
(1999) 01 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 564-MA of 1998

State of Punjab

APPELLANT

Vs

Bashamber Singh

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Citation : (1999) 1 RCR(Criminal) 816

Hon'ble Judges : V.K.Bali, J and B.Rai, J

Advocate : S.S. Dhaliwal, Advocates for appearing Parties

Judgement

V.K. Bali, J.

1. Seven persons namely Bashamber Singh, his two sons Gurnam Singh and Satnam Singh, Harjit Singh, Bhagwan Singh, Gurwinder Singh and Jaswinder alias Dimple were sent up by the police of P.S. Kotwali, Ludhiana for facing trial under Sections 148/149/302/307 of Indian Penal Code and S. 27 of the Arms Act. They were tried in Sessions case No. 31 of 6.8.1996 for the said offences by the learned Additional Sessions Judge, Ludhiana. After full dressed trial of the seven accused they were acquitted of the charges framed against them by a detailed judgment dated 9.5.1998. State being dissatisfied with the said decision has come to this Court with an application under Sub section (3) of Section 378 of Code of Criminal Procedure for permission to file appeal.

2. Brief facts of the case as stated by Samarjit Singh, PW3 in his statement Exhibit PF made before the police are that on 26.3.1996 at about 4.30 p.m. he alongwith Narinder Singh, Tejinder Singh and Raman Kumar were present in their office in Ghumar Mandi, Ludhiana. An information was received in the office that Bashamber Singh was unauthorisedly constructing a room in their plot. At this Samarjit Singh, Narinder Singh, Tejinder Singh and Raman Kumar went in a Maruti car at about 5.16 p.m. to the plot in Chander Nagar. On reaching there they found that Bashamber Singh armed with revolver, Satnam Singh armed with Kirpan, Gurnam Singh armed with pistol, Dimple @ Jaswinder Singh armed with gandasi, Harjit Singh armed with 12 bore gun, Gurwinder Singh armed with gun

were present there. Narinder Singh. PW4 asked Bashamber Singh accused as to why he was encroaching upon the plot. Bhagwan Singh raised lalkara "Far Lao, Bach Ke Na Jan". Then Bashamber Singh fired with his revolver which hit Samarjit Singh below his left shoulder on the chest. Gurnam Singh fired a pistol shot, which hit him below right shoulder on the chest. Gurwinder Singh, Harjit Singh and Bhagwan Singh accused fired with their 12 bore guns causing injuries to Narinder Singh, Raman Kumar and Tejinder Singh. They raised alarm "Mar Ditta, Mar Ditta" but they were encircled by Satnam Singh and Jaswinder Singh. Then the accused ran away from the spot with their respective weapons. The injured were removed to the hospital where the statement Exhibit PF of Samarjit Singh was recorded at 9.30 p.m. Later on Tejinder Singh injured succumbed to the injuries on 29.3.1996. After registration of the case FIR, Exhibit PF/1 investigation was completed, challan was presented. All the accused pleaded not guilty to the charges under Section 148/302/307/149 IPC and under Section 27 of the Arms Act. Prosecution examined as many as 14 witnesses. A large number of documents were also produced in evidence in support of the prosecution version. When examined under Section 313 Cr.P.C. all the accused denied the allegations of the prosecution. Bashamber Singh accused stated that he and his son Gurnam Singh were apprehended by the police on the same day while Satnam Singh was confined to bed. He was also taken into custody on the same day and not on 31.3.1996 as alleged by the prosecution. He took the stand that it was a false case. He was innocent. He alongwith Bhagwan Singh had entered into an agreement with Gurmit Singh, Charanjit Singh and Bal Kishan and that they (accused party) were in possession of the plot since December 1994 and they had raised boundary wall and had installed an iron gate. Gurwinder Singh accused stated that it was a false case. He was innocent. Plot in question belonged to his maternal uncle. Bashamber Singh and Bhagwan Singh had purchased the same from Gurmit Singh three years back and since 1994 they were in possession of the plot and had constructed boundary wall and had fixed iron gate. On 26.3.1996 at about 5/5.15 p.m. he alongwith others were present in the said plot and his uncle Bashamber Singh and his son Gurnam Singh had gone to Ludhiana City and Harjeet Singh was also not present there, whereas Satnam Singh was confined to bed at his house. In the meantime Narinder Singh, Samarjit Singh, Tejinder Singh, Raman Kumar armed with fire arms like revolver, guns and pistol came there and started firing in order to kill them and take possession of the plot as a result of which he and others present in the plot were injured. Narinder Singh and others continued firing and they would have surely murdered them and in right of private defence of persons and property he fired shots from his licensed gun. Thereafter, he went to police station and met SI Gurinderjit Singh and narrated him the incident that Narinder Singh and others had come prepared armed with fire arms in order to take possession of plot of Bashamber Singh and Bhagwan Singh and Narinder Singh and others fired shots from their arms and he also told the SI that in right of his private defence, he also fired and SI Gurinderjit Singh put him off asking him to get himself medically examined and then he went to Civil Hospital, Ludhiana where he was

medically examined and then he was admitted in the hospital. He further stated that in fact the PWs have relations with higher police officials and the police had carried out onesided investigation. Gurnam Singh put forth the version that he being son of Bashamber Singh had been arrested, who alongwith Bhagwan Singh had entered into an agreement with Gurmit Singh, Charanjit Singh and Bal Kishan and that agreement was reduced into writing and they were in possession of the plot since December, 1994. Satnam Singh accused denied the allegations of the persecution stating that in this case FIR was registered at a later stage under mysterious circumstances in connivance with relations of Narinder Singh who is Inspector of police and others. He further stated that khasra Nos. 656 and 660 belonged to the government where Budda Nala flows. In fact the plot in question falls in khasra Nos. 65, 66 and 67 of village Mahal Bhagat which was in their possession for the last three years. According to him he alongwith others was falsely implicated in this case being the son of Bashamber Singh. He met with a road accident and received injuries. Doctor had advised him complete bed rest and not to move about. Bhagwan Singh accused pleaded his innocence and false implication in this case. He stated that prosecution witnesses were interested and formed one group and they were engaged in land grabbing and other criminal acts. According to him Narinder Singh, PW was armed with revolver and Paramjit Singh, Tejinder Singh and Raman Kumar vicariously (variously ?) armed arrived at the spot where he had just reached. Gurvinder Singh @ Banti, Jaswinder Singh @ Dimple were also present there. Narinder Singh and his companion were responsible for initiating aggression. He, Gurvinder Singh and Jaswinder Singh alias Dimple were caused injuries with fire arms by Narinder Singh and his companions. He further stated that they would have surely murdered them (accused party) but for effective defence. The bullet shot fired from the revolver of Narinder Singh hit him on his right hand and got embedded therein. His injuries were later on subjected to CT Scanning at Gee Diagnostic Centre. The bullet remained embedded in his hand till 12.6.1996 and it was extracted by Dr. Subhash Batta, Surgical Specialist, Civil Hospital, Ludhiana. Jaswinder Singh, accused took up the stand that on 26.3.1996 at about 5.30 p.m. he was passing through the place while going to Jalandhar Bye Pass on his scooter when a bullet hit on his lower portion of the left leg. The wound started bleeding and after wrapping it with a piece of cloth he went to his house on scooter. When the injury started swelling causing great pain to him and he felt difficulty in walking he went to Civil Hospital on 27.3.1996 at about 1.00 p.m. and was got medically examined there. He remained admitted in the hospital upto 2.4.1996 and thereafter he was discharged.

3. The accused examined as many as 14 witnesses in their defence. They also produced documentary evidence to prove that Bishamber Singh and others were in possession of the plot in question. The learned trial judge critically examined and marshalled the oral as well as documentary evidence produced by the prosecution as also the evidence produced in defence by the accused persons. He also minutely considered the documentary evidence as well as written arguments

of the prosecution, as stated in para 33 of the judgment. Regarding the ownership of the plot he concluded :

i) That the complainant party is not the owner of the plot indicated. It is situated on this side of the nala and has an iron gate and boundary wall.

ii) That the accused have also not proved any sale deed in their favour, but only agreement to sell which does not confer any title. So they are also not the owners of the same.

iii) That the two plots claimed by either parties are situated at different places.

4. We have heard Sh. S.S. Dhaliwal, DAG Punjab and have carefully considered and scanned the judgment under attack.

5. It has been argued by Mr. Dhaliwal that it is amply proved on record that complainants were owners in possession of plot in dispute. According to him the trial Court has wrongly held that the plot of complainant party is situated in Chandu Nagar locality and not in Upkar Nagar and in the revenue limits of Mahal Bhagat. The said plot is situated near Chhoti Puli Chandu Nagar which falls in Upkar Nagar. A careful scrutiny of the evidence of PWs 3 and 4 would show that there is no material discrepancy in their statements and they are quite consistent. It was assertively argued that complainant party was in possession of the plot measuring 330 square yards bearing khasra Nos. 656/660/648/81 falling in Taraf Peeru Banda and Mahal Bhagat which was purchased by Narinder Singh from Inderjit Singh vide agreement of sale dated 10.4.1995 and that has been clearly proved by Samarjit Singh, PW a marginal witness to the agreement. It was also deposed by Dilbagh Singh, PW13 that he had sold that plot to Inderjit Singh vide agreement dated 11.11.1994. Dilbagh Singh has further stated that he purchased plot from Labh Singh and Surjit Singh through their Attorney Jagtar Singh in 1989. It was further argued that complainant party was attacked while it was peacefully protesting. That clearly establishes that the accused party was aggressor. There was no reason with the trial Court to discard the testimony of the stamped witnesses which is straightforward, natural and consistent. According to him the trial Court ought to have relied upon their evidence. Their evidence is fully corroborated by medical evidence as also by the report of the Forensic Science Laboratory. Two of the victims Narinder Singh and Raman Kumar had multiple injuries on whole of their bodies, that Samarjit Singh, PW and Tejinder Singh, deceased, had injuries caused to them by pellets which clearly shows that large number of shots were fired and that the assailants were seven in number as established by the recovery of weapons from them. Circumstantial evidence fully corroborates the prosecution version. On the other hand, the evidence produced by the accused in defence is highly unnatural and improbable. The trial court has not properly appreciated the evidence and has arrived at erroneous conclusion in acquitting the accused persons. It was, therefore, submitted that it is a fit case where the State should be permitted to file an appeal against acquittal.

6. We are of the view that in a criminal case the Court is not required to decide the question of title especially when the parties are litigating in the Civil court on the question of title. We are of the considered opinion that the learned Additional Sessions Judge has adopted the right course which is legal, just and proper not to decide the question of title and no fault can be found with the same.

7. As regards the possession over the plot in dispute the accused as well as the complainant party claimed to be in possession of the plot in dispute. In order to find out as to which of the two parties was in possession of the plot in dispute on the date of occurrence, the learned trial Judge has elaborately and critically examined oral as well as documentary evidence led by the parties. In that regard reference may be made to paras 46, 47 and 48 of the judgment.

8. We further find that conduct of the complainant party has been rightly considered and the conclusion that the complainant party ought not to have entered the plot finding accused persons in possession of it, especially when accused were armed with deadly weapons, instead should have gone to Police Station to lodge the report. From the challenge thrown by the complainant party indicates that it was armed and was not empty handed as sought to be proved by the prosecution. We are also convinced that the learned trial court after proper appreciation of the evidence and facts and circumstances of the case has rightly found that there was delay of 4 or 5 hours in reporting the matter to the police. The members of the complainant party at one time or the other were police officials and some of them are closely related to high ranking police officers and that delay of 4 or 5 hours was utilised to manipulate a story to fit in the case of the prosecution. Considering the injuries on the persons of complainant party, weapons used by the accused persons, appreciating the medical evidence, in the facts and circumstances of the case when the accused persons were facing such challenge which was dangerous to their lives, it was not unusual on the part of the accused to cause fire arm shots by Gurwinder Singh in their selfdefence.

9. It was argued by Mr. Dhaliwal, learned Deputy Advocate General that there were pellet injuries/wounds on the persons of Samarjit Singh, Tejinder Singh, Narinder Singh, Raman Kumar, PWs. As many as 5 firearm injuries were found on the dead body of Tejinder Singh deceased. The cause of death of Tejinder Singh was opined to be head injury by Dr. Daljit Singh, PW6. In so pointing out it was argued by the learned Deputy Advocate General that though not proved, in causing the death of Tejinder Singh the accused party had exceeded the right of private defence, therefore, the accused party at least should have been held guilty for the offence of culpable homicide not amounting to murder. We have considered this contention also. It is well settled that right of self defence is neither punitive nor retributive. However, it is difficult to expect from a person who exercises this right in good faith to weigh that right in golden scales as to what maximum amount of force he is required to exercise to defend himself or his property. Instinct of self preservation has dominant effect on the person

exercising such right in a given situation. He is not expected to measure the force to be used by him step by step or bit by bit to avert the attack. In the instant case it is proved on record that Gurwinder Singh, Bhagwan Singh and Jaswinder Singh accused had also suffered fire arm injuries at the hands of the complainant party. According to the accused party Narinder Singh, Samarjit Singh, Tejinder Singh and Raman Kumar armed with fire arms like revolver, guns and pistol came there and started firing in order to kill them and take possession of the plot as a result of which Gurwinder Singh and others present in the plot were injured. Narinder Singh and other continued firing and they would have surely killed them, therefore, in right of private defence of persons and property Gurwinder Singh fired shots from his licensed gun. In the facts and circumstances of the case the accused party was confronted with an imminent danger to their lives or was exposed to grave bodily harm. Therefore, it appears that there was no way out with the accused party but to fire at the complainant party especially when there is nothing to show that the accused party had the time to take recourse to have the protection of the public authorities. We do not find that the accused party had exceeded their right of private defence, even though one of complainants' party had lost his life in that incident. We are of the view that the conclusions arrived at by the learned trial Court as mentioned in para 70 of the judgment are well founded and no fault can be found therewith. Consequently we do not find any cogent reason to intervene in the order of acquittal recorded by the trial Court.

10. Lastly it was pointed out by the learned counsel for the appellant State that Harjit Singh accused son of Amar Singh was alive on 9.5.1998 when the judgment of acquittal was pronounced. However, in the memo of parties he has been described as "since deceased" and so also in para No. 34 of the judgment which clearly goes to show that the trial court has not applied its judicial mind to the evidence adduced by the prosecution in support of the charge. No doubt in the memo of parties Harjit Singh accused has been described as "since deceased" as also in para No. 34 of the judgment, but still we are not in complete agreement with the submission of the learned counsel that the trial court did not properly apply his judicial mind to the evidence adduced by the prosecution. On the first page of the judgment where presence of the parties has been recorded it has been clearly mentioned that Bishamber Singh, Gurnam Singh, Harjit Singh, Satnam Singh and Gurwinder Singh accused in custody with Sh. N.C. Tandon, Advocate; Bhagwan Singh accused in custody with Sarv Shri N.M. Mohinder Singh and Rajwant Singh, Advocate, Jaswinder Singh, accused on bail with Sh. D.K. Malhotra, Advocate. In the concluding para of the judgment it was recorded that the prosecution case was not free from doubt and the accused deserved acquittal. Accordingly finding them not guilty all the accused were acquitted of the charges framed against them. Even if Harjit Singh accused in the memo of parties and para No. 34 of the judgment has been shown to have died, the ultimate result could not be different as all the accused were acquitted. If the result was otherwise the mistake pointed out could be noticed then and there

and rectified accordingly. It is a mistake of fact. Even at a later stage either at the instance of the prosecution or on the request of the accused this factual mistake is rectifiable. We are of the view that it is an innocent mistake as no miscarriage of justice appears to have been caused or occasioned by that mistake.

11. For the reason mentioned above, we do not find it a fit case where permission should be granted to State to file appeal against acquittal. Leave to appeal is declined.