

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-A-1111-MA of 2013 (O&M)
 2. CRM-A-1134-MA of 2013 (O&M)
 3. CRM-A-1135-MA of 2013 (O&M)
 4. CRM-A-425-MA of 2014 (O&M)
- Date of Decision: 14.03.2017

Gurjit Kaur

....Appellant

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. H.C. Arora, Advocate
for the applicant-appellant.

Ms. Bhavna Gupta, DAG, Punjab.

Ms. Satpreet Grewal, Advocate
for respondent no. 2 in CRM-A-1134 & 1135 of 2013

SURINDER GUPTA, J.

Above captioned appeals have been taken up together for disposal as these arise from the common judgment passed by Additional Sessions Judge, Hoshiarpur whereby conviction of private respondents recorded by the trial court was set aside and they were ordered to be acquitted.

2. FIR No. 77 dated 02.05.2004 was registered at Police Station Haryana, District Hoshiarpur on the statement of complainant-Gurjit Kaur wife of Malkiat Singh, wherein she stated that on 28.04.2004 at about 08.30 p.m., she alongwith her husband was present at her home. Shukla son of Gurbachan Singh and Gurbachan Singh son of Assa Singh came in the street. Shukla was having *kahi* (spade) in his hand and Gurbachan Singh was having a *dang*. Shukla started removing bricks from drain and ramp constructed in front of the gate of house of complainant. Complainant

enquired for reason of doing so from Gurbachan Singh, who was standing nearby. At this Gurbachan Singh started hurling abuses and instigated Shukla to teach a lesson for constructing a ramp in front of the gate. He (Shukla) entered the house of complainant and gave blow of spade from reverse side which hit on left side of the complainant's head who fell on the ground. Husband of complainant came in the courtyard and tried to catch hold of the spade at which Shukla gave a spade blow on head of husband of the complainant. Gurbachan Singh gave a *dang* blow to the complainant while she was lying down. He also gave *dang* blow on right thigh of her husband. Shukla also gave kick blows to the complainant as a result of which she suffered internal injuries on her left leg and other parts of body. Both the accused ran away when people gathered at the spot.

3. Both the injured were taken to Civil Hospital, Hoshiarpur where the police reached on receiving the information and after taking doctor's opinion, who declared both the injured fit to make statements, contacted both of them for recording their statements but they refused to make statements stating that they are not feeling well. Both made statements on 02.05.2004, which were recorded by ASI Sham Lal, whereupon formal FIR was registered. After completion of investigation the police presented challan against accused Gurbachan Singh and Sukhwinder Singh @ Shukla for offences punishable under Sections 323 and 324 read with Section 34 IPC for which accused were charge-sheeted and after completion of trial both were convicted and sentenced as follows:-

<i>Name of Accused</i>	<i>Punishment</i>
Sukhwinder Singh @ Shukla	To undergo rigorous imprisonment for one year and to pay fine of ₹1000/-, in default of payment of fine, to further undergo rigorous imprisonment for 15 days under Sections 323 & 324 IPC.

<i>Name of Accused</i>	<i>Punishment</i>
Gurbachan Singh	Released on probation being an old person of 80 years of age, heart patient and first offender.

4. For the same incident, Gurjit Kaur filed complaint against Gurbachan Singh and Sukhwinder Singh @ Shukla and six other persons, alleging therein that she owns residential house and *haveli* in village Khadiala Sainian, District Hoshiarpur and in between the house and *haveli* there is a street towards which, a gate of the house of complainant is fixed. There is another gate which opens into *haveli* of the complainant. *Gram Panchayat* of village with active connivance of all the accused was inimical towards complainant and her family members. Husband of complainant had got constructed a ramp in the street to go to his house, which was got removed by *gram panchayat* illegally and forcibly. *Gram panchayat* intended to change level of the street in dispute and civil suit had already been filed by husband of the complainant to restrain the *gram panchayat* from changing level of the street which was pending. However, the ramp was removed by *gram panchayat* during pendency of the suit. In the civil suit, parties were directed to maintain *status quo* with regard to level of the street vide order dated 16.04.2004 passed by Civil Judge (Junior Division), Hoshiarpur. Despite order of *status quo*, *gram panchayat* in active connivance with accused was threatening to lower the level of street and made an attempt to this effect on 18.04.2004 but was restrained by husband of the complainant and other respectable of the village.

