IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 99 OF 2011

GURCHARAN SINGH AND OTHERS Appellant (s)

VERSUS

STATE OF PUNJAB Respondent(s)

O R D E R

1. In the Court of Additional Sessions Judge, Moga, in Sessions Case No.120 of 2005, initially five accused were charged and prosecuted for commission of offences under Section 307, 323, 148 and 149 of the Indian Penal Code (for short, 'I.P.C.'). F.I.R. No.149 dated 19.6.2005 was lodged at the Police Station, Baghapurana.

2. Facts of the case reveal that on 19.6.2005, information was received from S.H.O., Police Station City Moga-II with regard to admission of Balbir Singh in injured condition in Civil Hospital at Moga. It was further informed that Balbir Singh has been referred to DMC Ludhiana for treatment. A.S.I. Kashmir Singh along with police party went to DMC Ludhiana and moved an application to get his statement recorded. Initially, he was declared to be unfit to make a Statement.

3. In the same incident, Major Singh was also injured. Major Singh was admitted in Civil Hospital at Moga. A.S.I. Kashmir Singh, thereafter, came to Civil Hospital to obtain permission to record his Statement. Major Singh informed that on 18.6.2005 at about 8.30 P.M., he and his father Balbir Singh were present in their house. At that time, Ranjit Singh armed with dang, Jaswinder Singh alias Ghoti

armed with Gandhala, Gurcharan Singh alias Thandu armed with Gandasa, Harjinder Singh alias Nikka armed with Sella, Billu Boria empty handed, all residents of Village Tharaj, came in front of their house and challenged them to come out. They also filthily abused them. On hearing the noise, he and his father both came out of house and made inquiries. It is said that at that time Billu Boria challenged them that they should not be spared and they should be taught a lesson for blocking a passage.

4. At that time, Jaswinder Singh gave Gandhala blow in the abdomen of Balbir Singh, who fell down on the ground. Major Singh went to save his father, who was also given a blow from the reverse side of Gandasa on his left eye. Ranjit Singh gave thrust blow with dang, which hit on his nose. He shouted for help. Harjinder Singh allegedly gave sella blow

which also hit on his nose. In the meanwhile, brother of Major Singh - Baldarshan Singh alias Angpal Singh also came and asked for not to beat them. Many people, by that time, had gathered on the spot. The accused ran away with their respective weapons. Darshan Singh son of Balwinder Singh also reached there. He arranged conveyance and took injured to the Civil Hospital.

5. It is said that the main cause for this fight was a judgment dated 25.11.2004 delivered by Additional Civil Judge (Senior Division), Moga in Civil Suit No.89 dated 16.5.2001, whereby the Suit filed by Ranjit Singh against Gram Panchayat, Balbir Singh - Member Panchayat and BDPO, Baghapurana, for grant of permanent injunction with regard to use of passage, was dismissed. Site Plan of the place of occurrence was prepared and is marked as Exhibit P-11. Dr. Rajiv Arora (PW-7) had examined Balbir Singh and found following injuries:

1. Distended
2. Loops of intestine seen (approximately one feet) coming out of the abdominal wound.
3. Two perforation of 4x4 cm present in loops of intestine which were connected with each other.
4. Blood stained discharge present.

5. Finger cannot be insinuated between loops of intestine and abdominal wound. Dilated gut loops due to strangulation.
6. Tenderness present generalized.
7. Guarding present/rigidity present.

6. Dr. Sanjiv Kumar Jain (PW-2) had examined Major Singh and other injured and found three injuries on Major Singh:

1. Lacerated wound 2.5 cm x .5 cm over left eye brow transverse wound superficial. Fresh bleeding was present.
2. Swelling 2 cm x 1 cm over bridge of nose over which there was an abrasion 0.5 cm x 0.5 cm.
3. An abrasion 2 cm x .5 over left side of nose opening. Fresh blood was cozing present.

7. One of the injuries, said to have been sustained by Balbir Singh, was declared dangerous to his life vide Doctor’s Report Exhibit P-23. Whereas injuries Nos.1 and 3 of Major Singh were declared simple in nature, Injury No.2 was kept under observation. The Doctor’s opinion in this regard is Exhibit P-5.

8. After completion of usual investigation, charge sheet for commission of the aforesaid offences, as mentioned hereinabove, was filed. The Appellants used their wit and submitted that they have not committed any offence. In order to prove the charges levelled against the Appellants, prosecution examined seven witnesses. In defence, the accused did not examine any witness except they pleaded ‘not guilty’. On the strength of oral and documentary evidence, the Trial Court found all the five accused guilty of

commission of offences punishable under Sections 148, 307, 323 read with Section 149, I.P.C. and awarded a maximum punishment of 10 years with fine of Rs.10,000/-.

9. Feeling aggrieved by the said judgment and order of conviction recorded in Sessions Case No.120/2005 of 20.11.2009, all the five accused preferred Criminal Appeal No.2859-SB of 2009 before learned Single Judge of the High Court of Punjab and Haryana at Chandigarh.

10. High Court, after going through the entire evidence, recorded categorical finding that the accused were the aggressor. However, it also recorded finding that participation of Billu Singh and Ranjit Singh was doubtful as no specific overt act was attributed to them and the

prosecution has failed to prove commission of offences by these two accused beyond reasonable doubt. Thus, benefit of doubt has been given to Billu Singh and Ranjit Singh and they have been acquitted by the High Court. Present three Appellants, namely, Gurcharan Singh, Jaswinder Singh alias Ghoti and Harjinder Singh alias Nikka have been found guilty for commission of offences under Sections 323, 307 read with Section 34 of the I.P.C. However, they were acquitted of the offence punishable under Section 148. On account of the fact that there was no unlawful assembly, in place of Section 149, I.P.C., Section 34 of I.P.C. was invoked, for common intention. The sentences of 10 years awarded and the fine imposed on the appellants have been kept intact. Against this judgment and order of conviction recorded by learned Single Judge, the three accused are before us.

11. We have heard Mr. O.P. Bhadani, learned counsel for the accused-Appellants and Mr. Jayant Sud, Additional Advocate

General appearing for the State of Punjab.

12. Learned counsel for the Appellants vehemently submitted before us that the Appellants had also lodged F.I.R. on 19.6.2005 for commission of offences by the complainant party under Sections 324, 323/34 of the I.P.C. and Sessions

Case No.62 of 2006 was registered against them, but they have wrongly been found to be not guilty in the same. It has also been contended that admittedly offence was said to have been committed at about 8.30 P.M., when there was no electricity and in absence of proper identification of the appellants, they could not be held guilty. Learned counsel also raised a ground that in any case they did not have any intention of common object to cause such grievous injury to Balbir, which might have proved fatal to him. Lastly, it was contended that Appellant Jaswinder had also undergone a sentence of 3 years & 3 months, Gurcharan has been in jail for the last 3 years & 4 months and Harjinder is in jail for the last 3 years & 1 month. Thus, all the three brothers, being sons of Ranjit Singh, are in jail for more than three years and have sufficiently learnt a lesson on account of this incident. In the light of this, it was contended that it is a fit case where even if Appellants' conviction is upheld, their sentences be reduced to the period already undergone.

13. However, learned counsel for the State has severely opposed this prayer on the ground that proper and correct message has to be sent to the society. The nature of injuries caused and sustained by Balbir would show that if he would not have been given medical aid at the proper time, he would

have died on account of injuries sustained by him. It was also brought to our notice that Balbir remained in hospital from 19.6.2005 to 13.7.2005, i.e. almost about three weeks.

Looking to the overt acts of the Appellants, no leniency should be shown to them.

14. In the light of the aforesaid contention, we have critically examined all other material evidence in details and have considered each and every aspect of the matter.

15. According to us, ends of justice would be met if the conviction of the Appellants is upheld as per the order passed by the learned Single Judge of the High Court, but the sentence to be reduced to the period already undergone. We accordingly do so. The Appeal is accordingly allowed to this extent. The Appellants should be set at liberty forthwith, if not required in any other case.

.....J.
(DEEPAK VERMA)

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI,
MAY 16, 2012.

ITEM NO.102 COURT NO.2 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 99 OF 2011

GURCHARAN SINGH & ORS. Appellant (s)

VERSUS

STATE OF PUNJAB Respondent(s)

Date: 16/05/2012 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE DEEPAK VERMA
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
(VACATION BENCH)

For Appellant(s) Mr. O.P. Bhadani, Adv.

Mr. Brij Bhusan,Adv.
MR. Ashok Anand, Adv.

For Respondent(s) Mr. Jayant Sud, A.A.G., Punjab
Mr. Kuldip Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

In terms of signed order, the Appeal is allowed. The Appellants should be set at liberty forthwith, if not required in any other case.

(A.D. Sharma)
Court Master

(S.S.R. Krishna)
Court Master

(Signed Order is placed on the file)