

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-227-SB-2003 (O&M)
Reserved on: 19.07.2023
Pronounced on: 20.07.2023

Darshan Singh & others

... Appellant (s)

Versus

State of Punjab

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: - Mr. R.S. Cheema, Sr. Advocate with
 Ms. Sumanjit Kaur, Advocate and
 Mr. Satish Sharma, Advocate
 for the appellant(s) except appellant no.4.
 Mr. K.S.Dadwal, Advocate for appellant no.4.

Mr. Karunesh Kaushal, AAG, Punjab.

Ms. Bhagyashri Jain, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
130	20.9.1996	Mukerian	148/397/354/342/365/448/452/149/1 20-B IPC and 25/27 Arms Act

Sessions	2/FTC/1997/2002, Additional Sessions Judge, Hoshiarpur
Case No.	Date of decision: 14.01.2003

1. Challenging the judgment of conviction and order of sentence, all the
 convicts had come up before this Court by filing the present common

appeal. During the pendency of the appeal, Ramesh Chander, Joginder Singh, Ashok Kumar, Om Parkash, and main accused Gobind Dass, appellants no.8 to 11 and 13, respectively, have expired. Thus, appeal *qua* appellants no.8 to 11 and 13 stands abated.

2. The surviving appellants were convicted and sentenced as under: -

<u>S.No.</u>	<u>Accused- Appellant No.</u>	<u>Conviction U/S</u>	<u>Sentence</u>
1.	1 to 7 and 12	148 IPC	RI for 1 year
		120-B IPC	RI for 1 year
2.	Appellant No.1 & 12	397 IPC	RI for 7 years + Fine of Rs.2000/- and in default, RI for two months.
		365 IPC	RI for 3 years + Fine of Rs.1000/- and in default, RI for one month.
		342 IPC	RI for 6 months
		452 IPC	RI for 3 years + Fine of Rs.1000/- and in default, RI for one months.
		448 IPC	RI for 6 months
		379 IPC	RI for 1 year
		427 IPC	RI for 1 year
3.	Appellant No.2 to 7	397 r/w 149 IPC	RI for 7 years + Fine of Rs.2000/- and in default, RI for two months.
		365 r/w 149 IPC	RI for 1 year + Fine of Rs.1000/- and in default, RI for one month.
		342 r/w 149 IPC	RI for 6 months
		452 r/w 149 IPC	RI for 3 years + Fine of Rs.1000/- and in default, RI for one month.
		448 r/w 149 IPC	RI for 6 months
		379 r/w	RI for 1 year

		149 IPC	
		427 r/w 149 IPC	RI for 1 year

3. The prosecution’s case is that on the intervening night of Sept. 19/20, 1996, in the area of Thakurdwara, Jandwal, around 50-60 persons trespassed into the property of the complainant, committed robbery and forcibly took away her minor daughter. At that time, the assailants were armed with double-barrel guns, *dangs*, etc. They also forcibly entered the premises, on which the complainant claimed her husband to be a licensee and having cultivating possession. They also caused injuries to the person of a PW-3 minor girl and took away the paddy in tractor-trolleys.

4. The incident was of 19.09.1996, and the alleged detainee had returned to her home on 22.09.1996 and apprised her mother that she was slapped and beaten up during the custody. Her statement was also recorded under Section 164 CrPC. The investigator recorded that most of the property was recovered, a medical examination of the alleged detainee was conducted, and some accused were also arrested. After completion of the investigation, the SHO of the concerned Police Station launched prosecution against thirteen accused, including the appellants, by filing a report under Section 173 CrPC. Vide order dated 03.10.1997, the Sessions Court (Additional Sessions Judge, Hoshiarpur) framed charges against all the 13 accused for the commission of offenses under Sections 397, 365, 342, 452, 323, 448, 379, 427 read with Section 149 and 120-B IPC. The accused pleaded not guilty and claimed trial.

5. The prosecution examined the complainant Surinder Kaur as PW-2, an eye witness, and her minor daughter as PW-3, who was one of the primary victims, apart from Dr. V.P. Singh as PW-1 and other formal witnesses. However, the prosecution did not examine Gurbax Singh, husband of Surinder Kaur, who allegedly claimed to be in possession of the property.

6. In their statements under Section 313 CrPC, the accused denied the prosecution's case. The accused provided the revenue record regarding the tubewell connection through DW-1 Om Prakash to show that the complainant party was not in possession of the alleged area.

7. Vide judgment dated 14.1.2003, the Sessions Court accepted the prosecution version, convicted all the accused, and sentenced them, as captioned above.

8. I have heard learned senior counsel appearing on behalf of the appellants-accused and learned State's counsel and gone through the record.

9. The main material witness, in this case, is PW-2 Surinder Kaur, who at that time was a middle-aged lady, was married to Gurbax Singh, and was mother of PW-3, the alleged minor abducted victim. She has testified that she resided in the *Thakurdwara* for the last seven years, and there were residential rooms in that Dera given to them by accused Gobind Dass (since expired on 11.3.2004). She further stated that *Girdawari* entries regarding that land were being entered in her husband's name, Gurbax Singh, for the last 7/8 years. Even the electric motor connection was in her husband's name, and they were selling their produce through commission agents. She produced such receipts issued in her husband's name as Marks 'A' and 'B.' She further stated that on 19.09.1996, at midnight (the intervening night of 19/20.9.1996), about 50-55 people, including the appellants-convicts, who were present in Court, entered their premises. She further stated that she could even identify the other people if produced. But she did not know their names. She stated that Om Prakash and Parkash were armed with rifles, and the other accused were armed with *sharia* and *kirpans*. (Though Om Prakash was convicted, Parkash was not arraigned as an accused). They entered their house forcibly and removed their household articles, including beds, almirah, sofa-set, etc., in tractor-trolleys and also removed cash and jewelry. Her husband was locked and confined in a room. At about three in the night, the accused took away their minor daughter (PW-3) in a car. They

also made the complainant sit in the car, but she did not agree to sit with them. At her request, they allowed her to go. After the said incident, she went to the cattle shed of the *Dera*, where her sons were present. After that, the accused took away the paddy crop by harvesting it through combine to a different *Thakurdwara*, which falls in the territorial area of Himachal Pradesh. She had filed a complaint Ex.PB to the concerned Dy.SP in that regard. She further stated that her daughter returned home after four days.

10. In her cross-examination, PW-2 Surinder Kaur admitted that in her complaint, she had not mentioned that they had been cultivating the land for the last 7/8 years and also about the motor connection in their name. She further admitted that there was no mention of harvested crops sold to commission agents. She also stated that in the complaint, she had not mentioned the names of the accused, and she only mentioned that 50-52 people were there. She was confronted with the complaint in which the facts about the household articles being taken away were not mentioned. Regarding the abduction of her daughter, she stated that the police had brought her back after four days of the occurrence.

11. The abducted female child, who at the time of her statement recorded on 26.10.1999, stated her age as twenty years, which means that on the date of occurrence, i.e., 19.9.1996, she was around seventeen. She was examined as PW-3. At the time of recording her statement, she was married. She testified that at that time, she resided with her parents at Thakardwara, Jandwal. On 19.9.1996, around 50-60 people armed with *kirpans*, *dang*, rifles and iron bars, etc., came and knocked at their doors, and then, Baba Gobind Dass, accused no.13 (since deceased) entered the room and started throwing away the household articles including almirah, fridge, double bed, T.V., etc. out of the house and locked her father in a different room. In her examination-in-chief, she stated that they did not do anything to her mother, but she (minor daughter) was dragged towards the car and taken away by Baba Gobind Dass, along with others. Her eyes

were tied with a *parna*. They took her to a room where Gobind Dass gave 10/12 slaps to her and threatened that they should vacate their land. They also gave her beatings in the room. After three days, i.e., on 22.9.1996, they brought her back in the car after tying her eyes with a cloth and dropped her at some distance from Mansar, from where she went to Village Mansar, where in-laws of her brother were residing, who brought her to Thakardwara. She stated that she was kept in a small room that had doors and windows but could not tell its location. In her cross-examination, she admitted that her father had been implicated in some cases, which were going on between her father and Baba Gobind Dass (since expired). Prosecution examined PW-1 Dr. V.P. Singh, who had medically examined PW-3 and found (i) one abrasion 2.5 cm x 2 cm over her left knee joint; (ii) complaint of pain on the back in the infra scapular region, but no external mark of injury; (iii) complaint of pain in breast, but found no external mark of injury.

12. PW-3, the minor daughter, stated that when she was dragged towards the Maruti car, they had tied her eyes with a *parna*. They took her to a room where Gobind Dass gave 10/12 slaps to her. However, PW-1 Dr. V.P. Singh, who had examined her, did not find any injury or abrasion on her cheeks to corroborate such slaps. It was not one or two slaps which would have left no impact on her. Ten-twelve slaps inflicted by a grownup man certainly would have left some impact on her cheeks. Moreover, her examination had taken place on the third day of such alleged slapping, as such the injuries having been healed in process of time, is also ruled out. In her statement, she did not mention about any hit on her breast, as such, when she complained of pain in her breast, then that pain had nothing to do with the incident in question. Similarly, she had referred to injury in infra scapular region, but no corresponding injury was found in that region and thus, that injury is not linked with the incident in question. Regarding injury no.1 i.e., abrasion of 2.5 x 2 cm on left knee joint, she did not say that she had fallen down or beaten in that portion. Given the above, no injury of PW-3 can be attributed to any of the accused.

13. In addition to the absence of corroboration from medical evidence, there are material contradictions and improbabilities in the evidence of material witnesses, i.e., PW-2 and PW-3. Surinder Kaur, PW-2, the mother of PW-3 minor witness, stated that the accused had dragged her daughter and made her sit in a car, and she (PW-2) was also dragged to sit with them in the car, but she did not agree and requested them to let her go, to which they agreed and allowed her to go. Her version is highly improbable. It is hard to believe that PW-2 Surinder Kaur, who at the time of the alleged incident was more than 50 years of age, would tell the accused persons to leave herself and not her young daughter, who was barely seventeen, and was in the blossom of her life. Apart from this unusual conduct of PW-2 Surinder Kaur, there is a material contradiction in the versions of PW-2 and PW-3. Although PW-2 Surinder Kaur had stated that she was also dragged and made to sit in the car, PW-3, the minor daughter, had explicitly stated that the accused did nothing with her mother. This fundamental contradiction in the versions of the two main witnesses is so material that it hits at the credibility of the main prosecution witnesses, and consequently no reliance can be placed on these portions of their testimony.

14. There is another aspect of the matter. As per PW-3, the minor daughter was abducted and kept in a room from the early morning of 20.9.1996 to 22.9.1996, but she was silent during this time. Where did she go to answer the call of nature? Who provided her with water and food? The doctor who examined her did not notice any deficiency of food or water in her body. She did not allege anything else and thus, there was no motive for her abduction.

15. While cumulatively analyzing and appreciating the evidence of PW-2 Surinder Kaur and PW-3's minor daughter, the only possible view is that their testimonies do not lead to any inference that an of the surviving convict committed any kind of offence. The story of the abduction of PW-3 appears to be false and concocted to rope in the appellants accused; thus, no reliance can be placed on their contradictory versions. Strangely, the

prosecution did not examine Gurbax Singh, husband of the complainant, who was bolted inside the room as well as other formal witnesses.

16. As far as the impugned judgment is concerned, there is no discussion on the above-mentioned aspects. The judgment is the reproduction of the prosecution evidence without appreciating the credibility of witnesses in the background of ground realities and contradictions. Although learned counsel appearing on behalf of the appellants has raised various other points, including the fact that the place of the incident being village fields; there was no proper source of light at the time of the alleged incident, the Moon's position was waxing crescent, and it was 6.43 days old, and it was tough to identify the appellants-accused in the crowd of about 50-60 accused. However, the aforesaid conclusion points out that the foundations of the prosecutions' case are weak, and the contradictions and improbabilities are sufficient to give the convicts benefit of doubt, and thus there is no need to go into these additional arguments.

17. Given above, this Court finds that the prosecution has failed to prove its case beyond a reasonable doubt, and accordingly, the judgment of conviction is set aside, the accused are acquitted, and bail bonds furnished by the appellant-accused are discharged.

(ANOOP CHITKARA)
JUDGE

July 20, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No