



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

CRIMINAL APPEAL NO. 2286 OF 2010

JASBIR SINGH

...APPELLANT(S)

VERSUS

THE STATE OF PUNJAB

...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. None present for the appellant.
2. The appeal challenges the judgment and order passed by the learned Division Bench of the High Court of Punjab and Haryana dated 5th March 2009, thereby dismissing the appeal filed by the appellant challenging the judgment and order passed by the Sessions Judge dated 28th April 2006, thereby convicting the appellant along with five other accused persons for offences punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (for

short, “IPC”) and sentencing them to suffer rigorous imprisonment for life.

3. By the impugned judgment and order, the High Court has dismissed the appeal of the present appellant but acquitted all other accused of the charges charged with.

4. Mr. Mohit Siwach, learned counsel appearing on behalf of the State, has vehemently opposed the appeal. He submits that the learned Division Bench of the High Court has rightly held that though the place of occurrence is the house of the appellant, the conviction was liable to be under Section 302 IPC. He further submits that, even according to the defence of the accused, 30-35 persons who had come to his house were armed with only *lathies*. He also submits that if the offending party was armed only with *lathies*, there was no occasion for the appellant to use the firearms.

5. In any case, it is submitted that, the appellant has fired two rounds. As such, it cannot be said that he was entitled to the benefit of right to private defence.

6. From the judgment of the High Court, it would be clear that though, according to the prosecution, the place of

occurrence was near the field of Resham Singh, the High Court has found the same to be unreliable. It found that the place of occurrence was the house of the appellant. Not only this, the High Court, in paragraph 9, observed thus:-

“The defence version is more probable where Jasbir Singh appellant has stated that it was the complainant party who attacked him and his companions and he fired in self defence. Appellants have explained their conduct, that everything was done in self defence. It has been admitted by both the witnesses Sohan Singh PW-10 and Jaswant Singh PW-11 that the land was in possession of the appellants and they are the ones who had sown the crop. Complainant in fact are the aggressors.”

7. We are of the view that the High Court, after finding that the complainant was the aggressor party, could not have convicted the appellant under Section 302 IPC.

8. Insofar as the contention of the learned counsel for the State that the complainant party were armed only with *lathies* and, as such, the appellant could not have used the firearms is concerned; as to how a person responds to a situation would differ from person to person. It cannot be said that a person alarmed by aggression by 30/35 persons

and that too armed with *lathies* would not use firearm in the self-defence.

9. We are, therefore, of the considered view that the conviction under Section 302 IPC is not sustainable. The appellant was entitled to benefit of Exception 2 of Section 300 IPC.

10. We, therefore, find that the conviction under Section 302 IPC is not sustainable and the same is converted to Part-I of Section 304 IPC. Insofar as the conviction under Section 307 IPC is concerned, the same warrants no interference and is confirmed.

11. Learned counsel for the respondent-State fairly states that the appellant has undergone sentence of about five years.

12. We find that the sentence already undergone by the appellant would meet the ends of justice for offences punishable under Section 304 Part I IPC and Section 307 IPC. Thus, the appellant is sentenced to the period of incarceration already undergone.

13. The bail bonds shall stand discharged.

14. In the result, the appeal is partly allowed in the above terms.

15. Pending application(s), if any, shall stand disposed of.

.....**J**
[B.R. GAVAI]

.....**J**
[VIKRAM NATH]

NEW DELHI;
JANUARY 19, 2023