

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

CRA-S-666-SB-2005 (O&M)

Date of pronouncement: 09.08.2022

Gurmit Singh @ Meeta and others

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr. Ranjan Lakhanpal, Advocate with
Mr. Ashutosh, Advocate and Mr. Karaj Singh, Advocate
for the appellants.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Accused Gurmit Singh @ Meeta, Jugraj Singh @ Raju along with their co-accused Kala Singh @ Surinder, Makhan Singh, Hardial Singh, Pargat Singh and Jaswant Singh faced trial by Addl. Sessions Judge, Ferozepur, in a case registered vide FIR No.55 dated 07.04.1999, for offences under Sections 302, 324, 323, 440, 447, 148 and 149 IPC and Section 27 of Arms Act, registered with Police Station Dharamkot. Kala Singh @ Surinder had absented from the proceedings and was declared a proclaimed offender, whereas, Makhan Singh s/o Chanda Singh, had expired and proceedings against him stood abated. During the pendency of the appeal, Jugraj Singh @ Raju and Jaswant Singh are also reported to have expired, therefore, proceedings *qua* them stand abated.

2. Briefly stated facts of the case as per the prosecution story are that on 07.04.1999, on receipt of the medico-legal report of Resham Singh at Police Station Dharamkot, a police party led by SI/SHO Bachan Singh, went to the Primary Health Centre, Dharamkot, where, Resham Singh injured was admitted and recorded his statement, wherein, he stated that he is resident of Village Mehruwala having three sons namely Gurdeep Singh, Gurnam Singh and Gurdial Singh; his first two sons are married whereas, third one namely Gurdial Singh was a bachelor; that his land and residential house were washed away in the flood water of the river, however, when the water level in the river receded, then some portion of the river bed got dried and the complainant had been residing in that portion of the river bed after constructing the chhans i.e. temporary huts for about two years; that the complainant had sown wheat and massar crops in about 10 acres of land; that on the said date i.e. 07.04.1999, the complainant had gone to the house of Jagtar Singh at Village Daulewala Kalan and was busy in the marriage ceremonies of his daughter Kulwant Kaur and even marriage procession had arrived, when at about 12:00 noon, they came to know that Harmeet Singh and Kala Singh sons of Surinder Singh along with some other persons were ploughing the crops with the help of tractors and that they were armed with guns and (dangs) sotis; on receipt of the said information, complainant Resham Singh along with his sons Gurdeep Singh and Gurdial Singh and daughter-in-law Balbir Kaur w/o Gurdeep Singh and his daughter Manjit Kaur went to their land after crossing the water of the

river in a boat at about 1:30 P.M. and they observed that Kala Singh s/o of Lakhwinder Singh armed with a 12 bore DBBL gun, Jaswant Singh s/o Avtar Singh also having a 12 bore DBBL gun, a son of Kashmir Singh, r/o of Village Saidewala, whose name the complainant party did not know (Pargat Singh) armed with 315 bore rifle; Harmeet Singh @ Meeta son of Surinder Singh armed with a gandas, Hardial son of Kuldeep Singh armed with a gandas; Makhan Singh s/o of Chanda Singh armed with a gandas, Raj Singh s/o Baldev Singh having a rifle were present there; on warned the complainant party, they warned the complainant party to turn back otherwise they would not be able to escape; the complainant party asked from Kala Singh and other persons of his party as to why they had ploughed their wheat crop, hearing that Kala Singh etc. started quarreling with the complainant party; Harmeet Singh raised a lalkara that complainant party be caught hold of and they should not be allowed to escape; hearing that Kala Singh fired a shot from his 12 bore DBBL gun directly towards the complainant party and the shot hit Gurdeep Singh in the chest, face, neck and left upper arm; causing him injuries, then Gurdeep Singh fell down; the complainant raised hue & cry, at which Harmeet Singh gave a gandas blow to him causing him injury on the little finger of right hand, then Hardial Singh gave a gandas blow hitting the complainant on the right thumb; the complainant party raised hue and cry (raula) then all the accused left the spot on their tractors; thereafter the complainant went towards Gurdeep Singh and found that he had already expired; the accused had demolished chhans of the complainant

party and threw away household articles lying in the chhans; the motive behind the occurrence was that the complainant party was cultivating the land of the river bed vacated by receding water of the river and accused forcibly wanted to take possession of that land.

