

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. **Crl. Appeal-S No.3223-SB of 2010**
Date of Decision: March 25 , 2015.

Jagdev Singh APPELLANT(s)
Versus

State of Punjab RESPONDENT (s)

2. **Crl. Appeal-S No. 168-SB of 2009**

Jagtar Singh APPELLANT(s)
Versus

State of Punjab RESPONDENT (s)

3. **Crl. Appeal-S No. 121-SB of 2009**

Nirmal Singh APPELLANT(s)
Versus

State of Punjab RESPONDENT (s)

4. **Crl. Appeal-S No. 116-SB of 2009**

Amrik Singh APPELLANT(s)
Versus

State of Punjab RESPONDENT (s)

5. **Crl. Appeal-S No. 115-SB of 2009**

Bhagwant Singh APPELLANT(s)
Versus

State of Punjab RESPONDENT (s)

6. Crl. Appeal-S No. 24-SB of 2009

Varjinder Singh and another APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

7. Crl. Appeal-S No. 3-SB of 2009

Daljit Singh and others APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. K.S.Hissowal, Advocate
(in CRA-S No.116-SB, 115-SB, 121-SB, 168-SB of 2009
and CRA-S No.3223-SB of 2010).
Mr. Gurcharan Dass, Advocate
(in CRA-S No.3-SB of 2009)
Mr. Sandeep Arora, Advocate
(in CRA-S No.24-SB of 2009)
for the appellants.

Mr. Deepak Garg, AAG, Punjab.

Mrs. G.K.Mann, Advocate
for the complainant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This judgment shall dispose of CRA-S No.3223-SB of 2010

(Jagdev Singh v. State of Punjab), CRA-S No.168-SB of 2009 (Jagtar Singh

v. State of Punjab), CRA-S No.121-SB of 2009 (Nirmal Singh v. State of Punjab), CRA-S No.116-SB of 2009 (Amrik Singh v. State of Punjab), CRA-S No.115-SB of 2009 (Bhagwant Singh v. State of Punjab), CRA-S No.24-SB of 2009 (Varjinder Singh and another v. State of Punjab) and CRA-S No.3-SB of 2009 (Daljit Singh and others v. State of Punjab).

Abovesaid appeals have been filed by the appellants who have been convicted for the offences punishable under Sections 323/325/326/148/149 IPC and sentenced to undergo rigorous imprisonment for varying terms maximum being rigorous imprisonment for three years for the offence punishable under Sections 326/149 IPC vide impugned judgment and order dated 29.11.2008 by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana.

As per the prosecution version, complainant Kuldeep Singh, Junior Engineer was returning from his office at Sudhar on 30.11.2000. He was proceeding to his village Jangpur on his scooter bearing registration No. PB-10X-9416. He was way-laid by a Ford tractor driven by appellant – Jagtar Singh at the turning point of village Jangpur. He tried to crush the complainant with the said tractor with an intention to kill him but the complainant saved himself by turning to the left side. Appellant Ajmer Singh @ Major Singh, Sarpanch (one of the three appellants in CRA-S No.3-SB of 2009) who was sitting behind the bushes, fired a shot at Kuldeep Singh but fortunately he escaped being shot as he ducked and it went over his head. In the entire process complainant's scooter skidded and he fell onto the ground. He tried to run away. Ajmer Singh Sarpanch exhorted the other accused that complainant should be caught and he should not go scot-free. Thereafter, appellant Ajmer Singh @ Geja (since deceased) caught hold of the complainant. Appellant Daljit Singh son of Sadhu

Singh tried to strike him with a sword. As the complainant tried to ward-off the blow, the sword struck on his right fore-arm. In the meantime, Amrik Singh son of Kartar Singh, Tehal Singh son of Bhan Singh, Bhagwant Singh son of Joginder Singh alongwith four unidentified persons came at the spot. Appellant – Amrik Singh inflicted a blow on his head with a rod. All the accused persons started inflicting Dang blows on his entire body. Premjit Singh and Balbir Singh alongwith other people gathered there and rescued the complainant. All the accused fled from the spot on a car and a tractor. Cause of the attack was revealed to be an application moved by the complainant to Director Panchayat against Ajmer Singh @ Major Singh regarding some encroachment made by him over Shamlat land. It is due to this grudge that injuries were caused to the complainant. He was attacked with an intention to kill him.

