

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

320

Decided on : 22.11.2022

1. CRA-S-502-SB-2003

Bikram Singh and others

. . . Appellants(s)

Versus

State of Punjab

. . . Respondent(s)

2. CRR-782-2003

Ashok Kumar

. . . Petitioner (s)

Versus

Bikram Singh and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. H.S. Randhawa, Legal Aid Counsel
for appellants in CRA-S-502-SB-2003 and
for respondent No. 3 in CRR-782-2003.

Ms. Harpreet Kaur, Advocate for
Mr. Navkiran Singh, Advocate
for the complainant-Ashok Kumar in CRA-S-502-SB-2003 and
for the petitioner in CRR-782-2003.

Mr. Jaswinder Singh Arora, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. This Judgment shall dispose of two cases i.e. **CRA-S-502-SB-2003** titled as “ ***Bikram Singh and others v. State Punjab***” and **CRR-782-2003** titled as “***Ashok Kumar v. Bikram Singh and others***” filed against the

the Court of learned Additional Sessions Judge, Fast Track Court, Ferozepur, vide which out of four accused/appellants, three accused-appellants i.e. appellant No. 1-Bikram Singh, appellant No. 2-Sardool Singh and appellant No. 3-Raj Kumar, were held guilty for the offences punishable under Sections 452, 323 and 34 IPC and were convicted for a period of maximum 03 years. However, accused/appellant No. 4-Kulwant Singh was acquitted from all the charges, in case FIR no. 123 dated 02.07.1997 under Sections 452, 323, 341 IPC registered at Police Station City Abohar, District Ferozepur.

2. Details of sentences awarded to three accused namely Bikram Singh, Sardool Singh and Raj Kumar are as under:-

(1) Accused Bikram Kumar:-

Section(s)	Rigorous Imprisonment (RI)	Fine in Rs.	In default
452 IPC	03 years	1000/-	03 months R.I.
323 IPC	06 months	500/-	02 months R.I.
323/34 IPC	06 months	-Nil-	-Nil-

(II) Accused Sardool Singh

Section(s)	Rigorous Imprisonment (RI)	Fine in Rs.	In default
452 IPC	03 years	1000/-	03 months R.I.
323 IPC	06 months	500/-	02 months R.I.
323/34 IPC	06 months	-Nil-	-Nil-

(III) Accused Raj Kumar:-

Section(s)	Rigorous Imprisonment (RI)	Fine in Rs.	In default
452 IPC	03 years	1000/-	03 months R.I.
323 IPC	06 months	500/-	02 months R.I.
323/34 IPC	06 months	-Nil-	-Nil-

All the aforementioned sentences were ordered to run concurrently.

All the three convicts/appellants who were held guilty for the offences punishable under Sections 452, 323 and 34 IPC had deposited their respective amount of fine before the Court of learned Trial Court on the date of order of sentence itself.

3. Before dealing with the facts of the case, it would be necessary to mention that during the pendency of both the cases, accused/appellant No. 1-Bikram Singh and accused/appellant No. 2-Sardool Singh expired and vide order dated 18.11.2015, passed by the co-ordinate Bench of this Court, appeal qua both of them was ordered to be abated.

Order dated 18.11.2015 says as under:

“As per the report received from the Court of learned Chief Judicial Magistrate, Ferozpepur appellants Bikram Singh s/o Satnam Singh and Sardool Singh s/o Harbans Singh have expired, which is supported by death certificate of appellants-Bikram Singh.

There is also copy of report made by SHO police Station, City-2 Abohar to the effect that both the appellants have expired. Since both the appellants namely Bikram Singh s/o Satnam Singh and Sardool Singh s/o Harbans Singh have expired, so this appeal qua them stands abated.

Now this appeal is adjourned to 20.01.2016 for arguments qua appellant-Raj Kumar only.”

In other words, this Court is left with the issue to decide the fate of the appeal on behalf of accused/appellant No. 3-Raj Kumar only.

4. Prosecution case runs like that Ashok Kumar s/o Poonam

conductor. He hired a tractor trolley of accused/appellant No. 1-Bikram Singh. He owed freight charges towards accused/appellant No.1-Bikram Singh. On 01.07.1997, Bikram Singh alongwith Mohinder Munim of Abohar came to the office of complainant/injured- Ashok Kumar, situated near Rajinder Kanda Abohar for demanding payment of said freight charges.

