

CRA-S-1278-SB-2004 &
CRA-S-1309-SB-2004

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 22, 2023

1. CRA-S-1278-SB-2004

Satnam Singh and others

...Appellants

Versus

State of Punjab

...Respondent

2. CRA-S-1309-SB-2004

Bhalinderjit Singh and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. J.S. Toor, Advocate,
for the appellant(s).

Mr. J.S. Arora, Deputy Advocate General, Punjab.

SANJAY VASHISTH, J.

1. This judgment shall dispose of two appeals, i.e. CRA-S-1278-SB-2004 and CRA-S-1309-SB-2004, impugning the judgment of conviction and order of sentence dated 11.06.2004, passed by learned Additional Sessions Judge (Adhoc) Fast Track Court, Sangrur/Trial Court,

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in Sessions Case No. 24, dated 06.09.2001, B.T. No. 27 of 30.04.2004, arising out of FIR No. 56, dated 23.05.2000, registered at Police Station Ahmedgarh.

2. Appellants - Satnam Singh, then aged 30 years; Sarbjit Singh, then aged 29 years; & Gurdarshan Singh, then aged 24 years, have filed CRA-S-1278-SB-2004, whereas appellants - Bhalinderjit Singh, then aged 43 years; & Mohinder Singh, then aged 46 years, have filed CRA-S-1309-SB-2004, against the aforementioned judgment of conviction and order of sentence dated 11.06.2004, whereby they were held guilty for the offences punishable under Sections 307/452/364/511/323/336/148/149 IPC and 27/54/59 of the Arms Act, and sentenced as under:-

Name of convict/ appellant	Under Section	Sentence	Fine	In Default
Satnam Singh	148 IPC	3 years RI	--	--
	307/149 IPC	5 years RI	Rs.1000/-	3 months RI
	364/511 IPC	2 years RI	Rs.500/-	1 month RI
	323 IPC	6 months RI	Rs.200/-	1 month RI
	452 IPC	2 years RI	Rs.500/-	1 month RI
Sarbjit Singh	148 IPC	3 years RI	--	--
	307/149 IPC	5 years RI	Rs.1000/-	3 months RI
	364/511 IPC	2 years RI	Rs.500/-	1 month RI
	323 IPC	6 months RI	Rs.200/-	1 month RI
	452 IPC	2 years RI	Rs.500/-	1 month RI
Gurdarshan Singh	148 IPC	3 years RI	--	--
	307/149 IPC	5 years RI	Rs.1000/-	3 months RI
	364/511 IPC	2 years RI	Rs.500/-	1 month RI
	323 IPC	6 months RI	Rs.200/-	1 month RI
	452 IPC	2 years RI	Rs.500/-	1 month RI

Bhalinderjit Singh	148 IPC	3 years RI	--	--
	307 IPC	5 years RI	Rs.1000/-	3 months RI
	364/511 IPC	2 years RI	Rs.500/-	1 month RI
	323 IPC	6 months RI	Rs.200/-	1 month RI
	452 IPC	2 years RI	Rs.500/-	1 month RI
	27/54/59 Arms Act	3 years RI	Rs.1000/-	2 months RI
Mohinder Singh	148 IPC	3 years RI	--	--
	307/149 IPC	5 years RI	Rs.1,000/-	3 months RI
	364/511 IPC	2 years RI	Rs.500/-	1 month RI
	323 IPC	6 months RI	Rs.200/-	1 month RI
	452 IPC	2 years RI	Rs.500/-	1 month RI
	336 IPC	2 months RI	--	--
	27/54/59 Arms Act	3 years RI	Rs.1,000/-	2 months RI

All the substantive sentences were ordered to run concurrently.

3. Facts emerging from FIR No. 56, dated 23.05.2000, registered at Police Station Ahmedgarh, are that:-

Complainant – Jarnail Singh, son of Joginder Singh, resident of Dhaler Kalan, stated that about two years ago, he had sold his land at Dhaler Kalan and purchased 65 bighas of land of Mohinder Singh, son of Chand Singh, resident of Narike. After the purchase, said land was given to same Mohinder Singh on *Chakota*, at the rate of Rs.1,600/- per bigha, for a period of two years. Lateron, complainant acknowledged that Mohinder Singh wants to grab his land, therefore, said land was given to one Balwinder Singh on contract basis (*Theka*), at the rate of Rs.2,300/- per bigha. On this, Mohinder Singh developed grudge against complainant –

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Jarnail Singh. Mohinder Singh was in relation with Bhalinderjit Singh, Satnam Singh, and Happy @ Sarbjit Singh.

