

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

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**1) CRA-S-2501-SB-2007 (O&M)
Decided on : 28.02.2023**

Jaswinder Singh

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

2) CRR-730-2008 (O&M)

Gurpreet Singh

... Petitioner(s)

Versus

State of Punjab and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. N.K. Verma, Advocate
for the appellant(s) (in CRA-S-2501SB-2007).

None for the petitioner(s) (in CRR-730-2008).

Mr. Anmol Singh Sandhu, AAG, Punjab.

SANJAY VASHISTH, J.

1. This judgment shall dispose of CRA-S-2501-SB-2007 and CRR-730-2008, as they both are interconnected matters and are arising out of the same judgment of conviction and order of sentence dated 04.12.2007. However, the facts are being extracted from CRA-S-2501-SB-2007.

2. Appellant – Jaswinder Singh, then aged 33 years, has filed present appeal against the judgment of conviction and order of sentence dated 04.12.2007, passed by the Ld. Additional Sessions Judge, Fast Track Court, Fatehgarh Sahib, in Sessions Case No.22-T of 2003/2007, arising out of FIR No.127, dated 22.09.2003, under Section 307/34 of IPC, registered at

Police Station Bassi Pathana. Accused-appellant was held guilty for commission of offences punishable under Sections 307/34 of IPC, and was ordered to undergo sentence(s), as detailed in the following table:

Name of Convict	Under Section	Sentence	Fine	In Default
Jaswinder Singh	307 r/w 34 IPC	02 years RI	Rs. 2000/-	3 months RI

2. Accused (i) Jaswinder Singh, and (ii) Kirpal Singh, faced the proceedings in case FIR No.127, dated 22.09.2003, under Section(s) 307/34 of IPC, registered at Police Station Bassi Pathana, Distt. Fatehgarh Sahib. However, as per the note given on the preface of the impugned judgment, case of accused Kirpal Singh (main accused) was already sent to the Army Authorities for trial vide order dated 19.02.2004. Thus, trial in the present case was conducted against one accused i.e. Jaswinder Singh in Sessions Case No.22-T of 2003/2007.

3. Facts emerging from First Information Report (F.I.R.) are that on the statement of injured Gurpreet Singh s/o Susander Singh, r/o Balari Kalan, P.S. Sirhind, was recorded on 19.09.2003 that *“he along with his brother Baldev Singh and relative Sodagar Singh had gone to village Main Majri to see the fair and at about 9.30 p.m., Jaswinder Singh of his village came to him and took him to inside on the pretext of some talk. Jaswinder Singh was under the influence of liquor at that time and his brother Kirpal Singh, who has come on leave from Military was also standing there. Jaswinder Singh then caught hold of him and Kirpal Singh gave knife blow which hit on his neck. Complainant Gurpreet Singh then raised alarm “Marta Marta”, which attracted his brother Baldev Singh and his relative Sodagar Singh. The accused then ran away from the spot. Both Baldev*

Singh and Sodagar Singh took him to Civil Hospital, Fatehgarh Sahib for treatment. The motive behind the occurrence was that Jaswinder Singh every day was going near the house of complainant under the influence of liquor and he was stopped from doing so and due to this reason, they caused injuries to him. Beneath the said statement ASI Pritpal Singh made endorsement and sent the same to police station for recording of the FIR which was recorded by ASI Pakhar Ram.”.

4. After completion of investigation, final report under Section 173 Cr.P.C. was submitted to the Court of Area Magistrate. Thereupon, case was committed to the Court of Sessions *qua* both the named accused in the FIR i.e. Jaswinder Singh and Kirpal Singh. However, on moving an application for transfer of the case of accused Kirpal Singh to the Army Authorities, same was allowed and was forwarded to the Army Authorities for its trial. This way, charges were framed against accused-appellant Jaswinder Singh under Section 307 r/w 34 of IPC on 29.09.2004.

5. To prove its case, prosecution examined as many as total 10 witnesses (PW1 to PW10). Injured Gurpreet Singh appeared as PW1. Examination-in-chief of Gurpreet Singh (PW1) is reproduced herein-below:-

“On 19.9.2003, I alongwith my brother Baldev Singh, and our relation Saudagu Singh went to see fair at Vill. Anandpur Kalaur. At about 9.30 p.m. at night, Jaswinder Singh accused present in court came to us and he had taken liquor. He asked me to come near to him as he wanted to say something to me. He took me inside and asked me that I was playing mis-chief in the village. He grappled me and Kirpal Singh his brother who is an Army man is with him at that time. Kirpal Singh brother of accused took knife and gave blow on left side on my shoulder below the neck after taking the same from his pocket. I raised

alarm on receiving the injury. But both accused Jaswinder Singh and Kirpal Singh by felling me ran away from the spot. My brother Baldev Singh and our relation Saudagar Singh came to me and care to me. Both have seen this occurrence. I was brought to Civil Hospital F/Sahib. And thereafter I was referred to PGI Emergency Chandigarh. I remained admitted at PGI for 10 days. I was medically examined at PGI. The accused already used to talk rubbish under influence of liquor I always stopped them from doing so. The accused were offended with me on account of this and gave injuries to me. My statement was recorded on 20.9.2003 by police at PGI. My statement was read-over to me and thereafter I signed the same by admitting the same as correct. The same is Ex.P-A.”

Thereafter, said witness was cross-examined, wherein, in the very first line, he deposed as under:-

“No talk of accused took place with me at the time of this occurrence. Jaswinder Singh accused had not inflicted any injury upon me. Kirpal Singh accused was holding the knife in a thaas by him with hand. He gave injury to me in a thrust condition to me. I cannot tell the time exactly when I reached the hospital. Jaswinder Singh accused slipped in the darkness and he ran towards western side from the place of occurrence. Lights were glowing on the place of the occurrence and tubes of electricity were glowing at the place of occurrence. There was none other present on the spot other than myself and my brother Sodagar and Baldev Singh.”

6. On similar lines, Sodagar Singh, appearing as PW2, and Baldev Singh, appearing as PW-4, also deposed. Broadly speaking, all the witnesses have deposed that accused-appellant Jaswinder Singh, took him inside, and thereafter, accused - Kirpal Singh (his brother), who was in the Army, gave him a knife blow on the left side of the shoulder below the neck,

after taking out the same from his pocket.

7. Learned counsel for the appellant argues that he has two fold submissions to address before this Court, i.e.:-

- (i) There is no evidence with the prosecution to establish that appellant was sharing common intention with main accused Kirpal Singh, because he had no advance knowledge that Kirpal Singh has knife in his pocket, and same was with the purpose to cause murder of Gurpreet Singh. To substantiate said argument, learned counsel for the appellant submits that injured himself has deposed that Kirpal Singh took out the knife from his pocket, and thereafter, gave blow on left side of the shoulder below the neck.

Since the appellant is charged under Section 307 r/w 34 of IPC, there is no evidence put to the appellant in his statement recorded under Section 313 Cr.P.C. regarding sharing of common intention.

Thus, it is submitted that in the absence of any such evidence, appellant cannot be convicted in the present case for the act done by the main accused i.e. Kirpal Singh.

- II. Second argument addressed by learned counsel for the appellant is that main accused – Kirpal Singh, who was charged under Section 307 of IPC, was not even tried by the Military Court by conducting Court Martial proceedings. To prove this, documents i.e. Ex.D3 & Ex.D4 as well as document Mark D1 & Mark D2 were produced on record by the appellant in his defense evidence.

In this regard, Ld. Trial Court has recorded following finding:-

“8. The learned defence counsel argued that the accused was innocent and they were fabricated in a false case in order to settle their previous enmity. The learned defence counsel firstly argued that the occurrence was totally false and the same was also held in the decision given by the Army court, whereby they acquitted Kirpal Singh of the charges of offence under section 307 of the Indian Penal Code leveled against him. He claimed that the Army authorities had informed the court with regard to the fact that Naik Kirpal Singh was not present at the place of occurrence and no occurrence had ever taken place and he has been falsely implicated. It was claimed that if the occurrence had not taken place, there was no question of grappling of the present accused with Gurpreet Singh or of holding him while Naik Kirpal Singh gave him injuries with a knife. The learned defence counsel has placed reliance on the findings of the Army authorities declaring the prime accused Kirpal innocent, Singh who is alleged to have given a stab with a knife on the neck of Gurpreet Singh. The defence Counsel has placed reliance on the letter dated /October4,2004received from the commanding officer submitting that the case may be treated as closed as necessary disciplinary action has been initiated. The defence counsel has also placed reliance on the photo copies of the letter dated 10 December, 2004 passed by Sh.A.K. Sharma, commanding officer as well as investigation report mark D1 and mark D2.

From all the three documents i.e. Ex.D3 and Ex.D4 as well as mark D1 and mark D2, it is not made out that the trial has been conducted by the Army authorities. Kirpal Singh, who is alleged to have given stab wound,

was not tried by court Martial conducted by Military court. Only a preliminary investigation seems to have been conducted and on the basis of that the commanding officer has closed the case by finding that the occurrence has not taken place. None of the witnesses cited in the police challan was either examined by them or their affidavits were obtained by the Army Authorities before coming to the conclusion that the occurrence has in fact not taken place. Affidavits of Jaswant Singh son of Nachhatter Singh, Dalbara Singh son of Sohan Singh and Maniit Singh son of Atma Singh were only submitted there, but none of them stated in defence that Naik Kirpal Singh was not present at the scene of occurrence. Even otherwise, none of the police witnesses, as cited in the report under section 173 Cr'.P.C., was either summoned or examined. It is opined in report by Army that the case has been falsely implicated on account of land dispute, although nothing on the file has produced by defence to show that there existed a land dispute between the family of the complainant and the | accused. Even otherwise, no doubt, document mark D1 and D2 were not proved by the defence by examining any witness from the 11 Sikh Army unit yet even if they are taken into consideration, they do not reveal that any trial commenced against Naik Kirpal Singh and after examining of the witnesses, who would have seen the occurrence, he was acquitted of the charges leveled against him. Mark D1 and D2 only showed that disciplinary proceedings were initiated and on the basis of preliminary enquiry, the case was closed. Moreover, this court is not bound by the verdict of the Army authorities although there is nothing on record to show that the Army Court tried Kirpal Singh and acquitted him. It is merely the commanding officer of the unit, who had initiated the preliminary enquiry and there

is no proof of any trial by the Army court. Thus, the dropping of the charge against Kirpal Singh does not affect the present case and the same has to be view independently on the basis of evidence on record. Dropping of the charges against Naik Kirpal Singh, one of the co-accused, does not automatically give an inference that the accused present in the court is innocent.”

8. Upon this, learned State counsel argued to clarify in clear terms, as to whether main accused Kirpal Singh was ever proceeded with the trial or the proceedings have been dropped for the alleged act done by him, but learned State counsel Mr. Anmol Singh Sandhu, AAG, Punjab, neither succeeded in producing any document nor was in a position to prove that Kirpal Singh has ever been tried or has been prosecuted in the Court Martial proceedings by the Army Authorities.

