

IN THE COURT OF JAGMILAP SINGH KHUSHDIL, PCS,
SUB DIVISIONAL JUDICIAL MAGISTRATE,
SRI ANANDPUR SAHIB
(Unique Identification No. PB0342)

CNR No.PBROA1-000556-2014
CHI No. 121 of 2014
Crl. No. 121 dated 17.11.2014
Date of decision: 18.11.2022

State

Versus

1. Charan Singh son of Munsa Singh (**proceedings against accused Charan Singh abated vide order dated 10.12.2021**)
2. Mohan Singh son of Munsa Singh
3. Lakhvir Singh son of Munsa Singh
4. Sajjan Singh son of Hakam Singh

All residents of village Nangal, Police Station Nurpur Bedi, Tehsil Anandpur Sahib, Distt. Rupnagar.

..... **Accused**

FIR No. 142 dated 20.09.2014
U/Ss: 447, 511, 34 of IPC
& Sections 181 and 196 of Motor Vehicle Act.
Police Station:- Nurpur Bedi.

Present: Sh. S.S. Saini, APP for the State assisted by Sh. M.L. Saini, Advocate counsel for the complainant.
Accused Mohan Singh, Lakhvir Singh and Sajjan Singh on bail with counsel Sh. D.S. Barda, Advocate.
(Proceedings against accused Charan Singh stands abated vide order dated 10.12.2021)

JUDGMENT

1. The above named accused have been sent up by the

SHO, Police Station- Nurpur Bedi to face trial in case bearing FIR No.142 dated 20.09.2014 for the offences punishable under Sections- 447, 511, 34 of Indian Penal Code and under Sections 181 and 196 of Motor Vehicle Act.

2. During the trial of the present case, accused Charan Singh has died and proceeding qua him stands abated vide order dated 10.12.2021.

3. Narrating briefly the factual matrix giving rise to the present prosecution case are that complainant Karnail Singh moved an application at Police Station Nurpur Bedi for taking action regarding forcibly ploughing land under his ownership, wherein he stated that his land is situated in village Nangal Hadbast No.431, Rectangle 44 bearing Khasra Nos. 19, 20 and 22. He is in possession of the said land since 50 years. On 23.7.2014 at about 6:00 P.M., he alongwith his cousin Jarnail Singh went to the said land and saw that Lakhvir Singh son of Charan Singh, resident of village Nangal was ploughing the crop sown by them in the said land. He was accompanied by Sajjan Singh son of Hakam Singh, Charan Singh and Mohan Singh sons of Munsa. They got stunned on seeing the same. When they tried to stop the said persons from ploughing their land and not to uproot the crop sown by them, the said persons did not pay any heed and forcibly plough the land. The said persons were also accompanied by some unidentified person armed with weapons. The said persons were threatening them that if they come forward they would be killed. They

(complainant) remained silent due to fear of any mis-happening and came back to their house. The information was given to the police immediately. The aforesaid persons while uprooting the crops also broken the Burjies and Kunda installed for the boundary. A suit titled as Karnail Singh versus Charan Singh, Mohan Singh was also pending in the court regarding the said khasra number at Sri Anandpur Sahib and the court had passed the decree against Charan Singh and permanently restrained him from interfering in Khasra No.22 of Rectangle 44 and Ld. SDM, Anandpur Sahib was directed to give the possession of the land to them and Charan Singh, Mohan Singh cannot take possession of other khasra numbers till the partition. Action was prayed to be taken against the above said person.

4. On the basis of said information, the formal FIR was registered against the accused. The investigation was pressed into service. The accused were arrested. The tractor alongwith Haal was taken into police possession. The site plan of the place of occurrence was prepared. The statements of the witnesses were recorded. The offence under Section 181, 196 Motor Vehicle Act was added. After completion of necessary formalities of the investigation, challan for the offences punishable under Sections- 447, 511, 34 of IPC and Section 181, 196 Motor Vehicle Act against the accused was presented before the Court.

5. On presentation of challan and on appearance of the accused in court, copies of challan and necessary documents as relied upon by the

prosecution were supplied to the accused free of costs in compliance of Section-207 Cr.P.C and their statements were recorded in this regard.

6. Finding a prima-facie case against the accused, charges under Sections-447 read with Section 34 IPC and Sections 181 and 196 of Motor Vehicle Act were framed against the accused to which they pleaded not guilty and claimed trial. Hence, the trial of the case commenced and prosecution was granted time to lead and conclude the evidence.

