

## IN THE HIGH COURT OF PUNJAB &amp; HARYANA AT CHANDIGARH

1. CRA-S-2217-SB-2005 (O&M)  
Date of decision : September 6<sup>th</sup>, 2022

...

Gajanand and others

.....Appellants

vs.

State of Haryana

.....Respondent

2. CRA-S-78-SB-2006 (O&M)

...

Manoj

.....Appellant

vs.

State of Haryana

.....Respondent

**Coram: Hon'ble Mr. Justice H. S. Madaan**

Present: Mr.Vivek Khatri, Advocate assisted by  
Ms. Harleen Ahluwalia, Advocate and  
Mr. Sushil Bhardwaj, Advocate for appellants No. 1, 3 and  
4 in CRA-S-2217-SB-2005  
(appellant no.1 Ganjanand since deceased and appeal pursued  
by his son Sandeep Sharma) and as  
amicus curiae for appellant No.2 in CRA-S-2217-SB-2005  
and for the appellants in CRA-S-78-SB-2006

Mr. Vijesh Sharma, Additional Advocate General,  
Haryana.

...

**H. S. Madaan, J.**

1. Vide this judgment, I intend to dispose of two appeals,

bearing CRA-S-2217-SB-2005, filed on behalf of Gajanand, Ram Charan, Vinod and Jaipal, with Gajanand having expired, however, appeal filed by him being pursued by his son Sandeep Sharma and CRA-S-78-SB-2006 filed on behalf of Manoj, as both these two appeals have been filed against the same judgment of conviction and sentence, passed against the accused-appellants.

2. Briefly stated, facts of the case, as per the prosecution story are that, on 24.5.2003, on receipt of a VT message from General Hospital, Bhiwani, with regard to admission of injured Chhotu Ram son of Puran Singh, Hari Krishan son of Shri Dutt and Sudama son of Anant Ram, all residents of Sirsa Gogra, there HC Subhash Chander, from Police Post Kharak Kalan, went to the said hospital and recorded statement of injured Chhotu Ram as Exhibit PA. Inter alia in the statement, complainant – injured stated that on that very day i.e. 24.5.2003, at about 11-11.30 a.m., while he was going to provide water to his cattle tethered in a shed, on the way he came across his cousin Hari Krishan. On seeing them, Gajanand, Jaipal and Ram Charan all sons of Mani Ram, Manoj son of Gajanand, Ishwar son of Hukam Chand and Vinod son of Jaipal came there from the house of Ram Charan. All of them were armed with *lathis* and *farsies*. Gajanand having a *lathi* raised a *lalkara* and thereafter gave a *lathi* blow on the knee of Hari Krishan, whereas Ram Charan gave a *farsi* blow on left foot of the complainant, Jai Pal gave a *farsi* blow on the head of Hari Krishan. In the meanwhile, Sudama son of Anant Ram-grand son of complainant came there. Manoj inflicted a *farsi*

blow on his head, as a result of which Sudama fell down. Ishwar gave a *lathi* blow to the Hari Krishan hitting him on the back. He further gave a blow with *lathi* on the right knee of Hari Krishan. Vinod gave a *lathi* blow, hitting Hari Krishan on his right hand fingers, whereas Gajanand gave one more *lathi* blow on the back of Sudama, while he was lying on the ground. In the meanwhile, Mahabir and Rajender residents of Kharak Kalan and Mahesh son of Hukam Chand came there. All three of them were having swords. They were accompanied by 6-7 other boys, who were known to the complainant. They remarked that the complainant party would not be spared on that day. The complainant party raised alarm upon which his cousin Sri Dutt, his son Pawan Kumar alongwith other persons arrived at the spot and on their arrival, the accused ran away with their respective weapons. However, while leaving the spot, they threatened to kill the complainant party in future.

3. After recording such statement of the complainant as Exhibit PA, HC Subhash Chander put his endorsement thereon, sending *ruqa* to the Police Station, on the basis of which formal FIR Exhibit PA/1 was recorded at Police Station Sadar, Bhiwani. The investigation in this case was marked to ASI Rohtash Singh. The Investigating Officer went to the place of incident and prepared rough site plan thereof as Exhibit PK. He recorded statements of witnesses. The accused were arrested in this case.

