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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA S-2537-SB of 2004
Date of Decision:09.05.2024

Gurbachan Singh etc. ...Appellants

Vs.

State of Punjab ...Respondent

Coram : **Hon’ble Mr. Justice N.S.Shekhawat**

Present: Mr. Balram Singh, Advocate
 as Amicus Curiae, for the appellants.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.Shekhawat J.(Oral)

1. The present appeal has been preferred against the impugned judgement and order dated 26.10.2004 passed by the Additional Sessions Judge/Fast Track Court, Muktsar, whereby, the appellant Gurbachan Singh had been convicted for commission of offence under Sections 326 IPC; appellants Bir Singh, Mohinder Singh and Harbans Singh had been convicted for the commission of offences under Sections 326/34 IPC; appellant Mohinder Singh had been convicted for the commission of offence under Section 324 IPC and appellants Gurbachan Singh, Bir Singh and Harbans Singh had been convicted for the commission of offences under Section 324/34 IPC. Appellant Gurbachan Singh under Section 326 IPC and

appellants Mohinder Singh, Harbans Singh and Bir Singh under Section 326/34 IPC were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1,000/- each alongwith default stipulation. Further, appellants Mohinder Singh under Section 324 IPC and appellants Gurbachan Singh, Harbans Singh and Bir Singh under Section 324/34 IPC were sentenced to undergo rigorous imprisonment for one and half year each. All the substantive sentences were ordered to run concurrently.

2. The FIR in the present case was registered on the basis of a statement made by Pippal Singh. He stated that he was an agriculturist and his uncle Joginder had a dispute regarding the land with Chanan Singh son of Gopal Singh Bazigar. Even Chanan Singh and others stolen paddy crop, which was sown in the fields and as such a case was registered on 21.09.1999 against them for stealing the paddy crop. They suspected that during night, due to registration of the case, they would harvest more paddy crop and would take away the same. As such, he alongwith his younger brother Suraf Singh and cousin Amrik Singh went to see the paddy crop in the fields. At about 09.00 p.m., when they reached the field, they saw that Gurbachan Singh armed with a *Gandasi*, Mangal Singh armed with a sickle, Piara Singh armed with a *Kapa* (sons of Chanan Singh Bazigar), all residents of Rajanwali, Veeru son of Sobha Singh, who is their relative was having a sickle, Mohinder Singh was armed with a *Toki*,

Harbans Singh son of Mohinder Singh armed with a *Kapa*, Mukhtiar Singh son of Mohinder Singh and Kikkar Singh son of Mal Singh were having sickles, and they were standing in the field and were getting ready to harvest the paddy crop. The complainant saw these in the light of a bulb, which was glowing in the adjoining house. On seeing them, Gurbachan Singh raised a *Lalkara* that he and others be taught a lesson for getting the case registered. All the accused surrounded them. Gurbachan Singh raised a *Lalkara* that he and other be taught a lesson for getting the case registered. All the accused surrounded them. Gurbachan Singh gave a *Gandasa* blow hitting near his right eye on the cheek. Mohinder Singh gave a Toki blow hitting on his head. He fell down. On the alarm raised by them, persons from the village were attracted. Some injuries were caused the assailants in self- defence. After the alarm was raised, accused ran away with their respective weapons. He was taken to the Hospital at Kot Isekhan by his uncle Karnail Singh and Mukhtiar Singh. He was given injuries due to the registration of a case against the accused. Pippal Singh, injured was medically examined in the hospital.

3. After completion of the investigation, challan was presented against the accused. The accused were charge sheeted by the trial court under Sections 326, 324 and 149 IPC and they pleaded not guilty to the charge and claimed trial.

4. In order to prove the charge against the appellants, the

prosecution had examined Dr. Raman Kumar as PW1, ASI Daljit Singh as PW2, Dr. Satnam Kaur as PW3, Pippal Singh as PW4, Amrik Singh as PW5 and SI Jaspal Singh as PW6.

5. After recording the evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and they had stated that they were not present at the time of the occurrence. They were in possession of the land in question and even, *Khasra Girdawari* entries were in their favour. On 07.09.1998, Civil Judge, Zira, had granted a stay order in their favour and the complainant party wanted to take forcible possession of the land.

6. To prove their defence, the accused examined Chhinda Singh Patwari as DW1 and Sardara Singh as DW2.

7. Learned counsel for the appellants vehemently argued that the impugned judgment is based on misappreciation of evidence and the settled law. Harbans Singh and Bir Singh had not caused any injury and still they were wrongly convicted. Still further, it was the complainant party, which was aggressor and had caused injuries to Harbans Singh. Still further, even the place of occurrence was in the possession of the appellants and the complainant had trespassed in the property of the appellants and had attacked them. Learned counsel further contended that even the Civil Court had passed a decree in favour of the appellants and their possession was established on the land in dispute.

8. On the other hand, learned State counsel submitted that the prosecution case is based on the testimonies of PW4 Pippal Singh, who was injured in the present case and his testimony was duly corroborated by PW5 Amrik singh. Even both the witnesses were subjected to extensive cross-examination but nothing material could be elicited from the cross-examination, which could shake the credibility of the prosecution case in any manner. Learned State counsel further submitted that the testimonies of both the said witnesses were duly corroborated by the statement of PW1 Dr. Raman Kumar, who had proved the injuries on the person of Pippal Singh. He had proved the copy of the MLR as Ex.P-1 and pictorial diagram as Ex.P-2 and after X ray, injury No. 1 was declared to be grievous in nature. Apart from that, with regard to the possession also, the detailed findings had been recorded by the trial Court and the trial Court rightly held that the accused party to be the aggressor in the present case.