The complainant after leaving Gurdeep Singh's dead body in security, went to the civil Hospital, Dharamkot for taking treatment for his injuries, where, the Doctor carried out his medico-legal examination and gave treatment to him; the complainant sought taking of action against the accused party; SI/SHO Bachan Singh, sent the said statement of Resham Singh (Ex.P6) after putting his endorsement Ex.P6/A to the police station on the basis of which, formal FIR was recorded; the Investigating Officer (IO) along with other police officials went to the spot and recovered the empty shell of 12 bore cartridges lying in the bushes close to the place of occurrence; that empty shell was got controverted into a parcel sealed with the seal of IO having inscription 'BS' and then, it was taken into possession vide recovery memo Ex.P7, attested by witnesses; the Investigating Officer had prepared inquest report with regard to unnatural death of Gurdeep Singh as Ex.P10; he then sent the dead body for examination to Civil Hospital, Zira on 07.04.1999 through letter Ex.P11 and sent Constable Darshan Singh and Gurmail Ram along with the dead body; the Investigating Officer took into possession the blood stained earth and sample of earth from the spot preparing their separate parcels sealing those with his seal having inscription 'BS'; specimen of sample seal were prepared separately, then

both the parcels of the earth were taken into possession vide a recovery memo Ex.P12, attested by the witnesses; the Investigating Officer prepared a rough site plan of the place of occurrence as Ex.P13; during the spot inspection, the Investigating Officer took into possession some plants of wheat and massar sown in the land and prepared their parcels sealing those with the seal bearing initial 'BS' and then those were taken into possession vide Ex.P14, attested by the witnesses.

The doctor, who had conducted the postmortem examination of the deceased after doing the needful handed over a vial containing pallets sealed with seal of Doctor and clothes of the deceased and documents of postmortem examination to a police official, who was accompanying the dead body; the said police official handed-over the dead body to the IO on 08.04.1999 who converted the clothes of deceased and one iron karha into a parcel sealing that with the seal having initial 'BS' and then took the same into possession vide recovery memo Ex.P15, which was attested by Constable Gurmail Ram and Constable Darshan Singh.

On 15.04.1999, the Investigating Officer arrested accused Kala Singh in this case and recovered a 12 bore DBBL gun No. 416060-97 from right hand of accused Kala Singh; the accused could not produce any licence for possession of the gun, as such, the gun was converted into a parcel by the IO and sealed with the seal having initial 'BS'; a specimen seal impression memo was prepared and seal after the use was handed-over to ASI Jagir Singh; the parcel of the gun was taken into possession

vide recovery memo Ex.P16.

On 15.04.1999, the IO took into possession tractor make Swaraj 855 bearing registration No. PB-47-1253 along with its registration certificate vide a separate recovery memo; on the same day, the IO also recovered gandasas from the right hand of Gurdial Singh taking the same into possession vide recovery memo Ex.P18 attested by witnesses; the IO also recovered a gadasa from the right hand of accused Gurmit Singh @ Meeta on 18.04.1999 and it was taken into possession vide recovery memo Ex.P19, attested by the witnesses; he also recovered a tractor along with its registration certificate from Makhan Singh accused; the statements of the witnesses were recorded; all the accused were arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate, who ensuring compliance of Section 207 Cr.P.C., i.e. supply of documents relied upon in the challan to the accused free of costs, committed the case to the Court of Sessions Judge, Ferozepur, for trial.

The case in question was assigned to Addl. Sessions Judge, Ferozepur who framed formal charge for offences under Sections 148, 302, 324, 440 read with Section 149 IPC against the accused and charge-sheeted them accordingly. Accused Kala Singh absented during the pendency of the case and as his presence could not be procured despite issuance of warrants of arrest and proclamation under Section 82 Cr.P.C., against him, as such, he was declared a proclaimed offender, whereas,

accused Makhan Singh has expired during pendency of the case.

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

PW-1 Dr. Avtar Singh, SMO at PHC Dharamkot stated that on 07.04.1999 he had conducted medico-legal examination of Resham Singh at 4 PM and found following injuries on his person:-

- i. Incised wound 3cm x 0.3 cm muscle deep on the dorsal aspect of right hand on its medial side. Fresh bleeding was present.
- ii. Incised wound 3 cm x 0.2 cm muscle deep on the inner side of thumb of right hand on its proximal phalanx near interphalangeal joint. Fresh and clotted blood was present.
- iii. Abrasion 0.7 cm x 0.5 cm on the dorsal aspect of right hand on the base of thumb.

PW-2 Harbans Singh, Patwari who had inspected the spot and prepared the scaled site plan Ex.P2 deposed in that regard.