4. After completion of investigation and other formalities, challan against accused Manoj, Rajender, Mahender, Gajanand and

Ram Charan, was prepared and filed in the Court of Illaqa Magistrate, Bhiwani. Learned 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 offence under Section 307 IPC was exclusively triable by the Court of Sessions, vide his order committed the case to the Court of Sessions, from where it was assigned to Additional Sessions Judge, Bhiwani. On receipt of the case in his Court, learned Additional Sessions Judge, Bhiwani, framed formal charge against the accused before him, to which the accused pleaded not guilty and case was fixed for evidence of the prosecution.

5. After recording testimony of PW Chhotu Ram, an application under Section 319 Cr.P.C. was filed on behalf of the State for summoning of additional accused. Accordingly, the application was accepted and Jaipal, Vinod and Mahabir, who had not been challaned by the police earlier, were summoned by the Court as additional accused to face trial alongwith the accused already challaned. After the additional accused had put in appearance fresh charges for offences under Sections 148 IPC and 323/307/506 IPC read with Section 149 IPC was framed against the accused, to which they pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

6. During the course of prosecution evidence, the prosecution examined the following witnesses:-

PW-1 Chhotu Ram – injured/complainant and PW-2 Hari

Krishan & PW-6 Sudama (both of them also received injuries in the incident), provided the ocular version of the incident deposing in consonance with the prosecution story.

PW-3 Dr. Anil Kumar Sharma, stated that he had radiologically examined injured PW Sudama, PW- Hari Krishan and vide his report Exhibit PB, he had observed a depressed fracture on the right frontal bone on the person of PW Sudama, whereas in terms of report of Hari Krishan Exhibit PC, his X-Ray examination did not reveal any fracture.

PW-4 SI Ajaib Singh , who on receipt of *ruqa* had recorded formal FIR Exhibit PA/1 at Police Sttion Sadar Bhiwani, deposed in that regard.

PW-5 ASI Zile Singh stated that he had recorded statement of Kanwarpal, Draughtsman.

PW-7 Dr. Rajender Rai, stated that he had medico legally examined Sudama on 24.5.2003 and had observed following injuries on his person :-

1. Clean cut incised wound, hair root cut, spindle shaped, margins regular, size 6 c.m. x 4 c.m. brain deep with depressed fracture. This wound was divided into two parts by a flap of scalp of size 4 c.m. long. Wound was placed obliquely, upper end lies near the mid line and the lower end lies 4 c.m. lateral to mid line. Lower end was 6 c.m. above right eye brow.

Wound was placed in right frontal region.

Bleeding was present.

The nature of injury was declared dangerous to life and type of weapon used was sharp and probable duration of injury was less than 12 hours.

He proved MLR of Sudama as Exhibit PD. He further stated that he had medico legally examined injured Hari Krishan on that very day and had observed following injuries on his person :-

1. Lacerated wound over scalp, left temple, margin irregular, 4 c.m. x .8 c.m. into bone deep, 7 c.m. above pinna and 7 c.m. behind the hair line oblique. Bleeding was present. X ray of the part and surgical opinion was advised.
2. Swelling on left zygomatic prominence was present. No crapitus was present. Size was 3 c.m. x 3 c.m. Colour changes were not present. Tenderness was present. X-ray of the part was advised.
3. Injury on little finger right side was present. attitude, movements were restricted and painful. No external marks of injury were seen. X-ray of the part and ortho opinion was advised.

4. A contused abrasion over lateral side of right knee joint of the size of 3 c.m. x 3 c.m. was present. Red colour was present. Tenderness was present. Slight restriction of movements was present. X-ray of the part and ortho opinion was advised.

The weapon used for injuries was opined as blunt and the probable duration was stated to be within 12 hours. He proved copy of MLR as Exhibit PE. He further stated that on that very day he had examined Chhotu Ram son of Puran and found the following injury:-

1. Penetrating wound of size .5x.5 c.m. into muscle deep was present. Bleeding was present over lower leg on front.

The nature of injury was declared simple and the kind of weapon used was opined as penetrating type. The probable duration was given as within 12 hours. He sent *ruqqa* Ex.PG to police station. He gave opinion Ex.PH/1 that injured was fit to make statement, on police application Ex.PH. On 17.8.2003 on police request Ex.PJ, he gave opinion Ex.PJ/1 that injury described in MLR Ex.PD of Sudama was possible with the weapon Ex.P1 (farsa) shown to him. During his cross examination, he testified that at the time of examination Sudama was conscious and well oriented. He further stated that injury on the person of Sudama was declared dangerous to life after observing the condition of the wound. He proved copy of MLR of Sudama as Exhibit PD.

