

215 CRM-166-2020 in/and CRM-A-69-2020 (O&M), -1-
CRA-S-1360-2019 (O&M) and
CRM-A-2557-2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-166-2020 in/and
CRM-A-69-2020 (O&M)
Reserved on: 23.02.2023
Date of Decision: 19.04.2023

Raj Kumar Julka and another
.....Applicants-Appellants

Vs.

State of Punjab and others
.....Respondents

2. CRA-S-1360-2019 (O&M)

Harinder Pal Singh and others
....Appellants

vs.

State of Punjab
.....Respondent

3. CRM-A-2557-2019 (O&M)
Harinder Pal Singh
....Applicant-Appellant

vs.

Raj Kumar and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Karambir Singh Kahlon, Advocate,
for the applicant-appellants
(in CRM-166-2020 in/and CRM-A-69-2020 and
for respondents No. 1 to 3, 5 and 6 (in CRM-A-2557-2019).

Mr. Keshavam Chaudhri, Advocate, for
Mr. Sartaj Singh Gill, Advocate,
for the applicant-appellant
(in CRA-S-1360-2019 and CRM-A-2557-2019) and
for respondents No. 2 to 8 (in CRM-A-69-2020).

215 CRM-166-2020 in/and CRM-A-69-2020 (O&M), -2-
CRA-S-1360-2019 (O&M) and
CRM-A-2557-2019 (O&M)

Mr. Navneet Singh, Sr. D.A.G., Punjab.

HARPREET KAUR JEEWAN, J.

CRM-166-2020 in/and CRM-A-69-2020

By this application, the applicants-appellants seek condonation of delay of 205 days in filing the accompanying application seeking leave to appeal.

Notice in the application has already been issued vide order dated 14.02.2022 but no reply has been filed by the State so far.

Consequently, in view of the averments made in the application, which is duly supported by an affidavit, the application is allowed and the delay of 205 days in filing the accompanying application seeking leave to appeal is hereby condoned.

CRM stands disposed of.

CRM-A-69-2020 (O&M),
CRA-S-1360-2019 (O&M) and
CRM-A-2557-2019 (O&M)

Since the common question of facts and law is involved, as such the aforesaid appeals are taken up together for discussion and final disposal.

CRM-A-69-2020 (O&M), Raj Kumar Julka and another vs. State of Punjab and others

1. Appellants are seeking leave to appeal under Section 378 (4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') against the judgment dated 04.02.2019 passed by learned

Additional Sessions Judge, Gurdaspur, in Sessions Case No. 14/2009, titled State vs. Harinder Pal Singh and others, assailing the findings of acquittal of respondents Jagir Singh, Gurbinder Singh, Gurwinder Singh and the proclaimed offender Ranjit Singh under Sections 307/506/148/149 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') and also assailing the order granting benefit of probation to respondents Harinder Pal Singh, Lakhwinder Rana, Sukhdev Singh and Gurbachan Singh for offences punishable under Sections 452 and 336 read with Section 34 IPC.

CRA-S-1360-2019 (O&M), Harinder Pal Singh and others vs. State of Punjab,

Appellants-convicts have filed criminal appeal under Section 376 Cr.P.C. and Section 11 (2) Probation of Offenders Act, 1958 against the same judgment dated 04.02.2019 passed by learned Additional Sessions Judge, Gurdaspur, in Sessions Case No. 14/2009, titled State vs. Harinder Pal Singh and others assailing the findings of their conviction and order of sentence under Sections 452, and 336 read with Section 34 IPC, by which they were released on probation for a period of 2 years.

CRM-A-2557-2019, titled Harinder Pal Singh vs. Raj Kumar and others

Appellant is seeking leave to appeal under Section 378 (4) Cr.P.C. against the judgment dated 04.02.2019 passed by learned Additional Sessions Judge, Gurdaspur, in Sessions Case No. 75/2006, titled State vs. Raj Kumar and others, assailing the findings of acquittal of respondents Raj Kumar, Anil Kumar, Sumit Kumar, Munish Kumar, Vijay Kumar and Rajiv Kumar

from the charges framed under Sections 307/326/324/323/148/149 IPC and under Section 27 of the Indian Arms Act, 1957.

As per the judgment of the trial Court, accused Parshotam Lal died during the trial and proceedings stood abated vide order dated 06.06.2013.

FACTS

2. It is a case of version and cross-version set up by **Raj Kumar Julka** (appellant in CRM-A-69-2020, titled Raj Kumar Julka and another vs. State of Punjab and other) (hereinafter referred as '*the appellant Raj Kumar*') and by **Sh. Harinderpal Singh** (appellant in CRA-S-1360-2019 and CRM-A-2557-2019) (hereinafter referred as '*the appellant Harinderpal Singh*').

2.1 As per the version of appellant **Raj Kumar Julka**, he is running a cloth shop at City Road, Batala, under the name and style of Monica Print Store. On 01.08.2004 at about 10:30 a.m. he came to his shop and found that appellant Harinderpal Singh, Municipal Counselor, armed with a rifle along with 20-25 persons who were also armed with '*Takua*' '*sticks*' '*Hockeys*' and '*Dattars*' along with 5 tanks of water out of which 1 was containing acid, came there. Appellant Harinder Pal Singh raised a '*talkara*' that he would destroy the shop with the help of acid and he also fired a shot from his rifle. Whereas the persons who were accompanying accused Harinderpal Singh started throwing brick bats towards the appellant. In the meantime, police reached at the spot and on seeing the police party, accused Harinder Pal Singh self-suffered injuries on his

forehead with brick and upon which blood started oozing out from his forehead. However, the police party apprehended the accused Harinder Pal Singh. The motive behind the occurrence was that a civil suit between the parties is pending regarding the shop which is in possession of the appellant in which stay order has been granted in favour of the appellant Raj Kumar.

