

CRA-S-1587-SB-2002 and
CRR-2147-2002

- : 1 : -

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision: 15.12.2016.

CRA-S-1587-SB-2002

Pal Singh and others

....Appellants.

VERSUS

State of Punjab

....Respondent.

AND

CRR-2147-2002

Harchand Singh (since deceased) through his legal representative Smt. Ajaib
Kaur

....Petitioner.

VERSUS

Pal Singh and others

....Respondents.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Arjun Sharma, Advocate
for appellants No.1, 2 and 4 (in CRA-S-1587-SB-2002) and
for respondents No.1, 2 and 4 (in CRR-2147-2002).

Mr. Hardeep Singh, Advocate
for the petitioner (in CRR-2147-2002).

Mr. Angel Sharma, Advocate
for appellant No.3 (in CRA-S-1587-SB-2002) and
for respondent No.3 (in CRR-2147-2002).

Mr. Paramjit Batta, Advocate for the complainant.

Mr. Ankur Jain, Assisant Advocate General, Punjab.

SNEH PRASHAR, J.

This judgment shall dispose of the appeal CRA-S-1587-SB-

petitioner Harchand Singh, as the same had arisen out of the judgment of conviction and order of sentence dated 24.09.2002 recorded by learned Additional Sessions Judge, Rupnagar in Sessions Case No.RT 27 dated 19.09.1996/12.08.2002 based on First Information Report No.71 dated 04.06.1996 registered under Sections 326, 450, 325, 324, 323, 148 read with Section 149 of the Indian Penal Code (for short, "IPC") at Police Station Kharar, whereby the appellants were held guilty and were convicted and sentenced as under:-

Name of convict	Offence	Sentence	Fine	In default
Gurjit Singh	326 IPC	5 years R.I.	Rs.1000/-	3 months
	450 IPC	3 years R.I.	Rs.500/-	1 month
	325 IPC	1 year R.I.	Rs.200/-	15 Days
	324 IPC read with Section 149 IPC	6 months R.I.		
	323 IPC read with Section 149 IPC	3 months R.I.		
	148 IPC	6 months R.I.		
Baljit Singh	326 IPC	5 years R.I.	Rs.1000/-	3 months
	450 IPC	3 years R.I.	Rs.500/-	1 month
	325 IPC read with Section 149 IPC	9 months R.I.		
	324 IPC	9 months R.I.	Rs.200/-	15 Days
	323 IPC read with Section 149 IPC	3 months R.I.		
	148 IPC	6 months R.I.		
Pal Singh	326 IPC read with Section 149 IPC	3 years R.I.	Rs.500/-	1 month
	450 IPC	3 years R.I.	Rs.500/-	1 month
	325 IPC read with Section 149 IPC	9 months R.I.		

	324 IPC read with Section 149 IPC	6 months R.I.		
	323 IPC read with Section 149 IPC	3 months R.I.		
	148 IPC	6 months R.I.		
Bhagwant Singh	326 IPC read with Section 149 IPC	3 years R.I.	Rs.500/-	1 month
	450 IPC	3 years R.I.	Rs.500/-	1 month
	325 IPC read with Section 149 IPC	9 months R.I.		
	324 IPC read with Section 149 IPC	6 months R.I.		
	323 IPC read with Section 149 IPC	3 months R.I.		
	148 IPC	6 months R.I.		

It was ordered that all the substantive sentences shall run concurrently and if the amount of fine is realized from the convicts, a sum of Rs.4000/- from the same be given to Ajaib Kaur (injured) and Rs.1000/- be given to injured Harchand Singh in part compensation.

The story of the prosecution as enumerated by learned trial Court in Para No.2 of the judgment is as under:-

“In brief, the story of the prosecution was that Harchand Singh (complainant) was resident of village Lakhnaur and was agriculturist by profession; that the complainant on 3.6.1996 had gone to the residence of his brother Mehma Singh in the village, to ask his welfare; that Mehma Singh was on the first floor of his residence; that Mehma Singh had purchased land measuring 2/ 2½ biswas, through registered sale deed, on the previous Wednesday, from one Ranjit Singh, resident of the village; that in the said purchased land Mehma Singh had installed fodder cutting machine and the engine and the trailer of Mehma Singh, was also parked in the said site; that on 3.6.1996 at about 9.30 a.m. Sarabjit Singh son of Mehma Singh was going to his fields on tractor and accused Gurjit Singh, Baljit Singh sons of Gurbachan Singh, accused Pal Singh, accused Bhagwant Singh and accused Mohinder Singh sons of Amar Singh were coming on tractor-trailer and complainant noticed this, while standing from the chaubara of the house of Mehma Singh; that accused Gurjit Singh tried to

