

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

(1)

**CRR No. 849 of 2009.
Decided on: 2.12.2015.**

Constable Balga Nand and others

.... Petitioners

Versus

State of Haryana

.... Respondent

(2)

CRR No. 909 of 2009.

Mohar Singh and another

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. J.S. Bedi, Sr. Advocate with
Mr. H.N. Sahu, Advocate,
for the petitioners in CRR No. 849 of 2009.

Mr. Surender Deswal, Advocate,
for the petitioners in CRR No.909 of 2009.

Mr. Yashwinder Singh, DAG Haryana.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned two
Revision Petitions bearing CRR No. 849 of 2009 titled as “Constable
Balga Nand and others versus State of Haryana” and CRR No. 909 of
2009 titled as “Mohar Singh and another vs. State of Haryana” arising
out of the common judgment dated 24.03.2009, passed by the
Additional Sessions Judge, Panipat vide which the appeals filed by the

accused were dismissed and the judgment of conviction and the order of sentence dated 12.04.2007, passed by the Judicial Magistrate, First Class, Panipat were upheld. Vide the impugned judgments, accused were convicted and sentenced as under :-

Mohar Singh & Surat Singh

Offence	Sentence	Fine	In default
506 IPC	R.I for 2 years	Rs. 500/-	S.I for 1 month

Balga Nand, Attar Singh & Satpal

Offence	Sentence	Fine	In default
221 IPC	R.I for 2 years	Rs. 500/-	S.I for 1 month
120-B IPC	RI for 6 months	--	--

The brief facts of the case as noticed in the judgment passed by the Additional Sessions Judge are as under:-

“As per allegations contained in the FIR, on 16.09.1998, Balbir Singh ASI alongwith other police officials was present at Ram Lal Chowk, Panipat on routine patrolling duty and there, complainant Dalbir Singh met him and got his statement recorded alleging therein that he was resident of Dera Patti Insar, Panipat and was an agriculturist. There was dispute between his father and one Pargat Singh regarding some immovable property. Due to that, on 25.04.1996 said Pargat Singh, Gurmukh Singh, accused Mohar Singh, accused Surat Singh and

accused Jasbir Singh had murdered his father Sukha Singh and these aforesaid persons were facing trial in the court of Additional Sessions Judge, Panipat in this regard. On 15.09.1998, the said case was fixed for recording the evidence of the prosecution. In the said case, Pargat Singh and Gurmukh Singh were on bail whereas accused Mohar Singh, Surat Singh and Jasbir Singh were in custody and they had been produced before the Court. On 15.09.1998, at about 8.00 p.m., Mohar Singh, Surat Singh and Jasbir Singh arrived at his Dera and threatened him not to depose against them or he would be eliminated. At that time, Swaran Singh son of Richpal Singh and one Gurnam Singh son of Mohar Singh were also present. Since he apprehended danger to his life as well as of other family members, so he reported this matter.

On the basis of this aforesaid statement of the complainant, a case under Section 221/506/34 IPC was registered. Consequently, the accused-appellants were arrested and were bailed out in the present case. A site plan qua the place of occurrence was prepared by the investigating officer. Statements of the witnesses under Section 161 Cr.P.C. were recorded and after completion of necessary formalities, report

under Section 173 Cr.P.C. was submitted in the Court.”

The charges under Sections 221, 222, 120-B and 506 read with Section 34 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 HC Jagat Singh, PW-2 ASI Tikka Ram, PW-3 Umed Singh, PW-4, ASI Madan Lal (retired), PW-5, complainant, Dalbir Singh, PW-6, Swaran Singh, PW-7 Gurnam Singh and PW-8 Sohan Singh.

The material witness PW-2, ASI Tikka Ram deposed that on 16.9.1998, he was on Escort Guard duty and was to bring the accused from Ambala, Karnal and Kurukshetra. They brought the accused from Ambala and Karnal Jail to Panipat for their appearance in the Court. The custody of accused was handed over to Constable Satpal for their appearance in the Court against the receipt, Ex.PW-2/A which was taken into police custody in the presence of the witness.

The statements of the accused were recorded under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded false implications.

In their defence, the accused examined DW-1 Dr. S.L. Pruthi, Pruthi Nursing Home, Panipat and closed the evidence.

After appraisal of the evidence, the learned trial Court, vide the impugned judgment and the order dated 12.04.2007,

convicted the accused Mohar Singh, Surat Singh and Jasbir Singh under Section 506 IPC and accused Balga Nand, Attar Singh and Satpal under Sections 221, 222(3) read with Section 120-B IPC.

Feeling dissatisfied with the impugned judgment and the order dated 12.04.2007, the accused preferred separate appeals before the Additional Sessions Judge, Panipat. Vide judgment dated 24.03.2009, the learned Additional Sessions Judge, Panipat partly accepted the appeals filed by Balga Nand, Attar Singh and Satpal and acquitted them of offence punishable under Section 222 read with Section 120-B IPC however, their conviction under Section 221 read with Section 120-B IPC was maintained. The appeal filed by the accused Mohar Singh, Surat Singh and Jasbir Singh was dismissed.

Still feeling aggrieved by the impugned judgments dated 12.04.2007 and 24.03.2009, the present revision petitions have been filed.

The Criminal Revision No. 849 of 2009 has been filed by Constable Balga Nand, Constable Attar Singh and Constable Satpal whereas, the Criminal Revision No. 909 of 2009 has been filed by Mohar Singh and Surat Singh.

Learned counsel for the petitioners refers to the testimony of the PW-2, ASI Tikka Ram to contend that this witness has proved Ex. PW-2/A vide which the custody of Jasbir Singh was entrusted to Constable Satpal Singh on 16.09.1998. He further

contends that as per the case of the prosecution, on 15.09.1998 at 8

p.m., the accused Mohar Singh, Suraj Singh and Jasbir Singh while in the custody of Constable Balga Nand, Constable Attar Singh and Constable Satpal Singh in a murder case, went to the residence of the complainant and threatened him that in case he deposed against the accused, he would be eliminated. It is further contended that the occurrence in the present case is alleged to have taken place on 15.09.1998 whereas, the custody of accused Jasbir Singh was handed over to Constable Satpal Singh on 16.09.1998 vide Ex. PW-2/A. It is further contended that a false case has been planted against accused Mohar Singh, Surat Singh and Jasbir Singh in order to oppose the grant of bail to them in the earlier murder case. He further contends that the prosecution version is concocted because out of the five accused, who had been facing trial for the murder of father of the complainant, Pargat Singh and Gurmukh Singh were on bail. Had there been any intention on the part of the accused persons to criminally intimidate the complainant, accused Pargat Singh and Gurmukh Singh, who were already on bail, would have carried out the task.

On the other hand, the learned State counsel submits that the case of the prosecution has been fully established beyond reasonable shadow of doubt. The learned trial Court as well as learned lower appellate court have rightly convicted and sentenced the accused. The accused Balga Nand, Attar Singh and Satpal Singh being police officials do not deserve any leniency.

I have heard learned counsel for the parties and have

gone through the record of the case.

The accused, Mohar Singh, Surat Singh and Jasbir Singh were facing trial for the murder of the father of the complainant, Dalbir Singh. On 15.09.1998, they were produced in the Court. The murder trial was pending for evidence of the prosecution witnesses on that date. However, the evidence of witnesses could not be recorded on that date. Therefore, the case was adjourned to 16.09.1998 for the same purpose. In the evening of 15.09.1998, the accused Mohar Singh, Surat Singh and Jasbir Singh who were in the custody of Constable Balga Nand, Constable Attar Singh and Constable Satpal Singh, came to the residence of the complainant and criminally intimidated him that in case, he deposed against the accused, he would be eliminated. The ocular evidence in the shape of statements of the complainant Dalbir Singh and Swaran Singh is on the similar lines.

However, a perusal of Fard Spurdgi (Entrustment Memo) Ex. PW-2/A shows that the custody of accused Jasbir Singh was handed over to Constable Satpal Singh on 16.9.1998. If the custody of Jasbir Singh was handed over to Satpal Singh on 16.09.1998, then the prosecution story that the accused went to the residence of the complainant and threatened him while in custody of Constable Satpal Singh on 15.09.1998 becomes doubtful. In other words, before Constable Satpal Singh was given the custody of accused Jasbir Singh, how could he accompany him to the house of the complainant on 15.09.1998. The question remains unanswered. No

explanation much less cogent explanation has come forth from the prosecution. Further, if the intention of the accused i.e. Mohar Singh, Surat Singh and Jasbir Singh was to threaten the complainant and stop him from deposing against the accused persons, the task could very well have been accomplished by their co-accused Pargat Singh and Gurmukh Singh who were already on bail. The story propounded by the prosecution leaves much to be desired.

Viewed from this angle, a dent stands created in the case of the prosecution. Thus, this Court is of the opinion that the prosecution has not been able to prove its case beyond a reasonable shadow of doubt. Consequently, both the revision petitions are allowed. The impugned judgments and the order passed by the Courts below are set aside. The accused are acquitted of the charges framed against them. The bail bonds and surety bonds are discharged.

2.12.2015.
SN

(JITENDRA CHAUHAN)
JUDGE