2.2 Whereas it is the version of the appellant **Harinderpal Singh** that he is having 03 shops in front of Khasla School, City Road, Batala, out of which 2 shops were given on rent. On 01.08.2004, at about 10:30 a.m., he along with Gurbachan Singh, Ranjit Singh, Sukhdev Singh went to repair his shop. Accused Raj Kumar armed with '*Kirpan*', Anil Kumar armed with a double barrel gun, Purshotam Lal armed with '*Chhavi*', Sunil Kumar armed with '*Kirpan*', Munish Kumar armed with '*Kirpan*', Vijay Kumar alias Happy armed with '*Dang*' and Rajiv Kumar armed with '*Kirpan*' came there. The accused Raj Kumar raised a '*Lalkara*' exhorting Anil Kumar to kill the appellant with his gun and then Anil Kumar fired a shot from his gun towards the appellant but the appellant ducked. Then Anil Kumar gave another fire shot which hit Sukhdev Singh on his feet. Respondent No. 1, Raj Kumar gave a '*Kirpan*' blow which hit appellant No. 1 on his forehead. Purshotam Lal gave '*Chhavi*' blow from its reverse side which hit appellant Raj Kumar on his hands. Thereafter, appellant raised '*raula*' which attracted Balwinder Singh and Manjit Singh and others at the spot and the injured persons were taken to Civil Hospital, Batala.

**INVESTIGATION AND TRIAL PROCEEDINGS AT THE
INSTANCE OF APPELLANT RAJ KUMAR**

3. FIR No. 102, dated 01.08.2004 was registered at the instance of appellant Raj Kumar Julka under Sections 336/148/149 IPC and Section 25 of the Arms Act against the accused Harinderpal Singh and 20-25 other unknown persons in Police Station City Batala.

3.1 Thereafter, appellant Raj Kumar Julka also filed a criminal complaint against the accused Harinderpal Singh and others under Sections 307/452/506/34 of the IPC in the Court of Area Magistrate wherein it was alleged that he is in possession of a shop which has been taken on rent. However, respondent accused Harinder Pal Singh has been claiming that he had purchased the said shop in the year 2003. Since then, respondent Harinder Pal Singh has been making attempts to take forcible possession of the said shop. Appellant Raj Kumar had also filed a civil suit for permanent injunction whereby an order of stay had been passed in his favour.

3.2 In the criminal complaint filed by appellant Raj Kumar similar facts were also pleaded regarding the occurrence dated 01.08.2004 which were pleaded in the registration of the FIR at his instance. However, it was alleged that the local police instead of arresting the accused had given them VIP treatment and they were let off. The FIR was only registered at the instance of appellant Raj Kumar when a protest was made by the local shopkeepers. However, the local police did not present the challan against the appellant-Harinderpal Singh and others, therefore, the criminal complaint was filed.

3.3 The Complaint Case was committed to the Court of Sessions,

vide order dated 28.07.2006 passed by Sub-Divisional Judicial Magistrate, Batala, whereas the State case was subsequently committed to the Court of Sessions by SDJM, Batala, vide order dated 05.06.2009, Both these cases were clubbed together as per order dated 07.07.2010. Before commitment of the cases the documents were supplied to the appellant Harinderpal Singh and others as required under Section 207 of the Cr.P.C.

3.4 Appellant Harinderpal Singh, appellant Lakhwinder Singh appellant Sukhdev Singh, and appellant Gurbachan Singh and others were tried in Sessions case No. 14/2009, titled State vs. Harinderpal Singh.

3.5 Charge under Sections 336/148/149 of the IPC read with Section 25 of Act of 1959 was framed against appellant Harinderpal Singh and others. Thereafter, amended charge was framed by the trial Court under Sections 452/307/506/148/149 of the IPC, vide order dated 28.11.2014 against appellant Harinderpal Singh and other accused to which they pleaded not guilty and claimed trial.

3.6 Prosecution examined 7 witnesses. PW-1, Raj Kumar (the complainant), PW-2, Parshotam Lal, PW-3, Mulakh Raj, PW-4 ASI Savinder Singh, PW-5 Head Constable Prem Chand, PW-6, Poonam (Clerk) (wrongly written as PW-5) and PW-6 DSP Kirpal Singh.

3.7 Appellant Harinderpal Singh and other accused alleged false implications in the statement recorded under Section 313 of the Cr.P.C. Appellant Harinderpal Singh alleged in the said statement that on the day of occurrence he along with Gurbanchan Singh, Sukhdev Singh and Ranjit Singh went for the repair of the shop which adjoins the shop of appellant

Raj Kumar and which was in his possession. At that time appellant Raj Kumar armed with '*Kirpan*', his brother Anil Kumar armed with double barrel gun, his sons Sumant Kumar and Manish Kumar armed with '*kirpans*', Vijay Kumar alias Happy armed with '*Dang*', Rajiv Kumar armed with '*kirpan*' and Purshotam Lal armed with '*chhavi*' attacked them. Resultantly, Sukhdev Singh suffered a firearm injury from the hands of Anil Kumar, he sustained '*kirpan*' on his head from the hands of Raj Kumar and Parshotam Kumar whereas Gurbachan Singh, Ranjit Singh and Sukhdev Singh also suffered other injuries from the hands of Raj Kumar and his companions.

