

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

Crl. Appeal No.S-2842-SB of 2013 (O&M)

Date of Decision: November 10, 2017

Sukhwinder Singh

...Appellant

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Syan, Advocate
for the appellant.

Mr.Simranjeet Kaur, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.A.D.S.Sukhija, Advocate
for respondents No.2, 4 and 5.

Appeal qua respondent No.3 stands dismissed.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab and other respondents, challenging the judgment dated 24.01.2012 passed by learned Addl. Sessions Judge, Patiala, whereby the appeal filed by the accused-respondents was allowed and the judgment of conviction and order of sentence dated 09.06.2008 passed by learned Judicial Magistrate Ist Class, Patiala, were set aside.

From the record, I find that challan was presented against accused Chitwant Singh and Chottu alias Raju in case FIR No.339 dated

facts of the prosecution case as noted down in the judgment passed by learned JMIC, Patiala, are as under:-

“2. Briefly stated the case of prosecution is that on 3.7.2003 one wireless message was received at PP Bahadurgarh from P.S. Sadar that Sukhwinder Singh, complainant PW3 had been admitted in Rajindra Hospital, Patiala in an injured condition as informed by Dr.K.G.Goyal. Therafter, ASI Rajesh Kumar alongwith fellow police officials reached Rajindra Hospital, Patiala and after obtaining fitness opinion of the doctor regarding injured, recorded his statement briefly to the effect that he has been employed as Wireless Operator at Railway Station Ambala G.F.P. At about 6.00 p.m. today he had gone alongwith his mother Jaswant Kaur in the land in the backyard to collect cow dung cakes. When he was helping his mother in picking the cow dung cakes in tokra, then all of a sudden somebody attacked him from behind. He balancing himself arid while turning saw that Rajinder Singh son of Gurdial Singh has been standing duly armed with hand pump arm. He gave another hand pump arm blow on his right leg below the knee. Then Chitwant Singh alias Bittu son of Bhupinder Singh armed with kirpan and his servant Raju armed with dang reached there raising lalkaras and started saying that he will not be spared today and will be taught a lesson. On seeing this mother started weeping and when he started to escape then Chitwant Singh, Rajinder Singh and Raju way laid him. Chitwant Singh gave a Kirpan blow on his right leg below the knee. Mother of Chitwant Singh also came at the spot alongwith dang and reaching there she also gave dang blows on his right leg below the knee and another blow on the right leg near right foot. Raju gave dang blow on his right shoulder and another dang blow on his left knee. Rajinder Singh gave another hand pump arm blow on his back. He started to fell on the ground and while he was falling Raju gave another dang blow which hit on his left foot. When he fell on the ground all of them beaten him mercilessly. Their lalkaras cries and the noise of his mother were heard and on hearing this Rattan Singh son of Sardha Singh Mehra and Surjit Singh son of Bishan Singh Mehra alongwith others reached at the spot. On seeing them the accused ran from the spot alongwith their weapons. They have caused the injuries in conspiracy with each other. Motive for the crime is that the land of the backyard has been under dispute with Rajinder Singh and Gurdial Singh and Chitwant Singh and the case is pending in the court of Shri S.S.Sahni. On the basis of said statement and on the bass of medical record, case was registered. Investigation went underway. Place of crime was searched. Site plan was prepared. On 10.8.99 ASI Rajesh Kumar arrested Chitwant Singh and Raju and got recovered weapon

of offence. On 15.9.99 enquiry was conducted by Kulwinder Singh DSP (D) and on the basis of enquiry Sukhwinder Kaur and Rajinder Singh were declared innocent. Thereafter investigation was conducted by ASI Swaran Singh and HC Gurmail Singh. After the completion of investigation challan only against accused Chitwant Singh and Chottu was presented.”

On presentation of challan against accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused were charge-sheeted under Sections 341, 447, 324, 324/34, 323 and 506 IPC, to which they pleaded not guilty and claimed trial.

Accused-respondents Sukhwinder Kaur and Rajinder Singh were summoned later on to face trial along with accused already challaned and the charge was re-framed against all the accused.

In support of its case, prosecution examined PW-1 Dr.K.G.Goyal, who deposed that he found following injuries on the person of Sukhwinder Singh:-

- “1. Vertical incised wound with fresh bleeding 2 cm X 2 cm in middle of right lower leg.*
- 2. Vertical lacerated wound with fresh bleeding 3cm X 1/2 cm in middle of right lower leg medial to injury no.1.*
- 3. 5 cm x 3 cm tender swelling right lower leg 12 cm from ankle joint X-ray was advised.*
- 4. 2 red contusions 13 cm x 2 cm and 15 cm x 4 cm on left back of chest, X-ray was advised.*
- 5. 16 cm x 2 cm horizontal red contusion on back of both sides of chest.*
- 6. On back of light lower chest 10 cm x 2 cm 12 cm x 2 cm and 6 cm x 2 cm red contusions and x-ray was advised.*
- 7. On right upper back of chest 10 cm x 2 cm and 8 cm x 2 cm contusions just behind shoulder. X-ray was advised.*
- 8. On front of right upper arm 6 cm x 2 cm red contusion 8 cm from tip of shoulder.*
- 9. 10 cm x 4 cm red contusion right upper arm posterior aspect 4 cm above elbow.*
- 10. On left upper arm 5 cm from acromion 12 cm x 4 cm red*

contusion on posterior lateral aspect x-ray was advised.

