

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRA-S-1755-SB of 2003**
 Date of Decision: 02.06.2017

Gurmail Singh and others Appellants

VERSUS

State of Punjab Respondents

2. **CRA-S-1868-SB of 2003**

Hardev Appellant

VERSUS

State of Punjab Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sudhir Sharma, Advocate
 for Mr. Ram Krishan Rana, Advocate
 for appellants in both the appeals.

 Mr. Ashish Sanghi, DAG, Punjab.

SURINDER GUPTA, J.

These are the appeals against judgment dated 08.09.2003 passed by Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana in Sessions Case no. 88 dated 21.10.2000 whereby appellants were held guilty for offences punishable under Sections 148, 308/149, 427, 429 and were sentenced as follows:-

<i>Sections</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
308/149 IPC	RI for 3 years	-	-
452 IPC	RI for 3 years	₹500/-	RI for one month
148 IPC	RI for 2 years	-	-
427 IPC	RI for 1 year	-	-

PROSECUTION CASE:-

2. FIR No. 84 dated 27.04.2000 was registered at Police Station

Jagraon, Ludhiana on the statement of complainant-Hardeep Kaur wife of Hardev Singh, wherein she stated that she has two sons, namely, Rachhpal Singh, aged 24 years and Jaspal Singh, aged 22 years. Her son Rachhpal Singh was engaged about one year back with Narinder Jit Kaur daughter of Balwant Singh resident of Karnail Gate, Jagraon. Their neighbour Gurmail Singh and his family members were against this relation. In order to get the engagement of Rachhpal Singh and Narinder Jit Kaur dissolved family of Narinder Jit Kaur was feeded adversely, but they could not succeed. Rachhpal Singh got married with Narinder Jit Kaur on 20.04.2000.

3. On 26.04.2000, Rachhpal Singh, his wife Narinder Jit Kaur, Manjit Kaur, sister of complainant, her younger son Jaspal Singh and other relatives were returning to their home at about 07.00 p.m. They stopped their vehicle as railway crossing Rodowala was closed. Jaspreet Singh son of Gurmail Singh, their neighbourer, was coming on cycle and had a minor scuffle with them but people present at the spot intervened and settled the matter. Son of complainant disclosed the incident to her on reaching home. The entire family after taking dinner was sitting together and having chat, when at about 10.30 p.m., complainant heard *lalkaras* outside main gate of her house. She got up and came near the gate and found that Jaspreet Singh armed with *toki*, Gurmail Singh armed with *dang*, Bant Singh armed with *lathi*, Gurdial Singh armed with *toki*, Baldev Singh, Jasbir Singh, Hardev Singh sons of Gurdial Singh, Baldev Singh @ Bittu and Hardev Singh sons of Hardial Singh, Mohinder Singh son of Bogha Singh, Karam Singh son of Mohinder Singh were standing in front of their house and were hurling abuses. They were proclaiming that son of complainant had indulged in a quarrel with their son and they had to teach a lesson on this score.

Complainant did not open the gate of house and told her all the relatives present in the courtyard about the incident. In the meanwhile, all the aforesaid persons went to roof of their house and came on roof of the house of complainant. They removed bricks of boundary walls of roof and started throwing the same towards complainant and her relatives. Baldev Singh @ Billu gave a brick blow on the back of sister-in-law (wife of younger brother of husband of complainant). They also broke the electric lamp fitted on parapet and broke the telephone wire. The brick blows hit Jaspal Singh son of complainant and Gurjit Singh son of Balbir Singh. They also smashed glasses of truck belonging to husband of complainant which was parked in the courtyard. Complainant and her family raised hue and cry but nobody from village came to their help at which they entered rooms of their house and bolted themselves from inside. Baldev Singh son of Gurdial Singh fired 2-3 shots from his gun. After about half an hour, husband of complainant and his younger brother Baldev Singh took Baljit Kaur, Jaspal Singh and Gurjit Singh son of Balbir Singh for treatment to hospital, where they were examined by Dr. R.S. Grewal (PW-4) and he found following injuries on the person of Baljit Kaur:-

- “(i) Reddish bruise in an area of 9 cm. x 4 cm. over the left side of flank of abdomen. Underlying tenderness was present. Deep bleeding was painful and x-ray of chest was advised.
- (ii) Pain epigastrium and left hypochondrium complain of brick blow. Locally tenderness was present and the injury was kept under observation.
- (iii) Complain of pain relating to left leg, straight leg raising test was normal.”

4. He prepared medicolegal report (Ex. PC) giving description of

above injuries. In the opinion of doctor all the injuries were caused by blunt weapon. While injury no. (iii) was declared simple, injuries no. (i) and (ii) were kept under observation.

5. On examination of Jaspal Singh son of Hardev Singh, following injuries were found on his person:-

- “(i) 1.5 cm. x 2 mm. lacerated wound over just below left mastoid tip. Fresh bleeding was present surrounding swelling in an area of 4 cm. x 2.5. cm.
- (ii) Complain of pain in pubic region and has passed urine with clotted blood with pain.”

6. Injury no. (i) was declared simple and injury no. (ii) was kept under observation. Both the injuries were opined to have been caused by blunt weapon. PW-4 Dr. R.S. Grewal prepared medicolegal report regarding injuries of Jaspal Singh as Ex. PD.