5. When Bikram @ Pappu demanded money, Ashok Kumar told him that he had already made payment on Monday and at that time, he was not having any money. Bikram @ Pappu remarked that he would teach Ashok Kumar a lesson for not making said payment of freight and thereafter, both Bikram and Mohinder Munim left the office of Ashok Kumar.

6. On 02.07.1997 at about 10.00 AM, Ashok Kumar and Ramesh Kumar, r/o New Abadi Abohar were sitting in the office of Ashok Kumar. Accused Bikram @ Pappu, Sardool Singh and Raju Amritsarian all armed with iron rods came in the office of Ashok Kumar and two unidentified persons of the age group of 25/30 and 25/28, respectively, armed with Dangs also accompanied accused Bikram Singh. Bikram alias Pappu raised lalkara that today, Ashok Kumar was to be killed.

7. Bikram Singh @ Pappu gave three iron rod blows on the left shoulder, head and left arm of Ashok Kumar, Sardool Singh gave iron rod blow on the left arm of Ashok Kumar, Raju Amritsarian gave two iron rod blows, one on the right arm and second on the back of right shoulder of Ashok Kumar. Further, all of them forcibly lifted Ashok Kumar and brought him on the road. They also gave many injuries with their respective weapons on his back.

8. Thereafter, Ashok Kumar and Ramesh Kumar raised death alarm, then all the accused went from there alongwith their respective weapons giving further threats to the life of Ashok Kumar. Ramesh Kumar

took Ashok Kumar to Civil Hospital, Abohar on his scooter, for the purpose of treatment. Then, accused Bikram, Sardool Singh and Raju Amritsarian arrived in Civil hospital and gave beatings to Ashok Kumar. Injuries were caused by the accused to Ashok Kumar because he owed money to Bikram.

9. After receiving the medicolegal report of Ashok Kumar, SI Fauja Singh recorded the statement of Complainant- Ashok Kumar as Ex. PB/1 and on the basis of said statement, a formal FIR Ex. P-3 was registered against the accused under Sections 452, 506, 323, 148 and 149 IPC.

10. After completion of the entire investigation, final report under Section 173 Cr. P.C. under Sections 452, 506, 323, 148 and 149 IPC was submitted before the Court concerned.

11. As the present case was a cross version case of the main case titled as “Vikram Singh and others v. Ashok Kumar,” thus, the present case was committed by the Court of learned Judicial Magistrate Ist Class, Abohar to the Court of Sessions for its trial alongwith Sessions trial Case No. 26/11.02.2002/11.12.2002 under Section 307 IPC.

12. After commitment of the case, charges under Sections 452, 323 and 34 IPC were framed against the accused to which they pleaded not guilty and claimed trial.

13. From the investigation report filed under Section 173 Cr.P.C. and the charges, it was found that complainant Ashok Kumar suffered 17 injuries, which are as under :

1. *“Lacerated wound of 2x1 cm masts deep du the scalp of occipital region, Clatted blood present, Over lying area is swallow and tender Advan Y- ray.*
2. *Reddish black contusion around the right eye 7C7cm involving the upper eye lid as black congitive is cojusited.*

3. *Reddish contusion all over left eye including left eye including left and different of nose.*
4. *Reddish contusion le ca left side of the neck below and behind the ear lobule.*
5. *Reddish contusion on top of shoulder of 17:17 cm extending to the upper and lateral part.*
6. *Reddish: contusion left scapular region 183 cm extending above downy ward and medial.*
7. *Reddish contusion on the lateral left scapular region above downward and medial.*
8. *Reddish contusion 245 right scapular region stating from right shoulder running above downward and medial back upto thoracic vertebrae.*
9. *Reddish contusion 183 cm right intra scapular region extending above downward and laterally.*
10. *Reddish contusion 8X3 cm on the top of right shoulder.*
11. *Reddish contusion is ca right lateral elbow and the middle forearm, advised X-ray.*
12. *Reddish contusion on the lower part of right arm 7cmx2cm.*
13. *Reddish contusion at the base of the right forefinger 2×1 de kepet under observation.*
14. *Reddish contusion 4x4 cm and the swelling 4x4 cm tenderness on the back of the left forearm. Kept under observation.*
15. *Reddish contusion on the back of Left elbow and tenderness were present. Advised X- ray.*
16. *Reddish contusion on the upper part of left arm 8x3 cm extending above downward and medial.*

17. *Reddish contusion 15:3 ca on the lower part of the left thigh extending above downward and medial”.*

14. Another witness cited by prosecution in present cross-version case i.e. Ramesh Kumar is not even said to have suffered injuries.