toe the trailer belonging to Mehma Singh, lying parked, in the said purchased plot, with his tractor to which Sarabjit Singh objected and thereupon accused Gurjit Singh picked up Kirpan, accused Baljit Singh picked up Gandasi, accused Pal Singh picked up stick, accused Bhagwant Singh picked up Salangha (agriculture implement having pointed ends like a fork) and accused Mohinder Singh picked up Gandasi from their trailer and they attacked Sarabjit Singh and the assault was opened by accused Gurjit Singh with his Kirpan and the blow given by accused Gurjit Singh of his Kirpan landed on the head of Sarabjit Singh, who by that time had started running; that Sarabjit Singh in order to save himself from further injuries, at the hands of the accused rushed towards his residence and directly came to the chaubara where the complainant and others were present; that the accused, however, with their weapons of offence chased Sarabjit Singh, after trespassing into the residence of Mehma Singh; that accused Bhagwant Singh gave Salangha blow which landed on the right side of the chest of Sarabjit Singh who took a turn and thereupon Bhagwant Singh gave another Salangha blow which struck at the back of Sarabjit Singh from the pointed side of Salangha; that accused Pal Singh gave 6/7 stick blows which landed on the back, shoulder of the right arm; that accused Bhagwant Singh gave another blow of pointed ends of Saangha, on the back of Sarabjit Singh; that the complainant intervened to rescue Sarabjit Singh and thereupon accused Baljit Singh gave a gandasi blow which resulted into injury on the right side of the head of the complainant and then Mohinder Singh (accused) gave a gandasi blow which landed at the middle of the head of the complainant and accused Baljit Singh then gave second gandasi blow which struck at the forehead of the complainant; that Mohinder Singh also gave second gandasi blow which landed on the forehead of the complainant; that accused Baljit Singh, then, gave a gandasi blow from its reverse side which struck on the right side of the neck of the complainant and the two further gandasi blows from the reverse side given by Mohinder Singh which landed on the right side of the back of the complainant; that accused Pal Singh gave a stick blow push-wise which landed on the right side of the chest of the complainant; that Ajaib Kaur wife of the complainant and Amar Kaur sister of the complainant who were sitting on the chaubara also intervened and thereupon accused Gurjit Singh gave a kirpan blow which landed on the head of Ajaib Kaur and then accused Baljit Singh gave a gandasi blow which also landed on the left side of the head of Ajaib Kaur, accused Pal Singh gave a stick blow, which landed on the right back of Amar Kaur; accused Bhagwant Singh gave a Salangha blow which resulted into injury on the person of Amar Kaur, accused Baljit Singh then gave a gandasi blow which landed on the head above the forehead of Amar Kaur; that all the injured raised alarm,

thereupon accused Baljit Singh gave a gandasi blow from the reverse side which landed on the left arm of the complainant, above the wrist that the complainant might also have caused injuries, on the person of the accused in their self defence; that the alarm raised by the injured attracted Balwinder Singh son of the complainant who also raised alarm and rescued the injured; that thereupon the accused with their weapons of offence slipped away from the place of occurrence; that Balwinder Singh and Gurnam Singh took the injured in a van to Civil Hospital, Kharar where they were lying admitted; that the motive for the occurrence was that Mehma Singh had purchased plot from Ranjit Singh and on that account the accused party was nourishing a grudge and the accused party also pulled engine and trailer, outside the said plot or bara of Mehma Singh.”

The statement of Harchand Singh-injured (Ex.PJ) recorded by Investigation Officer ASI Harmesh Kumar and duly thumb marked by him, formed the basis for registration of First Information Report No.71 dated 04.06.1996 under Sections 325, 324, 452, 148 & 149 IPC (Ex.PJ/2). Statements of other injured namely, Sarabjit Singh, Ajaib Kaur and Amar Kaur were also recorded. On 09.06.1996 appellants Pal Singh, Bhagwant Singh and Gurjeet Singh were arrested and in pursuance of the disclosure statements made by them the weapons of offence namely, *Kirpan, Lathi and Salangha* were recovered and taken in possession by preparing memo (Ex.PQ). Similarly, on 11.06.1996 appellant Baljit Singh and Mohinder Singh (accused-since deceased) were arrested and in pursuance of their disclosure statements, the *Gandasis* used by them in commission of offence were recovered and taken in possession by preparing memo (Ex.PS).