7. Gurjit Singh son of Balbir Singh on examination was found having reddish bruises in the area of 6 cm. x 3 cm. over sternum and left sternoclavicular joint with mild tenderness. This injury as per medical report (Ex. PE) was also declared as simple caused by blunt weapon.

8. The medical examination of Baljit Kaur, Jaspal Singh and Gurjit Singh was conducted at 11.20 p.m. on 26.04.2000. Before the medical examination of aforesaid persons Dr. R.S. Grewal had medically examined Jaspreet Singh son of Gurmail Singh on 26.04.2000 at 10.30 p.m. (wrongly mentioned as 03.30 p.m. in his statement) and he found following injuries on his person as described in medicolegal report (Ex. DC):-

- “(i) 2 cm. x ½ cm. lacerated wound on skull, occipital region right to the mid-line, nearly 10 cm. posterior superior to right pinna with surrounding swelling in an area of 1½ inch x 1 inch, underline tenderness was present, fresh

bleeding was present and x-ray skull was advised.

- (ii) 5 cm. x $\frac{1}{4}$ cm. abrasion on left side of neck, horizontally placed.
- (iii) 2 cm. x 2 mm oblique abrasion on the right side of abdomen umbilical region.
- (iv) Complain on multiple blow all over the abdomen. Mild rigidity was present and the injury was kept under observation.”

9. In the opinion of doctor all the above injuries were caused by blunt weapon. While injuries no. (ii) and (iii) on the person of Jaspreet Singh were declared simple, injuries no. (i) and (iv) were kept under observation and declared simple after x-ray examination.

10. The complainant has alleged that there was no male member in the family, as such, the matter could not be reported to police in the night. On the statement of complainant-Hardeep Kaur recorded on next day, police registered instant FIR for offences punishable under Sections 452, 323, 506, 336, 427, 148, 149 IPC and 25 and 27 of the Arms Act. After completion of investigation, challan for offences punishable under Sections 452, 323, 506, 427, 308, 148, 149 IPC was presented against accused, namely, Gurmail Singh, Gurdial Singh, Jasbir Singh, Hardev Singh, Varinder Singh and Mohinder Singh. Later on Karam Singh, Jaspreet Singh, Bant Singh, Baldev Singh and Harwinder Singh were summoned as additional accused. Harwinder Singh was declared proclaimed offender in this case.

11. After completion of prosecution evidence statements of appellants under Section 313 Cr.P.C. were recorded wherein they denied allegations levelled against them and pleaded their false implication.

12. Appellant no. 1-Gurmail Singh in CRA-S-1755-SB-2003 stated in defence as follows:-

“I am innocent. My son Jaspreet Singh was assaulted by Rachhpal Singh, Jaspal Singh, Gurjit Singh and Randhir Singh while in drunken condition at about 08.30 p.m. on 26.04.2000. Jaspreet Singh was rescued by Bant Singh and he was got admitted in Civil Hospital, Jagraon after taking him to the nearby house of his Maasi. When the complainant came to know that Jaspreet Singh has been admitted to hospital, they cooked up a false version and got whole of my family implicated in the present case.”

13. Appellants, namely, Jasbir Singh, Gurdial Singh, Varinder Singh, Mohinder Singh (since deceased) stated in their defence that they have been falsely implicated being relatives of appellant no. 7-Jaspreet Singh. Appellant no. 6-Karam Singh stated in his defence that he was on his duty in Police Station Sudhar at the time of occurrence, while appellant no. 9-Baldev Singh stated that he was also on duty at the time of occurrence. Appellant no. 7-Jaspreet Singh stated in defence as follows:-

“I am innocent. I was assaulted by Rachhpal Singh, Jaspal Singh, Gurjit Singh and Randhir Singh at 08.30 p.m. near cross of kutcha Malik Raod Jagraon on 26.04.2000. I was saved by Bant Singh. I was got admitted in hospital by Bant Singh after taking me to nearby house of my Maasi. When complainant party came to know that I am admitted in hospital they got the present false case registered against us.”

14. Appellant no. 8-Bant Singh stated in his defence as follows:-

“I am innocent. Jaspreet Singh was assaulted by Rachhpal Singh, Jaspal Singh, Gurjit Singh and Randhir Singh on

26.04.2000 at about 08.30 p.m. I rescued Jaspreet Singh and got him admitted in Civil Hospital at Jagraon after taking him to nearby house of his Maasi. When the complainant party came to know that Jaspreet Singh has been admitted to hospital they cooked up the false version and got the present false case registered against us.”

15. DW-1 Constable Sukhchain Singh, DW-2 Vasu Dev, Salesman Markfed Branch, Jagraon and DW-3 Dr. Rekha Goyal, Professor and Head Radiology, DMC Hospital, Ludhiana were examined in defence.

16. After completion of evidence and hearing arguments, learned trial Court discarded the plea of *alibi* raised by appellants Karam Singh, Baldev Singh, Jaspreet Singh and Bant Singh, and held all the appellants guilty for offences punishable under Sections 148, 308, 427, 452 read with Section 149 IPC.

