

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-4534-SB-2017 (O&M)
Date of decision: 19.01.2022

GURBACHAN SINGH AND ORS. ...Appellants

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sandeep Verma, Advocate
for the appellants.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict of conviction, as recorded by the learned Additional Sessions Judge, Moga, upon, Sessions Case No.33. The impugned verdict of conviction was drawn by the learned Additional Sessions Judge (supra) vis-a-vis charges drawn against the accused for offences constituted under Sections 307, 323, 148, and, under Section 149 of the IPC.
2. Moreover, through a separate sentencing order, drawn by the learned Additional Sessions Judge concerned, on 15.11.2017, he proceeded to impose upon the convicts, the hereinafter extracted sentences of imprisonment, and, of fine.

Convict Gurbachan Singh	Section	Rigorous Imprisonment	Fine	In default of payment of fine to further RI for
	307 IPC	7 years	Rs.10000/-	Six months
	323/149 IPC	1 Year	Rs.500/-	One month
	148 IPC	2 Years	Rs.1000/-	Two months

Convict Darshan Singh	Section	Rigorous Imprisonment	Fine	In default of payment of fine to further RI for
	307/149 IPC	7 years	Rs.10000/-	Six months
	323/149 IPC	1 Year	Rs.500/-	One month
	148 IPC	2 Years	Rs.1000/-	Two months

Convict Balbir Singh	Section	Rigorous Imprisonment	Fine	In default of payment of fine to further RI for
	307/149 IPC	7 years	Rs.10000/-	Six months
	323	1 Year	Rs.500/-	One month
	148 IPC	2 Years	Rs.1000/-	Two months

Convict Dharamjit Singh	Section	Rigorous Imprisonment	Fine	In default of payment of fine to further RI for
	307/149 IPC	7 years	Rs.10000/-	Six months
	323/149 IPC	1 Year	Rs.500/-	One month
	148 IPC	2 Years	Rs.1000/-	Two months

Convict Kashmir Singh	Section	Rigorous Imprisonment	Fine	In default of payment of fine to further RI for
	307/149 IPC	7 years	Rs.10000/-	Six months
	323/149 IPC	1 Year	Rs.500/-	One month
	148 IPC	2 Years	Rs.1000/-	Two months

3. All the sentences were directed to run concurrently, and, the period spent by the convicts in jail was ordered to be set off from the period of the above impugned substantive sentence of imprisonment, as, became imposed upon each of them. The afore drawn order of sentence, is also challenged by the convicts, through their rearing the instant appeal before this Court.

4. The brief facts of the case are that as per prosecution story, FIR was registered against the accused on the statement of complainant Karamjit Singh, wherein, he has stated that he is resident of village Bakarwala. On 04.04.2014, he alongwith his younger brother Kuldeep Singh had gone for a walk at about 8 pm after taking meals. When they had reached on phirni of village, which is metaled road, near house of Darshan Singh son of Arjan Singh, they found that Darshan Singh son of Arjan Singh, Gurbachan Singh son of Darshan Singh and Kashmir Singh son of Arjan Singh, all residents of village Bakarwala were

present there and chatting. Dog of Kashmir Singh was standing near them. Dog had tried to bite them. He had picked up a brick bat and thrown it towards the dog. Aforesaid persons started abusing him. His brother Kuldeep Singh had taken him to house saying that they are not to quarrel. Thereafter, they had gone for a walk and returned after about ten minutes. When they were reached near the house of Darshan Singh, they had seen Darshan Singh, Gurbachan Singh, Dharampreet Singh, Balbir Singh and Kashmir Singh were standing. Balbir Singh was armed with sword, Gurbachan Singh was armed with small toki, Kashmir Singh and Darshan Singh were armed with sticks and Dharampreet Singh was empty handed. On seeking them, Dharampreet Singh raised a lalkara that they should not be spared because they had given a brick bat blow to their dog. They had started abusing them. Gurbachan Singh had given a toki blow with an intention to kill him, which had rested in the middle of the head. Kashmir Singh had given a dang blow on his person and in order to avoid said blow, he had raised his right hand and dang hit on fingers of his hand. Balbir Singh and Darshan Singh had caught hold Kuldeep Singh from his waist and gave him fist blows. Then, they raised a alarm "Mar Dita Mar Dita". People from neighbourhood, his wife Parwinder Kaur and uncle MohanSingh had come at the spot. All the accused ran away from the spot with their respective weapons. His uncle Mohan Singh had arranged for a vehicle and taken him to Civil Hospital, Kot Ise Khan, but he was referred to Civil Hospital, Moga due to seriousness of his injuries.

