

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRA-S-632-SB of 2004

Date of decision : 05.10.2015

Mohinder Singh and others

..... Appellants

Versus

State of Punjab

..... Respondent

AND

CRR No. 1055 of 2004

Date of decision : 05.10.2015

Chanan Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. S.P.S.Sidhu, Advocate
for the appellants no. 1, 2, 4, 7 to 10
(in CRA-S-632-SB of 2004) &
for respondents no. 2 to 11
(in CRR No. 1055 of 2004).

Mr.Rajesh Kapila, Advocate
for the appellants no. 3, 5 and 6
(in CRA-S-632-SB of 2004).

Mr. M.S.Sidhu, Advocate
for complainant (in CRA-S-632-SB of 2004) &
for petitioner (in CRR No. 1055 of 2004).

Mr. Ajaib Singh, Addl.AG. Punjab.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes
- 2. To be referred to the Reporters or not?Yes
- 3. Whether the judgement should be reported in the Digest?Yes

DARSHAN SINGH,J

1. This judgment shall dispose of CRA-S-632-SB of 2004 and CRR No. 1055 of 2004, as both of these have arisen out of the same judgment dated 28.02.2004.

2. Criminal appeal no. CRA-S-632-SB of 2004 has been preferred by appellants Mohinder Singh and others against the judgment of conviction dated 28.02.2004, vide which appellants have been held guilty and convicted for the offences punishable under Sections 148 and 307, 326, 325, 324, 323/149 of Indian Penal Code (hereinafter called IPC) and the order of the even dated, vide which accused-appellants have been sentenced as under:-

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Mohinder Singh	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	Two months
	307/149 IPC	5 years	500/-	Three months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	_____

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Jasbir Singh	148 IPC	Six months	---	---
	323 IPC	Six months	500/-	Three months
	307/149 IPC	5 years	500/-	Three months
	324/149 IPC	1 years	200/-	Two months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 year	200/-	Two months
	323/149 IPC	6 months	---	_____

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Angrej Singh (Ist)	148 IPC	Six months	---	---
	324 IPC	4 years	500/-	Three months
	307/149 IPC	5 years	500/-	Three months
	325/149 IPC	2 years	200/-	Two months
	324/149 IPC	1 years	200/-	Two months
	323/149 IPC	6 months	---	---

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Sahib Singh	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	Two months
	307/149 IPC	5 years	500/-	Three months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	---

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Ajmer Singh	148 IPC	Six months	---	---
	307 IPC	7 years	1000/-	Six months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	---

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Balbir Singh	148 IPC	Six months	---	---
	325 IPC	2 years	200/-	Two months
	307/149 IPC	5 years	500/-	Three months
	326/149 IPC	3 years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	---

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Lakhwinder Singh	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	Two months
	307/149 IPC	5 years	500/-	Three months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	---

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Paramjit Singh	148 IPC	Six months	---	---
	323 IPC	Six months	---	---
	307/149 IPC	5 years	500/-	Three months
	324/149 IPC	1 year	200/-	Two months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 years	200/-	Two months
	323/149 IPC	6 months	---	---

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Angrej Singh (IInd)	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	Two months
	307/149 IPC	5 years	500/-	Three months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 years	200/-	Two months
	324/149 IPC	1 year	100/-	Two months
	323/149 IPC	6 months	---	---

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Balwant Singh	148 IPC	Six months	---	---
	307/149 IPC	5 years	500/-	Three months
	326/149 IPC	3 years	200/-	Two months
	325/149 IPC	2 years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	---

All the sentences were ordered to run concurrently.

3. The catalogue of the facts and sequence of the events giving rise to this prosecution can be summed up as under:-

Complainant Chanan Singh is an agriculturist and is residing in a farm house situated on the southern side of village Chak Somiyan Wala. There is a kucha path by the side of their farm house leading to village Chappar Ki. Accused-appellant Mohinder Singh was having 1 ½ acres of land by the side of the land of complainant Chanan Singh which was purchased by him from Chanan Singh son of Jhanda Singh resident of village Chak Somiyan Wala. The land of complainant Chanan Singh

