

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

336

CRA-S-517-SB-2004
Decided on : 15.02.2023

Ramesh and another
Versus
State of Haryana
... Appellant(s)
... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Arshdeep Singh Brar, Legal Aid Counsel
(appointed vide order dated 17.11.2022).
Mr. Pawan Kumar Jhanda, AAG, Haryana.

SANJAY VASHISTH, J.

1. Present appeal has been filed by appellants - Ramesh and Mahender, against the judgment of conviction dated 16.02.2004, and order of sentence dated 20.02.2004, passed by learned Additional Sessions Judge (Ad-hoc), Hisar (for brevity 'Ld. Trial Court'), in Criminal Case No.53-SC, dated 12.03.2001/24.04.2003. Accused/appellants were held guilty for commission for the offences punishable under Sections 307/323/34 of IPC, and both of them were ordered to undergo sentence(s), as detailed in the following table:

Name of Convict	Under Section	Sentence	Fine	In Default
Ramesh	307/34 IPC	10 years RI	Rs. 500/-	06 months RI
	323/34 IPC	06 months		
Mahender	307/34 IPC	10 years RI	Rs. 500/-	06 months RI
	323/34 IPC	06 months		

All the sentences were ordered to run concurrently.

Third accused – Ashok Kumar was acquitted by the Ld. Trial

Court.

2. FIR No.746, dated 15.10.2000, was got registered under Sections 307/323/324/34 IPC, at Police Station Sadar, Hisar. Said FIR was got lodged at the instance of complainant Murlidhar (PW5), which is detailed hereunder:-

“I am resident of village Burak and I am an agriculturist. We are two brothers. Our parents are also alive. We both brothers cultivate the land jointly. Eight acres of land is under our cultivation in the village and it is in self-cultivation. Out of this land four killas of land is under the cultivation of Ashok and Mahender sons of Chabil Dass. The land beyond these four killas is also in the name of Mahender. We are in possession of four killas of land. There is a Civil suit going on between us and Mahender etc. in respect of this land.

Today at about 12 noon I and my brother Mani Ram and my father Bhim Sein had gone to the fields to remove the bushes from our fields. My brother and myself were busy in uprooting the bushes from those four killas of land, which we are cultivating and which belongs to us. My father was sitting on the ‘dol’ of the water course at about 1.30 or 2.00 p.m. when the opposite party, namely, Ashok and Mahender sons of Chabil Dass and Ramesh son of Ashok came there and they were armed with lathi, jaili and kasia. Arriving there they started abusing us and said that we would be taught lesson for taking into possession this land. Saying this first of 'all Mahender gave lathi blow on Mani Ram, which fell on his hand and also on the thigh. Thereafter Ashok gave a Jaili blow in my head and there being a cloth on the head, I did not receive any apparent injury. In the meanwhile Ramesh son of Ashok I mar, Who was carrying a kisia gave a blow to my father with kasia in his head. Ashok also felled me & down and Ramesh gave a kasia blow to me in my waist and Ashok bit my thumb of the left hand. I fell down on the ground and I could not see what had happened to my father and how many injuries had been caused to my brother Mani Ram. We cried for help and all the three accused then ran away carrying their respective weapons with them.

The cause of enmity is that the four killas of land which we cultivate, the accused wanted to get that land back from us. But because of our possession there and the pendency of civil suit, we did not agree for the same. Today finding the chance they have caused injuries to us. My brother Mani Ram and my father Bhim Sein have gone for treatment to Civil Hospital, Hisar and I have come in the police post to inform you. My statement has been recorded.”

3. After investigation of the case, appellants hereunder and one more accused – Ashok Kumar, were challaned, and accordingly, final report under Section 173(2) Cr.P.C. was submitted to the Court.

