

In the High Court of Punjab and Haryana at Chandigarh

CRA-S-1066-2022 (O&M)
Reserved on: 24.01.2024
Date of Decision: 19.02.2024

BHOLA SINGH AND OTHERS

.....Appellants

Versus

STATE OF HARYANA

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Kamal Narual, Advocate
for applicant-appellant No.1.

Mr. Nikhil Ghai, Advocate and
Mr. Shubham Mangla, Advocate for appellants
No.2 to 13, 15 to 17 and 19.

Mr. Rishu Garg, Advocate for appellant No.14.

Mr. Randeep S. Dhull, Advocate with
Mr. Aman Yadav, Advocate
for appellant No.18.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. The present appeal is directed against the impugned verdict, as made on 10.03.2022, upon case bearing CIS No.SC No.26 of 2016, by the learned Additional Sessions Judge, Kurukshetra, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 148, 149, 307, 323, 324, 325, 341, 427 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against the appellants-convicts. However, the other co-accused namely Gurmeet son of Karam Singh, Kuldeep Singh of Sukha Singh, and, Virender Singh @ Babbu

son of Jagir Singh were acquitted from the charges drawn against them.

Moreover, through a separate sentencing order drawn on 11.03.2022, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner.

<i>Offence/ Section</i>	<i>Quantum of Sentence</i>
<i>148 IPC</i>	<i>Rigorous imprisonment for a period of three years each and to pay fine of Rs.1,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of three months each.</i>
<i>341 read with section 149 IPC</i>	<i>Simple imprisonment for a period of one year each and to pay fine of Rs.500/- each. In default of payment of fine, to undergo simple imprisonment for a period of three days each.</i>
<i>323 read with section 149 IPC</i>	<i>Rigorous imprisonment for a period of one year each and to pay fine of Rs.500/- each. In default of payment of fine, to undergo simple imprisonment for a period of one month each.</i>
<i>324 read with section 149 IPC</i>	<i>Rigorous imprisonment for a period of two years each and to pay fine of Rs.1,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of two months each.</i>
<i>325 read with section 149 IPC</i>	<i>Rigorous imprisonment for a period of three years each and to pay fine of Rs.1,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of three months each.</i>
<i>307 read with section 149 IPC</i>	<i>Rigorous imprisonment for a period of five years each and to pay fine of Rs.5,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of five months each.</i>
<i>427 read with section 149 IPC</i>	<i>Rigorous imprisonment for a period of one year each and to pay fine of Rs.1,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of one month each.</i>

2. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by the appellants-convicts, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed sentence(s) of imprisonment.

3. All the accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became

imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst the instant criminal appeal, before this Court.

4. Learned State counsel has intimated to this Court, that neither the State nor the complainant has constituted any appeal, before this Court, against the verdict of acquittal, as made by the learned trial Judge concerned, qua the acquitted persons (supra). Thus, the verdict of acquittal, as made in respect of the acquitted accused, does acquire a conclusive, and, binding effect.

Factual Background

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. P1 is assigned. The narrations carried in Ex. P1 are, that the present FIR was registered on the statement of complainant Baljeet Singh to the effect that he is an agriculturist and he along with Balwan Singh, Mahinder, Karamveer and Mukhtiar had taken the land of Panchayat on lease for six months and they had sown wheat on the same. On 5.11.2015, at about 10.30 am, when he along with Lal Singh, Avtar Singh, Surjeet Singh, Balwan Singh, Karnail Singh, Raghbir Singh, Sukhwinder Singh and Mukhpal Singh having fan, pipe and engine went to their fields in tractor-trolley of Lal Singh bearing registration No.HRQ-1417 for irrigating the fields and when they reached near the plot of Karamveer, all the accused persons having gandasis, dandas and lathies in their hands were present there, who got stopped them and attacked upon them with their respective weapons and also damaged the motorcycles and tractor-trolley along with its implements. On hearing the hue and cry, people working in their fields came on the spot and on seeing them, accused persons fled away from the spot

along with their respective weapons while threatening to kill them in future.

All the accused persons caused injuries to them with an intention to kill them. Thereafter, they were shifted to CHC Pehowa for treatment, from where, he (Baljeet). Lal Singh and Avtar Singh were referred to LNJP Hospital, Kurukshetra and from there, Lal Singh was referred to GMCH Sector-32, Chandigarh due to his critical condition. He prayed for taking legal action against the accused persons. On the basis of these allegations, F.I.R. under Sections 148, 307, 323, 324 and 341 read with section 149 of IPC was registered.

Investigation proceedings

6. After investigation, challan against accused Bhola Singh, Devinder Singh, Gurmeet Singh, Randhir Singh a Dheera, Kuldeep Singh s/o Sukha Singh, Malkeet Singh, Gurnam Singh, Prem Singh, Kashmir Singh, Virender Singh @ Babbu, Surender Singh @ Chhinda, and, Nishan Singh was filed. Thereafter, supplementary challan against accused Lakhwinder Kaur was filed.

