

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1754-SB-2003

Reserved on: 09.12.2022

Date of Pronouncement:14.12.2022

Jagtaran Singh and others

...Appellants

VS.

State of Punjab

...Respondent

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**

Present : Mr. Anmol Singh Virk, Advocate with
 Mr. Jagdeep Singh Virk, Advocate
 for the appellants.

Mr. Pratap Singh Gill, Advocate
as Amicus for the appellants.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Tejinderbir Singh, Advocate
for the complainant.

N.S.Shekhawat J.

Feeling aggrieved of the judgment and order dated 27.08.2003 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, whereby the appellants were convicted under Sections 364/323 of Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default of fine, further rigorous imprisonment for three months under Section 364 of IPC and undergo rigorous imprisonment for six months under Section 323 of IPC, the appellants have preferred the present appeal before this Court.

The Story of the prosecution as it emerges from the final report under Section 173 Cr.P.C. is that the complainant Amarjit Singh was an agriculturist by profession. On 05.11.1999, while he was going back to his village on his motor cycle, he was followed by Rajinder Singh and Paramjit Singh on their scooter. At about 8.00 p.m, the accused Pappy, Harpreet Singh @ Happy, Jagtaran Singh and one unknown person Vicky were present there on the way with their vehicle bearing No. DL-IC-5968. The said accused stopped the motorcycle of the complainant and forcibly put him in their vehicle after giving him fist blows and was taken towards village Madhpur. When they reached near the water course of village Khatra, the complainant was taken out of the vehicle by the accused and Pappy accused gave a blow with his *soti* on the left side of the forehead of the complainant. Harpreet Singh @ Happy gave blows with his *soti* on the left wrist and left hand of the complainant. Vicky, Jagtaran Singh and one more unknown accused gave fist blows to the complainant. Paramjit Singh and Rajinder Singh also reached there in the meantime and on seeing them, the accused fled with their weapons and vehicle. Even as per the complainant the motive for causing injuries was that some days prior to the occurrence, the elections of Municipal Committee, Samrala were held and the complainant was supporting the candidature of Akali Dal candidate, where the accused were supporting the candidate fielded by the opposition Congress party. During the election, the slogans had been raised by the opposite party and there was some tension and because of the said reason, the election could not be held. The complainant further alleged that the accused were having grudge against him and kidnapped him with an intention to kill him.

After suffering the injuries, the complainant was shifted to Civil Hospital, Samrala and was medico legally examined. On the next day, i.e. on 06.11.1999, the statement of the complainant was recorded and the FIR in question was registered. After necessary investigation, the report under Section 173 Cr.P.C. was presented before the learned Illaqa Magistrate and since the offence was exclusively triable by the Court of Sessions, the same was ordered to be committed to the Court of learned Sessions Judge, Ludhiana.

After hearing the parties and perusal of the report under Section 173 Cr.P.C., the Court found that a *prima facie* case under Section 148, 364, 323 IPC was made out against the accused and they were ordered to be charge-sheeted accordingly. However, the accused pleaded not guilty and claimed trial.

To prove the charge, the prosecution examined four witnesses. Dr. Shashi Kant, Medical Officer, Civil Hospital, Samrala appeared as PW-1, who examined the complainant/injured Amarjit Singh at 10.45 p.m. on 05.11.1999 and found the following injuries on his person:-

- “1. 1 cm x 1 cm abrasion on the anterior aspect of right lower leg. Skin is abraded. Fresh bleeding was present.
2. Complaint of being hit on right knee. No mark of injury.
3. Complaint of being hit on lateral aspect of right thigh just above the right knee. No mark of injury.
4. 3" long contusion which is 1" broad and red in colour on dorsal aspect of left knee in the poplital area. Under lying bones and joint appear normal.
5. Patient complained of being hit on left lower leg. There are two areas each 1 cm x 1 cm which were contused. They were red in colour. Underlying bones were normal.
6. Complaint of being hit on left fore-arm in lateral aspect. There was swelling at the sight of injury. Advised X-Ray.

