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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(1) **CRA-S-582-2019 (O&M)**
Date of Decision: 16.07.2024

Sandeep and others Appellants

Versus

State of HaryanaRespondent

(2) **CRA-S-535-2019 (O&M)**

Rajesh and others Appellants

Versus

State of HaryanaRespondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. P.S. Poonia, Advocate &
Mr. Pulkit Dhanda, Advocate,
for the appellants in CRA-S-582-2019.

Mr. Partap Singh Gill, Advocate,
for the appellants in CRA-S-535-2019.

Mr. Praveen Bhadu, AAG, Haryana.

MAHABIR SINGH SINDHU. J.

Both these appeal have been preferred at the instance of 34 (4+30) appellants against the common judgment of conviction and order of sentence dated 30.01.2019 & 02.02.2019; respectively, recorded under Sections 148, 323, 332, 353 & 427 read with Section 149 of the Indian Penal Code, 1860 (for short, “IPC”) by learned Additional Sessions Judge, Hisar (here-in-after referred as “trial Court”); hence being identical in nature, are disposed off by this judgment.

2. For reference, conviction and sentence along with default clause read as under:-



Sr. No.	Conviction under Section	Imprisonment	Fine	Default clause
1.	148 IPC	RI for three years	Rs.1000/-	RI for 03 months
2.	323/149 IPC	SI for one year	Rs.1000/-	SI for 01 month
3.	332/149 IPC	RI for three years	Rs.1000/-	RI for 03 months
4.	353/149 IPC	RI for two years	Rs.1000/-	RI for 02 months
5.	427/149 IPC	RI for two years	Rs.1000/-	RI for two months

Above sentences were ordered to run concurrently.

3. It transpires that an FIR No.9 dated 08.01.2008 under Sections 323, 332, 353, 427, 452, 506, 395 and 148 read with Section 149 IPC and Sections 3 & 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST Act”) was registered on the basis of statement made by *de-facto* complainant-Jai Singh (PW-2) with the allegations that *“they are two brothers and both are agriculturist. They are having 40 acres of land in village Petwar and their houses are situated near the Pond meant for Sansis community in village. Yesterday in the village, a panchayat was convened of all the communities, except their community. Since 3.1.2008, some boys were sitting on fast in the Panchayat Ghar with an intention to get the houses of complainant demolished. Amongst the persons who were sitting on fast in the Panchayat Ghar were Ishwar son of Tara Chand, Rajesh son of Bhira, Joginder son of Dayal Singh and Rajiv son of Rewa Singh caste Jat residents of village Petwar. On 8.1.2008 at about 8/8:30 a.m, several persons of all the castes including ladies of the village had come while beating drums and their names are Badan Singh Jat Ex-Sarpanch, Amrish son of Mewa Jat, Rajiv son of Rewa Jat, Dharambir son of Sarupa Jat, Tinku son of Sewa Ram Jat, Mandeep son of Ranbir Jat. Guddu, Krishan sons of Risal Jat Member Panchayat, Mukesh, Dhola sons of Mahinder Jat, Dharminder Jat, Bina son of Baje Singh Jat, Lilu Jat, Kismat son of Bhagi, Rajesh son of Parkash, Naresh son of Hawa Singh Jat, Anup son of Sita Ram Jat, Jagta son of Wazir Jat, Jaibir*



son of Basau Jat, Kismat son of Telu Ram Jat, Daya Nand son of Bharthu Jat, Sandeep son of Ranvir Jat, Rajesh son of Dharambir Jat, Manon son of Tek Ram Jat, Kala son of Parkash Jat, Charan Singh Jat, Rohit son of Rewa Singh Jat, Raj Kumar son of Hari Ram Jat, Amal son of Mahender Jat, Ram Mehar son of Om Ujala, Kulbir son of Dhanna Jat, Pardeep son of Mahender Jat, Bhim son of Bharthu Chamar, Ram Kishan son of Pehlad Jat, Rajesh son of Dharambir Jat, Sita son of Mehtab Jat, Jasbir son of Mehtab Jat, Rishkant Brahmin, Manoj son of Mahabir Jat, Baje Singh son of Deepa Jat, Rajesh son of Karna Jat, Godhu son of Ishwar Singh, Disha son of Ram Chand Jat, Rajesh alias Kala son of Ram Chander Jat, Satbir son of Bhopal Singh Jat, Raju son of Dhira Jat, Raju son of Basau Jat, Manoj son of Jagdish Jat, Pardeep son of Ramesh Jat, Amit son of Ajmer Jat, Bajrang Kandhla Jat, Kalu Pehalwan Jat, Rajesh son of Mahinder Jat, Toni, Suresh Pardhan son of Baru Jat, Pardeep son of Baru Ram Jat, Badi son of Chhaju Ram Handa Jat, Sonu Jat, Girdhala Jat, Sunny son of Raja Jat, Rajesh son of Ram Chander Jat all residents of village Petwar. The wives of aforesaid persons and their daughters also accompanied them. Besides them, 50-60 other unknown young boys were among them, to whom he can identify if brought before him. On coming in front of him, said persons extorted that “you Sansis would be taught a lesson for not coming before the Panchayat a day earlier.” They also hurled abuses in the name of their caste and threatened him to leave their houses otherwise, they would be set on fire. When the female members of his family objected, aforesaid persons pushed them by giving kick and fist blows and entered into their houses, damaged household articles like Fridge, Television, Washing machine, Pressure Cooker, crockery, Gas Cylinder, quilts, mattresses, boxes etc. which were lying in their houses. They also caused injuries to them and took away the



articles lying in their houses. They also started damaging their houses with hammers, Ghans and Rumbha etc. Complainant gave information to Police Station, Narnaund through a boy of neighbourhood, upon which SHO, Police Station, Narnaund alongwith police force and DSP, Hansi came at the spot and they tried to stop the people from looting and damaging the houses. Due to large gathering, brick bats started pelting upon police force and some of the police officials received injuries in this incident. Glass panes of vehicles of police were also damaged. Thereafter, large police force reached at the spot, all the accused ran away from the place of occurrence. He requested that legal action against the above said accused be taken, their goods be got recovered from the accused and the damage caused to their houses be made good. Narinder son of Zile Singh, Sandeep son of Jai Singh, Baljeet son of Zile Singh, Jaljeet son of Zile Singh, Phuli Devi wife of Zile Singh, Kaushalya wife of Baljit Singh, Raj Devi wife of Jai Singh and Roshni daughter of Surat Singh, all residents of village Petwar witnessed the entire occurrence.”

4. After completion of investigation by DSP (Ranbir Singh), the report under Section 173 of the Code of Criminal Procedure, 1973 (for short, “Code”) was presented before learned *Illqa* Magistrate. On 21.10.2013, the case was committed to learned Sessions Judge; which ultimately, was assigned to learned Additional Sessions Judge (trial Court).

5. Learned trial Court, after taking into consideration the material available on record and upon hearing both sides, *prima facie* found that accused have committed offences under Section 3(1)(x) of the SC/ST Act & Sections 323, 452, 332, 353, 427 and 148 read with Section 149 IPC and charged them accordingly; to which they pleaded not guilty and claimed trial.



6. In order to prove the charges, prosecution examined 13 witnesses, viz. PW-1 Baljit Singh, PW-2 Jai Singh, PW-3 Dr. Yashpal Singh, PW-4 Dr. Pale Ram Singh, PW-5 Attar Singh, PW-6 Ranbir, PW-7 Inspector Vinod Shankar, PW-8 HC Rajender Kumar, PW-9 ASI Jitender, PW-10 Kaushalya Devi, PW-11 HC Mahabir Singh, PW-12 SI Suresh Kumar and PW-13 Suraj Mal Patwari and produced following documentary evidence:-

1. *Statement of complainant Jai Singh recorded under Section 161 Cr.P.C (Ex.P-1)*
2. *MLRs of Inspector Vinod Shankar & Jitender Singh (Ex.PW-3/B & PW-3/C, respectively).*
3. *MLRs of ASI Attar Singh and Constable Mahabir Singh (Ex.PW-4/A & PW-4/B, respectively).*
4. *Recovery Memo (Ex.PW-5/A).*
5. *Statement of Ranbir (Ex.PW-6/A).*
6. *Rough Site Plans (Ex.PW-7/A and PW-7/B)*
7. *FIR (Ex.PW-7/C).*

7. Above incriminating circumstances were put to the appellants under Section 313 of the Code, but they denied the same, claiming false implication.

8. In support of defence, appellants produced five witnesses, apart from documentary evidence, which are as under:-

- DW-1 Virender,*
DW-2 Suved Singh Criminal Ahlmad,
DW-3 HC Virender,
DW-4 EHC Joginder Singh;
DW-5 ASI Dalbir Singh.

Documentary evidence

1. *Certified copies of statements of Baljit, Kaushalya, Narender and Jai Singh (Ex.DB/1, DB/2, DB/3, DB/4, respectively).*



2. *Record of RTI application/information as Ex.DC/1 to DC/8.*
3. *Record pertaining to FIR No.382 dated 18.10.2005 registered at Police Station Hansi against Zile Singh and his family members Ex.DW-4/A.*
4. *Copies of history sheet Ex.DW-5/A.*
5. *Copy of petition and affidavits (Ex.DX/1, Ex.DX/2 to Ex.DX/10, respectively).*

9. Learned trial Court, after examining the records and upon hearing both sides, convicted and sentenced present appellants vide impugned judgment of conviction and order of sentence; hence present appeals.

CONTENTIONS:

ON BEHALF OF APPELLANTS

10. That all the appellants have already been acquitted by learned trial Court from the charges under Section 3(1)(x) of the SC/ST Act, as well as Section 452 IPC; and as such, the very foundation of prosecution case stands demolished.

