

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION**CRIMINAL APPEAL NO. 1475 OF 2015**

(Arising out of S.L.P. (Crl.) No. 8281 of 2007)

Raj Singh @ Raja

... Appellant

Versus

State of Haryana through Secretary
Ministry of Home Affairs, Chandigarh

...Respondent

J U D G M E N T**Prafulla C. Pant, J.**

This appeal is directed against judgment and order dated 21.8.2006 in Criminal Appeal No. 152-DB of 2004, passed by the High Court of Punjab and Haryana, whereby said appeal has been dismissed affirming the conviction and sentence awarded against accused/appellant Raj Singh @ Raja, by Sessions Judge, Sonapat, in Sessions Case No. 121 of 1999/2003 under Sections 148, 302, 307, 323 read with Section 149 of Indian Penal Code (IPC).

2. We have heard learned counsel for the parties and perused the papers on record.

3. Brief facts of the case are that PW-4 Bhale Ram (complainant) owned shops near bus stop of village Jagsi. In one of the shops liquor used to be sold, and the other shops were being used as tea stalls by the complainant's son PW-10 Sanjay and nephew Rajesh (deceased). A vacant piece of land adjoining the shops was also used by the complainant for tethering the cattle in respect of which a civil litigation was going on between him and Daya Kishan Bairagi (one of the accused).

4. On 30.11.1998 at about 7.00 p.m. when PW-10 Sanjay and Rajesh (deceased) were in the shop, complainant's daughters PW-11 Kamlesh and Meena were unloading the paddy straw from a cart at the vacant piece of land. At that point of time accused Kishan (son of Daya Kishan) came to the shop and asked Sanjay to deliver some goods without payment of the price. On this, a quarrel ensued and Kishan threatened Sanjay of dire consequences. He left the shop and soon thereafter came back along with other accused, namely, Pohla @ Sat Narain, Daya Kishan, Ajmer and the present appellant Raj Singh @ Raja. Pohla

@ Sat Narain was armed with gun, Ajmer was armed with 'Jaili' and remaining three, namely, Daya Kishan, appellant Raj Singh @ Raja and Kishan were armed with lathies. Pohla opened fire at Rajesh, who fell down. In the meantime, complainant and his daughters Kamlesh and Meena intervened to rescue Sanjay and Rajesh. Daya Kishan gave a blow with lathi on the person of the complainant. Ajmer and Kishan also gave blows with Jaili and lathi respectively on the complainant. Appellant Raj Singh @ Raja said to have assaulted Kamlesh and Meena. On hearing the commotion, PW-12 Ram Kishan and one Hoshiara also reached there. They rescued the complainant from the accused, who left the place along with their weapons. All the injured were taken to Community Health Centre, Gohana, wherefrom they were referred by PW-21 Dr. S.S. Gupta to PGIMS, Rohtak, where Rajesh was declared brought dead. Other injured were admitted in the hospital, and underwent medical treatment. On next day at 7.30 a.m. police recorded statement of PW-4 Bhale Ram (injured/complainant) and on its basis registered First Information Report No. 224 on 1.12.1998 relating to offences punishable under Sections 148, 149, 302, 307 and 323 IPC

5. PW-17 Inspector Ram Prakash conducted the investigation. He went to the spot, prepared site plan (Ex. PS), collected

blood-stained earth, and three used cartridges. He also took dead body of Rajesh in his custody, and prepared inquest report (Ex. PC). The body was sent in sealed condition for post mortem examination. PW-3 Dr. Vimal Kumar Sharma conducted autopsy. Meanwhile PW-14 Dr. Rajesh Saini prepared medico legal reports (Exs. PL, PM, PN, PO and PP) in respect of injured Sanjay, Kamlesh, Kishni, Meena and Bhale Ram, and also that of accused Daya Kishan (Ex. DA).

6. On completion of investigation, charge sheet was filed against accused Pohla @ Sat Narain, Kishan, Ajmer, Raj Singh @ Raja and Daya Kishan for their trial in respect of offences punishable under Sections 148, 302, 307 and 323 read with Section 149 IPC. Pohla @ Sat Narain was further charged in respect of offence punishable under Section 27 Arms Act, 1959. The case was committed to the Court of Session. On 25.5.1999, after hearing the parties, the Sessions Judge framed charge in respect of above offences against all the five accused to which they pleaded not guilty and claimed to be tried.

7. It appears that during the trial when the accused were on bail, two except Daya Kishan and Raj Singh @ Raja (present appellant) absconded. After the stage of 313 of Code of Criminal

Procedure (CrPC), appellant Raj Singh @ Raja also jumped the bail, and was declared proclaimed offender. As such, trial of accused Daya Kishan was concluded vide judgment and order dated 19.1.2004, passed by the Sessions Judge, whereby said accused was convicted and sentenced under Sections 148, 302, 307 and 323 read with Section 149 IPC.

8. Subsequently, when Raj Singh @ Raja (present appellant) was re-arrested, his case proceeded further from the stage of 313 CrPC. In defence DW-1 Dr. Gaurav Bhardwaj, DW-2 Bhan Singh, DW-3 Khazan Singh and DW-4 Dr. S.S. Gupta were examined. Two doctors proved the injuries found on person of Daya Kishan, suffered by him at the time of the incident. After hearing the parties, the trial court (Sessions Judge, Sonapat), vide judgment and order dated 10.10.2005 passed in Sessions Case No. 121 of 1999/2003, convicted and sentenced accused Raj Singh @ Raja also, under Sections 148, 307 and 323 read with Section 149 IPC.

9. Convicts Daya Kishan and Raj Singh @ Raja filed Criminal Appeal Nos. 277-DB of 2004 and 152-DB of 2006 respectively before the High Court. Both the appeals were heard together and disposed of vide common judgment and order dated 21.8.2006

whereby the two appeals were dismissed. Convict Daya Kishan, through special leave, filed Criminal Appeal No. 879 of 2007 before this Court, which was disposed of, vide judgment and order dated 22.4.2010. Said appeal of Daya Kishan was partly allowed by this Court and his conviction and sentence under Section 302 read with Section 149 IPC was set aside. However, his conviction and sentence under Section 148 IPC and under Sections 307 and 323 both read with Section 149 IPC was affirmed. Said decision of this Court in **Daya Kishan v. State of Haryana** is reported in (2010) 5 SCC 81.

10. It is relevant to mention here that this appeal, which is also filed by another convict Raj Singh @ Raja in the year 2007 (through S.L.P. (Crl.) No. 8281 of 2007) remained undisposed of. Both the appeals have arisen out of the common order passed by the High Court. These relate to the same incident. Prosecution evidence as against both the accused was recorded in Sessions Case No. 121 of 1999/2003. Both the accused are said to have been armed with lathies. Daya Kishan said to have assaulted Bhale Ram (complainant) and the present appellant said to have assaulted PW-11 Kamlesh. Needless to say that Pohla @ Sat Narain said to have fired the shot at Rajesh, who died of the injuries. This Court, in its judgment and order dated 22.4.2010

in Criminal Appeal No. 879 of 2007 (filed by Daya Kishan) has discussed that after the quarrel between PW-10 Sanjay and accused Kishan, all the accused assembled to teach lesson to Sanjay. It is discussed in the appeal decided by this Court that there was no common object on the part of other members of the unlawful assembly with accused Pohla @ Sat Narain to commit murder of Rajesh (deceased). The shot was fired at him by Pohla. Role of the present appellant Raj Singh @ Raja and that of Daya Kishan, both of whom were armed with lathies, is similar. As such, the case of the present appellant is identical to the case of Daya Kishan, already decided by this Court.

11. For the reasons, as discussed above, this appeal also deserves to be partly allowed, for the reasons mentioned in Criminal Appeal No. 879 of 2007 decided by this Court on 22.4.2010.

12. Accordingly, in the light of decision in the appeal of co-accused Daya Kishan, conviction and sentence of the appellant recorded by the trial court in respect of offence punishable under Section 302 read with Section 149 IPC is set aside. He is acquitted of charge of offence punishable under Section 302 read with Section 149 IPC. However, his conviction

and sentence in respect of other offences punishable under Section 148 IPC, and under Sections 307 and 323 both read with Section 149 IPC are affirmed. The appeal stands disposed of.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi;
November 20, 2015.



JUDGMENT