
(2010) 06 P&H CK 0030
In the Punjab And Haryana At Chandigarh

Bhagwan Singh and Others and Bhagwan Singh and Another	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision : 04-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 173, 307, 323

Citation : (2010) 06 P&H CK 0030

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—By this common judgment, both the appeals, viz. Criminal Appeal No. 7-SB of 2002 filed by Bhagwan Singh son of Sucha Singh, Mohinder Singh son of Harnam Singh, Sucha Singh son of Surjan Singh, Dhanno Bai wife of Sucha Singh, Kulwant Singh son of Sucha Singh and Malkiat Singh son of Harnam Singh; and Criminal Appeal No. 25-SB of 2002 filed by Bhagwan Singh son of Mehar Snigh and Paramjit Singh alias Pamma son of Jora Singh shall be disposed of together.

2. On 25.6.1995 at about 5.00 P.M. in the area of Village Bahmniwala, Tehsil Jalalabad, District Ferozepur, two groups clashed and caused injuries to each other. At the instance of one group, FIR No. 193 dated 26.6.1995 was registered at Police Station Sadar Jalalabad under Sections 326, 325, 324, 148, 149 IPC. The FIR was lodged at the instance of Sucha Singh son of Surjan Singh. Cross version to the FIR was divulged by Tehal Singh son of Guddar Singh. On the basis of FIR lodged by Sucha Singh, 15 persons were tried, namely, Surjit Singh, Kashmir Singh, Gajjan Singh, Makhan Singh, Surjan Singh, Veero Bai, Ishar Kaur, Surain Singh, Puran Singh, Tehal Singh, Balbir Singh, Desa Singh, Bishamber Singh, Joginder Singh and Narain Singh. In the cross version narrated by Tehal Singh, eight persons, namely, Bhagwan Singh, Mohinder Singh, Sucha Singh, Dhanno Bai, Kulwant Singh, Malkiat Singh, Bhagwan Singh and Paramjit Singh alias Pamma son of Jora Singh were tried. Both the trials were conducted separately but simultaneously.

3. The Court of Additional Sessions Judge, Ferozepur vide its judgment dated 28.11.2001 in the version given by Tehal Singh held Bhagwan Singh son of Sucha Singh and his seven co-accused guilty of offences under Sections 323, 324, 325, 326, 148, 149 IPC and vide a separate order dated 29.11.2001 sentenced them as under:

S. No

Name of convicts

Offences for which convicted

Sentence

Fine

In default of payment of fine

1

Kulwant Singh

324 IPC

R.I for one year

148 IPC

R.I for one year

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

323/149 IPC

R.I for six months

326/149 IPC

R.I for 1-? years

Rs.1000/-

R.I for three months

2

Malkiat Singh

323 IPC

R.I for nine months

148 IPC

R.I for one year

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

326/149 IPC

R.I for 1-? years

Rs.1000/-

R.I for three months

3

Bhagwan Singh son of Mehar Singh

324 IPC

R.I for one year

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148 IPC

R.I for one year

323/149 IPC

R.I for six months

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

326/149 IPC

R.I for 1-? years

Rs.1000/-

R.I for three months

4

Paramjit Singh alias Pamma

148 IPC

R.I for one year

323/149 IPC

R.I for six months

324/149 IPC

R.I for ten months

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

326/149 IPC

R.I for 1-? years

Rs.1000/-

R.I for three months

5

Sucha Singh

326 IPC

R.I for two years

Rs.1500/-

R.I for four months

148 IPC

R.I for one year

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

323/149 IPC

R.I for six months

6

Bhagwan Singh son of Sucha Singh

323 IPC

R.I for nine months

148 IPC

R.I for one year

326/149 IPC

R.I for 1-? years

Rs.1000/-

R.I for three months

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R. I for ten months

7

DhanoBai

148 IPC

R.I for one year

323/149 IPC

R. I for six months

324/149 IPC

R.I for ten months

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

326/149 IPC

R.I for 1-?years

Rs.1000/-

R.I for three months

8

Mohinder Singh

148 IPC

R.I for one year

323/149 IPC

R.I for six months

324/149 IPC

R.I for ten months

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

326/149 IPC

R.I for 1-? years

Rs.1000/-

R.I for three months

4. All the sentences were ordered to run concurrently.

5. Two appeals have been filed against the judgment of conviction and order of sentence, bearing Criminal Appeal Nos. 7-SB of 2002 and 25-SB of 2002. These appeals pertain to cross-version to the FIR. By this common judgment, both the appeals shall be decided together.

