

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA No.D-676-DB of 2014 (O&M)  
Date of decision: 26.05.2015

Kulwinder Kaur and another

..... Appellants

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON  
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. P.S. Brar, Advocate  
for the appellants. '

Mr. Arshvinder Singh, Addl. A.G., Punjab  
respondent No.1.

Mr. Navdeep Chhabra, Advocate  
for respondents No. 2 & 5.

Ms. Baljeet Kaur Mann, Advocate  
for respondents No. 3 & 4.

Mr. R.K. Girdhar, Advocate  
for respondents No. 6 to 8.

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S.S. Saron, J.

This appeal has been filed by Kulwinder Kaur and her husband Bhajan Singh, being aggrieved against the order dated 30.01.2014 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib for modifying and for enhancing the sentences awarded to Iqbal Singh, Balraj Singh, Lovepreet Singh, Kulwant Singh, Baljeet Singh and Gurditta Singh @ Gura (respondents No. 2, 3 and 5 to 8) and for convicting Sukhbir Singh (respondent No.4) also for the offences under Section 307, 452, 326, 324, 323, 148/149 Indian Penal Code

('IPC' - for short). It is further prayed that compensation may be awarded to the appellants.

Iqbal Singh, Balraj Singh, Lovepreet Singh, Kulwant Singh, Baljeet Singh and Gurditta Singh @ Gura (respondents No.2, 3 and 5 to 8) have been convicted by the learned Additional Sessions Judge, Sri Muktsar Sahib inasmuch as Iqbal Singh (respondent No.2) has been held guilty for the offence punishable under Section 307 IPC and co-accused Balraj Singh, Lovepreet Singh, Kulwant Singh, Baljeet Singh and Guranditta Singh (respondents No.3, 5 to 8) have been convicted for the offence under Section 307/149 IPC. Lovepreet Singh and Guranditta Singh (respondent No.5 and 8) have been held guilty for the offence under Section 326 IPC, while co-accused Iqbal Singh, Balraj Singh, Kulwant Singh and Baljit Singh (respondents No.2, 3, 6 and 7) have been held guilty for the offence under Section 326/149 IPC. All the said accused (respondents No.2, 3, 5 to 8) have been held guilty for the offence under Section 148 IPC, and Section 450 read with Section 149 IPC. Balraj Singh and Kulwant Singh (respondents No.3 and 6) have been held guilty for the offence under Section 323 IPC and co-accused Iqbal Singh, Lovepreet Singh, Baljit Singh and Guranditta Singh (respondents No.2, 5, 7 and 8) have been held guilty for the offence under Section 323/149 IPC. Sukhbir Singh alias Gosha

(respondent No.4), it was held, was not proved to be present at the time of occurrence so he was acquitted of the charge framed against him.

Iqbal Singh (respondent No.2) was sentenced to undergo rigorous imprisonment for seven years; besides, pay a fine of Rs.5000/- and in default in payment undergo imprisonment for six months for the offence under Section 307 IPC. He was also sentenced to varying terms for the other offences i.e. two years, three years, three years and one year for the offences under Sections 148, 450/149, 326/149 and 323/149 IPC, besides, pay fine etc. Balraj Singh (respondent No.3) was sentenced to undergo rigorous imprisonment for four years; besides, pay fine of Rs.3000/- and in default thereof undergo imprisonment for four months for the offence under Section 307/149 IPC. He was also sentenced to one year, three years, three years and two years imprisonment for the offences under Sections 323, 450/149, 326/149 and 148 IPC respectively, besides, pay a fine etc. Lovepreet Singh (respondent No.5) was sentenced to undergo rigorous imprisonment for four years; besides, pay fine of Rs.3000/- and in default thereof undergo imprisonment for four months for the offence under Section 307/149 IPC. He was also sentenced to three years, three years, one year and two years imprisonment for the offences under Sections 326, 450/149,

