicted the accused for offences under Sections 427 and 148 IPC. The appeal seems to have merit and the same is accepted. Resultantly, the impugned judgment of conviction and sentence passed against the accused is set aside and they are acquitted of the charge framed against them.

07.01.2020

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(H.S. MADAAN)
JUDGE

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