9. I have heard learned counsel for the parties and perused the record.

10. In the present case, the statement of Pipal Singh, injured, was recorded as PW4. He not only reiterated the contents of the initial complaint/FIR, but also given the vivid description of the entire occurrence. The statement of PW4 Pippal Singh was duly corroborated by PW5 Amrik Singh. From a perusal of their

testimonies, it is apparent that both the witnesses had been cross-examined by learned defence counsel at length and both the witnesses had consistently deposed in favour of the prosecution. Even, during the course of arguments, learned counsel for the appellants could not highlight any point, which could show that the said two witnesses had deposed falsely before the trial court. Even, I have gone through the detailed findings recorded by the trial Court and find no reasons to deviate from the same. Both the witnesses had consistently deposed with regard to the manner, in which, the injuries were caused by the four appellants and are held to be reliable witnesses.

11. Still further, the prosecution had examined PW1 Dr. Raman Kumar, who had medico legally examined Pippal Singh on 22.09.1999 and found the following injuries:-

“1. Incised wound 6 cm x 1 cm on the right side of face bone deep, 0.5 cm below thr right lower eye lid margin fresh bleeding was present. X ray was advised.

2. Incised wound 3 cm x 0.75 cm on the right side of scalp wound was bone deep. Wound was 07 cm above the right ear pinna and 5 cm from midline. Fresh bleeding was present. X-ray was advised”.

Blood pressure of the patient was 100/70, pulse was 88 p.m. Both the injuries were kept under observation and both were caused with sharp edged weapon within the duration of six hours. He proved on record the original MLR of Pippal Singh as Ex.P-1 and

pictorial diagram showing the sheets of the injuries as Ex.P-2. After receipt of X ray, he had declared the injury No. 1 as grievous in nature and injury No. 2 simple in nature and also proved the endorsement Ex.P-3, in this regard. In the present case, the statements of PW4 Pippal Singh and PW5 Amrik Singh were duly corroborated by the testimony of PW1 Dr. Raman Kumar.

12. It has been argued that in fact the accused were in possession of the land in question and the complainant side had no business to enter the land of the appellants. Still further, it has been argued that the complainant side was the real aggressor in the present case and the appellants were entitled to be acquitted on this ground. This Court has examined the findings recorded by the trial Court and find no reasons to deviate from the same. This plea has been dealt by the trial Court as follows:-

“The accused even in their defence have examined Chhinda Singh, Patwari as D.W.1, who proved copy of the Khasra Girdawari Ex.D-1 and copy of mutation Ex.D-2. The copy of the Khasra girdawari does not help the accused. Admittedly, the occurrence took place on 21.9.1999. As per Ex.D.I (Copy of Khasra girdawari) Joginder Singh was in possession of the disputed property at the time of The occurrence. The entries in the khasra girdawari were corrected in his name w.e.f. Hari, 1999. As such, at the time of occurrence, the property in dispute was in possession of Joginder Singh. As per mutation (Ex.D-2) also, the possession on the land was

of various persons. The transfer was from the State Govt. The possession was not of the State Govt. There is no evidence that the State Govt. put Chanan Singh in possession of the land. Even the copy of the Khasra Girdawari Ex.D-12 does not help the accused. Even according to the same, from Hari, 1999 onwards, possession was of Joginder Singh. Correction was made only regarding the change of possession in Kharif, 2000 and that also only of khasra No.13 and 14 of Rect.No.9 and khasra No.15 of Rect. No.9, which is also in dispute and is recorded in continuous possession of Joginder Singh since Hari, 1999. Any how, at the time of occurrence, the possession over the land was of the complainant party. As such, the accused party had no business to enter the fields at that time crop”.

13. Still further, I have perused the detailed findings recorded by the trial Court and it has been correctly held that injury No. 1 on the person of Pippal Singh was caused with a sharp edged weapon by Gurbachan Singh, appellant No. 1 and he was rightly convicted for the commission of offence under Section 326 IPC and other appellants No. 2 to 4 have been convicted with the aid of Section 34 IPC. Still further, injury No. 2 on the person of Pippal Singh was caused with sharp edged weapon and was attributed to Mohinder Singh, appellant No. 3 and he has been convicted for the offence under Section 324 IPC, while other appellants No. 1, 2 and 4 have been convicted with the aid of Section 34 IPC. Even, the findings recorded by the trial Court are based on correct appreciation

of evidence on record and the settled law. Even, the appellants have been failed to point out any material irregularity, illegality or perversity in the impugned judgment of conviction and the same is ordered to be upheld by this Court.

14. However, this Court is conscious of the fact that the appellants in the present case are facing the prosecution since 21.09.1999, i.e., for the last more than 24 years. Even, the appellant No. 1 has undergone 05 months and 25 days; appellant No. 2 has 02 years, 02 months and 04 days; appellant No.3 has undergone 05 months and 09 days and appellant No. 4 has undergone 02 months and 26 days of actual sentence. Even, all the appellants have no criminal antecedents except the fact that one FIR No. 183 dated 21.09.1999 under Sections 379, 148 and 149 of IPC, Police Station Dharamkot was ordered to be registered against Bir Singh, appellant No. 2. Thus, it would be in the fitness of the things, if the sentence imposed on the present appellants is reduced to the period already undergone by them. The sentence of fine in the present case will remain unaltered.

14. With these modifications, the petition stands disposed off.

15. All pending applications, if any, are disposed off, accordingly.

16. The case property, if any, may be dealt with as per the

rules after expiry of period of limitation for filing the appeal.

17. Records of the Court below be sent back.
18. In the end, I record my appreciation for Mr. Balram Singh, learned Amicus Curiae, who had rendered able assistance to this Court.

09.05.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No