PW-8 ASI Rohtash Singh, the Investigating Officer of this case deposed with regard to the investigation conducted by him proving various documents.

PW-9 Kanwar Pal, Draughtsman, who had visited the spot and prepared the scaled site plan Exhibit PS on 10.8.2003, deposed in that regard.

The prosecution relied upon various documents. With that the prosecution evidence got concluded.

7. Thereafter, statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused in the prosecution evidence, were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

8. Accused Manoj , Ram Charan, Rajender, Gajanand and Mahender took up identical plea contending that they were innocent and had not committed any offence and that they had been falsely involved by the complainant party in collusion with the police. The plea raised by Mahabir was that he had been declared innocent by the police and he had been falsely involved in this case by the complainant party in collusion with the police. To the similar effect happened to be the plea raised by accused - Jaipal and Vinod.

9. During their defence evidence, the accused examined two witnesses i.e. DW-1 HC Bhim Singh, who produced record of FIR No. 189 dated 31.5.1999 at Police Station Sadar, Bhiwani and

FIR No. 192 dated 24.5.2003 relating to the same Police Station. This witness proved copies of those FIRs as Exhibits DF and DG, respectively. DW-2 Ved Parkash from General Hospital, Bhiwani, had brought the summoned record and he produced bed head ticket of Gajanand as Exhibit DH stating that as per bed head ticket Gajanand was admitted in General Hospital, Bhiwani on 21.5.2003 and was discharged on 24.5.2003.

10. After hearing the arguments, learned trial Court in paragraphs No. 40 and 41 of the judgment dated 28.11.2005, concluded as follows :-

“40. As a sequel to my aforesaid discussions, it is held that prosecution has been successful in bringing home guilt against the accused Gajanand, Ram Charan, Manoj, Vinod and Jaipal for the offence under Section 148 IPC as the accused had constituted an unlawful assembly and were armed with weapons. The prosecution also proved that these five accused caused injuries to PW Chotu Ram and PW Hari Krishan and hence they are also liable for offence under Section 323 IPC read with Section 149 IPC. These five accused in prosecution of common object of unlawful assembly caused injury on the person of Sudama which was dangerous to life under such circumstances that

if Sudama had died then they would have been guilty of murder and hence the prosecution also successfully proved its case against these five accused Gajanand, Ram Charan, Manoj, Vinod and Jaipal for the offence under Section 307 IPC read with Section 149 IPC. The above named accused in prosecution of the common object of unlawful assembly also intimidated complainant PW Chotu Ram and hence the prosecution also succeeded in bringing home guilt against the above named five accused for the offence under Section 506 IPC read with Section 149 IPC.

41. The prosecution was unable to bring home guilt against accused Mahender, Mahabir and Rajender beyond shadow of reasonable doubt and they are extended benefit of doubt and are acquitted of the charged leveled against them.”

11. In pursuance of the order passed on 30.11.2005, all the five accused -convicts, namely, Manoj, Gajanand, Ram Charan, Vinod and Jaipal were sentenced as under :-

| <i>Offence U/s</i>    | <i>Sentence</i>                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Under Section 148 IPC | Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for a period of one month. |

| <i>Offence U/s</i>                              | <i>Sentence</i>                                                                                                                                                                                  |
|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Under Section 307 IPC read with Section 149 IPC | Rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for a period of two months. |
| Under Section 323 IPC read with Section 149 IPC | Rigorous imprisonment for a period of six months.                                                                                                                                                |
| Under Section 506 IPC read with Section 149 IPC | Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for a period of one month.    |

All the substantive sentences were ordered to run concurrently.

