

[Non-Reportable]

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 665-666 OF 2011

AJMER SINGH & ORS.

... Appellants

Versus

STATE OF HARYANA

... Respondent

J U D G M E N T

Rajesh Bindal, J.

1. At the very outset, learned counsel for the appellants submitted that Ajmer Singh s/o. Jiwan Singh having expired during the pendency of the appeal before this Court, the appeal qua him stands abated.

2. The conviction of the appellants having been upheld by the High Court, the order dated May 10, 2010 is under challenge before this Court. Vide impugned order, the High Court disposed of Criminal Appeal No. 843-SB of 2001 filed by (1) Ajmer Singh son of Jiwan Singh (2) Man Singh son of Ajmer Singh (3) Gurdhyan Singh

son of Ajmer Singh (4) Surinder Singh son of Shamsher Singh and (5) Nanak Singh son of Jiwan Singh out of which the appeal qua Ajmer Singh stands abated. The Criminal Revision bearing Nos. 475/2002 and 778/2003 were also disposed of by the same order. The appellants were convicted by the Trial Court under Sections 148, 323, 325 and 307 read with Section 149 of the Indian Penal Code (IPC). They were sentenced to undergo six months rigorous imprisonment under Section 148 read with Section 149 as well as for Section 323 read with Section 149, two years under Section 325 read with Section 149 IPC and seven years under Section 307 read with Section 149 IPC.

3. The High Court vide order dated May 10,2010 dismissed the appeal of the appellants. However, by a subsequent order dated May 28, 2010, sentencing part was modified by the High Court. The reason stated for the said modification was that an interim order dated May 28, 2010, was passed in the said appeal reducing the sentence from seven years to five years under Section 307 read with Section 149 IPC but the said modification was not incorporated into the detailed judgement.

4. It is a case in which both the parties suffered injuries. The FIR No. 75 dated 27.3.1997 was registered on the complaint of

Jagdish Chand alleging that at about 8.00 a.m. in the morning of 27.3.1997, Surender Singh tried to drive his tractor trolley from the disputed passage, the bara of the house of Jagdish Chand. Rajesh Kumar, nephew of Jagdish Chand asked him not to do so. Accused Man Singh, Ajmer Singh, Nanak Singh and Gurdhian Singh were sitting in the tractor-trolley. They attacked Rajesh Kumar and Jagdish Chand with lathi. Thereafter, a lathi blow was given on the head of Lajwanti (mother of Ravi Kumar, Rajesh Kumar and Sanjeev Kumar). On alarm being raised, Ravi Kumar and Sanjeev Kumar (nephews of Jagdish Chand) came to save them. Gurdhian Singh gave a kassi (spade) blow on the head of Rajesh Kumar. Nanak Singh gave a lathi blow to Ravi Kumar, whereas Surinder Singh gave a lathi blow to Sanjeev Kumar. On hearing the alarm, number of villagers gathered. The injured were taken to hospital and they were medically examined.

5. As against this, multiple injuries were suffered by the appellants. They were also medically examined at PHC Panjokra.

6. According to the defence, there was altercation between Harbans Kaur wife of Ajmer Singh and Lajwanti. As a result, the male members of both the parties collected and there was free fight.

7. The dispute between the parties, as claimed, was with reference to use of the disputed passage by the appellants. As both the parties suffered injuries in the fight, it cannot be held that no such incident had taken place.

8. The argument raised by the learned counsel for the appellants was that in the case in hand, the complainant party was the aggressor as on day-to-day basis they used to scold them while they were using the passage on the land, which is in the name of Gram Panchayat. The complainant party was treating that portion of the land to be their own. In fact, immediately after the incident on 27.3.1997 a civil suit for permanent injunction was filed by the complainant party, namely, Jagdish Chand and Krishan son of Kundan against Ajmer Singh, Nanak Singh sons of Jiwan Singh and Dhyan Singh, Man Singh sons of Ajmer Singh and Surender Singh son of Shamsher. The prayer in the suit was to restrain the defendants therein from using bara of the plaintiffs as passage. The suit was filed on 31.3.1997, which was dismissed on 15.1.2003. No decree of injunction was passed in favour of plaintiffs therein pertaining to Khasra No. 117, which was claimed to be the property

of the plaintiffs as it was found to be owned by Gram Panchayat and reserved for Rafiamm.

9. He further submitted that number of persons on the appellant side also suffered injuries and some of them were found to be grievous. However, the courts below have failed to take that into consideration. In fact, it was a case of self-defence. The incident took place outside the precincts of complainant party, hence the appellants cannot be said to be aggressors. Intention cannot be established as there was no weapon used. They were merely having their agricultural implements with them and it was the normal time to go to the fields as the incident happened at about 8.00 a.m. The allegation is that the appellants were going in the tractor-trolley, when on the provocation of the complainant party, the incident happened.

10. On the other hand, the argument of learned counsel for the State was that it is a case in which the appellants were found to be aggressors. They had caused grievous injuries to the complainant party. Even if they suffered certain injuries, those were in exercise of their right to private defence. The evidence in

the form of statements of injured witnesses cannot be discarded. Besides the injured witnesses, independent witnesses were also produced who corroborated the version of the prosecution.

11. Heard learned counsel for the parties and perused the material on record.

12. Date of incident, as such, is not in dispute. It has also not come on record that the appellants who were stated to be aggressors and have been convicted, used any weapons as such or they had gone to the place of incident with their pre-determined mind. Even the case set up by the complainant party was that they were passing through the passage in a trolley. In fight, lathi and kassi (spade) were allegedly used. These are the normal agricultural implements which are used in the rural areas, which the appellants were carrying in their trolley.

13. As is evident from the record, the dispute was with regard to the use of passage by the appellants which the complainant party was claiming to be its own. Another fact which has come on record is that there is a decree in a civil case filed by the complainant party immediately after the incident, in which it

was held that the passage belongs to the Gram Panchayat and the same is Rafiamm.

14. No doubt, there are injuries suffered by the complainant party. However, the fact remains that the injuries have also been suffered by the accused party. In the judgment of the High Court, due consideration has not been given to the injuries suffered by the appellants. Entire stress is on the injuries suffered by the complainant party or the evidence led by them. The defence of the appellants has not been touched. The High Court also opined that place of incident was space between bara and house of the complainant party. The issue was use of the passage by the appellants to which the complainant party was raising an objection.

15. Considering the material on record which has been discussed above where both the parties suffered injuries in free fight and the passage, which was the root cause of the fight, has been held to be the passage owned by Gram Panchayat and

Rafiamm and not belonging to the complainant party, in our opinion, the conviction and sentence of the appellants cannot be legally sustained. The appeals are accordingly allowed. The judgment and order of conviction and sentence passed by the Trial Court and affirmed by the High Court are set aside. The bail bonds of the appellants stand discharged.

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[Abhay S. Oka]

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[Rajesh Bindal]

New Delhi
April 11, 2023