was being irrigated from the sanctioned water course. The said water course was only available to their land and they also used to use this water-course for irrigation of the land through tubewell water. On 18.09.2001 at about 9/ 9.30 a.m. complainant Chanan Singh along with his father Karnail Singh, paternal uncle Mehal Singh and Mohinder Singh were irrigating their land with the water of electric motor tubewell. Accused Mohinder Singh armed with 'Kirpan', Jasbir Singh armed with 'Takua', Angrej Singh son of Mohinder Singh armed with 'Kapa', Sahib Singh armed with 'Gandassi', Ajmer Singh armed with 'Gandassa', Lakhwinder Singh armed with 'Takua', Paramjit Singh armed with 'Dang' (Lathi), Angrej Singh son of Mehal Singh armed with 'Kapa' and Balwant Singh armed with '12 Bore' gun came on a tractor being driven by accused-appellant Balbir Singh. Accused-appellants Mohinder Singh and Balwant Singh raised 'lalkara' that on that day Jatts should not be allowed to go scot free. At this, accused-appellant Ajmer Singh gave a 'Gandassa' blow on the head of Karnail Singh, who fell down. Balbir Singh ran over the thigh of Karnail Singh under the tyre of tractor and his left thigh was fractured. Paramjit Singh also gave a 'Lathi' blow on the left arm of Karnail Singh. When Mehal Singh came forward to rescue Karnail Singh, accused-appellant Angrej Singh son of Mehal Singh gave 'Kapa' blow on his head. Jasbir Singh gave 'Takua' blow from the reverse side of his elbow. Accused-appellant Mohinder Singh gave 'Kirpan' blow on the forehead of injured Mohinder Singh, who fell down. Paramjit Singh gave thrust-wise 'Lathi' blows in the abdomen of Mohinder Singh. Accused-appellant Balbir Singh also tried to run the tractor over Mohinder Singh,

who immediately went on his left side, but received injury on his shoulder. Accused Angrej Singh gave 'Kapa' blow on the right side of Chanan Singh. Accused Sahib Singh gave 'Gandassi' blow at Chanan Singh, who raised his left hand to ward off the blow, but received the injury on his left hand. Thereafter, Lakhwinder Singh gave 'Takua' blow on his left shoulder. Sarabjit Singh, brother of the complainant who was also present at the spot and the injured raised alarm and thereafter all the accused left the spot by boarding their tractor and also raising 'Lalkaras'. Injured Karnail Singh became unconscious at the spot. Injured were removed to the hospital, where they were medico legally examined. The motive for this occurrence is stated that about 3 ½ months prior to this occurrence there ensued a quarrel between the accused party due to playing of cassettes and in that dispute both the parties received injuries. The accused party had involved the complainant party in a case under Section 307 of IPC from which they were discharged and due to that grudge the accused party had attacked the complainant party.

4. On receiving the message from Police Station Ferozepur regarding the admission of aforesaid injured in Civil Hospital, Ferozepur ASI Naranjan Singh went to the civil hospital and after obtaining the fitness certificate, he recorded the statement of complainant Chanan Singh Ex.P14/A. On the basis of which the present case has been registered. The Investigating Officer inspected the spot on 19.09.2001 and prepared the site plan of the place of occurrence Ex.P-16. The accused persons were arrested. In pursuance of the disclosure statement a 'Takua' was recovered from the possession of accused-appellant Jasbir

Singh. A 'Gandassa' was recovered from the possession of accused-appellant Sahib Singh. A 'Gandassa' was recovered from the possession of accused Ajmer Singh. The tractor involved in the occurrence was also taken into possession. The Investigating Officer also recovered the 'Kirpan' from the possession of accused Mohinder Singh as well as Angrej Singh. During investigation accused Paramjit Singh, Angrej Singh son of Mehal Singh, Balwant Singh and Jasbir Singh were found innocent and on completion of the investigation, the report under Section 173 of Code of Criminal Procedure (for short Cr.P.C) was presented.

5. It is pertinent to mention that initially accused-appellants Mohinder Singh, Jasbir Singh, Angrej Singh son of Mohinder Singh, Sahib Singh, Ajmer Singh, Balbir Singh and Lakhwinder Singh were charge sheeted. Thereafter, accused Paramjit Singh, Angrej Singh son of Mehal Singh and Balwant Singh were summoned as additional accused and the fresh charges were framed against all the ten accused-appellants, to which they pleaded not guilty and claimed trial

6. In order to substantiate its case, prosecution examined as many as ten witnesses in all.

7. When examined under Section 313 Cr.P.C, accused-appellants pleaded that the complainant party was obstructing them from irrigating their fields from the sanctioned watercourse and the complainant party was threatening to forcibly take the possession of their land. They obstructed the complainant party from taking the forcible possession of their land due to which the complainant party caused injuries to them. Complainant party fabricated injuries with the help of

doctors and falsely implicated the appellants to save their skin.