PW-3 Constable Gurmail Ram who was deputed by the IO to get post mortem examination conducted on dead body of Gurdeep Singh from Civil Hospital Zira testified in that regard through his affidavit Ex.P3

PW-4 Joginder Kumar, Clerk Office of SDM, Zira stated that tractor bearing No.PB-47-1253 stands in the name of Jagjit Singh, Gurmit Singh and Harjit Singh sons of Lakhwinder Singh. He proved the registration certificate of the tractor as Ex.P4.

PW-5 Harjit Singh, Motor Transport Clerk from the office of

SDM, Nakodar proved the registration certificate of tractor No.PB33-3593 in the name of Kehar Singh, Makhan Singh and Kala Singh, such RC being Ex.P5.

PW-5/A Resham Singh (complainant) provided eye witness account of the incident, proving his statement Ex.P6 and the memo vide which empty shell was taken into possession as Ex.P7.

PW-6 Gurmit Kaur provided ocular version of the incident.

PW-7 ASI Gurdeep Singh who was working as MHC at the police station on 07.04.1999 stated that sealed parcels were deposited with him by the IO and he had sent the same to Forensic Science Laboratory for analysis. He proved his affidavit Ex.P8.

PW-8 Constable Balwant Singh, who had taken the sealed parcels to the office of Forensic Science Laboratory, Chandigarh vide his affidavit Ex.P9 testified in that regard.

PW-9 SI Bachan Singh the IO of the case deposed regarding the investigation conducted by him besides proving endorsement Ex.P6/A and Ex.P6/B. He also proved inquest report of deceased Gurdeep Singh as Ex.P10 besides various other documents.

PW-10 Chamkaur Sahib, Photographer testified with regard to photographs taken by him. He proved negatives as well as photographs.

PW-11 SI Jagir Singh stated that he had accompanied the IO for recording the statement of Resham Singh on 07.04.1999 and also took part in the investigation. According to him he had attested several

recovery memos on the file.

PW-12 Dr. Paramjit Singh, Medical Officer had conducted post mortem examination on dead body of Gurdeep Singh and opined the cause of death as shock and hemorrhage. He proved the post mortem report as Ex.P21.

4. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence 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 being relatives of Baldev Singh.

Accused Gurmit Singh stated that he along with Makhan Singh is in possession of the disputed land and girdawaries etc. of the disputed land are in their favour and on the day of occurrence, Kala Singh and Makhan Singh were ploughing the land when Gurdeep Singh and Resham Singh etc., came there fully armed and caused injuries to Makhan Singh and his son Pipal Singh and injury was caused to Gurdeep Singh under the right of private defence of property and person.

Hardial Singh and Pargat Singh sons of Kashmir Singh contended that they had been falsely involved in this case because they being relatives of Baldev Singh.

Accused Makhan Singh contended that he along with Gurmit Singh is in possession of the disputed land and girdawaries etc. are also in their favour and on the day of occurrence, Kala Singh, Gurmit Singh etc., were ploughing the land when Gurdeep Singh, Resham Singh etc.,

came there duly armed and caused injuries to him and his son Pipal Singh. He further stated that injuries were caused to Gurdeep Singh under right of private defence of property and person.

5. During their defence evidence the accused examined Nachattar Singh as DW-1, Dr. Raman Aggarwal as DW-2, after giving up several other summoned official witnesses, the accused had closed their defence evidence.

6. After hearing arguments, the trial Court vide judgment dated 26.03.2005 and order of the even date convicted and sentenced the accused Gurmit Singh @ Meeta, Jugraj Singh @ Raju, Hardial Singh, Pargat Singh and Jaswant Singh to undergo RI for 10 years with fine of Rs.2000/-; in default of payment of fine, to further undergo RI for one year U/s 304, Part-I r/w Section 149 IPC; accused Gurmit Singh @ Meeta was sentenced to undergo RI for two years under Section 324 IPC; accused Jugraj Singh @ Raju, Hardial Singh, Pargat Singh and Jaswant Singh were sentenced to undergo RI for 1 ½ years under Section 324 read with Section 149 IPC; accused Hardial Singh was sentenced to undergo RI for two years under Section 324 IPC, whereas, accused Gurmit Singh @ Meeta, Jugraj Singh @ Raju, Pargat Singh and Jaswant Singh were sentenced to undergo RI for 1 ½ years under Section 324 IPC; all the accused were sentenced to sentenced to undergo RI for two years under Section 148 IPC. Accused were acquitted under Section 302 r/w Section 149 IPC.

All the sentences were ordered to run concurrently.

7. Feeling aggrieved by the judgment of their conviction and order of sentence, the accused had preferred an appeal before this Court which was taken up on 07.04.2005, where it was admitted for hearing. On applications having been filed on behalf of the appellants, their sentence was suspended and they were ordered to be released on bail during pendency of the appeal.