323/149 and 148 IPC respectively, besides, pay a fine etc. Kulwant Singh (respondent No.6) was sentenced to undergo rigorous imprisonment for four years; besides, pay a fine of Rs.3000/- and in default thereof undergo imprisonment for four months for the offence under Section 307/149 IPC. He was also sentenced to one year, three years, three years and two years imprisonment for the offences under Sections 323, 450/149, 326/149 and 148 IPC respectively, besides, pay a fine etc. Baljit Singh (respondent No.7) was sentenced to undergo rigorous imprisonment for four years; besides, pay a fine of Rs.3000/- and in default thereof undergo imprisonment for four months for the offence under Section 307/149 IPC. He was also sentenced to one year, three years, three years and two years imprisonment for the offences under Sections 323/149, 450/149, 326/149 and 148 IPC respectively, besides, pay a fine etc. Guranditta Singh (respondent No.8) was sentenced to undergo rigorous imprisonment for four years; besides, pay a fine of Rs.3000/- and in default thereof undergo imprisonment for four months for the offence under Section 307/149 IPC. He was also sentenced to three years, three years, one year and two years imprisonment for the offences under Sections 326, 450/149, 323/149 and 148 IPC respectively, besides, pay a fine etc. All the sentences were ordered to run concurrently and the period of sentence already

spent by the accused were ordered to be set off from the substantive sentences in terms of Section 428 of the Code of Criminal Procedure ('Cr.P.C.' - for short).

The grievance of the appellants is that inadequate sentence has been awarded to Iqbal Singh (respondent No.2) for the offence under Section 307 IPC i.e. seven years imprisonment and further that inadequate sentence have been awarded to Balraj Singh, Lovepreet Singh, Kulwant Singh, Baljit Singh and Guranditta Singh (respondents No.3, 5 to 8) i.e. four years imprisonment.

Insofar as the appeal for enhancement of sentences awarded to Iqbal Singh, Balraj Singh, Lovepreet Singh, Kulwant Singh, Baljit Singh and Guranditta Singh (respondents No.2, 3, 5 to 8) is concerned, it is to be noticed that an appeal is not maintainable against the quantum of sentence. In terms of the proviso to Section 372 Cr.P.C., which provides for remedy of appeal to a 'victim', it is envisaged that the 'victim' shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The same does not evidently provide a remedy for filing an appeal against inadequate sentence and for imposing higher sentences.

In National Commission for Women v. State of

Delhi, (2010) 12 SCC 599, Hon'ble the Supreme Court held

that Section 372 Cr.P.C. specifically provides that no appeal shall lie from a judgment or order of a criminal Court except as provided by the the Code (Cr.P.C.) or by any other law which authorises an appeal. The proviso inserted to Section 372, it was said gives a limited right to the 'victim' to file an appeal in the High Court against any order of a criminal Court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. The proviso it was further said does not envisage an appeal against an inadequate sentence. Therefore, an appeal at the behest of the 'victim' against inadequate sentence or for enhancing the sentence that has been imposed would not be maintainable.

Insofar as payment of compensation, is concerned, it is to be noticed that no compensation has been awarded by the learned trial Court. A reading of the proviso to Section 372 Cr.P.C. shows that only quantum of compensation that has been awarded can be challenged by terming the same to be inadequate. The proviso to Section 372 Cr.P.C. provides for a limited right of appeal to the High Court by a 'victim', as already noticed, against any order of a criminal Court acquitting the accused or convicting him for a lesser offence or the imposition of inadequate compensation. There is no provision of appeal against award of no compensation.

However, the appellants, may if so advised, prefer an

application in the appeal filed by the convicts/respondents against their conviction and sentence praying for award of compensation, which may be urged therein and it would be for the Court to consider the same. An appeal, however, against omission of not awarding the payment of compensation would not be maintainable.

Therefore, the only question that requires consideration is whether the acquittal of Sukhbir Singh @ Gosha (respondent No.4) is liable to be interfered with.

Shri P.S. Brar, Advocate, learned counsel for the appellants has referred to the observations of the learned trial Court as made in para 50 of its judgment and contended that the plea of alibi raised by learned counsel for Sukhbir Singh @ Gosha (respondent No.4) is not tenable inasmuch as the record referred to by the learned trial Court is not an official record and it is that of the Bharat Petroleum Corporation Ltd. Therefore, no reliance was liable to be placed on the same.

In response Ms. Baljeet Kaur Mann, learned counsel for respondent No.4 contended that in the FIR Sukhbir Singh @ Gosha is not attributed any role. It is alleged by the complainant Kulwinder Kaur (PW-1) (appellant No.1) that Sukhbir Singh @ Gosha was armed with a 'dang' but he did not cause any injury to anyone. Besides, during deposition in

Court, it is alleged that Sukhbir Singh @ Gosha along with Baljit Singh caught hold of the arm of Kulwinder Kaur (complainant-appellant No.1). To similar effect is the deposition of Bhajan Singh (PW-3) (Appellant No.2), husband of Kulwinider Kaur. Besides, Sukhbir Singh @ Gosha (respondent No.4) was found innocent during investigation and was not sent up for trial. He was summoned as an additional accused under Section 319 Cr.P.C. The record of Bharat Petroleum Corporation Ltd., it is submitted, is a computer generated record and cannot be manipulated.