8. In the defence evidence, accused examined Dr. Deepak Chander, CHC Mamdot as DW-1 who has medico legally examined accused Sahib Singh, Jasbir Singh, Mohinder Singh, Angrej Singh son of Mohinder Singh and Lakhwinder Singh and proved their medico legal reports Ex.D-2, Ex.D-3, Ex.D-4, Ex.D-6 and Ex.D-8 respectively and pictorial diagram Ex. D2/A, Ex.D3/A, Ex.D4/A, Ex.D-6/A and Ex.D-8/A respectively. SI Kesar Singh, SHO, Police Station Sadar Ferozepur appeared as DW-2 and deposed that Angrej Singh, Paramjit Singh and Dr. Balwant Singh and one Jagir Singh were declared innocent during investigation and were not challaned. Said investigation was also verified by Sh. Surjit Singh, SP(D) Moga and DSP Barjinder Singh to be correct. Ashwani Kumar, Patwari Halka Chak Somiyan Wala appeared as DW-3. Surinder Singh, Reader to the Court of Smt. M.K.Bedi, JMIC, Ferozepur appeared as DW-4. Thereafter, the defence evidence was closed.

9. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, accused-appellants were convicted and sentenced as mentioned in the upper part of the judgment.

10. Complainant Chanan Singh has preferred the Criminal Revision No. 1055 of 2004 pleading therein that accused Balbir Singh had attempted to commit murder of Karnail Singh. But, the learned trial Court has convicted him only for the offence punishable under Section 325 of IPC, whereas he was required to be convicted for the offence punishable under Section 307 of IPC substantially. Revisionist has also prayed for the enhancement of the sentence awarded to the accused

adequately and for awarding the adequate compensation to him.

11. I have heard Mr. S.P.S.Sidhu, Advocate, learned Counsel for the accused-appellants no. 1, 2, 4, 7 to 10 (and for respondents no. 2 to 11 in CRR No. 1055 of 2004), Mr. Rakesh Kapila, Advocate, learned counsel for accused-appellants no. 3, 5 and 6, Mr. M.S. Sidhu, learned counsel for complainant-revisionist, Mr. Ajaib Singh, learned Additional Advocate General, Punjab and have meticulously examined the record of the case.

12. Initiating the arguments Mr. S.P.S.Sidhu, Advocate, learned counsel for the appellants contended that the present occurrence is alleged to have taken place on 18.09.2001 at 9.30.a.m. But, the FIR has been registered at 7.45 p.m. PW-5 Swarn Singh and Sarabjit Singh were not the injured and they could have easily reported the matter to the police promptly. So, there is delay of about 10 hours in lodging the FIR which has not been satisfactory explained.

13. He further contended that accused Sahib Singh, Jasbir Singh, Mohinder Singh, Angrej Singh son of Mohinder Singh and Lakhwinder Singh have suffered serious injuries in this occurrence. Sahib Singh has suffered a head injury with sharp weapon. Mohinder Singh also suffered the head injury and even the skull bone was exposed. Injury no. 1 on his person was declared as grievous. Angrej Singh son of Mohinder Singh has also suffered the grievous injury on his left thumb. Total 16 injuries have been suffered by the accused persons named above. But, absolutely no explanation has been given by the prosecution about so much injuries on the person of accused persons which establishes that the genesis and

origin of the occurrence has been suppressed and the prosecution is not coming forward with true version, which renders the case of prosecution doubtful. To support his contentions he relied upon case **State of Rajasthan Vs. Rajendra Singh 1998 Supreme Court Cases (Cri) 1605.**

14. He further contended that during investigation, accused Paramjit Singh, Angrej Singh son of Mehal Singh and Balwant Singh were declared innocent by the police and have only been summoned under Section 319 Cr.P.C.

15. He further contended that even the motive alleged by the prosecution with respect to playing the obscene songs is not established. The real cause for this occurrence was the dispute with respect to the sanctioned water-course situated in the land of accused Mohinder Singh. The complainant party was obstructing the accused from irrigating their land through this water-course and they also wanted to forcibly occupy their land. So, the prosecution is even concealing the real motive for the occurrence.

16. He further contended that there is no evidence to establish that the accused were aggressors, rather the members of the complainant party had come to the land of the accused and inflicted serious injuries to five accused persons. So, infact the complainant party was aggressors. In the alternative, he contended that at the most it can be a case of free fight and everybody will be liable for his individual act and Section 149 IPC was not applicable.

