

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

CRR-297-2017 (O&M)

Date of decision : 12.12.2019

Balbir Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. B.D. Sharma, Advocate for the petitioners.

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

Mr. Yogesh Goel, Advocate for respondent Nos.2 and 3.

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**ANIL KSHETARPAL, J.**

Through the present revision petition, correctness of judgment dated 12.12.2016 passed by the learned Additional Sessions Judge, Ludhiana while remanding the case back to the learned Magistrate with a direction to pass the judgment afresh, has been challenged.

The issue which arises for consideration before this Court is “whether the learned Additional Sessions Judge while exercising the powers of Appellate Court was correct in remitting the case back to the learned Judicial Magistrate only on one issue without examining entire evidence or not?”.

Some facts are required to be noticed.

The criminal prosecution was set in motion on an application

filed by Joginder Singh as power of attorney holder of his brother Balwinder Singh alleging that the accused have forged a sale deed dated 19/20.11.1990 by forging his signatures. It was further alleged that when Balwinder Singh came to Ludhiana on 03.12.2010, Balbir Singh accused (petitioner No.1 herein) came to him and asked for keys of the bounded plot permitting him to use the same for the marriage of his daughter with a promise to return the keys by 20.12.2010 but thereafter backed out of his promise and refused to return the possession.

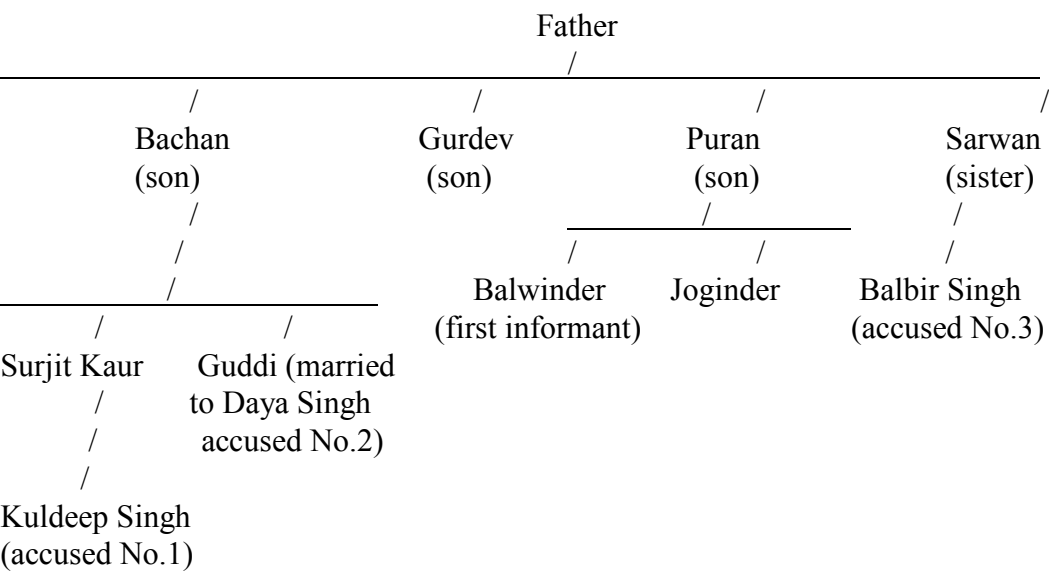
Police during investigation sent the signatures of Balwinder Singh for comparison and on the basis of opinion, investigations were concluded and police report was submitted in the Court.

Learned Judicial Magistrate, on appreciation of evidence, held that the prosecution has failed to prove its case beyond shadow of reasonable doubt. Broadly, learned Magistrate held that the original sale deed dated 20.11.1990 bearing Sr. No.19772 has not been produced. The Forensic Science Laboratory had also given its opinion on the basis of a photocopy which does not prove the case of the prosecution beyond shadow of reasonable doubt. Victims namely Joginder Singh and Balwinder Singh, (two brothers), filed appeal. Learned Additional Sessions Judge, as noticed above after finding that a signed copy of the sale deed kept in the office of the Sub-Registrar has been produced, set aside the judgment of the Judicial Magistrate and remitted the case back to the learned Court of Magistrate to pass a fresh judgment after discussing the evidence.

Normally, this Court while exercising the jurisdiction of revision would not interfere, however, this Court has in the facts of the case,

examined the evidence in detail and finds that continuation of proceedings would not be appropriate.

Some salient facts need to be noticed. A small pedigree table of the family would be convenient to understand inter se relationship between the parties:-



It is, thus, apparent from the perusal of the aforesaid pedigree table that accused-petitioners are related to the first informant. Balwinder Singh and Balbir Singh are cousin brothers. Whereas Kuldeep Singh is maternal grandson of Bachan Singh who was uncle of Balwinder Singh. Daya Singh is son-in-law of uncle of the first informant.

Learned counsel for the petitioners has produced translated copy of the statement of prosecution witnesses, correctness thereof is not disputed by the counsel opposite. It would be apt to extract the relevant evidence of the first informant:-

*“I am not in possession of the original sale deed of the plot which was in my favour, which was of year 1986. That sale deed in original was in the possession of my Taya i.e. Sh. Bachan Singh. Sh. Bachan Singh is also the attesting*

*witness of the sale deed bearing wasiqa No.19772 dated 20.11.1990. Bachan Singh has died and now I do not know where the original sale deed is lying. Bachan Singh was managing all my affairs being my Taya and as such he was in possession of the original sale deed. The original sale deed which was original in my favour never came into my possession.*