We have given our thoughtful consideration to the matter.

FIR in the case has been registered on the basis of statement of Kulwinder Kaur recorded by SI Balkar Singh, Police Station Sadar Muktsar. According to Kulwinder Kaur, on the date of occurrence i.e. 10.2.2011, she along with her husband Bhajan Singh (appellant No.2) was present in her house. The outer gate of their house was lying open. At that time, Iqbal Singh (respondent No.2) armed with a 'gandasa', Lovepreet Singh (respondent No.5) armed with a 'gandasa', Kulwant Singh (respondent No.6) armed with a 'dang', Guranditta Singh (respondent No.8) armed with a sword ('kirpan') and Baljeet Singh (respondent No.7) empty handed, residents of village Jando Ke accompanied by one Balraj Singh

(respondent No.3), resident of village Chak Saido Ke armed with an iron rod and his son Gosha (Sukhbir Singh-respondent No.4) armed with a 'dang' entered in her house and started raising 'lalkara' that on the said day Bhajan Singh (appellant No.2) should not be spared and he be taught a lesson for encroaching upon the land of Iqbal Singh (respondent No.2). Iqbal Singh (respondent No.2) inflicted a 'gandasa' blow on the head of Bhajan Singh (appellant No.2) - the husband of the complainant. The blow made a deep cut from the forehead towards the back of his head. Then, Kulwant Singh (respondent No.6) inflicted a 'dang' blow, which hit Bhajan Singh (appellant No.2) on his thumb. He raised an alarm of 'maar ditta, maar ditta'. When the complainant tried to intervene to save her husband (Bhajan Singh), then Lovepreet Singh @ Labh (respondent No.5) inflicted a 'dang' blow on the back of the head of the complainant Kulwinder Kaur (appellant No.1). Immediately thereafter Guranditta Singh @ Gura (respondent No.8) inflicted a sword ('kirpan') blow on the back of the head of the complainant. Then, Gura (respondent No.8) inflicted an iron rod blow on the left shoulder of the complainant. Both husband and wife i.e. Bhajan Singh and Kulwinder Kaur (appellants) started bleeding profusely and they raised an alarm. Suddenly, father-in-law of the complainant and Nihal Singh reached their house and on

seeing them, all the assailants along with their respective weapons fled from the spot. Both the injured were admitted in the Civil Hospital by Lakhvir Singh, Member Panchayat. Bhajan Singh (appellant No.2), the husband of the complainant, had received fatal injuries, therefore, he was referred to Faridkot for treatment.

The motive behind the incident was that about seven years back, the wife of Iqbal Singh (respondent No.2), namely, Inderjeet Kaur and his mother Balbir Kaur had committed suicide by consuming poison and he (Iqbal Singh respondent No.2) was accusing the husband of the complainant i.e. Bhajan Singh (appellant No.2) for that and in this regard Iqbal Singh (respondent No.2) had also filed a private complaint against Bhajan Singh (appellant No.2), the husband of the complainant. The complainant party had purchased a plot measuring 2 Kanals from Dalip Singh and Ajit Singh etc. and the sale deed as well as mutation was in the name of the complainant party. The accused, however, wanted to take forcible possession of the said plot, to which, the complainant party was resisting. Due to this, all the persons with pre-determined mind, it was said, had inflicted injuries to the complainant and her husband.

After investigation and trial the learned Addl. Sessions Judge, Sri Muktsar Sahib, held Iqbal Singh

(respondent No.2) guilty for the offence under Section 307 IPC. The co-accused Balraj Singh (respondent No.3), Lovepreet Singh (respondent No.5), Kulwant Singh (respondent No.6), Baljit Singh (respondent No.7) and Guranditta Singh (respondent No.8), for the offences under Sections 307/149 IPC. Besides, the accused were also held guilty for the other offences as have been noticed above. However, in respect of Sukhbir Singh @ Gosha (respondent No.4) it was held that he was not present at the time of occurrence and he was acquitted.

Criminal Appeals filed by the said accused i.e. CRA-S-1236-SB-2014 and CRA-S-929-SB-2014 are pending in this Court.

