

CRA-S-1999-SB-2004

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

CRA-S-1999-SB-2004 (O & M)

Date of decision: 16.04.2018

Sukhdev Singh

.....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. O.P.Kamboj, Advocate,
for the appellant.

Ms. Ruchika Sabharwal, AAG, Punjab.

INDERJIT SINGH , J

The present appeal has been filed by appellant-Sukhdev Singh challenging the judgment of conviction and order of sentence dated 24.09.2004, passed by learned Additional Sessions Judge, Fast Track Court, Ferozepur whereby he was convicted and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>In default of payment of Fine</i>
342 IPC	To undergo rigorous imprisonment for six months and to pay a fine of ₹200/-.	To further undergo rigorous imprisonment for 15 days.
365 IPC	To undergo rigorous imprisonment for 2½ years and to pay a fine of ₹500/-.	To further undergo rigorous imprisonment for 06 months.
452 IPC	To undergo rigorous imprisonment for 2½ years and to pay a fine of ₹500/-.	To further undergo rigorous imprisonment for 06 months.
506 IPC	To undergo rigorous imprisonment for 02 years and to pay a fine of ₹300/-.	To further undergo rigorous imprisonment for 03 months.

CRA-S-1999-SB-2004

All the substantive sentences have been ordered to run concurrently.

Originally, challan was presented against accused-Sukhdev Singh and Sukhwinder Singh. Learned trial Court on the basis of evidence convicted and sentenced both the accused vide judgment dated 29.09.2001. However, in appeal preferred by the accused/convicts, learned Additional Sessions Judge, Ferozepur remanded back the case for commitment proceedings with the observations that on the basis of evidence adduced by the prosecution, offence under Section 364 IPC was also made out. Thereafter, the case was committed by learned trial Court qua accused-appellant Sukhdev Singh alone and as regards case of accused-Sukhwinder Singh, his application for sending the case for trial to the Army Court was accepted.

The facts of the case, as noted down in the impugned judgment dated 24.09.2004 passed by learned trial Court are as under:

“2. Briefly stated the facts of the prosecution case are that on 20.07.1999 complainant Bhupinder Singh son of Sudagar Singh r/o Saddu Shah Wala got recorded his statement to ASI Iqbal Khan at Police Post Chugatte Wala to the effect that he was resident of village Saddu Shah Wala and was an agriculturist by profession. About two months back, the demarcation of ‘phirni’ was got conducted by the panchayat of the village but Amar Singh son of Ujagar Singh and his sons

CRA-S-1999-SB-2004

military personnel Sukhwinder Singh No.248753126 and Sukhdev Singh by whom land of phirni about 2 x 17 karams was found encroached had stopped the earth-work of the phirni. During those days, said Sukhwinder Singh had come in the village on leave from his military service about 7/8 days back. Jaspal Singh, SHO of Police Station Malan Wala had inspected the site on that day in the morning where Amar Singh and his above said sons called bad names to Sarpanch Rehmat and other respectables of the village and had taken away Amar Singh to the Police Station. As per the complainant, his father and his uncle Sukhwant Singh had also gone to Ferozepur alongwith panchayat. About 12/1 noon he (complainant), his mother Jasbir Kaur and his aunt Kashmir Kaur wife of Sukhdev Singh were present in their house when one 'Jonga' of army stopped in front of their house. Sukhwinder Singh aforesaid, one Naib Subedar who bore the name plate on his pocket as Hazura Singh alongwith four other military personnels out of whom two were Hindus gentleman and two were Sikh got down from it. Four military personnel out of them were armed assault rifles. The persons who came out from the Jonga were accompanied also by Sukhdev Singh son of Amar Singh. All these seven persons

CRA-S-1999-SB-2004

forcibly entered in their house and abused them. Sukhdev Singh held out threat also to kill them. Some military personnels entered into their residential rooms and scattered the house hold goods and forced him (complainant) to go ahead of them after catching hold him from his neck and later took him to the house of his uncle Sukhwant Singh son of Sudagar Singh where Gurmit Singh son of his uncle and Rehmat Sarpanch of village were present. Military personnels also abused Gurmit Singh and roughed him up and conducted illegal search of his house like that of their house. They also told them that their father had helped the Sarpanch and as such they would take their whole family to the other side. Gurmit Singh was also forced to move by those military personnels ahead of them in the same manner in which complainant was forced to move. While they reached near the outer gate of the house of his uncle, Tarlok Singh also came there and beseeched before Naib Subedar for their release but they did not pay heed to them. They carried both of them in 'Jonga' and told them that they would carry them to the Police Station Mallan Wala but they took them to the house of Amar Singh and kept them confined in a room for an hour and in the meanwhile continued taking lunch outside the said room.

CRA-S-1999-SB-2004

Thereafter, they again put them in the 'Jonga' and took them towards Ferozepur. On the way they (complainant and his brother) continued imploring to them to release them as they were telling that they would take them to Husaini Wala Border and would kill them. However, when they implored to them to release them further earnestly they released them at Focal Point of Arafke at about 2.30 P.M. threatening them that if they and their family members would help Rehmat etc. in future in connection with work of phirni they would not spare them. Due to fear they approached their father at Ferozepur and came to the police post alongwith him to report the matter and for taking action against the accused. On finding aforesaid statement of complainant constituting offence under Sections 452/342/294/506/148/149 of the Indian Penal Code ASI Iqbal Khan sent ruqa to the police station by hand through PHG Balkar Singh on the basis of which formal FIR against the accused was registered. Then ASI Iqbal Khan inspected the place of occurrence, prepared visual site plan thereof and recorded the statements of witnesses. He arrested accused Sukhdev Singh on 21.07.1999. On 22.09.1999, DSP Joginder Kumar of Sub Division, Ferozepur initiated the investigation and found

CRA-S-1999-SB-2004

Sukhdev Singh guilty and other accused as innocent. On 22.09.1999, on the instructions of DSP, Sukhwinder Singh son of Amar Singh was also arrested and produced in the Court. On completion of investigation and other formalities, challan against Sukhwinder Singh and Sukhdev Singh was filed under Sections 452/342/294/506/148/149 IPC.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding *prima facie* case, the accused-appellant was charge-sheeted under Sections 294, 342, 364, 452 and 506 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW 1 Bhupinder Singh, PW 2 Gurmit Singh, PW 3 Rehmat, PW 4 Tarlok Singh and PW 5 ASI Iqbal Khan and closed the evidence.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution. He denied the correctness of the evidence and pleaded himself as innocent. He also pleaded that “on the day of occurrence, Rehmat Sarpanch etc. wanted to change his land in the 'Phirni' about which his father called police to abstain them from doing so. Police of P.S.Mallan Wala came in the village and there were exchange of hot words between his father, himself on one side and Rehmat Sarpanch etc. and police on other side. Then police took them to

CRA-S-1999-SB-2004

the police station and due to grudge of abusing to the police, this false case is fabricated by making Bhupinder Singh as complainant.”

In his defence, the accused examined DW 1 Constable Lakhwinder Singh. This witness deposed that he has not brought the Arji (temporary) *Roznamcha* of Police Post Chogate Wala for the year 1999 because such temporary *roznamcha* is destroyed after a period of two years. Thereafter, the accused also tendered some documents in his defence and closed the same.

Learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the abovesaid judgment of conviction and order of sentence, the present appeal has been filed.

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

Learned counsel for the appellant argued that a false case has been registered against the present appellant. Except the statement of complainant, there is no other material evidence on record to support the prosecution version. He further argued that PW 2 Gurmit Singh and PW 3 Rehmat did not support prosecution version and turned hostile. Even PW 4 Tarlok Singh has made material improvements in his statement and his version also cannot be relied upon. He further argued that main story of the prosecution is that the complainant has been taken away/kidnapped in the Jonga of the military by the accused alongwith four military personnel, but the investigating officer during his cross-

CRA-S-1999-SB-2004

examination stated that this story was not found as correct. Therefore, learned counsel argued that a reasonable doubt exists in the prosecution version and there is motive for implicating the accused falsely in this case by the complainant, as there is already a litigation between the parties regarding '*Phirni*'.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. There is nothing on record to disbelieve the statements of the prosecution witnesses. He also argued that the prosecution has duly proved its case beyond doubt.

After hearing learned counsel for the appellant as well as learned State counsel and going through the record minutely and carefully, I find that first of all, PW 1 Bhupinder Singh (complainant) deposed as per the prosecution version, however, PW 2 Gurmit Singh and PW 3 Rehmat did not support the prosecution version and turned hostile. The fact that Gurmit Singh and Rehmat, who are the material witnesses, have turned hostile and not supported the prosecution version, creates a doubt in the prosecution version. As regards PW 4 Tarlok Singh, he deposed that he was cutting fodder in his fields approximately two *killas* away from his house. Achhar Kaur, mother of Bhinder Singh informed him that military personnel had arrived in front of house of Bhinder Singh in a *Jonga* and had got seated Bhinder Singh and Gurmit Singh in the *Jonga* and he should come with her. He came running in front of house of Bhinder Singh. He saw seven military personnel there

CRA-S-1999-SB-2004

namely Sukhdev Singh, Sukhwinder Singh, Hazura Singh and the names of other persons, he did not know. He himself saw that Gurmit Singh and Bhupinder Singh had been seated in the *Jonga* by them. The military personnel had with them rifles/ sten-guns. He identified accused-Sukhdev Singh present in the Court on that day. The accused also stated that they would take Bhinder Singh and Gurmit Singh to the Border and kill them. They had blind-folded both of them before saying so. Thereafter, Sukhwinder Singh took both of them (Bhinder Singh and Gurmit Singh) in the *Jonga* in his house adjoining to the house of this witness and confined them in a room and bolted the door thereof from outside. The accused kept them confined there for 2-3 hours. They informed the matter to Sarpanch Rehmat who implored before military personnel but they did not accept any such prayer. There was *Raula* (dispute) of '*Phirni*' having some part of land of Amar Singh, father of Sukhwinder Singh and they had been pursuing the matter for carving out '*Phirni*' and to get vacated the said land of '*Phirni*' from them for which Sarpanch Remant and accused were annoyed with them. The version given by PW 4 Tarlok Singh that Gurmit Singh was also taken away in the *Jonga* has not been corroborated as Gurmit Singh has not supported this version. Further, his version that he informed Sarpanch Rehmat, who requested the military personnel etc. for taking action, is also not supported and corroborated by PW 3 Rehmat as he has not supported the version of the prosecution and turned hostile. Further, PW 4 has made material improvements. In his cross-examination, he deposed that he has

CRA-S-1999-SB-2004

stated before the police in his statement dated 20.07.1999 (Ex.D-1) that Achhar Kaur had taken him to the spot by saying that military personnel had picked up Gurmit Singh and Binder Singh. When this witness was confronted with his statement (Ex.D-1), this fact was not found to be recorded. He also deposed that he had not stated to the police that he came to know about the incident at 1.00/1.30 P.M. However, when he was confronted with his statement (Ex.D-1), this fact was found to be recorded. Further, the fact that military personnel had also rifles with them, was also not found to be recorded, when he was confronted with his statement (Ex.D-1). Similarly, the fact that the accused had been telling that they would take both Gurmit Singh and Binder Singh to the border and shot them there, was also not found to be recorded in his statement (Ex.D-1), when he was confronted with the same. PW 4 further deposed that he stated to the police in his said statement that they had taken both the aforesaid persons with them in *Jonga* after blind folding them. When this witness was confronted with his statement (Ex.D-1), this fact was not found to be recorded there. Similarly, the fact that SHO had facilitated preparation of ridges, was also not found to be recorded in his statement Ex.D-1, when he was confronted. The cross-examination of PW 4 shows that he is making material improvements in his statement, which creates a doubt in the prosecution version.

Further, I find that PW 1 Bhupinder Singh stated that accused Sukhdev Singh is not member of armed forces. He also deposed that he stated to the police that Ninder Kaur, his wife was present in the

CRA-S-1999-SB-2004

house at the relevant time. However, when he was confronted with his statement (Ex.P-1), this fact was not found to be recorded. The facts that military personnel had tied them and bundled into *Jonga*, were also not found to be recorded in his statement (Ex.P-1). The witness further deposed that he has not stated to the police that after bundling them into *Jonga*, they entered in the house and conducted search of their house. PW 5 who is the investigating officer had admitted in his cross-examination that investigation of this case was also conducted by Joginder Kumar, DSP, but said Joginder Kumar, DSP has not been examined by the prosecution in the present case. Furthermore, he admitted that in his investigation as well, it has not come that military personnel had picked up and taken away Bhinder Singh and Gurmit Singh with them in a *Jonga*. This statement of the investigating officer has not supported the statement of PW 1 Bhupinder Singh, who stated that military personnel had picked up them and taken away in a *Jonga*. The investigating officer further stated that on the basis of his investigation, he found offences against the accused under Sections 342, 506, 148 and 149 IPC. He also stated that his investigation was verified by SI/SHO Jaspal Singh and DSP Joingder Kumar.

Next, I find that it is the version of complainant that Amar Singh and his sons had abused Rehmat Sarpanch as well as SHO Jaspal Singh, but the investigating officer stated that he did not join SHO Jaspal Singh in the investigation of the case. There is no other evidence on record to support the fact that Amar Singh and his sons had also abused

CRA-S-1999-SB-2004

SHO. In view of the evidence on record, I find that the witnesses have made material improvements and moreover, two of them did not support the prosecution version and were declared hostile. Further, the investigating officer has found the main version of the complainant regarding taking them in the *Jonga* by the military personnel, as incorrect. Even the material facts qua kidnapping, blind-folding, giving threat etc. were not found in the statements got recorded to the police by PW 1 and PW 4 and qua them, the material improvements have been made.

From the evidence on record, I find that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. The benefit of doubt always goes to the accused. Resultantly, the appeal filed by the appellant is accepted; the impugned judgment of conviction and order of sentence dated 24.09.2004 passed against him are set aside and he is acquitted of the charges framed against him by giving the benefit of doubt. His bail/surety bonds also stand discharged.

16.04.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No