

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

CRA-S-680-SB-2005 (O&M)

Date of pronouncement: 09.08.2022

Resham Singh and others

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr. Rajat Dogra, Advocate for
Mr. SPS Sidhu, Advocate for the appellants.

Mr. Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. This appeal is directed against judgment dated 26.03.2005 passed by Addl. Sessions Judge, Ferozepur, vide which he had tried Resham Singh, Gurdial Singh, Tarlok Singh and Gurmukh Singh, all of them being accused in FIR No.55 dated 07.04.1999, for offences under Sections 307, 326, 325, 324, 323 and 34 IPC, registered with Police Station Dharamkot and convicted and sentenced accused Tarlok Singh to undergo rigorous imprisonment for 07 years with fine of Rs.2000/- under Section 307 IPC; in default of payment of fine, to further undergo RI for one year, whereas, accused Resham Singh, Gurdial Singh and Gurmukh Singh were sentenced to undergo R.I. for five years with fine of Rs. 2000/- u/s 307 read with section 34 I.P.C; in default of payment of fine, to further undergo R.I. for one year. Accused Resham Singh was also

sentenced to undergo rigorous imprisonment for four years with fine of Rs. 1000/- u/s 325 I.P.C; in default of payment of fine, to further undergo R.I. for six months, whereas accused Gurdial Singh, Tarlok Singh and Gurmukh Singh were to undergo RI for three years with fine of Rs. 1000/- u/s 325/34 I.P.C; in default of payment of fine, to further undergo R.I. for six months. Accused Tarlok Singh and Gurdial Singh were also sentenced to undergo rigorous imprisonment for two years u/s 324 I.P.C. whereas accused Resham Singh, Gurmukh Singh to undergo RI for 1 ½ years u/s 324 read with Section 34 I.P.C. Accused Resham Singh and Gurmukh Singh were to undergo rigorous imprisonment for one year u/s 323 I.P.C. whereas accused Gurdial Singh and Tarlok Singh to undergo rigorous imprisonment for six months under Section 323 read with Section 34 IPC.

All the sentences were ordered to run concurrently.

2. At the very outset, it may be mentioned that this is cross version of the case registered on the basis of statement of Makhan Singh-injured. The first version of the incident in which the present accused are complainant is against Kala Singh and others for causing death of Gurdeep Singh and injuries to Resham Singh, vide FIR No.55 dated 07.04.1999 for offences under Sections 302, 324, 323, 427, 148, 149 IPC and Section 27 of Arms Act.

3. Briefly stated the facts of the case as per prosecution story are that on 07.04.1999 on receipt of wireless message at Police Station Dharamkot from Police Post Kot Ise Khan that Makhan Singh son of

Chanda Singh and Pipal Singh son of Makhan Singh were admitted in the hospital and necessary action be taken; in that very incident, Gurdeep Singh belonging to the opposite party had been killed and FIR No.55 dated 07.04.1999 for offences under Sections 302, 324, 323, 427, 148, 149 IPC and Section 27 of Arms Act had been registered at Police Station Dharamkot which was being investigated by SI Bachan Singh (for short 'the IO'); the said IO was busy in connection with investigation on 07.04.1999 and therefore, he went to Civil Hospital Dharamkot on 08.04.1999, and sought the opinion of the attending doctor with regard to fitness of the injured to make statements, on that the doctor declared both the injured to be unfit to make statements, therefore, the police party returned.

On 09.04.1999, the IO went to civil hospital and again sought opinion of doctor with regard to fitness of injured to make statements; the doctor declared both the injured to be fit to make statements; thereafter, statement of Makhan Singh was recorded in which he stated that he is resident of Village Mehruwala and his house was washed away with the flood water from the river more than two years back, as such, he and his family started residing near the bandh in the area of Village Ismilepur; that he has three sons, the elder two sons are residing separately whereas younger one namely Pipal Singh resides with him; on 07.04.1999 at about 12.00 noon he along with his son Pipal Singh was ploughing land with his tractor make International D-1 Mahindra along with Raj Singh, Kala Singh and Gurmit Singh and at that