3.8 The other accused also took similar plea in their statements recorded under Section 313 Cr.P.C.

3.9 In the defence, respondent-accused examined 6 witnesses. DW-1, Dr. Lakhbir Singh, DW-2, HC Sohan Singh, DW-3 Satwant Singh, DW-4 Ashwani Kumar, DW-5 ASI Swinder Singh and DW-6 Dr. Arvinder Singh.

3.10 The trial Court held the appellants Harinderpal Singh, Lakhwinder Rana, Sukhdev Singh and Gurbachan Singh, guilty of the offences punishable only under Sections 452/336 read with Section 34 of the IPC. However, the said appellants were not held guilty under Sections 307/506/148/149 of the IPC. The remaining accused namely, Jagir Singh, Gurbinderbir Singh and Gurwinder Singh were acquitted by the trial Court.

INVESTIGATION AND TRIAL PROCEEDINGS AT THE INSTANCE OF HARINDERPAL SINGH

4. On 03.08.2004, the police recorded the statement of appellant

Harinderpal as a cross-version in the aforesaid FIR No. 102 which was already registered at the instance of appellant Raj Kumar. Investigation was conducted and the '*challan*' was presented against appellant Raj Kumar and others. After supplying copy of the '*challan*' and annexed documents, the case was committed to the Court of Sessions by SDJM, Batala, vide order dated 22.03.2006.

4.1 The appellant Raj Kumar, respondent Anil Kumar, Sumit Kumar, Munish Kumar, Vijay Kumar @ Happy, Rajiv Kumar and Parshotam Lal (since deceased) were tried in Session's case No. 75/2006 by Additional Sessions Judge, Gurdaspur.

4.2 Charge-sheet was issued to appellant Raj Kumar and others under Sections 307/323/324/326 read with Section 149 of the IPC and Section 27 of the Arms Act, 1959, to which they pleaded not guilty and claimed trial.

4.3 Prosecution examined 7 witnesses. PW-1, Dr. Lakhbir Singh, PW-2 Head Constable Sawinder Singh, PW-3 Harinderpal Singh, PW-4, Sukhdev Singh, PW-5 Dr. Arvinder Singh, PW-6 Gurbachan Singh and PW-7, Ranjit Singh.

4.4 The appellant Raj Kumar and others alleged false implications in the statement recorded under Section 313 of the Cr.P.C., and alleged false implication.

4.5 In the defence, appellant Raj Kumar and others examined DW-1, AMHC Gurnam Singh and DW-2, Parvesh Kumar.

**OBSERVATIONS BY THE TRIAL COURT IN THE CASE
REGISTERED AT THE INSTANCE OF APPELLANT RAJ KUMAR**

5. While recording the conviction of appellant Harinderpal Singh, Lakhwinder Rana, Sukhdev Singh and Gurbachan Singh, the trial Court took a note of the admissions made by Raj Kumar (PW-1) that none of his party member suffered any gunshot injury or any kind of injury at the time of occurrence. He has also admitted that he did not take photographs of the damaged wall or sign board allegedly damaged by the accused persons. He has also admitted that he has not stated to the police that his wall or sign board were damaged. He has further stated that 200 persons had collected there who had thrown brick bats which hit him and to the accused party. The injury on the person of the accused party were also admitted by the said witness and he has stated that the accused party tried to dispossess them. The trial Court observed that from the said admissions as well as from the cross-case titled as **State vs. Raj Kumar etc.** it is clear that the accused respondent Harinderpal Singh and others were not appearing in any litigation regarding the shop in dispute filed by Raj Kumar. The trial Court concluded that on the date of occurrence respondent Harinderpal Singh and others had tried to dispossess them. Consequently, they were stopped by a mob and sustained injuries from the hand of the mob. It was concluded that the complainant and others have not suffered any gun shot injury or any kind of injury at the time of occurrence from the hand of the accused persons, as such, the said respondents were not held guilty under Section 307/506/148/149 of the IPC.

5.1 While acquitting the respondents-accused Jagir Singh, Gurbinderbir Singh and Gurwinder Singh, the trial Court observed that they have not been named by PW-1, Raj Kumar and PW-2, Parshotam Lal, in the cross case as such, and it is not proved that they have attacked the complainant on 01.08.2004 to dispossess them from the shop.

OBSERVATIONS BY THE TRIAL COURT IN THE CASE REGISTERED AT THE INSTANCE OF HARINDERPAL SINGH

6. The trial Court vide order dated 04.02.2019 acquitted the respondents after taking into consideration the evidence on record and the arguments addressed by counsel for the parties. The admission made by Harinderpal Singh (PW-3) was taken into consideration that he has admitted in his cross-examination that accused Raj Kumar took the disputed shop on rent from Sewa Singh and Surjit Singh, whereas he had purchased the said shop from its owner the year 2004 but no sale deed was executed in his favour. It was also admitted by the witness that Raj Kumar accused had filed a civil suit against him and the trial Court has granted stay against him. He had also admitted that he is having a license of .12 bore gun. There is further an admission that on 01.08.2004, he along with his companions Gurbachan Singh had gone to the spot on Maruta carrying water in drums. As such the trial Court believed the version of the complainant that Harinderpal Singh along with his companions had gone to the shop of Raj Kumar for dispossessing him.