7. To prove the guilt of the accused, prosecution examined Manjit Singh Halqa Patwari as PW-1, Karnail Singh complainant as PW2, Jaswant Singh as PW3, Jarnail Singh as PW4, ASI Deepak Kumar as PW5, Gurbhej Singh as PW6. Thereafter, Ld. APP for the State closed the evidence of prosecution on 05.08.2022.

8. Statements of accused under section 313 Cr.P.C. were recorded and all the incriminating pieces of evidence were put to them but the accused denied the same. They pleaded that they have been falsely implicated in the present case due to political reasons. They further pleaded that the dispute land is jointly owned and possessed by them as per their share recorded in the revenue record and no mutual or legal partition has taken place. They further pleaded that nothing was recovered from them as alleged by the witnesses. The accused opted to lead evidence in their defence.

9. In the defence evidence, Ld. Counsel for the accused

tendered copy of jamabandi for the year 2018-19 Ex.D1 and Ex.D2. Thereafter, accused vide separate joint statement closed their defence evidence on 18.11.2022.

10. I have heard Ld. APP for the state, Ld. defence counsel and have gone through the case file carefully with their able assistance.

11. Ld. APP for the State has contended that case of the prosecution has been duly proved by the prosecution witnesses. Further, Ld. APP for the State has vehemently argued that there is no dispute with regard to identification of the accused. Accordingly, accused is liable to be convicted and sentenced.

12. Per contra, learned defence counsel has argued that none of the essential ingredients of the charge sheet have been fulfilled by the prosecution. The credibility of the prosecution witnesses has been thoroughly impeached in their cross-examination. Ld. Counsel for the accused has further argued by relying upon the prosecution documents that there credibility cannot be relied upon. Hence, learned defence counsel has prayed for acquittal of the accused persons. He also placed reliance upon case laws titled as **Swaran Singh vs Sr. Superintendent of Police, Hoshiarpur 1999 (3) RCR (Criminal) 107 (P&H)**, **Sushil Ansal vs State of Haryana 1992 (1) RCR (Criminal) 47 (P&H)**, **Ram Rikh vs Kalu Ram and others 2010 (Suppl) Civil Court Cases 73 (P&H)**.

13. I have considered the rival contentions put forth by learned

APP for the State and learned counsel for the accused and have considered the arguments advanced in the light of peculiar facts and circumstances, documents produced and submissions made. Following points for determination emerge out of the case which are as under:-

1. **Whether on 23.7.2014 at about 6:00 P.M. in the area of village Nangal, P.S. Nurpur Bedi, the accused committed criminal trespass by entering into the land of the complainant which was in possession of the complainant with intent to commit offence of criminal trespass and thus committed the offence punishable under Section 447 IPC read with Section 34 IPC?**
 2. **Whether on the same date, time and place accused Lakhbir Singh found driven tractor No.PB-12E-8758 make Farm Tractor without any license and insurance of the said tractor and has violated the rules of Motor Vehicle Act and thus committed the offence punishable under Sections 181, 196 of Motor Vehicle Act?**
14. The prosecution, in order to bring home the guilt of accused, has examined Manjit Singh Halqa Patwari as PW1, who while appearing in the witness box deposed that he is Halqa Patwari of village Abiana Kalan.

He brought original record khasra Girwari of village Nangal Bet, Tehsil Sri Anandpur Sahib containing two pages Ex PW-1/A and identified his signature at point A on the same. He also brought the original record of jamabandi for the year 2008-09 of village hadbast 431 khewat khatooni 135/176, 177 containing four pages Ex.PW-1/B and Ex.PW-1/C respectively. He further deposed that according to record brought by him, there are 44 Musteel containing 16 khasra numbers and total land measuring 97 kanals and 3 marlas. The total 44// is distributed between 23 co-sharer from joint khatta. According to girdawari the total land has been divided into brotherhoods according to their respective shares which took place on the basis of family partition, but regarding this fact there is no mutation in the record. On 27.09.2012, Sajjan Singh son of Hakam Singh president of Village Nangal, who is also co sharer in the land in question, has transferred his land bearing 5-6 marlas to Charan Singh and Mohan Singh sons of Munsha Singh R/o Village Nangal. According to this exchange Charan Singh and Mohan Singh has transferred his land 44//11/2 (3-12) marlas respectively and 44//10/2 (1-14) marlas to Sajjan Singh and Sajjan Singh has transferred his land measuring 3 kanal 12 marlas to Charan Singh and land measuring 1 kanal 14 marlas to Mohan Singh from his land measuring 97 kanals and 3 marlas. In his cross-examination he deposed that the disputed property is joint between the complainant and the accused and other recorded co-sharers numbering about 23. He further

admitted that in the column of cultivation all the joint owners are shown in cultivating possession of the land. The Khasra No.44//49/20 and 22 are not shown specific possession/hissedari possession of any co-owner/co-sharer. No entry was made in the record regarding any mutual settlement regarding possession of the suit property between the co-owners/co-sharer. He further admitted that accused Charan Singh and Mohan Singh are also joint owners, co-sharers in possession of the aforesaid land.

15. Prosecution further examined Karnail Singh (complainant) as PW2, who while appearing in the witness box deposed that he is the owner of land measuring 3 Acre and 6 marlas which is situated in haddbasat no. 431 and musteel no. 44 khasra no. 19, 20 and 22 and he is having possession over the land for the last 50 years. On 23.07.2014 at about 6:00 PM Lakhvir Singh Son of Charan Singh r/o Village Nangal has uprooted his crop with his tractor in connivance with Sajjan Singh Son of Hakam Singh, Charan Singh and Mohan Singh sons of Munsha Singh, the said persons were armed with deadly weapons and threatened them if they would come forward one step then they have to suffer dire consequences. On that day the above said accused after ruining their crop uprooted Pukka burjies which were maintaining a boundary between two different land. Regarding land in question, one civil case had already been decreed in his farvour. Police took action against the accused after inspection of the spot by D.S.P. Sri Anandpur Sahib and S.H.O., P.S.

Nurpur Bedi. On 23.07.2014 he moved an application Ex.PW-2/A containing two pages before S.H.O., PS Nurpur Bedi he identified his signature at point "A". He identified all the accused present in the court. In his cross-examination he deposed that Charan Singh and Mohan Singh are also co-sharer in the aforesaid said. He voluntarily said that they all co-sharer are in separate possession for the last more than 70 years in the aforesaid land. He further deposed that there is no writing with regard to separate possession in the land amongst the co-sharer. He further deposed that they all the co-sharer have separate tube wells in the lands in their possession. On the southern side of the land in his possession there is *panchayat* land of village *Abhiana Khurd*. He further deposed that the present occurrence was occurred on 23.07.2014. The accused except the present accused were 15-20 in numbers and certain accused were had muffled their faces. He had got recorded in his statement to the police there were 15-20 unidentified persons with the accused. They had stopped the accused in the field itself. The people were passing through the *Gohar*, but, none of them had stopped at the spot. The accused attempted to flee from the spot after ploughing his field, however, police apprehended them at the spot along with their tractor make Farmtrac 45. No respectable of the village including panch, sarpanch or numberdar was called by the police at the spot. No photography/videography of the place of occurrence was carried out by the police. On next day i.e. on 24.07.2014, no *patwari* or

kanungo was called by the police at the spot nor any demarcation was got conducted by the police on that day. After 24.07.2014 no one had inspected the spot.

16. Prosecution further examined Jaswant Singh as PW3, who while appearing in the witness box deposed that he is co-owner with his brother Karnail Singh of land measuring 3 Acre and 6 marlas which is situated in haddbasat no. 431 and musteel no. 44 khasra no. 19, 20 and 22 and he is having a possession over the land for the last 50 years. On 23.07.2014 time about 6:00 P.M., Lakhvir Singh Son of Charan Singh r/o Village Nangal has been uprooted their Charri- fodder (crop) with his tractor in connivance with Sajjan Singh Son of Hakam Singh, Charan Singh and Mohan Singh sons of Munsha Singh, the said persons were armed with deadly weapons and threatened them if they would come forward one step then they have to suffer dire consequences. On that day the above said accused after ruing their crop they uprooted Pukka burjies which were maintaining a boundary between two different land. Regarding land in question, one civil case had already been decreed in his favour. Police took action against the accused after inspection of the spot by D.S.P. Sri Anandpur Sahib and S.H.O., P.S. Nurpur Bedi. On 23.07.2014 he moved an application Ex.PW-2/A containing two pages before S.H.O., PS Nurpur Bedi he identified his signature at point "A". He identified all the accused present in the court. In his cross-examination he deposed that it

was informed to the police that who is in possession of which khasra number. The police had come to the spot on 23.7.2014 the day of occurrence. He has not present at the spot earlier. He further deposed that on the next day i.e. 24.7.2014 SHO Bhagwant Singh and other police officials visited the spot and saw the possession etc. at the spot.

17. Prosecution further examined Jarnail Singh as PW4, who while appearing in the witness box deposed that on 23.7.2014 at about 6:00 P.M. he alongwith Karnail Singh visited their farms. They saw Lakhvir Singh son of Charan Singh resident of village Nangal has been uprooted their Charri-fodder (crop) with his tractor in connivance with Sajjan Singh son of Hakam Singh, Charan Singh and Mohan Singh sons of Munsha Singh and some other unidentified persons, who's faces were muffled, the said persons were armed with deadly weapons and threatened them that if they would come forward one step then they have to suffer dire consequences. Due to that they fled away from the spot towards their house. He identified all the accuse present in the court. In his cross-examination he deposed that the police recorded his statement in the present case in the month of July but he did not remember the exact date. He further deposed that the passerby kept on passing through the Gohar while the accused tilling the field. No demarcation was taken by the I.O. of the disputed land. He did not know whether the police has recorded the statement of said Sohan Singh.

18. Prosecution further examined ASI Deepak Kumar- Investigating Officer as PW5, who while appearing in the witness box deposed that on 20.09.2014, he was posted as incharge of police post Haripur, P.S. Nurpur Bedi, District Rupnagar. On the same day one application was received to him and he endorsed the same with his police proceeding Ex. PW5/A, which also bears his signatures and an FIR Ex.PW5/B was registered on the basis of the same. Thereafter, he along with the complainant Karnail Singh and Jaswant Singh went to the spot of occurrence and prepared rough site plan Ex. PW5/C. Thereafter, on 27.10.2014 accused Charan Singh, Mohan Singh, Lakhvir Singh and Sajjan Singh were arrested vide arrest memos Ex.PW5/D to Ex.PW5/G respectively. The personal search memos of the accused are Ex. PW5/H, Ex. PW5/J, PW5/K and Ex. PW5/L respectively. Thereafter on 29.10.2014 tractor bearing no. PB-12-E-8758 make farmtrack colour blue along with plough was taken into police possession vide memo Ex. PW5/M, which also bears his signatures. He had also obtained the documents i.e. jamabandi of the disputed land. He had also recorded the statement of witnesses and on completion of investigation challan had put in the Court. He identified the accused present in the court except accused Charan Singh. He can also identify him (since presence exempted for today only), if he be produced before him. He has not seen a tractor bearing no. PB-12-E-8758.

At that stage Ld. APP for the State requested to defer further examination in chief. Request was heard, considered and declined as the identity of the tractor was not disputed. More over the tractor was released on sapurdari by one of the accused Charan Singh and the other accused were not disputing the identity of the vehicle.

In his cross-examination he deposed that the application moved by the complainant Karnail Singh and Jaswant Singh was entrusted to him on 20.9.2014. On 20.9.2014 he did not see the revenue record of the disputed land. On 20.9.2014 Karnail Singh and Jaswant Singh had not come to Police Post. He did not join any Numberdar, Sarpanch or respectable person of the village in the investigation on 20.9.2014.

19. Prosecution further examined Gurbhej Singh as PW6, who while appearing in the witness box deposed that he is an agriculturist and his land is in village Nangal, hadbast no. 431 and same is ancestral property and having khewat no. 44/1 and total land is 97 kanal 3 marla. There are 23 co-sharer in the afore-said land and all the co-sharer have partitioned the afore-said land mutually by metes and bounds and all the co-sharer are in their separate possession for the last more than 50 years. The afore-said land bearing khasra no. 19, 20 and 22 is in possession of Karnail Singh, Jaswant Singh both sons of Bachan Singh for the last more than 50 years i.e. prior to consolidation of afore-said land and other co-sharer in the afore-said total land have no link or objection with the land in

possession of Karnail Singh and Jaswant singh for the last more than 50 years.

The cross-examination of this witness was deferred as he was not feeling well. However, thereafter this witness failed to appear before the court to face the stress of his cross-examination.

20. On the other hand, to rebut the case of prosecution the accused produced on record copy of jamabandi Ex.D1 and Ex.D2.

POINTS FOR DETERMINATION NO. 1 and 2 :-

21. In the present case the accused have been charge sheeted for the offence under Section 447 IPC read with Section 34 IPC. It is the allegation of the complainant that the accused committed criminal trespass by entering into his land, which was in his possession. The essential ingredients under Section 441 IPC i.e. criminal trespass are who enters into or upon property in the **possession of another with intent to commit an offence** is said to commit "criminal trespass". Thus, it was incumbent upon the prosecution to firstly establish the exclusive and separate possession of the complainant over the disputed land. Perusal of the evidence reveals that the disputed land as mentioned in the complaint moved by the complainant Karnail Singh(Ex PW 2/A) is still joint among the parties, which has not been partitioned till date. Meaning thereby that the accused are co-sharers in the disputed land which is also reflected in evidence, and it is a settled proposition of civil jurisprudence that every co-

sharer is entitled to every inch of the joint property till the same is partitioned. There is no entry in the revenue record or any separate writing showing the exclusive and separate possession of the complainant over the disputed land. Further, the complainant has also failed to show his continuous and uninterrupted possession over the disputed land in the form of any relevant documentary evidence. Further, it has also come forth in evidence that no demarcation was conducted, even after the occurrence to corroborate the prosecution story. Further, the non-joining of any independent witness and respectable person of the village i.e. Sarpanch, Numberdar despite their availability certainly proves fatal to the prosecution story. The prosecution has also not proved any photographs in support of its version as contained in Ex.PW2/A. Further, there is a fatal delay of approximately two months in filing the present FIR, which has remained unexplained by the prosecution. This delay certainly does not rule out afterthoughts and filling up of the lacunae in the prosecution story. The judgment dated 11.10.2022 placed on record by the complainant is not relevant to the present context as the occurrence is dated 20.9.2014 and the date of registration of the FIR in judgment dated 11.10.2022 is 17.3.2016. Meaning thereby that the occurrence in the judgment dated 11.10.2022 is subsequent to the present occurrence and is certainly not binding upon the present facts and circumstances of the case, which stands on an independent footing, which are being adjudicated upon on merits.

22. The accused have been further charge sheeted for the offence under Section 181 and 196 of Motor Vehicle Act. However, the essential ingredients of these sections are also not made out against the accused as the case property has not been proved or produced in the present case, although its identification has not been disputed by the accused. No relevant witness/official has been examined by the prosecution to establish the essential ingredients of these sections.

23. As such, in view of the above discussions and observations, the prosecution has miserably failed to prove the essential ingredients of the charge sheet against the accused. The possibility of false implication of the accused in the present case also cannot be ruled out.

24. In view of the above discussion, the essential ingredients of Sections 447 IPC read with Section 34 IPC and Section 181, 196 of Motor Vehicle Act are not proved against the accused facing trial in the present case.

Resultantly, points for determination are determined in favour of the accused and against the prosecution.

25. It is a well settled law and the principle of Criminal Jurisprudence envisages that accused is presumed to be innocent until and unless his guilt is established beyond the shadow of reasonable doubt. There is a heavy onus upon the prosecution to establish the guilt of the accused beyond reasonable doubt. The prosecution has miserably failed to discharge this onus. Hence in the totality of the facts and circumstances mentioned above and in

view of the evidence on record it is insufficient to form the opinion that the accused committed the alleged offence.

26. Therefore, in view of the discussion made above, it is held that the prosecution has failed to do prove its case on test of strict proof. Accordingly, accused **Mohan Singh, Lakhvir Singh and Sajjan Singh** are ordered to be acquitted from the charges framed against them in the present case. The accused are also directed to furnish personal bail bonds in the sum of ₹ 50,000/- each with one surety in the like amount each, separately in compliance with the provisions of Section 437-A of Cr.PC. Case property, if any, be disposed off after expiry of period of limitation of appeal or revision. File be consigned to the Judicial Record Room, Sri Anandpur Sahib after due compliance in all respects.

**Pronounced in the open Court :
18.11.2022**

Vinod Kumar
Stenographer-GI

**Jagmilap Singh Khushdil
Sub Divisional Judicial Magistrate
Sri Anandpur Sahib
(UID No. PB0342)**

Note:- Certified that this judgments contains seventeen pages which are signed by me and which have been directly dictated and typed on computer.

**Pronounced in the open Court :
18.11.2022**

Vinod Kumar
Stenographer-GI

**Jagmilap Singh Khushdil
Sub Divisional Judicial Magistrate
Sri Anandpur Sahib
(UID No. PB0342)**