7. *Complaint of being hit on left forehead. A small haematoma was present. Advised X-Ray.*
8. *Complained of being hit on dorsom of left hand. There was pain and swelling at the sight of injury. Advised X-Ray."*

He further stated that the nature of injuries from injuries No.1 to 5 were simple and injuries No.6 to 8 were subject to X-ray. In his cross-examination, Dr. Shashi Kant admitted that the possibility of all the injuries being caused by fall on hard surface could not be ruled out. In some of the injuries, in which the patient complained of injuries, there was no visible injury. All the injuries were simple and three injuries were kept under observations, but the patient did not get X-Ray done. PW-2 Amarjit Singh, injured/complainant was the star witness of the prosecution. He supported the case of the prosecution. He stated that the accused Pappy gave him a *dang* blow on his forehead, whereas Harpreet Singh @ Happy gave two *soti* blows, one each on his left and right hand. Remaining accused gave him fist blows. In the meantime, Rajinder Singh and Paramjit Singh came on the spot on a scooter and the accused left him and fled away from the spot. He further admitted that he belonged to Akali Party, whereas the accused belonged the Congress Party. A few days prior to the occurrence, a dispute had taken place between him and the accused regarding the elections of Municipal Committee. Both the sides were raising slogans in support of their respective party candidates. He admitted that the police came in the hospital on the next day and he narrated the whole occurrence to the police and on the basis of the same, the FIR was registered.

PW-2 Amarjit Singh admitted in his cross-examination that the bridge canal minor is at a distance of about $\frac{1}{2}$ or $\frac{3}{4}$ km from the place, from where he was kidnapped. The next bridge canal minor, where he was given

beatings was at a distance about $\frac{3}{4}$ km from the first bridge canal minor. He did not know about the number of doors in a Tata Sierra car but he was thrown out of the car from the back side. He belonged to Akali Dal (Badal Group). Jathedar Kirpal Singh Khirmi contested the MLA election from Samrala against Amrik Singh. The election was won by Amrik Singh. He further admitted that Akali Dal (Badal) formed the government. He further admitted that he was also worker of Akali Dal (Badal) Party. He further admitted that the accused Sukhbir Singh @ Pappy was political Secretary of Amrik Singh and the accused Harpreet Singh was Sarpanch of Gram Panchayat. He further admitted that it took about $\frac{4}{5}$ minutes in the whole process of kidnapping him and they had reached on the bridge canal minor within $\frac{5}{6}$ minutes and he was given beatings by the accused for about 10 minutes. The prosecution further examined eye-witness Paramjit Singh as PW-3, who did not support the case of the prosecution. The prosecution further examined PW-4 ASI Hakam Singh, who was deputed to record the statement of the complainant. He stated that on 05.11.1999, the injured was declared unfit to make the statement and on 06.11.1999, he again went to Civil Hospital, Samrala and moved an application Ex.PW-4/A for knowing the fitness of the injured, but he was again declared unfit to make the statement, since he was under the effect of medicines. At about 2.45 p.m. on the same day, he moved another application Ex.PW4/B, whereupon the injured was declared fit to make statement and he then recorded the statement of Amarjit Singh, complainant as Ex.PC. He had put his endorsement Ex.PW4/C on the said application and on the basis of the same, the formal FIR Ex.PW4/D was recorded by ASI Mohan Saran. ASI Hakam Singh also conducted the investigation in the instant case and arrested the accused.

However, he admitted that the search did not yield anything valuable. He also joined accused Harpreet Singh and Sukhbir Singh in the investigation, but their search did not yield anything valuable. He had taken the Tata Sierra vehicle into possession. He further admitted that the distance between the Civil Hospital and police station, Samrala was 400/500 yards. He further admitted that there was no police request dated 05.11.1999 and he visited Civil Hospital, Samrala for the first time at 2.40 pm on 06.11.1999. When he recorded the statement of the complainant at about 3.30 p.m. on 06.11.1999, 5 -7 persons were sitting with the complainant at that time. He knew Kirpal Singh Khirmi, who was member of SGPC. Kirpal Singh Khirmi had fought election against Amrik Singh, however, Kirpal Singh Khirmi was defeated by Amrik Singh in MLA elections. The accused Sukhbir Singh @ Pappy was the PA of Amrik Singh, MLA. Jagjiwan Singh S/o Kirpal Singh Khirmi was also present with the complainant in the hospital, when he recorded the statement. He further admitted that he had seen Tata Sierra vehicle and there are always two doors situated along with driver seat and adjoining side. If one has to sit on the rear seat of Tata Sierra, one has to fold the front seat and only then, he can stand on the rear seat and same was the position with the vehicle recovered in this case.