17. He further contended that absolutely no role has been attributed to accused Dr. Balwant Singh. It is alleged that he was present

at the spot with a 12 bore gun. If that would have been so, he must have fired the shot from his gun. But, no overt act on his part has been alleged by the prosecution, which shows that he has been falsely implicated. He was declared innocent during investigation. Thus, he pleaded that the appellants have been wrongly convicted.

18. On the other hand, Mr. Ajaib Singh, learned Additional Advocate General, Punjab, contended that from the statements of PW-3 Chanan Singh complainant, PW-4 Mehal Singh an injured witness and PW-7 Karnail Singh another injured witness which are also corroborated from the medical evidence. It is established that the accused persons in prosecution of their common object has attacked the members of the complainant party. Injury no. 1 suffered by Karnail Singh was declared as dangerous to life. Injured Chanan Singh and Karnail Singh have also suffered grievous injuries. The place of occurrence was the passage and not the land of accused Mohinder Singh as argued by learned counsel for the appellants. He contended that accused were aggressors as they have come prepared armed with weapons when the members of the complainant party were irrigating their land. The motive for the occurrence is the dispute of the water-course. He contended that moreover, case of the prosecution is based on direct evidence, so, the motive loses its significance. He further contended that accused-appellant Ajmer Singh has caused a severe head injury with 'Gandassa' to Karnail Singh. He has suffered the compound comminuted depressed skull fracture with brain haemorrhage, which shows that intention was to kill him. He further contended that a cross-case was also registered

against the members of the complainant party. So, injuries on the person of accused are well explained. Moreover, accused-appellants were aggressors and they can not claim the plea of self evidence.

19. Mr. M.S.Sidhu, Advocate, learned counsel for the revisionist has also supported the contentions raised by learned State counsel. In addition to that he contended that accused-appellant Balbir Singh had run over Karnail Singh with intention to kill. So, he should also have been convicted substantially for the offence punishable under Section 307 IPC. He further contended that the sentence is inadequate and even no compensation has been awarded to the injured. He further contended that accused Paramjit Singh, Angrej Singh son of Mehal Singh and Balwant Singh, who were declared as innocent during investigation have been summoned by the learned trial Court under Section 319 Cr.P.C. The prosecution evidence clearly establishes their role in the present occurrence. All the accused were sharing the common object.

20. He further contended that members of the complainant party who were arrayed as accused in the cross-case arising out of this occurrence have already been acquitted. So, the contentions raised by learned counsel for the appellants that members of complainant party were aggressors or it was a case of free fight, has no substance. Thus, he contended that the conviction of appellants has been rightly recorded.

21. I have duly considered the aforesaid contentions.

22. As per the prosecution evidence, the occurrence has taken place on 18.09.2001 at 9.30 a.m. Four persons namely Karnail Singh, Mohinder Singh, Chanan Singh and Mehal Singh were injured. The

condition of Karnail Singh was very serious. As per the statement of PW-2 Dr. Ramesh Kumar, Karnail Singh was semiconscious. His blood pressure and pulse were not recordable. He has to be taken to the bigger hospital for treatment and management. In these circumstances, the foremost duty of the family members was to save the life of injured than to indulge in the legal technicalities. The delay in lodging the FIR is not by itself be regarded as fatal to the case of the prosecution nor it can create any suspicion about the truthfulness of the prosecution version. In view of the circumstances in the case where one of the injured namely Karnail Singh was struggling for life, the delay of 10 hours in lodging the FIR cannot be considered to be inordinate delay to create any dent in the prosecution case. The Hon'ble Supreme Court in case **Om Parkash Vs. State of Haryana 2014(3) R.C.R (Criminal) 25** has laid down that mere delay in lodging the FIR cannot by itself be regarded as fatal to the prosecution case. Same ratio of law has been laid down by Hon'ble Apex Court in cases **Shanmugam and another Vs. State represented by Inspector of Police, Tamil Nadu 2014 (7) R.C.R (Criminal) 1518** and **Jatinder Kumar Vs. State of Haryana 2012(3) R.C.R (Criminal) 736**. The Division Bench of this Court in case **Dalip Singh Vs. State of Punjab 2014(4) R.C.R (Criminal) 151** has laid down that when there is impeccable positive evidence of complicity of the appellant in the commission of the crime, the delay in lodging the FIR is rendered inconsequential. In view of the aforesaid ratio of law, the delay of 10 hours, which is almost explained in the instant case is no ground to create

any doubt about the prosecution version.