Insofar as the acquittal of Sukhbir Singh @ Gosha (respondent No.4), is concerned, the learned trial Court in para 50 of its judgment held as follows :-

"50. Whereas, so far as Sukhbir Singh alias Gosha Singh is concerned, he has also taken a plea of alibi and in order to prove the same besides examining DW8 Vijay Kumar, Officer of M/s Sonia Auto Centre, Jalalabad, who proved that on 10.2.2011 Sukhbir Singh present in the court was conductor on oil canter bearing RC no. PB-05H-9465 and canter was sent for

filling the oil from Bharat Petroleum Corporation Ltd., Bathinda on 10.2.2011 and the Corporation issued invoice in this regard and proved the original Ex. DW8/A and further DW9 Nitesh Sikka, Executive Operation, Bharat Petroleum Corporation Ltd. appeared and deposed once the canter enters the premises of the Corporation for filling of oil, the entry is made online in the computer and time is noted. Once the canter is entered neither the driver nor the conductor is allowed to leave the premises and proved the computer generated documents Ex.DW9/A and Ex.DW8/A and further said on invoice the signature of the driver or conductor are taken and same are there on Ex.DW8/A. Whereas, even on the carbon copy Ex.DW9/B produced by the officer of Bharat Petroleum Corporation his signature is there. It means, signatures have not been appended on the invoice later on. Since, it is official record, so it cannot be manipulated afterwards. As per the entry dated 10.2.2011 Sukhbir entered alongwith tanker in the premises of Bharat Petroleum Corporation

Bathinda on 10.2.2011 at 8.51 A.M. and came out at 1.14.10 as per the entry Ex.PW9/A. Meaning thereby, at the time of occurrence, Sukhbir Singh alias Gosha was not present. So, he has been falsely implicated. Therefore, he deserves acquittal.”

The learned trial Court has in the circumstances held that Sukhbir Singh @ Gosha (respondent No.4) was not present at the time of the incident and he was falsely implicated in the case.

The reasons recorded by the learned trial Court are sound and, in any case, it is a reasonable and a possible view. In an appeal against acquittal of an accused where the learned trial Court has taken a reasonable and a possible view in acquitting the accused, the same is not liable to be lightly interfered with merely on the ground that another view may be possible. Interference with an order of acquittal would be warranted only if the order is perverse, against the evidence and material on record and rendered in complete breach of the settled principles of criminal jurisprudence. The findings recorded by the learned trial Court are on the basis of the record maintained by the Bharat Petroleum Corporation Ltd., which has maintained the record of entry and exit of vehicles possibly because of stopping pilferage. It has come on record

that Sukhbir Singh (respondent No.4) was a conductor on the oil Canter bearing Registration No. PB-05H-9465 and the said Canter was sent for filling the oil from the depot of the Bharat Petroleum Corporation Ltd., Bathinda on 10.2.2011, which is the date of the incident. It has come on record that once the Canter had entered the premises of the Bharat Petroleum Corporation Ltd., Bathinda, neither the driver nor the conductor was allowed to leave the premises. The computer generated documents show the entry of Sukhbir Singh (respondent No.4) along with the Canter in the premises of Bharat Petroleum Corporation Bathinda on 10.2.2011 at 8.51 a.m. and it had come out of the premises at 1.14.10 p.m. as per the entry Ex.PW9/A.

It may also be noticed that Sukhbir Singh was found innocent during investigation and was not sent up for trial. He was summoned as an additional accused in terms of Section 319 Cr.P.C. Bharat Petroleum Corporation Ltd. is a semi government organization under the control of Central Government and it is unlikely that the record prepared by it would have been tempered with. Therefore, we find no reason or justification to take a different view so far as the findings recorded and reached at by the learned trial Court in acquitting Sukhbir Singh @ Gosha Singh (respondent No.4) is concerned.

In the circumstances, the appeal against Iqbal Singh, Balraj Singh, Lovepreet Singh, Kulwant Singh, Baljeet Singh and Gurditta Singh @ Gura (respondents No. 2, 3 and 5 to 8) is dismissed as being not maintainable. The appeal as regards the award of compensation is also dismissed, as no compensation has been awarded by the learned trial Court; however, it would be open to the appellants to agitate for claiming compensation in the pending appeals of the convicts and the question may be gone into in the said case as appeal is a continuation of the original proceedings. The appeal against the acquittal of Sukhbir Singh @ Gosha (respondent No.4) is dismissed. Nothing stated herein above shall, in any case, be taken as an expression of opinion on the merits of the case insofar as criminal appeal filed by the respondents against their conviction and sentence is concerned and the observations made herein are only for the purpose of disposing of the present appeal.

(S.S. Saron)  
Judge

(Ramendra Jain)  
Judge

26.05.2015  
sp/A.Kaundal