

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1580-SBA-2004 (O&M)
Reserved on: 21.07.2023
Date of order: 21.07.2023

State of Punjab .. Appellant (s)

Versus

Mohan Singh & others ... Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Karunesh Kaushal, AAG, Punjab
for the appellant(s).

Mr. Rahul Vats, Legal Aid Counsel
for respondent no.4.

Mr. Hardik Ahluwalia, Advocate and Mr. Amandeep Sharma, Advocate
for Mr. A.S. Manaise, Advocate for respondents no.5 to 8.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
197	10.7.1998	Sadar Gurdaspur	323, 324, 148, 149 IPC

1. Aggrieved by acquittal of the respondents-accused in FIR captioned above, State has come up before this Court by filing present appeal and consequently, the same has come up for final hearing after a gap of about 19 years. Respondents No.1 and 3 had expired before the filing of the present appeal, whereas appeal *qua* respondent no.2 stands abated vide order dated 13.2.2019.
2. In a cross-case, based on the complaint filed by Swaran Singh against sixteen accused, the trial Court convicted thirteen accused and proceedings against remaining three accused stood abated, as they expired during trial. The said thirteen convicts have also filed a separate appeal i.e. CRA-S- 477-SB-2004 which is pending for hearing. In the said appeal, none has put in appearance on behalf of the surviving accused-convicts and as such, this Court could not proceed further with the matter for want of

representation. I have also gone through the entire record of the said appeal against conviction and I am of the considered opinion that if this case is decided by separating the same from the said appeal, no prejudice will be caused to the convicts or the complainant in the said appeal. As such, considering that this matter is pending for 19 years waiting for hearing, this Court proceeds further to separate both the cases registered on separate FIR/criminal complaint and go ahead by adjudicating the present appeal filed by the State challenging the acquittal of the accused, who were complainant in CRA-S- 477-SB-2004.

3. Based on the statement of Balwinder Singh (PW-1), the police registered the above captioned FIR. Case of the prosecution is that the Balwinder Singh and his family had taken panchayat land for cultivation, on lease, in an open auction. On July 10, 1998, complainant - Balwinder Singh along with Ram Singh, Nirmal Singh and other friends went to cultivate the said land on tractor- trolleys. On reaching there, they were confronted by the accused party, who were duly armed. When they tried to cultivate the land, the accused persons disputed their possession and started quarrelling with them. During the course of quarrel, accused Saram Singh gave a tokki blow to Ram Singh on left side of his forehead and he fell down. Subsequently, the remaining accused also started beating Ram Singh when he had fallen down. When Swaran Singh tried to intervene, accused Rattan Singh gave a *barchi* blow which hit on the left side of chest of Balwinder Singh. With the intervention of some other persons, the accused ran away from the spot with their respective weapons. After completion of investigation, the officer incharge of the Police Station filed report under Section 173 CrPC and consequently, charges were framed by the trial Court under Sections 323, 324, 148, 149 IPC, to which the accused pleaded not guilty and claimed trial.

4. The prosecution examined the injured persons, the doctors to corroborate the injuries, independent witnesses and the investigator.

5. While responding to their statements under section 313 CrPC, the accused denied the prosecution's case and took a stand that in fact, it was the complainant-party who was the aggressor and had inflicted injuries on them and they had been in possession of the land for the last 30-40 years. They also stated that Mohan Singh had received very serious injuries and he remained admitted at Civil Hospital Gurdaspur for 21 days. The said injuries were declared as dangerous and to prove the same, they examined DW1 Dr Raj Kumar and DW2 Dr Jagjiwan Lal.

6 After appreciating the prosecution's evidence, the trial court did not believe the prosecution's version and acquitted all the accused of all the charges.

7. I have heard learned counsel for the appellant-State and learned counsel for the respondents-accused as well as learned legal aid counsel for respondent no.4 and gone through the record.

8. A reference to the defence evidence reveals that in fact, accused Mohan Singh (A-1), Swaran Singh(A-3)Shamsher Singh, (A-6) and Chanan Singh (A-8) had also received injuries. There is a medical corroboration to such injuriesThe registration of cross-case has also been duly proved vide Ex.D1, Ex.D2 and Ex.D3The prosecution is able to prove that Mohan Singh had remained admitted in Civil Hospital, Gurdaspur for 21 days.

9. A reference to the statements of the complainant party prosecution witnesses would be relevant to appreciate the evidence in correct perspective. PW-1 Balwinder Singh although attributed injuries to the accused, but in cross-examination when he was duly confronted about the possession of the land and it was specifically stated that it was the accused party who were in possession of the land for 30-40 years and in fact, the complainant party was the trespasser PW-1 Balwinder Singh was specifically confronted that he had a kirpan and had caused injuries with it, whereas his associates were armed with Barchis, Tokas, dattars and sotras and they had caused injuries on the accused persons. It was further confronted that the accused persons had been medically examined and a cross-case was registered against them at the instance of Swaran Singh, who had expired during the pendency of the trial. Similarly, prosecution examined PW-2 Ram Singh, who had alleged receipt of injuries at the instance of the complainant party, was also confronted about the defence version in similar pattern and he admitted the possession over the land in question of the accused for the last one year. PW-4 ASI Iqbal Singh, the investigator, admitted that the accused persons Swaran Singh, Mohan Singh, Shamsher Singh and Chanan Singh were admitted in hospital and he had recorded their statements and received their medico-legal reports. It was specifically stated that the injuries of Mohan Singh were declared as dangerous to life.

10. A perusal of the statements of PW-1 Balwinder Singh and PW-2 Ram Singh do not mention even slightly as to how did the accused persons received injuries at the same period of time. Their silence to explain the injuries would be an additional circumstance to prove the defence version that they had received injuries at the hands

of the complainant party who were the aggressors. None had stopped PW-1 Balwinder Singh and PW-2 Ram Singh to explain the correct incident and true facts, which they concealed from the Court. Once the genesis of occurrence has been suppressed, it is not a case where the Court can separate grain from chaff and believe that the silence of the complainants does not prejudice the case of the accused. In fact, even the investigator admits the receipt of injuries by the accused persons in the same incident. It is well settled that the injuries received by the accused were not simple which could be ignored, but were dangerous to life. It is well settled that non-explanation of injuries on the accused can be fatal to the prosecution's case and such ratio would correctly apply to the facts of the present case.

11. I have also gone through the impugned judgment which is well reasoned, detailed and appreciates the evidence correctly. A scrutiny of the evidence proved on record even if looked at holistically from any angle whatsoever does not point out that it were the accused alone who were the aggressors and possibility of the complainant party being the aggressor and initiator of brawl, cannot be ruled out and thus, the accused are entitled to benefit of doubt. Therefore, there is no reason to interfere with the judgment of acquittal. Even without referring to the said judgment, the reasoning which this Court has given is independent of the reasons given by the Sessions Court, which would lead to one conclusion that the prosecution has failed to prove its case beyond reasonable doubt.

12. Therefore, the present appeal is dismissed. All pending application(s), if any, stand closed. Bonds, if any, furnished by the respondents-accused stand discharged.

(ANOOP CHITKARA)
JUDGE

July 21, 2023
AK

Whether speaking/reasoned	Yes
Whether reportable	No