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

1. CRA-S-1426-SB-2003

Jagsir Singh and others Appellants

Versus

State of Punjab Respondent

2. CRR-630-2004

Atma Singh Petitioner

Versus

Jagsir Singh and others Respondents

Date of Decision : October 17th, 2016

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present: Ms. Divya Sharma, Advocate, [*Amicus curiae*]
and Mr. P.S.Brar, Advocate,
for the appellants (in CRA-S-1426-SB-2003).
and for the respondents in CRR No. 630 of 2004.

Mr. Anter Singh Brar, Advocate,
for the Revisionist.

Mr. Yogesh Kumar Gupta, AAG, Punjab
for the respondent-State.

SHEKHER DHAWAN, J.

This order shall dispose of Criminal Appeal No. CRA-S-1426-SB-
2003 filed by appellants, Jagsir Singh, Charat Singh and Chinnder Singh,

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and CRR No. 630 of 2004 filed by Atma Singh as both arise out of the same judgment of conviction and order of sentence.

Appellants have preferred appeal, bearing No. CRA-S-1426-SB-2003 against the judgment of conviction and order of sentence dated 25.07.2003 passed by learned Additional Sessions Judge, Moga whereby they were convicted and sentenced as under:-

Appellant's name	Under Sections	Sentence	In default
Jagsir Singh	452 IPC	to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.1,000/- each.	to further undergo Rigorous Imprisonment for a period of 3 months.
	325 IPC	to undergo Rigorous Imprisonment for a period of 2-1/2 [Two and a half] years and to pay a fine of Rs.1,500/- each.	to further undergo Rigorous Imprisonment for a period of 6 months.
	325/34 IPC	to undergo Rigorous Imprisonment for a period of 2 years.	-
	324 IPC	to undergo Rigorous Imprisonment for a period of 1 year each.	-
	324/34 IPC	to undergo Rigorous Imprisonment for a period of 1 year.	-
	323/34 IPC	to undergo Rigorous Imprisonment for a period of 6 months.	-
Charat Singh	452 IPC	to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.1,000/- each.	to further undergo Rigorous Imprisonment for a period of 3 months.

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Appellant's name	Under Sections	Sentence	In default
	325 IPC	to undergo Rigorous Imprisonment for a period of 2 years.	-
	325/34 IPC	to undergo Rigorous Imprisonment for a period of 2-1/2 [Two and a half] years and to pay a fine of Rs.1,500/- each.	to further undergo Rigorous Imprisonment for a period of 6 months.
	324 IPC	to undergo Rigorous Imprisonment for a period of 1 year each.	-
	324/34 IPC	to undergo Rigorous Imprisonment for a period of 1 year.	-
	323 IPC	to undergo Rigorous Imprisonment for a period of 6 months.	-
	323/34 IPC	to undergo Rigorous Imprisonment for a period of 6 months.	-
Chhinder Singh	452 IPC	to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.1,000/- each.	to further undergo Rigorous Imprisonment for a period of 3 months.
	325/34 IPC	to undergo Rigorous Imprisonment for a period of 2-1/2 [Two and a half] years and to pay a fine of Rs.1,500/- each.	to further undergo Rigorous Imprisonment for a period of 6 months.
	325/34 IPC	to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.1,500/- each.	to further undergo Rigorous Imprisonment for a period of 6 months.
	324 IPC	to undergo Rigorous Imprisonment for a period of 1 year each.	-

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Appellant's name	Under Sections	Sentence	In default
	324/34 IPC	to undergo Rigorous Imprisonment for a period of 1 year.	-
	323 IPC	to undergo Rigorous Imprisonment for a period of 6 months.	-
	323/34 IPC	to undergo Rigorous Imprisonment for a period of 6 months.	-

All the sentences have been ordered to run concurrently.

Atma Singh, one of the eye-witnesses, has preferred CRR No. 630 of 2004 seeking enhancement of quantum of sentence awarded to appellants.

2. Relevant facts for the purpose of decision of these cases; that appellants Jagsir Singh and others alongwith Ujjagar Singh were sent to face trial for commission of offence punishable under Sections 307, 450, 325, 324, 323 read with Section 34 IPC, on the allegations that on 6.4.1999 at about 4.45 PM, complainant – Jit Singh alongwith his brother Atma Singh and family members was present in their house. Chinnder Singh armed with gandasa, Charat Singh armed with kassia, Jagsir Singh armed with kassia and Ujjagar Singh [since deceased] was riding a tractor make Escord of white colour. The tractor was being driven by Charat Singh. They raised a *lalkara* that they would teach them lesson for deserting their girl. Complainant – Jit singh alongwith his wife Jaspal Kaur and daughter Paramjit Kaur went to the house of Atma Singh and informed that the accused armed with weapons had come. Meanwhile, the accused-

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appellants armed with their respective weapons and Ujjagar Singh [since deceased] who was armed with pulli of the tractor, came to the house of Atma Singh. Paramjit Kaur daughter of Jit Singh came forward and the accused-appellants inflicted injuries to her. Jaspal Kaur wife of Jit Singh, Atma Singh and Harbans Kaur wife of Atma Singh made efforts to rescue Paramjit Kaur. All the accused caused injuries to them on different parts of their bodies with their respective weapons. Thereafter the accused-appellants ran away from the spot alongwith the weapons. Injured were admitted in the hospital. As per the complainant, the motive for the crime was that the complainant did not want to bring the wife of Jagtar Singh and on this score, the accused were having grudge against them and caused the injuries to them.

3. Police started the investigation. After taking medical opinion about the injured of this case and after recovery of weapons on the basis of disclosure statements made by the accused and after their arrest, investigation was completed and challan was presented in the Court.

4. During the process of trial, learned trial Judge completed various stages of trial including framing of charge against the accused-appellants to which they pleaded not guilty and claimed trial. After recording of evidence of the prosecution witnesses, examination of accused under Section 313 Cr.P.C and after considering the prosecution evidence and the defence version, the trial Court held the appellants guilty and convicted them for commission of offence under Sections 325, 324, 323 and 452 read with Section 34 IPC on 25.07.2003 and sentenced them , as detailed in para No.1

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above.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeal bearing No. CRA-S-1426-SB-2003. The revisionist being dissatisfied with quantum of sentence awarded to the appellants, has preferred CRR No. 630 of 2004.

6. As counsel for the appellants was not appearing on different dates, vide order dated 15.09.2016, Ms. Divya Sharma, Advocate was appointed as *amicus curiae* to assist the Court in this appeal. This Court appreciated the efforts put in by her. However, at the time of final arguments, Shri P.S.Brar, Advocate representing the appellants also appeared and argued the matter as well. Learned counsel for the appellants contended that learned trial Court has not considered the relevant aspects of the case. Undisputedly, the occurrence had taken place on 6.4.1999 whereas, the matter was reported to the police on 7.4.1999, i.e., after a delay of 18 hours. This delay remained unexplained throughout. The relations between the parties were inimical and because of that, complainant party got an opportunity to come with false version. In fact, the complainant party was the aggressor party and after manipulation and distorted version having been made the basis by the Investigating Agency and because of partial investigation having been done, the appellants have been falsely implicated. It was in fact, a case of self defence on the part of appellants. Even the ladies on the side of the accused-appellants had also sustained injuries. At the best, it was a case of free-fight where the complainant party as well as

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the accused party had sustained injuries. In fact, the complainant party had attacked the accused persons. The medical evidence in support of nature of injuries is not coming on the file as no CT-Scan report was produced on the file. The medical opinion regarding nature of injuries was given on the basis of cumulative effect of injuries. More so, it has come in the statement of the injured that the kassia was used from its reverse side. The appellants had also sustained several injuries as per statement of DW – 1, Dr. V.J.S.Dhillon, who were also medico legally examined in the hospital on the same day, but the Court below has not considered all these aspects while recording judgment of conviction against the appellants. The appellants have already undergone actual sentence of about 6 months and the present appeal be accepted and they be acquitted of the charge.

7. Learned State counsel as well as learned counsel for the complainant while arguing on these points, submitted that the Court below has already considered all the aspects regarding delay in reporting the matter and the delay has been duly explained in this case. The conviction has been recorded *inter alia* under Section 325 IPC on the basis of opinion given by the doctor and keeping in view the weapons used for commission of offence and seat of injuries. Even the plea of self-defence was considered at length by learned trial Court and was rightly discarded. The Court below has rightly come to the conclusion that it was not a case of self-defence on the part of the appellants, rather they were the aggressors as the place of occurrence was residential house of Atma Singh and the accused-persons had attacked the complainant and his family members after conspiring with

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each other and making due preparation to open the attack. In that process, the appellants might have sustained certain injuries. Otherwise, the nature of injuries are not such which may suggest and establish that the accused-persons were exercising their right of self-defence. The present appeal is without any merit and the same be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that most of the facts are not disputed that the occurrence had taken place on 6.4.1999 at about 4.45 PM. Immediately thereafter, injured Paramjit Kaur, Jaspal Kaur, Jit singh and Harbans Kaur were shifted to the hospital where they were medico legally examined. Accused persons, namely, Chinnder Singh was armed with gandasa, Charat Singh was armed with kassia, Jagsir Singh was armed with kassia and Ujjagar Singh [since deceased] was armed with a pulli of the tractor and the tractor was being driven by Charat Singh. As per the testimony of injured eye-witnesses and investigation carried out in this case, the place of occurrence is a residential house of Atma singh. The place of occurrence itself establishes that the accused-appellants were aggressor persons and they were armed with deadly weapons like gandasa and kassia. Thereafter, they had caused injuries to Paramjit Kaur, Jaspal Kaur, Jit Singh [complainant] and Harbans Kaur. During investigation, the accused persons were arrested and they had made disclosure statements and got recovered weapons used in the commission of crime. Accused Chinnder Singh made disclosure statement [Ex. PF] and got recovered gandasa; accused Charat Singh made disclosure statement [Ex.PD] and got recovered

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kassia and accused Jagsir Singh made disclosure statement [Ex. PE] and got recovered kassia. Tractor bearing registration No.PUK-1236 was also got recovered. The investigation of the case was conducted by ASI Shiv Chand [PW-4]. Initially the medical examination of the injured was done by Dr. Rajesh Kumar Puri [PW-5]. PW-7, Dr. Gagandeep Singh proved Radiologist report Ex. PQ and reports Ex. PQ/1 to PQ/3. However, it had come in the cross-examination of Paramjit Kaur, injured that Jagsir Singh had given kassia blow from its reverse side which hit her on her head. Jagsir Singh gave another blow with kassia from its reverse side which hit on above left side of ear and she became unconscious. PW-2 Jaspal Kaur has also supported the prosecution case that accused persons named above were duly armed with deadly weapons like gandasa and kassia and had caused injuries. PW-3 Atma Singh deposed that he had informed the police at about 9.30 PM and that information was given to the police at Police Station, Baghapurana after receipt of injuries. So, there was no delay in reporting the matter to the police. As per MLR of injured, they were taken to the Civil Hospital, Baghapurana on 6.4.1999 at about 6.05 PM and there they were medico legally examined. MLRs of the injured are Ex. PK, PM and PN and thereafter medical *ruqa* was sent to the police immediately. That way, there was no delay in reporting the matter to the police. The plea taken by learned counsel for the appellants that there was delay of 18 hours in reporting the matter to the police and because of that distorted version had come on the file is not sustainable. If the incident itself is admitted by the appellants, the delay itself losses significance. The Court below has

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rightly dealt with this aspect while dealing with the point of delay in reporting the matter to the police. That way, the prosecution case is not unbelievable on account of delay and the Court below has rightly discarded the same contentions.

9. When the occurrence had been admitted by the accused appellants, the only point of determination is whether the complainant party was the aggressor or the appellant party was the aggressor party. More so, there was no reason for the complainant party to allow the real culprits to go scot-free and to falsely implicate the innocent persons. The factum of presence and involvement of the accused-appellants in the present occurrence is established on the basis of medical record also. The Court below has rightly decided the point that in fact, the appellant-accused was the aggressor party as the place of occurrence is residential house of Atma Singh. The presence of accused-appellants, who were duly armed with deadly weapons like gandasa and kassia establishes that in fact, the appellant-accused were the aggressors and the plea of self-defence was rightly negated by the Court below.

10. As regards to the nature of injuries, the Court below has again taken a correct view keeping in view the fact that injured Paramjit Kaur [PW-1] had herself admitted in her cross-examination that injuries were caused to her with kassia which was used from reverse side. PW-2 Jaspal Singh had also deposed in her examination-in-chief itself that Jagsir Singh gave kassia blow from its reverse side which hit head of Paramjit Kaur and another blow from reverse side which hit above left ear of her daughter.

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Had there been any intention on the part of appellants to kill the injured persons or the complainant, then the weapon must have been used from its front side and not from reverse side. Law on the point is also settled that though medical evidence has persuasive value, but the same is not binding and the entire evidence is to be seen keeping in view the statements of the injured and eye-witnesses and the medical evidence is to be read along with eye-witnesses account. The Court below had taken the reasonable view and the conviction has been recorded *inter alia* under Section 325 IPC keeping in view the nature of injuries and the weapon used for commission of offence from blunt side.

11. In view of the above, this Court does not find any merit in any of the submissions made by learned counsel for the appellants. Consequently, the present appeal bearing No. **CRA-S-1426-SB-2003** is without any merit and stands dismissed. The appellants are on bail in this case. Their bail/surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them to prison for serving the remaining period of sentence and shall take necessary steps to comply with the order, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of three months, from the date of receipt of a copy thereof. The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

12. Now, coming to the revision petition having been filed by one of

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the eye-witnesses, this Court has already dealt with the aspect regarding nature of injuries and conviction having been recorded under Section 325 IPC and is of the considered view that the judgment of conviction and order of sentence passed by the trial Court are perfectly valid and do not call for any interference. Resultantly, finding no merit in the present revision petition, **CRR No. 630 of 2004** also stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 17th, 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes