

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

CRM-A-569-2022
Reserved on: 24.01.2024
Date of decision: 19.02.2024

KULDEEP SINGH

...Appellant

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present: Mr. Nikhil Ghai, Advocate for the appellant.

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 instant appeal is directed by the aggrieved-complainant against the verdict of acquittal, as made on 10.03.2022, by the learned Additional Sessions Judge, Kurukshetra, upon Sessions Case No.SC No.66 of 2017, and, is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

2. The brief facts of the prosecution case are that the present case is the cross version of case titled as “State Versus Bhola Singh and others” in FIR No.498 of 06.11.2015, under Sections 148, 149, 323, 324, 325, 341, 427, 307 of the IPC, registered at Police Station Pehowa, District Kurukshetra.

3. After investigation 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, 324 and 326 read with Section 149 IPC against accused Surjeet Singh, Dalip Singh, Mam Chand, Mukhpal, Balwan Singh, Baljit Singh and Avtar Singh; the accused were charge sheeted vide order dated 21.03.2017, to which they pleaded not guilty and claimed trial.

4. Thereafter vide order dated 13.04.2018, an application under Section 319 Cr.P.C. was partly allowed and Mohinder Singh son of Phool Singh was ordered to be summoned to face the trial as an additional accused and the application qua summoning of Lal Chand son of Juglal, Rajesh @ Jassi son of Labh Singh and Malkeet Singh son of Sadha Singh was dismissed.

5. On finding a prima facie case for the commission of offences punishable under Sections 148, 324 and 326 read with Section 149 IPC against accused Mohinder Singh; the accused was charge sheeted vide order dated 06.07.2018, to which he pleaded not guilty and claimed trial.

COMMITTAL PROCEEDINGS

6. Since the afore offences were exclusively triable by the Court of Session, thus the learned Sub Divisional Judicial Magistrate, Pehowa, Kurukshetra, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 13 witnesses, and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. They also choose to adduce defence evidence, and, Ex.D4 to D46 were tendered into evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

8. The learned counsel for the appellant has submitted, that though the private respondents, did not well propagate the right of private defence of property, and, of person, yet the said propagation became untenably accepted by the learned trial Judge concerned. In making the said submission, the learned counsel for the appellant submits, that since the respondents were the initiators of the aggression, besides when the crime event took place at a site which was in the physical possession of the appellant party. Therefore, but necessarily when the private respondents made an impermissible ingress thereinto, thereby for repulsing the said impermissible ingress onto the crime site by the private respondents, rather the present appellant, but lawfully exercised the right of private defence of property, and, of person. Contrarily, he submits that yet the learned trial Judge concerned, untenably endowed to the private respondents, thus the benefit of the exception(s) (supra), against the imposition of criminal liability, upon the private respondents. Therefore, it is argued that the impugned verdict of acquittal suffers from a gross fallacy.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

9. On the other hand, the learned State counsel has argued before this Court, that the verdict of acquittal (supra), as become passed by the learned trial Judge concerned, 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 appellant, be dismissed.

FOR THE REASONS TO BE ASSIGNED HEREINAFTER THE ABOVE MADE SUBMISSION OF THE LEARNED COUNSEL FOR THE APPELLANT LACK ANY VIGOR, AND, IS REJECTED

10. The submission addressed before this Court by the learned counsel for the appellant devolves, upon the assigning by the learned trial Judge

concerned, to the private respondents the benefit of the apposite exception to the imposition of criminal liability.

11. Now proceeding to dwell, upon, the tenacity of the argument raised before this Court, that the private respondents, did not well exercise the right of private defence of property as well as body, it is but necessary to delve, into the records to gather therefrom, whether the crime site was evidently possessed by the private respondents, besides it is also required to be discerned from the evidence available on record, that whether the aggression becoming initiated, by the private respondents, and/or, by the appellant party, besides is also required to be gauged from the records whether the numerical strength of the appellant party was lesser or superior to the numerical strength of the private respondents. Moreover, it is also required to be fathomed from the evidence available on record whether the private respondents were equally armed as was the appellant party. Significantly also it is required to be determined whether the private respondents exceeded or did not exceed the exercisings of their rights of private defence of body, and/or, of party.

12. In determining the above, it is but necessary to allude to the grave factum, that the numerical strength of the private respondents was 9, whereas, the numerical strength of the appellant party was 24. Therefore, given the superior numerical strength of the appellant party, than the numerical strength of the private respondents, thus thereby besides, when the private respondents were also not as well armed as was the appellant party, who were respectively wielding weapons of offences, as became recovered, some of which are also sharp edged weapons. Resultantly, thereby a conclusion becomes garnered, that given the superior numerical strength of the appellant party, vis-a-vis, the numerical strength of the private respondents, besides with the private respondents not being so well armed, as were the appellant party, thereby the

private respondents did not exceed their right of private defence of body, and, of property. Resultantly, the endowment vis-a-vis them of the apposite exception to the fastening of criminal liability, thus was well merited.

13. 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 party, but rather as also echoed in the FIR enclosed in the appeal bearing No.CRA-S-1066-2022, the crime site occurred on a “*Gair Mumkin*” rasta. Necessarily, thus the “*Gair Mumkin*” rasta was not owned either by the appellant party or by the private respondents. Therefore, the appellant party cannot ably argue, that with the crime taking place on a public path, rather they were owners thereof, nor they can propagate, that in the exercise of their defending their rights as owners thereof, or for repulsing the ingress made thereon, as became purportedly made by the private respondents, thus they made an able assault on the persons of the private respondents.

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

FINAL ORDER

15. For the reasons assigned hereinabove, the instant appeal is dismissed, and the impugned verdict of acquittal is maintained and affirmed.
16. Bail bonds, if any, are ordered to be forthwith cancelled and discharged. 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.
17. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

19.02.2024

Ithlesh

(LALIT BATRA)
JUDGE

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