6.1 However, the trial Court held that there was mob consisting of 200 peoples of nearby area of the shops collected at the spot. The mob

saved the possession of Raj Kumar and in order to scare Harinderpal and others, the mob started throwing bats and stones on them and they received minor injuries. The trial Court further observed that appellant Harinderpal and others did not receive any injuries from the hands of the accused party. As such all the respondents accused were acquitted of the charges framed against the respondents.

ARGUMENTS ADDRESSED BY THE COUNSELS

7. The learned counsel for the appellant Raj Kumar Julka (in CRM-A-69-2020), submitted that there is substantial evidence on record to convict respondent Harinderpal Singh and others under Sections 307/506/148/149 of the IPC, however, the said respondents have been only convicted under Sections 452/336 IPC. It was also submitted that there is substantial evidence against respondents Jagir Singh, Gurbinderbir Singh, Gurwinder Singh and Ranjit Singh (proclaimed offender) to prove the charges against them but they have been wrongly acquitted by giving them benefit of doubt.

7.1 Learned counsel for the appellant Harinderpal Singh (in CRA-S-1360-2019) submitted that the appellants have been wrongly convicted and sentenced. The appellant Harinderpal Singh is 55 years old. He was selected as a Municipal Counselor in the year 2003 and was also serving a General Secretary of Ramgarhiya Foundation which is enrolled for uplifting of the downtrodden and is continuously serving the public at large. While convicting the appellants the trial Court has not appreciated the fact that the shop in dispute was purchased by appellant Harinderpal

Singh from the grand-son of Sewa Singh. The appellant was repairing the adjoining shop which is owned by him but they were attacked by Raj Kumar and his companions. The dispute between the parties was regarding the shop which is under the tenancy of the appellant Raj Kumar.

7.2 Learned counsel for the appellants further highlighted that the complainant Raj Kumar and others did not receive any injury rather it was the appellants who had received injuries at the hands of the complainant Raj Kumar and others which has been proved on record.

7.3 It was vehemently argued that the trial Court has failed to appreciate the medical evidence produced by DW-1 Dr. Lakhbir Singh, who has medico-legally examined appellant No. 3 Sukhdev Singh on 01.08.2004, who had proved 3 injuries on his person. The trial Court failed to appreciate that the foreign body (pellets) were found on below the shoulder joint area and on the back of the right side of the chest of appellant No. 3 Sukhdev Singh which were inflicted on him by one of the companions of the complainant Anil Kumar. Even the medical evidence has been proved by DW-1 regarding the injuries suffered by appellant Harinderpal Singh. The trial Court has failed to appreciate that prosecution has miserably failed to prove any of the charges against the appellants-accused. As such the appellants are liable to be acquitted under Sections 452/336/34 of the IPC.

7.4 Learned counsel for the appellant Harinder Pal Singh (in CRM-A-2557-2019) submitted that the trial Court erred in acquitting the respondents of the grave and heinous charges under Sections

307/326/324/323/148 of the IPC, as well as under Section 27 of the Arms Act, which has resulted in miscarriage of justice. The medical evidence led by PW-1 Lakhbir Singh and PW-5 Dr. Arvinder Singh have not been properly considered by the trial Court. Similarly, the testimony of the eye witness PW-3, Harinderpal Singh-appellant, PW-4, Sukhdev Singh, PW-7, Ranjit Singh was also overlooked. The testimony of the appellant Harinderpal Singh (PW-3), Sukhdev Singh (PW-4), Gurbachan Singh (PW-6) and Ranjit Singh (PW-7) has also been ignored by the trial Court. It was submitted that the respondents are liable to be convicted. Hence, leave to appeal be granted.

FINDINGS

8. We have considered the arguments raised by learned counsel for the parties and perused the paper-book.

9. The present appeals require the determination of following points: -

- a) Whether the appellant Harinderpal Singh, Lakhwinder Rana, Sukhdev Singh and Gurbachan Singh are liable to be convicted under Sections 307/506/148/149 IPC?
- b) Whether the respondents Jagir Singh, Gurbinder Singh and Gurwinder Singh are liable to be convicted of the charges framed against them as per the version set up by appellant Raj Kumar?
- c) Whether the judgment of conviction against appellant Harinderpal Singh, Lakhwinder Rana, Sukhdev Singh

and Gurbachan Singh is liable to be set aside?

- d) Whether the respondents Raj Kumar and others in the application seeking leave to appeal bearing No. CRM-A-2557-2019 are liable to be convicted of the charges framed against them at the instance of appellant Harinderpal Singh?

MOTIVE

10. The genesis of the alleged occurrence is the shop in question which is admittedly in possession of Raj Kumar (Party A). It is not disputed that Raj Kumar (Party A) had filed a civil suit for permanent injunction against Gurdeep Singh and others on 06.11.2003, i.e. before the date of occurrence which took place on 01.08.2004. In the said civil suit, Raj Kumar has alleged that he is in possession of the shop in question as a tenant under Sujit Singh, son of Sewa Singh and Sewa Singh son of Boor Singh. Appellant Harinderpal Singh was defendant No. 3 in the said civil suit and specific allegations were made against him that he is alleging to have purchased the shop in question. He had started demolishing the adjoining shop which is situated towards the Southern side of the shop in question and there was an illegal threat from the defendants for illegal dis-possession of the plaintiff from the shop in question. As per the order dated 11.06.2012 (Ex. DY) which has been relied upon in defence in the trial of Sessions Case No. 75/2006, titled **State vs. Raj Kumar and others**, the said civil suit has been decreed and a finding was recorded by the Civil Judge, Batala, that plaintiff (appellant Raj Kumar) in possession over the

shop in dispute as a tenant.