7. Copies of challan was supplied to the accused free of costs as envisaged under Section 207 Cr.P.C. On finding a prima-facie case for the commission of offences punishable under Sections 148, 341, 323, 324, 325, 307, 427 read with section 149 IPC against accused Bhola Singh, Devinder Singh, Gurmeet Singh, Randhir Singh @ Dheera, Kuldeep Singh s/o Sukha Singh, Malkeet Singh, Gurnam Singh, Prem Singh, Kashmir Singh, Virender Singh @ Babbu, Surender Singh @ Chhinda, Nishan Singh and Lakhwinder Kaur, the accused were charge-sheeted vide order dated 9.8.2016, to which they pleaded not guilty and claimed trial.

8. Thereafter, vide order dated 6.2.2017, an application under section 319 Cr.P.C. was allowed and Lakhwinder Singh, Daljeet Singh,

Talwinder Singh, Balbir Singh, Kuldeep Singh s/o Kundan Singh and Mukhtool Singh were ordered to be summoned to face the trial as additional accused.

Committal Proceedings

9. Since the offences were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 8.07.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

10. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the commission of offences punishable under Sections 148, 341, 323, 324, 325, 307, 427 read with section 149 IPC. The afore drawn charge was put to the accused, to which they pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 23 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also chose to adduce defence evidence, and, Ex.D4 to D14 were tendered into evidence.

12. As above stated, the learned trial Judge concerned, proceeded to convict the appellants-convicts, for the charges (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the

convicts-appellants.

Submissions of the learned counsels for the appellants

13. The learned counsels for the convicts-appellants have submitted, that the appellants had well propagated a right of private defence or property, and, of person, yet the said propagation becoming untenably disrobed of its efficacy by the learned trial Judge concerned. In making the said submission, the learned counsels for the appellants submit, that since the crime event, took place at a site which was in the physical possession of the appellants. Therefore, but necessarily when the complainant party made, an impermissible ingress thereinto, thereby for repulsing the said impermissible ingress onto the crime site, by the complainant party, they lawfully exercised their right of private defence of property, and, of person. Consequently, they submit, that they were required to be endowed with the benefit of the said exception against the fastening of criminal liability rather by the learned trial Judge concerned. However, when the said endowment has not been made to the present appellants, thereby the impugned verdict suffers from a gross fallacy.

Submissions of the learned State counsel

14. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts-appellants, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convicts-appellants, be dismissed.

For the reasons to be assigned hereinafter the above made submission of the learned counsels for the appellants lack any vigor, and, is rejected

15. All the injured-eye witnesses who respectively entered into witness box as PW-4, PW-7, PW-9, and, PW-20, thus in their respectively

made depositions assigned the fullest credence to their respectively made previous statements in writing. Though, the learned counsels for the appellants submit, that since they are injured eye witnesses thereby, their respective testifications rather are to be discarded. However, the above made submission is not acceptable to this Court, as a keenest and wholesome appraisal of their respectively made testifications, necessarily discloses, that they have neither grossly improved nor direly embellished, upon their respectively made previous statements, in writing, thereby with wants of the above taints occurring in their respectively made testifications, resultantly immense creditworthiness is acquired by their respective testifications.

16. Even otherwise, since the principal submission addressed before this Court by the learned counsels for the appellants, devolves, upon, the non assigning to them by the learned trial Judge concerned, vis-a-vis the exception (supra) against imposition of criminal liability, upon, the appellants inasmuch as, despite the appellants ably propagating the right of private defence of person, and of property, yet the efficacy of said propagation becoming disarmed, but yet therebys the appellants not only admit the occurrence taking place at the crime site, but also acquiesce to the testifications (supra) of the injured eye witnesses, thus being not devoid of any evidentiary sanctity. Resultantly, therebys the taint of interestedness, if any, ingraining the testifications made by the injured witnesses to the occurrence but pales into insignificance.

DISCLOSURE STATEMENT OF THE APPELLANT AND CONSEQUENT THEREWITH RECOVERIES

17. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accuseds' to police remand.

During the course of the appellants, being put to police remand, they

respectively made signed disclosure statements, which are respectively enclosed in Ex.P-4, P-5, P-9, P-10, P-11, P-12, P-15, P-16, P-17, P-18, P-22, and, P-23.

18. Since all the disclosure statements are signed by all the accused, resultantly when readings of the signed disclosure statements, as respectively made by accuseds', candidly reveal that therein they not only confessed their guilt in the crime event, but also each spoke therein, that they can ensure the causings of recoveries of gandasis and lathis, to the investigating officer concerned, from the respective places of theirs respectively hiding, and, concealing them, given the said sites being exclusively known to them. Since in pursuance thereof through recovery memos respectively embodied in Ex.P-13, P-19, P-25, P-94, P-95, P-96, P-97, they caused the recovery of gandasis and lathis (supra). Significantly, since the appellants have not been able to either ably deny their signatures as occur on Ex.P-4, P-5, P-9, P-10, P-11, P-12, P-15, P-16, P-17, P-18, P-22, and, P-23, nor when have been able to also prove the apposite denial. Moreover, since they have also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Therefore, all the memos are concluded to be holding the utmost evidentiary tenacity.

