

IN THE COURT OF DAVENDER, SUB DIVISIONAL JUDICIAL  
MAGISTRATE, TOSHAM, (UID No.HR-0330)



{Date of Judgment: 06.06.2023}  
Case No. 74-1 of 2018  
Date of Institution: 13.04.2018  
CNR No. HRBHD10002792018  
CIS No. CHI/74/2018  
FIR No. 0363 Dated: 19.09.2017  
Under Sections: 147,149,323,341,506 IPC  
Police Station: Tosham.

|                |                                                                                                                                                                                                                                                                                                                  |
|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COMPLAINANT    | Sanjay son of Ramchander                                                                                                                                                                                                                                                                                         |
| REPRESENTED BY | Assistant Public Prosecutor                                                                                                                                                                                                                                                                                      |
| ACCUSED        | 1. Ajay son of Ramesh<br>2. Sombir @ Dhalla son of Jai Singh<br>3. Jogender @ Sethi son of Dalbir<br>4. Surender @ Sunder son of Jai Singh<br>5. Manoj son of Zile Singh<br>6. Mohan son of Zile Singh<br>7. Vikas son of Mahabir<br>8. Sunil son of Mahabir, all residents of village Sidhan, District Bhiwani. |
| REPRESENTED BY | Shri SK Dhull, Advocate.                                                                                                                                                                                                                                                                                         |

|                                    |            |
|------------------------------------|------------|
| Date of Offence                    | 19.09.2017 |
| Date of FIR                        | 19.09.2017 |
| Date of Charge-sheet               | 13.04.2018 |
| Date of Framing of Charges         | 22.05.2018 |
| Date of commencement of evidence   | 29.10.2018 |
| Date on which judgment is reserved | 06.06.2023 |

|                  |            |
|------------------|------------|
| Date of judgment | 06.06.2023 |
|------------------|------------|

**Accused Detail:**

| Ran<br>k of<br>the<br>Acc<br>u-<br>sed | Name<br>of<br>Accuse<br>d | Date of<br>Arrest | Date of<br>Release on<br>Bail | Offe<br>nces<br>char<br>ged<br>with                | Whether<br>Acquitted<br>or<br>convicted | Se<br>nte<br>nc<br>e<br>im<br>po<br>sed | Period of<br>Detention<br>Undergon<br>e during<br>Trial for<br>purpose of<br>Section<br>428,<br>Cr.P.C. |
|----------------------------------------|---------------------------|-------------------|-------------------------------|----------------------------------------------------|-----------------------------------------|-----------------------------------------|---------------------------------------------------------------------------------------------------------|
| 1                                      | Ajay                      | 07.11.2017        | 08.11.2017                    | 147,<br>148,<br>323,<br>341/<br>149,<br>506<br>IPC | Acquitted                               |                                         |                                                                                                         |
| 2                                      | Sombir<br>@<br>Dhalla     | 07.11.2017        | 08.11.2017                    | do                                                 | Acquitted                               |                                         |                                                                                                         |
| 3                                      | Jogend<br>er @<br>Sethi   | 07.11.2017        | 08.11.2017                    | do                                                 | Acquitted                               |                                         |                                                                                                         |
| 4                                      | Surend<br>er @<br>Sunder  | 07.11.2017        | 08.11.2017                    | do                                                 | Acquitted                               |                                         |                                                                                                         |
| 5                                      | Manoj                     | 08.11.2017        | 08.11.2017                    | do                                                 | Acquitted                               |                                         |                                                                                                         |
| 6                                      | Mohan                     | 08.11.2017        | 08.11.2017                    | do                                                 | Acquitted                               |                                         |                                                                                                         |
| 7                                      | Vikas                     | 08.11.2017        | 08.11.2017                    | do                                                 | Acquitted                               |                                         |                                                                                                         |
| 8                                      | Sunil                     | 04.12.2017        | 04.12.2017                    | do                                                 | Acquitted                               |                                         |                                                                                                         |

**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES**

**A. Prosecution:**

| Rank | Name             | Nature of Evidence<br>(Eye witness, Police Witness, Expert<br>Witness, Medical Witness, Panch<br>Witness, other witness |
|------|------------------|-------------------------------------------------------------------------------------------------------------------------|
| PW1  | SI Chander Singh | FIR                                                                                                                     |
| PW2  | Sohan            | Injured                                                                                                                 |
| PW3  | Sanjay           | Complainant/injured                                                                                                     |

|     |             |             |
|-----|-------------|-------------|
| PW4 | Chanderkala | Eye witness |
| PW5 | Banwari Lal | Eye witness |

**LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS****A. Prosecution:**

| Sr. No. | Exhibit Number | Description                |
|---------|----------------|----------------------------|
| 1.      | Ex.PW1/A       | FIR                        |
| 2.      | Ex.PW1/B       | Endorsement                |
| 3.      | Ex.PW2/A       | Statement of Sohan         |
| 4.      | Ex.PW3/A       | Complaint                  |
| 5.      | Ex.PW3/B       | Rough site plan            |
| 6.      | Ex.PW3/C       | Statement of Sanjay        |
| 7.      | Ex.PW4/A       | Statement of Chander Kanta |
| 8.      | Ex.PW5/A       | Statement of Banwari Lal   |

**JUDGMENT:-**

1. The above named accused person have been sent to face trial for the commission of offence punishable under Sections 147,149,323,341 and 506 of Indian Penal Code (in short 'IPC') by the Police of Police Station, Tosham.

2. Brief facts, as culled out from the report under Section 173 Code of Criminal Procedure 1973 (in short 'Cr.P.C'), are that the present case was registered on the complaint of Sanjay to the effect that on 19.09.2017, when he, his mother Smt. Chanderkalan and his uncle Banwari Lal were returning to their house from plot, Sohan son of Rishal came running to them and he was chased by Vikas son of Shish Pal, Vikash son of Gharsi Ram, Satya Prakash son of Manphool, Sombir son of Jai Singh, Sunder son of Jai Singh, Sombir son of Bhal Singh, Ajay son

of Mahabir, Krishan son of Rishal, Setha son of Dalbir, Suresh son of Mohan Lal, Ajay son of Mahabir, Manoj son of Zale Singh, Bhoja son of Zale Singh and 4-5 other persons armed with bricks, stones etc.. His mother and his uncle rescued Sohan from the assailants. The assailants gave two stone blows and thereafter, Sohan fled away from there. Thereafter, the assailants restrained their way and they did not allow them to leave. They raised noise. At this, all the assailants climbed on their respective houses and started pelting bricks and stones and threatened to kill them because they had helped Sohan. Mainly with these allegations, complainant requested for legal action against the accused persons.

3. On the basis of above, instant FIR was registered. Investigation was carried out. Spot was inspected and statements of witnesses were recorded. During investigation, except accused Ajay, Sombir, Jogender, Surender, Mohan, Vikas, Sunil and Manoj, all other persons named above were found innocent. Medical records was obtained. After completion of investigation, challan was submitted in the Court against the accused.

4. Copies of challan and other documents were supplied to the accused free of costs as envisaged under Section 207 of Cr.P.C.

5. Accused were charge sheeted for the commission of offence punishable under Sections 147,323,341/149 and 506 IPC, to which they pleaded not guilty and claimed trial.

6. Prosecution to prove its case has examined following witnesses:

7. **PW1 SI (retired) Chander Singh** has proved the formal FIR Ex.PW1/A and endorsement Ex.PW1/B being recorded by him.

**PW2 Sohan** has deposed that on 19.09.2017, he was going to the house of Sanjay in the evening time and at that time, Ajay, Sombir, Jogender, Surender, Mohan, Vikas, Sunil and Manoj were quarreling with some other persons and while intervening between them, he and Sanjay etc. received injuries. Thereafter, he was admitted in CHC Tosham. Except it, he does not know anything about this case. The accused present in the court neither restrained his way nor they ever caused any injury to him nor they ever given threat to kill him.

**PW3 Sanjay** has deposed that on 19.09.2017, Sohan, a resident of his village came to his house and at the same time, a quarrel took place in the street between Ajay, Sombir, Jogender, Surender, Mohan, Vikas, Sunil and Manoj and some other persons and while intervening between them, he, Sohan and others received injuries. Thereafter, Sohan was shifted to CHC Tosham. Police came on the spot and he got recorded his statement to it. He got mentioned the names of accused due to misunderstanding. The accused present in the court neither restrained their way nor they ever caused any injury to them nor they ever given threat to kill them.

Both PW2 and PW3 were declared hostile on the request of learned APP for the State and permission to cross-examine the witnesses was allowed. However, nothing fruitful could be elicited out from these witnesses in favour of the prosecution. Both the abovesaid witness were cross-examined at length but nothing fruitful came out from their

respective depositions. Both have repeated their examination-in-chief in their cross-examination also. PW2 has denied his statement Ex.PW2/A to be made to the police. PW3 Sanjay has stated that he has given his statement Ex.PW3/A to the police due to misunderstanding. PW3 has admitted that rough site plan Ex.PW3/B was prepared on his demarcation. He denied his statement Ex.PW3/C to be made by him to the police. Both the abovesaid witnesses denied that they have resiled from their earlier statements due to compromise with the accused persons.

8. **PW4 Chanderkala and PW5 Banwari are the eye witnesses.**

They have deposed in one tune that on 19.09.2017 in the evening time the accused persons namely Ajay, Sombir, Jogender, Surender, Mohan, Vikas, Sunil and Manoj and some other persons were quarreling with each other. While intervening between them, Sanjay, Banwari and Sohan received injuries and except, it they know nothing about this case.

**PW4 and PW5** were also declared hostile on the request of learned APP for the State and permission to cross-examine the witnesses was allowed. However, nothing fruitful could be elicited out from these witnesses in favour of the prosecution. During cross-examination, they deposed that they never made statements Ex.PW4/A and Ex.PW5/A to the police. They denied the prosecution story. They denied that they being won over by the accused persons have deposed falsely.

9. Thereafter, evidence of the prosecution was closed by learned APP for the State by maintaining that examination of remaining witnesses would be a futile exercise as the witnesses have not supported the case of the prosecution.

10. As there was nothing incriminating against the accused on record, therefore, recording of statements of accused persons under Section 313 of Cr.P.C was dispensed with.

11. Hence arguments were heard. After hearing the arguments from both the sides and having perused the case file very carefully, this court finds that the prosecution has miserably failed to prove the guilt of the accused as the prosecution has failed to prove the identity of the accused persons and could not connect the accused persons with the alleged crime even to the remotest stretch. Reference in this regard can be made to the statement of PW3 Sanjay, the complainant/injured, on whose complaint the present case was registered against the accused persons. Reference can also be made to the statements of PW2 Sohan, the injured and PW4 Chanderkala and PW5 Banwari Lal, the alleged eye witnesses. While appearing in the witness box, PW2, PW4 and PW5 have retracted from their earlier statements given to the police and PW2 has stated that he has made statement Ex.PW3/A due to misunderstanding. All these witnesses have not identified the accused persons being the assailants/accused and have demolished the prosecution case completely. Further, prosecution has not examined any medical officer which shows the lacuna of prosecution. Therefore, there is a total lack of evidence in support of prosecution case as the identity of the accused has remained unproved on the file.

12. In view of the aforesaid findings, I feel no hesitation in saying that the prosecution, in the present case, has failed to prove the guilt of the accused persons Ajay, Sombir, Jogender, Surender, Mohan,

Vikas, Sunil and Manoj, beyond the reasonable shadow of doubt. In the said circumstance, accused persons are acquitted of the charges levelled against them. Their bail and surety bonds stand discharged. Case property be dealt with as per law, after expiry of period of appeal/revision, as the case may be. Superdaginama, if any, also stands discharged. File be consigned to the record room after due compliance.

Pronounced in open court.  
Dated: 06.06.2023

**(Davender)**  
Sub-Divisional Judicial Magistrate,  
Tosham.(UID No. HR-0330)

Certified that all the pages have been checked and signed by me.  
All cuttings/over writings have been initialed by me.

Date of order: 06.06.2023  
*Satya Narayan Stgr. II*

**(Davender)**  
Sub-Divisional Judicial Magistrate,  
Tosham (UID No.HR-0330)



**CNR No. HRBHD10002792018**

**CIS No. CHI/74/2018**

Present: Shri Pawan Kumar, APP for the State.  
Accused on bail represented by Shri SK Dhull, Advocate.

Statements of accused persons under Section 313 Cr.P.C stand dispensed with as nothing incriminating in evidence came against them.

Arguments heard. Vide my separate judgment of even date, the accused have been acquitted of the charge levelled against them. Their bail and surety bonds stand discharged. Case property be dealt with as per law, after expiry of period of appeal/revision, as the case may be. Superdaginama, if any, also stands discharged. File be consigned to the record room after due compliance.

Pronounced in open court.  
Dated:06.06.2023  
*Satya Narayan Stgr. II*

**(Davender)**  
Sub-Divisional Judicial Magistrate,  
Tosham.(UID No. HR-0330).