11. As per the version of the appellant, Harinderpal Singh (Party-B) he has 3 shops. On the day of occurrence, he along with his companions had gone to repair his one of the shop which is in his possession. One of his shops is admittedly in possession of the other party, Raj Kumar. On the day of occurrence when he had gone to repair his shop, the other party including Raj Kumar and others have attacked them and inflicted injuries with an intention to kill them. Whereas, as per the version of the appellant Raj Kumar he is in occupation of the shop in question which he (appellant) has taken on rent from its owner. On the day of occurrence, Harinderpal Singh who alleges that he has purchased the said shop came at the spot along with his companions with an intention to take the possession of the shop. Harinderpal Singh and his other companions were armed with weapons. They were carrying acid in a water tank and they inflicted injuries to Raj Kumar and others (Party A).

12. In the cross-examination Harinderpal Singh (PW-3) in Sessions Case No. 75/2006, titled **State vs. Raj Kumar and others**, has admitted that in the year 2003 he was elected as Municipal Counselor of the Ruling Party. He also deals in sale and purchase of property. The possession of the spot by the appellant Raj Kumar Julka is also admitted by him in his cross-examination. Though he has alleged in the cross-examination that he had purchased the shop from its owner in the year 2004 but he has admitted that no sale deed was executed in his favour and he only obtained power of attorney from the owner. Even the said power of

attorney was not produced in the Court. He has also admitted that Raj Kumar was regularly paying rent to the owners. He had obtained the power of attorney from Gurdeep Singh, son of Darshan Singh but he had no talk with the owner regarding the tenancy deed executed in favour of Raj Kumar. Regarding the pendency of the civil suit and the stay granted by the Civil Court, the witness has admitted that he was restrained from interfering in the said shop.

13. Keeping in view the facts and circumstances of the case, appellant Raj Kumar was held to be in lawful possession of the shop in question on the day of occurrence and had taken recourse to legal remedies for protecting of his possession by filing a civil suit for permanent injunction. Then there cannot be any motive with him to inflict any injuries to the appellant Harinderpal Singh and his companions.

MEDICAL EVIDENCE AND INJURIES

14. A perusal of the trial Court record of both cases indicates that 4 persons of the party of appellant Harinderpal Singh were injured in the occurrence. PW-1, Dr. Lakhbir Singh in Sessions Case No. 75/23.03.20063, titled **State vs. Raj Kumar and others** has proved the medico-legal examination of injured Sukhdev Singh, Harinderpal Singh, Gurbachan Singh and Ranjit Singh.

As per his version following injuries were found on the person of Sukhdev Singh:-

“(1) A penetrating entry wound measuring 0.5 x 0.5 cm surrounded by reddish area in a radius of 1 cm with blisters on the interior surface of the entry wound placed on the

back of the chest on right side 7 cm posterior to right axilla and 18.5 cm below the right shoulder joint and 8 cm lateral to the inferior angle of right scapular.

(2) A penetrating entry would measuring 0.5 x 0.5 cm surrounded by reddish area in a radius of about 1 cm with blister formation at the inferior surface of the entry wound placed on the back of right side of chest 11 cm below and medial to injury No. 1.

(3). A reddish contusion 5 x 3 cm on the lateral aspect of right thigh 15 cm above the right knee joint. Corresponding perforation on the shirt were present. Corresponding to injuries No. 1 and 2 which were marked and signed by me and sent with MLR report to the police.”

He has stated that injury No. 3 was declared simple. Weapon used was blunt for injury No. 3. Injuries Nos. 1 and 2 were declared simple in nature after receiving x-ray report from Radiologist Civil Hospital, Batala and weapon used possibly was of fire arm.

15. He has also stated that the following injuries were found on the person of Harinderpal Singh:-

“(1) An incised wound measuring 3.5 x 0.5 cm on the right side of forehead surrounded by diffuse swelling of 7 x 4.5 cm 3.5 cm about his right eye brow and 4 cm to the right from the central line. Wound was bone deep and profusely bleeding.

(2) A transversely placed incised wound measuring 5.25 x 0.5 cm on the left side of head in the parietal region 8.5 cm above the left ear 16 cm above the posterior hair line. Wound was bone deep and profusely bleeding. Corresponding cut was also present on the turban corresponding to injury No. 2.

(3) An abrasion measuring 1.5 x 1 cm

on the dorsum of first inter pharyngeal joint of little finger of left hand.

(4) An abrasion measuring 0.25 x 0.25 cm on the distal phalynx of little finger left hand at the base of nail.

(5) An abrasion measuring 0.5 x 0.5 cm on the dorsum of proximal inter pharyngeal joint of ring finger of left hand.

(6) Patient complaints all over the body.”

He has stated that injuries No. 1 and 2 were kept under observation, which were declared simple in nature after receiving the x-ray report from Civil Hospital, Batala. Weapon used was sharp for injuries No. 1 and 2, blunt for rest of the injuries and remaining injuries were declared simple at the time of examination.

16. The said witness has medically examined Gurbachan Singh and found the following injuries: -

“(1) An incised penetrating wound 1.5 x .025 cm on the posterior aspect of left arm just below the elbow joint. Depth of wound was 1.25 cm.