8. I have heard learned counsel for the appellant/accused, learned State counsel besides going through the record.

9. In this case, of the accused named in the FIR, Kala Singh @ Surinder is a proclaimed offender. Furthermore, Makhan Singh had died during pendency of the trial whereas Jugraj Singh @ Raju and Jaswant Singh are also reported to have expired, during pendency of the appeal.

10. Learned trial Court had formulated the following points for determination:-

- i. Whether Jaswant Singh accused was not present at the spot and was rightly declared as innocent during investigation?
- ii. Whether accused party or complainant party was in possession of disputed land and which party was aggressor party?
- iii. Whether Kala Singh caused the death of Gurdip Singh in exercise of his right of private defence of property and body?

11. Taking up point No.(i), the trial Court had observed that although during the course of investigation, the police had declared Jaswant Singh to be innocent but subsequently he was summoned to face trial along with his co-accused.

12. Under point No.(ii) the trial Court has observed that prosecution had not brought proper evidence on the file to show that complainant party was in possession of the disputed land through Resham Singh. Although Resham Singh who is an accused in cross version had brought documentary evidence on file that they were in possession of the disputed land immediately before occurrence and the girdawri was unauthorizedly changed in the name of accused only in the month of March 1999 i.e. immediately before the occurrence and for that reason, an application for temporary injunction filed by the accused party was dismissed and later on, the injunction case was dismissed in default. The trial Court had admitted it that evidence had been brought on file by the accused in this case showing that on the day of occurrence they were in possession of the disputed land because PW2 Harbans Singh Patwari had proved scaled site plan of the place where the occurrence took place and stated in his cross-examination that khasra number shown in the site plan were in possession of the Gurmit Singh when he prepared the site plan on 12.05.1999 and the possession was also with Gurmit Singh in the month of March 1999.

Similarly PW9 SI Bachan Singh stated in his cross-examination that accused produced before him jamabandi and girdawri of the land in dispute in which they were recorded to be in cultivating possession of the land upto Harri 1999. It was observed that though Resham Singh complainant had admitted in his cross-examination that Kala Singh @ Surinder Singh etc. and others were in possession of the

land in dispute but it actually meant that at that time those persons were in possession of the land in dispute.

13. After detailed analysis of the evidence adduced by the parties and other facts and circumstances of the case, the trial Court in para No.16 has observed that complainant party was in possession of the disputed land, however, on account of that very fact they did not get right to inflict injuries on anybody who entered unauthorizedly in the disputed land. According to the prosecution story, complainant party was present in village Daulewala when they received information that accused party was ploughing the disputed land with tractors. The information was received at about 12 noon thereafter complainant along with others went to the spot, reaching there about at 1.30 PM.

In terms of statement of DW2 Dr. Raman Aggarwal, Makhan Singh had received six injuries on his person and his condition was serious when he was taken to the hospital; injury No.1 which was caused with a sharp edged weapon was declared to be dangerous to life whereas injury No.2 was also declared grievous in nature caused with a blunt edged weapon; the remaining two injuries were with sharp edged weapon and two injuries with blunt edged weapon have been declared as simple in nature. Such doctor had stated that in his cross-examination that BP of Makhan Singh was only 40 and if he had not reached the hospital in time, he would have died. The doctor had further proved injuries on the person of Pipal Singh stating that one of the incised wounds present on the person of Pipal Singh was grievous in nature.

PW-9 SI Bachan Singh had admitted in his cross-examination that during his investigation, it came to his notice that Gurdeep Singh deceased and his companions had gone to the spot while they were armed with gandasas, sotas and kirpans and that first injuries were caused to Pipal Singh and Makhan Singh and thereafter in exercise of right of private defence, Kala Singh had fired shot; otherwise Resham Singh, complainant had sufficient time to have recourse to the law and instead of going to the spot with arms they should have reported the matter to the police, observing that the complainant party instead of taking recourse to contacting the police went to the spot and caused injuries to the accused party as such complainant party was actually aggressor party.

14. Coming to point No.(iii), the trial Court observed that the accused have taken up a plea of right of private defence in causing fire arm injury to Gurdeep Singh. Accused have taken plea of right of private defence of property and body but right of private defence of property does not apply to the present case. In para No. 18, the trial Court has observed that causing of death of Gurdeep Singh in exercise of private defence of body is also not available to accused Kala Singh because that right does not extend to inflicting of more harm than it is necessary to inflict for the purpose of defence. It has been observed that accused Kala Singh @ Surinder in the first instance should have fired in the air and then if the complainant party continued causing injuries, then Kala Singh should have fired shots on the non-vital parts of the body like legs simply

to deter the complainant party but Kala Singh fired the shot directly in chest of Gurdeep Singh particularly when no injury had been caused to him. In that way, accused party i.e. Kala Singh had exceeded the right of private defence of body and by causing death of Gurdeep Singh by gun shot.

