

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

Crl. Appeal-S No. 1283-SB of 2003

Date of Decision: July 29 , 2015.

Jaspal Singh @ Jassa @ Tota and another

..... APPELLANT (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Harshit Sethi, Advocate
for the appellants.

Ms. Shivali, AAG, Punjab.

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.

Appellant No.1 Jaspal Singh @ Jassa @ Tota son of Iqbal Singh has been convicted for the offence punishable under Section 326 IPC and sentenced to undergo rigorous imprisonment for four years, besides, pay a fine of ₹1,000/- and in default thereof, to further undergo rigorous imprisonment for one month. He has also been convicted for the offence punishable under Sections 323/34 IPC and sentenced to undergo rigorous imprisonment for six months. Appellant No.2 Sawinder Singh @ Chhinda son of Harnam Singh has

been convicted for the offence punishable under Section 323 IPC and sentenced to undergo rigorous imprisonment for one year. Both the appellants have impugned their conviction and sentence by the learned Additional Sessions Judge (Adhoc), Amritsar vide judgment and order dated 11.07.2003.

Brief facts of the case are that FIR No.134 dated 07.09.1999 was registered under Sections 307/326/323/295A/34 IPC at Police Station Bhikhiwind against the present appellants as well as Harpal Singh and Gopal Singh, who were acquitted by the trial court. Abovesaid FIR was registered on the statement of PW1 Jaswinder Singh son of Mehar Singh recorded on 07.09.1999 by ASI Purshotam Lal, PW6. Jaswinder Singh in his statement dated 07.09.1999 revealed that he alongwith Manjit Singh son of Gurdip Singh were going to their fields on 05.09.1999 at about 6.00 p.m. Near the flour mill, Jaspal Singh @ Jassa and Sawinder Singh @ Chhinda (appellants) armed with Dangs (sticks) were standing. Complainant's brother Harinder Singh was coming back from his fields at that time. When Harinder Singh reached near Jaspal Singh, an unknown person exhorted that Harinder Singh be caught hold of and taught a lesson for defaming them. Appellant No.1 Jaspal Singh caught hold of Harinder Singh from his beard and took out a knife from his pocket and inflicted a knife blow on his chin. Appellant No.2 Sawinder Singh inflicted a Dang blow on the right shoulder of Harinder Singh. His brother fell down on the ground and the unknown person gave a teeth bite on Harinder Singh's right finger. Complainant and Manjit Singh raised hue and cry. On hearing the noise, Surinder Singh son of Pritam Singh reached the place of occurrence. In the meanwhile, the accused fled with their respective weapons. Harinder Singh

was got admitted in Civil Hospital, Sur Singh.

A copy of the medico-legal report of Harinder Singh was received on 06.09.1999 by ASI Purshotam Lal, Incharge, Police Post Sur Singh. ASI Purshotam Lal alongwith other police officials proceeded to the hospital and submitted an application regarding fitness of the injured to make a statement. It was reported by the doctor that the injured was sent to Guru Nanak Dev Hospital, Amritsar for x-ray examination of the injuries and no person who had witnessed the occurrence was available in the hospital to make a statement. On 07.09.1999 ASI Purshotam Lal again proceeded to the hospital and inquired about the fitness of injured. The injured was declared unfit to make statement by the doctor on 07.09.1999. However, statement Ex.PB of PW2 Jaswinder Singh was recorded by ASI Purshotam Lal at Bus Stand on the basis of which, formal FIR Ex.PB/2 was registered. Supplementary statement of Jaswinder Singh was also recorded. Rough site plan Ex.PN of the place of occurrence was prepared.

Statement of injured Harinder Singh was recorded on 08.09.1999 after obtaining the opinion of the doctor regarding his fitness to give a statement. He too revealed the infliction of injuries upon his person as disclosed by Jaswinder Singh.

Accused Jaspal Singh @ Jassa after being arrested, vide disclosure statement Ex.PC, revealed that he has kept concealed the knife used in the commission of the offence in a room at his tubewell and offered to get the same recovered. Thereafter, he got recovered knife from the said place vide Ex.PF.

Accused Sawinder Singh produced a Dang which was taken in possession vide

Ex.PP.

On completion of investigation, report under Section 173 Cr.P.C. was presented. All the accused were charged for the commission of offences punishable under Sections 307/326/323/295A read with Section 34 IPC. All the accused pleaded not guilty and claimed trial.

Prosecution examined as many as nine (9) witnesses to prove its case. ASI Milkha Singh, Manjit Singh and Surinder Singh were given up by the prosecution as being unnecessary. PW Harbans Singh was given up as having been won over by the accused.

All the accused while denying the incriminating material/evidence put to them pleaded innocence and false implication in their statements recorded under Section 313 Cr.P.C. No evidence was led in defence.

Learned trial court after going through the evidence concluded that the prosecution has been able proved its case beyond reasonable doubt qua Jaspal Singh @ Jassa and Sawinder Singh @ Chhinda, who were convicted and sentenced as detailed above. Accused Harpal Singh and Gopal Singh were acquitted of the charges against them as their involvement in the alleged offence was not proved. Aggrieved from their conviction and sentence, appellants have preferred the present appeal.

Learned counsel for the appellants vehemently argues that first and foremost, delay in lodging of the FIR is fatal to the prosecution case. Alleged incident is stated to have occurred on 05.09.1999 at 6.00 p.m. Statement of Jaswinder Singh was recorded on 07.09.1999 at about 3.00 p.m. There is no plausible explanation for this inordinate delay. Trial court has erred in ignoring

the same especially in view of the fact that there is no document on record to show that injured Harinder Singh was indeed taken to Amritsar for x-ray examination. While referring to x-ray report, Ex.PK by Dr. Sandeep Kaur, it is submitted that the report is dated 11.09.1999 wherein a fracture of the mandible is reported to be seen towards left side from midline. It is further submitted that Dr. Sandeep Kaur was never examined by the prosecution though it is admitted that the said doctor had gone abroad as revealed by PW8 Bikramjit Singh, Radiographer.

Learned counsel for the appellants further submits that Kirpal Singh i.e., the brother of accused Harpal Singh as well as Gopal Singh had suffered injuries at the hands of Harinder Singh, injured, Gurbaksh Singh and Surinder Singh. However, no case was registered in an illegal manner against the complainant party. Furthermore, prosecution has not been able to explain the injuries suffered by Kirpal Singh and Harbinder Singh. It is vehemently urged that in the light of the injuries on the said two persons, prosecution has suppressed the true facts and a false case was registered against the appellants on account of political influence after a delay of 45 hours.

Learned counsel for the appellants further submits that the manner in which the incident is stated to have taken place is highly improbable and unnatural. Harinder Singh PW3, the injured witness, has stated that accused Jaspal Singh @ Jassa had caught hold of him from his beard and while holding his beard, accused took out a knife from his pocket and opened it with his mouth. It is submitted that it is not humanly possible for the accused to catch hold of beard of a person and then take out a knife, open the same with his

mouth at the same time. Furthermore, when two of the accused have been acquitted on the same set of evidence it is unjustified to convict the present appellants-accused on the basis of same evidence. It is, thus, prayed that both the appellants-accused be acquitted of the charges against them.

Learned counsel for the State, on the contrary, submits that there is sufficient evidence on record to prove the complicity of the appellants in the commission of offence. She prays for upholding the conviction and sentence imposed upon the appellants.

I have heard learned counsel for the parties and gone through the record.

It is a settled position of law that delay by itself cannot be a ground to reject the prosecution story. Incident in question occurred on 05.09.1999 at about 6.00 p.m. FIR No.134 was registered on 07.09.1999 on the statement of Jaswinder Singh, who is an eye-witness of this occurrence. However, it is noted that there is sufficient and cogent explanation on record for the aforementioned delay. A copy of the medico legal report was received by ASI Purshotam Lal on 06.09.1999 i.e., the next day. Request Ex.PM was submitted by him regarding the fitness of the injured to make statement. Vide Ex.PM/1, doctor has recorded on 06.09.1999 at 11.00 a.m. that the patient had been referred to Guru Nanak Dev Hospital, Amritsar for x-ray/ CT Scan. On 07.09.1999 injured was again declared unfit for recording his statement vide Ex.PG. Statement Ex.PB of eye-witness Jaswinder Singh was recorded on 07.09.1999. PW5 Dr. Ashwani Kumar Ahuja has proved the opinion given by him regarding the injured being unfit for making a statement. PW5 Dr. Ashwani Kumar Ahuja, SMO Civil Hospital, Zira District Ferozepur has specifically testified that he

medico-legally examined Harinder Singh son of Mehar Singh on 05.09.1999 and found the following injuries on his person:-

- “1. Mark of tooth bite 1 x 0.2 cm on the dorsum of right index finger. Proximal interphalangeal joint was swollen and tender. Tooth bite extended on to ulnar side of palmar aspect distal interphalangeal joint of right index finger. X-ray was advised.
2. Incised penetrating wound 1 x 0.2 cm depth not probed on the left side of under surface of chin. It was profusely bleeding. X-ray and CT Scan was advised. The patient was drowsy responding mildly to external stimuli. Patient and injury were kept under observation. N.P. Was 40/quey. Pupils were dilated and sluggishly reacting to light. History of vomiting was present. Many hair were uprooted from beard.
3. Vertical contusion bright red 8 x 6 cm. with diffuse swelling on right deltoid area of right shoulder.
4. Interphalangeal joint of left thumb was swollen and tender. X-ray was advised.

Injury No.3 was declared as simple in nature and rest of the injuries were kept under observation. These injuries were caused within the probable duration of six hours. Injury No.2 was caused with sharp pointed weapon and the rest of the injuries were caused by blunt weapon. Ex.PF is the canon copy of the medico-legal report.”

Therefore, it cannot be said that there is an unexplained delay in the lodging of the FIR which is fatal to the prosecution case.

Medical evidence on record corroborates the ocular version as given by the eye-witness Jaswinder Singh, PW2 as well as the injured witness, Harinder Singh. As noted above, injured Harinder Singh son of Mehar Singh

was got admitted at Primary Health Centre, Sur Singh and was examined by PW5 Dr. Ashwani Kumar Ahuja. It was opined by the doctor vide Ex.PG/1 that the injury on the person of Harinder Singh could have been dangerous to life. On receipt of the x-ray report, Ex.PK dated 11.09.1999 regarding the fracture of mandible of Harinder Singh, opinion Ex.PK/1 was rendered by PW5 Dr. Ashwani Kumar Ahuja declaring injury No.2 grievous in nature.

It is further proved by PW8 Bikramjit Singh, Radiographer, Civil Hospital, Patti that Dr. Sandeep Kaur who had given x-ray report dated 11.09.1999 had gone abroad and there is no likelihood of her coming back to India in the near future. He has testified that he was posted as Radiographer at Primary Health Centre, Sur Singh on 11.09.1999. X-ray of Harinder Singh i.e., Ex.P2 and Ex.P3 were taken by him. X-ray films were given by him to Dr. Sandeep Kaur who gave her report Ex.PK after examining the x-ray films. He identified her handwriting and signature. In this view of the matter, objection by the learned counsel for the appellants that Dr. Sandeep Kaur has not been examined therefore, report Ex.PK cannot be taken into consideration, is untenable and rejected. In the given factual matrix, conviction of the appellant Jaswinder Singh for offence punishable under Sections 326/323 read with Section 34 IPC is justified. Absence of any evidence to show that Harinder Singh was subjected to X-ray/CT Scan at Guru Nanak Dev Hospital, Amritsar is indeed irrelevant. Reference of Harinder Singh to Guru Nanak Dev Hospital, Amritsar is reflected in Ex.PM/1. Furthermore, injured witness as well as the eye-witness have firmly adhered to their version and nothing fruitful was elicited from their lengthy cross-examination.