11.1 The above acquittal of appellants was not challenged by the State of Haryana; and even an application (CRM-A-1988-2019), seeking leave to appeal at the instance of *de-facto* complainant-Jai Singh (PW2) has been withdrawn from this Court on 29.11.2023. As on today, the acquittal of appellants, to that extent has attained finality and as such, the whole prosecution story becomes doubtful.

11.2 That none of the appellants has been attributed any specific role or injury; nor any incriminating material is available on record to prove the charges against them under Sections 148, 323, 332, 353 & 427 read with Section 149 IPC.



11.3 The occurrence is alleged to have taken place on 08.01.2008; during investigation, no test identification parade was conducted by the police; prosecution witnesses have been examined in the year in 2016; thus, after a period 08 years, it would be highly improbable to identify the appellants during trial, especially when the mob is allegedly, consisting of several hundred persons.

11.4 There is no evidence on record to connect the appellants with the alleged offences, except the bald and self-contradictory statements of prosecution witnesses.

11.5 The allegation of breaking front wind-screen of police Gypsy with stone pelting is apparently cooked up in view of the fact that driver of Gypsy (EHC Balwan Singh) was given up by the prosecution, so that he may not reveal the true facts. Even, the broken pieces of wind-screen were not sent to FSL for making comparison or examination thereof; nor any mechanic or expert was produced during trial to prove this fact.

11.6 The testimonies of police officials (PW-5, PW-7, PW-9 and PW-11) are self-contradictory; hence the same do not inspire confidence for proving the charges against appellants.

11.7 As per testimonies of doctors (PW-3 & PW-4), injuries suffered by police officials were found to be simple in nature and possibility of falling on hard surface have not been ruled out. Apart that, no weapon of offence was ever shown to the doctors; nor any opinion regarding weapon of offence was obtained from either of the doctors.

11.8 The complainant party was having an unauthorized possession of panchayat land and the appellants have been falsely implicated as a pressure tactics, just to thwart the ongoing eviction proceedings against them under the



provisions of Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) and no such occurrence had taken place.

11.9 The prosecution has miserably failed to prove that appellants were members of an unlawful assembly and/or that in prosecution of the common object of such an assembly, any member has committed the alleged offence(s).

ON BEHALF OF THE STATE

12. Supporting the impugned judgment of conviction and order of sentence, learned State counsel submitted that prosecution has duly proved the charges against appellants and as such, no interference is warranted by this Court while entertaining the present appeals.

12.1 Further submitted that appellants formed an unlawful assembly, for common object, armed with deadly weapons, committed offence of rioting and caused injuries to ASI Attar Singh (PW-5) as well as SI/SHO Vinod Shankar (PW-7). Apart that, they caused obstruction in discharging the official duties by police party and also damaged the government vehicle, thus, all the appellants have rightly been convicted and sentenced by learned trial Court.

12.2 Further submitted that *de-facto* complainant-Jai Singh (PW-2) along with eye-witness Baljeet (PW-1) and Kaushlya (PW-10) deposed in one voice, while giving minute details of the occurrence as well as the role of appellants in commission of offences under Sections 148, 323, 332, 353 and 427 IPC read with Section 149 IPC.

12.3 Also submitted that ocular version of prosecution witnesses is fully corroborated by the medical evidence, coupled with testimonies of Dr. Yashpal Singh and Dr. Pale Ram Singh (PW-3 & PW-4) respectively, on each and every aspect of the matter.

Thus, prayed for dismissal of both the appeals.



13. Heard learned counsel for the parties and perused the records, carefully.

13.1 PW-1 Baljit Singh son of Zile Singh stated that on 03.01.2008, a panchayat was convened of all castes except their caste. Five persons of upper caste decided to sit on hunger strike. The names of those persons were Rajeev, Rajesh, Joginder, Ishwar and Balwan. They wanted to demolish their houses. On 08.01.2008, at about 8.30 a.m. accused reached their house by beating drums and dancing. They all were armed with weapons. The weapons were *dandas, rods, chhini, guarter, iron rods, rumba*. They were 60/62 in number and all were armed with weapons. They exhorted that “*come out from your houses, today we will teach a lesson*”. They were also saying “*Kute Kamino, Sasiyo, Niklo apne Ghar se Bahar Verna tumhe tumhare Ghar me Jinda Jala Denge*”. He knew the names of accused Badan Singh, Amrish, Rajiv, Rohit, Dharambir, Anil, Rajesh, Harpal, Kalu Pahalwan, Dhola, Mukesh, Satbir, Jasbir, Sita, Amit son of Ajmer, Rajesh, Rajesh, Rajesh, Rajesh, Mandeep, Sandeep, Manoj, Manoj, Kulbir, Jaibir @ Pappu, Krishan, Guddu @ Nirmal, Satbir, Ishwar, Jogender, Charan Singh, Dharmender, Sonu, Tinku, Ram Mehar, Bhim, Baje Singh and others. He can identify other persons on appearance. Some of them entered in their house and looted the ornaments and gold of his brother Narender and Zile Singh. They also looted four gold bangles, one necklace (gold), two ladies gold rings, one gold nose pin (nath), one gold pandle, one pair of silver Pajeb of his brother Narender and Four bangles of gold, three gold rings, two gold rings of children, two ladies gold rings, one gold necklace, one pair of gold jhhumke (earrings), one pair of gold *kundle* (anklets) and one pair of silver *Pajeb* of Zile Singh. Some of them started demolishing their houses.