5. On 28.04.2004, at about 08.30 p.m. accused Gurbachan Singh armed with *dang*, Sukhwinder Singh @ Shukla, Avtar Singh @ Sonu, Malkiat Singh, Baljinder Singh @ Pappu armed with *kahis* (spade), Roshan Lal and Gurmit Singh armed with *kirpans* and Kulwant Kaur, empty handed

came to the street and started digging earth to lower the level of street in front of the house of complainant. They started removing earth in the trolley and when complainant, her husband and other respectable intervened and showed *status quo* order, they instead of obeying the order used derogatory language. When husband of the complainant threatened to call the police and came inside the house, all the accused with their respective weapons trespassed the house of complainant and caused injuries to complainant and her husband. Sukhwinder Singh @ Shukla gave *kahi* blow on head of the complainant while Gurbachan Singh gave *dang* blow on left forearm of the complainant and other *dang* blow on left arm of the complainant. When husband of the complainant intervened, accused Malkiat Singh, Baljinder Singh, Avtar Singh caught hold of him and gave him slaps while Sukhwinder Singh @ Shukla gave *kahi* blow from its reverse side which hit him on right side of his scalp. Accused Gurbachan Singh also gave a *dang* blow which hit Malkiat Singh on his right thigh. On account of receiving injuries, both complainant and her husband fell on the ground and accused ran away from the spot alongwith their respective weapons.

6. The accused were summoned and charge-sheeted for offences punishable under Sections 452, 323 and 324 read with Section 34 IPC. On completion of trial all the accused except Gurbachan Singh and Sukhwinder Singh @ Shukla were acquitted while Gurbachan Singh and Sukhwinder Singh were sentenced as follows:-

<i>Name of Accused</i>	<i>Punishment</i>
Sukhwinder Singh @ Shukla	To undergo rigorous imprisonment under Sections 323, 324 IPC as awarded in State case and for offence punishable under Section 452 IPC awarded rigorous imprisonment for two years and to pay fine of ₹1000/-, in default of payment of fine, to further undergo rigorous imprisonment for 15 days.

<i>Name of Accused</i>	<i>Punishment</i>
Gurbachan Singh	Released on probation being an old person of 80 years of age, heart patient and first offender.

7. Sukhwinder Singh @ Shukla and Gurbachan Singh filed appeal against their conviction in complaint case as well as in State case. Gurjit Kaur filed appeal against acquittal of six other accused in complaint case and seeking enhancement of sentence awarded to Sukhwinder Singh @ Shukla and Gurbachan Singh. All the appeals were taken up together by Additional Sessions Judge, Hoshiarpur and vide judgment dated 24.10.2013, Gurbachan Singh and Sukhwinder Singh @ Shukla were ordered to be acquitted.

8. I have heard learned counsel for the applicant-appellant, learned State counsel and learned counsel for private respondents and have perused the paper-books with their assistance.

9. In the occurrence that took place on 28.04.2004, applicant-appellant got recorded FIR and also filed a complaint. While in FIR she alleged presence of only two accused at the spot but in the complaint she twisted entire version so as to implicate six more persons. So far as application of provisions of Section 210 Cr.P.C. with regard to trial of complaint and FIR registered for same occurrence is concerned, the same cannot be disputed. Section 210 (3) provides as follows:-

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence -

(1) & (2) xx xx xx xx

(3) If the police report does not relate to any accused in the complain case or if the Magistrate does not take cognizance of any offence on the police report, he shall

proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

10. In the present case also the Magistrate has conducted separate trial on the final report presented by the police in case bearing FIR No. 77 dated 02.05.2004 and on the complaint filed by applicant-appellant but decided both together. While the procedure adopted by learned Magistrate is not disputed, the question which arises for consideration is whether a person, who has given two versions regarding the same occurrence, can be believed. This is what appears to have perturbed Ist Appellate Court while recording acquittal of accused with the observations as follows:-

“28. Now dealing with the appeals of convicts Sukhvinider Singh and Gurbachan Singh, it is necessary to go through the evidence which has been brought on the file and pleading of the parties. As pointed out by learned counsel for the accused/appellants there is total inconsistent version inter se first information given to the police and the complaint case. In the FIR allegations are qua convicted accused whereas in the complaint six more additional accused have been named. An effort was made to make out a case that the police has not recorded statement of complainant correctly and have rather obtained her signatures on blank papers. Hence the names of these six accused were not found mentioned in the FIR as well as in the report under Section 173 Cr.P.C. This argument is not sustainable because statement of complainant in the State case is very

relevant. A perusal of her statement, when she was examined as PW3 goes to show that she has got recorded her statement to the police which is Ex. PA and it bears her signatures in Punjabi. She identified her signatures on the same. So this is clear admission in the examination in chief itself that she has got recorded her statement Ex. PA and the statement Ex. Pa which is base of the present case only mentions two names i.e. Gurbachan Singh and his son Sukhvinder Singh whereas she is making improvements by naming other persons in the case to which she has been confronted in cross-examination. So arguments that police has obtained signatures on blank papers goes with the examination in chief of Gurjit Kaur when she submits that her statement is Ex.PA and it bears her signatures. Now she cannot get back from this statement.

11. Learned Ist Appellate Court also took note of the fact that occurrence took place on 28.04.2004. The police visited hospital on 29.04.2004 and then on 30.04.2004. The complainant was declared fit to make statement but she did not make any statement and came up with version regarding the occurrence only on 02.05.2004 i.e. about four days after the occurrence. On 29.04.2004 and 30.04.2004, she had stated to the police that she does not want to make any statement as she was not feeling well because of the injuries received by her in the occurrence and on the contrary as per opinion of doctor she was fit to make statement. From the conduct of applicant-appellant (complainant) Ist Appellate Court inferred

that she had deliberately avoided to make statement to the police so as to procure some more time to make deliberations and consultations.

12. Ist Appellate Court also took note of the fact that trial Court had dismissed the application filed by applicant-appellant for summoning of six more accused for their participation in the occurrence in FIR case but in complaint case those six persons were summoned. Observations made by learned Ist Appellate Court to this effect in para 30 are as follows:-

“30. The things do not stop here, a perusal of the file of State case goes to show that an application filed under Section 319 Cr.P.C. for summoning these six accused have been dismissed by the same trial Court on 17.10.2011. It is very strange that same court is summoning the said accused in private complaint and putting them on trial whereas the same trial court is dismissing the application of the complainant to summon them as additional accused under section 319 Cr.P.C. Even if it was so done by the learned trial Court, no remedial action was taken against the said order meaning thereby that the prosecution accepted the version that only two persons are to be put on trial. A perusal of the complaint goes to show that genesis of the occurrence is totally different. In the State case the version is that accused Sukhvinder Singh started dismantling steps constructed in front of the gate of complainant and throwing bricks away and on questioning by the complainant, accused Gurbachan

Singh started abusing her whereas as per complaint, all the 8 accused named therein, came and started digging earth and loading it into the trolley. This is altogether a different version. It has been even mentioned in the complaint that some of the accused are armed with swords. The names of one or two persons may have been skipped by the police deliberately. If the version of the complainant is admitted for the sake of arguments, but genesis of the occurrence cannot change. This factor goes to show that correct version of the occurrence is being concealed from the court and the version as convenient to the complainant is being put forth in a different manner. Had this factor been taken into consideration by the learned trial Court, it would not have believed the story of the prosecution.”

13. Learned counsel for the applicant-appellant has argued that there are two versions regarding the same occurrence in the FIR as well as in criminal case but the Ist Appellate Court has committed error while looking into the evidence recorded in complaint case for the purpose of disposal of appeal made in the case instituted on police challan. He has argued that both the appeals should have been taken up by the Ist Appellate Court separately and decided as per evidence on file without making any reference to the evidence recorded in both the cases together.

14. I do not find any merit in the submission made by learned counsel for the applicant-appellant. The occurrence is one, witnesses are the same and two accused were also summoned in both the cases. Ist Appellate

Court could certainly refer testimony of common witnesses recorded in both the cases to find the truth. The different versions regarding same occurrence as given by complainant led Ist Appellate Court to draw inference that true versions of occurrence had not been brought before trial Court and it discarded both the versions regarding the occurrence.

15. On perusal of judgment of Ist Appellate Court, I find no reason to have a contrary view or to interfere with judgment of Ist Appellate Court in these appeals, which have no merit and the same are dismissed.

March 14, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No