23. This fact can not be disputed that accused namely Sahib Singh, Jasbir Singh, Mohinder Singh, Angrej Singh son of Mohinder Singh and Lakhwinder Singh have also suffered the injuries in this case. As per prosecution evidence, complainant PW-3 Chanan Singh, PW-7 Karnail Singh, PW-4 Mehal Singh and Mohinder Singh son of Surain Singh have suffered the injuries from the complainant side. Karnail Singh has suffered three injuries. He has suffered injury no. 1 with sharp weapon on the right side of his head. The underline bone was cut. He has suffered the compound comminuted depressed fracture of skull with brain haemorrhage and the injury no. 1 suffered by him was declared as dangerous to life. He also suffered fracture of pelvic bone and fracture left femur bone. Injury no. 2 on his person i.e. on the front and middle of left thigh was also declared as grievous. Mohinder Singh son of Surain Singh has also suffered three injuries. Injury no. 1 was on the left side of forehead, which was a bone deep injury. Chanan Singh son of Karnail Singh has suffered three injuries. All injuries on his person were caused with sharp weapon. The statement of PW-1 Dr. Hardit Jyoti Radiologist shows that he has suffered the fracture of first metacarpol of the right hand. So, he has also suffered a grievous injury with sharp weapon. PW-4 Mehal Singh has also suffered two injuries. Injury no. 1 was a bone deep injury on the left side of head.

24. From the side of accused-appellants, Sahib Singh has suffered three injuries. Injury no. 2 was on the perital aspect of skull bone. But, all the injuries suffered by him were simple in nature.

Accused-appellant Jasbir Singh has also suffered three injuries. None of the injury suffered by him was on the vital part of body and all the injuries were simple in nature. Accused-appellant Mohinder Singh has suffered five injuries. Injury no. 5 was on the skull. The skull bone was exposed. As per the X-ray report Ex.D-1, the terminal phalanx of his little finger of right hand was found missing. Thus, accused-appellant Mohinder Singh has suffered grievous injury due to loss of the terminal phalanx of little finger of right hand. Accused-appellant Angrej Singh son of Mohinder Singh has also suffered four injuries. Injury no. 2 on his person showed the fracture of first metacarpal bone of left thumb. So, he has also suffered a grievous injury. Accused-appellant Lakhwinder Singh has suffered only one injury with blunt weapon which was simple in nature.

25. This fact is not disputed that out of this occurrence a cross-case was registered against the members of the complainant party for causing injuries to accused mentioned above. PW-3 Chanan Singh complainant has categorically admitted in the cross-examination that they are also facing trial in this case in the cross-version of the present occurrence. Thus, the police has already taken the cognizance of the injuries suffered by the accused in this occurrence and a cross-case was set up against the members of complainant party. Learned counsel for the complainant had stated at bar that in the cross-case, members of the complainant party were acquitted by the learned trial Court and this fact could not be disputed by learned counsel for the appellants. So, it cannot be stated that the prosecution has concealed the injuries on the person of

accused. Rather, the police has put forward the version of both the parties before the Court with respect to this occurrence for judicial verdict. If the prosecution witnesses have not stated in their testimonies about causing the injuries to members of the accused party that will not advance the case of the appellants as the cross-case against the complainant party was already set up by police for trial.

26. Way back, the Hon'ble Apex Court in case **Vijayee Singh Vs. State of U.P 1990(2) R.C.R (Criminal) 304** has laid down that the failure of the prosecution to explain the injuries on the person of accused can not be held to be a ground in each and every case to reject the case of prosecution without any further probe as much depends upon the facts and circumstances of each case. In case **Rajendra Singh and others Vs. State of Bihar 2000(2) R.C.R (Criminal) 537**, the Hon'ble Supreme Court has laid down that if the prosecution evidence is clear, cogent and creditworthy, mere this fact that injuries on the accused were not explained cannot be itself by a sole basis to reject the prosecution evidence. Again in case **Anil Kumar Vs. State of U.P 2004(4) R.C.R (Criminal) 358**, the Hon'ble Apex Court reiterated the legal position that it can not be held that accused should be acquitted in each and every case where injuries on the accused are not explained. In the instant case also the evidence of prosecution is clear, cogent, creditworthy and supported by the medical evidence. So, mere non explanation of the injuries suffered by the prosecution witnesses is itself not a ground to reject the prosecution case. Moreover, in cross-examination, the prosecution

witnesses have not been specifically questioned about the suffering of injuries by accused at the hands of members of the complainant party. In Case **Triloki Nath & Ors. Vs. State of U.P 2005(4) R.C.R (Criminal) 870** also the Hon'ble Apex Court has laid down that it is not the law that prosecution case fails only because injuries on the person of accused have not been explained. It was further laid down that when case of the prosecution is supported by an eye witness who is found to be truthful, in that case mere non-explanation of the injuries of the accused persons cannot be a foundation for discarding the prosecution version. Thus, no benefit can be extended to the accused-appellants for non explanation of the injuries on the person of accused.