Medical Evidence in respect of injured-witnesses

19. In pursuance to the assault, as made upon the injured namely Lal Singh, Baljeet Singh, Avtar Singh, Raghubir, Karnail Singh, Sukhwinder Singh, Balwan, Surjeet, and, Mukhpal, they became subjected to medical examination by PW-22, who during the course of hers, making her examination-in-chief, has proven all the respectively drawn MLRs, vis-a-vis

the injured witnesses, as are respectively carried in Ex.P-67 to P-75, thus detailing therein, the hereinafter extracted injuries, as became noticed to be occurring on the injured persons.

Sr. No.	Name of injured	Injuries
1.	Lal Singh	1. Incised wound on skull. 2. Incised wound on Skull. 3. Incised wound over left ear.
2.	Baljeet Singh	1. Incised wound on left parietal region skull. 2. Pain in left leg. 3. Incised wound on the skull.
3.	Avtar Singh	1. Lacerated wound over parietal region of skull. 2. Pain in left hand. 3. Incised wound on the skull.
4.	Raghubir	1. Lacerated wound over left eye brow.
5.	Karnail Singh	1. Lacerated wound on ear. 2. Superficial laceration on left shoulder. 3. Superficial laceration over left lower abdomen. 4. Contusion over left lower back.
6.	Sukhwinder Singh	1. Swelling on left ear.
7.	Balwan	1. Pain in left forearm. 2. Lacerated wound on right index finger.
8.	Surjeet	1. Superficial laceration on left leg. 2. Laceration wound over parietal region of skull.
9.	Mukhpal	1. Superficial laceration over right lower lip, mild swelling. 2. Pain in right forearm, localized swelling.

20. Since the doctor concerned, hence therebys thus cogently proved that the said injuries became entailed, on the respective persons of the victims, thus as a sequel of users thereon, of the incriminatory recovered weapons of offence, thereupon the above medical evidence, thus also cogently corroborates the credible ocular account rendered qua the occurrence.

21. Now proceeding to dwell, upon, the tenacity of the principal argument raised before this Court, that the appellants rather had well exercised their right of private defence of property as well as body, it is but necessary to delve into the records, thus to gather therefroms, whether the crime site was evidently possessed by the appellants, besides it is also

required to be discerned from the evidence available on record, that whether the aggression became initiated by the appellants, and/or, by the complainant party. Moreover, it is also required to be gauged from the records whether the numerical strength of the appellants was lesser or superior to the numerical strength of the adversarial party. In addition, it is also required to be gauged from the evidence available on record, whether the adversarial party, was equally armed as were the appellants. Significantly also it is required to be determined whether the appellants exceeded or did not exceed the exercisings of their rights of private defence of body, and/or, of party.

22. In determining the above it is but necessary to allude to the grave factum, that the numerical strength of the complainant party was 9, whereas, the numerical strength of the appellants was 24. Therefore, given the superior numerical strength of the appellants, than the numerical strength of the complainant party, thus thereby besides, when the complainant party was also not as well armed as were the appellants, who all were but evidently respectively wielding weapons of offences, as became recovered, at their respective instances, some of which are also sharp edged weapons. Resultantly, thereby a conclusion becomes garnered that given the superior numerical strength of the appellants vis-a-vis the numerical strength of the complainant party, besides with the complainant party, not being so well armed, as were the appellants, thereby the appellants did exceed the right of private defence of body, and, of property.

23. Be that as it may, fortifying strength to the above inference, is thus garnered from the trite factum, that the crime site was not evidently possessed by the appellant, but rather as also echoed in the FIR enclosed in the instant appeal, besides in the cross case, the crime site occurred on a

owned either by the complainant party or by the appellants. Therefore, the appellants cannot ably argue, that with the crime event, taking place on a public path, that they were owners thereof, nor they can propagate, that in theirs defending their rights as owners thereof, thus theirs for repulsing the ingress made thereon, as became purportedly made by the complainant party, rather they made an able assault on the persons' of the complainant party.

24. Furthermore, therefrom too immense strength, is garnered by the above inference recorded by this Court, planked importantly, on account of the superior numerical strength of the appellants, than the numerical strength of the complainant party, besides too, from the evident factum of the complainant party being lesser armed than the appellant party, resultantly therebys there is thus inconsequentiality too, either qua the complainant party or the appellants party being the initiators of the aggression. Contrarily, it has to be well concluded, that the appellants in theirs purportedly exercising the right of private defence of body, rather theirs exceeding the said right, but as revealed by the injuries (supra), as enclosed in the MLRs (supra). As a corollary thereof, it has to be concluded, that the appellants were not liable to be assigned the benefit of the exceptions (supra), against the fastening of criminal liability upon them, as became aptly denied to them by the learned trial Judge concerned.

Final order

25. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convicts by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross

mis-appreciation, and, non-appreciation of the evidence on record. In

consequence, there is no merit in the appeal, and, the same is dismissed. If the appellants are on bail, thereupon they are ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

- 26. Records be sent down forthwith.
- 27. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

February 19, 2024
Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No