time, Kala Singh and Raj Singh were having their own tractors; the land which they were ploughing had been vacated by the receding water of the river; the girdawari of the said land was in their names and they had ploughed the land; then Bagga Singh Ex.sarpanch of Village Ismilepur brought Tarlok Singh, Gurmukh Singh son of Jagtar Singh, Gurdeep Singh, Gurdial Singh sons of Resham Singh and Resham Singh son of Shankar Singh along with four women on his boat and after crossing the river water left them in the land of the complainant; Resham Singh immediately on reaching the field of the complainant started abusing the complainant party, at which the complainant party asked Resham Singh as to why he was abusing them because they had ploughed their own land at which Resham Singh raised a lalkara (exhortation) that complainant party be caught hold of and be taught a lesson for ploughing the land.

Tarlok Singh gave a kirpan blow on the left leg of complainant and he fell down; thereafter, he gave another kirpan blow on the left elbow joint of the complainant; Resham Singh gave a dang blow which hit the complainant on his left ankle joint; another dang blow was given by him which hit the complainant on the waist; Gurdeep Singh gave a gandasi blow hitting the complainant on right leg; when son of the complainant namely Pipal Singh came forward to rescue him, then Gurdial Singh and Resham Singh gave injuries to him; Gurdeep Singh gave a gandasi blow on the hand of complainant; complainant party raised hue and cry, then accused went away while abusing the complainant party; the incident had taken place at about 01.30 PM; as

stated by the complainant in this case, they had also caused injuries to Gurdeep Singh party; the motive for the incident was that the accused party wanted to take forcible possession of the land left by receding river water and caused injuries to the complainant party; the matter was investigated, during the course of which a dang was recovered from right hand of accused Gurmukh Singh on 02.05.1999 and it was taken into police possession, vide recovery memo Ex.P14; a gandasi was recovered from accused Gurdial Singh on that very day, it was also taken into possession, vide recovery memo Ex.P15; a kirpan from the right hand of accused Tarlok Singh was recovered on 17.05.1999 by ASI Jagir Singh which had also been taken into police possession; a dang was recovered from the right hand of accused Resham Singh by ASI Jagir Singh on 19.05.1999 and it was taken into possession; the accused were arrested in this case.

4. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate, who after complying with requirement of supply of documents to the accused free of costs in terms of Section 207 Cr.P.C., committed the case to the Court of Sessions Judge, Ferozepur, who in turn assigned it to Addl. Sessions Judge, Ferozepur. Finding a prima facie case, charge for offences under Sections 307, 325, 324, 323 and 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

5. During the course of prosecution evidence, prosecution

examined as many as six PWs; remaining PWs were not examined and rather given up by Public Prosecutor for the reason of their having been won over by the accused party and some witnesses being unnecessary.

The PWs examined by the prosecution were as under:-

PW-1 Dr. Raman Kumar while he was posted at CHC Kot Ise Khan on 07.04.1999 at about 7.00 PM had medico-legally examined Makhan Singh, and found the following injuries on his person:-

- i. Incised wound 7cm x 2cm on the outer aspect of left lower leg .5 cm above ankle joint. Fresh and profuse bleeding was present. Under lying bones were cut.
- ii. Swelling 8 cm x all-round left ankle joint. X-ray was advised.
- iii. Incised wound 5 cm x 1 cm on the outer aspect of left elbow joint. Bleeding was present. Under lying bone was visible. X-ray was advised.
- iv. Lacerated abrasion 7 cm on the left side of back in the middle.
- v. Lacerated wound 3 cm x 1 cm on the dorsal aspect of right hand. Just below wrist joint.
- vi. Incised wound 2 cm x ½ cm on the front of right lower leg. 12 cm below knee joint.

He had also medico-legally examined Pipal Singh, finding the following injuries on his person:-

- i. Incised wound 6 cm x 1 ½ cm on the dorsal aspect of ring finger of right hand. 2 ½ cm from tip of finger. Fresh bleeding was present. Under lying bone was cut.
- ii. Incised wound 2 ½ cm x 1 cm on the front of right leg 8

- cm above ankle joint. Fresh bleeding was present.
- iii. Contusion with swelling 6 cm x 5 cm on the left side of chest 9 cm below the nipple. X-ray was advised.
- iv. Linear incised wound 3 cm on the back of right forearm just above wrist joint.
- v. Swelling 9 cm x 6 cm on the outer aspect of right forearm 4 cm below elbow joint.

He had declared injury No.1 as grievous in nature whereas injury No.3 were kept under observation; injuries No.2, 4 and 5 were declared as simple in nature; injuries No.1, 2 and 4 were caused with a sharp edged weapon, whereas injuries No.3 and 4 were caused with a blunt edged weapon; he proved carbon copy of MLR as Ex.P2 and pictorial diagram as Ex.P2/A; he stated that as a result of X-ray examination of injured Makhan Singh from lateral view shows fracture of both bones at lower end with dislocation of ankle joint; he proved the X-ray report Ex.P7.

PW-2 Harban Singh Patwari proved the site plan prepared by him after going through the spot as Ex.P11.

PW-3 Makhan Singh, complainant/injured and PW-5 Pipal Singh, injured provided the eye witness account of the incident supporting the prosecution story on material aspects.

PW-4 SI Bachan Singh, the IO deposed regarding the investigation conducted by him proving various documents.

PW-6 SI Jagir Singh who accompanied the IO and later had partly investigated the case, recovering weapons from the accused taking

those into possession vide various memos, proved the same.

With that the prosecution evidence got concluded.

6. 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 were innocent and had been falsely involved in this case.

7. The trial Court has observed that Makhan Singh party though had time to have recourse to the law and to give information to the police and seek police help but instead of that accused Resham Singh etc. went to the spot and caused injuries to complainant Makhan Singh etc., who were already present at the spot and ploughing the fields, therefore, accused Resham Singh etc. was the aggressor party and the case against the accused is fully proved on the file. The trial Court has further observed that the complainant party had gone to the disputed land for ploughing it and for damaging the crop of the accused party and had gone there duly armed, therefore, the complainant party was aggressor party. The accused had caused injuries to Makhan Singh and Pipal Singh and are not fabricated as was alleged by accused party, later in order to make defence against accused Resham Singh.

8. The trial Court had formulated following points for determination:-

- i. Whether the discrepancies pointed out by the learned counsel for the accused make the statements of complainant Makhan Singh and eye witness Pipal Singh as

unreliable?

- ii. Which party i.e. whether Makhan Singh complainant party or accused Resham Singh party was in possession of the disputed land and which party was the aggressor party?

9. As regards point No.1 after detailed discussion, the trial Court has concluded as under:-

“It is correct that Makhan Singh complainant stated in the Court that Resham Singh accused was armed with gandasa whereas in his statement Ex.P12 made before police, he stated that Resham Singh was armed with dang with which he caused injuries to the complainant and Pipal Singh. However, this is a very minor discrepancy because the seat of injuries attributed to Resham Singh have been correctly stated by Makhan Singh in the Court as stated by him before Police. It is correct that Makhan Singh has not stated in the Court about the injuries allegedly caused by accused to Pipal Singh but simply this fact is not sufficient to conclude that statement of Makhan Singh is not reliable because the injuries caused by accused to Pipal Singh have been explained by Pipal Singh in his statement recorded before Police as well as in his statement recorded in the Court. Moreover Makhan Singh has not described the injuries caused by accused to Pipal Singh in his statement Ex. P12 before police, rather he has simply stated in his statement Ex. P12 which he made before Police that when Pipal Singh came forward to rescue him, accused Resham Singh and Gurdial Singh also caused injuries to him. It is correct that Pipal Singh has stated in his statement Ex. DA before Police that the land vacated by receding water of the river was previously in possession of Resham Singh but in

Court he stated that the said land was Previously with his father and no body had occupied the said land after the river water receded but simply this fact is not sufficient to make statement of Pipal Singh are unreliable. Otherwise, Pipal Singh has corroborated the fact regarding causing of gun shot injury to Gurdip Singh in his examination-in-chief also as well as in his statement Ex. DA recorded by the Police. Therefore, the discrepancies pointed out by the learned counsel for the accused are not sufficient to discard the statements of Makhan Singh and Pipal Singh recorded in the Court because they have mostly corroborated their statements recorded by the police.”