4. Vide order dated 03.04.2001, all the three accused were charge-sheeted by the Court under Sections 307, 324, 323 read with Section 34 of IPC, and on pleading not guilty, were put to trial. Prosecution examined total 12 witnesses, details of which are mentioned hereunder:-

Sr. No. of PW	Name of the PW	Purpose.
1.	SI Jai Singh	He recorded the formal FIR in this case.
2.	Dr. Suresh Kumar	He medico-legally examined Murlidhar, Mani Ram, Bhim Sein in Civil Hospital, Hisar on 15.10.2000.
3.	Insp. Sube Singh	He prepared the final report in this case on 3.1.2001.
4.	Dr. V.K. Gupta	He treated Bhim Sein s/o Tika Ram, when he was brought to his hospital with head injury on 15.10.2000 onwards.
5.	Murlidhar	He is one of the eye-witnesses of the occurrence and injured himself.
6.	Bhim Sein	He is the injured witness.
7.	Mani Ram	He is another son of Bhim Sein & witness to the occurrence.
8.	UGC Om Parkash	He has placed his affidavit on record.
9.	Rajender Patwari	He prepared the scaled site plan of the place of occurrence.
10.	HC Hans Raj	He placed his affidavit on record.

11.	ASI Pat RAM	He partly investigated the case.
12.	Dr. Vikram Yadav	He treated the injured.

5. In defence, two witnesses i.e. Ram Singh Patwari as DW1, and Jagir Singh as DW2 were examined, beside tendering record in support of their case.

6. In the statements recorded under Section 313 Cr.P.C., all the accused pleaded innocence and false implication.

7. As already mentioned, third accused – Ashok Kumar was acquitted by the Ld. Trial Court. Thus, this Court is required to decide the fate of appeal *qua* rest of the accused i.e. both the appellants before this Court.

8. Dr. Suresh Kumar, appeared as PW2, and explained the injuries suffered by the complainant Mulridhar (PW5), Bhim Sein (PW6) and Mani Ram (PW7). Dr. Suresh Kumar (PW2) medically examined the injured and injuries suffered by all the three injured are reproduced hereunder:-

*“On 15.10.2000 I **examined Murli Dhar** son of Bhim Sain, medicolegally and he was brought by police. I found following injuries on his person:-*

- 1 - One abrasion on the middle of nose.*
- 2- Patient was complaining of pain in the middle of back.*
- 3- One abrasion on the calf region.*
- 4- One abrasion on the left thumb.*

All the injuries were simple in nature and were caused by a blunt weapon. Duration of injuries was within six hours. Copy OfMLR is Ex.PB, which bears my signature.

*2) On the same day I also **examined Mani Ram** son of Bhim Singh, 32 years, I/o VPO Budak and found following injuries on his person:*

- 1- One swelling on the dorsal aspect of right forearm 5 c.m. x 3 c.m.*

- 2- One swelling on the dorsal aspect of left forearm 6 c.m. x 4 c.m.

&

Tenderness was present.

Both the injuries were simple in nature and were caused by blunt weapon. Duration of injuries was within six hours. copy of MLR Is EX.PC, Which bears my signature.

(3) on the same day, I also **examined Bhim Sain** s/o TikU Ram, 65 years, I/• VPO Budak and found the following injuries on his person:-

- 1- Patient was unconscious, not responding to verbal commands.

Injuries:

1. One infixed wound on the right fronto parietal region and size 7 x 2 c.m. underline bone was fractured. The brain matter was coming out of this bone. Again said the brain matter is lacerated and exposed •
- 2- Right sided black eye was present. Advise for surgeon opinion and x-ray.

Injury no.1 was dangerous to life and was caused by a sharp edged weapon. Injury no.2 was kept under observation. Duration of injuries was within six hours. Injury no.2 was caused by a blunt weapon. Copy of MIR is Ex.PD, Which bears my signature. I also sent ruqa Ex.PE to the police post. Police made request Ex.PF to me for examination of Murli Dhar, injured. (At this stage seal of ISL is opened and a Kasia taken out) Injury No.1 in the MLR of Sham Sain is possible due to weapon i.e. kasia Ex.P1. ”

9. From the details of the injuries as mentioned herein-above, it is clear that injury No.1 suffered by injured Bhim Sein (PW6) is the one, which was declared as dangerous to life, and same was caused by sharp edged weapon. Another witness Dr. V.K. Gupta (PW4), would not be that material because his job was to give preliminary treatment in his private hospital, and

then to refer the injured persons to the PGI, Rohtak.

10. For proving the incident, and the injuries, complainant Murlidhar appeared as PW5, Bhim Sein, appeared as PW6, and Mani Ram, appeared as PW7. Thus, all the three injured witnesses appeared in the witness-box and specific roles were assigned to the appellants. As per the deposition of the injured witnesses, accused - Ramesh (appellant No.1 herein) armed with kasia, came on the spot, and started abusing. Accused – Mahender (appellant No.2 herein) was armed with lathi, and Ashok (already acquitted by the Ld. Trial Court) was armed with jaili.

Accused - Mahender gave a lathi blow to Mani Ram (PW7), which landed on his right hand and thigh. Accused - Ashok Kumar gave jaili blow on the head of Murlidhar (PW5), but due to the angocha on the head, he was saved. Accused – Ramesh gave kasia blow to Bhim Sein (PW6) on his head. On raising alarm all the accused ran away from the spot, and the motive of the occurrence was that all the accused had obtained land fraudulently, and wanted to take possession of the land forcibly.

11. Counsel for the appellants, argues that there is a specific stand of the appellants that injuries were caused in self-defense, and for proving the said aspect, Ram Singh - Patwari Halqa Burak, appeared as DW1 and tried to show that from the entries made in the Girdawari and Jamabandi (Ex.D1 & Ex.D2), it is clear that appellants were in possession of land in question. Ld. Legal Aid Counsel also referred to the statement of Jagir Singh (DW2), and tried to prove that appellant No.1 – Ramesh was not present on the spot. He also tried to prove that there was a quarrel in the field, and when he reached, Ramesh Kumar was taking his father and Chacha in a tractor to hospital.

Thus, from the statements of the said witnesses, Ld. Legal Aid Counsel tried to prove that the injuries are result of the exercise of right of

self-defense of the appellants. However, Ld. Legal Aid Counsel was unable to point out any discrepancy in the role assigned to the appellants during their deposition before the Court.

Thus, limited argument addressed by the Ld. Legal Aid Counsel is that though injuries are caused, but same are caused by both the sides and appellants have caused injuries in their self-defense.

12. For the purpose of proving the fact that both the parties suffered injuries, Ld. Legal Aid Counsel read out the statement of ASI Pat Ram (PW11), who in his examination-in-chief has explained that *“On the same day, I received a telephonic message from P.P., G.H. Hisar, to the effect that both parties were admitted in General Hospital, Hisar in injured condition and accordingly, I went to General Hospital, Hisar, where Ram Suresh Constable produced ruqa Ex.PE and MLRs of Bhimsen, Murlidhar and Mani Ram.”*.

Ld. Legal Aid counsel tried to project from the statement of Patwari that in the revenue entry also, possession of land is mentioned in the name of appellants. For proving the factum of injuries suffered by both the sides, Ld. Legal Aid Counsel relied upon the statement of Jagir Singh (DW2).

13. On the other hand, while opposing the submissions addressed by Ld. Legal Aid Counsel, Ld. State counsel reads out the statements of all the three injured witnesses i.e. Murlidhar (PW5), Bhim Sein (PW6) and Mani Ram (PW7), and thus, argues that the case against the appellants is fully proved, as the weapons used by them have also been recovered, and thus, there is complete chain of evidence. As there is no escape for the appellants, present appeal is worth for dismissal.

14. I have heard learned counsel for the parties and perused the

record carefully, and found that the plea of defense taken by the appellants is untenable. From the cross-examination of the witnesses, it could not be pointed out that injuries were caused in self-defense, and appellants had also suffered injuries. Not only this, defense side has failed to examine any Medical Officer/Doctor to prove the factum of suffering of injuries and more for corroborating the admission of ASI Pat Ram (PW11), where, he deposed that *“both parties were admitted in General Hospital, Hisar.”*

15. This Court has also examined the statements of appellants recorded under Section 313 Cr.P.C., wherein, except of saying that the injuries were caused by the prosecution witnesses to Mahender, there is nothing mentioned that how they themselves (complainant party) had suffered injuries. In fact, the burden was upon the appellants, once they admit their presence, and states that appellants themselves suffered injuries at the hands of the complainant party.

Broadly speaking, there is nothing pleaded specifically by the appellants regarding causing of the injuries. Rather, case of the appellants is not of the self-defense.

16. Now coming to the aspect that whether injuries suffered by the victim Bhim Sein (PW6) is dangerous to life or not ? Dr. has specifically detailed the injuries and accordingly, opined that injury No.1 is dangerous to life. Statement of the Doctor has already been reproduced herein-above. Otherwise also, no dispute has been raised by the appellants about the nature of injuries suffered by the victim Bhim Sein (PW6).

17. In view of the submissions addressed and recorded herein-above, and after examining of the complete record along with findings given in the impugned judgment, this Court does not find any illegality or perversity in the impugned judgment, thus, same is worth to be maintained

by upholding that appellants have committed an offence under Section 307 of IPC, and both the appellants are liable for the said injury because of sharing of common intention. Thus, challenge to the judgment *qua* conviction part is not acceptable, and thus appeal stands dismissed.

18. However, considering the aspect that incident took place on 15.10.2000 i.e. about more than 22 years back, and as reported by Ld. State counsel, from the custody certificates that appellant No.1 – Ramesh has undergone actual custody period of 02 years, 05 months and 09 days, and including remissions 03 years, 02 months and 07 days, ; and Appellant No.2 – Mahender has also undergone actual custody period of 02 years, 07 months and 04 days, and including remissions 03 years, 04 months and 02 days; I deem it appropriate to reduce the sentence part, because there is nothing available on record, or even pointed out during arguments by Ld. State counsel that during this long period of more than 22 years, any of the appellants is found involved in any other criminal activity.

19. Ld. Legal Aid Counsel also argues that both the appellants are now well settled with their respective families, and are the only bread earners for them. Sending them behind bars after two decades period would completely unsettle the life of other family members, who are dependent upon these appellants.

This Court also cannot ignore the aspect that appellant No.2 – Mahender, is attributed injury on the right hand and thigh of injured Mani Ram (PW7) with lathi, which is said to be simple one. But appellant No.1 – Ramesh has caused kasia blow on the head of Bhim Sein (PW6), who was then aged about 65 years, and said injury was opined to be dangerous to life. Injury was such that brain material also came out. Therefore, sentence awarded by Ld. Trial Court of 10 years *qua* appellant No.1 is reduced to that

of actual sentence period of 05 years.

Thus, appellant No.1 is ordered to undergo the total sentence period of 05 years as rigorous imprisonment. Appellant is directed to surrender before the concerned Jail Authorities forthwith, for undergoing his remaining part of sentence, or else prosecution agency would be free to take the appellant in custody.

Remaining part of sentence i.e. payment of fine etc. shall remain as such, as passed by the trial Court.

However, taking a lenient view for appellant No.2 – Mahender, who in fact, has caused simple injury to Mani Ram (PW7), but convicted and sentenced for the purpose of sharing of common intention with appellant No.1 – Ramesh, is given benefit by reducing his sentence to that of already undergone by him. However, sentence *qua* fine would remain intact without there being any change.

By modifying the order of sentence, appeal stands disposed of with aforesaid modifications.

(SANJAY VASHISTH)
JUDGE

February 15, 2023

J.Ram

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