5. After completion of investigations into the afore offences by the investigating officer concerned, a report under Section 173 Cr.P.C., was filed before the learned Committal Court, and, the latter thereafter proceeded to commit the accused for trial to the learned Sessions Court concerned.

6. The accused upon being charged for the afore drawn offences, did not plead guilty and claimed trial.

7. In proof of the prosecution case, the prosecution has relied upon the testifications of 9 prosecution witnesses. On the other hand, the accused relied, upon the testifications of 4 defence witnesses.

8. The learned counsel appearing for the appellants, has contended with much vigor before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra) as become imposed upon each of the convicts, is amenable for interference, being made by this Court, as it is ridden with a vice of gross mis-representation, and, non-appreciation of evidence on record.

9. The prime and star prosecution witness is one Karamjit Singh. He is the injured-victim. He stepped into the witness box as PW-2. In his deposition comprised in his examination-in-chief he supported the version qua the genesis of the prosecution case, as is set forth in the afore FIR lodged qua the occurrence, and, as becomes embodied in Ex.P-9. Tritely he attributes to the co-accused Gurbachan Singh, and, to all other co-accused, an incriminatory role of theirs being armed, and, theirs with users thereof inflicting injuries upon his person. However, he has testified that co-accused Dharamjit was not wielding any weapon of offence. The relevant incriminatory occurrence, after the ill event of the victim PW-2 allegedly striking the dog of the co-accused, with a brickbat, rather occurred 10 minutes thereafter, and, at the site of occurrence, as is embodied in site plan carried in Ex.P-11.

10. This Court may proceed to assign the completest evidentiary sanctity to the deposition of PW-2, as is carried in his examination-in-chief, only when during the course of his cross-examination, he omits to evidently grossly

embellish or improve, upon, his previously recorded statement in writing, and/or his omitting to contradict the prosecution version, as becomes narrated in his examination-in-chief. In the afore endeavour, a reading of the testification of PW-2, as carried in his cross-examination reveals, that the learned defence counsel, has not during the phase of his cross-examining PW-2, meted to him any suggestions for hence eliciting from him, any answer, in personification, qua his proceeding to hence embellish or improve upon his previous statement recorded in writing, and, nor any suggestions, became meted to him, and, obviously nor any elicitation became unearthed from him, rather displaying, that his hence contradicting his testification, as, carried in his examination-in-chief. Necessarily, hence, the testification of PW-2, does *prima-facie* earn some evidentiary worth. The further reason for making the afore inference, is drawn from the factum of the learned defence counsel, upon, proceeding to conduct cross-examination, upon PW-2 his meteing suggestions to him, qua the penal occurrence, as, attributed to the accused, being a sequel of the accused exercising the right of private defence of body. The propagation of the afore defence obviously is magnificatory of the defence acquiescing to the penal occurrence, rather taking place at the relevant site of occurrence.

11. The statement of PW-2 is supported by the statement of his brother one Kuldeep Singh, who alike PW-2, PW-3 has, in his examination-in-chief attributed an incriminatory role to the accused. Even in his cross-examination the learned defence counsel, has not been able to elicit from him any answer, to any suggestion, hence, magnifying that he was not an ocular witness to the occurrence, and, nor has been able to elicit from him, any answer rather signifying that he either embellished or improved upon, his previously recorded statement in writing, and/or his contradicting in his cross-examination, the

narration qua the prosecution case, as carried in his examination-in-chief, and nor, any articulation occurs in his deposition, qua his contradicting the testification of PW-2, his brother. The sequel of the afore is that *prima-facie*, the credit of PW-3 remains un-impeached, and, also a further inference becomes spurred that the prosecution case has been *prima-facie* able to prove the prosecution case, as set forth in the FIR, as, carried in Ex.P-9.

12. The above narrated *prima-facie* credible ocular account qua the prosecution case, is supported by medical evidence, as comprised in the testification of PW-5. During his examination-in-chief, he has proven Ex.P-18. Ex.P-18 is the medico legal certificate of victim Karamjit Singh. He has also proven the factum, as becomes narrated therein, and, as becomes extracted hereinafter.

“Left frontal craniotomy---post-op case.

Acute E.D.H. Of thickness 7mm is seen in left frontal region.

Pneumocephalous+

Haemorrhagic contusions are seen in left frontal lobe.

No midlineshift.”

13. Moreover, PW-6 who had medico legally examined victim Karamjit Singh, has during the course of his examination-in-chief, has proven CT Scan. The apposite of CT Scan, becomes borne in Ex. P-18. Moreover, he has also testified that, upon, his perusing the CT Scan report, as comprised in Ex. P-18, he formed the opinion, that the injuries existing in Ex. P-19 are life endangering injuries.