(2) A reddish contusion measuring 20 x 2 cm on the altero lateral aspect of left arm 8.5 cm below left shoulder joint and 10 cm abot the left cubical fossa.

(3) A reddish contusion 14 x 1.5 cm placed 2 cm below and parallel to injury No. 1.

(4) A reddish contusion 9.5 x 1.75 cm on the postero lateral aspect of left force arm 0.5 cm below the left elbow joint.

(5) A reddish contusion 12 x 6 cm on the inferior part of left scapular region.

(6) A reddish contusion 19 x 2.5 cm on the back of chest starting 12 cm below the neck on right

side and extending obliquely to the left side of back of chest.

(7) A reddish contusion measuring 5.5 x 4.0 cm on the back of left side 19.5 cm below the iliac crest and surrounded by diffuse swelling of 8 x 6 cm.”

He has stated that injury No. 1 was sharp in nature and rest of the injuries were blunt in nature.

17. He has also examined Ranjit Singh and found the following injuries: -

“(1) An incised wound measuring 2.75 x 0.5 cm on the antero lateral aspect of left forearm, wound was profusely bleeding and bone deep. Wound was stitched with white thread.

(2) An incised wound measuring 4.5 x 1.25 cm on the shin of right leg 13 cm above the right ankle joint. Wound was bone deep.

(3) Multiple contusion reddish in colour of varying sizes ranging from 28 x 1 cm, 13 x 1 cm, 30 x 1.25, 17x 1 cm, 29 x 1.25, 21 x 1 cm were present over the back of chest and abdomen spread over an area of 29 x 42 cm.”

He has stated that injuries No. 1 and 2 were kept under observation and No. 3 declared simple. Weapon used was sharp for injuries No. 1 and 2 and blunt for injury No. 3. Probable duration of injuries was within 6 to 12 hours. Injury No. 1 and 2 were declared grievous.

18. On the other hand, appellant Raj Kumar and others have not received any injuries and no medical evidence has been led to prove injuries on the person of Raj Kumar and any of his party member.

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RECOVERIES

19. As per the evidence on record some recoveries were made by the police at the spot and some of the recoveries were subsequently made from both the appellants and their companions.

20. ASI Sawinder Singh (PW-4) who was recorded in Sessions Case No. 14/2009, titled **State vs. Harinderpal Singh** has testified that he was present along with the police party headed by SI Surender Chander, investigating officer, and visited the spot. He is also signatory of various memos vide which various articles were recovered from the spot. He has identified the signatures of the investigating officer (Suresh Chand SI) and stated that he has since died, as he had worked under him and seen him signing the documents, therefore is acquainted with his handwriting.

21. PW-2 Head Constable Sawinder Singh recorded in Session's case No. 75/2006 titled **State vs. Raj Kumar and others** has testified that during investigation Anil Kumar son of Jai Gopal presented license of the gun which was taken into possession by SI Suresh Chand vide memo Ex. P-12.

22. As per the evidence on record in the record of both the sessions trial, the following recoveries were made from the spot on the day of occurrence including some of the recoveries which were subsequently made: -

1. A car bearing No. PB-18-J-1448, Indica (Memo Ex. PW-4/A).

2. A car bearing No. PB-02-R-8516, Maruti (Memo Ex. PW-4/A).
3. One **DBBL gun No. 20492/96** along with 08 live cartridges and 2 empty cartridges recovered from car Indica, bearing No. **PB-18-J-1448**.
4. Arms License No. 28-DM BTL 90 having entry of DBBL gun No. 20492/96, valid from 17.02.2003 to 14.07.2005 produced by accused Harinderpal Singh on 24.08.2004 (Memo Ex. PW-4/F).
5. One **DBBL gun No. 18327/96** along with 02 live cartridges Make Juskee Friends Company recovered from rear seat of car No. PB-02-R-8516 (Memo Ex. PW-4/B).
6. A **gun No. 31742A Make M6MCS LTD** double barrel along with 02 empty cartridges recovered from the platform of the shop (Memo Ex. PW-4/C).
7. License No. 4896/DM/1986 12 BBL gun No. 31742A/OY 1985 produced by Anil Kumar son of Jaigopal (Memo Ex. P-12)
8. One Maruta ('*Gheruka/Peter Rerha*') loaded with three drums of 200 liters and one tank of 1000 liter containing liquid (Memo Ex. PW-4/E).
9. A '*Chhavi*' recovered from accused Parshotram Lal on 28.08.2004 (Memo Ex. PW-4/G).

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10.A '*Kirpan*' recovered from accused Sumit Kumar on
28.08.2004 (Memo Ex. PW-4/H).

11.A '*Kirpan*' recovered from accused Munish Kumar on
28.08.2004 (Memo Ex. PW-4/J).

12.A '*Kirpan*' recovered from accused Rajiv Kumar on
28.08.2004 (Memo Ex. PW-4/K).

13.A '*Kirpan*' recovered from accused Raj Kumar Julka on
28.08.2004 (Memo Ex. PW-4/L).

FORENSIC REPORTS

23. PW-5 Head Constable Prem Chand is Sessions case No. 14/2009, titled **State vs. Harinderpal Singh** is the carrier. As per his affidavit Ex. PW-5/A on 11.03.2005 he had deposited in the office of FSL Chandigarh the weapons and cartridges in two sealed parcels which was handed over to him by MHC Sukhwant Singh.

24. As per the report of Forensic Science Laboratory, Punjab, Chandigarh (Ex. PX), two sealed parcels Mark A to B were received along with two unsealed parcels. Sealed parcel A was containing DBBL gun No. 31742 along with two 12 Bore cartridges cases. Parcel B was containing DBBL gun No. 20492-96 along with two 12 Bore cartridges case. Parcel C and D were containing 12 Bore test cartridges.

As per the said report both the guns were in working condition. Two cartridge cases C-1 and C-2 contained in Parcel A has been fired from left barrel and right barrel of 12 Bore DBBL Gun No. 31742,

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respectively. Similarly, two 12 Bore cartridge cases Mark C-3 and C-4 contained in Parcel B have been fired from the lower barrel and upper barrel of 12 Bore DBBL Gun No. 20492-96.

CONCLUSION

25. The presence of both the parties at the spot is not disputed as per the appellant Raj Kumar, he was present in his shop and his possession is lawful being a tenant. Even a stay order was granted in his favour by the Civil Court. As per the version of appellant Harinderpal Singh he had gone to his adjoining shop for repair.

26. The recoveries of weapon from both the parties clearly indicate that there was a fight between the parties. The view taken by the trial Court that the appellant Harinderpal Singh and his companions have suffered injuries from the hands of the mob is not correct, keeping in view the fact that a **DBBL Gun No. 31742A** along with two empty cartridges were recovered from the platform of the shop in question. Even as per the Forensic Science Report, two cartridges have been fired from the said weapon and the empties have been matched.

27. On the other hand, the license weapon of appellant Harinderpal Singh, i.e. **DBBL Gun No. 20492/96** along with 8 live cartridges and 2 empty cartridges have been recovered from a car Make Indica which was also recovered from the spot. Subsequently, even Harinderpal Singh appellant handed over the copy of the armed license of the said weapon and as per the Forensic Science Report, two cartridges

have been fired from both the barrels of the said gun and the empties have matched with the gun belonging to appellant Harinderpal Singh.

28. As per the rough site plan Ex. PY proved in Sessions Case No. 14/2009 titled **State vs. Harinderpal Singh** Point AB has been marked in a shop “Monika Print Store”, which is a shop in question and belongs to appellant Raj Kumar, who has clarified this fact when he appeared as PW-1 in the said case. Point A has been marked in the said site plan depicting the place where Kalsi (appellant Harinderpal Singh Kalsi) and Point B has been marked to depict the place where Sukhdev Singh sustained fire arm injuries (pellets). Point AB has been shown as note No. 4 where appellant Harinderpal Singh has opened fire from his gun in the air. The said site plan fortifies the fact of the plea of appellant Harinderpal Singh that he had gone to the spot to repair his shop. The said site plan corroborates the version of appellant Raj Kumar that appellant Harinderpal Singh was and his accomplices had come to take forcible possession. There is no explanation as to why appellant Harinderpal Singh was carrying a licensed weapon while going for repair of his shop. There is also no explanation as to why he entered the shop which was in possession of appellant Raj Kumar as a tenant and despite the fact that he was a party to the civil suit in which stay was granted in favour of appellant Raj Kumar.

29. We have also noticed that appellant Raj Kumar had no motive for inflicting injuries to the appellant Harinderpal Singh and others if Harinderpal Singh had only come to the adjoining shop for the purpose of his repair. The evidence and circumstances on record clearly indicate that

appellant Harinderpal Singh had gone armed with his licensed weapon. He entered the shop which was in lawful possession of appellant Raj Kumar and fired a shot. The intention is clear from the said act that he wanted to take forcible possession of the shop since he was claiming that he had purchased the shop but when cross-examined he could not produce any sale deed and ultimately said that he did not get the sale deed executed and only had a power of attorney. Even the power of attorney was not produced by appellant Harinderpal Singh in his favour to support his claim.

30. The facts and circumstances on record give clear indication that the shop was in possession of appellant Raj Kumar who had no motive to inflict the injuries but the appellant Harinderpal Singh entered the said shop and from this only inference can be drawn that he intended to take forcible possession of the shop in question.

31. Now the question arises as to whether the injuries on the person of Harinderpal Singh and his companions are justified and explained?

32. Keeping in view the fact that appellant Harinderpal Singh intended to take forcible possession; he entered the shop in question and fired even though that sometimes before the occurrence the appellant Raj Kumar had sought his legal remedy by way of filing a suit for permanent injunction. His possession had been protected, as such it was within his right of private defence to protect his lawful possession of the shop in question. Every person has a right to defend his property against an act of criminal trespass under Section 97 of the IPC. Though the said right is

subject to the restrictions contained under Section 99 of the IPC but there is nothing on record that the act of appellant Harinderpal Singh unlawfully entering the shop along with his companions duly armed with fire weapons falls within any of the exceptions carved out under Section 99 of the IPC.

33. The Hon'ble Apex Court in **Darshan Singh vs. State of Punjab and another** 2010(2) SCC 333 while dealing with the right to private defence observed that the right to protect one's own person and property against the unlawful aggressions of others is a right inherent in a man. The duty of protecting the person and property of others is a duty which man owes to society of which he is a member and the preservation of which is both his interest and duty.

In Kashmiri Lal & Others v. State of Punjab, 1996(3) RCR (Criminal) 543, the Hon'ble Supreme Court held that "a person who is unlawfully attacked has every right to counteract and attack upon his assailant and cause such injury as may be necessary to ward off the apprehended danger or threat."

In **James Martin v. State of Kerala**, 2004(1) RCR (Criminal) 306, the Hon'ble Apex Court again reiterated the principle that the accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

In **Gotipulla Venkatasiva Subbrayanam & Others v. The State of Andhra Pradesh & Another**, (1970)1 SCC 235, this court held that "the right to private defence is a very valuable right and it has been

recognised in all civilised and democratic societies within certain reasonable limits.

34. While formulating the various principles, the Hon'ble Apex Court in Kashmiri Lal's case (supra), held that it is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record. It was also observed that the accused need not prove the existence of the right of private defence beyond reasonable doubt. The principles laid down by the Hon'ble Supreme Court in the said case are as under:-

“58. The following principles emerge on scrutiny of the following judgments :

(i) Self-preservation is the basic human instinct and is duly recognised by the criminal jurisprudence of all civilised countries. All free, democratic and civilised countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical

exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Indian Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

35. In the light of the aforesaid facts and circumstances, we are of the considered opinion that appellant Harinderpal Singh was the aggressor party. He has committed the offence of house trespass while entering the shop in possession of appellant Raj Kumar. Since he was carrying his licensed weapon and has even opened fire from the said weapon as such the offence of house trespass after making a preparation for causing hurt and assault as punishable under Section 452 of the IPC has been proved against him. After appreciating the evidence on record, the trial Court also rightly held that the presence of his co-accused Lakhwinder Singh, Sukhdev Singh and Gurbachan Singh and rightly convicted them with the aid of Section 34 IPC. Scrutinizing the evidence on record does not prove the presence of their co-accused Jagir Singh, Gurbinder and Gurwinder

Singh at the spot beyond a shadow of doubts. As such their acquittal is justified and is based on reasons. As such the prayer made by the appellant Raj Kumar for conviction of the said respondents is liable to be declined especially keeping in view the principles laid down by the Hon'ble Apex Court in Dhanapal vs. State By Public Prosecutor, Madras (2009) 10 SCC 401. The principles laid down by the Hon'ble Supreme Court in the said case regarding the scope of interference at appellate stage in an appeal against order of acquittal, which are reproduced as under:-

“39.The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has “very substantial and compelling reasons” for doing so.

5. If two reasonable or possible views can be reached— one that leads to acquittal, the other to

*conviction—the High Courts/appellate courts must
rule in favour of the accused.”*

36. We have also considered the arguments raised by learned counsel for the appellant Raj Kumar that respondent Harinderpal Singh and others are liable to be convicted under Sections 307/506/148/149 IPC. Though the appellant Raj Kumar when he appeared as PW-1 in Session's case No. 14/2009 **State vs. Harinderpal Singh** has stated in the examination-in-chief that with an intention to kill him, accused Harinderpal Singh aimed his 12 Bore gun at him and he fired a shot but the bullet did not hit him. He has further stated the mob in order to scare the accused started throwing brick bats and stones on the accused. However, in his cross-examination he has stated that the police did not collect any such brick bats from the spot. He did not receive any injury nor did he get his medical examination conducted. The rough site plan prepared by the investigating officer who reached at the spot immediately clearly indicate that the occurrence took place inside the shop of the appellant Raj Kumar. Since the appellant Harinderpal Singh was carrying a firearm weapon, if he had an intention to kill Raj Kumar he could have caused injury to Raj Kumar with his firearm. Even the site plan prepared by the investigating officer indicate that the shot was fired by appellant Harinderpal Singh in air. All these circumstances, clearly establishes lack of intention to kill on the part of appellant Harinderpal Singh and his companions Jagir Singh, Gurbinder Singh and Gurwinder Singh as such, his acquittal from the charges framed under Section 307 IPC by the trial Court is well justified. As such the appeal filed by the appellant Raj Kumar assailing the findings

of acquittal of respondent Harinderpal Singh and others under Sections 307/506/148/149 IPC is liable to be dismissed.

37. Since the appellant Raj Kumar and his co-accused had inflicted injuries in order to protect their possession in the shop in question and they have not exceeded their right of private defence as such their acquittal of the charges framed against them by the trial Court is justified and is based on the appreciation on evidence on record. Though the trial Court has recorded different reasons for acquittal of respondent Raj Kumar and others but even appreciating the entire evidence on record, the order of acquittal passed in the Sessions Case No. 75/2006 titled **State vs. Raj Kumar and others** requires no interference. As such the application for leave to appeal against the said order is liable to be dismissed.

38. As such the findings arrived at by the trial Court vide impugned judgment dated 04.02.2019 in the Sessions Case No. 14/2009 titled **State vs. Harinderpal Singh and others** and the impugned judgment dated 04.02.2019 in the Sessions Case No. 75/2006 titled **State vs. Raj Kumar and others** is based on proper appreciation of facts and evidence on record and calls for no interference.

39. Consequently, both the applications seeking leave to appeal filed by appellant Raj Kumar (CRM-A-69-2020) and filed by appellant Harinderpal Singh (CRM-A-2557-2019) stand dismissed. The appeal filed by appellant Harinderpal Singh and others assailing the findings of their conviction and sentence (CRA-S-1360-2019) also stand dismissed.

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All pending miscellaneous applications, if any, also stand
disposed of.

(G.S. SANDHAWALIA) (HARPREET KAUR JEEWAN)
JUDGE JUDGE

April, 19 2023
nitin

Whether Speaking	Yes
Whether Reportable	Yes