

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRA-S-1611-SB of 2009 (O&M)**

DATE OF DECISION: SEPTEMBER 8, 2015

MALKIAT CHAND AND OTHERS

...APPELLANTS

VERSUS

STATE OF PUNJAB

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.**

1. Whether the judgement should be reported in the digest? Yes

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PRESENT: MR. RAJESH PAL, ADVOCATE FOR APPELLANT NO.1.  
MR. S.S.GREWAL, ADVOCATE FOR APPELLANTS NO.2 & 3.  
MR. PREMJIT SINGH HUNDAL, ADDL.A.G., PUNJAB.

**M. JEYAPPAUL, J.**

**CRM-6117-2014**

1. The main appeal itself was taken up today and disposed of.  
Therefore, the application becomes infructuous and is dismissed as such.

**CRM-13964-2013**

2. The application is filed for declaring appellant No.2 Tarlochan Puri as juvenile.

3. Appellant No.2 produced School Certificate Annexure A-9 which discloses that he was born on 20.4.1987. The said Certificate was issued by Government High School, Gobindgarh, Roopnagar. A report was filed today by the State counsel after verification of the above Certificate to the effect that Certificate was in fact issued by the School Authorities. The genuineness of the said Certificate was not under challenge. The occurrence had taken place on 14.12.2004. Appellant No.2 Tarlochan Puri had

completed only 17 years and 7 months as on the date of occurrence.

4. In view of the proved facts and circumstances, I have no hesitation to declare appellant No.2 Tarlochan Puri as juvenile at the time when he committed the occurrence on 14.12.2014. The application is allowed.

**CRA-S-1611-SB of 2009**

5. Accused Malkiat Chand, Tarlochan Puri and Gurdas Puri have challenged the judgement passed by the trial Court vide which accused Malkiat Chand was convicted under Section 307 IPC while accused Tarlochan Puri and Gurdas Puri were convicted under Section 307 read with Section 34 IPC and were each sentenced to undergo 5 years R.I. and to pay a fine of ₹1000/- each and in default of payment of fine, to undergo a further period of R.I. for 3 months each.

6. It is the case of the prosecution that PW10 Jagir Ram who retired from military in the year 1985 was serving as Pujari in the Guga Mari of the village. On 13.12.2004, accused Malkiat Chand and Gurdas Puri teased the girls who were going to the forest to ease themselves. Jagir Ram had objected to the said teasing. On 14.12.2004 at about 8.00 a.m., all the three accused alongwith other persons came present at Guga Mari. Accused Malkiat Chand expressed his intention to teach a lesson to Jagir Ram. He having taken out Trishul from the religious place, hit PW10 who was caught hold of by accused Tarlochan Puri and Gurdas Puri. One Niranjana Singh made an attempt to rescue PW10 from the accused and in that process, he also received injuries.

7. An FIR was registered based on the statement suffered by PW3 Gulshan Kumar who is the son of PW10 Jagir Ram.

8. PW1 Dr.Gitanjali examined injured Niranjana Singh on 14.12.2004 at about 10.15 a.m. and found a lacerated wound in his occipital region, a contusion on his right arm and a swelling in the left hand. All these injuries were certified by her as simple in nature. PW1 also medico-legally examined PW10 Jagir Ram on the same day at about 10.20 a.m. and found lacerated wound on the left parietal area of scalp. It is her opinion that a blunt side of the weapon had been used to cause the injury.

9. PW2 Dr. Lt.Col. A.S.Bal, Duty Medical Officer, Command Hospital, Western Command, Chandimandir examined Jagir Ram and found penetrating wound on his left temporal region who was admitted to Command Hospital on 14.12.2004 at about 9.15 p.m. The said injury was certified as grievous in nature.

10. PW10 Jagir Ram was found unstable to give rational answers at the time when he was examined. But he spoke about the attack launched by the accused and the injuries sustained by him. PW5 Balbir Ram was another eye witness who also supported the testimony of PW3 and PW10. PW6 ASI Kesar Singh and PW8 ASI Mahinder Singh have investigated the case.

11. PW3 has categorically spoken about the motive for the occurrence. The previous day of the occurrence PW10 had objected to the act of accused in teasing the girls who proceeded to the forest area for easing themselves. Even otherwise, it is a well settled position of law that

when an eye witness is there to establish the case of the prosecution, the motive for the occurrence pales into insignificance.

12. PW3 and PW5 have deposed that 2<sup>nd</sup> and 3<sup>rd</sup> appellants caught hold of PW10 Jagir Ram and the 1<sup>st</sup> appellant having taken out Trishul from the religious place attacked him on his head and caused grievous injury.

13. The nature of weapon used and the seat of injury chosen go to establish that the 1<sup>st</sup> appellant had in fact intended to cause the death of PW10 Jagir Ram. The other two accused having caught hold of the victim shared the intention of 1<sup>st</sup> accused to cause the death of Jagir Ram.