*Xxx xxx*

*xxx xxx*

*I have never read sale deed bearing wasiqa No.19772 dated 20.11.1990 which is in favour of accused Kuldeep Singh. I had not seen the sale deed bearing wasiqa No.19772 dated 20.11.1990 which is in favour of accused Kuldeep Singh, before giving the specimen signatures to the police. I had seen the said sale deed first time in the police station. This was seen in the police station by me on 26.03.2010. The said sale deed was attested by the nambardar of Village, Thakarwal and was also attested by Bachan Singh. All my properties in Ludhiana were purchased by Bachan Singh and were sold by him on my behalf. Bachan Singh had purchased countless properties on my name and he had also countless properties sold on my behalf. I cannot give the exact detail of those property including the details of the sale deed made by Bachan Singh. Bachan Singh was the Nana of accused Kuldeep Singh and was father in law of accused Daya Singh and was Mama of accused Balvir Singh.*

*Xxx xxx*

*xxx xxx*

*It is correct that Daya Singh has also constructed the migrant labour quarters in his purchased area measuring 100 sq. yd.*

*Xxx xxx*

xxx xxx

*It is incorrect to suggest that I myself got drafted the said sale deed and then after admitting the contents of the same to be true has signed the same in the presence of marginal witnesses and then I appeared before the Sub-registrar and before sub-registrar I had also signed the endorsements.*

Xxx xxx

xxx xxx

*I did not enquired from Bachan Singh regarding the execution and registration of sale deed from Bachan Singh. It is correct that I myself was knowing the execution and registration of sale deed bearing wasiqa no.19772 dated 20.11.1990 from the very beginning as such I did not enquire.*

Xxx xxx

xxx xxx

*It is correct that I had received the sale consideration from Kuldeep Singh and then conveyed the title in favour of Kuldeep Singh.*

Xxx xxx

xxx xxx

*It is correct that accused Kuldeep Singh and Daya Singh are owner in possess of the plot in question.”*

Similarly, relevant part of cross-examination of brother of the first informant through whom the present FIR has been registered is extracted as under:-

*“We had not stopped Daya Singh when he had constructed house in the plot in dispute*

xxx xxx

*When Daya Singh was constructing the house, I or my brother did not demand any document of ownership of the*

*plot in dispute from Daya Singh. We had not given any complaint to the police when Daya Singh was constructing the house.*

*Xxx xxx*

*Daya Singh had constructed one shop in the front portion measuring 100 square yards out of the plot in dispute and in the remaining portion, quarters have been constructed. These quarters are double storeyed. Daya Singh has given all these quarters on rent and the shop is vacant. All the abovesaid quarters were already constructed 14-15 years ago. I am running a karyana shop near the plot in dispute and the land of quarters. I had opened this shop in the year 2000-2001.*

*xxx xxx*

*When Daya Singh had constructed quarters in the plot in dispute, he had demolished 15-16 feet wall from the front. I had not given any complaint to the police at the time of demolition of the said wall. My brother Balwinder Singh also came there and saw it and even after seeing it, he also did not give any complaint to the police. My elder paternal uncle Bachan Singh had informed my complainant brother Balwinder Singh about the sale deed of the plot in dispute in favour of accused Kuldeep Singh.*

*Xxx xxx*

*Daya Singh is my brother-in-law (Jija) and Kuldeep Singh is my nephew (son of sister) and Balbir Singh is son of my aunt (Bhua). Bachan Singh, who was maternal grandfather of Kuldeep Singh, was my elder paternal uncle. He had no son but he had two daughters out of which, one is married to Daya Singh and the second daughter is the mother of Kuldeep Singh. My elder paternal uncle Bachan Singh had given six killas of land of his share in village Rajgarh to my brothers Balwinder Singh and Swaran Singh.*

*The plot in dispute was purchased by Bachan Singh in the name of my brother Balwinder Singh.*

*Xxx xxx*

*The sale deed in favour of Kuldeep Singh was executed on 20.11.1990. I have no personal knowledge about the same. I have come to know of the sale deed from the police and the police told us that the sale deed in favour of Kuldeep Singh is forged.*

*Xxx xxx*

*The police had not done comparison of the sale deed in favour of Kuldeep Singh either in my presence or in the presence of my brother. The police had not taken in possession any documents for carrying out comparison in my presence or in the presence of my brother.”*

From the reading of the aforesaid depositions, two following things are apparent:-

- i) The case set up by the prosecution that the possession of the premises was taken over by Balbir Singh at the occasion of marriage of his daughter in the year 2010 with promise to return the same is factually incorrect.
- ii) Late Sh. Bachan Singh was managing entire properties. Bachan Singh had also in absence of a male child had given his properties to various members of the family. Further, the factum of sale deed having been executed on 20.11.1990 was in the knowledge of the first informant and his brother from very beginning. They also knew that Daya Singh has constructed a building thereon and they never objected thereto for all these years. First informant admit receipt of consideration for the sale deed.

In such circumstances, the Appellate Court should have examined the evidence itself rather than remanding the case back to the learned Magistrate for a fresh decision. It is also apparent that Balwinder Singh launched criminal prosecution in 2011 i.e. after delay of period of 21 years. There is no explanation as to why the first informant or his brother remained silent for 21 years.

Further, the opinion given by the Forensic Science Laboratory or any Handwriting or Finger Print Expert is only an opinion. On comparison of signatures, opinions of the Finger Print and Handwriting Expert are not binding on the Courts. It is too well settled that comparison of signatures is not a perfect science.

Petitioners have already faced protracted criminal prosecution for a period of more than 8 years. In these circumstances, keeping in view the facts of the case, this Court is of the considered view that the accused are entitled to the "benefit of doubt". Hence, while setting aside the judgment of Additional Sessions Judge, the revision petition filed by the petitioners is allowed resulting in their acquittal.

All the pending miscellaneous applications, if any, shall stand disposed of, in view of the abovesaid judgment.

**12.12.2019**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                      Yes/No**