12. This judgment of conviction and order of sentence, left the accused aggrieved and they had preferred appeals before this Court, which were admitted for regular hearing. On application having been filed, the remaining sentence of the appellants-accused was suspended and they were ordered to be released on bail, subject to their furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate, Bhiwani. Now the appeals have come up for final hearing.

13. I have heard, learned counsel for the appellants-accused, learned State counsel, besides going through the record.

14. As far as, appellant -Manoj, to whom injury with *farsi* on the head of injured Sudama, which was declared dangerous to life, has been attributed, appellant-Ram Charan, to whom injury with *farsi* on the left foot of complainant, which comes within the definition of Section 323 IPC has been attributed, their involvement in the incident stands adequately established by the prosecution by bringing on

record enough, cogent, convincing and reliable ocular evidence, supported by medical evidence.

15. However, involvement of other convicts, namely, Gajanand, Vinod and Jai Pal, is not duly proved and is rather suspect. The reason for saying so are many.

16. Firstly, the defence has brought evidence to show that Gajanand was admitted in Civil Hospital at Bhiwani and he was discharged therefrom on 24.5.2003 only. DW-2 Ved Parkash, an official from Civil Hospital, Bhiwani, had categorically stated so on the basis of documentary evidence, which cannot possibly be manipulated being record kept in the Civil Hospital, which is a government institution. It is highly unlikely, that Gajanand after being discharged from Civil Hospital, Bhiwani, would rush to the place of occurrence, some distance away, do necessary planning with his co-accused, then would assault complainant – Chhotu Ram, as well as Hari Krishan and Sudama, at about 11.00 -11.30 am.

17. Secondly, Gajanand had suffered injuries in an incident in which son of complainant, Chhotu Ram was an accused. Therefore, the complainant party had a motive to involve him in this case falsely.

18. As far as appellants Vinod and Jai Pal are concerned, after registration of the FIR, the matter was investigated and involvement of Vinod and Jai Pal was not found to be there. As such, they were not challaned and it was only during trial, after recording statement of complainant Chhotu Ram, when the

prosecution had filed an application under Section 319 Cr.P.C., the same was accepted and Vinod and Jai Pal were summoned as additional accused to face trial alongwith the other accused challaned in the case.

19. The second reason, which raises a doubt in the mind about involvement of Vinod and Jai Pal in the incident, is that although according to the case of prosecution, Vinod was armed with a *lathi* and Jai Pal with a *farsi* during the incident and Vinod had caused injury with *lathi* to Hari Krishan on fingers of right hand, whereas, Jai Pal had given a *farsi* blow on the head of Hari Krishan. But no weapon was recovered from possession of either Vinod or Jai Pal by the Investigating Officer.

20. The third reason making the involvement of these appellants-accused in the incident doubtful is that they are resident of Bhiwani, whereas the incident had taken place at Village Sirsa Ghogra. Such accused had brought evidence on record including proving documents to show that they had been residing at Bhiwani but the trial Court for unconvincing reason had rejected that contention.

21. It is to be kept in mind that in a criminal trial basically it is the duty of the prosecution to prove charge against the accused, beyond a shadow of reasonable doubt and such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is to render only reasonable and plausible explanation which may cause a reasonable doubt in the mind about

his guilt. He is not expected to prove his defence evidence with same exactness and rigor with which the prosecution is required to prove its case against the accused. The prosecution cannot take advantage of any weakness in the defence version so as to strengthen its case against the accused. Therefore, as regards involvement of appellants Gajanand, Vinod and Jaipal, a reasonable doubt does arise in the mind about their involvement in the incident. As per the law, benefit of doubt should be given to the accused. The trial Court had though noticed all the facts discussed above, but rejected the defence version giving unconvincing reasons and wrongly convicted Gajanand, Vinod and Jai Pal.

22. With involvement of these three , having not found to be there in the incident, conviction of the accused for offence under Section 148 and 149 IPC, is not sustainable, because basic ingredient of Section 148 IPC and Section 149 IPC is unlawful assembly, which in terms of Section 141 IPC, must consist of at least five members. Section 148 IPC deals with offence of rioting armed with deadly weapons. Section 146 IPC provides that whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, then every member of such assembly is guilty of the offence of rioting. Section 149 IPC provides that every member of unlawful assembly is guilty of offence committed in prosecution of common object. Therefore, neither offence under Section 148 IPC, nor under Section 149 IPC, survives.