15. From the charges, it becomes clear that injuries suffered by Ashok Kumar were neither serious nor grievous in any manner and it can be said to be simple in nature.

16. The prosecution, in order to prove its case, had examined 05 prosecution witnesses, which are as under:-

PW-1	Hardial Singh	Investigating officer
PW-2	Ashok Kumar	Injured
PW-3	Ramesh Kumar	Eye witness
PW-4	SI Fauza Singh	Investigating Officer
PW-5	Dr. Manohar Lal Madan	Medical Officer

17. After completion of the procedural stages of the trial, learned Trial Court heard the arguments and held the accused guilty for the offences punishable under Sections 452, 323 and 34 IPC, and sentenced them, as already noticed above, vide judgment of conviction and order of sentence, dated 26.02.2003.

18. Feeling aggrieved, accused/appellants, namely, Bikram Singh, Sardool Singh and Raj Kumar have approached this Court by filing of Criminal Appeal No. 502-SB of 2003, whereas, complainant/injured-Ashok Kumar has approached this court for seeking enhancement of sentence by filing of Criminal Revision Petition No. 782 of 2003.

19. Vide order dated 11.11.2022 passed by this Court, Mr. H.S. Randhawa was appointed as *Legal Aid Counsel* on behalf of appellant-Raj Kumar, to assist the Court.

While challenging the judgment of conviction, Mr. H.S.

Randhawa, *Legal Aid Counsel* for appellant-Raj Kumar, has argued that initially, four accused were named in the present case and after completion of trial, one of the accused- Kulwant Singh has already been acquitted by the trial Court. During the pendency of the present appeal, other two convicts i.e. appellant No.1-Bikram Singh and appellant No.2- Sardool Singh died and appeal qua both of them already stands abated by this Court, as noticed above. Thus, submissions are required only qua appellant -Raj Kumar.

21. Mr. H. S. Randhawa, Advocate, submits that since it is the case of version and cross version, it would be necessary to examine whether all the allegations of the complainant as well as the presence of present appellant is well established beyond the shadow of doubt or not. First of all, Mr. Randhawa reads out the statements of the accused recorded under Section 313 Cr.P.C.

Statement under Section 313 Cr.P.C. of Bikram Singh says as under:

“Q. Do you want to say anything else?”

A. On 2-7-97, I and Sardool singh were standing outside the office of Tractor-trolley Union Abohar, where Ashok Kumar came, I demanded money from Ashok Kumar. Ashok Kumar hurled abuses. We grappled with each other. We were separated by Sardool Singh. On 2-7-97 at about 9-30. I with Sardool Singh were standing near Sabji Mandi Chowk. Vijay Kumar armed with Rod, Ramesh Kumar and Gogi empty handed came there. Vijay Kumar remarked that I should be taught lesson for demanding money. Vijay Kumar gave Iran Rod blows on me. we reached Civil Hospital Abohar. Vijay Kumar gave injuries

with his iron Rod on the person of Sardool Singh. I and Sardool Singh raised alarm, Vijay Kumar with his companions fled away. Police recorded my statement, but inconnivance with Ashok Kumar a false case has been registered against us. I was also medicolegally examined in civil Hospital Abohar, where Sardool Singh was also medically examined for injuries caused by Ashok Kumar complainant. My statement was recorded by the police, but no action was taken by the police, so I filed separate complaint.

Statement under Section 313 Cr.P.C. of Sardool Singh says as under:

“Q. Do you want to say anything else?”

A. “On 2-7-97 I and Bikram Singh were standing outside the office of Tractor-trolley Union Abohar, where Ashok Kumar came, I demanded money from Asnok Kumar, and Kumar hurled abuses They grappled with each other. I separated them. On 2-7-97 at about 9-30P.M. Vijay Kumar armed with Rod, Ramesh and Gogi also came there, with empty hand. Vijay Kumar remarked that Bikram Singh should be taught lesson for demanding money Vijay Kumar gave iron rod blow on the person of Bikram. We reached Civil Hospital, Abohar. Vijay Kumar gave injuries on my person with Iron Rod blow. I and Bikram raised alarm, Vijay Kumar with his companions fled away. Vijay Kumar and his companions caused injuries to me and Bikram Singh when we were going in the street situated opposite side of the Sabzi Mandi. we are falsely implicated in the present case inconnivance with the Police. I and Bikram Singh were admitted in the civil Hospital, Abohar, where the

police came. Police did not record any statement of mine and no action was taken by the police against the Vijay Kumar and his companions.”

