

In the Court of Mrs.Monica Sharma, PCS, Judicial Magistrate Ist Class, Fazilka.

Crl. Case No.500-1 of 23.2.2010/20.9.2013.

CIS No.CHI/943/2013.

Date of Decision:07.03.2015.

State Vs. 1. Daljit Singh son of Jagtar Singh, resident of village Moolian Wali, Tehsil & District Fazilka.
 2. Chhinderpal Kaur wife of Santokh Singh, resident of village Moolian Wali, Tehsil & District Fazilka.
 3. Gurmeet Kaur wife of Daljit Singh, resident of village Moolian Wali, Tehsil & District Fazilka.
 4. Kuldeep Singh son of Daljit Singh, resident of village Moolian Wali, Tehsil & District Fazilka.
 5. Sandeep Singh son of Pritam Singh, resident of village Moolian Wali, Tehsil & District Fazilka.
 ...Accused.

FIR No.268 dated 19.10.2009.

Under Sections 324/323/148/149 of the Indian Penal Code.

Police Station, Sadar Fazilka.

Present: Sh.Gurbaj Singh learned A.P.P for the state.
 All accused on bail represented by Sh.S.S.Mann,
 Advocate.

JUDGMENT:-

1. The above named accused have been sent up by Officer Incharge, Police Station, Sadar Fazilka, to face trial under Sections 324/323/148/149 of the Indian Penal Code.

2. Brief facts of the case of the prosecution, as disclosed in the police challan are that on 18.10.2009, a wireless message received regarding admission of injured Rano Bai in Civil Hospital, Fazilka due

to injuries and to send the Investigating Officer for police proceedings. Upon which, HC Pawan Kumar along with some other police officials after obtaining the MLRs pertaining to Rano Bai, Surjit Singh, Baljit Kaur and MLRs of second party namely Daljit Singh, Gurmeet Kaur from concerned MHC, visited Civil Hospital, Fazilka for recording their statements. The concerned Doctor has reported that injured Rano Bai has been referred to Abohar for C.T.Scan, Whereas, the second party refused to record the statement and stated to the Investigating Officer that since they are relatives with each other so there is possibility of compromise between the parties. That again on 19.10.2009 HC Pawan Kumar along with other police officials visited Civil Hospital, Fazilka for recording the statements of injured persons where complainant-injured Rano Bai got recorded her statement, to the effect, that she is resident of village Moolian Wali and is housewife. That on 17.10.2009, her daughter-in-law Manjit Kaur wife of Surjit Singh had gone to the fields for taking fodder where Daljit Singh and Kuldeep Singh used filthy language with her daughter-in-law and when they tried to give fist blow upon her, Santokh Singh made them understand and they came back to their houses. At about 8.00 PM when she(i.e.Rano Bai) went outside her house near the wooden logs

lying in front of her house, Daljit Singh armed with kirpan, Sandeep Singh armed with gandasi, Kuldeep Singh armed with iron pipe came there. At that time, the street light was also lightening and he identified them in the light. Accused Daljit Singh raised a lalkara that today Rano Bai should not be spared. In the meantime, Daljit Singh gave a kirpan blow upon her which hit on her head from its sharp side. On hearing their nosies, Bimbo Bai and Dhimmi daughters of Daljit Singh armed with sotis, Chhinderpal Kaur armed with Soti, Gurmeet Kaur armed with gandasi also came out from their house. Accused Gurmeet Kaur gave a gandasi blow upon her(i.e.Rano Bai) which hit on her arm from its reverse side upon which she fell down on the ground and on hearing her noise,her son Surjit Singh and daughter Baljit Kaur also came at the spot. Accused Kuldeep Singh gave a blow of iron pipe upon her son Surjit Singh which hit on her nose. Accused Sandeep Singh also caused injuries upon her son. Accused Baljit Kaur and Sandeep Singh also caused injuries on upon her daughter Baljit Kaur with their respective weapons. The whole occurrence was witnessed by her husband Jagtar Singh, who came at the spot and rescued them from the clutches of accused and all the accused persons fled away from the spot along with their respective weapons. Thereafter, they were got

admitted by their neighbourer Prem Singh in Civil Hospital, Fazilka. The motive behind the occurrence is that the accused persons want to occupy their land. The statement was thumb marked by the complainant which was endorsed by HC Pawan Kumar on the basis of which FIR was registered. Thereafter, site plan was prepared, statements of witnesses were recorded. During investigation, accused Bimbo Bai and Dhimmi found innocent and the weapons used in the occurrence by the remaining accused were recovered from their possession. Thereafter, accused were arrested and released on bail and after the completion of remaining formalities, challan against the accused was presented in the court.

3. On presentation of challan its copies were supplied to the accused free of costs, as envisaged under Section 207 of Cr.P.C. After hearing learned APP for the State and learned defence counsel a prima facie case under Sections 324/323/148/149 of the Indian Penal Code made out against the accused and they were charged accordingly to which they pleaded not guilty and claimed trial.

4. During its evidence, the prosecution examined complainant Rani Bai as PW1, the injured-eye witness Surjit Singh a

PW2, Dr.N.K.Sethi as PW3, SI Ranjit Singh as PW4, the other injured-eye witness Jagtar Singh as PW5, Baljit Kaur as PW6, ASI Pawan Kumar as PW7 and thereafter learned APP for the State closed the prosecution evidence.

5. On closure of the prosecution evidence, statements of the accused were recorded under Section 313 of Cr. P.C. wherein all the incriminating evidence appearing against the accused was put to them to which they denied as being false and stated that they have been falsely implicated in the present case. The accused have further taken the plea that Surjit Singh and others caused injuries to them and create false injuries upon themselves only to create cross-case.

6. In defence evidence, the accused have not examined any witness and closed the same vide their separate statement.

7. Learned APP for the State has put forth the arguments that the prosecution has fully proved the charges against the accused beyond shadow of reasonable doubt as the witnesses examined by the prosecution have duly supported and corroborated the version of each other and remained cogent and convincing during their depositions. Accordingly, learned APP for the State has prayed that accused be convicted and punished accordingly on the basis of oral as well as

documentary evidence.

8. On the other hand, learned counsel for the accused has argued that in the present case according to the prosecution version the occurrence took place on 17.10.2009, whereas, statement of complainant was recorded on 19.10.2009. It is further argued that the injuries narrated by PW1 are not corresponding to the medical evidence which is proved by PW3 Dr.N.K.Sethi. Even there are major contradictions between the statements of prosecution witnesses with regard to name of accused and injuries caused by them. In fact, it was the complainant party who acted as aggressor, whereas from the medical evidence it has been proved that accused had also sustained serious injuries on their person, therefore, injuries on the person of complainant are self suffered only to create a cross version case. Even, the prosecution has miserably failed to prove the charges against the accused beyond shadow of reasonable doubt, therefore, the accused are entitled to be acquitted.

9. I have considered the rival submissions of the learned APP for the State and learned defence counsel and have perused the file carefully.

10. The criminal law was set into the motion on the statement

of complainant Rano Bai Ex.P1 dated 19.10.2009. In order to prove the allegations levelled against the accused, the complainant Rano Bai herself appeared as PW1, who proved her statement Ex.P1 and deposed on oath that accused Daljit Singh armed with kirpan, Sandeep Singh armed with gandasi, Kuldeep Singh armed with iron pipe, Gurmeet Kaur armed with gandasi and Chhinderpal Singh armed with soti formed an unlawful assembly and caused injuries to complainant and Surjit Singh.

11. The injured-eye witness Surjit Singh appeared as PW2 and corroborated the entire version of complainant regarding the manner in which the injuries were caused by the accused persons.

12. PW3 Dr.N.K.Sethi(wrongly mentioned as PW2 hereinafter to be referred as PW3) has proved the MLR pertaining to complainant Rano Bai Ex.P2, pictorial diagram Ex.P3, x-ray report Ex.P4, further injury report Ex.P5, x-ray films Ex.P6 to Ex.P8 and further stated that he noted the following injuries on the person of Rano Bai:-

- I. An incised wound measuring 12x1 cm was present on right fronto parietal region of the head. The wound was bone deep. Fresh bleeding was present from the wound. X-ray was advised and clinical observation.

- ii. Diffuse swelling was present on the inner surface of right elbow joint and adjoining area of upper arm and forearm. X-ray was advised.

He further deposed that injury No.1 was caused with sharp edged weapon and injury No.2 was caused with blunt weapon. However, later on, both the injuries were declared as simple in nature.

13. PW3 also proved the MLR of Surjit Singh as Ex.P9, pictorial diagram Ex.P10 and deposed that he noted the following injuries on his person:-

- I. Diffuse reddish swelling was present on bridge and upper part of dorsum of nose. There was an overlying abrasion with oozing of blood. X-ray was advised.
- ii. Diffuse reddish swelling was present on left scapular region of the back. X-ray was advised.
- Iii. Diffuse reddish swelling was present on back of left hand. X-ray was advised.

PW3 also proved the MLR pertaining to Baljit Kaur wife of Resham Singh as Ex.P11, pictorial diagram Ex.P12 and stated that he noted the following injuries on his person:-

- I. Diffuse reddish swelling was present on back of left wrist

joint and forearm tender to touch. X-ray was advised.

- ii. An abrasion of 1.5 cm x 0.3 cm was present on inner surface of right ring finger. Oozing of blood was present.

14. PW4 SI Ranjit Singh has deposed that on 19.10.2009, HC Pawan Kumar recorded the statement of complainant Rani Bai Ex.PW4/A and on 20.10.2009, the investigation of this case was marked to him. He visited the spot and prepared site plan Ex.PW4/B, recovery memos Ex.PW4/C Ex.PW4/F regarding taking into police possession the weapons used in the occurrence by the accused were prepared. Rough sketch of kirpan Ex.PW4/G, rough sketch of kirpan Ex.PW4/H were also prepared.

15. PW5 Jagtar Singh who is stated to be the eye witness has also supported the version of complainant in all material particulars.

16. PW6 Baljit Kaur, daughter of complainant has supported the entire version of complainant.

17. PW7 ASI Pawan Kumar has proved that on 19.10.2009 on reaching Civil Hospital, Fazilka he recorded the statement of complainant Rano Bai upon which the FIR was registered and further investigation was conducted by ASI Ranjit Singh. He also proved that on 01.12.2009, he was accompanied by the Investigating Officer,

accused were produced by Narinderpal Singh Sarpanch and the accused also produced the weapons used in the occurrence which were taken into police possession vide memos Ex.PW4/H & Ex.PW4/G.

18. After going through the entire evidence on record and arguments of learned defence counsel firstly, the argument of learned defence counsel regarding delay is considered. It is relevant to note that it has come in the testimony of PW7 ASI Pawan Kumar that when he reached Civil Hospital, Fazilka on 18.10.2009 for recording statement of complainant, she could not record her statement on the said day, because the Doctor made his endorsement that Rano Bai was referred to Abohar for C.T.Scan. Therefore, he again visited the hospital on the next day, where he recorded the statement of complainant. From the medical evidence on record, it is established that in the occurrence complainant Rano Bai along with her son Surjit Singh and Baljit Kaur sustained several injuries. One injury on the person of complainant was inflicted with sharp edged weapon which was kept under observation and x-ray was advised. In these circumstances, if the complainant had chosen to get herself medically treated first and recorded her statement on the next day, the same cannot be said to be harmful to the case of prosecution rather it was the natural

conduct as that of any reasonable prudent man. In this regard, I find support from the case law titled as **Mahendra Singh vs. State of U.P.2014(4)RCR, 530.** Thus, I am of the opinion that the delay, in these circumstances, is fully explained and as such the same is not fatal.