After conclusion of the trial, the trial Court found that the prosecution had failed to prove the identity of the accused Balwinder Singh beyond reasonable doubt and he was ordered to be acquitted of the charge framed against him. However, four accused/appellants, namely, Jagtaran Singh, Baljinder Singh, Sukhbir Singh @ Pappy and Harpreet Singh @ Happy were held guilty and sentenced, as mentioned above. During the pendency of the present appeal, the accused-appellant No.4 Harpreet Singh @ Happy died on

02.06.2006 and the appeal qua him stood abated. Challenging the impugned judgment and order passed by the learned trial Court, the appellants have preferred the instant appeal and prayed for their acquittal on the grounds mentioned in the instant petition.

I have heard learned counsel for the parties at length and with their able assistance, I have gone through the trial Court record.

After hearing the rival contentions made by learned counsel for both the parties, the first question, which arises for the consideration of this Court is whether the offence under Section 364 IPC is made out in the present case or not.

It has been held by the Hon'ble Supreme Court in the matter of **Badshah and another Vs. State of Uttar Pradesh, 2008 (3) SCC 681** as follows:-

“12. Before embarking upon the legal issue, we may notice the definition of kidnapping and abduction, as contained in Sections 359 and 362 of the Penal Code which are in the following terms:

*“359. **Kidnapping-** Kidnapping is of two kinds: Kidnapping from India, and kidnapping from lawful guardianship.*

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*362. **Abduction-** Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”*

We may also notice Section 364 of the Penal Code which reads as under:-

“364. Kidnapping or abducting in order to murder.-

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

13. Ingredients of the said offence are (1) kidnapping by the accused must be proved; (2) it must also be proved that he was kidnapped in order to; (a) that such person may be murdered; or (b) that such person might be disposed of as to be put in danger of being murdered. The intention for which a person is kidnapped must be gathered from the circumstances attending prior to, at the time of and subsequent to the commission of the offence. A kidnapping per se may not lead to any inference as to for what purpose or with what intent he has been kidnapped.

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A careful reading, as a whole, of Section 364, I. P. C. along with the illustrations appended thereto shows that kidnapping or abduction, which Section 364, I.P.C. envisages, may be not only with the intention to murder, but also with the knowledge that the person, kidnapped or abducted, would be put to danger of being murdered. Section 364,I.P.C., in fact, shows that if

the kidnapping or abduction is with the intention that the person, kidnapped or abducted, be murdered or if the person is kidnapped or abducted with the knowledge that the victim is likely to be put to danger of being murdered, offence under Section 364, I. P. C. would be complete irrespective of the fact as to whether the victim is, eventually or actually, murdered or not. The illustration (a) to Section 364, I.P.C. clearly reveals that even when the abduction is with the knowledge that it is likely that the victim may be murdered, offence under Section 364, I. P. C. would be complete and it does not really matter whether the person, who is kidnapped or abducted, is actually murdered or not. To put it differently, if a person is abducted with the intention that he may be murdered or with the knowledge that he may be put to danger of being murdered, the offence under Section 364, I.P.C. would be complete even if the victim, eventually, escapes or is not murdered. Conversely, if the victim is not abducted with the intention of being murdered or with the knowledge that he is likely to be murdered, but if such a victim is, eventually, murdered, penal provisions of Section 364, I.P.C. would not be attracted to such a case, for the gravamen of the charge under Section 364, I.P.C. is that kidnapping or abduction has to be either with the intention to murder the victim or with the knowledge that the victim is likely to be murdered.”

Now, adverting to the facts of the instant case, Amarjit Singh PW-

2 is the star witness of the prosecution. He admitted that he belonged to Akali

Dal (Badal) and Jathedar Kirpal Singh Khirmi contested the MLA election from Samrala against Amrik Singh. The election was won by Amrik Singh. He admitted that Akali Dal (Badal) had formed the government and he was also worker of Akali Dal (Badal). He further admitted that accused Sukhbir Singh @ Pappy was the political Secretary of Amrik Singh, MLA, whereas the accused Harpreet Singh @ Happy was the Sarpanch of the Village Gram Panchayat. Even the dispute between the parties was also related to the election of vice president of Municipal Committee, Samrala, where the accused as well as the complainant had gone there as supporters of two rival groups. Both the parties had political enmity and due to their raising of the slogans, the election could not be held. Even PW-4 ASI Hakam Singh admitted that he visited Civil Hospital, Samrala at 2.40 p.m. on 06.11.1999. He admitted that he knew Kirpal Singh Khirmi, who was a member of SGPC. He further admitted that Kirpal Singh Khirmi had fought elections against Amrik Singh and Amrik Singh had defeated Kirpal Singh Khirmi in MLA election. He further admitted that Sukhbir Singh @ Pappy was P.A. of Amrik Singh, MLA. He further admitted that Jagjiwan Singh S/o Kirpal Singh Khirmi was present with the complainant in the hospital when he had recorded the statement of the complainant. Thus, it is apparent that the Investigating Officer was aware of the political influence of the complainant and even the statement of the complainant was recorded in the presence of a senior politician from the ruling party and there is a possibility that the prosecution version was exaggerated by the complainant.