On the intervening night of 22/23.05.2000, complainant – Jarnail Singh alongwith his servant (*Siri*) Kaka Khan, son of Ramjan Khan, resident of Dhaler Kalan, were sleeping in the courtyard of their house at village Dhaler Kalan. Wife of complainant – Jarnail Singh had gone with her aunt. At about 12.00 mid-night, someone knocked the door and he (complainant) asked his servant - Kaka Khan to open the door. Upon opening the door, Mohinder Singh armed with rifle, Bhalinderjit Singh armed with pistol, Satnam Singh armed with *Soti*, Sarabjit Singh armed with *Soti*, and one unidentified person entered in the house. Mohinder Singh raised *Lalkara* that they shall teach a lesson to the complainant for giving the land to some other person. All the persons caught hold the complainant and pulled him out in the street, where a Maruti Car No. PB-28-5300 was parked. All the accused tried to put the complainant in the car. On raising alarm – ‘*Marta Marta*’, neighbour Harjinder Singh opened his window, who assured the complainant that he will reach to help him out. Upon this, Bhalinderjit Singh fired with his pistol towards Harjinder Singh, hitting in his window. Two more shots were fired by Bhalinderjit Singh with his pistol, hitting on the wall of *Chaubara*. Harjinder Singh and Sukhdev Singh alongwith some other persons came there and attacked with bricks on the car of the accused persons, in order to save the complainant. Mohinder Singh then fired two shots with his gun in the air and ran away from the spot. Due to this scuffle, complainant – Jarnail Singh received

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injuries on his finger. On the next morning, complainant – Jarnail Singh, Harjinder Singh, Sukhdev Singh alongwith other persons reported the matter to the police. This way, FIR was registered.

4. After effecting recovery etc. and completion of investigation, final report, under Section 173 Cr.P.C., was submitted against all the five accused (appellants herein) before concerned Court of Magistrate. After framing charges against the accused/appellants, under Sections 452, 307, 336, 364, 511, 148 and 149 IPC and 27/54/59 of the Arms Act, trial commenced and total 17 prosecution witnesses were examined.

Prosecution witnesses, namely, (i) Gorakh Nath, (ii) Avtar Singh, (iii) Ranjit Singh, (iv) Saudagar Singh, (v) Constable Darbara Singh, (vi) ASI Joginder Singh, (vii) Constable Amrik Singh, (viii) Bhagwan Singh, **were given up.** Reports of Forensic Science Laboratory dated 20.09.2000 and 09.11.2000 were tendered as Exs. P-31 and P-32 respectively.

5. Stand taken by the accused in their statements recorded under Section 313 Cr.P.C. is as under:-

Accused – Sarbjit Singh, Gurdarshan Singh & Satnam Singh:

“Ques: Whether you want to say anything else?”

Ans. I am innocent. I never went to the alleged place of occurrence at any time. I have been falsely implicated because I was the friend of Mohinder Singh and the complainant apprehends that in the litigation, I will help him. Case is false one.”

Accused – Mohinder Singh:

“Ques: Whether you want to say anything else?”

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Ans. I am innocent. No occurrence ever took place as alleged by the witnesses. Complainant Jarnail Singh leased out his land to me after executing an agreement and Jarnail Singh wanted to take the possession of land from me illegally. Apprehending my illegal ejection, I filed an injunction suit against Jarnail Singh etc. and got stay order from the Court at Malerkotla. When Jarnail Singh came to know about the stay order, then he lodged the present false F.I.R. against me and others. The other accused named in the F.I.R. have also been falsely implicated by the complainant in this case because someone told the complainant that they will help me regarding the possession of land. We never went to the alleged place of occurrence, nor any occurrence as alleged has ever happened. We have been falsely implicated in the present case.”

Accused – Bhalinderjit Singh:

“Ques: Whether you want to say anything else?”

Ans. I am innocent. I never went to the alleged place of occurrence nor I ever participated in any alleged occurrence. Mohinder Singh accused was having some litigation with his relative Jarnail Singh, who is the complainant of the case and Jarnail Singh was of the view that I am close friend of Mohinder Singh accused and I will help him in the litigation and due to that fact, I have been falsely implicated in this case. I moved before the higher authorities regarding my false implication in the present case. During enquiry of the case, I was found to be innocent by the Investigating Agency and I was not challaned by the police. Case is false one.”