On the basis of this statement (Ex.PW2/A) of Kuldeep Singh, FIR No.86 dated 02.12.2000 (Ex.PW3/C) under Sections 323/324/325/326/307/148/149 IPC was registered at police station Dakha. As many as thirty seven (37) injuries were found on the person of complainant Kuldeep Singh on examination by Dr. Resham Chand, PW1. As per the MLR (Ex.P1), injuries No.12 and 20 were declared grievous in nature on the basis of x-ray report by Dr. G.S.Gill.

On investigation being completed, challan/report under Section 173 Cr.P.C. was presented against accused Jagdev Singh, Nirmal Singh, Jagtar Singh, Harjit Singh, Barjinder Singh, Amrik Singh, Bhagwant Singh and Daljit Singh @ Happy. Ajmer Singh @ Major Singh, Tehal Singh, Daljit Singh and Ajmer Singh @ Geja (since deceased) were found innocent during investigation.

Case was committed to the court of Sessions. Thereafter, an application under Section 319 Cr.P.C. was filed, upon which the accused Ajmer

Singh @ Major Singh, Tehal Singh, Ajmer Singh @ Geja and Daljit Singh son of Sadhu Singh were summoned on 02.07.2002 as additional accused. Charge was framed against all the accused persons for the offences punishable under 323/324/325/326/307/148/149 IPC. They pleaded innocence and claimed trial. Ajmer Singh @ Geja passed away during the pendency of the trial. Harjit Singh was declared a proclaimed offender. He was tried, convicted and sentenced subsequently. Harjit Singh is not an appellant in the present set of appeals before this Court.

Prosecution produced as many as seven witnesses to prove its case. Accused in their statements under Section 313 Cr.P.C. pleaded innocence and false implication. In defence, two witnesses were examined.

Learned trial court on going through the facts and circumstances and on appreciation of the evidence on record concluded that the prosecution has failed to prove the charge against the accused for the offence punishable under Section 307 IPC. All the accused were however convicted for the offences punishable under Sections 323/325/326/148/149 IPC and sentenced to undergo rigorous imprisonment for varying periods, the maximum being rigorous imprisonment for three years.

Learned counsel for the appellants vehemently argue that the learned trial court has proceeded on the basis of conjectures and surmises. In fact, there is no evidence on record to connect the appellants with the offences in question. It is urged that the delay in lodging of the FIR strikes at the root of the prosecution case. Incident allegedly took place on 30.11.2000 at about 4.00 p.m. and the FIR has been registered on 02.12.2000. Complainant – Kuldeep Singh had refused to have his statement recorded though it is proved on record

that he was conscious at the time of admission to the hospital. FIR is therefore, a result of due deliberation, consultation and is not a true narration of the facts.

Furthermore, appellants Ajmer Singh son of Sadhu Singh as well as Ajmer Singh @ Geja (since deceased), Daljit Singh and Tehal Singh were found to be innocent in an inquiry conducted by DW2 Nirlabh Kishore, Assistant Commissioner of Police. They were summoned by the trial court as additional accused on an application moved under Section 319 Cr.P.C.

