
(1989) 05 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 296 of 1986

Gurdial Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 26-05-1989

Acts Referred:

Citation : (1989) 2 RCR(Criminal) 668

Hon'ble Judges : Harbans Singh Rai, J

Advocate : B.S. Walia, T.P.S. Mann, P.S. Mann, Advocates for appearing Parties

Judgement

Harbans Singh Rai, J.

1. Gurdial Singh and Balwinder Singh were convicted by Shri G.C. Suman, Judicial Magistrate Ist Class, Ludhiana, vide his order dated July 30, 1985. Balwinder Singh was convicted under Section 326 and 323/34, IPC and Gurdial Singh was convicted under Sections 326/34 IPC and 323 IPC. They were ordered to undergo R.I. for one year each and to pay a fine of Rs. 500/ each; in default of payment of fine further R.I. for one month under Section 326/34 and 326. IPC respectively and to three months R.I. under Sections 323 and 323/34 IPC respectively. All the sentences were ordered to run concurrently. Their appeal was dismissed by Shri Iqbal Singh, Additional Sessions Judge, Ludhiana, vide his order dated February 27, 1986. Feeling aggrieved, they have filed this appeal.

2. The prosecution case in brief is that on June 28, 1982, at about 6 p.m. Jarnail Singh was ploughing his fields in village Ratan. Gurdial Singh and Balwinder Singh appellants came there, Balwinder Singh was armed with a Kulhari and Gurdial Singh with a Dang. They asked Jarnail Singh not to plough the field which they have already purchased. Jarnail Singh replied that a civil suit was pending qua the same land. On this, Balwinder Singh gave a kulhari blow on the head of Jarnail Singh and Gurdial Singh gave a Dang blow on the right leg of Jarnail Singh. Balwinder Singh gave another Kulhari blow on Jarnail Singh's head. He raised a raula which attracted Paul Singh and Mohan Singh. The accused ran away with their respective weapons.

3. As both the parties caused injuries to each other, so two cases were registered one against the appellants i.e. Balwinder Singh and Gurdial Singh and another against Jarnail Singh and Pal Singh PWs. The trial Court did not accept the version of the prosecution qua the possession of Jarnail Singh and held :

".....When this is so that actual possession of neither of the accused nor of the complainant Jarnail Singh etc. has been proved to be there on the site on which fight between the parties admittedly took place, the natural conclusion is that both the parties having already a dispute regarding the land on which the fight took place had come with preplanned intention to give injuries to each other. In that situation, none of the parties can be termed to be an aggressor, but it was wilful preplanned fight between both the parties. The possession of the accused or the injured at the site where the occurrence admittedly took place has not been proved on the record. Thus, when the occurrence between the parties has been admitted and it has been proved from the evidence of the prosecution that the accused entered the land which has been not proved to be in actual possession of Jarnail Singh, it cannot all be said that Gurdial Singh etc. were aggressors. These facts indicate that it was a motivated preplanned fight between both the parties hatched in order to teach each other a lesson regarding the assertion of claim of possession of the land on which fight between the parties has taken place. Thus, when the fact of fight between the parties is an admitted fact and neither of the party could prove their respective possession on the said land, this point in my view alone is sufficient to conclude that the accused are guilty of the offences for which they have been charged."

4. According to Jarnail Singh, he was in possession of the property and he was cultivating the same, and the accused came and attacked him when he was ploughing it. It has not denied that the accused party also received grievous and simple injuries, but Jarnail Singh explains these injuries by saying that he acted in his right of selfdefence. The accused, on the other hand, stated that they had purchased this land and they were in possession of the same. Their crop of 'Har Har' was standing when Jarnail Singh came to plough it. They had caused him injuries in their right of selfdefence. The Courts below did not accept the version of either of the parties and convicted thee petitioners holding that both the parties has come with a preplanned determination and caused injuries to each other. According to site plan Exhibit PE the incident took place in the 'Har Har' field of Balwinder Singh.

5. It well settled that the trial Court could either accept the prosecution case or reject the same. The Court is entitled to convict the petitioners even if it does not accept the prosecution case totally and the circumstances which are available in the prosecution evidence are sufficient to hold the accused guilty of the charge. It is not legally permissible for the Court to come with its own version of the incident which is neither supported by any evidence nor is the case of either of the parties. In this case both the parties were asserting their possession. Both the parties receives grievous injuries. Both were challenged. The Court finds that

neither of them is in possession nor acted in right of selfdefence meaning thereby that the version given by both the parties is not proved. The Court comes with its own version that it is a case where both the parties came to the place of occurrence predeternined to fight. This finding is not justified from the record. No doubt, Jarnail Singh in his statement, says that he was in possession of the property, but the site plan shows that the incident took place in the 'Har Har'' field of Balwinder Singh. So it cannot be said whether Jarnail Singh was in possession or Balwinder Singh was in possession of land. When the genesis of the occurrence is not known and it cannot be said who is the aggressor (as has been held by the trial Court that it cannot be found out who is the aggressor), it is not desirable that the Court should come out with its own version of free fight and convict the petitioners. The approach is not to be appreciated.

6. In view of the fact that the genesis of the occurrence is not known and it cannot be said who is a aggressor and who was in possession of land in dispute and both the parties have received injuries, the petitioners are entitled to benefit of doubt. It is ordered that the conviction and sentences under Sections 326/34, 323, 323/34 IPC are set aside and they are acquitted of the charges.