

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

**CRA-S-2481-SB of 2007 (O&M)
DATE OF DECISION :- September 06, 2022**

Yusuf Masih

...Appellant

Versus

State of Punjab

...Respondent

CRA-S-2502-SB of 2007 (O&M)

Tarsem Singh Beldar and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Ms. G.K. Mann, Sr. Advocate with
Mr. Amritpal Singh Mann, Advocate for the appellants.

Mr. Anupam Bhardwaj, Advocate for the complainant.

Mr. G.S. Dhillon, AAG, Punjab.

1. Vide this judgment, I intend to dispose of two appeals against the same judgment of conviction and sentence bearing CRA-S-2481-SB of 2007 filed by Yusuf Masih and CRA-S-2502-SB of 2007 filed by Tarsem Singh Beldar and Manga Masih, all of them being accused in F.I.R. No. 280 dated 4.10.2004 for offences under Sections 307/148/149 IPC registered with Police Station Lopoke, Amritsar.

2. The prosecution story in nutshell is that criminal machinery in this

case was set into motion by complainant Tarsem Singh, who had got his statement recorded with SI Vishwa Mitter (hereinafter referred to as the Investigating Officer/I.O) from Police Station Lopoke, District Amritsar, while the I.O along with other police officials was present at Chowk Lopoke. Complainant Tarsem Singh, interaila contended that on 26.9.2004, a Bhog ceremony on account of death of his grand father Sh. Chanan Singh was organized, in which all the relatives had assembled. After the bhog ceremony, the guests took meals and then left the venue.

3. At about 5 P.M, while Sukhmit Singh @ Cofi and Swaran Singh were taking meals in the courtyard of the house and he was serving meals to them then accused Tarsem Singh, Lubhaya Masih, Yusuf Masih, Karma Masih and Maqbook Masih came there. Tarsem Singh was armed with a datar. Lubhaya Masih removed Thali of Sukhmit Singh and raised a lalkara (exhortation) that since they had refused matrimonial alliance with his sister Sati and had insulted them in their brotherhood as such they be killed. Accused Manga, Yusuf and Makbook Masih caught hold of complainant Tarsem Singh. Accused Tarsem Singh son of Makbook Masih gave a datar blow on left side of head of complainant Tarsem Singh. Resultantly the complainant fell down and became unconscious. His father and Sukhmit Singh raised alarm. Thereafter the assailants ran away from the spot.

4. The I.O. recorded statement of complainant Tarsem Singh and sent it to police station for registration of formal F.I.R and it was done accordingly. Tarsem Singh complainant produced his MLR and blood stained clothes before the Investigating Officer which were converted into a parcel taken into police possession. The investigating officer went to the spot and prepared rough site plan of place of incidence. He recorded statements of PWs.

The accused were arrested in this case. On 28.11.2004 Maqbool Singh Masih

during course of investigation had suffered a disclosure statement and thereafter in pursuance thereof got the Datar recovered from his possession, which was seized by the investigating officer. After completion of investigation and other formalities, challan against all the accused were prepared and filed in the Court.

5. On presentation of challan in the Court of learned Illaqa Magistrate, Amritsar, he supplied copies of documents relied upon therein to the accused free of cost as provided under Section 207 Cr.P.C. and finding that challan had been filed for offence under Section 307 IPC, which was exclusively tried by the Court of Sessions, the case was committed to the Court of Sessions at Amritsar, which was assigned to Additional Sessions Judge (Adhoc), Amritsar.

6. Finding a prima facie case, charge for offence under Section 307 IPC was framed against the accused Tarsem Singh whereas with regard to remaining accused it was under Sections 307 read with 149 IPC. In addition to that all the accused were charge sheeted for offence under Section 149 IPC as well. Accused pleaded not guilty to the charge and claimed trial.

7. During the course of prosecution evidence the prosecution examined in as many as 8 witnesses. PW1 Tarsem Singh and PW2 Sukhmit Singh provided the eye witness account of the incidence supporting the prosecution case on material points. Dr. Kanwaldeep Singh provided the medical evidence proving MLR of complainant/injured Tarsem Singh while appearing as PW3. PW4 Rishi Ram and PW5 SI Vishwa Mitter, the investigating officer of this case deposed with regard to investigation conducted by him along with PW6 Constable Sube Singh, PW7 HC Mukhtiar Singh and PW8 HC Bhupinder Singh.

8. The public prosecutor tendered in evidence report of Chemical

Examiner Ex. PX and thereafter closed evidence of prosecution.

9. Statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them but they denied the allegations contending that they were innocent and have been falsely involved in this case; as a matter of fact Sati daughter of Maqbook Masih was married with Maqbool Masih @ Kala son of Karam Masih resident of Bhindi Aulakh for the last 6/7 years; about 1-1½ years earlier the grand father of husband of Sati had died and religious ceremonies on his 16th day of death were being performed; after the ceremonies were over all guests started taking liquor and meals; at about 4.30 P.M Yusuf Masih along with Karam Masih, Manga Masih; Gurmukh Masih were standing on the other side near house of Swaran Singh; then Satnam Singh, Swaran Singh, Mannual Masih, Tarsem Singh and Supit Singh @ Cofi came there; Satnam Singh was having a gandasi whereas his associates were having Sotis; Satnam Singh raised lalkara (exhortation) to catch hold of them; since according to him they were talking loose about his reputation and had not accepted proposed matrimonial alliance between Sati and Cofi son of Sadha Singh; Cofi grappled with him and Satnam Singh gave him a gandasi blow hitting him on his right arm, which he had raised to ward off the blow; Swaran Singh gave a dang blow on his back. Yusuf Masih raised alarm. Manga Masih was hit on his eye and Gurmukh Singh on his lips. Thereafter Satnam Singh and others fled away from the spot; false case has been registered in a counter blast; the accused party had not caused injuries to complainant party. Though in their defence evidence accused examined Dr. Lachhman Das as DW1, Manmohan Singh SP as DW2, SI Kuldip Singh as DW3.

10. After hearing arguments, learned trial Court vide judgment dated 20.11.2007 held that it was a case of free fight and both the parties had

admittedly enmity with each other, both the parties had received injuries as a cross case being there, therefore, both the parties are liable for their individual acts. In that way accused Tarsem Singh Beldar was convicted for an offence under Section 324 IPC for causing simple hurt to Tarsem Singh PW1, while accused Yusuf Masih and Manga Masih were convicted for offence under Sections 324/34 IPC. Accused Lubhaya Masih and Mannual Masih were found to be not guilty and were acquitted of the charge framed against them. In terms of order passed on that very day Tarsem Singh under Section 324 IPC, Yousuf Masih and Manga Masih for the charge under Section 324/34 IPC were sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.500/- each and in default of payment of fine to undergo further rigorous imprisonment for one month.

11. Feeling aggrieved by the judgment of the conviction and order of sentence convict Yusuf Masih had filed an appeal, which was taken up on 13.12.2007, when it was admitted for regular hearing and convicts Tarsem Singh Beldar and Manga Masih have filed an appeal, which was taken up on 20.12.2007, when it was admitted for regular hearing. Appellants accused, who were on interim bail granted to them by the trial Court in order to enable them to prefer an appeal before this Court, their sentence was suspended during pendency of the appeal and they were ordered to be released on bail subject to their furnishing bonds to the satisfaction of Chief Judicial Magistrate, Amritsar.

12. I have learned counsel for the appellants and learned State counsel besides going through the record.

13. Learned counsel for the appellants accused has contended that there is delay of more than 8 days in reporting the matter to the police, inasmuch as the incident is said to have taken place on 26.9.2004 at about 5.00 P.M, whereas report with regard to the incident was lodged with the police on

4.10.2004. No explanation for the delay is there as such the prosecution story should have been rejected for that very reason but it was not so done by the trial Court.

14. The second contention of learned counsel for the appellants was that there was delay of 24 hours in going to the hospital which has not been explained satisfactory therefore, this fact also affects the prosecution story at this stage.

15. Thirdly the injuries on person of the accused side had not been explained which shows that origin and genesis of the incident was not as suggested by the prosecution in this case rather prosecution has tried to suppress role played by the complainant party in the incident.

16. In the end and last of all according to learned counsel for the appellants the parties have since compromised the matter. In that regard the appellants accused and the injured have filed their affidavits. Compromise deed has also been placed on record. Referring to the judgment *Ramgopal and another Versus The State of Madhya Pradesh* delivered in Criminal Appeal No. 1489 of 2012 by the Apex Court, learned counsel for the appellants has contended that the High Court has power to quash proceedings emanating from non compoundable offences which have no impact or depraving effect on the society at large.

17. Learned counsel appearing for the complainant who were accused in the connected case also admit the factum of compromise.

18. The basic principles of law are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with same exactness and rigor, with which the prosecution is required to prove guilt of the

accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons may go scot-free but even one innocent should not be punished.

19. In the instant case the appellants accused have successfully proved that the impugned judgment of conviction and sentence are not sustainable. Firstly there is gross delay of 8 days in reporting the matter which has not been explained. The delay is always looked down upon with suspicion by the Courts since it leaves a wide room open where possibility of false implication after due deliberation and consultation can easily creep in. When an incident is promptly reported to the police it gives a spontaneous and blemish free version and with passage of time the element of truth in the version gets diluted with chances of coloured version being introduced after due deliberation and consultations. In this case no satisfactory explanation is coming forth for gross delay of 8 days in reporting the matter to the police which proves fatal and prosecution story is liable to be rejected on that score alone.

20. Secondly no explanation is coming with regard to the injuries on the person of the accused. Admittedly an F.I.R had been registered against the complainant party with regard to the occurrence on that very day. The prosecution having not explained such injuries on person of accused goes to show that the incident had not taken place in the manner as suggested by the prosecution and an attempt has been made to suppress its origin and genesis. Thus for the reasons mentioned above a reasonable doubt arises in the mind about truthfulness of prosecution story. As per law benefit of such doubt is to go to the accused. The trial Court has wrongly denied the same to the accused.

The impugned judgment of conviction and sentence passed against the accused is not sustainable and is bound to be set aside.

21. Even otherwise the parties have since buried their differences by entering into a compromise.

22. Therefore, both the appeals are accepted. The impugned judgment of conviction and sentence passed against the appellants is set aside and they are acquitted of the charges framed against them.

23. All pending miscellaneous applications shall also stands disposed of.

(H.S. MADAAN)
JUDGE

September 06, 2022
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No