It is further contended that there is no independent witness of the alleged occurrence. So called eye-witness PW5 Balbir Singh has not supported the prosecution version and Premjit Singh has not even been examined for reasons best known to the prosecution. Balbir Singh and Premjit Singh are the persons who allegedly saved complainant from the clutches of the accused. Learned counsel for the appellants would also urge that injuries on the person of Kuldeep Singh are simple in nature. A doubt is raised on the prosecution version on account of the fact that complainant was taken to Civil Hospital, Sudhar instead of Civil Hospital, Dakha which was nearer to the place of occurrence. There is no explanation as to why he was not taken to the nearest hospital for medical aid. Complainant's version is also not corroborated as no pistol or sword etc. has been recovered. No empty cartridges were recovered from the spot. There is no evidence of firing. It is also contended that complainant has unnecessarily tried to involve all the accused persons in a *mala fide* manner. No identification parade was conducted to prove the identity of all the accused, some of whom being mentioned as unidentified persons in the FIR. Complainant – Kuldeep Singh is also stated to be involved in a corruption case and his antecedents are suspect.

Learned counsel for the appellants points out that the complainant is a green-card holder and has been living in the United States of America since the past eight years. It is urged, in the facts and circumstances, that prosecution cannot be said to have proved its case beyond the shadow of reasonable doubt.

Learned counsel for the State as well as the complainant submit that trial court has proceeded on the basis of clear and cogent evidence on record. Conviction and sentence of the appellants should be maintained in the face of the overwhelming evidence on record.

I have heard learned counsel for the parties and gone through the record with their able assistance.

As per the evidence of PW1 Dr. Resham Chand, Medical Officer, PHC, Sudhar, thirty seven (37) injuries were found on the person of Kuldeep Singh. Injuries No.12 and 20 were declared grievous in nature on the basis of x-ray report given by Dr. G.S.Gill. He proved the MLR (Ex.P1) and pictorial diagram (Ex.P1/A). His opinion regarding the injuries is Ex.P3 and his report regarding diagnosis and discharge of injured – Kuldeep Singh is Ex.P4. Complainant – Kuldeep Singh was discharged from the hospital on 16.12.2000. It cannot be said that these injuries can in any manner be self-inflicted. As none of the injuries were found dangerous to life, learned trial court has acquitted the accused of the offence punishable under Section 307 IPC. However, that by itself cannot entitle the appellants to say that they are liable to be acquitted on other counts as well.

Complainant – Kuldeep Singh has clearly deposed regarding unfolding of the events. His testimony could not be shattered despite a lengthy cross-examination. To say that a specific role has not been attributed to each of

the accused is a fallacious argument in the light of the number of injuries found on the person of Kuldeep Singh. Factum of many of these injuries being abrasions and contusions cannot improve the case of the appellants. It cannot be said that the prosecution version is unnatural or improbable as it is not humanly possible to give the role of each accused separately when so many persons were together inflicting injuries upon the complainant.

Much stress has been laid that the alleged eye-witness PW5 Balbir Singh has not supported the prosecution version and another eye-witness, Premjit Singh has not been examined by the prosecution, therefore, a doubt is raised on this version. It is be noted at this juncture that there is another witness PW4 Jaspal Kumar, who duly corroborates the complainant's version. He has deposed that accused Gurkirpal @ Goga had come to his house on 30.11.2000 and asked him to accompany for delivering a marriage card. They went to a petrol pump situated at Raikot road where other co-accused were present. They revealed their intention to beat the complainant and insult him. PW4 Jaspal Kumar was asked to join them but he refused to be a party to the same. He saw the incident in question and identified the accused in court. PW5 Balbir Singh though denied having witnessed the incident does say that he saw one scooter and turban lying at the distance of 40 karams from the chowk. He identified the scooter and the turban to be of Kuldeep Singh. Complainant Kuldeep Singh has duly identified all the accused in court. There is no doubt about the identity of the accused in this case.

Contention of the learned counsel for the appellants that conviction of accused Ajmer Singh, Daljit Singh and Tehal Singh is unsustainable as they were found innocent in an inquiry conducted by DW2 Nirlabh Kishore, is

fallacious and rejected. There is sufficient evidence on record to show that all the accused persons have indeed participated in infliction of injuries upon Kuldeep Singh. Mere fact of their being found innocent during investigation can be of no avail to them.

