

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

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**CRA-D-699-DB of 2015  
Date of decision : 17.2.2016**

**Sandeep Kumar**

**.....Appellant**

**v.**

**State of Punjab and others**

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN  
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present : Mr. Davinder Singh Khurana, Advocate  
for the appellant

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**RAMENDRA JAIN, J.**

Appellant/Complainant has preferred the present appeal against the impugned judgment dated 23.1.2015, acquitting respondents No.2 to 4 under Sections 364, 382, 323 and 120B IPC.

Briefly stated, around 9.30 p.m. on 16.4.2012, respondent No.3-Kharait Lal along with two unknown persons after raising lalkara to teach a lesson, kidnapped the complainant in a car driven by himself. All the three persons were armed with kirpan and kappa. They kept on beating the complainant in the car on the instructions of respondents No.2 and 4, namely, Balbir Chand and Sandeep Kumar respectively. They also snatched money and mobile phone of the complainant. Finally, they pushed him out of the car, somewhere near Village Dharmuwala. The motive behind the occurrence was of suspicion of respondents No. 2 to 4 upon the complainant that he used to keep a

bad eye on their sister. On recording the above statement of the complainant in Civil Hospital, Jalalabad, formal FIR was registered. Statements of the relevant witnesses were recorded. Rough site plan of the place of occurrence was prepared. Respondents No.2 to 4 were arrested. After completion of necessary investigation, the final report under Section 173 Cr.P.C. was presented in the Court against them. Respondent No.5 Lovepreet was declared juvenile. Therefore, his trial was separated and sent to Juvenile Justice Board. Since the offence under Section 364 IPC was exclusively triable by the Court of Sessions, therefore, the case was committed there.

On finding a prima facie case, the learned trial Court charge sheeted the respondents No. 2 to 4 under Sections 120B, 364, 382 and 323 IPC, to which they pleaded not guilty and claimed trial. The prosecution in support of its case, examined as many as following 8 witnesses :-

PW1 is complainant Sandeep Kumar. PW2 Pawan Kumar is his brother in law and an eye witness to the alleged occurrence, who took the complainant and got him admitted in the hospital. PW3 Surinder Kumar is father of the complainant. PW4 Dr. Kanwaljit Singh, had medico legally examined the complainant and found multiple injuries simple in nature on his person vide MLR Ex.PW4/A, pictorial diagram Ex.PW4/B. This witness also proved endorsement Ex.PW4/C on the application, declaring the complainant fit to make statement. PW5 SI Lekh Raj is the Investigating Officer. PW6 is Pardeep Kumar, previous owner of the Zen car allegedly used in the commission of crime. PW7 is ASI Darshan Singh, who partially investigated the case and arrested the respondents-accused. PW8 is C. Ravinder Pal Singh, Computer Clerk SSP Office, Fazilka.

Statements of respondents No. 2 to 4 under Section 313 Cr.P.C. were recorded putting entire incriminating evidence brought on record by the prosecution against them, to which they denied and pleaded their false implication. In their defence, they alleged that the complainant was sending SMS to their sister Sudesh Rani. Thus, they had collected a panchayat in which the complainant was reprimanded. Therefore, in order to take revenge, false case was registered against them.

After hearing learned counsel for both the sides and considering the evidence on record, the learned trial Court acquitted respondents No.2 to 4 vide impugned judgment dated 23.1.2015.

Learned counsel for the appellant argued that the impugned judgment of the learned trial Court is based on surmises and conjectures. The learned trial Court has failed to appreciate that the complainant had suffered seven multiple injuries on various parts of his body at the hands of respondent No.3 and his companions, on the instructions of his father Balbir and brother in law Sandeep Kumar (respondents No.2 and 4 respectively). Learned trial Court has also erred in not relying upon the statement of eye witness PW 2 Pawan Kumar. Respondents No.2 to 4 have wrongly been acquitted on the ground that the prosecution has failed to prove that respondent No.3 had ever made any call to respondents No.2 and 4, despite the fact that the complainant has specifically named them.

We have given our thoughtful consideration to the above submissions made by learned counsel for the appellant.

The whole story in this case revolves around the alleged motive of respondents No.2 to 4 in causing injuries to the complainant. As per own

admission of the complainant, the private respondents had suspicion upon him that he used to send SMS to their sister Sudesh Rani and in a panchayat, the matter was resolved. Taking lead to the above motive explained by the complainant, the respondents No.2 to 4 in their statements under Section 313 Cr.P.C. clarified that since the complainant was reprimand in the panchayat, therefore, in order to take revenge, he got registered the false case against them.

Now it has to be seen that whether the prosecution has been able to prove its case against respondents No.2 to 4 beyond any reasonable doubt or whether respondents No.2 to 4 have been able to convince the Court about their aforesaid defence.

As per the complainant, he was kidnapped by respondent No.3 and his two companions on his way, just a short distance from the hospital, where he was working. PW 2 Pawan Kumar, brother-in-law of the complainant is stated to have witnessed his kidnapping by respondent No.3-Kharait Lal. However, it is unexplained on the file that why he did not approach the police, despite witnessing the kidnapping of the complainant, who was none else, but his real brother in law. He has testified that he simply informed PW 3 Surender Kumar, father of the complainant and they both chased the car for one and a half hours. It is again unexplained that why during this period, they did not bother to inform the police or to raise any hue and cry, so that the assailants should be intercepted by the police.

The fact cannot be lost sight of that now a days, it is very usual and easy to inform the police about a crime on number “100”. Hence, while chasing the car of the assailants, it was very easy for PW-2 Pawan Kumar and PW-3 Surender Kumar brother in law and father of the complainant respectively to

dial number "100". A man of ordinary prudence would always act in this manner. Hence, non action of PW 2 Pawan Kumar and PW 3 Surender Kumar in this regard creates a suspicion in the prosecution story and liable to draw an adverse inference against them that the things did not happen in the manner as narrated by the prosecution.

The complainant has stated that he was kidnapped by respondent No. 3 Kharait Lal, Sandeep Kumar and one un-identified person. However, during investigation the whereabouts of aforesaid Sandeep Kumar and Chhinder Singh could not be traced by the police. Thus, they could not be arrested. Hence, the learned trial Court has rightly held that the prosecution story was not truthful. Allegations against respondents No.2 and 4 are that they were regularly instructing respondent No.3 on his mobile, while he was driving his car after kidnapping the complainant. Contrary to it, the complainant has stated that respondent No.3 Kharait Lal was talking on mobile with someone, but, no person responded him. In these circumstances, it has rightly been held by the learned trial Court that how the appellant could say that respondent No.3 was regularly talking with respondents No.2 and 4 on mobile. The receipt of simple injuries by the complainant also falsifies the prosecution story that the assailants, who kidnapped him were armed with kirpan and kappa.

The complainant as PW1 has stated that after pushing him out of the car by the assailants, he telephoned his father from village Dharmuwala. Thereafter, his father got him admitted in the hospital whereas, his father Surender Kumar as PW 3 deposed that he took the complainant from Village Baghe Ki maur. Thus, the place of incident and throwing of the complainant and his taking by his father to the hospital has also been rendered doubtful.

No other point was urged before us.

We have gone through the impugned judgment very carefully and found no irregularity or perversity in the same. Accordingly, the appeal being completely devoid of any merit, is hereby dismissed.

**(RAMENDRA JAIN)**  
**JUDGE**

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

**17.2.2016**  
*Ashwani*