27. I also do not find any substance in the contentions raised by learned counsel for the appellants that complainant party was aggressor. Mere this fact that five persons from the accused side had suffered total 16 injuries is not a criteria or ground to draw the conclusion that the complainant party was aggressor. The entire facts and circumstances of the case has to be taken into consideration in order to determine this question. It is the consistent testimonies of PW-3 Chanan Singh, PW-4 Mehal Singh and PW-7 Karnail Singh that on the date of occurrence, the complainant and injured witnesses were irrigating their fields through the disputed water-course from their electric tubewell when the accused-appellants came from the side of village on a tractor armed with deadly weapons. It is the case of accused-appellants that the disputed water-course is the sanctioned water-course by the Canal Department. They also had their turn of water fixed on this water-course. In the defence

evidence, accused have not adduced any documentary evidence to show that the water-course in question was a sanctioned water-course by the Canal Department. They have also not produced any documentary evidence to show that they also had their turn to irrigate the land fixed on this water-course. The accused have set up a plea that members of the complainant party were causing hindrance to them to irrigate their fields from the sanctioned water-course. But, in the defence evidence no documentary evidence has been produced by the accused to show that they had the turn to irrigate their land on 18.09.2001 at 9.30.a.m i.e. the time of occurrence. So, there is no material on record to show that the occurrence has taken place due to hindrance by members of the complainant party to irrigate the land by the accused-appellants through the disputed water-course. As per the site plan Ex.P-16, the authenticity of which has not been disputed, the occurrence has taken place on the passage and not in the land of accused Mohinder Singh. The land of complainant party also abuts the said water-course and the passage. Thus, in these circumstances, there is no escape from the conclusion that the accused party was aggressor. They had come prepared to cause injuries to the prosecution witnesses armed with weapons when they were present in the fields to irrigate their land. Thus, accused-appellants being aggressors can not claim the right of private defence. To support this view reference can be made to case **Abid Vs. State of U.P 2009(4) R.C.R (Criminal) 985(S.C)**.

28. It is also not a case of free fight as the accused-appellants have come prepared armed with weapons to open assault. They also

initiated the occurrence. Mere this fact that some of the accused-appellants have also suffered the injuries is no ground to conclude that it was a case of free fight. To make out the case of free fight both the parties should have contributed to the initiation and consequential occurrence. Those ingredients/ circumstances are totally lacking in this case.

29. The present case is based on the direct evidence. It is settled principle of law that where there is direct evidence to establish the commission of the offence, the absence of the proof of motive is of no legal consequence. But, in the instant case it is even the admitted case of the accused-appellants that there was a dispute qua the water-course between both the parties. It has also come on record that earlier also a dispute has taken place as a result of which the members of complainant party are facing trial. So, it cannot be stated that there was no motive for the present occurrence.

30. This fact is not disputed that during investigation of the case, accused Paramjit Singh, Angrej Singh son of Mehal Singh and Balwant Singh were declared innocent. But, they were later on summoned as additional accused to face the trial under Section 319 Cr.P.C and have facing the trial along with other accused-appellants. The specific injuries have been attributed to accused-appellants by the prosecution witnesses except accused-appellant Balwant Singh. Accused-appellant Mohinder Singh was armed with a 'Kirpan'. He raised 'Lalkara' and gave injury on the forehead of Mohinder Singh son of Surain Singh with the 'Kirpan' Accused-appellant Jasbir Singh had given a 'Takua' blow on the elbow of Mehal Singh. Accused-appellant Angrej Singh son of Mohinder Singh

has given a 'Kapa' blow on the head of Mehal Singh and second blow on the hand of Chanan Singh. The injury attributed to him on the right hand of Chanan Singh was declared as grievous with sharp weapon, which attracts Section 326 IPC. Accused-appellant Sahib Singh has given the 'Gandassi' blow on the left hand of Chanan Singh. Accused-appellant Ajmer Singh has given a 'Gandassa' blow on the head of Karnail Singh and this injury was declared as dangerous to life. Accused-appellant Lakhwinder Singh has given a 'Takua' blow on the left shoulder of Chanan Singh. Accused-appellant Paramjit Singh gave a 'Dang' blow on the left arm of Chanan Singh and he caused the second injury on the abdomen of Mohinder Singh. Accused-appellant Angrej Singh son of Mehal Singh was armed with 'Kapa' and had given the 'Kapa' blow on the head of Mehal Singh PW-4. Accused-appellant Balbir Singh had run over Karnail Singh under his tractor as a result of which he suffered the fracture of pelvic bone and fracture left femur bone and he also tried to run over Mohinder Singh. So, the specific injuries have been attributed to all the accused except accused-appellant Balwant Singh.