They also gave beatings to the ladies of their family. When complainant party



tried to stop them, they gave beatings to them too. His uncle Jai Singh made a telephonic call to police station after taking phone from a neighbour. SHO and DSP reached the spot. Police also tried to stop them from looting and demolishing the houses. Accused also pelted stones at the police. Two or three police officials received injuries. They also damaged the Gypsy of police. Police failed to stop them. Thereafter, SHO called more police force. When more police officials reached the spot, the assailants demolished their houses completely. D.C. Uma Shankar also reached the spot. Accused demolished their houses from the midst part. D.C. Uma Shankar assured that they will get their houses repaired and looted articles returned. D.C. Uma Shankar gave a grant of Rs. 8 lakh and also got their houses repaired.

13.2 PW-2 Jai Singh son of Surta stated that on 03.01.2008, five persons of their village, namely, Balwan, Ishwar, Rajesh, and two others, whom he can identify if brought before him, sat on hunger strike. His son knows both of them. A panchayat was convened in the village of all castes, except their caste. On 08.01.2008 at about 8:30 a.m. many young boys, girls and ladies reached their house by beating drums and dancing. The ladies of their house tried to restrain them but they gave fist and leg blows to them. All of them were having weapons like *guarter*, *rumbe*, *chheni*, *hathore*. He further stated that some of them entered in their house and some reached upstairs on the rooftop. They also started damaging their house and broke the boxes with *chheni*, *hathoras*, *rumba* etc. and took out ornaments from the boxes. He made a telephonic call to SHO Narnaund through mobile of a boy residing in the neighbourhood. SHO came with the police force and tried to stop the boys, girls ladies etc. but they threw stones on the police. 2-3 police officials got injured in the incident. They also broke the Gypsy of the police. SHO called more police force on the spot and



when the police force came, they had already damaged their houses and looted ornaments etc. He further stated that when more police came on the spot, accused fled away. The ornaments which were looted by them are three necklaces, five rings, four chains, four rings of children, one *Kada*, one chain, one ring; all ornaments were of gold. D.C Uma Shankar, IAS also came on the spot. Their houses were got constructed by the D.C on the same spot later on. Their houses are situated in the Lal dora of the village and they have inherited the same from their forefathers 200-year-ago. Police recorded his statement Ex.P1, which bears his signatures.

13.3 PW-3 Dr. Yashpal Singh, MO, CHC, Narnaud tendered his affidavit Ex.PW3/A vide which he deposed that on 08.01.2008, he medico-legally examined two injured, namely, Vinod Shankar son of Kripa Shankar and Jitender Singh son of Hari Chand. Both the injured were police officials. He proved their MLRs Ex.PW3/B and Ex.PW3/C, respectively.

13.4 PW-4 Dr. Pale Ram Singh, Dy. CMO Jind stated that on 08.01.2008, he medico-legally examined ASI Attar Singh son of Sheo Karan and C-Mahabir Singh son of Ratti Ram and prepared their MLRs Ex.PW4/A and Ex.PW4/B, respectively. In both the cases, injuries were of simple in nature and caused by blunt weapon. Duration of injuries was within 24 hours.

13.5 PW-5 Attar Singh son of Sheo Karan stated that on 08.01.2008, he was posted as ASI in PS Narnaund. On that day, he was accompanying SHO Vinod Shanker and other police officials when they reached village Petwar. After registration of case, he remained associated in the investigation. Driver of the Government Gypsy bearing registration No.HR39-A-2732 told the SHO that mob had broken the front glass of the Gypsy by pelting stones. After that, IO collected the broken pieces of glass from the place of occurrence which were



sealed and seized vide Memo. Ex.PW5/A. Memo was signed by him and HC Balwan as witness. Seal after use was handed over to him. He further stated that at that time, many people of village Petwar, whose name he did not know, were attacking the house of Jai Singh son of Surta by pelting stones. He tried to convince them, but instead they attacked them in which he, IO/SHO Vinod Shanker, C Mahabir and HC Jitendar Kumar sustained injuries. He was medico-legally examined later on at C.H.C. Narnaund.

13.6 PW-6 Ranbir son of Om Parkash stated that he does not know anything about the present case. He had not taken any photographs of the place nor developed the same from any laboratory. On the request of Learned Public Prosecutor, he was declared hostile and confronted with contents of statement Ex. PW6/A, but he denied the same.