19. As far as the argument of learned defence counsel regarding the contradictions in the statements of Pws is concerned. In this regard, I have carefully gone through the testimony of all the prosecution witnesses. The occurrence in question took place on 17.10.2009, whereas, the testimony of all the prosecution witnesses have been recorded in the year 2011 to 2014 i.e after about 3 to 6 years of the occurrence. It is quite possible that due to lapse of time there may be minor discrepancies but the same goes to prove that the witnesses are not tutored and they have narrated the true version, therefore, the minor discrepancies which are not with regard to material aspects can be ignored. So, this contention of learned defence counsel carries no weight.

20. Now turning to the arguments of learned defence counsel that accused have sustained grievous injuries which were inflicted by the complainant after entering the house of complainant is concerned.

In the testimony of all the prosecution witnesses, it has emerged that occurrence took place neither in the house of complainant nor in the house of accused, rather, the occurrence had taken place in the open place which is adjoining the houses of both the parties but both the parties are at dispute pertaining to its ownership and possession. Even in the site plan Ex.PW4/B proved by PW4 Investigating Officer, the mark-A shown as the place where the occurrence between both the parties took place and as per site plan the place mark-A is in front of the house of both the parties which is vacant place leading to one street. As far as the complainant party being aggressor is concerned, from the testimony of the prosecution witnesses, it is evident that both the parties were present at the spot armed with deadly weapons. It has also come on record that prior to the occurrence scuffle took place between Daljit Singh, Kuldeep Singh when the complainant and her daughter in law were present in their fields. In the testimony of complainant, it has also emerged that the parties are at dispute regarding the place where the occurrence took place. Due to this reason, free fight took place between the parties in which both the parties sustained and inflicted injuries upon each other. Moreover, both the parties are alleging the other party to be aggressor which goes to

show that the true genesis of the occurrence is being suppressed by both the parties. But even then, the presence of both the parties armed with weapons and causing injuries upon each other is duly established, therefore, this argument of learned defence counsel carries no weight.

21. In view of the above discussion, I am of the considered opinion that the prosecution has proved beyond shadow of reasonable doubt that all the accused in prosecution of the common objection of unlawful assembly voluntarily caused injuries to complainant Rano Bai and others, therefore, all the accused have committed the offences punishable under Sections 324/323/148/149 IPC. Accordingly, all the accused are held guilty and convicted under the above said Sections. All the accused are ordered to be taken into custody. Let the accused be heard on the quantum of sentence. -Sd/-

Pronounced in open Court
Dated:07.03.2015.
(Sanjeev Narang)

(Monica Sharma),
Judicial Magistrate Ist Class,
Fazilka.

QUANTUM OF SENTENCE.

Present: Ld.APP for the State.

Convicts/accused Daljit Singh, Chhinderpal Kaur, Gurmeet Kaur, Kuldeep Singh and Sandeep Singh in custody represented by Sh.S.S.Mann,Adv.

I have heard the convicts, as well as learned APP on the

quantum of sentence. It has been pleaded by the convicts that they are innocent and poor persons and that they are the sole bread winner of their respective families, so a lenient view be taken against them and they be released on probation.

After carefully considering the plea of accused, this court is of the considered opinion that it is not a fit case for release of convicts on probation. Thus, considering the antecedents of the convicts and entire other facts and circumstances, the interest of justice would be fully met, if all the convicts are sentenced as under:-

Under Section

Sentence.

148 IPC

R.I. for a period of two years and also sentenced to pay fine of Rs.1000/- each and in default of fine to further undergo sentence R.I. for six months each.

324/149 IPC

R.I. for a period of two years and also sentenced to pay fine of Rs.2000/- each and in default of fine to further undergo sentence R.I. for six months each.

323/149 IPC

R.I. for a period of six months and also sentenced to pay fine of Rs.500/- each and in default of fine to further undergo sentence R.I. for one month each.

All the aforementioned sentences shall run concurrently.
Fine paid. The period of detention already undergone by the convicts during investigation or trial shall be set off against the substantive sentence. Case property be disposed of as per rules, after the expiry of appeal/revision, if any. File be consigned to the record room after due compliance.

-Sd/-

Pronounced in open Court
Dated:07.03.2015.
(Sanjeev Narang)

(Monica Sharma),
Judicial Magistrate Ist Class,
Fazilka.