Statement under Section 313 Cr.P.C. of Raj Kumar says as under:

“Q.14 Do you want to say anything else.

A. I am falsely implicated in the present case due to enmity of Ashok Kumar with Bikram Singh and others. I have not caused any injury.”

22. Learned counsel for the appellant submits that from all the aforesaid statements, it is clear and admitted that appellants, namely Bikram and Sardool Singh (since deceased) were present at the time of incident but in their statements recorded under Section 313 Cr. P.C., nothing is admitted about the presence of accused/appellant No.3- Raj Kumar.

23. Similarly, while referring to the stand in defence of the appellant Raj Kumar, counsel for the appellant submits that appellant-Raj Kumar was involved in the present case only on the basis of false implication and he has nowhere admitted his presence. Thus, charging him for the offence of trespassing under Sections 452 IPC would not be justified.

24. While building up the submissions, Mr. H.S. Randhawa counsel for the appellant Raj Kumar has also read out the deposition of the said prosecution witnesses.

25. Out of total 17 injuries, appellant No. 3-Raj Kumar is attributed with two injuries with iron rod blows. When PW2-Ashok Kumar appeared to depose in the witness box, he stated that accused Raj Kumar gave him

two iron rod blows, one **on the right arm** and second on right shoulder.

When PW3-Eye witness, Ramesh Kumar appeared before the witness box, he stated that appellant Raj Kumar gave two iron rod blows, one **on the left arm** and another on the right shoulder of complainant-Ashok Kumar.

26. Mr. Randhawa, also refers to the statement of PW5- Dr. Manohar Lal Madaan, who in his cross examination has admitted that medicolegal examination of accused Bikram Singh was conducted on 02.07.1997 at 10.45 AM and also pointed out that Injury Nos. 1 and 2 suffered by Bikram Singh were on the vital parts and could be dangerous to life. Said Dr. also examined appellant No. 2-Sardool Singh with three injuries. Thus, there is none else from the side of the appellants as per cross version case, who might have suffered injuries.

In other words, counsel submits that had appellant- Raj Kumar been present on the spot, chances of suffering of some injuries by him also, were of course on the higher side.

However, during the examination of witnesses also, no where it emerged that any other person from the accused side, except Sardool Singh and Bikram Singh, has suffered injuries.

Thus, Counsel argues that all these facts and circumstances, strengthens the argument on behalf of Raj Kumar that he was not present on the spot.

27. While referring to the statement of PW 4-SI Fauza Singh, Mr. Randhawa, also argues that FIR version has itself originated from the medicolegal report because the statement Ex. PB has been given by Complainant Ashok Kumar after completion of medicolegal examination and preparation of MLR and the said fact gets established from the statement

Relevant part of it says as under:

“PW-4 On SA

Inspector Fuaza Singh, Vigilance Bureau,
Ferozepur.

On 2-7-1997, I was posted at police station City Abohar. On that day I received MLR report of Ashok Kumar son of Punam Chand. I alongwith Jaspal Singh and Kashmir Singh went to Civil Hospital, Abohar. I moved application Exh. P-2 to the doctor incharge for knowing the condition of the injured. The Medical man opined injured Ashok Kumar to be fit for making statement vide Endst. Exh. P-3. Ashok Kumar made statement Ex. PB to me which was readover and explained to him and he after admitting the same to be correct and signed the injured Ashok Kumar and sent ruqa to the police station on the basis of which SI Balbir Singh recorded FIR, I identify signature of SI Balbir Singh on carbon copy of FIR Exh. P-3.”

28. It is also submitted that involvement of accused Raj Kumar is false for the reason that there can not be any motive for him to cause injuries to Ashok Kumar, without there being any reason or agony with him. Direct motive of owing money from Bikram Singh by Complainant Ashok Kumar is otherwise well established. Thus, involvement of appellant No. 3-Raj Kumar is not trustworthy.