As all the accused (appellants herein) were convicted by the learned Trial Court, present appeals filed by them, have come up for final hearing today.

6. Learned counsel for the appellants while starting arguments, submitted that, in fact, no such incident took place, as has been alleged by the prosecution and, therefore, most important and independent witness, i.e. servant (*Siri*) – Kaka Khan, son of Ramjan Khan, resident of Dhaler Kalan,

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has not been examined as witness by the prosecution. In fact, he is the person who saw all the accused at midnight, just after opening of the gate. However, for the reasons best known to the prosecution, neither said witness has been examined, nor any plausible reason has been given by the prosecution.

7. On the other hand, Mr. J.S. Arora, learned Deputy Advocate General, Punjab, submits that servant (*Siri*) Kaka Khan, only being the person who opened the door, cannot be said to be an important witness, when the injured witnesses have appeared and deposed about the incident.

However, no plausible reason or circumstance has been explained by the prosecution for not examining him as witness, in whose presence allegedly complainant – Jarnail Singh was dragged and taken out of the house by all the accused collectively.

On perusal of the record, it is also noticed from the cross-examination of the complainant – Jarnail Singh (while appearing as PW-1 on 07.11.2001) that he categorically admitted that “.....***Occurrence took place only 5 minutes which was witnessed by Kaka Khan.***”.

Thus non examination of witness Kaka Khan appears to be a serious flaw in the case of prosecution.

8. Next argument addressed by learned counsel for the appellants is that one witness Harjinder Singh, son of Shamsheer Singh, resident of village Dhaler Kalan, who is just neighbourer of complainant – Jarnail Singh, has not supported the case of the prosecution, as he failed to identify any of the accused, though he says that “.....***I received one pellet on my***

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left shoulder.”. Thus, learned counsel submits that not supporting the case of the prosecution, even by the neighbourer of the complainant – Jarnail Singh, who himself claims to be injured one, completely demolishes the case of the prosecution.

In response to this argument, learned State counsel submits that said witness appears to have been won-over by the accused/appellants and, thus, non supporting of the case by him, would not be considered as a serious defect in the case of the prosecution. Learned State counsel relies upon the statements of complainant – Jarnail Singh, who appeared on 07.11.2001 as PW-1, and again on 29.01.2003 as PW-6, as well as statement of Sukhdev Singh, who appeared as PW-8.

9. Learned counsel for the appellants then referred to the statement of Dr. Narinder Kumar (PW-11), who was posted as Medical Officer, Civil Hospital, Ahmedgarh, which says as under:-

“ On 23.5.2000, at 2.30 p.m. I medically examined Jarnail Singh son of Joginder Singh, aged 32 years, male, r/o village Dhaler Kalan, PS, Ahmedgarh and found the following injuries on his person:-

1- A lacerated wound measuring 1cm x .25cm on the back of right ring finger in its middle. The direction of wound was horizontal. Fresh bleeding was present, on cleaning the wound, the wound was surrounded by inflammatory swelling measuring 3cm x 3cm. Movements of right ring finger were restricted.

The weapon used was blunt and the said injury was kept under observation. The probable duration of injury was within 24 hours.

I have brought the original MLR register with me. Copy of the same, which is carbon one and was prepared

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in the same process is Ex. P27, which bears my signatures. The pictorial diagram showing the seat of injury is Ex. P28.

The above said patient was brought by C. Sohan Lal No. 406.

On the same day, at 3.00 p.m. I medically examined Harjinder Singh son of Shamsheer Singh, aged 28 years, male, r/o village Dhaler Kalan, brought by C. Sohan Lal and found the following injury on his person:-

- 1- An abrasion measuring .5cm x .25cm on the tip of right shoulder. The direction of wound was vertical. No bleeding was present. The wound was 5.5cm away from the tip of acromion. The wound was surrounded by inflammatory swelling 1cm x 1cm. Movements of right shoulder joint were not restricted.*

The said injury was subject to X-ray and the weapon used was blunt in nature and the duration was within 24 hours.

I have brought the original MLR register. Carbon copy of the MLR is Ex. P29 and pictorial diagram showing the seat of injury is Ex. P30.

On 20.1.2001 on police request Ex. PW9/H, I declared injury no. 1 on the person of Harjinder Singh simple in nature vide my opinion Ex. PW9/H/1. On the same day on the police request Ex. PW9/J, I declared injury no. 1 on the person of Jarnail Singh simple in nature vide my opinion Ex. PW9/J/1.

XX XXX by defence counsel

It is correct that I have mentioned that on the injury of Jarnail Singh, there was fresh bleeding and 'fresh bleeding' means that it was usually less than twelve hours old. It means the age of the injury was less than 12 hours. It is correct that possibility of injury on the person of Jarnail Singh being caused at friendly hand, cannot be ruled out because the direction of injury was horizontal. There was no injury found on the adjoining fingers of Jarnail Singh. The weapon of offence used was never shown to me by the police. The injuries on the person of Jarnail Singh and Harjinder Singh could be the result of any blunt weapon. Blunt weapon

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includes Sotti, Dang and even blunt side of sharp edged weapon. It is wrong to say that there was no injury on the persons of Jarnail Singh and Harjinder Singh and that I have mentioned the said injuries at the wishes of complainant and the police.”

10. Pointing out the injuries recorded by Dr. Narinder Kumar (PW-11), learned counsel for the appellants also referred to the statement of complainant – Jarnail Singh, wherein it is alleged by him that he was caught by all the accused and dragged out by holding his arms and legs. Learned counsel submits that from the medical evidence, this aspect has not been corroborated because injury suffered by the complainant describes only one injury that too on the right ring finger. Thus, learned counsel submits that if the allegation is of causing injuries by entering the house, then to drag him out from the house to the street, at least, requires corroboration with medical evidence or support from the statement of eye-witness Kaka Khan, to whom prosecution failed to examine. In other words, learned counsel submits that once dragging marks are not even noticed during medical examination, the allegation of dragging becomes highly doubtful. Therefore, story of entering the house with weapons and dragging the complainant in the street, thereby attracting the offence punishable under Section 452 IPC, loses its ground.

11. Moreover, this Court finds that in the statement of witness Sukhdev Singh (PW-8), who is an eye-witness, there is no mention of the allegation of entering the house and to drag out the complainant in the street. Another witness, Harjinder Singh (PW-7), has already failed to support the case of the prosecution. Thus, to the view point of this Court,

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there being no evidence, submission of appellants that the charge under Section 452 IPC, is not sustainable; finds a solid ground.

12. Learned State counsel again submits that case of the prosecution banks upon the statement of complainant – Jarnail Singh and Sukhdev Singh, therefore, statement of Harjinder Singh (PW-7) is without any importance.

13. For the convenience of the Court, examination-in-chief of complainant – Jarnail Singh, while he appeared as PW-6, is reproduced here-below:-

“ About two and half years back, I was present in my village. At about 11.00 p.m. I was sleeping in my courtyard. At that time some one knocked at the door of my house. I asked my servant Kaka Khan to see as to whom has come. Then Kaka Khan opened the door, from inside. I saw Mohinder Singh, Bhalinder Singh, Satnam Singh, Sarabjit Singh entering into my house at that time. One another unidentified person was also accompanying the above said four accused, but today said unidentified person is also present in the court alongwith other four accused. Immediately Mohinder Singh raised lalkara that I be taught a lesson for giving my land to some other person. Then all the accused started dragging me from my cot and they dragged me and took me out side my house forcibly towards the maruti car in which accused had come to my house. The registration number of said maruti car was PB-28-5300. At that time accused Bhalinder Singh was armed with rifle of .12 bore and then accused Bhalinder Singh fired gun shot in the air again said Mohinder Singh was armed with rifle and he fired gun shot in the air. Bhalinder Singh was also armed with pistol and he fired pistol shots towards the Chaubara of Shamsher Singh. In the meantime I raised alarm which attracted Sukhdev Singh, Harjinder Singh from my neighbourhood. Harjinder Singh and Sukhdev Singh started brick batting to rescue me from the hands of accused. Then all the accused sped away from there in the above said maruti car, leaving me at the spot. In the above said occurrence, accused caused injuries on my two fingers of right hand. Early in the morning I reported about this occurrence to panch Avtar Singh and Ranjit Singh.