9. In the given facts and circumstances, learned counsel for the appellant argues that when prime accused, against whom allegations of taking out of knife from the pocket, and then causing injury as are alleged, but he has not been prosecuted and convicted, his accompish, like appellant in the present case, cannot be burdened with the liability of punishment prior to the awarding of punishment to the main accused i.e. Kirpal Singh in the present case. While submitting so, learned counsel for the appellant relies upon the judgment of Hon'ble Apex Court in **Central Bureau of Investigation v. Akhilesh Singh**, (Crl. Appeal No.727 of 1997, D/d. 8.12.2004), Law Finder Doc Id # 79552, and refers to paragraph No.5 of the said judgment, which says as under:-

“5. The police recovered some bullets from the place of

occurrence and also from the dead body of deceased Syed Modi. The police also recovered a point 38 bore revolver pursuant to the confession made by Amar Bahadur Singh. A point 9 mm pistol was recovered at the instance of accused Bhagwati Singh @ Pappu. On the basis of the material available with the investigating agency, they filed a charge sheet against the respondent. It is interesting to note that the original accused Dr. Sanjay Singh and Mrs. Amita Kulkarni were implicated as accused, but both of them were discharged by an order passed by the Sessions Judge and that order of discharge was challenged by the State before the High Court unsuccessfully. A Special Leave Petition also was filed before this Court and that too ended in dismissal on 27.1.1994. Therefore, the very basis of the alleged conspiracy by the respondent with Dr. Sanjay Singh lost its substratum. Admittedly, the respondent was not present at Lucknow when the incident happened. Respondent was implicated in the case on the basis of the alleged conspiracy between himself and the original accused Dr. Sanjay Singh. There is no other material placed before the court to prove the complicity of the respondent. Mr. Ram Jethmalani, learned Senior Advocate appearing on behalf of the respondent drew our attention to the various reasons given by the learned Single Judge for passing the impugned order. There was no direct evidence to show that the respondent had supplied the weapons and rendered assistance to the assailants in carrying out the common object

of killing Syed Modi. Had the conspiracy charge been established, at least some of the acts and conduct of the respondent could have been made admissible under the provisions of Section 10 of the Evidence Act. Once the main accused, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged, and when that matter had attained finality, the learned Single Judge was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent.”

Learned counsel also relies upon another judgment of Hon’ble Orissa High Court, rendered in **Santosh Kumar Maity v. State of Orissa**, (CRLMC No.632 of 2006, D/d. 4.7.2006), Law Finder Doc ID # 275176, and refers to paragraph No.5, which says as under:-

*“5. Heard counsel for the parteis at length. To appreciate the arguments advanced, this Court also went through the judgment passed in S.T. Case No.54/166 of 2004/2001, and other relevant materials and the evidences. Law as laid down by the Supreme court in the case of **B.S. Joshi and others v. State of Haryana and others, (2003) 25 OCR 99: 2003 (II) OLR (SC) 101**, quashing of cognizance in respect of non-compoundable offences, in giving circumstances is permissible by the High Court in appropriate cases. In the case of **Sridhar Pani v. State of Orissa and another, 2003 (II) OLR 238: (2003) 25 OCR 447**, this Court has also held that it the Court feels that continuance of a criminal case would amount to abuse of process of law, the same can be quashed invoking inherent jurisdiction. Similar view is also expressed by this Court in the case of **Kanhu Behera v. State of Orissa, 2005 (II) OLR 386**. giving conscious thought to the facts of the present case in the*

*touch stone of the aforesaid decisions, this Court feels that the prosecution has totally failed to substantiate their case even against the main accused, i.e., the son of the presnet petitioner, Sidheswar Maity, inasmuch as neither the eyewitnesses or relatives nor any other independent witnesses supported the prosecution case. In fact no eye-witness was examined by the prosecution. The Sessions Court after threadbare discussion of the entire evidence and on being satisfied that the prosecution has failed to establish the case against the said accused was pleased to acquit him and the said order has attained finality. Perusal of the materials of U.D. case and other materials, also reveal that no specific allegations have been made against the present petitioner, who is the father and an old man. No overt act has been attributed nor any nexus has been found out between the present petitioner and the alleged commission of offences. Thus, this Court is satisfied that no prima facie case against the petitioner for commission of the alleged offences has been made. **The principal accused having already faced trial and having been acquitted, this Court feels that continuance of the criminal proceedings against the petitioner after lapse of six years would undoubtedly amount to abuse of the process of law inasmuch as there is bleak chance of conviction and there is every likelihood that the case will end in acquittal.***

10. With the help of aforesaid judgments, it is argued by learned counsel for the appellant that once main accused is not punished for the act done by him, then the appellant cannot be held liable for the said act/injury in isolation.