31. As per the prosecution version, accused-appellant Balwant Singh was armed with a gun and only a 'Lalkara' has been attributed to him. No other overt act has been attributed to him for his participation in the occurrence. It is not believable that in this type of occurrence if a person is present at the spot having a fire arm, he will just remain the silent spectator and will not use the fire arm to cause more damage to the opponents. He has also not suffered any injury on his person. Though, five members of accused party have suffered injuries on their person. It is

also not alleged that he has fired any shot from his gun. Thus, only a 'Lalkara' has been attributed to him. It does not appeal to the reasons that a person armed with a gun will come present at the place of occurrence just for giving a 'Lalkara'. So, the presence of accused-appellant Balwant Singh at the place of occurrence is extremely doubtful. Consequently, his presence at the spot and participation in the occurrence is not established beyond shadow of reasonable doubt and he deserves the benefit of doubt.

32. The plea raised by learned counsel for the revisionist that accused-appellant Balbir Singh should also have been convicted substantially for the offence punishable under Section 307 IPC cannot be entertained at this stage as he was never substantially charge sheeted for the offence punishable under Section 307 IPC by the learned trial Court. He was only charge sheeted for the offence punishable under Section 307 read with Section 149 IPC for sharing the common object with co-accused-appellant Ajmer Singh. Substantially, he has been charge sheeted only for the offence punishable under Section 325 IPC. At no stage of trial, the prosecution has raised the plea that accused-appellant Balbir Singh should also have been charge sheeted substantially for the offence punishable under Section 307 IPC. The State of Punjab has also not filed any appeal for not convicting appellant Balbir Singh substantially for the offence punishable under Section 307 IPC. The occurrence has taken place on 18.09.2001. About 14 years have lapsed since the date of occurrence. The interest of justice does not demand that the case should be remanded to the trial Court in order to frame the charge against appellant Balbir Singh substantially for the offence punishable under

Section 307 IPC and to conduct the fresh trial. The role played by appellant Balbir Singh can be taken into consideration while determining the quantum of sentence.

33. Learned counsel for the appellants has also pleaded that the appellants are facing the trial for the last about 14 years. Five members from the side of accused party have also suffered injuries. In the previous occurrence also they were the victims. Thus, he pleaded for reduction of sentence. The aforesaid plea raised by learned counsel for the appellants has substance. There is no denial to the fact that appellants are facing the agony of these proceedings for the last about 14 years. It is also not disputed that five persons from the accused side have also suffered injuries in this occurrence. In the previous occurrence also the members of accused party were the victims. There is no material on record to show that after this occurrence, the appellants had indulged in any other such criminal activities. So, the interest of justice requires reduction in quantum of sentence of the accused-appellants except accused-appellant Balbir Singh, who has caused grievous injuries on the person of Karnail Singh by running over him under his tractor and also tried to run over Mohinder Singh. Thus, the sentences awarded to accused-appellants by the learned trial Court except accused-appellant Balbir Singh are required to be reduced.

34. Complainant Chanan Singh has suffered the grievous injury i.e. first metacarpol of his right hand with a sharp weapon. PW-7 Karnail Singh had suffered a sever head injury. He had the compound comminuted fracture of skull on the right side with depressed fracture and

haemorrhage, which were declared dangerous to life. He also suffered fracture pelvic bone and fracture left femur bone. In the revision petition filed by the complainant, it has been prayed that the compensation should be awarded to them. The learned trial Court has not awarded any compensation to these injured. Certainly, injured Karnail Singh and complainant Chanan Singh shall be entitled to compensation under Section 357 (1) Cr.P.C as fine is the part of the sentence. In order to meet out that object, the Court has to enhance the amount of fine and out of that the suitable compensation can be paid to injured-complainant Chanan Singh and PW-7 Karnail Singh. Reliance can be placed on case **Puttaswamy Vs. State of Karnataka 2009 (1) RCR (Criminal) 501 (SC)**.

