

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

1)

CRA-S-372-SB-2005
Decided on : 24.10.2019

Lakhvir Singh

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

2)

CRA-S-717-SB-2005

Jagdeep Singh

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. S.S. Joshi, Advocate
for the appellant(s) (in CRA-S-372-SB-2005).

Mr. H.P.S. Ghumann, Advocate
for the appellant(s) (in CRA-S-717-SB-2005).

Ms. Jaspreet Kaur, AAG, Punjab.

MANJARI NEHRU KAUL, J.

This order will dispose of two cases i.e. CRA-S-372-SB-2005 & CRA-S-717-SB-2005, as both the appeals have arisen out of the same judgment. For the sake of convenience, the facts are being extracted from CRA-S-372-SB-2005.

1. The above mentioned appeal has been preferred against the impugned judgment and order of conviction, passed by Addl. Sessions

Judge-cum-Presiding Officer, Fast Track Court, Rup Nagar, vide which the accused-appellant(s) were convicted and sentenced as under : -

<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) in default of payment of fine(s)</i>
1. Jagdeep Singh, 2. Lakhvir Singh	397 IPC	Rigorous imprisonment (RI) for 07 years each	--	--

All the sentences were ordered to run concurrently.

2. The prosecution case in brief is that on 14th November, 2003 at about 07:30 P.M. the accused-appellants along with co-accused Gurpreet Singh approached the complainant-Amrik Singh (PW-1) to hire his taxi for going village Barri near Ropar from the Taxi Stand of G.T. Road, Sirhind. On being asked by the complainant, the accused disclosed their names as 'Jagdeep Singh', 'Lakhvir Singh' and 'Gurpreet Singh'. While the complainant was driving the three accused-appellants in his taxi to their destination, at about 09:00 P.M., the accused-appellants asked him to stop the taxi as they wanted to answer the call of nature. The complainant stopped his taxi. However, soon thereafter, accused-Gurpreet Singh caught hold of the complainant from his arms while accused-appellant/Jagdeep Singh took out a Dagger (Chhura) from his dub and inflicted 6 to 7 injuries on the forehead of the complainant. The complainant tried to raise an alarm, but accused-Gurpreet Singh shut his mouth with his hand. Meanwhile, accused-appellant/Lakhvir Singh also took out a Knife from his dub and inflicted 2 to 3 injuries on the left side of the abdomen as well as one injury on the neck of the complainant. The complainant after being attacked and inflicted the aforementioned injuries was thrown out from the taxi by the

accused-appellants and who then fled away in the taxi itself. The complainant was found on the road side by the police officials, from where he was removed to the Civil Hospital, Ropar and in turn referred to PGI, Chandigarh, as his condition was found to be serious. On the statement Ex.PA of injured-complainant/Amrik Singh, FIR Ex.PM was registered under Sections 382, 307/34 IPC.

3. After registration of the case, the accused were arrested and recoveries of the weapons of offence were effected from them. The recovered articles i.e. Knife and Dagger were seized vide recovery memo Ex.PD and Ex.PE, respectively, along with the Esteem car (taxi) bearing registration No. HR-09-7131 vide recovery memo Ex.PJ/1. On completion of investigation, challan was presented and charges were framed under Section 397 IPC, against accused-appellants, to which they pleaded not guilty and claimed trial.

4. The prosecution in support of its case, examined as many as 07 witnesses including the complainant. When examined under Section 313 Cr.P.C., the accused-appellants pleaded false implication. They examined two witnesses also in their defense.

5. After analyzing the evidence led by the parties, Ld. Trial Court convicted the accused-appellants by holding that the case against them stood proved and sentenced them as already detailed hereinabove.

6. I have heard learned counsel for the parties besides going through the evidence and other material available on record.

7. Learned counsel for the accused-appellants has laid a challenge to the impugned judgment by urging that the Ld. Trial Court failed to appreciate that not only was there a delay in the registration of the FIR, but

no test identification parade was got conducted. Hence, the identification of the accused-appellants in the Court for the first time clearly indicated that it was a case of false implication. It was further urged that the investigating agency had manipulated the prosecution evidence to the extent of fabricating the scene of crime, since no blood stained earth was recovered from the alleged place of occurrence. It was further urged that the knife and dagger so recovered from the accused-appellants were not sealed, which created a big question mark about the truthfulness of the prosecution version.

8. Learned State counsel on the other hand vehemently argued that there was nothing to doubt the version of the complainant, who identified the accused-appellants in the Court and further there was no occasion for the complainant to falsely implicate the accused-appellants in the instant case in the absence of any previous enmity having been alleged against any of them. It was further urged that no doubt there were a few minor lapses on the part of the investigating agency in not taking into possession the blood stained earth but it would in no way create any dent in the prosecution case.

9. Coming to the first challenge regarding the delay in the registration of the FIR, the same is devoid of merit. Admittedly, injuries found on the person of the complainant are not in dispute. It also stands admitted, in view of his serious condition, he was referred to PGI, Chandigarh from Civil Hospital, Ropar. It is a matter of record that on 14.02.2003 when the police went to record the statement of the injured-complainant/Amrik Singh, he was declared unfit to make any statement by Dr. Mukesh Bhatia, (PW-6). It was only on the following day i.e. on 15.02.2003 at about 12:00 noon, statement Ex.PA was recorded, after the complainant had been declared fit to make a statement by the concerned

Doctor at PGI, Chandigarh. Hence, in this scenario, the delay in lodging of the FIR, if any, is inconsequential.

10. The next challenge of the learned counsel *qua* the failure to hold test identification parade cannot be of any benefit to the accused-appellants. It would be worthwhile to notice that the accused-appellants and the complainant travelled together in the taxi for considerable time before the latter was attacked by the accused-appellants. Hence, it goes without saying that the complainant got ample opportunity not only to interact but also to remember, notice and observe their faces. Moreover, when the accused-appellants approached the complainant to hire his taxi, he had enquired from them their names. This fact is well supported from the FIR Ex.PM, wherein, the names of all the three assailants finds mention. Had it been a case of the FIR having been lodged against unknown assailants, then a doubt could still have been raised about the identification of the accused for the first time in Court. In this case, the absence of test identification parade cannot be thus said to be fatal to the prosecution.

11. The next argument of the learned counsel that the scene of crime had been fabricated to implicate the accused in the crime, on the face of it deserves rejection. I fail to understand as to how the change of the scene of crime would advance the case of the accused-appellants or be of any help to the prosecution. As far as, the non-sealing of the weapon of the offence is concerned, it can at best be said to be a lapse on the part of the investigating agency. Once, it stands established that the appellants were the assailants coupled with the fact that the complainant not only identified each of them, though in the Court, but also gave out their names in his very first statement i.e. Ex.PA, the complainant cannot be made to suffer on account of this lapse

of the investigating agency. In any case, there is nothing to suggest on record that there was a history of any bad blood or previous ill-will between the parties, to falsely implicate them.

12. As per MLR Ex.PN, the complainant suffered the following injuries:-

1. *An incised wound 1.3cm x 1/6 cm in between two eye brows just on glabella. Injury was bone deep.*
2. *An incised wound 1.5 cm x 1/4 cm in the middle of forehead about 1 cm above glabella.*
3. *An incised wound 1.5 cm x 1/6 cm in the middle of forehead about 2 cm away from injury No.1. bone deep.*
4. *An incised wound 1.5 cm x 1/4 cm in the middle of forehead about 1/3 cm away from injury No.3. bone deep.*
5. *An incised wound 1.5 cm x 1/6 cm on right side of forehead about 1/4 cm away from injury No.4. bone deep injury.*
6. *An incised wound 1.5 cm x 1/6 cm on right side of forehead about 1 cm away from injury No.5. bone deep.*
7. *An incised wound 1.7 cm x 4 cm on right side of forehead about 2 cm above the outer half of right eye brow injury was bone deep.*
8. *An incised wound 1.5 cm x 1/6 cm on right temple region about 1 cm away from injury No. 7.*
9. *A punctured incised wound elliptical in shape measuring 1.7 cm x 1/2 cm just on the posterior fold of axilla, depth not probed.*

10. *A punctured incised wound elliptical shape measuring 1.5 cm x 1/2 cm on outer left side of chest, almost in the middle in the infra axillary region, depth not probed.*
11. *A punctured incised wound elliptical in shape measuring 1.7 cm x 1/2 cm on left outer aspect of abdomen depth not probed.*

A perusal of the above injuries suffered by the complainant, cannot be stated to be a fabrication.

13. As a sequel to the above discussion and keeping in view the facts and circumstances of the case, no interference is warranted in the impugned judgment of the Ld. Trial Court, which deserves to be upheld, as the same is a well reasoned one. Consequently, both the appeals stand dismissed. The accused-appellants are on bail. Their bail bonds/surety bonds stand cancelled. Necessary steps be taken to secure their custody.

**(MANJARI NEHRU KAUL)
JUDGE**

October 24, 2019

J.Ram

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