

In the High Court of Punjab and Haryana at Chandigarh

**CRA-D-937-DB-2003 (O&M)
Reserved on: 19.7.2024
Date of Decision: 26.7.2024**

MANGAL SINGH @ MANGA AND ANOTHER

.....Appellants

Versus

STATE OF PUNJAB

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Sandeep Singh Majithia, Advocate
Mr. Shiv Deep, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate
for the appellants.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 11.10.2003, upon sessions case bearing number S.C. No.403/2003/FTC, by the learned Additional Sessions Judge, (Ad), Amritsar, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 302, 323, 34 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellants-convicts. However, the other co-accused namely Bikkar Singh and Gurmit Kaur were acquitted from the charges drawn against them. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced both the appellants-convicts in the hereinafter

extracted manner.

“After hearing Mangal Singh and Gurdev Singh, accused-convict in the matter of sentence, Mangal Singh is awarded life imprisonment and fine of Rs.2,000/- and in default, two months R.I. u/s 302 IPC and Gurdev Singh is also awarded life imprisonment and fine of Rs.2,000/- and in default, two months R.I. u/s 302/34 IPC and Gurdev Singh is awarded six months R.I. u/s 323 IPC and Mangal Singh is awarded the same sentence u/s 323/34 IPC.”

2. All the above imposed sentences of imprisonment, were ordered to run concurrently. The period spent in prison by the convicts, thus during investigation or trial, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. Both the accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst their respective criminal appeals, before this Court.

4. Since appellant No.1 namely Mangal Singh @ Manga died during the pendency of the appeal, therefore, the proceedings qua him stand abated through an order made by this Court, on 19.07.2024.

Factual Background

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PB/2 is assigned. The narrations carried in Ex.PB/2 are, that on 23.2.2002, at about 8 P.M., his father Nirmal Singh after taking meals was of the his fitting planks in the outer entrance of their house as

there was no regular door, when Gurmit Kaur by looking from over wall of the house which is near the place of the occurrence started hurling abuses to Nirmal Singh. When Nirmal Singh requested her not to abuse them as the matter will be taken to Panchayat in the morning, she started throwing brick bats towards him and shouted and exhorted her co-accused not to spare him, as his death was waiting for him, and he had not been desisting from collecting manure near their wall and also from taking tractor through the street to his house. In the meanwhile her husband Bikkar Singh and her sons Mangal Singh and Gurdev Singh who were taking liquor raising lalkara came there. Bikkar Singh was having dang, Mangal Singh was armed with handle of hand pump and Gurdev Singh was carrying iron rod. It is alleged that Gurmit Kaur caught held shirt of Nirmal Singh and pulled to take him in the street, that Mangal Singh gave three blows with the handle of the pump one after the other on his head and on shoulder. When Nirmal Singh fell down, Gurmit Kaur caught hold her long hairs and dragged him and Gurdev Singh gave him 3/4 blows of iron rod near his left ear and on his forehead and near his left eye, and Bikkar Singh gave dang blows on his legs, and on the back of his left hand and on the left leg below knee, and Mangal Singh gave another blow with handle of the hand pump thrust wise, when Jagir Singh and his wife Palwinder Kaur tried to intervene, Gurdev Singh gave blow with iron rod on the head and left arm of Balwinder Kaur. In the meanwhile on hearing noise, Gurmit Kaur wife of Darbara Singh and Jaswinder Singh son of Kashmir Singh came there and the accused fled away, from there. There was electric light at the place of the occurrence. Deceased in injured condition was rushed to CH, Baba Bakala, from where he was referred to Civil Hospital, Amritsar, and on the next day at 1.15 A.M.

he succumbed to the injuries, Jagir Singh gave information of the death of his father to the hospital guard. On receipt of telephone message, Inspector-SHO of Beas went to the mortuary of CH, Amritsar where he recorded statement Ex.PB of Jagir Singh which was signed by him in token correctness. Ex.PB with ends. Ex.PB/1 was sent to PS where FIR Ex.PB/2 was registered.

Committal Proceedings

6. Since the offences punishable under Section 302 of the IPC, were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 13.5.2002, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused, for the commission of offences punishable under Sections 302, 323/34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 8 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. However, they did not lead any evidence.

Submissions of the learned counsel for the appellants-accused

9. The learned counsel for the aggrieved convicts-appellants has

argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He support the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

10. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts-appellants, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convicts-appellants, be dismissed. He further submits that the State has not challenged the verdict of acquittal against the other co-accused namely Gurmit Kaur and Bikkar Singh, either before this Court or before the Hon'ble Apex Court, as such the verdict of acquittal rendered qua them has acquired binding and conclusive effect.

Analysis of the deposition of eye witnesses to the occurrence who respectively stepped into the witness box as PW-2 and PW-3

11. Both the witnesses (supra), in their respectively made depositions, as comprised in their respective examinations-in-chief, ascribed to the convicts-appellants, thus the incriminatory role, inasmuch as, with theirs wielding the respective incriminatory weapons of offence, theirs hence inflicting injuries on the person of deceased Nirmal Singh and injured Palwinder Kaur.

12. It is evident on a reading of depositions of the above witnesses, that all of them, were aware of the identity(ies) of the convicts-appellants. Resultantly, when there is also no efficacious cross-examination made upon both the eye witnesses (supra), thus suggesting, that the present convicts-

appellants were unknown to both of them nor when any affirmative answer thereto became meted, thus by the eye witnesses (supra). Therefore, the first time identification, by them thus in Court vis-a-vis the identities of the convicts concerned, rather even without prior thereto any valid test identification parade being held, rather does not make the apposite identifications, rendered only in Court to be lacking in any evidentiary vigor.

13. Be that as it may, an incisive and wholesome reading of the depositions of the said eye witnesses to the occurrence unfolds that; a) both of them did not either grossly improve nor grossly embellished upon their previously recorded statements in writing, b) both of them have in respect of the crime event thus made a version in complete alignment with the version embodied in the FIR, c) both of them have narrated an ocular account vis-a-vis the crime event which is but free from any taint of any *inter se* or *intra se* contradiction. Resultantly, therebys the eye witness account as became rendered by them vis-a-vis the crime event, rather is to be assigned the completest evidentiary vigor, wherebys the prosecution has been able to cogently establish the charge drawn against the accused.

Signature disclosure statement of convict Gurdev Singh
Ex. PM

14. During the course of investigations, being made into the appeal FIR, convict-appellant Gurdev Singh, made a signature disclosure statement, to which Ex.PM is assigned. The signature disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x x

I have kept concealed one Iron Rod in my residential room in the tore under the articles regarding which I have the exclusive knowledge. I can get the same recovered. Memo was prepared and witnesses put their signatures under the same.

x x x x x”

15. The disclosure statement (supra), carry thereons the signatures, of the convict concerned. In his signed disclosure statement (supra), convict Gurdev Singh, confessed his guilt in inflicting injuries on persons' of the injured, hence with the recovered weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence. Moreover, the said signed disclosure statement does also makes speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

16. Significantly, since the appellant has not been able to either ably deny his signatures as occur on Ex.PM nor when he has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recovery is either contrived or invented. Therefore, the said memo is concluded to be holding the utmost evidentiary tenacity.

17. Significantly also since post the making of the said signed disclosure statement, by the convict to the investigating officer concerned, the convict concerned, through recovery memo Ex.PM/2, thus caused the recovery of the weapon of offence to the investigating officer concerned. Consequently, when the said made recovery is also not suggested by any cogent evidence to be a planted recovery. Resultantly, the effect thereof, is that a valid recovery being made vis-a-vis the incriminatory weapon of offence thus by the convict, to the investigating officer concerned. In sequel, the making of the valid signed disclosure statement, by the convict concerned, besides the pursuant thereto effectuation of valid recovery of the

incriminatory weapon of offence, thus by the convict concerned, to the investigating officer concerned, but naturally corroborates and supports the unblemished and credible eye witness account (supra), as becomes rendered vis-a-vis the crime occurrence, thus by the ocular witnesses (supra).

MEDICAL EVIDENCE (POST MORTEM REPORT)

18. The autopsy upon the body of deceased Nirmal Singh, was conducted on 25.2.2002, by PW-4. PW-4 has proven *qua* his, authoring Ex.PC, as relates to the autopsy as made upon the body of deceased.

19. Moreover, he has proven that the cause of death of deceased Nirmal Singh, was compression and laceration of brain (vital organ) as a result of head injuries No.1, 2 and 11, as detailed in Ex.PC. All the injuries were declared to be ante mortem and were also declared to be sufficient to cause death in ordinary course of nature. The relevant ante mortem injuries as noticed by PW-4 on the body of deceased are extracted hereinafter.

- “1. *Reddish brown abrasion 2.5x2cm on right side of forehead 2 cm above middle of eye brow.*
2. *2.5x5cm reddish brown abrasion right side of forehead, 4 cm above medical end of eye brow.*
3. *6x3.5 cm bluish black colour bruise (black eye) on left orbit involving both upper and lower eyelids.*
4. *0.4x0.3 cm reddish brown abrasion was present on bridge of nose.*
5. *3x1cm reddish brown abrasion was present on right side of face 2.5 cm lateral to outer angle of eye.*
6. *0.6x0.2 cm reddish brown abrasion on the right side of face 1 cm above injury no.5.*
7. *4.5x2 cm reddish brown abrasion was present on top and back of right shoulder.*
8. *3.5x2.5 cm reddish brown abraded bruise was present on back of left shoulder.*
9. *2.5x0.7 cm reddish brown abrasion was present on back of*

left hand in its middle.

10. *0.5x0.5 cm lacerated wound was present on back of left forearm in its middle. It was skin deep. Clotted blood was present.*

11. *Defuse swelling with reddish blue bruise in an area of 10x8cm on the left temporo frontal and occipital region of left side 3.5 cm above outer end of eye brow.*

12. *Reddish brown abrasion 1x0.5cm was present on front of right leg, 4 cm below tibial tuberosity.*

13. *Reddish brown abrasion 3x0.5cm was present on left leg of its chin.”*

20. The incriminatory weapons of offences were shown to PW-4, thus during the course of his making his testification(s), before the learned trial Judge concerned. In his testification he has spoken that “*possibility of injuries being caused by the handle of the pump and saria cannot be ruled out*”. The effect of the above, is that, especially when no efficacious cross-examination was made upon the said prosecution witness, by the learned defence counsel, thus thereby, the defence conceding qua the said ante mortem injuries declared in PMR were, as such, inflicted on the relevant portion of the body of the deceased, with the users, rather by the accused, thus of recovered handle of pump and iron rod. Consequently, thereby medical evidence also corroborates the recovery memos (supra).

21. The submission addressed before this Court by the learned counsel for the appellants that the appellants had used their right of private defence and the appellants were not the aggressors.

22. Proceeding to dwell, upon, the tenacity of the argument raised before this Court, that the appellants, did not well exercise the right of private defence of property, as well as their respective body, it is but necessary to delve, into the records, to gather therefrom, whether the crime site was evidently possessed by the appellants, besides it is also required to

be discerned from the evidence available on record, that whether the aggression become initiated, by the appellants, and/or, by the complainant party, besides is also required to be gauged from the records whether the numerical strength of the accused party rather was lesser or inferior to the numerical strength of the complainant party. Moreover, it is also required to be fathomed from the evidence available on record whether the accused were equally armed as was the complainant party. Significantly also it is required to be determined whether the accused exceeded or did not exceed the exercisings of their rights of private defence of body, and/or, of persons.

23. In determining the above, it is but necessary to allude to the grave factum, that the numerical strength of the complainant party was 1, whereas, the numerical strength of the accused was 4. Therefore, given the superior numerical strength of the accused party, than the numerical strength of the complainant party, thus thereby besides, when the complainant party were also not as well armed as was the accused party, who were respectively wielding weapons of offences, as became recovered, at their respective weapons, some of which are also lethal weapons. Resultantly, thereby a conclusion becomes garnered, that given the superior numerical strength of the accused party, vis-a-vis, the numerical strength of the complainant party, besides with the complainant party not being so well armed, as were the accused party, thereby the accused party did exceed their right of private defence of body, and, of property. The same becomes further firmly engendered from the fact, that the accused party inflicted injuries on the person of the deceased Nirmal Singh, thus even when he was lying on the ground. Therefore, the right of private defence, if any, which was available to become claimed by the accused party rather become exceeded.

FINAL ORDER

24. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellants-convicts by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant No.2 is on bail, thus he is ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

25. Records be sent down forthwith.

26. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

July 26, 2024
Ithlesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No