Counsel also refers to the findings given by learned trial Court that accused lifted Ashok Kumar from his office and took him out on the

road and also caused injures there and as far as injuries to Ashok Kumar

caused in the hospital is concerned, this part of story of prosecution was not believed by trial Court.

29. Arguments addressed by counsel for the appellant have been countered by learned counsel for the State assisted by learned counsel for the complainant and has submitted that since injured has suffered total 17 injuries inside his office, it is not possible that all the said injuries have been caused by one or two persons, therefore, involvement of more than two persons in the alleged offence, from the side of accused-appellant is probable. Therefore, presence of the appellant Raj Kumar on the spot of incident cannot be doubted without there being any substantial evidence with the accused to defend the allegations.

30. Counsel also argues that benefit of doubt has already been extended to one of the accused Kulwant Singh, therefore, appellant Raj Kumar has been rightly convicted by the trial Court.

On the other hand, counsel for the complainant also supports the submission addressed by the learned DAG, Punjab. State counsel also submits that since injured witness himself is appearing before the Court and has explained each and every injury except of minor discrepancies, hence prosecution story is well proved beyond any doubt.

However, there is no clear explanation with the learned State counsel or the complainant to the submissions addressed by the appellant.

31. This Court has considered all the aforesaid submissions, addressed by all the respective parties and has also examined the case file and record.

32. As already observed and noticed that appeal qua two appellants namely Bikram Singh and Sardool Singh stands abated, this Court is left

Kumar only. Submission addressed by learned counsel for the appellant that there is no motive alleged or proved against the accused Raj Kumar, appears to be a genuine submission, because it is a money dispute and also does not appear to be of a very big amount. But as alleged in the prosecution version, Ashok Kumar owed money to Bikram Singh, there is nothing mentioned or alleged or deposed by any of the witness that why Raj Kumar will participate, without therebeing any agony.

33. Even there is nothing found on the record to show that appellant Raj Kumar is directly related to the accused or his family members, to make it probable to participate in the incident by accompanying the main accused, who is armed with weapon, and then to visit the office of Ashok Kumar to cause him injuries. Moreover, there is contradiction in the statements of witnesses in regard to the role of appellant Raj Kumar. According to Ashok Kumar-PW2, iron rod blow is given on the right arm, whereas as per the deposition of Ramesh Kumar-PW3, iron rod blow is given on the left arm.

34. Another submission that his presence is also doubtful, gets strengthened from the fact that in the stand taken by the remaining appellants in their respective statements under Section 313 Cr.P.C.; they have admitted their presence in clear words without there being any mentioning of presence of any other person including the appellant Raj Kumar.

Except of the allegations in the prosecution version at the instance of injured complainant-Ashok Kumar, there is nothing available on record for proving the involvement of appellant No. 3-Raj Kumar.

Kumar who has not suffered even a scratch on his person and has introduced himself as a prosecution eye- witness. It is highly doubtful that from the side of accused, three of the accused have suffered injuries on their vital parts and from the side of the victim, total 17 injuries were suffered by only Ashok Kumar. In other words, presence of Ramesh Kumar PW3, seems to be doubtful.

36. Another aspect for consideration is that in the first version case i.e. in the complaint case, PW 2 complainant Ashok Kumar himself has admitted that he was alone in his office on the date of occurrence. Further, no where it is mentioned that Bikram Singh and Sardool Singh have also suffered injuries.

37. In view of the submissions addressed and recorded hereabove and in totality of circumstances, reasonings given by this Court, I am of the view that findings of conviction qua appellant-Raj Kumar is not sustainable and thus, appeal qua him deserves to be allowed.

Appellant-Raj Kumar is ordered to be hereby acquitted from the charges levelled against him.

Appeal i.e. CRA-S-502-2003 stands allowed, qua appellant-Raj Kumar.

38. This Court also appreciates the assistance provided by Mr.H.S. Randhawa, Advocate appearing as a legal Aid Counsel for appellants and for addressing the arguments within 10 days of being given the responsibility by this Court. This Court also appreciates the arguments addressed by Ms.Harpreet Kaur, Advocate, who helped the Court in examining the complete record.

39. In view of the above, present CRR-782-2003 also stands disposed of, having become rendered infructuous.

(SANJAY VASHISTH)
JUDGE

22.11.2022

Riya

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