13.7 PW-7 Vinod Shankar, Inspector stated that on 08.01.2008, he received a telephonic call from village Petwar that many people, including some women were demolishing the house of Surat Singh @ Surta, Sansi, upon which, he along with ASI Attar Singh, HC Jitender Kumar, Constable Mahabir on Government Vehicle bearing Registration No.HR39-A-2732 being driven by Constable Balwan reached village Pewar after intimating higher officials and also made request for sending additional police force. When he reached near house of Surta Singh Sansi, he found that many people were demolishing his house. Situation was very tense and he tried to calm down the mob but they ignored his request. In the meantime, mob attacked them by pelting stones in which front glass of government vehicle was broken. He alongwith ASI Attar Singh, HC Jitender and Constable Mahabir received injuries. Thereafter, additional force reached there and matter was calm down. One Jai Singh son of Surat Singh got recorded his statement Ex.P1 and Jai Singh put his signatures at



point A which were attested by him at point B. After making his endorsement Ex.P1/A over the same, he sent the same through HC Ram Kumar to the police-station for registration of FIR. In the meantime, DSP Shri Ranbir Singh came present there. He handed over case file to him as further investigation was to be conducted by him. After that, the injured officials got themselves medico-legally examined from C.H.C Narnaud. His statement was recorded by DSP in this regard. He had seen documents prepared by Shri Ranbir Singh DSP, who was IO of present case, which was signed by him and he identified his signatures as he had worked under him and well acquainted with his signatures and handwriting.

13.8 PW-8 HC Rajender Kumar, 82-Hansi, Police-lines, Hansi stated that on 08.01.2008, MHC Davender Singh handed him over three sealed envelopes of special report which he delivered to Illaqa Magistrate and to Higher Police authorities without any delay on his part.

13.9 PW-9 ASI Jitender stated that on 08.01.2008 upon receipt of order from SHO Vinod Shankar, he along with other police officials went to village Petwar, where a mob was demolishing the houses of Surta Sansi and his sons. Vinod Shankar SHO, ASI Attar Singh, Constable Mahabir alongwith driver Constable Balwan Singh were already present there on Government vehicle bearing registration No. HR39A/2732 and were trying to calm down the mob for maintaining peace. He further stated that all of a sudden, mob started pelting stones upon them in which he, SHO Vinod Kumar, ASI Attar Singh and Constable Mahabir received injuries. He received injuries on both hands, waist and left foot. He alongwith other injured officials got himself medico-legally examined from C.H.C. Narnaund.



13.10 PW-10 Kaushalya Devi wife of Sh. Baljit Singh stated that on 03.01.2008, a panchayat was convened of all castes, except their caste. Five persons, namely, Joginder, Rajesh, Rajiv, Balwan and Ishwar were on hunger strike for the demand of demolishing their houses. On 08.01.2008, at about 8.30 a.m, about 60-62 persons, including young women were beating drums and reached their house. They all were having weapons like *rumbe*, *sabbal*, *guarteris* and hammers. Upon reaching there, they proclaimed that “*come out from the houses and we will teach a lesson*”. They were also saying “*Kutte Kamino, Sanshio, Dhedo, Niklo Apne Ghar Se Bahar and Ham Tumhe Hamari Baat Na Mannne ka Maja Chakhyage.*” They tried to stop them but instead of stopping, they started abusing them and gave beatings with fists and blows. Out of them, some persons started demolishing their houses and remaining assailants started looting ornaments, household articles and other valuable items. They also broke locks of their almirahs and boxes where their valuables were kept. Her maternal uncle Jai Singh managed to telephonically inform police through a mobile of their neighbour. Thereafter, SHO and his party reached there, who tried to disperse them but mob also attacked upon them by pelting stones, in which, police officials received injuries and their Government vehicle i.e. Gypsy got damaged. After that additional force and DSP reached at the spot, some of the accused fled away from the spot. Deputy Commissioner Deepti Uma Shankar came on the spot and assured them that she will get them compensated and also get repaired their houses. Some of the persons, who were part of mob are Amrish, Badan Singh, Rajiv, Rohit, Satbir, Mukesh, Rajesh, Joginder, Ram Kishan, Bimla, Harpal, Dharambir, Pardeep, Sandeep, Kala, and some other persons.



13.11 PW-11 HC Mahabir Singh stated that on 08.01.2008, a telephonic call was received from village Petwar by SHO Vinod Shankar that many people, including some women were demolishing the house of Surat Singh @ Surta, Sansi, upon which, he alongwith SHO/Inspector Vinod Kumar, ASI Attar Singh, HC Jitender Kumar reached village Petwar on Government Vehicle being driven by Constable Balwan, where they saw that a large mob was demolishing the house of Surta Singh Sansi. Situation was very tense and they tried to calm down the mob but they ignored their request. In the meantime, mob attacked them by pelting stones in which front glass of government vehicle was broken. He alongwith, SHO Vinod Shankar, ASI Attar Singh, HC Jitender received injuries. Thereafter, additional force reached there and matter was pacified. He received injuries on his left arm and leg. He along with injured officials was got medico-legally examined from C.H.C. Narnaund.