11. On left shoulder 6 cm x 2 cm red contusion.

12. In middle of left upper arm posterior aspect 6 cm x 2 cm red contusion.

13. On front of right wrist 1/2 cm x 1/2 cm red abrasion with swelling. X-ray was advised.

14. On left buttock multiple red contusion in 12 cm x 10 cm area.

15. 2 cm x 1 cm red abrasion on right lower-leg 5 cm below knee.

16. 2 cm x 1 cm red abrasion just below left knee.

17. On front of left ankle multiple red abrasion in 5 cm x 1 cm area.

18. On lateral aspect of left forearm and elbow 12 cm x 3 cm area.”

Prosecution further examined PW-2 Sukhwinder Singh, complainant, PW-3 Head Constable Gurmail Singh, PW-4 ASI Rajesh Kumar, Investigating Officer and PW-5 Jaswant Kaur, eye witness, mother of PW-2.

At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. They denied the correctness of the evidence and pleaded themselves as innocent. In defence, accused examined DW-1 Gurmukh Singh, DW-2 Teja Singh, DW-3 Baldev Singh, DW-4 Subhash Chander, Handwriting and Fingerprint Expert, DW-5 Gurdial Singh, DW-6 Dhananttar Singh, DW-7 Tirath Singh, DW-8 Amarjit Singh, DW-9 Jatinder Singh and DW-10 Satwant Singh.

Learned JMJC, Patiala, after appreciating the evidence, convicted the accused-respondents under Sections 324, 323, 341, 447 read with Section 34 IPC and sentenced them to undergo simple imprisonment for a maximum period of two years under Section 324 read with Section 34 IPC along with fine. An appeal was filed by accused-respondents and learned Addl. Sessions Judge, Patiala, accepted the appeal vide impugned

judgment dated 24.01.2012 and acquitted the accused-respondents.

Aggrieved from the judgment dated 24.01.2012 passed by learned Addl. Sessions Judge, Patiala, present appeal along with application seeking to leave to appeal has been filed and the leave was granted.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.2, 4 and 5 appeared and contested the appeal. The appeal qua respondent No.3 had already been dismissed by this Court vide order dated 14.03.2017.

I have learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that after summoning of all the accused and after framing of the charge against them, the prosecution was directed to produce the evidence. The prosecution examined PW-1 Dr.K.G.Goyal and then injured Sukhvinder Singh, complainant was examined, who stated in his chief examination that he identifies accused Chitwant Singh, Chotu @ Raju, Sukhwinder Kaur and Rajinder Singh, who are present in the Court. He further deposed that his further statement dated 08.05.2011 may kindly be read as part of his statement. The statement recorded earlier when at least two accused were not present, cannot be read into evidence and even after re-framing the charge, when two accused have been summoned under Section 319 Cr.P.C. during the trial, no statement has been given by injured-complainant in the Court against them describing the whole occurrence. This earlier statement cannot be read at least against those two accused, who were summoned later on. The mere fact that accused have not objected to it, is no ground to read earlier statement, which was recorded in the absence of

there is no statement of Sukhvinder Singh, injured-complainant, given in the Court during the proceedings after re-framing of the charge, which was necessary. The accused are not supposed to tell the prosecution to lead evidence against them. It is the duty of the prosecution to get examined the witnesses.

Secondly, I find that other eye witness PW-5 Jaswant Kaur, mother of PW-2, in her chief examination, has deposed against accused, who gave injuries, as Giani and Bittu etc. but the prosecution has not got cleared that out of accused, who is Giani. This name is nowhere mentioned in the prosecution version. On this ground also, reasonable doubt exists in the prosecution version.

Further, I have gone through the record. The main incriminating evidence against the accused that he was armed with this weapon and caused injury with that weapon and regarding occurrence, has not been put during the statement under Section 313 Cr.P.C., therefore, it cannot be held that incriminating evidence has been put to the accused.

Learned Addl. Sessions Judge, Patiala, further found that a civil litigation was also going on regarding the place where cow dung was kept and also found that accused Sukhwinder Kaur is 70 years of age and active participation has been shown by her. It looks unnatural that when other persons armed with kirpan, dang etc. were causing injuries to one person, an old lady of 70 years will take participation in the commission of the offence and will give dang blow etc.

All these facts show that prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the judgment dated

per evidence and law and does not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

November 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No