6. In the FIR case, fifteen (15) persons were tried and held guilty of offence under Sections 324, 148, 307, 323, 149 IPC vide judgment dated 28.11.2001 and vide a separate order dated 29.11.2001, they were sentenced as under:

S. No

Name of Convict

Offences for which convicted

Substantive sentence awarded

Fine

Indefault of payment of fine

1

Surain Singh

324 IPC

R.I for ten months

148 IPC

R.I for nine months

307/149 IPC

R.I for two years

Rs. 1500/-

R.I for four months

323/149 IPC

R.I for six months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

2

Narain Singh

324 IPC

R.I for ten months

307 IPC

R. I for 2-? years

Rs. 1500/-

R.I for four months

148 IPC

R.I for nine months

323/149 IPC

R.I for six months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

3

Surjan Singh

324 IPC

R.I for ten months

307 IPC

R.I for 2-? years

Rs. 1500/-

R.I for four months

148 IPC

R.I for nine months

323/149 IPC

R.I for six months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

4

Gajjan Singh

323 IPC

R. I for six months

148 IPC

R. I for nine months

324/149 IPC

R.I for ten months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

307 /149 IPC

R.I for 2-1/2 years

Rs. 1500/-

R.I for four months

5

Surjit Singh

324 IPC

R.I for ten months

307 IPC

R.I for 2-1/2 years

Rs. 1500/-

R.I for four months

148 IPC

R.I for nine months

323/149 IPC

R.I for six months

326/149 IPC

R.I for 1-V2 years

Rs. 500/-

R.I for 30 days

6

Kashmir Singh

324 IPC

R.I for ten months

148 IPC

R.I for nine months

323/149 IPC

R.I for six months

326/149 IPC

R.I for 1-y2 years

Rs. 500/-

R.I for 30 days

307/149 IPC

R.I for 2-Vi years

Rs. 1500/-

R. I forfourmonths

7

Puran Singh

324 IPC

R. I for ten months

148 IPC

R.I for nine months

323/149 IPC

R.I for six months

326/149 IPC

R. I for 1-V2 years

Rs. 500/-

R. I for 30 days

307/149 IPC

R.I for 2-? years

Rs. 1500/-

R.I for four months

8

Balbir Singh

324 IPC

R.I for ten months

148 IPC

R. I for nine months

323/149 IPC

R. I for six months

326/149 IPC

R. I for 1-? years

Rs. 500/-

R. I for 30 days

307/149 IPC

R.I for 2-? years

Rs. 1500/-

R.I for four months

9

Bishambe Singh

r 326 IPC

R.I for two years

Rs. 1000/-

R. I forthreemonths

148 IPC

R.I for ten months

323/149 IPC

R. I for six months

307/149 IPC

R.I for two years

Rs. 1500/-

R.I for four months

324/149 IPC

R.I for ten months

10

Tehal Singh

323 IPC

R.I for six months

148 IPC

R.I for ten months

307/149 IPC

R.I for two years

Rs. 1500/-

R.I for four months

326/149 IPC

R.I for 1-V2 years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

11

Makhan Singh

323 IPC

R.I for six months

148 IPC

R.I for ten months

307/149 IPC

R.I for two years

Rs. 1500/-

R.I for four months

325/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

12

Joginder Singh

323 IPC

R.I for six months

148 IPC

R.I for ten months

307/149 IPC

R.I for two years

Rs. 1500/-

R.I for four months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

13

Desa Sing

h 323 IPC

R.I for six months

148 IPC

R.I for ten months

307/149 IPC

R.I for two years

Rs. 1500/-

R.I for four months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

14

IsharKaui

323 IPC

R.I for six months

148 IPC

R.I for eight months

307/149 IPC

R.I for 1-? years

Rs. 1500/-

R.I for four months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

15

VeeroBai

323 IPC

R.I for six months

148 IPC

R.I for eight months

307/149 IPC

R.I for 1-? years

Rs. 1500/-

R.I for four months

326/149 IPC

R.I for 1-? years

Rs. 500/-

R.I for 30 days

324/149 IPC

R.I for ten months

7. All the sentences were ordered to run concurrently.

8. In the present appeals bearing Criminal Appeal Nos. 7-SB of 2002 and 25-SB of 2002, this Court shall confine to the cross-case to the FIR No. 193 dated 26.6.1995, Ex.P8, lodged by Tehal Singh. Same when translated into English reads as under:

I am resident of Village Bahmniwala. We have a land dispute with Mohinder Singh son of Harnam Singh, resident of Mojdeenwala. Regarding this dispute both the parties have already been released on bail in security proceedings. Mohinder Singh had sown paddy in the disputed land. On 25.6.1995 at about 5.00 P.M., I along with my brother Surain Singh and Veero Bai wife of Surain Singh went to the disputed land for sowing the paddy afresh. Then Kulwant Singh son of Sucha Singh, Rai Sikh, resident of Village Bahmniwala came from his Dhaani. Kulwant Singh was armed with a Kirpan, Malkiat Singh son of Harnam Singh was armed with a Gandasi, Bhagwan Singh son of Mehar Singh was armed with a Gandasi and Pamma Singh who is son-in-law of Mehar Singh was empty handed. Pamma Singh raised a lalkara that for sowing the paddy again, we will teach you a lesson, upon which Malkiat Singh gave a Gandasi blow to him which hit on the wrist of his left arm from reverse side. Kulwant Singh gave a Kirpan blow which hit on his right thigh. These accused also caused injuries to Surain Singh and Veero Bai wife of Surain Singh in order to restrain them from planting the paddy. Lateron Boor Singh son of Bakhtawar Singh who was our relative arranged for a conveyance and brought us to Civil Hospital,

Jalalabad, where we are under treatment.

9. The above-said FIR was investigated and report u/s 173 Cr.P.C. was submitted.

10. The case was committed to the Court of Additional Sessions Judge, Ferozepur, as it was a cross version to the FIR case registered u/s 307 IPC. Bhagwan Singh son of Mehar Singh, Bhagwan Singh son of Sucha Singh, Mohinder Singh son of Harnam Singh, Sucha Singh son of Surjan Singh, Dhanno Bai wife of Sucha Singh, Kulwant Singh son of Sucha Singh, Malkiat Singh son of Harnam Singh and Paramjit Singh alias Pamma son of Jora Singh were charged for offence u/s 148 IPC for having constituting unlawfully assembly, armed with deadly weapons on 25.6.1995 at about 5.00 P.M. Second charge stated that Sucha Singh son of Surjan Singh had voluntarily caused grievous hurt to Surain Singh by means of a Gandasi and committed offence punishable u/s 326 IPC, whereas his other co-accused were charged with aid of Section 149 IPC. Third charge stated that Rajinder Singh was sent before the Juvenile Court who had voluntarily caused grievous hurt to Veero Bai with a Sotta (a blunt weapon) and thus committed offence punishable u/s 325 IPC and his co-accused were charged with aid of Section 149 IPC. Bhagwan Singh son of Mehar Singh was substantively charged for causing simple injuries to Surain Singh with a gandasi and thus committed offence punishable u/s 324 IPC, whereas his co-accused committed offence with aid of Section 149 IPC. Kulwant Singh was also substantively charged for offence u/s 324 IPC for causing simple incised injuries to Tehal Singh, whereas other co-accused were charged with the aid of Section 149 IPC. Bhagwan Singh son of Sucha Singh was charged for causing simple injuries to Surain Singh by means of a Sotta and committed offence u/s 323 IPC. Other co-accused were charged with the aid of Section 149 IPC. Malkiat Singh was charged for causing simple injuries from reverse side of Gandasi to Tehal Singh and thereby committed offence u/s 323 IPC, whereas his co-accused were charged for offence u/s 149 IPC.