13.12 PW-12 SI Suresh Kumar No. 268-H, Police Station Narnaud stated that on 09.01.2008, investigation of this case was with Sh. Ranbir Singh Hooda, DSP Hansi (since deceased) and he was assisting him as Reader. On that day, he visited the place of occurrence where DSP recorded statement of SHO Vinod Shankar, HC Jitender, HC Mahabir, HC Ram Kumar, ASI Attar Singh and others. He further stated that on 25.01.2008 and 05.02.2008, DSP had also recorded statements of witnesses u/s 161 Cr.P.C. After completion of investigation, charge-sheet in the present case was forwarded by DSP Ranbir Singh Hooda, but he died during trial and was not examined as a prosecution witness.

13.13 PW-13 Suraj Mal Patwari, Halqa Dobhi-I stated that on 05.02.2008, on the instructions of Naib Tehsildar, Narnaund, he went to the place of occurrence with IO and prepared scaled site plan Ex.PW13/A.



14. Before proceeding further, it is necessary to recapitulate the charges framed against the appellants by learned trial Court and which are as under:-

“I, Basruddin, Addl. Sessions Judge, Hisar do hereby charge you (the above named accused) as under:

That on 8.1.2008, in the area of village Petwar Distt. Hisar, you intentionally started breaking the house of PW Jai Singh who belonged to Balmiki Community with intent to humiliate him being a member of Scheduled caste, being Balmiki community and thus thereby committed an offence punishable under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and within the cognizance of this court.

Secondly, on the same date, time and place, you the above named accused having been armed with deadly weapons like brick bats etc. formed an unlawful assembly and prosecution of the common object of that assembly committed the offence punishable under Section 148 IPC and within the cognizance of this Court.

Thirdly, on the same date, time and place, you the above named accused in prosecution of the common object of an unlawful assembly caused simple hurt to PW ASI Attar Singh and SI/SHO Vinod Shankar and thereby committed an offence punishable under Section 323/149 IPC and within the cognizance of this Court.

Fourthly, on the same date, time and place, you the above named accused in prosecution of the common object of an unlawful assembly committed criminal house trespass by entering into the house of aforesaid PW Jai Singh Balmiki having made preparation to cause hurt the aforesaid PW and thereby committed an offence punishable under Section 452/149 IPC and within the cognizance of this Court.



Fifthly, on 8.1.2008 in the area of village Patwar, you the above named accused in prosecution of the common object of an unlawful assembly used criminal force to police party headed by SI/SHO P.S. Narnaund namely Vinod Shankar in the execution of their official duty, in order to deter them from discharging their duty as a public servant and thus thereby committed an offence under Section 332/149 of IPC, which is within the cognizance of this court.

Sixthly, on the same date and place you the above named accused in prosecution of the common object of an unlawful assembly assaulted to aforesaid SI/SHO P.S.Narnaund namely Vinod Shankar and other police officials of police party, the public servants in the execution of his official duty as a public servant to deter them from discharging his duty as such and thus thereby committed an offence punishable under Section 353/149 IPC which is within the cognizance of this court.

Seventhly, on the same date and place you the above named accused in prosecution of the common object of an unlawful assembly, you the above named accused committed mischief by demolishing the house belonging to complainant Jai Singh and police vehicle valued more than Rs.50/- and thus, you thereby committed an offence punishable under Section 427/149 IPC and within the cognizance of this Court.

And I hereby direct that you be tried by this court on the aforesaid charge.

*Sd/-
Additional Sessions Judge
Hisar 09.12.2013”*

15. From perusal of the above chargesheet, it is apparently clear that charges were not framed properly against the appellants; rather these are omnibus in nature. It is well settled that charges should be specific, so that no



prejudice is caused to any accused. However in the present case, learned trial Court framed the charges in a completely vague manner.

16. Be that as it may, there is no dispute that appellants have been acquitted from the charges under Section 3(1)(x) of the SC/ST Act as well as Section 452 IPC by learned trial court vide judgment under challenge. It is noteworthy that learned trial court while acquitting the appellants to that extent, in Para 32 of the judgment, came to the following conclusion:-

(i) It is not proved on record that accused entered in the houses of complainant party, caused any damage to the houses or removed any valuable house hold articles.

(ii) None of the prosecution witnesses i.e. PW-1, PW-2 and PW-10 have ever stated that accused caused the incident only due to the reasons that complainant belongs to Scheduled Caste.

(iii) During investigation or even during trial, complainant party has not produced any document/certificate issued by the competent authority to prove that actually they belonged to Scheduled Caste community.

