

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRA-D-700-DB-2002

Date of decision : 28.11.2015

Karan Singh and another

... Appellants

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Ms.Baljit Mann, Advocate
for the appellant (in CRA-D-700-DB-2002)
for the petitioner (in CRR-222-2003).

Mr.P.P.S.Theti, Addl.A.G.Punjab.

Mr.P.S.Ahluwalia, Advocate
for the complainant,
for the petitioner (in CRR-2162-2002).

REKHA MITTAL, J.

This order will dispose of **CRA-D-700-DB-2002 'Karan Singh and another Vs. State of Punjab'**, **CRA-D-244-DB-2003 'State of Punjab Vs. Mohinder Singh and others'**, **CRR-222-2003 'Gurnam Singh Vs. Mohinder Singh and others'** and **CRR-2162-2002 'Avtar Singh Vs. State of Punjab and others'**. For the sake of convenience, facts are taken from CRA-D-700-DB-2002.

Briefly stated, the story of the prosecution is that Avtar Singh son of Mohinder Singh got recorded his statement Ex.PN on the allegations that he had taken 4 killas of shamlat land on lease from the Panchayat for the year 1998-99 and is in possession thereof. On 20.07.1998, he along with his father

Mohinder Singh, grand father Pritam Singh son of Narain Singh and Bhupinder Singh son of Bhag Singh was sowing *Chari* crop in the said land. At about 4 p.m., accused Karan Singh, Balwinder Singh armed with *gandasi*, Gurcharan Singh armed with *hathi* (handle) of hand pump came running and proclaimed that they will teach a lesson to the complainant party for cultivating the land. At the same time, accused Gurnam Singh son of Nand Singh and his wife Kartar Kaur also came to the spot raising Lalkara that the complainant party should not escape unhurt. Karan Singh gave a *gandasi* blow to Pritam Singh on his right thigh. Gurcharan Singh gave a blow with handle of the hand pump which fell on the head of Pritam Singh above his right ear, another blow with the same weapon was given by Gurcharan Singh on right eyebrow of Pritam Singh. Pritam Singh raised an alarm and when the complainant went to rescue Pritam Singh, Gurnam Singh accused gave a *gandasi* blow to Avtar Singh on his right arm. Amarjit Kaur, mother of the complainant received a stone blow on her head given by accused Kartar Kaur. Hazura Singh and Bhupinder Singh raised an alarm and some co-villagers were attracted to the site of crime. The accused ran away from the place of occurrence along with their weapons.

The motive behind the occurrence was that as the Panchayat has leased out the abovesaid land to Avtar Singh (complainant), accused nursed a grudge against the complainant party. The injured were shifted to the Civil Hospital, Rajpura. Pritam Singh was referred to Rajindra Hospital, Patiala. Formal FIR was registered on the basis of statement of the complainant. Pritam Singh succumbed to his injuries and offence under Section 302 IPC was added. On completion of investigation, the challan was presented in the Court for commencement of trial.

After necessary compliance with the provisions of Section 207 of the Code of Criminal Procedure (for brevity 'Cr.P.C.'), the case was committed to the Court of Sessions as offence under Section 302 of the Indian Penal Code (for brevity 'IPC') is exclusively triable by the said Court.

On finding a prima-facie case, all the accused were charged for committing offence punishable under Sections 148, 302/149, 324, 323/149 IPC to which they pleaded not guilty and claimed trial.

To substantiate the charge, the prosecution examined Dr. Sanjiv Aggarwal PW1, Dr.Manjit Singh PW2, Dr.Deepak Walia PW3, Satpal Patwari PW4, Avtar Singh PW5, Amarjit Kaur PW6, Sadhu Singh PW7, SI Bhag Singh PW8, HC Amrik Singh PW9, ASI Jai Krishan PW10, Sampuran Singh PW11, HC Babu Ram PW12 and HC Mohinder Singh PW13(wrongly numbered as PW12).

On evidence of the prosecution being closed, the accused were examined under Section 313 of the Cr.P.C. wherein they denied the incriminating circumstances put to them and pleaded their innocence and false implication.

Kartar Kaur accused raised the plea in the following manner:-

“The case is false one. On 20.7.98 at about 2.30 p.m. she was present in her Farm House. Avtar Singh complainant, her father Mohinder Singh and her associates wanted to take forcible possession of the Shamlat land which was in their possession. In order to murder her and to take forcible possession of the Shamlat land aforesaid Avtar Singh, Jagtar Singh, Mohinder Singh, Babu Singh, Balbir Singh, Ranjit Singh, Bhupinder Singh, Jagdish Singh, Baldev Singh, Swaran Singh, Baldev Singh s/o Kirpal Singh, Gurmel Singh, Hazur Singh, Ishar Singh, Ishar Singh entered into her house and caused injuries to her

with intention to kill her. She raised alarm which attracted Tarsem Singh s/o Sant Singh, Raghbir Singh, Ajaib Singh, members Panchayat and Karnail Singh s/o Santa Singh and many other villagers collected there who rescued her from the hands of above noted Avtar Singh and others. Thereafter, in sympathy of her and being alone lady was attached, the villagers collected there at the house of Pritam Singh and there was altercation and some brick bats between villages and Pritam Singh and her family and received minor injuries including Amarjit Kaur and Avtar Singh. Thereafter, her husband was kidnapped on the same day by Mohinder Singh, Avtar Singh, Jagtar Singh, Babu Singh, Balbir Singh, Ranjit Singh, Bhupinder Singh, Jagdish Singh, Baldev Singh, Swaran Singh, Baldev Singh s/o Kirpal Singh, Gurmel Singh, Hazur Singh, Ishar Singh with intention to murder her and took her to forest and gave injuries and considering that Gurnam Singh had died, thereafter to save their skin from the injuries of Gurnam Singh and purporting that Gurnam Singh had died, the present case is planted with connivance of with Bhag Singh and other police officials I.O. Of the case. There is strained relations with Bhag Singh and other police officials of her husband. Gurnam Singh as such the injuries of Pritam Singh were manipulated after referring Pritam Singh to Rajindra Hospital, P:atiala and on the way one injury on the head was caused by the complainant party in connivance with the I.O. So that section 302 IPC may be added on account of death of Pritam Singh which is evidence from the post mortem examination report. The complainant party is liable for the death of Pritam Singh. Herself and her entire family is falsely implicated with the motive to take the possession of Shamlat land and the land is situated in the area of Chatt Bir /Zirakpur which costs to crores of rupees. The entire case is false. They are poor Harizans whereas the complainant party is financial as

well as physically sound. S.P. enquired into the matter of kidnapping of her husband and the same case is presented before this Hon'ble Court against the complainant party. That the occurrence of kidnapping is of the same time and the injuries to her are also of the same time, so question of any present occurrence does not arise. Her one son was found innocent and he was put in Khanna No.2. The FIR in the case is after consultation and deliberation. Witnesses are interested and the investigating agency is inimical towards us."

The co-accused of Kartar Kaur adopted the plea raised by her. The accused examined Harminder Singh Saini, Advocate, Civil Court DW1, Nitin Kumar Ahlmad in the Fast Track Court DW2 and tendered certain documents in defence evidence.

The learned trial Court, bestowed its thoughtful consideration to the materials on record and rival submissions made by counsel for the parties and came to hold that a clear case under Sections 302/34 IPC is made out against Gurcharan Singh and Karan Singh accused and accordingly they were held guilty for committing the said offence. However, remaining accused namely Gurnam Singh, Kartar Kaur and Balwinder Singh @ Binder Singh were acquitted of the offence charged against them.

Feeling aggrieved against the judgment of conviction against Karan Singh and Gurcharan Singh, they have preferred the criminal appeal (**CRA-D-700-DB-2002**).

Avtar Singh complainant has filed criminal revision (**CRR-2162-2002**) to claim compensation of ₹2 lacs in terms of Section 357 Cr.P.C. for the murder of Pritam Singh.

Gurnam Singh has filed criminal revision (**CRR-222-2003**) to

assail the judgment dated 17.08.2002 passed by the Additional Sessions Judge (Adhoc) Patiala acquitting the accused namely Mohinder Singh and others in Sessions case No.10 dated 25.07.2000 in respect of FIR No.12 dated 10.02.1999 for offence punishable under Sections 452, 323, 148, 149 IPC. Similarly, an appeal (CRA-D-244-DB-2003) has been preferred by the State to assail the judgment of acquittal of Mohinder Singh and others.

Ms.Baljit Mann, Advocate representing the appellants (convicts) has submitted that case of the prosecution is not free from lacunae, flaws and embellishments that the trial Court has failed to appreciate. To bring home her contention, she has assailed the judgment of the trial Court on few counts.

The first submission made by learned counsel is that as per case of the prosecution, the occurrence in question took place in the land that was taken on lease by complainant Avtar Singh in auction from the Gram Panchayat of village Khizergarh which was earlier in possession of the accused party. It is argued that the prosecution has failed to adduce tangible evidence on record to prove that possession of the said land was actually delivered to complainant Avtar Singh prior to 20.07.1998. It is further submitted that once the prosecution has failed to prove that possession of the land in question, stated to be bone of contention between the parties, was actually delivered to the complainant party, the genesis of the crime becomes doubtful.

It is further argued that the complainant party indicted all the members of the family of Gurnam Singh but only Karan Singh and Gurcharan Singh have been found guilty of committing the offence, therefore, the story of the prosecution is not true.

According to learned counsel, Kartar Kaur sustained injuries in the occurrence, proved by Dr.Manjit Singh PW2. Kartar Kaur suffered as many

as 8 injuries on her person detailed in the statement of Dr.Manjit Singh and described in medico legal report Ex.DB. The prosecution has miserably failed to explain the injuries sustained by Kartar Kaur, sufficient to conclude that genesis of the crime has been concealed. In addition, it is submitted that as the prosecution is guilty of concealing genesis of the crime, the judgment of the trial Court is liable to be set aside so far as conviction of the appellants is concerned.

Karan Singh accused has raised the plea of alibi. Mr.Harminder Singh Saini, Advocate, Civil Court, Rajpura was examined to prove that Karan Singh was available in his chamber upto 5 p.m. on 20.07.1998. It is argued that the learned trial Court has not appreciated statement of Mr.Harminder Singh Saini, Advocate in right perspective and thus committed a grave error by holding Karan Singh guilty of the offence charged.

Counsel for the appellants, in the alternative, has made a submission that in case the appellants are held liable for causing injuries to Pritam Singh (deceased), in view of the nature and number of injuries sustained by Pritam Singh, conviction of the appellants may be converted to that of offence punishable under Section 304 Part II IPC. For this purpose, counsel has carried us through the statement of Dr.Sanjiv Aggarwal PW1, Dr.Manjit Singh PW2 and Dr.Deepak Walia PW3. It is further argued that Dr.Sanjiv Aggarwal conducted medico legal examination of Pritam Singh and found 3 injuries on his person. During cross-examination, he has stated that possibility of injury No.1 due to result of injury No.2 (simple in nature) cannot be ruled out. If injury No.1 could possibly be the result of injury No.2, it means that there were only 2 injuries sustained by Pritam Singh and out of these 2 injuries, injury on the pinna of right ear has been attributed to Gurcharan Singh

and on the thigh above right knee to Karan Singh. The injury on the pinna of right ear is a lacerated wound 1 cm x 0.5 cm and the injury on the thigh is incised wound 10 cm x 2 cm deep, therefore, in view of nature and number of injuries sustained by the victim, findings of the learned trial Court that the convicts inflicted these injuries to deceased Pritam Singh with an intent to kill cannot be affirmed.

Counsel for the State of Punjab and counsel for the complainant have supported the judgment of the learned trial Court with the submissions that in the occurrence, three persons from the side of the complainant namely Pritam Singh, Avtar Singh and Amarjit Kaur sustained injuries. All the injured were admitted in A.P. Jain Hospital, Rajpura at about 6.45 p.m. on the day of occurrence and were medico legally examined by Dr.Sanjiv Aggarwal and he has proved the medico legal reports of the injured victims. The land in question was the bone of contention as the accused never wanted to lose its possession and for years together they indulged in protracted litigation with the Gram Panchayat to retain its possession but ultimately proved unsuccessful. The accused party lost possession of the land after they lost the legal battle upto the High Court of Punjab and Haryana. The possession was delivered to the Gram Panchayat in January 1998 and the land was auctioned by the Panchayat in June 1998. The land bearing khasra Nos. 115, 116 was auctioned in favour of complainant Avtar Singh and possession of auctioned land of the aforesaid khasra numbers along with other land was delivered to Avtar Singh who also paid an amount of ₹10,100/- towards auction money to the Gram Panchayat in June, 1998. As the accused party was feeling offended due to losing possession of the land, Gurnam Singh and his family members namely Kartar Kaur (wife), Karan Singh, Gurcharan Singh and Bhupinder Singh (sons) came

to the place of occurrence armed with weapon and opened attack causing injuries to Pritam Singh (deceased), Avtar Singh PW5 and Amarjit Kaur PW6. It is further argued that as the accused armed with weapons came to the spot with pre-mediated mind and inflicted injuries to three members of the complainant party, there are no mitigating circumstances in their favour.

Counsel has further argued that no injury was sustained by Kartar Kaur and Gurnam Singh at the hands of the complainant party. As per plea of the accused, the occurrence in question took place at 2.30 p.m. in the house of Gurnam Singh where Kartar Kaur sustained injuries at the behest of the complainant party and the complainant party was caused injuries by the people gathered at the spot on an alarm raised by Kartar Kaur. Gurnam Singh was allegedly kidnapped by the complainant party at about 5.30/ 6 p.m. on 20.07.1998 detained in a jungle and caused injuries. With regard to kidnapping and injuries to Gurnam Singh and injuries sustained by Kartar Kaur, FIR No.12 dated 10.02.1999 was registered in Police Station Banur for offence under Sections 452, 323, 148, 149 IPC and in Sessions case No.10 dated 25.07.2000 trial against as many as 15 persons including Avtar Singh son of Mohinder Singh (complainant in the present case) and his father Mohinder Singh son of Pritam Singh was held. The accused in the said case were acquitted by the trial Court vide judgment dated 17.08.2002 and the State has preferred an appeal against Mohinder Singh and others. It is further argued that acquittal of Mohinder Singh and others goes a long way to show that a false case was got registered by Gurnam Singh after delay of about 7 months with a view to create defence and to put pressure on the complainant party to settle the entire dispute by way of compromise. It is argued that neither any occurrence took place at 2.30 p.m. on 20.07.1998 in which Kartar Kaur sustained injuries nor

any such occurrence happened at 5.30/6 p.m. on the same day in regard to kidnapping of Gurnam Singh.

We have heard counsel for the parties and perused the records.

Before advertng to rival submissions made by counsel for the parties, it is appropriate to make a brief reference to the medical evidence adduced by the prosecution.

Dr.Sanjiv Aggarwal, Medical Officer, A.P.Jain Hospital, Rajpura PW1 examined Pritam Singh son of Narain Singh on 20.07.1998 at about 06.40 p.m. and found boggy swelling over right temporal region. He further noticed following injuries on his person:-

1. *Right eye (black eye) was present.*
2. *Lacerated wound 1 cm x 0.5 cm on the pinna of right ear.*
3. *Large incised wound 10 cm x 2 cm deep over the back of right thigh about 6 cm above right knee joint. Profuse bleeding was present.*

He has proved carbon copy of the medico legal report Ex.PA. He opined that probable duration of injuries was approximately within six hours. The type of weapon used was blunt for injuries No.1 & 2 and sharp for injury No.3.

Dr.Sanjiv Aggarwal further proved the medico legal report Ex.PB in respect of the injuries sustained by Amarjit Kaur wife of Mohinder Singh examined by him on the same day at about 7 p.m. As per medico legal report of Amarjit Kaur, following injury was found on her person:-

1. *Lacerated wound 5 cm x 1 cm x 0.5 cm deep on the forehead (right frontal region) about 8 cm above the right eye brow. Wound was obliquely placed.*

He has deposed that on the same day about 7.15 p.m., he examined Avtar

Singh son of Mohinder Singh and found the following injury on his person:-

1. *Incised wound 4 cm x 1 cm x 1.5 cm deep on the dorso lateral surface of left lower arm 7 cm below the left elbow joint. Fresh blood was present. Swelling and tenderness was around the wound. Moments of the lower arm restricted.*

He proved carbon copy of the medico legal report of Avtar Singh Ex.PC.

Dr.Manjit Singh, Medical Officer, A.P.Jain Hospital, Rajpura (PW2) declared Avtar Singh and Amarjit Kaur fit to make the statement vide endst. Ex.PE/1 and PF/1 respectively on the applications Ex.PE and PF submitted by the police. During cross-examination, he has deposed that on 21.07.1998 at 12.30 a.m. he examined Gurnam Singh son of Nand Singh and found the following injuries on his person:-

1. *½ cm x 5 cm lacerated wound on vertex obliquely placed. Clotted blood was present. Depth was examined after cleaning of wound which was till aponeurosis.*
2. *10 cm x 12 cm reddish bluish irregular contusion on lateral surface of left shoulder joint.*
3. *10 cm x 3 cm reddish bluish contusion on left scapular region.*
4. *3 cm x 3 cm reddish bluish contusion over dorsal surface of right shoulder joint.*
5. *Multiple abrasion in different directions over dorsolumbar region, clotted blood was present.*
6. *Multiple abrasion on left shin, clotted blood was present.*
7. *Diffuse swelling over right lateral malleolus was present. Tenderness was present just distal to malleolus and proximal to it.*

He proved certified copy of medico legal report of Gurnam Singh Ex.DA and opined that all the injuries were caused by blunt weapons. He further proved

medico legal report Ex.DB in respect of the injuries found on the person of Smt. Kartar Kaur wife of Gurnam Singh, detailed hereinbelow:-

1. 4 cm. X 2 cm. Lacerated wound on the lateral margin of left eye, depth was till bone. Clotted blood was present.
2. 22 cm. X 4 cm. Redish bluish contusion across the back in lumber region.
3. 11 cm x 4 cm redish bluish contusion over the posterior part of right iliac-crest.
4. 15 cm. X 4 cm. redish bluish contusion over the lower part of left side of chest posterior.
5. 5 cm x 3 cm bluish reddish contusion on anterior surface of left shoulder joint.
6. 5 reddish bluish contusion on antero lateral side of left forearm. All contusions were $\frac{1}{2}$ cm. wide and varied in length 3 cm. to 10 cm.
7. 6 cm. x 1 cm. abrasion on dorsum aspect of right forearm was present in the middle part. Clotted blood was present.
8. Bluish coloured subungual haematoma was present on left bigtoe.

The injuries sustained by Kartar Kaur were stated to be caused with blunt weapons.

Dr. Deepak Walia conducted post mortem examination on the dead body of Pritam Singh who passed away on 21.07.1998. He proved the post mortem report Ex.PH and found the following injuries during post mortem examination:-

1. A diffused swelling on right temporo parietal region of head was present.
2. Right eye was black.
3. A stitched wound 1 cm long on right pinna of right ear.

4. *A stitched wound about 10 cm. on back of right thigh 6 cm above right knee joint.*

The accused, though, have admitted that Pritam Singh, Avtar Singh and Amarjit Kaur, sustained injuries on 20.07.1998 but have a different story to tell about the manner in which they sustained injuries (detailed hereinbefore). The defence plea raised by the accused in this regard would be dealt with in the latter part of the judgment.

Learned counsel for the appellants has assailed the prosecution story on the premise that as Avtar Singh was not in possession of the land where the occurrence has allegedly taken place, it creates a serious doubt in the prosecution case as well as genesis of the crime. For this purpose, counsel has invited our attention to the defence plea of the accused that the occurrence took place at 2.30 p.m. on 20.07.1998 at the house of Gurnam Singh where the complainant party laced with weapons took advantage of Kartar Kaur being alone in the house and caused injuries to her.

Satpal Patwari Halqa Rampur Kalan, Tehsil Rajpura PW4 was examined to prove that land earlier in possession of the accused party, belonging to the Gram Panchayat of the village was got vacated and possession was taken over by the Gram Panchayat on 21.01.1998 in regard whereof an entry bearing No.175 dated 21.01.1998 was made in the roznamcha Ex.PJ. Counsel for the appellants has not disputed that the accused party lost possession of the land in question prior to the occurrence in question, however, she has asserted that possession of the said land was not with the complainant party. Sadhu Singh, Village Level Worker-cum- Panchayat Secretary of village Nagari PW7 was examined to prove the proceedings in regard to auction of Shamlat Land, conducted on 04.06.1998. The witness has proved that auction

in respect of plot No.1 was made in the name of Avtar Singh son of Mohinder Singh for ₹10,100/- and the auction money was deposited by Avtar Singh on the same day vide receipt No.16 dated 04.06.1998. He has proved resolution No.1 dated 04.06.1998 passed by the Gram Panchayat Ex.PO and copy of the receipt in regard to deposit of auction money Ex.PQ. The witness was cross-examined at length by the defence counsel but nothing tangible has been elicited to create dent in his testimony. Statement of Sadhu Singh PW7, based on record, is more than sufficient to prove that auction in respect of Shamlat land comprising plot No.1 was made in the name of Avtar Singh son of Mohinder Singh (complainant) more than a month prior to the occurrence in question. The mere fact that in the resolution Ex.PO, there is no reference to delivery of possession of the auctioned land in favour of the auction purchaser (lessee) is not sufficient to accept the defence plea that the complainant party was not in possession of the land in question. There was no reason for the Gram Panchayat to make a statement and manufacture records in favour of the complainant party had the land in question belonging to the Gram Panchayat been not auctioned in favour of Avtar Singh son of Mohinder Singh. In view of the statement of Sadhu Singh duly corroborated by Avtar Singh complainant, we find it difficult to accept contention of the appellant that as the complainant party was not in possession of the land in question, the genesis of crime becomes doubtful. We would hasten to add that the accused have failed to probablise their defence plea that the occurrence in question took place at 2.30 p.m. on 20.07.1998 at the residence of Gurnam Singh wherein Kartar Kaur allegedly sustained injuries at the hands of complainant party. This defence plea raised during cross-examination of Avtar Singh PW5 is contradicted by the accused themselves in view of defence plea raised by Smt.Kartar Kaur, in

her statement recorded under Section 313 Cr.P.C. adopted by other accused in its entirety. A relevant extract from the plea of Smt.Kartar Kaur (though reproduced hereinbefore in whole) reads as under:-

“.....Thereafter, in sympathy of her and being alone lady was attacked, the villagers collected there at the house of Pritam Singh and there was altercation and some brick bats between villagers and Pritam Singh and her family and received minor injuries including Amarjit Kaur and Avtar Singh.”

A plain reading of the two versions makes it evident that the same are contradictory. In the first version put to Avtar Singh, the complainant party sustained injuries at the house of Gurnam Singh purportedly caused by the people gathered there on an alarm raised by Smt.Kartar Kaur for her rescue. But in the second version raised under Section 313 Cr.P.C., Pritam Singh and other sustained injuries at the behest of villagers at the house of Pritam Singh himself. We are not oblivious of the fact that the accused is not obligated to prove his plea in defence beyond shadow of reasonable doubt and the accused is entitled to get its benefit in case he is able to probablise his defence plea. The accused have not examined any villager namely Tarsem Singh son of Sant Singh, Raghbir Singh, Ajaib Singh, members Panchayat and Karnail Singh etc. who allegedly collected and rescued Smt.Kartar Kaur. One thing more to be added here is that Kartar Kaur and Gurnam Singh reported in the hospital after mid night and were medico legally examined at 12.30 a.m. On 21.07.1998. There is no explanation that if Kartar Kaur sustained injuries at about 2.30 p.m. on 20.07.1998, why it took about 12 hours in getting medical treatment for Smt.Kartar Kaur more particularly in the circumstances that as per defence version, a large number of people from the village gathered at her house and

rescued her from the assailants. It appears that as the accused party was not ready to admit that they had lost possession of Shamlat land, they tried to twist the facts by raising an incorrect plea so that the complainant party may not assert its possession over the said Shamlat land. In this view of the matter, we are unable to accept that either the complainant party was not in possession of the land in question or the occurrence in question did not take place at the spot or the complainant party is the assailant and caused injuries to Smt.Kartar Kaur at her house.

Much stress has been laid by counsel for the convicts that Karan Singh to whom the incised injury sustained by Pritam Singh has been attributed, was not present at the spot in view of plea of alibi, substantiated by Sh.Harminder Singh Saini, Advocate examined in defence. Avtar Singh complainant was examined on 19.09.2001 but cross examined on 07.02.2002, more than three years after the occurrence. During cross-examination, he has been confronted that on the day of occurrence, Karan Singh appeared as a witness in the Court of Civil Judge (Junior Division), Rajpura. A relevant extract from his testimony in this regard is quoted below for ready reference:-

"I do not know if Karan Singh son of Gurnam Singh accused had filed a suit for specific performance against Kadam Singh son of Rasal Ram or that the same was pending in those days in the Court of Miss Navjot Sohal, Civil Judge (Junior Division), Rajpura. I do not know if Karam Singh accused appeared as a witness in the civil suit or that his statement was recorded in the suit on that day. It is incorrect to suggest that Gurnam Singh accused was present at the time of alleged occurrence or that he has been falsely implicated."

Karam Singh in his statement recorded under Section 313 Cr.P.C.

has merely adopted the defence plea raised by Smt.Kartar Kaur. Smt.Kartar Kaur in her defence plea has not mentioned that Karam Singh could not be present at the spot as he was present in the Court at Rajpura at the relevant time. Karam Singh did not raise an additional plea of alibi in his statement under Section 313 Cr.P.C. A reading of the aforesaid extract put to Avtar Singh PW does not indicate that the accused have taken any such plea that at 4.30 p.m. on the fateful day, Karam Singh was either present in the Court of Civil Judge, Rajpura or he was available with his counsel. There is not even reference to the particulars of the counsel representing Karam Singh in the said case. As has been noticed hereinbefore, no such plea of alibi was raised by Karam Singh in his statement recorded under Section 313 Cr.P.C. It is for the first time at the fag end of the trial, Karan Singh raised such a plea by examining Harminder Singh Saini, Advocate DW1 that he (Karan Singh) was present in the chamber of Sh.Saini, Advocate upto 5 p.m. on 20.07.1998.

The question now arises whether the statement of Harminder Singh Saini, Advocate DW1 is worthy of credence and reliance to accept plea of alibi raised by Karam Singh. Harminder Singh Saini, Advocate has deposed that suit titled Karan Singh Vs. Kadam Singh was pending in the Court of Miss Navjot Sohal, Civil Judge, Rajpura and he was counsel for Karan Singh. Only two PWs were examined on 20.07.1998. The statement of the plaintiff and his witness started at 3 p.m. and finished at 4 p.m. The statement of Karan Singh started at 3 p.m. and completed at 3.30 p.m. Thereafter the statement of Jasbir Singh was recorded till 4 p.m. Karan Singh complainant remained present in the Court till 4 p.m. thereafter he stayed in his chamber upto 5 p.m. In response to a court question, the witness deposed, quoted thus:-

“There is no time recorded on the document recorded (sic).

I remember the time from the memory. I cannot tell the number of the cases (sic) in which I have to appear in case (sic) on 20.07.1998. I cannot tell the name of the case and the timing and the Courts to show that I appear (sic) at a particular Court and particular time.”

If Sh.Harmidner Singh Saini, Advocate did not remember the particulars of the cases, the particulars of the Court in which those cases were pending and the time when he appeared in a particular Court in a particular case, it is difficult to accept that he could tell from his memory and that too about 4 years of the occurrence that in the case filed by Karan Singh accused, Karan Singh or his witness was examined at a particular time or till 4.00 p.m. This apart, no such plea was raised during examination of Avtar Singh PW5 that Karan Singh was present in the Court of Civil Judge (Junior Division), Rajpura uptil 4 p.m. and thereafter he stayed in the chamber of his lawyer upto 5 p.m. In the light of aforesaid facts, in our considered opinion, the testimony of Harminder Singh Saini, is not at all sufficient to prove the plea of alibi raised by Karan Singh.

This brings the Court to the question of conviction of the appellants for offence under Section 304 Part II IPC instead of Section 302 IPC. Though Dr. Sanjiv Aggarwal in the medico legal report of Pritam Singh has referred to boggy swelling over right temporal region but for the reasons best known, he has not described it as one of the injuries. However, it is an undisputed position in the case that there was swelling over right temporal region of the victim and was later described as injury in post mortem examination of Pritam Singh by Dr. Deepak Walia PW3. Dr. Deepak Walia found four injuries on the person of the deceased and injury No.1 is diffused swelling on right temporo parietal region of head. He has further deposed that

on exploration of skull cerebral oedema was present. Fracture of right parietal bone was present. Sub-dural haematoma was present in temporo parietal occipital region. Intra cerebral haemorrhage was present. Mid line shift was present. Compression of left lateral ventricle was present.

The accused tried to explain this injury in their statement recorded under Section 313 Cr.P.C. Smt.Kartar Kaur in her statement has mentioned that “the injuries of Pritam Singh were manipulated after referring Pritam Singh to Rajindra Hospital, Patiala and on the way one injury on the head was caused by the complainant party in connivance with the investigating officer so that Section 302 IPC may be added on account of death of Pritam Singh which is evident from the post mortem examination report.” It is not very clear if the accused wanted to state that the said injury was caused to Pritam Singh prior to his death or after the death. Statement of Dr.Deepak Walia makes the picture clear as he categorically deposed that all the injuries on the person of Pritam Singh were ante mortem in nature. It is highly difficult to believe that the complainant party inflicted serious head injury to Pritam Singh so that the offence committed by the accused becomes grave in nature.

The deceased sustained one injury on right temporo parietal region of head and the other on pinna of right ear, both attributed to Gurcharan Singh. The accused came to the spot armed with weapons with a pre mediated mind as they had a serious grievance to express for losing possession of the land in question in regard whereof they fought legal battle for years together and eventually lost in the High Court of Punjab and Haryana. Keeping in view conduct of the accused who did not want to see somebody else cultivating the land and for that reason they came to the spot armed with weapons and caused injuries not only to Pritam Singh (deceased) but also to Avtar Singh and

Amarjit Kaur, we do not find any merit in the contention of the appellants that they may be convicted for a lesser offence punishable under Section 304 Part II IPC.

The acquittal of co-accused namely Gurnam Singh, Kartar Kaur and Balwinder Singh @ Binder by extending them benefit of doubt will not enure to benefit of the appellants as we have not examined correctness and legality of the judgment in this regard, in absence of an appeal either by the State or the complainant.

In view of what has been discussed hereinabove, we do not find any infirmity much less illegality in the judgment passed by the learned trial Court qua conviction of the appellants. As a result, the appeal is dismissed. The judgment of conviction and order of sentence are affirmed. The appellants, if on bail, be taken in custody to suffer remaining sentence.

CRR-2162-2002

Avtar Singh has filed **CRR-2162-2002** claiming compensation of ₹2 lacs in respect of the death of Pritam Singh. In view of our findings in criminal appeal preferred by Karan Singh and another, the judgment of the learned trial Court finding them guilty for committing murder of Pritam Singh has been affirmed.

Section 357 Cr.P.C. provides for payment of compensation due to fine imposed by the Court. Clause (c) of Section 357(1) Cr.P.C. provides as under:-

“(c)when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such

death”

Pritam Singh was about 70 years old. Keeping in view age of the deceased and in absence of any evidence on record with regard to his income, in our considered opinion, ends of justice would be served if compensation to the tune of ₹1 lac is awarded for the death of Pritam Singh, payable by the convicts in equal share, to the legal heirs of deceased Pritam Singh. With these observations, **CRR-2162-2002** stands disposed in the aforesaid terms.

CRA-D-244-DBA-2003 & CRR-222-2003

We have gone through the judgment passed by the learned trial Court and find no reason to differ with the observations made by the trial Court. FIR No.12 dated 10.02.1999 was registered in respect of injuries sustained by Smt.Kartar Kaur in an occurrence which allegedly took place on 20.07.1998 at about 2.30 p.m. and another occurrence on the same day but later in point of time regarding kidnapping of Gurnam Singh and injuries inflicted on his person. The learned trial Court has doubted the prosecution version for its failure to explain an inordinate delay of more than two months in submitting an application dated 23.09.1998 Ex.PA by Sh. Gurnam Singh when the FIR is admittedly registered in February 1999. It was also noticed by the trial Court that delay in lodging the FIR speaks a lot that complaint was filed as a counter blast to save their skin by the accused party in the murder case lodged by Avtar Singh. Indisputably, the injuries sustained by Kartar Kaur were simple in nature and those by Gurnam Singh were just superficial, thus, possibility of the injuries being fabricated can not be ruled out. Learned counsel for the State and counsel representing the petitioner (complainant) are not in a position to point out if the judgment passed by the learned trial Court is the result of misreading of evidence or ignoring any material evidence adduced

on record.

As per settled position in law, examination of a judgment of acquittal stands on a different footing than that of conviction. If two views are possible on appreciation of evidence on record, one adopted by the trial Court is to be accepted as it reaffirms and reassures the presumption of innocence available in favour of the accused. We do not find any illegality much less perversity in the findings recorded by the learned trial Court as would call for intervention. As a result, CRA-D-244-DBA-2003 & CRR-222-2003 are ordered to be dismissed.

(S.S.SARON)
JUDGE

(REKHA MITTAL)
JUDGE

November 28, 2015.

Davinder Kumar