23. Now, since, involvement of accused – Manoj and Ram Charan has been found to be there, they can be convicted with the help of Section 34 IPC for causing injuries to Chhotu Ram, Hari Krishan and Sudama, in furtherance of their common intention.

24. It needs to be mentioned here that there was delay of about 9 hours in lodging the FIR. The delay is looked down upon with suspicion by the Courts since that provides spontaneous and blemish-free version of the incident and with the passage of time, the element of truth in the version gets diluted and possibility of false implication after due deliberations and consultations can easily creep in. Such delay, in this case seems to have been utilized in throwing the net wide and implicating as many persons as possible of the opposite party.

25. The trial Court had acquitted three of the persons, namely in the FIR i.e. Mahabir, Mahender and Rajender, whereas involvement of other three persons, namely, Gajanand, Vinod and Jai Pal has also found to be not there.

26. Whereas, Manoj and Ram Charan are found to have caused injuries on the person of Chhotu Ram, Hari Krishan and Sudama, in pursuance of their common intention. Injury under Section 307 IPC on person of Sudama is attributed to Manoj. Whereas to Ram Charan simple injuries are attributed. It appears that the other simple injuries on person of the other injured were also caused by them in pursuance of the common intention. They are also found to be guilty of criminal intimidation.

27. It is to be kept in mind that merely for the reason that the version of the prosecution with regard to six of the alleged assailants had been disbelieved, does not mean that its case regarding Manoj and Ram Charan should also be discarded.

28. From the medical evidence brought on file by the prosecution, it comes out that Chhotu Ram, Hari Krishan and Sudama had suffered injuries on their person. Manoj, when arrested by the police, in this case had suffered a disclosure statement on 26.5.2003 and got a *farsi* recovered from his possession, which was then seized by the Investigating Officer. Similarly, Ram Charan, while in police custody on 1.6.2003, had suffered a disclosure statement under Section 27 and got recovered a *farsi* from his possession. Therefore, the prosecution has successfully proves its charge against Manoj and Ram Charan. The maxim *falsus in uno, falsus in omnibus* i.e. false in part, is false in whole, is not made applicable by the courts in India, rather an endeavor is made to separate grain from the chaff i.e. truth from the falsehood.

29. In view of the detailed discussion above, the appeal filed by Gajanand, Vinod and Jai Pal is accepted, with the result, the impugned judgment of conviction and sentence, passed against them is set aside and they are acquitted of the charge framed against them.

28. Whereas, the appeal(s) with regard to Ram Charan and Manoj, is dismissed. However, their conviction is modified and they are convicted as under:-

| <i>Name of the convict</i> | <i>Offence u/s</i>                             | <i>Sentence</i>                                                                                                                                                                                  |
|----------------------------|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Manoj</b>               | Under Section 307 IPC                          | Rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for a period of two months. |
|                            | Under Section 323 IPC read with Section 34 IPC | Rigorous imprisonment for a period of six months.                                                                                                                                                |
|                            | Under Section 506 IPC                          | Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for a period of one month.    |
|                            |                                                |                                                                                                                                                                                                  |
| <b>Ram Charan</b>          | Under Section 307 IPC read with Section 34 IPC | Rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for a period of two months. |
|                            | Under Section 323 IPC read with Section 34 IPC | Rigorous imprisonment for a period of six months.                                                                                                                                                |
|                            | Under Section 506 IPC                          | Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for a period of one month.    |

Accused-appellants Manoj and Ram Charan are stated to be on bail granted to him by this Court vide order dated 24.7.2006 and 1.9.2006, respectively, while suspending their remaining sentence.

Their bails are cancelled. Chief Judicial Magistrate, Bhiwani, is directed issue non-bailable warrants of arrest against them to get

them arrested and make them undergo the remaining part of their sentence of imprisonment. Necessary intimation be sent to Chief Judicial Magistrate, Bhiwani, in that regard.

September 6<sup>th</sup>, 2022

chugh

( H.S. Madaan )  
Judge

|                             |          |
|-----------------------------|----------|
| Whether speaking / reasoned | Yes / No |
| Whether reportable          | Yes / No |