16.1. For reference, the relevant part of para 32 of the judgment is reproduced as under:-

32. Firstly, we take the testimonies of private witnesses. PW1 Baljit, PW-2 Jai Singh and PW-10 Kaushalya Devi though in their examination in chief have stated that on 08.01.2008 in the morning, various people by forming an unlawful assembly, having Chheni, Hammer, Rumba etc. collected in front of their houses and started damaging their house and took out ornaments from the boxes and also lifted various other valuable house hold articles and when police party reached at the spot and tried to stop them, they pelted stones and caused injuries to police officials and also damaged the government vehicle. But these witnesses have failed to utter a single word that while committing the said offence, accused were ever proclaiming that these persons



belonged to scheduled caste and their houses be damaged only due to this reason. Further, from the testimonies of aforesaid witnesses, it is not proved that actually the incident had taken place inside the houses of complainant party. Moreover, prosecution has not produced on record any documentary evidence to show and suggest that which of the houses belong to complainant party and what damage was allegedly caused to those houses. Even no survey report has been produced on record during trial to prove that government has ever assessed the loss actually caused to the houses of complainant party and all these facts shows that no such incident inside the houses of complainant party had taken place nor any valuable house hold articles of complainant party have been removed by any of the persons. Moreover, PW12 complainant Jai Singh in cross-examination has also stated that he has no proof regarding ownership of his land. He has also stated that he and his family members did not move any application to sarpanch of their village about intention of villagers to demolish their houses. He further stated that he did not hand over proof of ownership of ornaments nor produced any gold smith before police who prepared the ornaments. He further stated that Dharambir of their community was having a mobile but no snaps were taken from that mobile phone while accused were demolishing their houses. Furthermore, though PW-1 Baljit, PW-2 Jai Singh and PW-10 Kaushalya have deposed that in the incident they have sustained injuries but no MLR of aforesaid witnesses have been produced on record to prove that actually in the incident they had received injuries. In cross-examination PW-1 Baljit and PW-10 Kaushalya have also stated that they and their family members were not medically examined. PW10 Kaushalya has also stated that she did not hand over any documentary evidence regarding their ownership over the land in question. She stated that she does not know whether their houses were



constructed in lal dora or not. Regarding ornaments, this witness stated that her ornament were not stolen or missing. During investigation, no ornaments, Fridge, Television, washing Machine etc. were recovered from accused. She further stated that no Hammer, Sabbals etc. were recovered from accused. In view of above discussed evidence of material and star witnesses of the prosecution, it is not proved on record that accused entered in the houses of complainant party, caused any damage to the houses or removed any valuable house hold articles. Furthermore, as discussed above, none of the prosecution witnesses i.e. PW-1, PW-2 and PW-10 have ever stated that accused caused the incident only due to the reasons that complainant belongs to Scheduled Caste. Moreover, during investigation or even during trial, complainant party has not produced any document/certificate issued by competent authority to prove that actually they belonged to scheduled community. Therefore, the charge under Section 3(1)(x) of SC/ST Act remained unproved against the accused.”

17. There is no quarrel that acquittal of the appellants under Section 3(1)(x) of the SC/ST Act and Section 452 IPC is not under challenge by the State of Haryana. Of course, an application (CRM-A-1988-2019) for seeking leave to appeal against the aforesaid acquittal was preferred by the *de-facto* complainant-Jai Singh (PW2); but the same was withdrawn on 29.11.2023 prior to granting any leave.

18. Although, Jai Singh (PW-2) deposed that during occurrence, Rajo, Seema and Bala received injuries, but he candidly acknowledged that “*their medico-legal report was not prepared*”. This witness also stated that neither he, nor his family members were brought to General Hospital, Hansi or Hisar, for medical examination. He again stated that “*male members of family did not receive any injury in the hands of accused*”. Apart that, PW-10 Kaushalya



during her cross-examination, stated *inter alia* that “her ornaments were not stolen or missing”. She further stated that “they were not medico-legally examined; nor any MLR was prepared by doctors”. This witness again stated that “there was no external mark of injury on our body”. She further stated that during investigation of this case, “police did not recover any ornaments, washing machine, fridge, T.V or any other valuable items from the accused”. She again stated that “police never recovered any hammers, *sabbals* etc. from the accused”.

19. PW-6 Ranbir (photographer) stated that neither photographs were taken by him, nor same were developed from his lab. This witness has gone to the extent that he does not know about the case and ultimately, on request of the learned Public Prosecutor, he was declared hostile. Even during cross-examination by learned Public Prosecutor, this witness stated that he did not capture the photographs Mark “A” to Mark “S”. He again stated that police never met him in connection with investigation of this case; nor his statement was recorded. Lastly, he denied the suggestion of visiting at the place of occurrence and taking photographs of police Gypsy bearing registration No.HR39-A-2732, as well as preparation of Mark “A” to Mark “F”.

PW-13 Suraj Mal, (Revenue Patwari), during cross-examination, clearly stated that “it is correct that it was not mentioned by me that at point B House of Jai Singh son of Surta was in demolished condition. The police had not shown me any other point where the houses were demolished”.

It is noteworthy that there is no other evidence available on record regarding the demolition of house of *de-facto* complainant or any damage to the police Gypsy.



20. It is most relevant to observe here that no weapon of offence, much less to say the deadly weapons or brick-bat has been recovered by the police in this case; thus, the prosecution has miserably failed to prove the charge under Section 148 IPC against the appellants.