On the basis of the X-ray reports, the two incised injuries, on the head of Ajaib Kaur were declared grievous and the blunt weapon injury, on the forehead of complainant Harchand Singh was also declared grievous.

In view of declaration of the injuries suffered by Ajaib Kaur to be grievous

was added to the case. As it was found that the occurrence had taken place inside the residential house of Mehma Singh, Section 450 IPC was also added to the case.

On completion of investigation, final report under Section 173 of the Code of Criminal Procedure (for short, "Cr.P.C.") was submitted before the Court.

The appellants-accused (Pal Singh, Mohinder Singh, Bhagwant Singh, Gurjeet Singh and Baljit Singh) were charge-sheeted under Sections 326, 325, 324 and 323 read with Section 149 IPC and under Section 148 and 450 IPC, to which they pleaded not guilty and claimed trial.

During trial of the case, Mohinder Singh expired and proceedings against him were dropped by learned trial Court vide order dated 11.04.2001.

The prosecution examined as many as ten witnesses, namely, PW1 Dr. Vijay Kumar Singla, PW2 Harchand Singh (complainant/injured), PW3 Sarabjit Singh (injured), PW4 Kharaiti Lal, PW5 Ashok Kumar, PW6 Ajaib Kaur, PW7 Amar Kaur (injured), PW8 Ran Singh, PW9 ASI Harmesh Kumar and PW10 Dr. P.D. Jain.

After closure of evidence of the prosecution, statements of appellants under Section 313 Cr.P.C. were recorded by putting to them the incriminating evidence available on record which they negated and claimed to be innocent.

In their defence, the appellants examined DW1 Iqbal Singh, Advocate, DW2 Kaka Singh Ahlmad, DW3 S. Harbant Singh, Advocate, DW4 Bhag Singh, DW5 Avtar Singh HC, DW6 Dr. Puran Singh and DW7

Analyzing the evidence available on record and the submissions made by learned Additional Public Prosecutor and learned counsel representing the appellants, learned trial Court convicted and sentenced the appellants as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 24.09.2002 passed by learned trial Court, the appellants preferred appeal CRA-S-1587-SB-2002 and the petitioner-complainant filed CRR-1565-2002.

The submissions made by Mr. Arjun Sharma and Mr. Angel Sharma, learned counsels representing the appellants, Mr. Hardeep Singh, learned counsel representing the complainant-petitioner, Mr. Ankur Jain, learned Assistant Advocate General for the State of Punjab and Mr. Paramjit Batta, learned counsel representing the complainant have been heard and record perused.

To begin with, learned counsel for the appellants argued that the occurrence was alleged to have taken place on 03.06.1996 at about 9:30 a.m., whereas the statement of complainant-injured Harchand Singh (Ex.PJ) was recorded at 11:50 p.m. on 03.06.1996. Apparently, there was a delay of 14 hours in lodging the complaint which was long enough to provide an opportunity to the complainant party to manipulate and concoct a false story. Not a single independent witness was named in the complaint whereas the occurrence was alleged to have taken place in the residential area of the village. Had such an occurrence taken place in the morning at the house of Mehma Singh, there would have been number of independent public witnesses whom the complainant could have named and examined during

who were all members of the same family and were interested witnesses, renders their credibility doubtful and their depositions do not deserve to be relied upon.

Learned counsel further pointed out that the statement of PW2 complainant-injured Harchand Singh was inconsistent in itself. In the beginning of his deposition, he mentioned that appellant Gurjeet Singh was armed with a *Kirpan* and he gave a *Kirpan* blow on the head of Sarabjit Singh. In his further statement, controverting his own version, he deposed that Gurjeet Singh gave a *Gandasi* blow from its blunt side which fell on his left arm and his arm was fractured. PW2 simultaneously stated that Gurjit Singh thereafter gave a *Lathi* blow that hit on the head of Amar Kaur. Learned counsel asserted that such fluctuating testimony of PW2 Harchand Singh shows that his narration of the occurrence was neither true nor in natural flow and as such he does not deserve to be believed.