14. Be that as it may, though *prima-facie* there is *inter-se* harmony *inter-se prima-facie* credible medical account qua the prosecution case, with medical evidence (*supra*).

15. Moreover, with PW-4 in his deposition comprised in his examination-in-chief, proving his recording the disclosure statement of co-accused Gurbachan Singh, as embodied in Ex. P-15, whereons, the signatures of the accused, and, the witness(s) thereto one HC Manjit Singh, hence exist. Furthermore, since subsequent thereto through recovery memo borne in Ex. P-16, the incriminatory weapon of offence inasmuch as, the one disclosed by him in Ex. P-15, to be used by him in causing injuries upon the victim concerned, rather became recovered, and, when factum of preparation thereof, rather remained provenly undenied by accused Gurbachan Singh. Therefore, the incriminatory role of Gurbachan Singh in the penal transaction, becomes supported, by the afore drawn memos, as, respectively comprised in Ex. P-15, and, in Ex. P-16.

16. In addition, PW-9 in his testification embodied in his examination-in-chief, has proven Ex. PW-9/D, wherein becomes embodied the disclosure statement as made to him, by co-accused Baldev Singh, with respect to his concealing a kirpan in his house, and, with echoings therein qua his willingness to ensure its recovery at his instance, to the investigating officer concerned. Importantly thereons, the provenly undenied signatures of the afore accused Balbir Singh, do exist. Since subsequent to the making of Ex. PW-9/D, accused Balbir Singh ensured recovery of kirpan Ex. PW-9/F from the place of its keeping, to the investigation officer concerned, and, qua therewith recovery memo Ex. PW-9/G became prepared. Therefore, in so far as the incriminatory role of co-accused Balbir Singh is concerned, it also gathers support therefrom.

17. Likewise, the disclosure statement of co-accused Dharamjit Singh is proven by PW-9 hence to be borne in Ex. PW-9/H, and, thereons his provenly undenied signatures exist, and, when he thereafter ensured the recovery of the

incriminatory weapon of offence, inasmuch as of a dang, to the investigation officer concerned, through a memo borne in Ex. PW9/I.

18. In aftermath, through all the afore borne memos as appertaining to the afore recoveries as made respectively at the instance of Gurbachan Singh, Balbir Singh and Dharamjit Singh, the prosecution proves the guilt of the accused (supra), as none of them, has provenly denied the existence of their valid signatures, on each of the respectively drawn memos (supra), as, became prepared by the investigating officer concerned, at their respective instances.

19. *De-hors* the above, yet there is a delay of about four days in the lodging of the FIR, as, embodied in Ex.P-9, at the instance of one Karamjit Singh-injured victim, and, who has stepped into the witness box as PW-2. The prosecution case may not *per-se* fail, merely on account of the afore delay, yet, a valid explication in respect of the afore delay was to be meted by the prosecution. The afore delay though appears to be well explicated by PW-7, inasmuch as, in the quickest and promptest sequel to the taking place of the relevant occurrence, rather the complainant Karamjit Singh becoming declared by PW-1, to be not fit to make a statement, whereas, his acquiring the requisite fitness, only on 08.04.2014. However, even if the afore delay has, on the afore made ground rather become well explicated by the prosecution, yet, PW-3 was not precluded to make a statement in respect of the penal occurrence, to the police agencies. Therefore, when PW-3, the victim's brother, rather was an ocular witness to the occurrence, yet his omitting to lodge an FIR qua the occurrence, with the police agency concerned, does taint, the prosecution case. Moreover, the further sequel of delay in the lodging of the FIR, and, also the sequel of PW-3, a purported ocular witness to the occurrence, rather not promptly reporting the incident to the police, is that, the testification of PW-3

hence purportedly meteing corroboration to the testification of PW-2, cannot be assigned any aura of credibility. The further aftermath, is that the solitary testification of PW-2, cannot constrain this Court, to affirm the verdict of conviction, and, consequent therewith sentence (supra), as became imposed upon each of the accused.

20. The above drawn inference gathers momentum from the factum of PW-9, making recoveries of all the alleged incriminatory weapons of offence(s) from even the person of one co-accused Dharamjit Singh, yet the aforemade recovery becoming falsified, from the factum of PW-2, the injured-victim, in his testification carried in his examination-in-chief, rather candidly articulating that at the relevant time co-accused Dharamjit Singh, was not wielding any weapon of offence. The effect of the afore falsification, is that *prima-facie* hence co-accused Gurbachan Singh, and, Balbir Singh, at whose respective instances, rather recoveries of the relevant incriminatory weapons of offence(s) hence were made to the Investigating Officer concerned, appear to be the only ones rather present at the relevant site of occurrence, whereas, obviously the other co-accused qua whom also PW-3, in his examination-in-chief, narrates that they were also wielding incriminatory weapon of offence, and, that each inflicted the spoken injuries upon his person, cannot be construed to be present at the relevant site of occurrence. The reason being that reiteratedly no recoveries of any incriminatory weapon of offence, as, allegedly used by them, upon, the person of the victim rather became recovered at their respective instances, to the Investigating Officer concerned.

21. Be that as it may, the effect of the afore conclusion, is to be combined along with the defence, propagating the right of private defence of body. The Investigating Officer concerned, upon his stepping into the witness

box as PW-4, has testified that he had recorded DDR No.9, as, carried in Ex. P-12. In his examination-in-chief PW-4 has deposed, that he had collected the MLRs respectively of co-accused Gurbachan Singh, and, of Kashmir Singh. The afore drawn MLRs appertaining to co-accused Gurbachan Singh, and, co-accused Kashmir Singh, and, as become respectively carried in Ex. D-1, and in Ex. D-4, do vividly pronounce, that injuries carried in the above MLRs, were inflicted on their respective persons, on the date as mentioned in the DDR concerned. In other words, the afore drawn MLRs relate to injuries, as became suffered or became entailed, upon the person of the accused concerned, hence during the course of the scuffle which erupted *inter-se* PW-2 Karamjit Singh, and, the co-accused. Though, the relevant incriminatory scuffle was subsequent to the occurrence of the victim brick-batting the dog of the accused, and/or it happened 10 minutes thereafter. However, it is to be determined whether the defence has succeeded in proving, that the complainant along with Kuldeep Singh, Avtar Singh, Chhinder Singh, and, Mohan Singh, each of whom become suggested to PW-2, in his cross-examination, to be wielding incriminatory weapon(s) of offence, rather proceeded to initiate the aggression or mount the aggression upon the accused, as only upon the complainant along with others afore, hence initiating the aggression, rather would capacitate the accused to repulse it, through theirs validly exercising the right of private defence of body. Since as afore stated, this Court has not believed the testification(s) of PW-2 as well as of PW-3, thereupon the inevitable sequel thereof, is that, *de-hors* the PW-3 in his cross-examination rather denying that all the above were armed respectively with weapon(s) of offence, and, also his denying qua theirs proceeding, to initiate the aggression or mount the aggression upon PW-2, that hence PW-3 along with the others afore, were the initiators of the aggression.

Since for reasons (supra), the numerical strength of PW-2 along with others above, hence was disproportionally higher to the numerical strength of the co-accused concerned, and, when each of them were also equally armed. Therefore, the co-accused were ably facilitated under law, to for validly repulsing the aggression, as became initially mounted upon them, by PW-2 along with others afore, to cause injuries upon the person of the victim. The afore exercising of the right of private defence of body, by the accused, is supported, by the above referred MLRs, as, become respectively proven by DW2.

22. The Investigating Officer concerned has apparently rather given short shrift, to the above, and, has in a most capricious manner not taken to fairly investigate, the FIR and/or the DDR concerned, whereas, in case he had made a fair investigation(s) thereintos, an unbiased and un-coloured story qua the penal transaction, would have emerged. Consequently, a tainted/coloured version, qua the genesis of the prosecution case cannot become fully accepted by this Court. Predominantly rather when for the afore stated reasons, the accused have succeeded in proving, that in theirs admittedly inflicting injuries, upon the person of the victim, theirs making the injuries (supra), only upon theirs validly exercising the right of private defence of their respective persons.

23. There is merit in the appeal, and, the same is allowed. The impugned verdict of conviction, and, of consequent therewith sentence(s) (supra) as become imposed, upon the accused by the learned trial Court concerned, suffers from a grave perversity, and, absurdity of gross mis-appreciation of evidence on record, and, also of grave non-appreciation of evidence, as appertaining to theirs respectively validly exercising the right of private defence of their respective persons.

24. The verdict of conviction, and, consequent therewith sentence(s) is quashed, and, set aside. The accused, if in custody be forthwith set at liberty. Fine amount, if deposited by them be refunded to them. Their respective personal and surety bonds shall stand forthwith cancelled, and, discharged, and, the records be sent down forthwith. The weapons of offence are ordered to be destroyed after the expiry of the period of limitation.

25. Pending miscellaneous application(s), if any, also stand(s), disposed of.

19.01.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>