

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

1)

CRA-S-370-SB-2005
Decided on : 07.11.2019

Gurdip Singh and others

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

2)

CRR-971-2005

Khazan Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Bhuvan Vats, Advocate as *Amicus Curiae*
for the appellant(s) (in CRA-S-370-SB-2005).

Mr. Kartik Bhardwaj, Advocate as *Amicus Curiae*
for the petitioner (in CRR-971-2005).

Ms. Jaspreet Kaur, AAG, Punjab.

Mr. Arshvir Singh Sandhu, Advocate for
Mr. S.P.S. Sidhu, Advocate.

MANJARI NEHRU KAUL, J.

1. This order will dispose of two cases i.e. CRA-S-370-SB-2005 & CRR-971-2005, as both have arisen out of the same judgment.

The instant appeal has been preferred against the impugned judgment and order of conviction dated 12.02.2005 passed by Addl. Sessions Judge, Fast

Track Court, Ferozepur.

The criminal revision has been preferred by the complainant-Khazan Singh against the acquittal of respondents No.5 & 6 (i.e. Raj Singh and Kaushalya Bai, respectively) as well as for enhancement of sentence awarded to accused-respondents No.2 to 4 (i.e. Darshan Singh, Inder Singh & Gurdip Singh, respectively) by the trial Court.

It may be noticed that since there was no representation on behalf of the petitioner (in CRR-971-2005) continuously for three dates of hearing, Mr. Kartik Bhardwaj, Advocate (P-3009/2016), who was present in the Court, was therefore appointed as *Amicus Curiae* to assist the Court on behalf of the petitioner in CRR-971-2005.

2. The prosecution case as it emerges from the evidence on record is that on 02.05.2004 at about 07:30 A.M., complainant – PW-2/Khazan Singh on being informed that accused/appellants - Inder Singh, Gurdip Singh etc. were embroiled in a verbal altercation with PW-3 Makhan Singh, went to Makhan Singh's house to counsel the parties. On reaching the house of PW-3/Makhan Singh, he saw that appellant No.2 – Inder Singh armed with Gandasi, accused – Kaushalya (since acquitted) armed with Stones, accused-Raj Singh (since acquitted) armed with sotti and accused/appellants No. 1 & 3 – Gurdip Singh and Darshan Singh, empty handed were engaged in a verbal altercation with PW-3/Makhan Singh. Complainant Khazan Singh tried to intervene and counsel both the parties. However, accused-appellant No.1 – Gurdip Singh raised a lalkara that PW-2/Khazan Singh should not be spared as he was indulging in partisan behaviour. Soon thereafter, accused – Kaushalya Bai and Raj Singh started giving kick blows to PW-2/Khazan Singh and caused him injuries with stones. Accused-

appellant No.2 – Inder Singh inflicted a Gandasi blow on the forehead of Khazan Singh. On a hue and cry raised by Khazan Singh, the accused party fled away from the spot with their respective weapons. Injured Khazan Singh was removed to Civil Hospital, Jalallabad, from where he was referred to Baghi Hospital, Ferozepur. After obtaining opinion from the concerned Doctor *qua* the fitness of the injured, the statement Ex.P10 of PW-2/Khazan Singh detailing the aforementioned occurrence was recorded, on the basis of which, FIR No. 141, dated 03.05.2004, under Sections 148/307/323 read with Section 149 IPC, was got registered at Police Station Saddar Jallalabad. On completion of investigation and other formalities, the accused were arrested and sent up for trial, where they were charged under Sections 148/307/323/149 IPC, to which they pleaded not guilty and claimed trial.

3. The prosecution examined as many as 06 witnesses, including injured Khazan Singh as PW-2 & eye-witness Makhan Singh as PW-3 and after tendering some documents, closed their evidence. The accused when examined under Section 313 Cr.P.C., denied the allegations of the prosecution and pleaded false implication on account of a complaint which co-acused Kaushalya Bai (since acquitted) had made against the 'Chhinder Singh' nephew of PW-3/Makhan Singh, who had allegedly teased her daughter. It was stated that since Makhan Singh, Khazan Singh and Puran Singh (father of Chinder Singh) had refused to tender an apology as directed by the Panchayat, they had lodged the instant complaint against them, after fabricating injuries on the person of Khazan Singh. In defense, the accused examined DW-1/ Ramesh Kumar.

4. The learned trial Court after going through the evidence and other material on record, acquitted accused-Kaushalya Bai & Raj Singh. However, the

accused-appellants No.1 to 3 were convicted and sentenced as follows:-

<i>Name of Convict(s)</i>	<i>Offence(s)</i>	<i>Period of sentence(s)</i>	<i>Fine(s) imposed</i>	<i>Period of sentence(s) of default payment of fine(s)</i>
<i>Inder Singh</i>	<i>326 IPC</i>	<i>Rigorous imprisonment (RI) for 03 years</i>	<i>₹ 2000/-</i>	<i>RI for 03 months</i>
<i>Gurdip Singh Darshan Singh</i>	<i>326/34 IPC</i>	<i>RI for 03 years each</i>	<i>₹ 1000/- each</i>	<i>RI for 02 months each</i>

All the sentences were ordered to run concurrently.

5. I have heard learned counsel for the appellants as well as the State, besides going through the evidence and other material available on record.
6. The challenge to the impugned judgment by the learned counsel for the appellants is primarily on the inordinate and unexplained delay of almost 29 hours in the lodging of the FIR. It has been urged by the learned counsel for the appellants that the trial Court failed to appreciate that there was admittedly a history of enmity between the complainant and the accused-party, and the accused-party had thus been falsely implicated in the instant case in collusion with the police. It was further urged that the trial Court ignored the medical evidence, which was at variance with the ocular evidence, for which the benefit of doubt should have gone to the accused-party. Learned counsel for the appellants strenuously argued that the delay of 29 hours in lodging of the FIR was used by the complainant party to fabricate a false version by specifically targeting and falsely implicating appellants No.1 & 3 in the instant case, who admittedly were empty handed and no injury too had been attributed to them. It was urged that in fact they were on a better footing than the co-accused Kaushalya Bai and Raj Singh, who had been attributed injuries on the person of the injured Khazan Singh, but were still acquitted by the learned trial Court, who rightly disbelieved the

prosecution version *qua* them.

7. I have given my thoughtful consideration to the arguments put-forth by the learned counsel for the appellants. No doubt, there is a delay in the lodging of the FIR, but this delay by itself cannot be a sole ground to discard the prosecution version in its entirety. Admittedly, injured Khazan Singh was immediately taken to the Civil Hospital, Jallalabad, soon after the alleged occurrence on 02.05.2004 and at 07:50 AM was medico legally examined by PW-6/Dr. Parveen Kumar Garg, who found the following injury on his person:-

“1. An incised wound 4 cm x 1 cm was present on the right side of forehead vertically 6 cm above the right eye brow. Fresh bleeding was present. X-ray was advised.”

It was PW-6/Dr. Garg, who on seeing the serious condition of injured PW-2/Khazan Singh, referred him immediately to Baghi Hospital, Ferozepur, where, a CT Scan was done on PW-2/Khazan Singh by PW-5/Dr. Vikas Arora. On the basis of CT Scan report Ex.P27, Dr. Vikas Arora, opined as under:-

“There was a depressed fracture involving the frontal bone of right side. However, no blood collection was seen opposite the fracture side.

The grey and white matter attenuation values were within normal limits.

Basal ganglia are normally visualised.

Ventricular system and external fluid spaces appeared normal.”

8. The above said injury suffered by PW-2/Khazan Singh cannot by any

stretch of imagination be said to be a self-suffered or fabricated injury as argued by the learned counsel for the appellants. No doubt, learned counsel for the appellants strenuously argued that there was a history of some bad blood between the parties, but that by itself would not be sufficient to hold the case of the prosecution to be false, as admittedly injured PW-2/Khazan Singh was a stamped witness, who supported the prosecution case on all material facts of the case. No person would falsely implicate an innocent person on account of past enmity and exculpate the actual culprit. It has come in the evidence of PW-4/Bakshish Singh, Investigating Officer that he recorded the statement Ex.P10 of injured complainant PW-2/Khazan Singh, only after the attending doctor had declared him fit to make a statement. In this background, the delay in lodging of the FIR stands well explained. As far as eye-witness PW-3/Makhan Singh is concerned, a question mark can indeed be raised as to what prevented him from immediately reporting the matter to the police. However, in the facts and circumstances of the case, even if we brush aside his testimony, there is nothing to doubt the credibility of the injured PW-2/Khazan Singh, who bears the seal of injury on his head and specifically named accused-appellant No.2 - Inder Singh, as the one who inflicted the gandasi blow on his head.

9. It is in this background that the learned trial Court rightly acquitted co-accused Kaushalya Bai and Raj Singh (respondents No.5 & 6 in CRR-971-2005) by giving them the benefit of doubt as the medical evidence did not reveal any other injury on the person of the injured except the one on the forehead of Khazan Singh (PW-2), which is attributed to accused-appellant No.2 – Inder Singh. Hence, I find no reason to interfere in the findings of the learned trial Court *qua* the acquittal of respondents No.5 & 6 (Raj Singh & Kaushalya Bai).

The criminal revision (i.e. CRR-971-2005), therefore, stands dismissed.

10. So far as, accused-appellants No.1 & 3 (Gurdip Singh & Darshan Singh) are concerned, after taking into consideration the factum of delay in lodging the FIR, the likelihood of introduction of false attribution of roles to both of them cannot be ruled out. They were admittedly empty handed and no injury attributed to either of them finds reflection in the Medico Legal Report (MLR) Ex.P-28 of injured PW-2/Khazan Singh. Hence, both the accused-appellants No.1 & 3 deserve the benefit of doubt. Consequently, their conviction is set aside and their bail bonds/surety bonds stand discharged.

11. However, in view of the consistent and cogent testimony of PW-2/Khazan Singh, the role of accused-appellant No.2 – Inder Singh, in the occurrence in hand, stands proved. Resultantly, his conviction is upheld. Accused-appellant No.2 – Inder Singh, is on bail, his bail bonds/surety bonds stands cancelled. Necessary steps be taken to secure his custody.

12. With the above modifications, the present appeal and criminal revision stand disposed of.

**(MANJARI NEHRU KAUL)
JUDGE**

November 07, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No