17. Learned counsel for appellants has argued that as per prosecution case, three persons, namely, Baljit Kaur, Jaspal Singh and Gurjit Singh received injuries in the occurrence. Both Jaspal Singh and Gurjit Singh were not examined by prosecution and were given up as having been won over by accused. Reasons for their non-examination was quite obvious. They have deliberately avoided to appear and support the case of prosecution as they could not face cross-examination and this would have shattered the case of prosecution. Learned trial Court discarded this glaring omission in prosecution case with mere observation that non-examination of these witnesses is not fatal to the case of prosecution. Above reasoning given by learned trial Court is not tenable in the eyes of law. Injuries on the person of Baljit Kaur have been attributed to Jaspreet Singh and Baldev

Singh and the police in its investigation had found both Jaspreet Singh and Baldev Singh as innocent. They were summoned on the application of prosecution under Section 319 Cr.P.C. Learned trial Court simply discussed 3-4 arguments of learned defence counsel, discarded the same and held all the accused guilty without looking into veracity of statements of prosecution witnesses; number of persons implicated by complainant; delay in reporting the matter to police; and the medical evidence pertaining to appellant no. 7-Jaspreet Singh, who was lying admitted in hospital at the relevant point of time. The prosecution has not come up with any version regarding injuries caused to appellant no. 7-Jaspreet Singh. False implication of all the 11 family members is apparent on record from the fact that even Mohinder Singh (since deceased), aged more than 75 years, was implicated and had been attributed active participation in causing injuries to Baljit Kaur and others. In his statement, Mohinder Singh specifically stated that being an old man he could not even walk without stick. This shows that entire version regarding the occurrence as put-froth by prosecution is false. Investigating officer while appearing as PW-8 has specifically stated that he found appellant no. 6-Karam Singh, appellant no. 7-Jaspreet Singh, appellant no. 8-Bant Singh and appellant no. 9-Baldev Singh as innocent during course of investigation and has given reasons for his reaching such conclusion. Complainant-Hardeep Kaur while appearing as PW-1 has stated that appellant no. 9-Baldev Singh and appellant no. 7-Jaspreet Singh gave two brickbat blows to Baljit Kaur. When she again appeared after amendment of charge, she attributed two brickbat blows on the persons of Baljit Kaur to appellant no. 1-Gurmail Singh and appellant no. 8-Bant Singh, which was improvement on her previous statement. She has made

several improvements regarding mode and manner of occurrence. Baljit Kaur while appearing as PW-2 has attributed first injury by brickbat blow suffered by her to accused-Harwinder Singh (proclaimed offender). She attributed remaining injuries to appellant no. 1-Gurmail Singh, appellant no. 7-Jaspreet Singh and appellant no. 8-Bant Singh but did not attribute any injury to appellant no. 9-Baldev Singh. In view of this, there remains total contradiction in statements of PW-2 Baljit Kaur and PW-1 Hardeep Kaur regarding injuries caused to Baljit Kaur. Learned trial Court without looking into all these aspects convicted all the appellants for offences punishable under Sections 308 read with Section 149, 452, 148 and 427 IPC. No evidence was produced on file to show that any injury suffered by Baljit Kaur was dangerous to her life. It is apparent from the medical record on file that she was having *rasoli* and fibroid in her uterus. The doctor, who operated Baljit Kaur, had not been examined and no evidence has come on record to show as to for what purpose her operation was conducted. The conviction of appellants for offence punishable under Section 452 IPC is also not made out as there is no evidence that appellants armed with weapons entered the house of complainant. Appellants have also been convicted for offence punishable under Section 427 IPC. The evidence on file shows that the truck was damaged in some accident and not due to brick blows. It was also alleged by complainant-Hardeep Kaur that some shots were fired by appellants with gun which Baldev Singh was carrying but no evidence to corroborate her testimony has come on record. There is nothing on file to show that any such shot was fired or empty cartridges were recovered from the spot. Even the investigating officer has not stated anything to this effect. The reason for lodging the present FIR against

appellants was that appellant no. 7-Jaspreet Singh was thrashed and caused injuries by complainant party, who on his admission in hospital was medically examined. In order to create a defence, complainant lodged this FIR, implicated all the family members and near relatives of Jaspreet Singh. Even police had not conducted any investigation regarding the injuries suffered by appellant no. 7-Jaspreet Singh. Learned trial Court blindly believed statements of complainant and injured-Baljit Kaur without looking into the fact that there were only three injuries on the person of Baljit Kaur for which the complainant has implicated 11 persons as accused. This fact is not disputed that both the parties have inimical and hostile relations with each other over the marriage of Rachhpal Singh son of complainant with Narinder Jit Kaur and this was the reason for implicating all the family members as accused. It is human mentality that when relations are hostile, attempt is made to implicate as many persons of accused party as possible to serve dual purpose, firstly to strengthen its case; and secondly to exert maximum pressure on accused party.

18. Learned State counsel has argued that complainant as well as injured Baljit Kaur have fully supported the prosecution version. They have named all the accused as persons who came to the spot, hurled brickbats. Injuries were caused to Baljit Kaur, Jaspal Singh and Gurjit Singh. Though, Jaspal Singh and Gurjit Singh were not examined yet doctor has proved their injuries. Injury no. 1 on the person of Baljit Kaur was declared dangerous to life by Dr. Ravinderpal Singh Grewal, who was examined as PW-3, vide his report Ex. PB/1. The bricks hurled by appellants and other co-accused were recovered from compound of the house of complainant. The plea of *alibi* set up by appellants no. 6 and 9 Karam Singh and Baldev

Singh respectively, was examined by learned trial Court but was found as not proved. There is no evidence that appellant no. 7-Jaspreet Singh was in hospital at the time of occurrence. Learned trial Court had examined all the pleas raised by appellants and discarded the same. The prosecution has fully proved its case against appellants for offences punishable under Sections 308 read with Section 149, 452, 148 and 427 IPC.

19. On perusal of judgment of learned trial Court, I find that the trial Court has not taken note of the version of incident as recorded in the FIR, given by complainant, eye-witness and statement of investigating officer recorded in this case. It confined its finding only with regard to non-examination of injured Jaspal Singh and Gurjit Singh; the doctor who performed operation of Baljit Kaur; delay in reporting the matter to police; conduct of investigating officer while investigating this case; discarding the plea of defence counsel that there were improvement in statements of PW-1 Harjeet Kaur and PW-2 Baljit Kaur and the plea of *alibi* raised by appellants Jaspreet Singh, Bant Singh, Karam Singh and Baldev Singh. The prosecution version was not examined from the point as to who was attributed injuries caused to Baljit Kaur; basis for declaring injury no. 1 on the person of Baljit Kaur as dangerous to life; whether all the accused named by complainant participated in the occurrence; and mechanical report of the truck etc.

20. As per submissions of learned counsel for appellants, learned State counsel and on perusal of file, I find following points for determination in this case:-

- (i) Who caused injuries on the person of PW-2 Baljit Kaur;
- (ii) What was basis for declaration of injury no. 1 on the person of Baljit Kaur as dangerous to life;

- (iii) Effect of non-examination of doctor who performed operation on Baljit Kaur;
- (iv) Effect of non-appearance of injured Jaspal Singh and Gurjit Singh;
- (v) Effect of delay in reporting the matter to police keeping in view the fact that parties had inimical and hostile relation;
- (vi) Whether plea of *alibi* set up Jaspreet Singh, Bant Singh, Karam Singh and Baldev Singh was duly proved;
- (vii) Effect of non-explanation of injuries on the person of appellant no. 7-Jaspreet Singh;
- (viii) Whether the offence punishable under Sections 452, 427 and 148 IPC are duly proved in this case;

21. In order to examine aforesaid points for determination the entire evidence produced by prosecution requires to be revisited, appreciated and looked into.

- (i) Who caused injuries on the person of PW-2 Baljit Kaur;
- (iv) Effect of non-appearance of injured Jaspal Singh and Gurjit Singh; and
- (vi) Whether plea of *alibi* set up Jaspreet Singh, Bant Singh, Karam Singh and Baldev Singh was duly proved?

22. All these points have been taken up together being inter-connected.

23. Firstly, I proceed to look into the prosecution version as contained in FIR.

24. As per version of occurrence in the FIR, which was recorded on statement of PW-1 Hardeep Kaur, brickbat blows given by Baldev Singh @ Bittu hit back of Baljit Kaur. Other brick blows given by appellant no. 7-Jaspreet Singh hit in the abdomen of Baljit Kaur. No other accused was attributed any brickbat blow on the person of Baljit

Kaur.

25. After framing of charge against seven persons including one proclaimed offender, against whom challan was presented, complainant appeared as PW-1 on 24.05.2001 and reiterated her version as given in the FIR. The charge was amended after summoning of Karam Singh, Jaspreet Singh, Bant Singh, Baldev Singh and Harwinder Singh as additional accused. **Statement of Hardeep Kaur was again recorded as PW-1 on 29.08.2001 wherein she made improvement in her statement regarding injuries suffered by Baljit Kaur and stated that firstly Jaspreet Singh and Baldev Singh gave brickbat blows to Baljit Kaur which hit on her abdomen and backside. Thereafter, Gurmail Singh and Bant Singh gave brickbat blows to Baljit Kaur. She was confronted with improvement made by her in her statement about causing of injuries to Baljit Kaur by Bant Singh and Gurmail Singh which she could not explain.**

26. Baljit Kaur while appearing as PW-2, attributed injuries suffered by her to Harwinder Singh son of Hardial Singh (proclaimed offender), which hit in her abdomen, Jaspreet Singh, which also hit on left side of her abdomen and two brickbat blows to Gurmail Singh and Bant Singh, which hit on her back.

27. As per version in the FIR and two statements of complainant-Hardeep Kaur recorded in this case, wherein no injury on the person of Baljit Kaur was attributed to Harwinder Singh. **Baljit Kaur has not attributed any injury on her person to accused Baldev Singh.** One injury on her person was attributed to Jaspreet Singh by Hardeep Kaur as well as Baljit Kaur. So far as causing of injuries to Baljit Kaur by Gurmail Singh and Bant Singh is concerned, it is an improvement in the prosecution

version by Hardeep Kaur as well as Baljit Kaur. Even in the medical examination of Baljit Kaur, three injuries were found out of which one was on left side of flank of abdomen and second was complain of pain epigastrium and left hypochondrium. As per complainant as well as Baljit Kaur, she had not received any brickbat injury on her legs. Third injury of Baljit Kaur was complain of pain in left leg. The doctor conducted straight leg raising test, which was found to be normal.

28. From the evidence on record, it is apparent that no injury on the person of Baljit Kaur was caused by Gurmail Singh and Bant Singh. Jaspreet Singh is proved to have caused one injury by giving brick blow in abdomen of Baljit Kaur. Though in the FIR and in the statement of PW-1 Hardeep Kaur, Baldev Singh has been named as the person, who caused brickbat blow on back of Baljit Kaur but Baljit Kaur has not attributed any injury to Baldev Singh.