11. To counter the arguments of learned counsel for the appellant, learned State counsel has also relied upon the evidence of the defense and submits that there is eye-witness account corroborates the statement of each

and every witness with the medical evidence available on record. Thus, appellant has to face the consequences of his being in the company of his brother i.e. main accused – Kirpal Singh. Thus, there is no substance in the appeal, and same is liable to be dismissed.

12. I have considered the submissions made by learned counsel for the parties, and carefully examined the record by reading the statements of eye-witnesses, and the medical evidence.

13. First of all, I find substance in the argument addressed by learned counsel for the appellant that without there being any punishment to the main accused, who otherwise is admittedly main assailant, his accomplice like the appellant in the present case, cannot be burdened in isolation with the punishment of imprisonment. Neither there is any material on record to show that any punishment has been awarded by any competent Court of law to main accused – Kirpal Singh, nor any material is produced by learned State counsel to prove the fact that submissions of appellant as recorded by Ld. Trial Court *qua* accused – Kirpal Singh, are incorrect. Learned counsel for the appellant has already relied upon the judgment of Hon'ble Apex Court, though said judgments deals with a situation where main accused has been acquitted, but in principle the Hon'ble Apex Court has held that there is no point in continuing proceedings *qua* other accused, once no material is found for the main accused.

Thus, relying upon the judgments cited by learned counsel for the appellant, and the arguments addressed by Ld. Trial Court and recorded in the impugned judgment, this Court is of the view that on the issue of liability of the punishment, appellant cannot be treated different to the main

accused, and thus, cannot be subjected to discrimination by awarding punishment only to him.

Therefore, applying the principle of parity, appellant cannot be put at disparity, especially, considering the act/role done by main accused – Kirpal Singh.

14. Otherwise also, there is a serious doubt of sharing of common intention by the appellant with main accused – Kirpal Singh. There is no material available on record to hold that appellant was already having knowledge that Kirpal Singh is keeping knife in his pocket, that too for the purpose of causing murder of the injured Gurpreet Singh (PW1).

Thus, for the act done by main accused – Kirpal Singh, without there being a sound evidence of prior knowledge, as discussed above, appellant should not be held guilty.

15. There is another aspect that appellant is charged in specific only under the charge of sharing common intention for attempt to murder, and therefore, was charge-sheeted only under Section 307 r/w 34 of IPC. Prosecution has failed to put any material or the evidence while recording statement of the appellant under Section 313 Cr.P.C. referring therein the evidence regarding sharing of common intention by the appellant and then making attempt to cause murder.

Thus, in totality of circumstances available on record; relying upon the judgments cited by learned counsel for the appellants; this Court considers it appropriate to allow present appeal, and consequently to acquit the appellant of the charges.

Accordingly, judgment of conviction and order of sentence dated 04.12.2007, passed by Ld. Trial Court, are hereby *set aside*, and

consequently, **appeal is allowed** by acquitting the appellant from all the charges levelled against him.

Appeal stands disposed of.

CRR-730-2008 (O&M)

So far as, CRR-730-2008 is concerned, petitioner herein prayed for modification of order of sentence dated 04.12.2007, by enhancing of sentence awarded to accused-respondent No.2.

There is no representation on behalf of the petitioner, however, a written request for an adjournment has been made. Since the main appeal has been allowed and the accused-appellant Jaswinder Singh (respondent No.2 herein) has been acquitted from all the charges levelled against him, nothing survives in present criminal revision petition, and same stands disposed of, as having been rendered infructuous.

Pending criminal miscellaneous application(s), if any, are also disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

February 28, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No