11. Dr. Rajesh Kumar Sharma PW2 on 25.6.1995 at 10.30 P.M. had medico legally examined Tehal Singh son of Guddar Singh and found two injuries on his person. Both the injuries were simple in nature. Injury No. 1 was incised wound on upper half of right thigh and injury No. 2 was swelling on back of middle third of left forearm. On the same day at 10.45 P.M., Dr. Rajesh Kumar Sharma PW2 had examined Surain Singh son of Guddar Singh and found three injuries on his person. Injury No. 1 was incised wound on the left occipital region anterior. Injury No. 2 was incised wound on the left index finger and injury No. 3 was complain of pain. Injury No. 2 was lateron declared as a grievous. On the same day, at 11.00 P.M., same witness examined Veero Bai and had found one injury on the right foot. This injury was caused with a blunt weapon and was lateron declared as grievous.

12. In support of the cross version, Tehal Singh injured appeared as PW4 and reiterated as to what was stated in his statement Ex.P8. His testimony was further corroborated by injured Surain Singh PW5 and Veero Bai PW6.

13. This Court need not to go into all intricacies and evidence of other witnesses who had participated in the investigation as the trial Court had given the following findings in its para 12, relevant portion whereof is as under:

...As there is no material available on the record of this case or in cross version case titled as State v. Surjit Singh etc. to show as to which of the assailants opened attack first and as such certainly the aggressor cannot be determined due to which opinion formed by P.W.3 qua taking place of free fight is not an improper opinion. Detailed discussion in this respect is also held by main cross case titled as St. v. Surjit Singh etc. and as such testimony of P.W.3 cannot be disbelieved that present case is a case of free fight. As. P.W.3 did not visit the spot and recorded statements of any of the witnesses and as such version given by him to the effect that he cannot say as to whether Surjit Singh and Ors. came for taking forcible possession of land of Mohinder Singh or not, is a true version given by P.W.3. No benefit from this version can be gained by defence particularly when P.W.3 after consulting with ASI Raj Singh formed opinion qua number of assailants of this case as well as qua fact as to whether present case is a case of free fight or not.

14. Once the trial Court held that the opinion formulated by ASI Raj Singh that it was a free fight, then this Court cannot ignore that in a cross case, a categoric finding has been given that the fight between two sides was a result of free fight. After examining the testimonies of the witnesses, this Court is of the view that cross-examination of ASI Raj Singh PW7 is required to be reproduced hereunder:

FIR was recorded on the basis of statement of accused Sucha Singh. SI/SHO Bhupinder Singh found Bhagwan Singh s/o Mehar Singh and Paramjit Singh @ Pamma s/o Ujagar Singh as innocent during investigation and placed them in column No. 2. Ex.DA and DB and statements of other witnesses were recorded without any alteration. Ex.DC is the correct carbon (copy) of statement of Bhagwan Singh. It is correct that where the occurrence took place, that land belongs to Sucha Singh accused. It is correct that Tehal Singh injured-complainant of this case has got recorded in his statement Ex.P.8 that they had gone to sowing the paddy crop in the fields in which paddy crop was already sown by Mohinder Singh etc. and Tehal Singh etc. were uprooting the paddy plant. I inspected the place of occurrence on 26.6.95 at 11.30 A.M. I had seen the place of occurrence. The place where occurrence took place, Chari accused (crop) was sown there which belonged to Sucha Singh accused. The paddy crop was abutted with the Chari crop but I had not found any paddy crop which was alleged to be uprooted as that field was irrigated, and was full of water. Statement of Tehal Singh was recorded by me on 26.6.95 at about 3.45 A.M. Thereafter Sucha Singh did not met me before his arrest. Again said Tehal Singh did not met me before his arrest. I do not remember whether I visited Civil Hospital, Ferozepur on 28.6.95 or not. I cannot say whether Surain Singh remained absent from Civil Hospital, Ferozepur from 2.30 P.M. To 10.40 P.M. On 28.6.95. Statement of Surain Singh was recorded on 26.6.95 at 9.00 A.M. I

recorded the statement of Tehal Singh and Surain Singh in civil hospital, Jalalabad. It is correct that a case u/s 307 IPC was registered against Tehal Singh etc. and in that case Sucha Singh, Bhagwan Singh, Rajinder Kumar and Mohinder Singh was injured. It is wrong to suggest that I conducted a partial investigation in this case. It is further incorrect to suggest that this cross-version is false one. It is further incorrect to suggest that I have deposed falsely.

15. In the present case, both the parties were asserting their possession over the land. To prove their claim, sowing of paddy became an important issue for the parties, thus both the sides caused injuries to each other. They were determined to settle their possession by use of weapons. In such a situation, it is difficult to find out as to how the occurrence originated. Genesis of the occurrence cannot be comprehended. Therefore, it can be safely said that it is a case of free fight. It is a settled legal position that in a case of free fight, each accused is responsible for his individual role and Section 149 IPC cannot be applied. This Court in Gurmit Singh and Ors. v. State of Punjab, Criminal Appeal No. 857-SB of 1997, decided on 22.1.2010 considered the case law and observed as under:

In Gajanand and Others Vs. State of Uttar Pradesh, , Hon"ble Apex Court held as under:

A free fight is "when both sides mean to fight from the start, go out to fight and there is a pitched battle. The question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders.

It was further held that in case of free fight, each accused is responsible for his own act and can only be convicted for individual liability. In State of Haryana Vs. Chandvir and others, , Hon"ble Apex Court held that in case of free fight, liability of each accused has to be considered independently. This view was further followed in Kanbi Nanji Virji and Others Vs. The State of Gujarat, . In "Kashi Rai and Ors. v. State of Bihar" 1994 SCC (Cri) 416, the settled legal position was further reiterated and it was held that assailants should be held liable for their individual acts. Further reliance can be placed upon Pundalik Mahadu Bhane and Others Vs. State of Maharashtra, .

16. As per prosecution case, the grievous injury suffered by Veero Bai PW6 is attributed to Rajinder Kumar who was tried by the Juvenile Justice Board. Therefore, conviction of the present appellants for offence u/s 325 IPC read with Section 149 IPC cannot be sustained and is liable to be set aside. Tehal Singh has suffered two simple injuries. Malkiat Singh caused a blunt injury from reverse side of Gandasi on the wrist of left hand of Tehal Singh. Kulwant Singh caused a simple injury from sharp side of Kirpan on the right thigh of Tehal Singh. Thus, Malkiat Singh is held guilty u/s 323 IPC and Kulwant Singh u/s 324 IPC. Surain Singh had suffered three injuries. Injury No. 3 was complain of pain. There was no external mark of injury. Thus, Bhagwan Singh son of Sucha Singh, alleged author of this injury, is granted benefit of doubt. Bhagwan Singh son of

Mehar Singh is said to have given a simple injury on the head of Surain Singh falling u/s 324 IPC. Sucha Singh caused an injury with a Gandasi on the left hand of Surain Singh which was declared as a grievous and fall u/s 326 IPC.

17. As a result of above discussion, Sucha Singh alone is held liable substantively for offence u/s 326 IPC, Bhagwan Singh son of Mehar Singh u/s 324 IPC and Malkiat Singh u/s 323 IPC and Kulwant Singh u/s 324 IPC. Rest of the accused had caused no injuries, therefore, they are acquitted of the charges. The trial Court had sentenced Sucha Singh u/s 326 IPC to undergo rigorous imprisonment for two years and a fine of Rs. 1500/-, in default of payment of fine to further undergo rigorous imprisonment for four months. In the present case occurrence had taken place in the year 1995. A period of 15 years is going to elapse. Taking into consideration that the accused had suffered mental pain and agony of the protracted trial, therefore, the sentence awarded upon Sucha Singh is reduced from two years to one year's rigorous imprisonment. Kulwant Singh has only been held liable for offence u/s 324 IPC. He has been sentenced to undergo rigorous imprisonment for one year. His sentence is reduced to rigorous imprisonment for six months. Bhagwan Singh son of Mehar Singh has been held guilty for offence u/s 324 IPC and sentenced to undergo rigorous imprisonment for one year. His sentence is reduced to six months rigorous imprisonment. Malkiat Singh has been held liable for offence u/s 323 IPC and sentenced to undergo rigorous imprisonment for nine months. His sentence is reduced to 4 months rigorous imprisonment.

18. With the aforesaid modification in the order of sentence, both the appeals are disposed of.