20.1. The charge under Section 323/149 IPC is also not substantiated for the reason that there is no material to indicate that appellants in prosecution of the common object of an unlawful assembly caused any hurt to ASI Attar Singh (PW-5) and/or SI/SHO Vinod Shankar (PW-7) or to any other family members of the *de-facto* complainant.

Doctor Yashpal Singh (PW-3), during cross-examination, stated that injuries are simple in nature and possibilities of the same by falling on hard surface cannot be ruled out. He further stated that no weapon of offence was shown to him; nor any opinion regarding the weapon of offence was obtained from him.

Similarly, Dr. Pale Ram (PW-4), during cross-examination, stated that injuries are simple in nature and possibilities of injuries by falling on a hard surface cannot be ruled out. He further stated that no weapon of offence was shown to him; nor any opinion regarding the weapon of offence was obtained from him.

21. SI/SHO Vinod Shankar (PW-7), during cross-examination, clearly stated that “he cannot name any specific person who caused injuries by pelting stones on the police force”. ASI Jitender (PW-9) also, during cross-examination, stated that he cannot identify the accused as he has seen them after a gap of eight years. This witness further stated that he “had not mentioned name of any accused or any persons, who had caused injuries to police officials”. Constable Mahabir Singh (PW-11) also, during cross-examination, stated that he “cannot



identify the accused present in the court specifically”. He again stated that no Test Identification Parade was got conducted by the police during investigation in this case. At the end, this witness stated that he “cannot say who was throwing stones” and “cannot identify if members of Sanshi caste were members of this mob or not”.

It is worth notice that EHC Balwan Singh, who is stated to be the driver of police Gypsy, was given up by the prosecution, while terming him as unnecessary, but in view of facts and circumstances of the present case, such a course followed by the prosecution is not convincing; Because, had there been any damage to the wind-screen of police Gypsy, its driver was the most material witness to prove this fact.

22. As already discussed, there is no recovery of any weapon, what to talk of deadly weapon. There is no evidence regarding the demolition of house of the *de-facto* complainant or his family members or that anyone of them suffered any injury at the hands of appellants.

There is no material available on record to prove any damage to the police Gypsy. Even the prosecution has miserably failed to prove that during alleged occurrence, ASI-Atar Singh and/or ASI-Vinod Shankar suffered any hurt at the hands of appellants.

23. Above all, the very foundation of prosecution case stand demolished with the acquittal of appellants under Sections 3(1)(x) of the SC/ST Act and Section 452 IPC by learned trial Court and that has attained finality.

24. Although, appellants have been charged for using criminal force to deter the police party headed by SI/SHO Vinod Shankar (PW-7) in execution of their official duty, but the record speaks otherwise.



As per prosecution story, the occurrence is alleged to have taken place on 08.01.2008 at 8/8:30 a.m in village Petwar, which is at a distance of approximately 10 kilometers from Police Station, Narnaund. Again, it is also claimed by the prosecution that an information was received in Police Station at 10:00 a.m and police party, headed by SI/SHO Vinod Shankar reached on the spot at 10:30 a.m. Thereafter, DSP Ranbir Singh Hooda also arrived at the place of alleged occurrence and police remained there upto 9:00 p.m. Yet the FIR was registered at 5:30 p.m. at Police Station, Narnaund and there is no material to indicate that any proceedings were recorded by the police; Special report to *Illaga* Magistrate, Hansi was sent at 11:05 p.m.

Despite all this, no one was apprehended on the spot; nor steps were taken by the police in terms of Section 129 of the Code to disperse the alleged unlawful assembly; for which SI/SHO was duly empowered. Thus, in such a scenario, it is unbelievable that appellants used criminal force to deter the police party from discharging their official duty.

25. At the same time, there is no quarrel with the legal proposition that “Section 149 of the IPC is declaratory of vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object” (vide AIR 1959 SC 725 (para 6), *Shambhu Nath Singh and others Vs. State of Bihar, 3-Judge Bench*). However, in the present case, prosecution has badly failed to prove that appellants were the members of an unlawful assembly and/or that any offence is committed by any of them as member of an unlawful assembly in prosecution of common object of such an assembly or that any one of them knew that offence is likely to be committed in prosecution of common object.



26. In view of the above, this Court is of the considered opinion that prosecution has failed to prove the charges under Sections 148, 323, 332, 353 and 427 read with Section 149 IPC against the appellants.

27. As a result thereof, there is no option except to allow the appeals.

28. Consequently, both these appeals are allowed; the impugned judgment of conviction & order of sentence dated 30.01.2019 & 02.02.2019 respectively, are hereby set-aside and all the appellants are acquitted of the charges framed against them.

29. Since appellants are stated to be on bail, therefore, their bail-bonds/surety bonds stand discharged.

30. Case property, if any, be disposed off as per law.

Pending criminal misc. application(s), if any, shall also stand disposed off.

A photocopy of this judgment be placed on the file of connected case.

16.07.2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

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