29. Before drawing any conclusion as to whether any injury was caused to Baljit Kaur by Jaspreet Singh, it will be relevant to examine his plea of *alibi*. In his statement recorded under Section 313 Cr.P.C., Jaspreet Singh has stated that he was caused injuries near cross of *kacha* Malik Road, Jagraon on the date of occurrence i.e. 26.04.2000 at 8.30 p.m. He was saved by Bant Singh and got admitted in hospital. SI Harjinder Singh, investigating officer of the case, has stated that he found Jaspreet Singh innocent as he was found admitted in Civil Hospital, Jagraon at the time of occurrence. However, no evidence was produced in defence to prove that at the time occurrence Jaspreet Singh was lying admitted in Civil Hospital, Jagraon. As per statement of PW-4 Dr. R.S. Grewal, Jaspreet Singh had received four injuries which all were declared simple in nature. Even he has

not stated that Jaspreet Singh remained admitted in the hospital after the injuries suffered by him. The onus to prove the plea of *alibi* is always on the accused, who set up this plea. However, in the absence of any cogent and convincing evidence to support the plea of *alibi* raised by Jaspreet Singh, the mere statement of investigating officer cannot be relied upon. Jaspreet Singh has failed to establish plea of *alibi* raised by him and consequently, plea of *alibi* set up by Bant Singh alleging that he was attending Jaspreet Singh in hospital also fails.

30. In order to prove the plea of *alibi* raised by Karam Singh, he examined C. Sukhchain Singh as DW-1, who has stated that Karam Singh remained present on duty for entire month of April, 2000. This statement of C. Sukhchain Singh in no manner proves the plea of *alibi* set up by Karam Singh as he has nowhere stated about duty hours of Karam Singh on the day of occurrence or that at the time of occurrence Karam Singh was present on duty.

31. In order to prove the plea of *alibi* raised by appellant Baldev Singh, he has examined Vasu Dev as DW-2, who has stated that as per their record on 26.04.2000, the date of occurrence, Baldev Singh, who is posted as watchman, was present on duty from 04.00 p.m. to 12.00 in the night. He has placed on file certified copy of register as Ex. DD and attested copy of watch and ward duty list as Ex. DE. As per Ex. DE, Baldev Singh was having his duty time from 04.00 p.m. to 12.00 in the night for the period from 21.04.2000 to 30.06.2000. He has further stated that holidays and rests of employees were curtailed due to procurement season.

32. Learned trial Court after examining the plea of *alibi* of Baldev Singh rejected the same with the observation as follows:-

“.....Similarly, DW-2 Vasu Dev in his cross-examination admitted that Ex. DB does not bear the signatures of employee and that Ex. DE is the copy of a loose sheet. He has also deposed that the name of father of Baldev Singh has not been mentioned in the register and that he had no personal knowledge regarding the entries made in Ex. DD.”

33. The question which arises for consideration is as to what evidence could be produced by Baldev Singh to prove that he was on duty. Admittedly, father's name of neither of the employees was mentioned in the register of employees and DW-2 Vasu Dev has specifically stated that name of the father of Baldev Singh was not mentioned in the register of employees as they do not mention the name of father of any employee in their attendance register. It is otherwise also a general practice that name of father of an employee is not recorded in attendance register and learned trial Court could take judicial notice of this practice. Ex. DE is the duty list and if it is on a loose paper, it does not make any difference. No suggestion was given to DW-2 Vasu Dev that attendance record of Baldev Singh was falsely prepared. I am of the considered opinion that the trial Court has committed error while not properly appreciating evidence on record and has casually rejected the plea of *alibi* set by Baldev Singh. It has not confronted itself with the question as to what other evidence could be produced by Baldev Singh to prove that he was on duty on the day of occurrence. I find reasons to accept the plea raised by Baldev Singh that he was not present at the time of occurrence being on duty as watchman and has proved his plea of *alibi* raised by him. However, the other three appellants, namely, Jaspreet Singh, Karam Singh and Bant Singh have not been successful in

proving similar plea raised by them. This point for determination is accordingly partly decided in favour of prosecution and partly in favour of appellants.

34. From the above discussion, I reach a safe conclusion that causing of injuries in the abdomen of Baljit Kaur by Jaspreet Singh is duly proved. The version of prosecution that Baldev Singh had also caused injuries and statement whereby improvement was made by PW-1 Hardeep Kaur and statement of PW-2 Baljit Singh that she was caused four brickbat blows appeared to be an after thought version. This is particularly so, when four injuries alleged to have been caused by brickbat blows were not found on the person of Baljit Kaur.

35. The prosecution has produced medical evidence to prove that on medical examination of Jaspal Singh and Gurjit Singh, some injuries were found on their person but there is no evidence on record to show as to who caused those injuries. Complainant-Hardeep Kaur while appearing as PW-1 has stated that she is not aware as to who caused injuries to Jaspal Singh and Gurjit Singh. Similar statement was made by PW-2 Baljit Kaur.

36. In view of above evidence on record and non-examination of injured Jaspal Singh and Gurjit Singh, the case of prosecution with regard to injuries on the person of Jaspal Singh and Gurjit Singh is without any evidence and no inference can be drawn that these injuries were caused to them by appellants. This point is accordingly decided against the prosecution.

- (ii) **What was basis for declaration of injury no. 1 on the person of Baljit Kaur as dangerous to life; and**
- (iii) **Effect of non-examination of doctor who performed operation on Baljit Kaur;**

37. PW-3 Dr. Ravinder Pal Singh, who was posted as Registrar,

Dayanand Medical College and Hospital, Ludhiana has declared injury no. 1 on the person of Baljit Kaur as dangerous to life. He had declared injuries no. 1 and 2 as 'endanger to life'. While appearing as PW-3 he has explained above injuries as follows:-

“.....I declared injury no. 1 as reddish bruise over left side flank and injury no. 2 as pain epigastrium and left hypochondrium which was investigated and ultrasound portable done on 27.04.2000 showed gross free fluid in peritoneal cavity. Treatment given as exploratory laparotomy with splenectomy with peritoneal lavage done and spleen was removed and the injury was declared endanger to life and my report is Ex. PB/1.....”

38. Opinion of PW-3 Dr. Ravinder Pal Singh, who was posted as Registrar, DMC Hospital, Ludhiana is based on surgical opinion. The doctor, who conducted surgery, was not examined. In ultrasound, free fluid was seen in the peritoneal cavity and there is nothing on file to show that free fluid was collection of liquid or blood or due to some infection of spleen. No evidence was produced by prosecution to prove as to why spleen of Baljit Kaur was removed. Whether it was due to injuries or was already infected? Even notes written by surgeon at the time of operation were also not duly proved. In the absence of opinion of surgeon, who conducted the surgery, there is no basis for statement of PW-3 Dr. Ravinder Pal Singh declaring injuries no. 1 and 2 as 'endanger to life'. Learned trial Court without looking into this aspect convicted all the appellants for the offence punishable under Section 308 IPC in a mechanical manner. It has not looked into the ingredients required to constitute offence under Section 308

IPC, which reads as follows:-

“A person is said to commit an offence under this section, if he does an act with such intention or knowledge and under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder as defined under Exceptions 1 to 5 to section 300 IPC. To invoke the section, intention to commit culpable homicide not amounting to murder must be established.”

39. In this case, the trial Court has nowhere recorded the finding that injuries on the person of Baljit Kaur was caused with intention or knowledge and under such circumstances that if thereby death of Baljit Kaur had been caused, the appellants would have been guilty of culpable homicide not amounting to murder.

40. From the above discussion, I find that learned trial Court has committed grave error while reaching the conclusion that appellants are guilty of offence punishable under Section 308 IPC. For the injuries caused to Baljit Kaur, the offence disclosed against Jaspreet Singh is under Section 323 IPC and against other under Section 323 read with Section 34 IPC. This point for determination is answered accordingly.

(v) Effect of delay in reporting the matter to police keeping in view the fact that parties had inimical and hostile relation.

41. The matter was reported to the police after 9 ½ hours of the occurrence. Complainant-Hardeep Kaur while appearing as PW-1 has stated that she was alone at her house because Baljit Kaur was taken to Civil Hospital, Jagraon by Hardev Singh (husband of complainant) and brother-in-law of Baljit Kaur. She could not go to Police Station due to night hours in the absence of any male member at home. Though, complainant has tried

to explain the delay in reporting the matter to police but it certainly puts the Court on guard to scrutinize the statements of injured and eye-witness with caution to rule out false implication of any accused. Complainant had named 11 persons as accused. In the FIR, it is stated that out of these 11 persons, appellant no. 7-Jaspreet Singh and appellant no. 3-Gurdial Singh were armed with *toki* while appellant no. 1-Gurmail Singh and appellant no. 8-Bant Singh were armed with *lathi* and Baldev Singh was having a rifle. As per FIR, other accused were not having any weapon in their hands. While appearing as PW-1, complainant-Hardeep Kaur has stated that all the accused were armed with *tokies* and *dangs*. When her statement was recorded after amendment of charge on summoning of additional accused, she deposed about weapons which accused were carrying as follows:-

“.....Jaspreet Singh was armed with toki, Bant Singh armed with dang, Gurdial Singh armed with dang, Gurmail Singh armed with toki, Mohinder Singh armed with toki, Baldev Singh son of Gurdial Singh was armed with rifle and about other I did not notice what weapon they were holding.....”

42. Discrepancies which have come on record regarding injuries caused to Baljit Kaur have been discussed while deciding ponits no. 2 and 3 above. Non-examination of injured Jaspal Singh and Gurjit Singh has rendered the case of prosecution without any evidence as to how they suffered the injuries. From evidence that has come on record, it is apparent that more than one person was assailant; appellant-Baldev Singh was not present at the spot; appellants Jasbir Singh, Varinder Singh, Mohinder Singh (since deceased) and Karam Singh were empty handed and had no specific role in the occurrence; appellants Jaspreet Singh, Harwinder Singh,

Gurmail Singh, Gurjit Singh and Bant Singh were armed with weapons. It is also proved on file that occurrence had taken place in which Baljit Kaur suffered injuries but the complainant and injured have implicated more persons belonging to same family for three injuries suffered by Baljit Kaur. It was stated that bricks were rained in compound of the house of complainant but SI Harjinder Singh, Investigating Officer, while appearing as PW-8 has stated that on reaching the spot, he found about 10 bricks lying at the spot, which were taken into possession vide memo Ex. P-1.

43. Appellants, Gurmail Singh, Gurdial Singh and Bant Singh are brothers and sons of Bachan Singh and Jasbir Singh, Hardev Singh and Baldev Singh are brothers and sons of Gurdial Singh. Gurdial Singh father of Jasbir Singh, Hardev Singh and Baldev Singh has also been named as accused. Mohinder Singh (since deceased) and his son Karam Singh were also impleaded as accused while Jaspreet Singh son of appellant no. 1- Gurmail Singh is also an accused. This shows that all the accused are from same family and the time between occurrence and reporting of the matter to police has given opportunity to complainant for deliberation and implicate as many persons of the accused party as possible. No specific role in the occurrence has been attributed by complainant and injured witness to appellants Jasbir Singh, Varinder Singh, Mohinder Singh, Karam Singh and Hardev Singh.

44. As per statement of injured-Baljit Kaur, accused Harwinder Singh (proclaimed offender), Jaspreet Singh, Gurmail Singh and Bant Singh were having bricks in their hands when they came on roof of the house. Though, injuries on the person of Baljit Kaur is proved to have been caused only by Jaspreet Singh, attracting offence punishable under Section 323

IPC. The offence under Section 323 read with Section 34 IPC is proved against Gurmail Singh and Bant Singh and Gurdial Singh as they have come prepared to cause injuries to complainant and her family in furtherance of their common intention.

45. Careful scrutiny of testimonies of complainant-Hardeep Kaur and PW-2 Baljit Kaur shows that appellants Jasbir Singh, Hardev Singh, Varinder Singh, Mohinder Singh (since deceased) and Karam Singh appeared to have been added in the array of accused without attributing any injury or specific role to them in the occurrence. Even otherwise, it is not believable that 11 accused were raining bricks in compound of the house of complainant but only 10 bricks were found by the investigating officer. So far as naming Gurmail Singh, Bant Singh as persons, who caused injuries on the person of Baljit Kaur is concerned, it has already been discussed that testimony of complainant and injured Baljit Kaur are riddled with discrepancy on this score ruling out acceptance of version of both the witnesses in this regard. Now we are left with only Jaspreet Singh and Baldev Singh as the persons, who as per version of complainant had allegedly caused brickbat injuries on the person of Baljit Kaur. Injured-Baljit Kaur has not named Baldev Singh as the person, who gave her brickbat blow. Even otherwise plea of *alibi* set up by appellant-Baldev Singh is proved.

46. From the above discussion, I am of the considered opinion that complainant and injured-Baljit Kaur have given exaggerated version of the occurrence and presence of only Jaspreet Singh, Gurmail Singh, Bant Singh and Gurdial Singh is disclosed at the time of occurrence, who threw bricks at complainant and her family members. While Jaspreet Singh has been

attributed injury in abdomen of Baljit Kaur constituting offence punishable under Section 323 IPC, other three referred above committed offence punishable under Section 323 read with Section 34 IPC. This point for determination is accordingly decided partly in favour of prosecution and partly in favour of appellants.

(vii) Effect of non-explanation of injuries on the person of appellant no. 7-Jaspreet Singh.

47. Injuries on the person of appellant no. 7-Jaspreet Singh were simple injuries, which were not caused during occurrence. No witness was produced in defence to prove as to how and in what manner these injuries were caused to Jaspreet Singh, as such, non-explanation of injuries on the person of Jaspreet Singh has no effect to the case of prosecution. This point is decided in favour of prosecution accordingly.

(viii) Whether the offence punishable under Sections 452, 427 and 148 IPC are duly proved in this case?

48. As a sequel of my above discussion, the offence under Section 148 IPC is duly proved against appellants Jaspreet Singh, Gurmail Singh, Bant Singh and Gurdial Singh, who were also accompanied by Harwinder Singh (proclaimed offender).

49. In order to prove the offence punishable under Section 427 IPC with regard to damage to truck no PUV-9239, which was parked in compound of the house of complainant, prosecution has examined PW-7 Baljit Singh, who had repaired the truck. He has stated that headlight, glasses of the truck were lying broken and he had also done denting work. However, while explaining the damage to truck, he has stated that dent to the truck could be caused due to vehicular accident. Ramji Dass, Head Mechanic, Punjab Roadways, while appearing as PW-6 has stated that he

had examined the truck in question and gave his report Ex. PG. He found following damage to the truck:-

- (i) Front both glasses broken;
- (ii) Right side headlight broken;
- (iii) Right side show bend.

50. PW-6 has stated that this damage to the truck as mentioned in the report could also be caused by an accident. The front side was pressed upto 2/2½ ft. and this is not possible due to striking of bricks. Statement of this witness supports the testimony of PW-7 Baljit Singh, who has stated that dent on the vehicle could be the result of vehicular accident. While appearing as PW-1 Hardeep Kaur has stated that assailants have thrown bricks on glasses of the truck resulting in breaking of glasses. Baljit Kaur has not stated about causing of damage to the truck.

51. From the testimony of PW-6 Ramji Dass, Head Mechanic and PW-7 Baljit Singh, who repaired the truck, it becomes doubtful that the truck was damaged in the occurrence as possibility of damage being caused in a vehicular accident is strongly there. In view of this only other factors which can be considered to find if any offence under Section 427 IPC was committed, is the testimony of PW-1 Hardeep Kaur that assailants broke the electric bulb installed in courtyard. However, her statement does not find any support from the testimony of PW-2 Baljit Kaur. In these facts and circumstances, I find no hesitation to hold that no offence under Section 427 IPC is proved against appellants.

52. The next question which arises for consideration is as to whether offence punishable under Section 452 IPC is duly proved?

53. Section 452 IPC reads as follows:-

wrongful restraint.—Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

54. The main ingredient of this offence is house trespass. It is to be seen from the testimony of complainant-Hardeep Kaur and injured-Baljit Kaur as to whether appellants have committed trespass in the house of complainant. While appearing as PW-1, complainant-Hardeep Kaur has stated that assailants came to the roof of her house and started throwing bricks. She has also stated that Jaspreet Singh, Bant Singh, Gurdial Singh, Gurmail Singh and Mohinder Singh (since deceased) were armed with *toki* and *dang* while Baldev Singh son of Gurdial Singh was armed with rifle. Injured-Baljit Kaur has not stated that any of the assailants was armed with any weapon. As per her statement, Jaspreet Singh, Harwinder Singh, Gurmail Singh and Bant Singh were having bricks in their hands. She has stated that she heard fire shot from the rifle but she does not know as to who had fired those shots. From the statement of complainant as well as Baljit Kaur, ingredients to constitute offence punishable under Section 452 are fulfilled.

55. From the above discussion, it is evident that the trial Court has committed grave error by not examining entire evidence produced by prosecution in a proper perspective. Without looking into the role of each of appellants it has convicted all the accused for offences punishable under Sections 308, 452, 427 and 148 IPC. No offence under Sections 308 and 427 IPC is disclosed in this case. It is held that prosecution has been able to

prove its case for offence punishable under Section 323 IPC against appellant no. 7-Jaspreet Singh and for offence punishable under Section 323 read with Section 34 IPC against appellants Gurmail Singh, Bant Singh and Gurdial Singh and for offence punishable under Sections 148 and 452 IPC against appellants, namely, Gurmail Singh, Gurdial Singh, Jaspreet Singh and Bant Singh in CRA-S-1755-SB of 2003. Case of prosecution against appellants, namely, Jasbir Singh, Varinder Singh, Mohinder Singh (since deceased), Karam Singh and Baldev Singh in CRA-S-1755-SB of 2003 and appellant-Hardev Singh in CRA-S-1868-SB of 2003 is not proved beyond any shadow of doubt. Giving benefit of doubt, appellants, namely, Jasbir Singh, Varinder Singh, Mohinder Singh (since deceased), Karam Singh and Baldev Singh in CRA-S-1755-SB of 2003 and appellant-Hardev Singh in CRA-S-1868-SB of 2003, are acquitted.

56. The occurrence in this case pertains to the year 2000 and about 17 years have been passed so far. Sentence of appellants was suspended vide orders dated 06.10.2003 in CRA-S-1755-SB of 2003 and 09.10.2003 passed in CRA-S-1868-SB of 2003. After a lapse of 17 years of the occurrence, it will not serve the interest of justice if convicted appellants are again sent to jail to undergo rigorous imprisonment for offences punishable under Sections 323, 323 read with 34, 148 and 452 IPC. Keeping in view facts and circumstances of the case, I am of the view that compensating the injured and complainant will be more judicious than sentencing appellants.

57. Keeping in view above facts, all the appellants are ordered to be released on probation for a period of one year on their furnishing probation bonds and surety bonds to the satisfaction of Chief Judicial Magistrate, Ludhiana and to pay ₹10,500/- each as costs of litigation. Out of

costs of litigation, an amount of ₹20,000/- shall be paid to complainant and another sum of ₹20,000/- shall be paid to injured-Baljit Kaur, if both are alive. In case of demise of complainant-Hardeep Kaur, amount of ₹20,000/- shall be paid to her legal heirs. However, in the event of demise of injured-Baljit Kaur, no amount shall be paid to her legal heirs. Fine of ₹500/- (five hundred) if already paid, shall be adjusted in cost of litigation.

58. Appellants are directed to furnish probation bonds and surety bonds before the Chief Judicial Magistrate and deposit costs of litigation within a period of six weeks from the date of this judgment, failing which they will undergo imprisonment as follows:-

<i>Name of appellants</i>	<i>Sections</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
Appellant no. 1- Gurmail Singh	452 IPC	RI for 1 year	₹2000/-	RI for 3 months
	323/34 IPC	RI for 6 months	₹1000/-	RI for 1 month
	148 IPC	RI for 6 months	₹1000/-	RI for 1 month
Appellant no. 3- Gurdial Singh	452 IPC	RI for 1 year	₹2000/-	RI for 3 months
	323/34 IPC	RI for 6 months	₹1000/-	RI for 1 month
	148 IPC	RI for 6 months	₹1000/-	RI for 1 month
Appellant no. 7- Jaspreet Singh	452 IPC	RI for 1 year	₹2000/-	RI for 3 months
	323 IPC	RI for 6 months	₹1000/-	RI for 1 month
	148 IPC	RI for 6 months	₹1000/-	RI for 1 month
Appellant no. 8- Bant Singh	452 IPC	RI for 1 year	₹2000/-	RI for 3 months
	323/34 IPC	RI for 6 months	₹1000/-	RI for 1 month
	148 IPC	RI for 6 months	₹1000/-	RI for 1 month

59. The sentence awarded to aforesaid appellants shall run concurrently. Amount of fine on its realization will be paid to injured-Baljit Kaur towards compensation for injuries suffered by her. Amount of fine deposited by other appellants be refunded to them.

A copy of this order be conveyed to all the concerned.

June 02, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No