Learned counsel contended that the fact was that the appellants were in actual physical possession of the 'Bara' in question under a family settlement and were using the same for stocking building material and other miscellaneous items for the last many years. The complainant party after having got executed a sale deed of a share in the Bara intended to take forcible possession of the same and to achieve the object committed theft of the building material of the appellants lying in the Bara. When appellant Gurjeet Singh intervened and raised resistance, he was caused injuries by the complainant and his companions. Bhag Singh (DW4) and Pal Singh came to the rescue of Gurjeet Singh. DW6 Dr. Puran Singh medico legally examined Gurjeet Singh on the day of occurrence i.e. 03.06.1996. Copy of

examination that the injuries found on the person of Gurjeet Singh could be self suffered. The complainant party itself being the aggressor deliberately concocted a false story and implicated the appellants.

Undisputedly, the complainant-injured and the appellants are residents of same village and the *Bara/* plot, regarding which there was a dispute over possession between the parties, was located in the same vicinity of the village. As noticed by learned trial Court in Para No.27 and 28 of the impugned judgment and also is evident from the sale deed dated 29.05.1996 (Ex.PX), Ran Singh and Sarabjit Singh sons of Mehma Singh had purchased the Bara/plot in dispute. PW8 Ran Singh and PW5 Ashok Kumar, Registration Clerk were examined to prove the sale deed executed by one Ranjit Singh. No doubt, no document was produced by the prosecution to prove the title of vendor Ranjit Singh but to controvert the sale deed i.e. the title document proved by the complainant party, no document worth in its name was placed on record or proved by the appellants to support their contention that they were the owners or were in possession of the disputed Bara/plot at any point of time.

Except for oral testimony of one person DW4 Bhag Singh, no other witness was examined by the appellants to prove their possession over the disputed Bara/plot. The testimony of DW4 Bhag Singh was apparently biased as he admitted in his cross-examination that there had been long drawn litigation between his close relations and associates on one hand and the complainant party on the other. For that reason, his solitary statement with regard to possession of the Bara/plot was not competent enough to be believed. As far as the testimony of DW1 Iqbal Singh, Advocate, who was

concerned, it was of no help to the appellants because the report revealed that the inspection of the site was carried out by the local commission in absence of the opposite party and without issuing any notice to them. Moreso, the report of the local commission was to be analyzed and adjudged by the Civil Court who had appointed him for inspection of the site.

Be that as it may, it had come in the judgment of learned trial Court that the civil suit filed by the appellants against Ran Singh etc. regarding the disputed Bara/plot was dismissed. In other words, the assertion of the appellants that they were in possession of the disputed Bara/plot was rejected by the Civil Court. Learned counsel for the appellants could not deny the fact of dismissal of the civil suit filed by the appellants and it is not their case that they had preferred any appeal against the said judgment. As already noticed above, the sale deed (Ex.PX) executed in favour of Ran Singh and Sarabjit Singh sons of Mehma Singh, in whose house the occurrence took place, was a registered document to prove the title and possession derived from the said document by the members of the complainant family. Having concluded so, there remains no reason to doubt the deposition of complainant-injured Harchand Singh that appellant Gurjeet Singh had tried to tow the trailer belonging to Mehma Singh lying parked in the disputed Bara/ plot with his tractor to which Sarabjit Singh objected and thereupon the appellants, who were armed with *Kirpan, Gandasis, sticks and Salangha*, attacked on Sarabjit Singh. The *Kirpan* blow given by appellant Gurjeet Singh landed on the head of Sarabjit Singh. To save himself, Sarabjit Singh rushed towards his residence and came to the *Chaubara* where complainant Harchand Singh and others were present.

residence of Mehma Singh inflicted injuries on Sarabjit Singh, complainant Harchand Singh, Ajaib Kaur and Amar Kaur.

The argument of learned counsel for the appellants that there was long delay in lodging of the First Information Report and that was used by the complainant party to concoct a false story, appears to be misconceived. Four members of the complainant party namely, Harchand Singh, Sarabjit Singh and two ladies Ajaib Kaur and Amar Kaur had sustained serious injuries during the occurrence. PW1 Dr. Vijay Kumar Singla proved that the injured had reached Civil Hospital, Kharar at 11:20 a.m. He medico legally examined them one after the other and also sent intimation regarding arrival of the injured to the police. The police reached the hospital and moved a written request to the doctor to opine about the fitness of the injured for making statement. The doctor declared Harchand Singh, Ajaib Kaur and Sarabjit Singh fit to make statement at 10:30 p.m. It is thereafter that the statement (Ex.PJ) of complainant Harchand Singh was recorded and the First Information Report was registered. The gap between the time of occurrence and the recording of the statement of the complainant was duly explained. In any case, delay in lodging of the First Information Report is not always fatal to the prosecution case as held in **Bhajan Singh @ Harbhajan Singh & ors. vs. State of Haryana, (2011) 7 Supreme Court Reports.**

The argument of learned counsel for the appellants that the occurrence had taken place in the morning hours, but no independent witness was examined, is of no force because it is well known that in such criminal matters where two parties of same village are involved, the co-villagers avoid becoming witness fearing hostility of the offender/ one party.