14. Though Niranjana Singh made an attempt to rescue PW10 and in the process he also sustained injuries as per the medical evidence available on record, he was not examined by the prosecution. The evidence of PW6 would disclose that the attempts made at the earliest point of time to record his statement to register a case against the accused did not fructify. Only in his presence, the statement of Niranjana Singh was recorded. Therefore, it is found that Niranjana Singh was very much reluctant from the very beginning to prosecute the accused for the injuries he sustained in the occurrence. At any rate, in the light of evidence of PW3 and PW5 and in the background of the medical evidence available on record, the Court cannot simply ignore the attack launched by the accused not only on PW10, but also on Niranjana Singh. The ocular testimony has been completely corroborated by the medical evidence.

15. Learned counsel appearing for the appellants would submit that there was a delay in lodging the first information report and that such a

delay deals a death blow to the case of the prosecution.

16. I thoroughly perused the evidence of PW6 ASI Kesar Singh who has deposed that there was an attempt made by the police officials to record the statement of Niranjana Singh who also sustained injury in the occurrence, but he evaded to suffer statement. Only in his presence, Niranjana Singh chose to suffer a statement. Further, it is found that PW10 who was interested to prosecute the case was originally treated by PW5. He was taken to PGI, Chandigarh and thereafter he was admitted to Command Hospital, Chandimandir. Further, the case was registered only under Sections 323 and 324 IPC by PW6, based on the statement suffered by PW3 Gulshan Kumar, the son of PW10.

17. Every delay in lodging the first information report does not throw doubt on the case of the prosecution. Further, in a case where the eye witness and the injured witness spoke about the occurrence, the question of doubting the version of the prosecution merely on the ground that there was some delay in lodging the first information report does not arise.

18. Learned counsel appearing for the appellants pointed out that there was some discrepancy in the medical evidence. On a careful analysis of evidence of PW1 and PW2, it is found that PW1 came out with a version that PW10 sustained lacerated wound, whereas PW2 on examination of PW10 certified that the injury was a penetrating wound.

19. It may be a case where either of these two Doctors had not properly examined the wound suffered by PW10. The victim does not have any control over the opinion being expressed by the Doctors who examined

him. The fact remains that Trishul was used for causing injury on the head of PW10. When the ocular witness has spoken cogently that Trishul was used to cause injury on the head of PW10, the contradiction found in the medical evidence does not go to the root of the matter.

20. The non-examination of Niranjana Singh does not create a dent in the case of the prosecution, inasmuch as the other witnesses have cogently established the case of the prosecution.

21. Learned counsel appearing for the appellants submitted decisions of this Court in *Kishori & others vs. State of Haryana, 2007(4) RCR(Criminal) 726* and *Shahbeg Singh and others vs. State of Punjab, 2008(1) RCR(Criminal) 517*, to strengthen his argument that grievous injury allegedly sustained by PW10 was not established.

22. Section 307 of the IPC would be attracted even if no injury has been sustained by the victim. But in the instant case, the seat of injury and the weapon used clearly establish that an attempt to commit murder was made by 1<sup>st</sup> accused with the aid of 2<sup>nd</sup> and 3<sup>rd</sup> accused. Further, the evidence of PW2 would establish that injury found on the person of PW10 was grievous in nature. Therefore, the above decisions would not apply to the facts and circumstances of this case.

23. Appellant No.2 Tarlochan Puri was declared as minor as per the order passed by this Court in CRM-13964-2013. I am aware of the legal position that under such circumstances he shall be referred to the Juvenile Justice Board concerned for passing the sentence. But considering the peculiar facts that he was convicted alongwith the adult accused and has

also undergone 2 months and 29 days of imprisonment, I do not propose to send the case to the Juvenile Justice Board concerned for passing suitable sentence. Confirming the conviction recorded by the trial Court as against accused Tarlochan Puri, he is sentenced to the period already undergone by him.

24. Coming to the sentence imposed on appellant Malkiat Chand and Gurdas Puri, I find that they had undergone the ordeal of trial for about 11 long years. Accused Gurdas Puri had just caught hold of the victim. In view of the above peculiar circumstances, accused-appellant Malkiat Chand is sentenced to undergo 4 years R.I. instead of 5 years R.I. and accused-appellant Gurdas Puri is sentenced to undergo 2 years R.I. instead of 5 years R.I. The fine amount awarded and the default sentence imposed by the trial Court as against all the three accused-appellants stand sustained.

25. The accused-appellants Malkiat Chand and Gurdas Puri are on bail. Their bail bonds stand cancelled. They shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Mohali, who shall send them to jail to undergo the remaining part of the sentence. If they fail to surrender, the learned Chief Judicial Magistrate, Mohali shall take coercive steps to secure thier presence and send to jail to undergo the remaining part of the sentence.

26. The appeal is disposed of accordingly.

September 8, 2015  
Gulati

**(M. JEYAPPAUL)**  
**JUDGE**