Argument of the learned counsel for appellants that conviction of

the present appellants on the same set of evidence which was found insufficient to convict the other two accused is illegal and arbitrary, is misconceived and fallacious.

It has been authoritatively held by Hon'ble Supreme Court in **Israr v. State of U.P., 2005(2) RCR(Criminal) 40** that maxim "falsus in uno falsus in omnibus" has no applicability in India. Even if evidence has been found to be deficient to prove the guilt of other persons in case but the residue is found sufficient to prove the guilt of an accused notwithstanding the fact of acquittal of number of other co-accused, his conviction can be maintained. It was observed that even where evidence of some of the witnesses is found to be deficient to prove the guilt of some accused, it is open to the court to convict co-accused on the same evidence. In the present case, evidence on record is found trustworthy and reliable and does not leave any doubt regarding the culpability of the appellants.

Similarly, contention that non-explanation of the alleged injuries on the person of Kirpal Singh and Harbinder Singh renders a fatal blow on the prosecution version, is untenable. Said Kirpal Singh, real brother of accused Harpal Singh and Gopal Singh who were acquitted, has not even been examined by the accused in their defence. It is not even the case of the accused that Kirpal Singh and Harbinder Singh were present at the time of the occurrence neither any such plea was taken by the accused in their statements under Section 313 Cr.P.C. It is not the case of prosecution that Harbinder Singh and Kirpal Singh were present at the time of occurrence. Non-explanation by the prosecution of the injuries on the abovesaid two persons who were medico-

legally examined four hours after injured Harinder Singh, does not adversely affect the prosecution version. Therefore, in view of the facts and circumstances as discussed above, the prosecution has indeed proved its case beyond reasonable doubt for the commission of the offences as detailed above.

Learned counsel for the appellants, in the alternate, argues that the appellants have undergone agony of trial for nearly 16 years. There is no other case in which the appellants are involved in. Appellant No.1, Jaspal Singh @ Jassa has undergone actual imprisonment of nine months and twelve days out of the sentence of four years and appellant No.2, Sawinder Singh has undergone actual imprisonment of one month and 25 days out of the sentence of one year. It is further submitted that both the appellants are attributed with single injury. Therefore, it would be in the interest of justice to reduce the sentence imposed upon the appellants to that of having already undergone. He relies on judgments of Hon'ble Supreme Court in **Vipul Kumar @ Vipulesh v. State of Chhattisgarh, 2015(3) Recent Apex Judgments 217** and **Neelam Bahal and another v. State of Uttarakhand, 2010(1) RCR(Criminal) 929** as well as a judgment rendered by coordinate Bench of this Court in **Suresh Kumar v. State of Haryana, 2000(1) RCR(Criminal) 50.**

Learned counsel for the State has affirmed that the appellants are not involved in any other case. Period of imprisonment as undergone by them is also verified.

Keeping in view the peculiar facts and circumstances including the fact that the appellants are not involved in any other case, they have undergone the agony of trial for a period of nearly 16 years and have undergone actual

imprisonment as detailed above, it would be in the interest of justice to reduce the sentence imposed upon the appellants. Sentence imposed upon appellant No.1 – Jaspal Singh @ Jassa for the offence punishable under Section 326 IPC is reduced to rigorous imprisonment of two (2) years, for the offence punishable under Sections 323/34 IPC it is reduced to three (3) months. Both sentences to run concurrently. Amount of fine imposed upon Jaspal Singh @ Jassa is enhanced to ₹10,000/- in default thereof, he shall undergo simple imprisonment for two months. Sentence imposed upon appellant No.2 – Sawinder Singh @ Chhinda for the offence punishable under Section 323 IPC is reduced to four(4) months. He shall also pay a fine of ₹5,000/- in default whereof, he shall undergone simple imprisonment for one month.

With the said modification in the sentence imposed upon the appellants, this appeal is accordingly disposed of.

July 29 , 2015.
'om'

(LISA GILL)
JUDGE