35. Thus, keeping in view my aforesaid discussion, criminal appeal no. CRA-S-632-SB of 2004 qua accused-appellant Balwant Singh is hereby allowed. The conviction and sentence of accused-appellant Balwant Singh as recorded by the learned trial Court is hereby set aside and he stands acquitted of the charges. The substantive sentences awarded to appellants Mohinder Singh, Jasbir Singh, Angrej Singh son of Mohinder Singh, Sahib Singh, Ajmer Singh, Lakhwinder Singh, Paramjit Singh, Angrej Singh son of Mehal Singh are hereby modified/reduced and sentence of fine is enhanced as under:-

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Mohinder Singh	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	Two months
	307/149 IPC	3 years	10,500/-	Three months
	326/149 IPC	2 years	200/-	Two months
	325/149 IPC	1 ½ years	200/-	Two months

	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	_____

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Jasbir Singh	148 IPC	Six months	---	---
	323 IPC	Six months	---	---
	307/149 IPC	3 years	10,500/-	Three months
	324/149 IPC	1 year	200/-	Two months
	326/149 IPC	2 years	200/-	Two months
	325/149 IPC	1/ ½ years	200/-	Two months
	323/149 IPC	6 months	---	_____

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Sahib Singh	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	Two months
	307/149 IPC	3 years	10,500/-	Three months
	326/149 IPC	2 years	200/-	Two months
	325/149 IPC	1 ½ years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	_____

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Lakhwinder Singh	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	Two months
	307/149 IPC	3 years	10,500/-	Three months
	326/149 IPC	2 years	200/-	Two months
	325/149 IPC	1 ½ years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	_____

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Paramjit Singh	148 IPC	Six months	---	---
	323 IPC	Six months	---	---
	307/149 IPC	3 years	10,500/-	Three months
	326/149 IPC	2 years	200/-	Two months
	325/149 IPC	1 ½ years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	_____

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Angrej Singh son of Mehal Singh	148 IPC	Six months	---	---
	324 IPC	1 ½ years	200/-	two months
	307/149 IPC	3 years	10,500/-	Three months
	326/149 IPC	2 years	200/-	Two months
	325/149 IPC	1 ½ years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Angrej Singh son of Mohinder Singh	148 IPC	Six months	---	---
	326 IPC	2 ½ years	500/-	Three months
	307/149 IPC	3 years	10,500/-	Three months
	325/149 IPC	1 ½ years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	

Name of the Convict	Under Section	R.I	Fine	In default of payment of fine to further rigorous imprisonment
Ajmer Singh	148 IPC	Six months	---	---
	307 IPC	5 years	11,000/-	Three months
	326/149 IPC	2 years	200/-	Two months
	325/149 IPC	1 ½ years	200/-	Two months
	324/149 IPC	1 year	200/-	Two months
	323/149 IPC	6 months	---	

36. As far as accused-appellant Balbir Singh is concerned, the sentence of fine awarded to him for the offence punishable under Section 307/149 IPC is enhanced from 500/- to 10,500/-. All other sentences awarded to him and default clauses will remain intact.

37. All the aforementioned sentences shall run concurrently.

38. Out of the fine so realized Rs.10,000/- from each accused i.e. total Rs.90,000/- shall be paid to complainant-injured Chanan Singh and PW-7 Karnail Singh as compensation under Section 357(1) Cr.P.C. Out of this amount of Rs.90,000/-, Rs.25,000/- shall be paid to complainant-

injured Chanan Singh and Rs.65,000/- shall be payable to injured PW-7 Karnail Singh as compensation. The enhanced amount of fine be deposited with the learned trial Court. With the aforesaid modification in the order of sentence, the appeal qua appellants Mohinder Singh, Jasbir Singh, Angrej Singh son of Mohinder Singh, Sahib Singh, Ajmer Singh, Balbir Singh, Lakhwinder Singh, Paramjit Singh, Angrej Singh son of Mehal Singh has no merits and the same is hereby dismissed.

39. The revision petition filed by Chanan Singh with the grant of compensation to injured-complainant Chanan Singh and Karnail Singh stands partly allowed as mentioned above. Accused-appellants Mohinder Singh, Jasbir Singh, Angrej Singh son of Mohinder Singh, Sahib Singh, Ajmer Singh, Balbir Singh, Lakhwinder Singh, Paramjit Singh and Angrej Singh son of Mehal Singh are on bail. Their bail stand cancelled. They shall surrender within 15 days from the date of this judgment before the learned Chief Judicial Magistrate, Ferozepur, who shall send them to jail to undergo the remaining part of their sentences. If, they fail to surrender, the learned Chief Judicial Magistrate, Ferozepur, shall take coercive steps to secure their presence and send them to jail to undergo the remaining part of the sentence.

October 05, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**