10. Coming to the point No.2, the conclusion drawn is that though accused Resham Singh party was in possession of the disputed land but they had gone to the disputed land for getting it vacated from complainant Makhan Singh party after making preparation of causing hurt and there was enough time with them to have recourse to law and the authorities, as such accused Resham Singh party was aggressor party in this case. The trial Court has held Resham Singh party to be liable for causing injuries to Makhan Singh Pipal Singh. Resultantly, they were convicted and sentenced.

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

12. The trial Court has held the accused to be aggressors accepting the right of private defence available to the opposite party but finding that the opposite party had exceeded right of private defence

inasmuch as Kala Singh had caused death of Gurdeep Singh by firing a shot at him and he had inflicted an injury more than what was justified. The present accused party has though been found to be in possession of the dispute land but the trial Court was of the view that if the opposite party had gone there and was cultivating that land, the accused party had sufficient time to take recourse to law by reporting the matter to the police or by going to the Court instead of going to the spot armed with weapons like gandasies, kirpans and then attacking the opposite party. However, of the accused party, Gurdeep Singh had lost his life in the incident. As per prosecution story, Gurdeep Singh armed with gandasi had caused injuries to complainant Makhan Singh on right leg and hand; Tarlok Singh armed with kirpan had caused injuries to Makhan Singh on left leg and left elbow joint. Gurdial Singh had caused injuries to Pipal Singh. Injuries on the person of Makhan Singh and Pipal Singh were on non-vital parts. Although, the doctor who had medico-legally examined the injured namely Dr. Raman Kumar had declared injuries on person of Makhan Singh injured to be dangerous to life while appearing as PW-1; he had given details of the injuries. In his cross-examination, he admitted that legs and arms are non-vital party of the body. He stated that seeing the general condition of the patient and condition of the injuries, he came to opinion that if patient had not reached hospital in another 15-20 minutes, injury No.1 on the person of Makhan Singh could have been fatal for him; then he went on to say that there can be other reasons for lowering of blood pressure except the injuries.

13. As regards injury No.1 on person of Pipal Singh, he stated that possibility of same having been caused by friendly hand cannot be ruled out. Injury No.1 on the person of Makhan Singh being on non-vital part does not show the intention of attacker to cause his death. Similarly, no knowledge can be attributed to the assailant that by causing of such injury, he was likely to cause death of the victim. Under the circumstances, in my considered view, no offence under Section 307 IPC is made out and the trial Court was not justified in convicting the accused for offence under Section 307 IPC read with Section 149 IPC. The offence which is disclosed against the accused comes out to be under Section 326 IPC, considering the fact that injuries on person of injured are on non-vital parts. No injury has been attributed to Gurmukh Singh and that the accused party had lost one of their assailants, namely Gurdeep Singh being shot dead by Kala Singh of opposite party and that as per custody certificate filed by the State, the accused Resham Singh has undergone 07 months and 09 days, accused Tarlok Singh has undergone 11 months and 15 days, accused Gurdial Singh has undergone 07 months and 26 days and accused Gurmukh Singh has undergone 08 months and 26 days including remissions.

14. Further, no previous conviction is alleged or proved against them, I find that they deserve leniency in the matter of sentence. The incident had taken place on 07.04.1999 i.e. about 23 years back. The accused were convicted on 26.03.2005. They are not shown to have indulged in any criminal act after suspension of their sentence and grant of bail to them. If they are sent behind bars to undergo further sentence,

then old wounds would be opened and element of enmity may get flared up. In my considered view, ends of justice shall be adequately met if they are sentenced to imprisonment already undergone by them in this case. Therefore, the order of sentence passed by the trial Court is modified and the appellants/accused are sentenced to the imprisonment already undergone by them in this case. The fine part is kept as such. The appellants are directed to deposit the amount of fine within one month from today in the Court of Chief Judicial Magistrate, Ferozepur, failing which CJM shall issue warrants of arrest against the accused/appellants so as to recover the amount of fine or to make them undergo imprisonment in default of payment of fine.

A copy of this judgment be sent to the Court of CJM, Ferozepur for information and necessary compliance.

The appeal stands party allowed.

09.08.2022

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(H.S. MADAAN)
JUDGE

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