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At that time Sukhdev Singh and Harjinder Singh were also accompanying me. Then I alongwith Avtar Singh, Ranjit Singh, Sukhdev Singh and Harjinder Singh went to police station, Ahmedgarh, to report the matter and on the way in village Kangan Wal police party met us. Then police recorded my statement Ex. PW6/A. I signed the said statement in its correctness. The motive behind the occurrence was that I had got land dispute with accused Mohinder Singh. The accused had come to my house at the time of occurrence with intention to kill me. On the next day, I was got admitted in CH. Ahmedgarh where I was medico legally examined. I identify the accused who are present today in the court.”

Similar examination-in-chief of witness Sukhdev Singh (PW-8) is also reproduced here-below:-

“ On the night intervening between 22 and 23 May, 2000, I was sleeping on the roof of my house. At about 12.00 mid-night, I heard noise marta-marta raised by Jarnail Singh, my neighbourer. Then I sat up and saw from the top of the roof that one maruti car of red colour was standing parked in front of the gate of house of Jarnail Singh. At that time I also saw Bhalinder Singh and Mohinder Singh, were standing near the above stated naruti car, while accused Satnam Singh and Happy and one another unidentified person were trying to put Jarnail Singh in the said maruti car forcibly. On seeing this, I started throwing bricks towards accused to save Jarnail Singh from the clutches of above said accused persons. On this, Bhalinder Singh aimed his pistol towards me and started firing. At that time accused Mohinder Singh, who was armed with double barrel gun fired two gun shots in the air. Then the above said accused persons ran away from there in the above said maruti car while leaving behind Jarnail Singh at the spot. Then on the next day early in the morning, I alongwith Jarnail Singh, Ranjit Singh and Avtar Singh went to report the matter to police station, Ahmedgarh. On the way, police party met us in the area of village Kanganwal. Jarnail Singh narrated the entire occurrence to the police in my presence. Statement of Jarnail Singh was also recorded by the police. Then police party came alongwith us to place of occurrence. Police also recorded my statement. Today I identify accused Mohinder Singh, Bhalinder Singh, Satnam Singh and Happy, who are present in the court. At the time of occurrence, when I threw bricks on the accused, the wind screen of the car of accused got damaged.”

14. This Court has deeply examined the statements of complainant – Jarnail Singh (PW-6) and eye-witness Sukhdev Singh (PW-8). The allegation of entering the house and then dragging the complainant, is mentioned only in the statement of complainant – Jarnail Singh. But Sukhdev Singh, another eye-witness is silent about the said allegation.

15. I have also seen the medical evidence, i.e. statement of Dr. Narinder Kumar (PW-11). From the details of injuries given by him, it can not be assumed that injured – Jarnail Singh had any scratch or other kind of injuries because of dragging. Thus, in the absence of any evidence, this Court finds it difficult to accept the allegation of dragging of the complainant/injured – Jarnail Singh (PW-6) from inside the house to the street side. Moreover, in the cross-examination, Dr. Narinder Kumar (PW-11) has categorically admitted that “.....*It is correct that possibility of injury on the person of Jarnail Singh being caused at friendly hand, cannot be ruled out because the direction of injury was horizontal. There was no injury found on the adjoining fingers of Jarnail Singh.*”. No injury was found on the adjoining fingers of Jarnail Singh. Said part of the evidence of Dr. Narinder Kumar (PW-11) has already been reproduced in the preceding part of this judgment.

16. By referring the medical evidence, even, it can be concluded that there is no definite opinion of the doctor of causing of injuries by the accused/appellants by use of firearm, as alleged by the prosecution witnesses.

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For the said purpose, reference of the evidence of Dr. Harpreet Singh (PW-14), who conducted X-ray examination and submitted his report, would also be relevant. As per deposition of Dr. Harpreet Singh (PW-14), '*no bony injury*' was found to have been suffered by injured Jarnail Singh. Even there was no pellet detected during X-ray examination of Harjinder Singh and the injury suffered by him was simple. Rather, it is deposed by said doctor that "*.....As per MLR, injury on the person of Harjinder Singh does not seem to be caused by fire-arm.*". For reference, statement of Dr. Harpreet Singh (PW-14), who conducted X-ray examination of injured persons, i.e. Jarnail Singh and Harjinder Singh, is reproduced here-below:-

" On 24.5.2000 when I was posted as Medical Officer, Civil Hospital, Malerkotla, I conducted X-ray examination of Jarnail Singh son of Joginder Singh, r/o Dhaler Kalan, Police Station, Ahmedgarh. On conducting X-ray right ring finger, I found no bony injury.

I have brought the original X-ray report, and the copy of the same is Ex. PW14/A, and the X-ray film is Ex. PW14/B.

On 26.05.2000, I also conducted X-ray examination of Harjinder Singh son of Shamsher Singh. On conducting the X-ray of right shoulder, I found no bony injury. The X-ray report of Harjinder Singh is Ex. PW14/C and X-ray films are Ex. PW14/D and Ex. PW14/E.

XX XX by defence counsel

The X-ray examination of Harjinder Singh was conducted on the basis of police request which was dated 26.5.2000. It is wrong to say that I have deposed falsely. During X-ray examination, no pellet was detected. I cannot say if any tatooing or blackening was found on the injury, on the person of Harjinder Singh. The injury on the person of Harjinder Singh was simple in nature. As per MLR, injury on

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the person of Harjinder Singh does not seem to be caused by fire-arm. I cannot say if at the time of X-ray examination, the wound of Harjinder Singh was already stitched or dressed or not, or whether any bleeding was present. No record of treatment of Harjinder Singh is presently available on the judicial file. It is wrong to say that I have deposed falsely.”

17. Learned counsel for the appellants has also referred to the evidence that appellant – Bhalinderjit Singh was having armed licence in his name and same has been produced on record as Ex.P13, by the prosecution, by examining Raj Pal, Clerk, Arms Licence, Office of SDM, Ghulla, who appeared as PW-16. Thus, knowing the fact that appellant – Bhalinderjit Singh is having licenced fire-arm(s), a false story is created and by committing delay in lodging of FIR & all the accused/appellants were forced to face prosecution. To substantiate this argument, learned counsel submits that as referred in the earlier submissions & with the help of medical evidence, there is nothing to assume that any of the injury was caused or suffered by use of firearm. Thus, use of firearm in the alleged incident is not proved in the present case and story of the prosecution is highly doubtful. Therefore, charge under Section 307 IPC is also not made out.

18. Learned counsel for the appellants further refers to the reports of Forensic Science Laboratory dated 20.09.2000 (Ex. P-31) and 09.11.2000 (Ex. P-32). As per report dated 20.09.2000 (Ex. P-31), .32 inch revolver is matched with the bullet/caliber of .32 inch. Relevant extracts of FSL Reports dated 20.09.2000 (Ex. P-31) and 09.11.2000 (Ex. P-32) says as under:-

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FSL Report dated 20.09.2000:

“ RESULT OF EXAMINATION

On scientific examination of the lead bullet marked B/1 contained in parcel ‘A’ it was found that, caliber of B/1 is .32 inch. Such bullets are normally fired from .32 inch revolver.”

FSL Report dated 09.11.2000:

“ RESULT OF EXAMINATION

No definite opinion can be given regarding firing of two .32 inch lead bullets marked B/1 and B/2 from .32 inch welbley Revolver No. A-97594, due to lack of sufficient individual characteristic marks on them.”

Referring to the said reports, with unproved fact of ‘use of fire-arm’ or ‘suffering of fire-arm injury’ by any of the injured, learned counsel for the appellants submits that allegation of use of fire-arm by the appellants stands nowhere, merely on the basis of imagination that someone who is possessed with fire-arm licence & firearm has fired the shot. Even in the present case, there is allegation of use of double barrel gun, but there is no recovery of such .12 bore gun or bullet, empty or pellets. Thus, the said allegation also loses strength.

Thus, while referring to the aforementioned aspects and documents, learned counsel for the appellants submits that once the charge of attempt to cause murder fails, conviction by way of impugned judgment cannot sustain qua other offence(s) also, i.e. under Sections 511, 336 and 149 IPC and 27/54/59 of the Arms Act.

19. To oppose the said submissions, learned State counsel argues that once injured witnesses are deposing and injuries available on the

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person of injured are proved by medical evidence, such explanation by defence is not sustainable and moreover weapon used in the incident has been recovered. Therefore, it cannot be said that accused/appellants have been falsely implicated.

20. I have examined these submissions thoroughly and find that as per case of prosecution, all the accused were either armed with fire-arms or with Soti, but surprisingly injured Harjinder Singh and complainant/injured – Jarnail Singh have suffered only one simple injury each on their person. Thus, naming and involving all the accused in the incident, seems to be unbelievable.

21. During the course of arguments, learned counsel for the appellants has also produced a photocopy of the certified copy of order dated 23.05.2000, passed on the next day of the incident, by the Civil Judge (Junior Division), Malerkotla, in a civil suit for permanent prohibitory injunction, titled as “Mohinder Singh v. Jarnail Singh and another”. The said civil suit was filed by appellant – Mohinder Singh against complainant – Jarnail Singh and his wife Harwinder Kaur. Said order dated 23.05.2000, says as under:-

“Present: Counsel for plaintiff: Sh. S.K. Aggarwal Adv.

Suit presented directly, as Ld. Addl. Civil Judge (Sr. Divn.), Malerkotla is on leave. Office report seen. Suit be registered. Notice of the suit and stay application be given to defendants-respondents for 7.6.2000 on PF.

2. Along with main suit, plaintiff-applicant has also filed an application u/O 39 rule 1 & 2 of CPC which is supported by copy of jamabandi for year 1995-96, copies of khasra-girdavri and copy of agreement regarding contract and

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duly sworn affidavit of plaintiff-applicant. Heard. Record perused. From the perusal of the record, prima facie case is made out in favour of plaintiff-applicant and parties are directed to maintain status-quo regarding possession over the suit property, till the date so fixed.

3. *This order of mine is subject to compliance to order 39 rule 3 of CPC by the next working day, failing which, stay shall stand vacated.*

*Sd/-
Civil Judge (Jr. Divn),
Malerkotla.*

Dated:- May 23rd, 2000”

Without doubting authenticity of the said document, this Court relies upon the same and takes it on record by marking it as ‘Mark-A’. Registry is directed to tag the same at an appropriate place in the paper book.

Learned counsel for the appellants submits that as per said order, Civil Court had ordered the parties to maintain status-quo regarding possession over the suit property, which as per version of the FIR is said to be bone of contention of the grudge between the complainant and appellant – Mohinder Singh. Learned counsel further submits that even said stay order was confirmed subsequently vide order dated 25.08.2000 (Ex. D-1), wherein it is recorded that status-quo order dated 23.05.2000 stands confirmed.

Learned counsel for the appellants, thus, submits that passing of status-quo order, dated 23.05.2000, by the Civil Court proves that appellant – Mohinder Singh was in lawful possession of the land in question and just to oust him, complainant – Jarnail Singh had hatched a

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conspiracy and got registered a totally false case against appellant – Mohinder Singh and his friends.

22. This Court is of the considered view that the appellants cannot derive any benefit from the status quo order dated 23.05.2000, passed by Civil Court, vis-a-vis happening of the incident, in present case.

From perusal of the status-quo order dated 23.05.2000, passed by Civil Court, it is evident that civil suit filed by appellant – Mohinder Singh, against the complainant party, i.e. Jarnail Singh and his wife, was presented on 23.05.2000 itself, whereas the incident has occurred on the intervening night of 22/23.05.2000. Thus, it cannot be assumed with certainty that only with a motive to oust the appellant – Mohinder Singh from the land in dispute, a false case was registered at the behest of complainant – Jarnail Singh, against the appellants. Accordingly, plea of possession of appellant – Mohinder Singh etc. over the disputed land cannot be said to be established on the day of incident because, status quo order is passed by the Civil Court on the next day of the incident.

23. Considering all the submissions addressed by learned counsel for the parties, mentioned here-above, and the evidence adduced by the prosecution, I have reached to the conclusion that there is no definite evidence available with the prosecution by which charges against the appellants could be said to have been proved beyond shadow of reasonable doubt. There is complete de-linking in the oral evidence viz-a-viz medical evidence and the circumstances narrated by the prosecution witnesses.

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24. Thus, appellants are entitled for the benefit of doubt because of non-proving of the charges beyond shadow of doubt. Consequently, by setting aside the impugned judgment of conviction and order of sentence dated 11.06.2004, passed by learned Trial Court, **both the appeals, i.e. CRA-S-1278-SB-2004 and CRA-S-1309-SB-2004, are allowed** and the appellants are discharged of the charges levelled against them.

25. Appeals stand disposed of.

26. Registry is directed to send back original lower court record alongwith a copy of this judgment to the learned Trial Court.

(SANJAY VASHISTH)
JUDGE

March 22, 2023

Pk Kapoor

Whether Speaking/Reasoned: YES/NO
Whether Reportable: YES/NO-