15. The trial Court after appraisal of the evidence brought on file by the prosecution, considering the defence version and other facts and circumstances of the case has returned a clear observation in para No.16 of the impugned judgment that PW-9 SI Bachan Singh (IO of the case) has admitted in his cross-examination that during his investigation, it came to his notice that Gurdeep Singh deceased and his companions had gone to the spot while armed with gandasas, sotas and kirpans and that first injuries were caused to Pipal Singh and Makhan Singh and only thereafter, in exercise of right of private defence, Kala Singh had fired a shot. The trial Court has accepted the defence version that the complainant party was aggressor party giving a reasoning that complainant party had sufficient time to have recourse to law, and instead of going to the spot with arms, they should have reported the matter to the police or should have taken recourse to Courts but instead of doing that, they went to the spot, took 1 ½ hours in reaching the spot, covering distance of 1 ½ km from the place where they had gone in connection with a wedding and caused injuries to accused party. In that way, complainant party was actual aggressor party.

16. In para No.17, the Court has found that though the accused

did not have right of private defence of property because it only applies in cases mentioned in Section 103 IPC, however, case of accused does not fall within ambit of clauses provided in that Section and further right of private defence of property cannot be exercised in case of vacant land as in case in hand and house trespass by the offending party is one of the essential ingredients for exercising the right of private defence of property which is missing in this case. However, the Court found that causing of death of Gurdeep Singh in exercise of right of private defence of body by Kala Singh was a case of exceeding right of private defence because in the process more harm was inflicted than was necessary for the purpose of defence. Kala Singh @ Surinder Singh had fired a shot at Gurdeep Singh in exercise of right of private defence of body since as has come on record that accused party i.e. Makhan Singh and his son Pipal Singh had also suffered grievous injuries. DW-2 Dr. Raman Kumar had deposed in that regard. For that reason instead of holding Kala Singh @ Surinder Singh guilty for offence under Section 302 IPC, he was found to be guilty of offence of culpable homicide not amounting to murder as provided under Section 304 Part-I IPC.

17. Now coming to the other accused in this case, once the trial Court held that the accused party had a right of private defence, although it was exceeded by Kala Singh @ Surinder Singh by firing a shot at Gurdeep Singh resulting in his death but then it cannot be said that accused had formed an unlawful assembly and they were guilty of rioting armed with deadly weapons. Similarly, no inference can be reached that the accused had formed an unlawful assembly and the incident leading to

death of Gurdeep Singh and injuries to Resham Singh had taken place in prosecution of common object of the unlawful assembly. Rather it comes out that each accused is responsible for his own acts and other accused are not vicariously liable for criminal acts of their co-accused. Once a conclusion is reached by the trial Court and rightly so that the accused did possess a right of private defence then the accused cannot be held liable of guilty of committing offence under Sections 148 and 149 IPC. The injuries attributed to Hardial Singh and Gurmit Singh are simple in nature. As per prosecution story, Gurmit Singh had hit the complainant on little finger of right hand with a gandasa whereas Hardial Singh had inflicted injuries to him on right thumb with a gandasa. Both the injuries were simple in nature and are on non-vital parts, coming under definition of Section 324 IPC and both of them have been found guilty of such offence. Under the circumstances such injuries having been caused by both these accused were in exercise of right of private defence and as far as they are concerned, they had not exceeded right of private defence. The trial Court was not justified in convicting Gurmit Singh, Hardial Singh, Jugraj Singh, Pargat Singh, Makhan Singh and Jaswant Singh for offence under Section 304 Part-I read with Section 149 IPC.

18. As regards conviction under Section 324 IPC of Gurmit Singh and Hardial Singh, in view of the detailed discussion above, that is not sustainable and for similar reasons, the conviction of other accused under Section 324 read with Section 149 IPC cannot be sustained. It may be mentioned here that during the pendency of appeal, Makhan Singh and Jugraj Singh @ Raju are reported to have expired. Therefore, appeal qua

them stands abated and remaining appellant/accused are acquitted of the charge framed against them.

The appeal stands allowed.

09.08.2022

(H.S. MADAAN)
JUDGE

sumit.k

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