Coming to the discrepancies pointed out by learned counsel for the appellants, the same are immaterial and of no consequence. PW2 Harchand Singh as well as PW3 Sarabjit Singh and PW6 Ajaib Kaur consistently deposed that appellant Gurjeet Singh was armed with a *Kirpan*. If in some portion of statement of PW2 Harchand Singh, the weapon in the hand of Gurjeet Singh was named as *Gandasi* or *lathi*, it could be due to typographical mistake or slip of tongue or actually change of weapon by the assailants, therefore, that would hardly raise any doubt in the credibility of the witness. No explanation with regard to variation in the name of the weapon with appellant Gurjeet Singh was sought from the witness. Such discrepancy cannot be used to discredit the witness.

The two grievous injuries caused with sharp edged weapon suffered by Ajaib Kaur were on the head i.e. the most vital part of the body. Complainant Harchand Singh also suffered a grievous injury on his left elbow, though the same was inflicted with a blunt weapon. There was no previous enmity between the parties, therefore, there was no reason for the complainant and other injured to falsely implicate the appellants and conceal the names of the actual culprits.

In the above premise, it is held that the evidence led by the prosecution established beyond all shadows of reasonable doubt that the appellants Gurjeet Singh and Baljit Singh had committed the offence punishable under Sections 326 IPC whereas appellants Pal Singh and Bhagwant Singh had committed the offence punishable under Section 326 read with Section 149 IPC; appellant Gurjeet Singh had also committed the offence punishable under Section 325 whereas appellants Baljit Singh, Pal Singh and Bhagwant Singh had committed the offence punishable under

Section 325 read with Section 149 IPC; appellant Baljit Singh also committed the offence punishable under Section 324 IPC whereas appellants Gurjeet Singh, Pal Singh and Bhagwant Singh had also committed the offence punishable under Section 324 read with Section 149 IPC; appellants Gurjeet Singh, Baljit Singh, Bhagwant Singh had also committed the offence punishable under Section 323 read with Section 149 IPC and sections 148 and 450 IPC.

Accordingly, the judgment of conviction recorded by learned Trial Court is upheld.

As regards sentence awarded to the appellants, no ground for enhancement of the sentence awarded to the appellants is made out and there is no merit in the revision CRR No.1565 of 2002 filed by petitioner Harchand Singh. However, considering the facts and circumstances of the case and also the fact that occurrence had taken place 20 years ago and at that time appellants Pal Singh and Bhagwant Singh were aged 45 and 40 years respectively and appellants Gurjeet Singh and Baljit Singh were in their early twenties which means by now Pal Singh and Bhagwant Singh are in old age and other two are middle aged and as submitted by learned counsel for the appellants they have young children who are dependent on them, the sentence of rigorous imprisonment of five years awarded to appellant Gurjeet Singh under Section 326 IPC is reduced to 2½ years rigorous imprisonment and the sentence of rigorous imprisonment of three years awarded to him under Section 450 IPC is reduced to two years rigorous imprisonment; the sentence of rigorous imprisonment of five years awarded to appellant Baljit Singh under Section 326 IPC is reduced to two

three years awarded to him is reduced to two years rigorous imprisonment; the sentence of rigorous imprisonment of three years awarded to appellant Pal Singh under Section 326 read with Section 149 IPC is reduced to one year rigorous imprisonment and the sentence of rigorous imprisonment of three years awarded to him under Section 450 IPC is reduced to one year rigorous imprisonment and the sentence of rigorous imprisonment of three years awarded to appellant Bhagwant Singh under Section 326 read with Section 149 IPC is reduced to one year rigorous imprisonment and the sentence of rigorous imprisonment of three years awarded to him is reduced to one year rigorous imprisonment. However, the remaining part of the sentence and fine awarded to the appellants shall remain the same. The period of imprisonment already undergone by them during trial and subsequent to conviction shall be set off against the sentence of rigorous imprisonment awarded to them today. All the sentences shall run concurrently.

With the above modification in the order of sentence, the appeal as well as the revision are 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 judgment, 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 two months, from the date of receipt of a copy thereof. However, in case either of the appellant has already served the

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.

(SNEH PRASHAR)
JUDGE

15.12.2016.
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : No