

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

**Criminal Appeal AS-177 of 2015
Date of Decision: September 14, 2016**

Krishan @ Dalla	Versus	Appellant
Jaswant Singh and others		 Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Sudhir Sharma, Advocate
for the appellant.

Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for respondents No. 1 to 5.

Mr. M.S.Sidhu, Addl. Advocate General, Haryana
for respondents No. 25-State.

T.P.S.MANN, J.

Complainant Krishan @ Dalla has preferred the present appeal for challenging the judgment dated 31.8.2009 passed by the learned Additional Sessions Judge, Sirsa to the extent of acquitting of respondents No. 1 to 5 of the charges under Sections 148, 452/149, 325/149 and 323/149 IPC.

According to the prosecution, complainant Krishan @ Dalla had made statement before Sub Inspector Hari Chand on 22.4.2005, wherein, he stated that on 18.4.2005, he was standing near the bridge of the Canal where Jassa, Bittu, Mohan

Singh, Pamma and Binder Singh, residents of his village, came and were under the influence of liquor. They all remarked that he belonged to a lower caste. They gave fist and slap blows to him. His brother Fateh Singh @ Fatta came there and rescued him. On 20.4.2005, he along with his father Baaj Singh, mother Raja Bai and wife Kulbir Kaur was sleeping in the compound of their house. At about 9.00 p.m. he woke up and saw that 20/25 persons armed with gandasas and lathis had entered his house from both sides. Immediately after coming, Amarjit Singh gave a gandasa blow from its reverse side to him. He then went to the roof of the house. However, all those intruders followed him. Jassa @ Jaswant Singh, who were armed with a lathi gave a blow on the fingers of his left hand. Bittu Singh gave a lathi blow on the front of his left thigh. Swaran Singh caused injuries with a balla on his left calf and below the left wrist. The brother-in-law of Jassa gave lathi blow on his back near left shoulder. Balkar Singh, Ex-Sarpanch, Jeet Singh and Raju, who were armed with lathis, Pargat Singh, who was empty handed, Pamma armed with a lathi, Chhinder armed with a lathi, Joginder Singh armed with a lathi, Chhinda armed with a sword, Gurwinder Singh armed with a Gandasa, Baba Singh armed with a kappa, Jeet Singh armed with a sword, Jassa armed with a barchha, Pala Singh armed with a sword, Kulwant Singh @ Kaka armed with a lathi, Raju @ Rajinder Singh armed with a lathi, Ranjeet

Singh empty handed, Jeet Singh armed with a gandasa Binder Singh armed with a kappa and Karnail Singh came on the roof top from the staircase. He raised a hue and cry. In the meantime, his mother Raja Bai, father Baaj Singh, wife Kulbir Kaur and brother Fateh Singh rushed there. On seeing them, the accused ran away from the spot. With their respective weapons, the injuries were inflicted to him due to old rivalry. He was then shifted to Civil Hospital, Sirsa, where he was medico-legally examined.

It is also the case of the prosecution that on the basis of the aforementioned statement made by Krishan @ Dalla, cross version of the criminal case, which already stood registered against the complainant party was set up. During its investigation, Jaswant Singh, Amarjit Singh, Chhinder, Jassa and Ranjit Singh were arrested while the remaining accused were found to be innocent. Accordingly, after completion of investigation, the aforementioned five accused were sent up to stand trial.

Respondents No. 1 to 5, who were challaned by the police were charged for committing the offences under Sections 148, 452/149 and 323 read with Section 149, to which, they pleaded not guilty and claimed trial. As the remaining accused were not sent up for trial by the police for the reason that they were found innocent during the investigation, complainant Raja Bai preferred a private complaint and after preliminary evidence those accused were summoned to face trial. Upon their

appearance, learned Sessions Judge, Sirsa vide order dated 15.4.2008 found it desirable to club the complaint case with the State case. However, all the proceedings were to be recorded in the State case. All the private respondents were, thereafter, charged for committing offences under Sections 148, 452 read with Section 149, Section 325 read with Section 149 and Section 323 read with Section 149 IPC, to which, they pleaded not guilty and claimed trial.

At the trial of the case, the prosecution examined seven witnesses, namely, Dr. Subhashni Gupta as PW1, Raja Bai as PW2, Krishan alias Dalla (complainant) as PW3, Fatta Singh as PW4, Dr. Viresh Bhushan as PW5, Dr. Harish Kumar Goyal as PW6, Dr. Ashok Kumar Gupta as PW7 and Sub-Inspector Hari Chand as PW8.

When examined under Section 313 Cr.P.C. accused Jaswant Singh stated that that on 20.04.2005, during day time PW Fateh Singh alias Fatta son of Baaj Singh had made his cattle enter in his fields which was objected to by him, upon which a quarrel took place between him and Fateh Singh alias Fatta. Fateh Singh alias Fatta gave fist blows to him and threatened him with dire consequences. He then narrated the incident to his family members. At about 8:30 p.m., his brother Ranjeet Singh and father Karnail Singh went to the house of Krishan Kumar to lodge a protest regarding the aforesaid incident. His father asked

Baaj Singh as to why his son Fateh Singh alias Fatta had entered his cattle into their fields and damaged the fodder crop and also gave fist blows to Jaswant Singh. Baaj Singh asked Karnail Singh and Ranjeet Singh to come on the roof-top of his house for settlement of dispute. They then went on the roof where Baaj Singh raised a lalkara to teach a lesson to them for lodging a protest and thereupon Krishan caught hold the right hand of Karnail Singh and Fateh Singh alias Fatta gave Gandasi blow on the head of Karnail Singh, who on receiving this injury fell down on the ground. Ranjeet Singh raised hue & cry, which attracted him as well as other villagers. On seeing them, Baaj Singh and Fateh Singh alias Fatta ran away through the stairs whereas Krishan while coming down through the stairs in haste slipped and fell on the stairs and received injuries. Fateh Singh alias Fatta never received any injury in the present incident and got his medical examination conducted on the next day at Ellenabad. Accused Ranjeet Singh in his statement has also taken the same stand as that of his co-accused Jaswant Singh. The remaining twenty two accused in their statements under Section 313, Cr.P.C. have stated that they were not at all present at the time of alleged occurrence and that they have been falsely implicated in this case by the police.

In their defence, the accused tendered in evidence Ex.D4 certified copy of the statement of Dr. Hans Raj Bashir;

Ex. D5 Copy of statement of Jaswant; Ex.D6 attested copy of inquest report and Ex.D7 certified copy of statement of Ranjit Singh.

The deposition of the various witnesses examined by the prosecution are as under:-

PW1 Dr. Subhashani Gupta was posted as Medical Officer in General Hospital, Sirsa on 22.04.2005. On that day, on application of police Ex.P1, she declared injured Krishan fit to make statement vide her endorsement Ex.P2.

PW2 Raja Bai is the complainant of the case as she had instituted private complaint. She has supported the prosecution case and has reiterated the facts as mentioned in the complaint filed against remaining nineteen accused persons who were summoned later on by the learned Ilqa Magistrate.

PW3 Krishan alias Dalla is the son of PW2 Raja Bai and is the complainant of the case instituted on police report. He has also supported the prosecution case and has corroborated the statement of PW2 Raja Bai and PW4 Fateh Singh alias Fatta. He has stated about the weapons carried by each accused and has also attributed specific injuries to the accused persons.

PW4 Fatta Singh is the brother of Krishan Kumar alias Dalla complainant. He has also supported the prosecution case and corroborated the statements of PW2 Raja Bai and PW3 Krishan alias Dalla complainant. He has also stated about the

weapons carried by each accused and also attributed specific injuries to the accused persons.

PW5 Dr. Viresh Bhushan, Medical Officer, G.H., Sirsa has medico-legally examined complainant Krishan and has found following injuries on his person:-

- (i) A lacerated wound 4 cm x 0.5 cms on inter parietal region of scalp. It was obliquely placed across of mid line and bone deep. Fresh bleeding was present. X-ray was advised.
- (ii) A reddish contusion 3 cms. x 3 cms. on right arm middle 1/3rd laterally. It was tender. X-ray was advised.
- (iii) A reddish contusion 4 cms. x 2 cms. on left deltoid region laterally. It was tender. X-ray was advised.
- (iv) An abraded contusion 4 cms. x 1 cms. on left forearm middle 1/3rd postero-medially. Dried blood was present over the injury. X-ray was advised.
- (v) Complaint of pain in the right hand fingers. Tenderness was present. X-ray was advised.
- (vi) Reddish contusion 6 cms. x 4 cms. on left scapular region. It was tender. X-ray was advised.
- (vii) Reddish contusion 12 cms. x 3 cms on right thigh middle 1/3rd antero laterally. It was tender. X-ray was advised.
- (viii) Multiple abrasions all over anterior surface of left leg of different shapes and sizes. Fresh and dried blood was present.

Ex.P4 is the carbon copy of M.L.R. of Krishan Kumar prepared in the same process with the original and Ex.P5 is the

diagram showing the seat of injuries. This doctor witness has also stated that he sent ruqa Ex.P6 to P.S.City, Sirsa regarding the admission of injured Krishan. On police application Ex.P7 dated 21.04.2005 at 2:15 a.m. he opined vide his opinion Ex.P8 that this injured was unfit to make statement.

PW6 Dr. Harish Kumar Goyal medico-legally examined PW Fateh Singh vide M.L.R. Ex.P10 and found following injuries on his person:-

- (i) Bruise of size 13 cms. x 2 cms. at the right side of back, vertical in direction, simple caused with blunt weapon.
- (ii) Bruise of size 5 cms. x 2 cms. oblique above the right shoulder region.
- (iii) Diffuse swelling present at the left arm, tenderness was present. X-ray was advised. This injury was kept under observation and caused by blunt weapon.
- (iv) Diffuse swelling present at the base of littler finger dorsal aspect. Advised X-ray left hand. This injury was caused by blunt weapon and kept under observation.
- (v) Complaining of pain in left foot medical aspect. No external mark of any injury was seen. Advised X-ray left foot. This injury was kept under observation and caused by blunt weapon.

PW7 Dr. Ashok Gupta radiologically examined PW Fateh Singh on 21.04.2005 and found fracture base of proximal phalanx little finger left hand vide x-ray report, attested copy of

which is Ex.P12.

PW8 Sub-Inspector Hari Chand was the investigating officer of the case. He has fully supported the case of the prosecution as narrated in the opening part of the judgment. He has also stated with respect to various aspects of investigation conducted by him in this case and has proved the documents referred to above and prepared by him during the investigation

The trial Court, after hearing learned counsel for the parties and on going through the evidence came to the conclusion that the prosecution had miserably failed to prove its case against the accused beyond reasonable doubt. Accordingly, all of them were acquitted of the charges against them.

Aggrieved of the acquittal of respondents No. 1 to 24, complainant Krishan @ Dalla sought leave to appeal. This Court vide order dated 5.11.2015 granted leave only against the acquittal of respondents No. 1 to 5, who stand duly served and represented.

After hearing learned counsel for the parties and on scanning the evidence with their able assistance, this Court finds that there was a delay of more than thirty six hours in lodging the report with the police. According to the prosecution, the occurrence had taken place on 20.4.2005 at about 8.30 p.m. wherein the complainant had received simple injuries. PW5

Dr. Viresh Bhushan has admitted in his cross-examination that injuries on the person of the complainant were on non-vital parts and all the injuries except injury No. 1 were simple in nature. He also admitted that the patient was conscious and well oriented at the time of admission. Despite the same, the statement of the complainant came to be recorded only on 22.4.2005 at 11.00 a.m. No satisfactory explanation has been given by the prosecution in order to explain the delay.

In the first version before the police, complainant Krishan Kumar had not at all stated that his brother Fateh Singh @ Fatta had sustained injuries during the occurrence. He simply stated that on hearing his noise, his parents, wife and brother Fateh Singh @ Fatta reached the spot and on seeing them the assailants ran away from there. Moreover, Fateh Singh @ Fatta got himself medico-legally examined after fifteen hours of the occurrence. PW6 Dr. Harish Kumar Goyal, who had medico-legally examined Fateh Singh @ Fatta admitted in cross-examination that injuries on the person of Fateh Singh @ Fatta could be self suffered or by friendly hand.

While making statement Ex.P3 before Sub-Inspector Hari Chand, on the basis of which, the cross-case was initiated against the accused party, complainant Krishan Kumar did not state about Karnail Singh (since deceased), sustaining an injury in the occurrence. Fateh Singh @ Fatta besides PW3 Krishan

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-:11:-

Kumar complainant while in the witness box did not explain the injury of Karnail Singh, which was present on his head and caused with the sharp edged weapon and finally proved fatal. Non-explanation of the injury on Karnail Singh casts a serious dent in the prosecution case.

In view of the above, no case is made out for any interference in the impugned judgment passed by the trial Court to the extent of acquitting respondents No. 1 to 5 of the charges against them. The appeal is without any merit and, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

September 14, 2016
amit rana

**(GURMIT RAM)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No