An effort was made to contend that injury No.12 was, in fact, a lacerated wound and not incised as there is a cutting which was effected at a later stage. A perusal of Ex.P1, the medico-legal report shows recording of injury No.12 as 'IW 3cm x 1cm on the medial side of right fore-arm 3 cm above the wrist joint, fresh bleeding bone deep x-ray advised'. There is no cutting of any sort at this entry. It is duly recorded as an incised wound (IW). Similarly, admission of the injured at Civil Hospital, Sudhar instead of Dakha (which in any case is a few kilometers away) is understandable as the complainant was admittedly posted at Sudhar. Plea of delay being fatal to the prosecution case is also not borne out from the evidence on record. As per ASI Labh Singh PW3, on receipt of information he proceeded to PHC Sudhar on 01.12.2000. Injured Kuldeep Singh expressed his desire to make a statement in the presence of the doctor. Thereafter, ASI Labh Singh on 02.12.2000 moved an application before the doctor regarding fitness of the injured to make a statement and ultimately statement of injured Kuldeep Singh was recorded. Thus, the delay as such does not impinge on the veracity of the prosecution version.

No other point has been raised on behalf of the appellants.

Learned counsel for the appellants are unable to point any illegality or perversity in the impugned judgment convicting the accused persons for the offences punishable under Sections 323/ 325/326/148/149 IPC.

Faced with this situation, learned counsel for the appellants submit

that the accused have been facing the agony of a protracted trial since the year 2000. Incident occurred due to party-faction. Subsequent thereto, no untoward incident has taken place between the parties. They have been living peacefully without any acrimony since then. There is no other case in which the accused are involved except appellant Jagdev Singh who is involved in two other matters. Complainant Kuldeep Singh has been residing in the United States of America since the past eight years. Appellant Ajmer Singh is stated to be about 70 years old and Daljit Singh about 65 years old. It would be in the interest of justice if the benefit of probation be extended to the appellants or in the alternate sentence imposed upon the appellants may be reduced to that of one already undergone by them. Compensation in terms of Section 357 Cr.P.C. can be awarded.

Learned counsel for the complainant submits that no mitigating circumstance for extending the benefit of probation or reduction in the sentence is made out. She however, does not deny that complainant – Kuldeep Singh is at present in the United States of America with his children.

Keeping in view the fact that the accused have indeed faced a protracted trial for over fourteen years and except Jagdev Singh, none of the accused are involved in any other case, a lenient view is indeed called for. Moreover, it is admitted that no untoward incident has occurred between the parties since the year 2000. They have been living peacefully since then, therefore, it would be in the interest of justice to display leniency in respect to the sentence imposed upon them. Sentence of three years imposed upon the appellants for the offence punishable under Sections 326, 326/149 IPC shall stand reduced to one year, for the offence punishable under Sections 325/149

IPC it is reduced to six months instead of two years, for the offence punishable under Sections 323, 323/149 IPC it is reduced to three months instead of six months and rigorous imprisonment for one year for the offence punishable under Section 148 IPC is reduced to three months. Fine imposed upon them shall remain the same.

Section 357(3) Cr.P.C. mandates the award of compensation to the victim. Hon'ble Supreme Court in **Manohar Singh v. State of Rajasthan and others, 2015(1) RCR (Criminal) 747** has held that a duty is cast upon the courts to apply its mind to award compensation in every criminal case. Keeping in view the peculiar facts of this case, it is considered just and expedient to direct all the appellants to pay compensation to the tune of ₹10,000/- each to the complainant, which shall be deposited with the trial court within a period of three months from the date of receipt of certified copy of this judgment.

With the abovesaid modification in the sentence imposed upon the appellants, all these appeals are dismissed. Conviction of the appellants vide impugned judgment dated 29.11.2008 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana is upheld.

March 25, 2015.
'om'

(**LISA GILL**)
JUDGE