

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

**CRM-A No.1247-2019 (O&M)**

**March 29 , 2023.**

Joginder Singh

.....Applicant/Appellant

**Versus**

Kashmir Singh and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL  
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Manbir Singh Basra, Advocate  
for the applicant/appellant.

\*\*\*\*

**RITU TAGORE, J**

1. Joginder Singh, appellant-complainant seeks leave to appeal against judgment dated 06.09.2018 passed in Criminal Complaint No.155 of 2008 titled 'State through Joginder Singh vs. Kashmir Singh and others' under Sections 326, 325, 324, 323, 336, 447, 511, 148 and 149 of IPC, 1860 and Section 25 of Arms Act, 1959, Police Station, Dera Baba Nanak, Batala passed by Judicial Magistrate, Ist Class, Batala whereby the respondents-accused have been acquitted of the charges framed against them.

2. Brief facts as per prosecution version are that, on complaint of Joginder Singh, FIR bearing No.109 dated 03.12.2007 under Sections 326, 325, 324, 336, 447, 511, 148, 149 IPC read with Section 25 of Arms Act was registered against seven persons (arraigned as accused in the complaint). After inquiry, police found the accused to be innocent and cancellation report was submitted in the court of Area Magistrate. Being dissatisfied with the cancellation report, complainant filed protest petition/complaint, alleging therein

that on 29.11.2017 at about 11.00 AM, he and his nephew Sukhdev Singh were present in front of his house, ready to leave for bus stand, when accused Kashmir Singh armed with a rifle; accused Gagandeep Singh armed with a sword; Satwinder Singh, Jasmit Singh and Balwinder Singh accused-persons armed with sticks; Jasjit Singh accused armed with a sickle and accused Amrik Singh armed with a rifle along with some other unidentified persons, who were also armed with sticks and swords, arrived on two tractors.

3. Accused, Kashmir Singh fired a shot in the air with his rifle and raised *lalkara* to teach a lesson to complainant for restraining them from cultivating their land. Accused, Gagandeep Singh gave a sword blow to Sukhdev Singh, which landed on the back of his head. When Joginder Singh, the complainant came forward to rescue his nephew, then accused Satwinder Singh gave him a stick (*daang*) blow that landed on the back of his head and he fell down. Then, accused Jagjit Singh gave a sickle (*datar*) blow from reverse side that fell on his back. Accused, Jasmit Singh also gave a stick (*daang*) blow on the left arm of the complainant. After all this, when the complainant tried to stand up, accused Balwinder Singh gave a stick blow on his chest. Sukhdev Singh was given a stick blow on his stomach by accused Satwinder Singh and a stick blow on the right leg below knee of Sukhdev Singh was given by accused Jasmit Singh. Another stick blow on the left thigh of Sukhdev Singh was given by accused Balwinder Singh and accused Jagjit Singh gave sickle blows from its reverse side on the right hand of Sukhdev Singh. When Sukhdev Singh fell down, accused Jasmit Singh, Satwinder Singh and Balwinder Singh gave several stick-blows to him.

4. Complainant raised a hue and cry and on hearing the same, Pritam Kaur wife of complainant (Joginder Singh), Jasbir Kaur wife of Sawinder Singh

and Jasbir Kaur @ Jaj wife of Sukhdev Singh came at the spot and witnessed the entire occurrence. Thereafter, Amrik Singh fired a gun-shot in the air from his rifle and tried to threaten persons present at the spot after which all the accused fled from the spot on their tractors along with their respective weapons.

5. Complainant and his nephew were admitted at Civil Hospital, Dera Baba Nanak by Heera Singh and Kashmir Singh but were referred to Guru Nanak Dev Hospital, Amritsar and were given medical treatment.

6. The incident was reported to police, where upon an FIR No.109 dated 03.12.2007, under Sections 326, 324, 323, 336, 447, 511, 148 and 149 of IPC, 1860 and Section 25 of Arms Act, 1959 was registered at Police Station, Dera Baba Nanak, Batala but no action was taken on it against the accused by the police.

7. On the basis of preliminary evidence, accused were ordered to be summoned by learned trial Court for commission of offences punishable under Sections 326, 324, 323, 336, 148 and 149 of IPC vide order dated 05.12.2016.

8. Pursuant to summons, all accused persons put up appearance and were enlarged on bail after executing their bail and surety bonds. Copies of the complaint were supplied to accused free of cost as envisaged under Section 208 Cr.P.C. and thereafter the complaint was posted for pre-charge evidence.

9. Complainant led pre-charge evidence and examined himself as CW-1 and in support examined Sukhdev Singh as CW-2, Pritam Kaur as CW-3 and Dr. A.S. Bajwa, Specialist Aruna Asaf Ali Government Hospital, Delhi as CW-4. Besides the above, medical record consisting of MLRs, X-ray reports and X-ray films of Sukhdev Singh and Jarnail Singh from (Exh.C-1 to Exh.C-8) was tendered.

10. On basis of the pre-charge evidence, accused were charge-sheeted for the commission of offences punishable under Sections 326, 324, 323, 336, 148 and 149 of IPC, to which they did not plead guilty and claimed trial.
11. Exercising their option under Section 246 Cr.P.C., accused opted to further cross-examine the witnesses namely, Joginder Singh (complainant), Sukhdev Singh and Pritam Kaur in post-charge evidence. Complainant through his counsel closed the after-charge evidence vide statement dated 09.05.2018.
12. On closing post-charge evidence, the accused were examined under Section 313 Cr.P.C. They all raised a common plea of their false implication, denied allegations and pleaded that complainant party gave injuries to Gurpreet Singh and Gurtej Singh on 29.11.2007 in order to take forcible possession of land and as a counter blast registered a false case against them by exerting political pressure.
13. In support of their version, the accused examined SP Mohan Lal No.TP 93, posted as Assistant Commandant 82 Battalion PAP Chandigarh (DW-1), who proved the cancellation report (Exh.DW-1/A), by observing that the complaint so made by complainant Joginder Singh, that lead to registration of FIR No.109, dated 03.12.2007 under Sections 326, 325, 324, 336, 447, 511, 148, 149 IPC read with Section 25 of Arms Act was found to be false and recommended cancellation of the aforesaid case.
14. On appraisal of the entire evidence, learned trial Court came to a definite finding that complainant failed to establish allegations against all the accused beyond the shadow of reasonable doubt and further observed that complainant-party has filed the complaint as a counter blast to avoid their liability for causing injuries to Gurpreet Singh and Gurtej Singh and in respect

of which complainant party has been convicted in a cross case by order of even date, and acquitted all the accused of the charges framed against them.

15. We have heard learned counsel for the applicant/appellant and have gone through the record with his assistance.

16. Learned counsel for the appellant-applicant submits that learned trial Court misread and misconstrued the evidence completely while acquitting the accused; whereas complainant led ample evidence on record, both oral and documentary, to establish that accused committed the offences with which they have been charged. Referring to the statement of complainant-injured Joginder Singh (CW-1), Sukhdev Singh (CW-2) an injured and eye-witness Pritam Kaur (CW-3), learned counsel submitted that witnesses have given a consistent version of the occurrence by attributing specific roles played by each accused in inflicting injuries to the complainant party in furtherance of prosecuting their common object to cause injuries to them by forming unlawful assembly.

17. Further, learned counsel for the appellant-applicant stated that medical evidence has fully corroborated the oral account of witnesses with respect to the place, seat of injuries and weapons used to inflict injuries to complainant and another injured (CW2) in the occurrence. However, learned trial Court erred in appreciating facts and evidence in the right manner and faulted in its approach while acquitting the accused.

18. Learned counsel for the appellant-applicant further states that appellant-applicant and his nephew (CW2) have proved the motive for accused to assault them and defence failed to impeach evidence of the complainant and his witnesses on account of any major or significant discrepancies or omissions, or deviation on the core aspects of the prosecution case. It is stated that learned trial Court erred in discarding the evidence of prosecution on surmises and

conjectures.

19. Concluding his submissions, learned counsel for the appellant/applicant states that inferences so drawn by trial Court, while acquitting the accused are against settled principles of law, whereas the complainant has duly proved his case against them. It is thus, prayed that leave to appeal against judgment dated 06.09.2018 be granted, impugned judgment be set aside and accused be convicted for the offences as charged and be sentenced accordingly.

20. Perusal of the statements of complainant-Joginder Singh (CW1), Sukhdev Singh (CW2) and Pritam Kaur (CW3) reveals that there are material discrepancies in the versions put-forth by them. Said discrepancies, while going to the root of the matter, indeed demolish the complainant's case.

21. Complainant Joginder Singh (CW1) testified that on 29.11.2007 at 11.00 a.m, respondents-accused along with 10-12 other persons, armed with weapons like rifle, *datar* (sickle), *dangs* (sticks) came near his house located in the fields and attacked him and his nephew Sukhdev Singh (CW2) when they were about to leave for the bus stand. According to complainant Joginder Singh (CW1), reason for attack is the dispute regarding possession/cultivation of the land in question. Complainant (CW1) deposed that accused Kashmir Singh fired from his rifle by raising a *lalkara* to catch him and his family for restraining them from cultivating their land and accused attacked them with their respective weapons. He detailed the role played by each accused in inflicting injuries upon him and his nephew with their respective weapons.

22. Complainant-Joginder Singh (CW1) has denied any injury being caused to the opposite party whereas it is a matter of record that the complainant alongwith others have been convicted for causing injuries to Gurpreet Singh and

Gurtej Singh. Complainant stated that the occurrence was witnessed by Sulakhan Singh (since deceased) and one Kulwant Singh son of Bachan Singh. It is further stated by the complainant that Kashmir Singh and Hira Singh reached the spot after the accused persons fled after causing injuries. However, none of the said persons have been examined for reasons best known to the complainant.

23. Pritam Kaur (CW3), wife of the complainant testified that she along with her sister-in-law and daughter-in-law came at the spot on hearing the alarm raised by her husband. She reiterated averments in the complaint in her examination-in-chief. However, during cross-examination she stated that she reached the place of occurrence after 10-15 minutes of hearing the alarm raised by her husband and his nephew. This in itself casts a serious doubt about the place of occurrence as described by the complainant. Pritam Kaur (CW3) wife of the complainant, contrary to her version in examination-in-chief, later deposed that there is no land dispute between them and the accused party nor any civil litigation is pending. Sukhdev Singh (CW2) nephew of complainant also in contrast to his version in examination-in-chief, later denied any land dispute with accused or any civil litigation pending between them. CW2 Sukhdev Singh, nephew of the complainant even proceeded to say that accused persons had no motive against them. It is relevant to note at this stage that complainant-Joginder Singh (CW1) admitted that he is a co-sharer in the land in dispute with the accused – Kashmir Singh, Balbir and Sukhwinder Singh having purchased 15 Kanals 17 Marlas of land from Virsa Singh, Amrik Singh and Ranjit Singh. He further deposed that Kashmir Singh and other accused persons had never cultivated the land as they (complainant party) never allowed them to cultivate the same. Joginder Singh (CW1) claimed that he and his family members are in exclusive cultivating possession of the land in dispute and the said land is owned

by his mother.

24. Defence set up by the respondents was that on the day of occurrence injuries were inflicted upon Gurpreet Singh and Gurtej Singh by complainant-party. The complainant party, it is stated, sought to restrain them from cultivating land in dispute and that the occurrence took place on the said land itself and not on the road in front of the complainant's house as alleged. It is pertinent to note at this stage that though complainant submitted that he could produce relevant documents to prove that his mother is owner of land measuring 15 Kanals 17 Marlas, no such record has been placed on record whereas, accused persons produced a copy of Jamabandi for the year 2003-2004 (Ex.Dx) reflecting that mutation No.131 was sanctioned in the name of accused Kashmir Singh, Sukhwinder Singh and Balwinder Singh after its purchase from Virsa Singh, Amrik Singh and Ranjit Singh. Swaran Kaur also shown to be a co-sharer as per the Jamabandi for the year 2008-2009 (Ex.DY). Swaran Kaur alongwith other co-accused are reflected in joint possession of the land. It is correctly observed by the learned trial court that nothing has been placed on record to show that the complainant or his mother were in exclusive possession of the property in dispute which was admittedly joint. Question of alleged motive as set-forth by the complainant is clearly set to naught by the witnesses themselves. Reference is yet again made to statement of CW2 Sukhdev Singh and CW3 Pritam Kaur, who stated that accused had no motive and that there was no dispute pending between the parties.

25. As per the complainant, alleged incident took place in front of his house when he and his nephew were proceedings to go to the bus stand. The same is belied by the statement of CW3 Pritam Kaur, wife of the complainant, when she states that she reached the place of occurrence 10-15 minutes after

hearing the commotion and alarm raised by her husband (complainant) and his nephew. In case complainant's version that place of occurrence is exactly in front of the house of the complainant, it is highly improbable that it would have taken Pritam Kaur (CW3), 10-15 minutes or even 5-7 minutes as has also been stated by her, to reach at the place of occurrence from her house on hearing alarm raised by her husband. It is relevant to note that CW3 Pritam Kaur further stated that nearly 100-200 persons gathered at the place of occurrence. Complainant (CW1) stated that occurrence was witnessed by Sulakhan Singh (since deceased) and one Kulwant Singh son of Bachan Singh and that thereafter Kashmir Singh and Hira Singh also reached at the spot though after the accused had fled after causing injuries to them. None of the said persons i.e., Kulwant Singh, Kashmir Singh and Hira Singh have been examined for reasons best known to the complainant. Non-examination of Kulwant Singh is clearly damaging to complainant's case. Furthermore, none out of 100-200 persons gathered at the spot, as per version of CW3 Pritam Kaur, have been examined. There is no explanation, leave alone a plausible explanation coming forth for the same. It is apparent that genesis of the incident has not been proved on record.

26. Another aspect to be considered is that there is a delay of four days in recording of the FIR (cancellation of which was recommended), regarding the alleged incident. Occurrence is alleged to have taken place on 29.11.2007 and FIR No.109 was registered on 03.12.2007. Though in a given case mere delay in recording of FIR is not fatal but in the present case delay becomes one of the important and relevant factors while considering the prosecution case. No reasonable or cogent explanation for delay in lodging of the FIR is forthcoming. It is to be noted that CW2 Sukhdev Singh stated that they reached Police Station Dera Baba Nanak on the day of occurrence itself. CW2 Sukhdev Singh in his

cross-examination stated that though they went to the police station on the same day, however, they did not disclose as to who caused injuries to them and in what manner. Therefore delay, in the given factual matrix, causes a serious dent in the complainant's version. Witnesses examined by the complainant are not worthy of any credence in view of material discrepancies in their statements.

27. Furthermore, medical evidence on record also does not support complainant's version. Medico-legal report available on record reflects arrival of Joginder Singh at Guru Nanak Dev Hospital, Amritsar at 9.20 p.m. and arrival of Sukhdev Singh at 5.40 p.m. on 29.11.2007 whereas, as per their stand both the injured were taken to the hospital together. Medical examination of Sukhdev Singh was carried out at 6.10 p.m. on 29.11.2007 and Joginder Singh was examined at 7.30 a.m. on 30.11.2007. There is again no explanation forthcoming for the same. Explanation of CW5 Dr. A.S.Bajwa that he did not examine Joginder Singh on 29.11.2007 as he was waiting for the police docket, is not borne out from the record in view of Ex.C4 i.e., medico-legal report of Joginder Singh, reflecting that he was admitted by the police alongwith docket and was duly accompanied by MHC, Police Station Dera Baba Nanak. CW5 Dr. A.S.Bajwa admitted that he did not treat the injured nor prepared X-ray report and that his opinion is based on X-ray film and report of Radiologist, who has not been examined. As per Ex.C2 i.e., opinion qua injury No.1, 2 to 6 of Sukhdev Singh, is based not only upon the X-ray films but upon the opinion of a private orthopedic surgeon. However, no evidence has been led to prove the medical evidence by the private entity/doctor.

28. Learned counsel for the applicant/appellant is unable to deny that there is no evidence on record to prove that any shot was fired from a rifle by Kashmir Singh and Amrik Singh. No recovery was effected from them.

29. It is relevant to note at this stage that the matter was duly inquired into by the police authorities. DW1 SP Mohan Lal, No.TP 93, Assistant Commandant, 82 Battalion PAP, Chandigarh proved cancellation report (Ex.DW1/A). SP Mohan Lal (DW1) specifically testified that he carried out thorough inquiry with regard to genuineness of allegations in FIR No.109 registered at the behest of complainant and found all allegations to be false and thus recommended its cancellation vide report (Ex.DW1/A). Learned counsel for the applicant/appellant is unable to deny that testimony of DW1 SP Mohan Lal could not be shattered. There is nothing on record to indicate that DW1 SP Mohan Lal was inimical towards the complainant or had any axe to grind against them. We find that learned trial court has rightly proceeded to acquit the accused-respondents of the charges against them after proper appreciation of the facts and evidence on record.

30. As an upshot of the above discussion and inferences drawn, it is held that complainant has failed to bring home the guilt of accused persons beyond the shadow of reasonable doubt in respect to commission of the offences as charged. It is a settled proposition of law that suspicion, however strong, cannot take place of proof of guilt of the accused beyond reasonable doubt.

31. It is equally well settled that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where the impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Merely because another view may be possible on the basis of evidence placed on record it is not sufficient to set aside an order of acquittal. A profitable reference can be made in this regard to judgment of Hon'ble the

Supreme Court in '*MahamadkhanNathekhan vs. State of Gujarat*' 2014 (14) SCC 589. Further, in judgment titled '*State of Rajasthan Vs. Kistoori Ram*' in Crl. Appeal No.2119 of 2010 decided on 28.07.2022, it is held that it is not permissible to interfere with the findings of acquittal unless it is found that the view taken by the Court is impossible or perverse. We do not find the view taken by the learned trial court to be so.

32. Learned counsel for the appellant has been unable to point out any infirmity, illegality or irregularity or any compelling and substantial grounds, calling for interference for setting aside the judgment dated 06.09.2018 passed by learned Judicial Magistrate, Ist Class, Batala on proper appreciation of the facts and evidence, acquitting all the accused of the charges framed against them.

33. No other argument was raised.

34. Application has been filed seeking condonation of delay of 141 days in filing this application/appeal. As the matter has been considered and decided on merits, adjudication of this application is rendered academic. Application is disposed of accordingly.

35. Leave to appeal is thus denied and application is accordingly dismissed. Pending miscellaneous applications, if any, is/are disposed of accordingly.

(LISA GILL)  
JUDGE

(RITU TAGORE)  
JUDGE

March 29 , 2023  
'Manpreet'/'om'

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No