Still further, it has been alleged by the prosecution that the complainant was abducted by the accused with an intention to murder him. The complainant admitted that he was caused injuries with *soti/dang/lathi* by the

accused. However from a perusal of the statement of PW-4 ASI Hakam Singh, it is apparent that no such weapon of offence i.e *soti/dang* was recovered from any of the accused. Still further, all the injuries suffered by the complainant were simple in nature and there was a possibility of suffering of the injuries by fall on the hard surface. Even in some of the injuries, where the patient complained of injury, there was no visible injury. Still further, the complainant alleged that he was thrown from the back door of the vehicle Tata Sierra with an intention to kill, whereas, as per the statement of PW-4 ASI Hakam Singh, there is no door on the back side of the Tata Sierra. Still further, the version of PW-2 Amarjit Singh complainant/injured was not corroborated by any other evidence and the eyewitness PW-3 Paramjit Singh turned hostile and did not support the case of the prosecution. Consequently, it appears that it was a case of minor scuffle between the parties and the complainant wrongly tried to make the allegations graver by projecting a false story of abduction and causing of injuries by the accused.

Even the alleged occurrence had taken place in the evening on 05.11.1999 and the injured was fit to make the statement as he had suffered only simple injuries. Even there was a distance of 400/500 yards between the civil hospital and Police Station, Samrala, still no efforts were not made by the police to register the FIR and PW-4 ASI Hakam Singh visited Civil Hospital, Samrala for the first time at 2.40 p.m. on 06.11.1999, when the statement of the complainant was recorded in the presence of Jagjiwan Singh S/o Kripal Singh Khirni, a senior Akali Dal Leader of the ruling party. Thus, the story of the prosecution not only seems to be exaggerated, but appears to have been

recorded by the police under the political influence of the persons, who were admittedly present at the time of recording of the statement.

Apart from that, the basic ingredients of the offence under Section 364 IPC were completely missing in the instant case. In order to prove the charge of kidnapping or abduction in order to murder, the prosecution is under an obligation to prove that the kidnapping or abduction was committed only with the sole aim and intention to murder, which has to be proved in the facts and circumstances of the each case. In the instant case, the story of the prosecution regarding taking away of the complainant in a Tata Sierra vehicle has been found to be improbable and does not inspire confidence. Thus, by extending the benefit of doubt, the appellants are ordered to be acquitted of the charge under Section 364 of IPC.

However as observed earlier, the case seems to be a minor scuffle between the complainant and the appellants, who were politically opposed to each other. The complainant suffered simple injuries. PW-1 Dr. Shashi Kant, Medical Officer, Civil Hospital, Samrala proved the injuries suffered by the complainant. However, he submits that injuries No.1 to 5 were simple in nature and injuries No.6 to 8 were kept under observation, but the patient did not get the X-Ray done. Thus, the charge under Section 323/34 of IPC is proved against the present appellants and are ordered to be convicted under Section 323/34 of IPC and the findings recorded by the trial Court to that effect are liable to be upheld.

During the course of hearing, it has been brought to the notice of the Court that the parties had compromised the matter and the copy of the compromise has been placed on record as Annexure A-1 by way of

miscellaneous application. Learned counsel appearing for the complainant/respondent also did not dispute the factum of compromise between the parties. Even the offence under Section 323 IPC is compoundable and even there is no dispute that the offence can also be ordered to be compounded by this Court, while exercising the appellate jurisdiction. Consequently, the parties are permitted to compound the offence under Section 323/34 of IPC in the instant case and accordingly, the appellants are acquitted of the charge under Section 323/34 IPC.

As a consequence of the above discussion, the impugned judgment and order dated 27.08.2003 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana, are set aside and the appellants are ordered to be acquitted of the charge.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation. The trial court record be sent back.

14.12.2022

hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes