

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Cr. Appeal-S-3331-SB of 2017 (O&M)
Date of Decision: 01.06.2023

Rajvir Singh and another ... Appellants

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. R.S. Athwal, Advocate,
for the appellants.

Mr. Alankar Narula, Assistant Advocate General, Punjab.

MANISHA BATRA, J.

1. The aforementioned appeal has arisen out of judgment of conviction and order on quantum of sentence both dated 22.08.2017 passed in Sessions Case bearing CIS No.98 of 2015 titled as *State v. Jaivir Singh alias Deepu and another*, registered vide FIR No.77 dated 02.12.2013 under Sections 307, 323, 324, 148 and 149 of IPC at Police Station Garhdiwala, District Hoshiapur, Punjab whereby accused Jaivir Singh and Rajvir Singh were acquitted by the Court of learned Additional Sessions Judge, Hoshiarpur for commission of offence punishable under Section 307 of IPC but were held guilty and convicted under Sections 324 and 326 of IPC. They were sentenced to undergo rigorous imprisonment for a period of three years for commission of offence punishable under Section 326 of IPC and were directed to pay a

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fine of Rs.15,000/-. In default of payment of fine, they were sentenced to undergo rigorous imprisonment for a period of two months. The accused were further sentenced to undergo rigorous imprisonment for a period of one year for commission of offence punishable under Section 324 of IPC. Feeling aggrieved from the findings of their guilt for commission of offences punishable under Sections 324 and 326 of IPC, the accused Rajvir Singh and Jaivir Singh preferred the present appeal.

2. For the sake of convenience, the parties shall be referred to as per their original nomenclature as given at the time of trial.

3. The broad contours of the case as set up by the prosecution are that on 30.11.2013, on receipt of an information regarding admission of the complainant Shiv Dayal in Community Health Centre, Bhunga (for short “CHC, Bhunga”) due to injuries sustained in some altercation, a police party headed by ASI Daljit Singh reached there. The injured had been referred to some higher Centre and information was received that he had been admitted in Joshi Hospital, Jalandhar. On 01.12.2013, ASI Kewal Krishan moved an application before the concerned doctor for seeking opinion regarding condition of the injured for the purpose of recording his statement. However, the injured was opined to be unfit to make any such statement. His statement was then recorded on 02.12.2013. The complainant alleged that on 30.11.2013 at about 11:30 AM, he was going from K.C. Complex towards Life Care Hospital, Village Gardhiwala and when he reached near the shop of one Avtar Singh, suddenly two motor bikes reached there from the opposite side. Accused Rajvir Singh @ Raja and Jaivir Singh were occupants of those motor bikes along with three unidentified youths. All of

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them were armed with weapons and on seeing the complainant, they stopped their vehicles and at once opened an attack upon him with an intention to kill him. The accused Jaivir Singh struck blows with datar on the person of the complainant thereby injuring his little and ring finger of left hand. Accused Rajvir Singh struck blows with kirpan on the complainant thereby causing several injuries on different parts of his body. The three unidentified youths also assaulted the complainant by striking blows with iron rods and baseball bats. The complainant raised rescue alarm on hearing which, his wife Smt. Santosh Kumari rushed towards the spot. His son Ganesh Kumar also reached there and got him admitted in CHC, Bhunga and thereafter he was admitted at Joshi Hospital, Jalandhar. The complainant alleged that there was dispute qua some land between him and Pargat Singh, father of the accused who used to keep on threatening him to occupy the said land though there was a decree in his favour. On the basis of his statement and as per the medico legal report, a case under Sections 307, 323, 324 and 148 read with Section 149 of IPC was registered. Investigation proceedings were initiated. During investigation, both the accused were found to be innocent. However, subsequently SIT was formed who also inquired into the matter and thereafter, the accused Jaivir Singh was arrested. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented against him. The case was committed to the Court of Sessions and the accused Jaivir Singh was charge-sheeted for commission of offence punishable under Section 307 of IPC. During the course of trial, an application under Section 319 of Cr.P.C. had been filed by the prosecution which was allowed and

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accused Rajvir Singh was arraigned as an additional accused and was summoned as such. Supplementary challan was presented against him in the Court after completion of investigation. The copies of challan were supplied to him and the case was committed to the Courts of Sessions.

4. On finding a prima facie case for commission of offences punishable under Section 307 and 324 read with Section 34 of IPC, both the accused had been charge-sheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined as many as eight witnesses. **PW-1** ASI Kewal Krishan deposed about joining the investigation on 30.11.2013 and conducting investigation w.e.f. 01.12.2013 till culmination of entire investigation proceedings and proved the steps taken by him during the course of the investigation leading to collection of entire incriminating evidence justifying the prosecution of the accused for committing the subject offences. He proved the various documents prepared during the course of investigation. **PW-2** Santosh Kumari, wife of the injured deposed in support of the allegations in the FIR. **PW-3** Shiv Dayal injured also deposed in support of the statement as recorded by him before the police on the basis of which FIR was registered. **PW-4** Dr. Jatinder had conducted medico legal examination of the injured complainant at CHC, Bhunga on 30.11.2013. He proved medico legal report, pictorial diagram and intimation sent to the police. He also deposed about examining the medico legal report of the complainant while being member of a Board constituted for the purpose on 20.10.2014 and proved report Ex.PW4/D. **PW-5** Dr. Jaswinder Singh tendered affidavit Ex.PW5/A affirming therein

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that on 20.10.2014, SMO Incharge, Civil Hospital, Hoshiarpur namely Doctor Vinod Sarin had formed a Board comprising of himself, Doctor Jatinder, Doctor Upkar Singh and Doctor Hardeep Singh as per orders of Civil Surgeon, Hoshiarpur on an application moved by Doctor Jatinder for declaration of nature of injuries of the complainant as shown in his MLR dated 30.11.2013. He proved opinion given by him along with other members of the Board as Ex.PW4/D. **PW-6** HC Avtar Singh was a formal witness. **PW-7** Dr. Mukesh Joshi of Joshi Hospital tendered affidavit Ex.PW7/A affirming therein that the injured complainant was admitted in the hospital on 30.11.2013 and proved his treatment record. **PW-8** Hardeep Singh, Draftsman deposed about preparing scaled site plan of the place.

6. Statements of accused were recorded under Section 313 of Cr.P.C. wherein they abjured their guilt and claimed themselves to be innocent. They also took the plea of alibi.

7. In defence evidence, the accused examined six witnesses, namely, **DW-1** Balvir Singh, **DW-2** Dilbagh Singh, **DW-3** HC Tarsem Singh, **DW-4** Gurdit Singh and **DW-6** Inspector Narinder Singh. The accused Rajvir Singh himself appeared as **DW-5**.

8. After appreciating the evidence produced on record and hearing the contentions of both the sides, the learned trial Court acquitted the appellants-accused of the charge framed under Section 307 of IPC but held them guilty under Section 324 and 326 read with Section 34 of IPC and they were sentenced in the manner as mentioned above.

9. Learned counsel for the appellant-accused argued that the impugned judgment of conviction and order on quantum of sentence were

liable to be set aside as the findings as given by learned trial Court were not sustainable in the eyes of law being based on conjectures and surmises. The learned trial Court did not apply its judicious mind. There was inordinate delay of more than 53 hours in lodging of the FIR but it had not been satisfactorily explained and this proved that the FIR was lodged after making due deliberations to falsely implicate the accused with whom the complainant was already having an enmity. The learned trial Court ignored the fact that at the time of his admission at CHC, Bhunga, the complainant had recorded that he was assaulted by some unknown persons and had not named the accused as assailants. PW-2 Santosh Kumari was proved to be a planted witness in order to lend support to the version of the complainant. No explanation had come forward as to why even her statement had not been recorded till 02.12.2013 though she claimed to be an eye-witness. There were material inconsistencies and infirmities in the statements of PW-2 Santosh Kumari and PW-3 Shiv Dayal. There was no independent corroboration to the statements of these witnesses though it had come on record that Avtar Singh a person having shop in the neighbourhood of the alleged place of occurrence had come to the spot at the time of the occurrence and several other persons had also gathered but none of them was tried to be joined as witness which created a serious dent in the prosecution story.

10. It was further argued by learned counsel for the appellant that the medical evidence was at variance with the oral evidence of the witnesses and hence could not be relied upon. Neither the X-ray report nor the X-ray films had been produced on record to prove that the injured had sustained

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any grievous injury. The prosecution had implicated the accused on the allegation of having caused grievous injuries to the injured on the basis of oral statements of the doctors which could not be relied upon for the purpose. Even the name of the radiologist who had conducted radiological examination of the injured had not been cited in the list of witnesses nor he had been examined due to which the factum that the injured had sustained any grievous injury had become doubtful. Neither any weapon of offence nor the vehicles allegedly used in the commission of the subject crime were got recovered at the instance of the accused. No investigation whatsoever had been conducted as against the unidentified youth who allegedly accompanied the accused at the time of occurrence. The place of occurrence had not been established beyond doubt. It was further argued that the presence of appellants-accused had not been established at the place of occurrence at all. The learned trial court had wrongly disbelieved the plea of alibi as set up by them and thereby committed a grave error. With these broad arguments, it was submitted that the impugned judgment and order were liable to be set aside, the appeal deserved to be accepted and that the appellants deserved to be acquitted of the charges for which they had been held guilty and convicted.

11. It will not be out of place to mention here that though the complainant had filed a separate appeal aggrieved from the acquittal of the accused for commission of offence punishable under Section 307 of IPC but the said appeal has been dismissed in default for want of prosecution on 09.05.2023. The learned Assistant Advocate General, Sh. Alankar Narula, while refuting the various contentions raised by learned counsel for the

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appellants-accused and by submitting that the appeal was devoid of any merits, urged that the same was liable to be dismissed.

12. We have heard learned counsel for the appellant and learned Assistant Advocate General at considerable length and have carefully gone through the evidence available on record with their able assistance.

13. So far as the factum of sustaining injuries by the complainant as shown in the medico legal report Ex.PW4/A as on 30.11.2013 is concerned, the evidence of prosecution has remained uncontroverted. With regard to the nature of these injuries, we would make discussion in the later part of this judgment. The case as set up by the prosecution is that these injuries were voluntarily caused by the appellants-accused to the complainant injured due to their previous enmity with each other over some land dispute whereas according to the appellants accused, the complainant had sustained injuries at the hands of some unknown persons and had falsely implicated them due to the reason that they were having inimical relations due to property dispute. Both the parties have attributed motive to each other for causing injuries and for falsely implicating respectively. Therefore, the main question that crops up for consideration before this Court is as to whether it were the appellants who had assaulted the complainant on 30.11.2013 and had caused injuries as shown in the MLR, on his person? Learned counsel for the appellants has assailed the findings given by learned trial Court on several grounds. Let us firstly consider the contention that there was inordinate and unexplained delay of 53 hours in lodging of FIR. As per the prosecution case itself, the occurrence had taken place on 30.11.2013 at about 11:30 AM and immediately thereafter the

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injured Shiv Dayal had been taken to CHC, Bhunga and from there, he was referred to Civil Hospital, Hoshiarpur but was got admitted at Joshi Hospital, Jalandhar. FIR was lodged two days thereafter i.e. on 02.12.2013 at 4 PM. It is well settled proposition of law that the FIR in a criminal case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any used as also the names of the eye-witnesses if known to the informant. Delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, report not only gets bereft of the advantage of spontaneity, but danger also creeps in of the introduction of colour version, exaggerated account or concocted story as a result of deliberation and consultation (See: **Thulia Kali v. State of Tamil Nadu**, AIR 1973 SC 501; **Satpal Singh v. State of Haryana**, (2010) 8 SCC 714; **Kishan Singh v. Gurpal Singh**, (2010) 8 SCC 775; **Jai Parkash Singh v. State of Bihar**, (2012) 4 SCC 379 and **Manoj Kumar Sharma and others v. State of Chhattisgarh and another**, (2016) 9 SCC 1).

14. It is also well settled proposition of law that a delayed First Information Report gives rise to suspicion and puts the Court on guard to look for a plausible and acceptable explanation for the delay. The First Information Report is a document of considerable importance. This document is produced and proved in the criminal trial with the avowed object of obtaining the early information of the alleged criminal activity and

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to have a record of the circumstances before there was time for them to be embellished or forgotten. A quick information report is a towering circumstance that goes a long way to assure the veracity of the prosecution story as in such cases, there cannot be any time to create and deliberate a false case against the accused. Applying the above discussed proposition of law to the present case, it is revealed that no satisfactory explanation has come forward with regard to delay of 53 hours in reporting the matter to the police. It is proved from the testimony of PW-4 Dr. Jatinder before whom the injured was brought at CHC, Bhunga immediately after the incident, that the injured was conscious, well oriented to time and place, when he had been brought there. From the treatment record prepared by Joshi Hospital, Jalandhar also, it is revealed that he was fully conscious when he had been brought therein. ASI Daljit Singh who had taken over the investigation of the matter on 30.11.2013 had been examined as a witness and, therefore, no explanation could come from him to show as to why he did not record the statement of the injured on that very day. As per prosecution case, on 01.12.2013, the second Investigating Officer ASI Kewal Krishan had moved application for seeking opinion regarding condition of the injured who was opined to be unfit to make statement and that is why the statement of the victim was recorded on 02.12.2013 but when we go through the testimony of PW-1 ASI Kewal Krishan, this version stands totally belied because he stated that he had moved application Ex.PD to the doctor of Joshi Hospital for obtaining opinion as to fitness of injured on 01.12.2013 itself and had recorded his statement Ex.PE on that very date though contrary to this, the application Ex.PD is shown to be moved on 02.12.2013 and Ex.PE was also

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recorded on that date. This shows that this witness was not speaking the truth. It may also be mentioned that as per the prosecution case, even PW-2 wife of the victim was an eye-witness to the occurrence. Then why her statement could not be recorded by the Investigating Officer till 02.12.2013 has remained a mystery which has not been unfolded by any witness. Neither the Investigating Officer nor PW-3 who was the most important witness of the case could give any explanation whatsoever as to why the delay of 53 hours had occurred in giving the formal information about the incident to the police and disclosing the names of the culprits involved in the act of assaulting the accused and this fact, in our opinion had created a serious dent in the prosecution story as well as veracity of the version of PW-3 but the learned trial court had failed to take the same into consideration.

15. Dilating further, on the minute scrutiny of evidence available on record, we are of the opinion that due to delay in reporting the matter to the police, some other lacunas have also been created in the case of the prosecution which the learned trial Court failed to take note of. PW-4 Dr. Jatinder had conducted medico legal examination of the injured on 30.11.2013 at about 12:15 PM i.e. immediately after the incident. In his report, Ex.PW4/A while mentioning history of injuries, it was recorded that the victim was assaulted by unknown persons. In his sworn deposition, this witness categorically deposed that it was on the information as given by the victim himself that he had recorded in the MLR that the assailants were unknown persons. He was not at all controverted on this point. More so, he was independent and disinterested person who had no reason to make any

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false statement. Therefore, his statement can certainly be acted and relied upon completely to prove that at the time of his admission in CHC, Bhunga, the complainant had disclosed that he was assaulted by some unknown persons. Admittedly, the appellants accused were already known to the complainant and his wife. If that was so, then what was the hitch for them to not to disclose the names of the accused as assailants at the very first instance to the doctor or immediately to the police, has remained unexplained on the part of PW-2 or PW-3. From this, it can reasonably be inferred that the names of the present appellants had been introduced later on by the complainant after making deliberations, concoctions and in connivance with his family members to implicate them falsely in this case because of the reason that their relations were already inimical and that is why a delay of 53 hours had taken place for the complainant to lodge formal FIR in this case and due to this fact also, a doubt has been created over the truthfulness of the version of the prosecution as well as of PW-2 and PW-3 and the benefit of which should certainly have been to the appellants which was not so given by learned trial Court.

16. One more argument had been raised by learned counsel for the appellants that the case rested upon the singular statement of PW-2, which had in fact not been corroborated by any other evidence as PW-2 Santosh Kumari was proved to be a planted witness and no other eye-witness had been examined. Therefore, he urged that the uncorroborated testimony of PW-2 could not be relied upon. Learned trial Court had also observed that presence of PW-2, Santosh Kumari, who claimed to be an eye witness had in fact not been proved. Though Pw-2 Santosh Kumari deposed about eye-

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witnessing the occurrence but her statement stands falsified from the testimony of PW-3, Shiv Dayal, who stated that PW-2 had reached at the spot after he had raised alarm. Further, though it was stated by PW-2, that some persons had gathered at the spot at the time of occurrence but none of them had been examined. As such, the case of prosecution mainly rests upon the testimony of PW-3, i.e. Complainant, injured only. No doubt the well settled proposition of law is that as a general rule, the Court can and may act upon the testimony of a single witness and there is no legal impediment in convicting the accused on the solitary statement of a witness provided the same is wholly reliable. Evidence of an injured witness must be given due weightage because being a stamped witness, his presence cannot be doubted. The testimony of such a witness has its own relevance and efficacy, as he has sustained injuries at the time and place of occurrence and this lends support to this testimony that he was present during the occurrence and normally he would not like to let the actual assailant go unpunished. However, it is equally well settled that if there are major contradictions or infirmities in the testimony of such witness, the same cannot be considered as creditworthy. As already discussed, the testimony of PW-3 has become doubtful due to the reason that the same was recorded before the police after a gap of 53 hours thereby leaving scope for making deliberations, concoctions, exaggerations and creation of false story. Moreover, as already discussed, at the time of his admission at CHC, Bhunga, he had disclosed that he was assaulted by unknown persons and had not named the appellants. In such circumstances, when the case of the prosecution with regard to the occurrence rests upon the solitary statement

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of the complainant which itself cannot be considered to be creditworthy, in our opinion the appellants-accused could not be held guilty on the basis of his statement which in the circumstances of the case, did not inspire confidence for connecting the accused with the subject crime.

17. Yet another circumstance which has also created doubt about the veracity of the prosecution version is that as per the allegations, the appellants-accused along with three unknown persons had opened assault upon the complainant on 30.11.2013 and while they had caused injuries to him with datar and the kirpan, the unknown persons had caused injuries to him with baseball bats and iron rods and he had sustained simple as well as grievous injuries. PW-4 Dr. Jatinder who had conducted medico legal examination of the injured complainant on 30.11.2013 deposed that the injured had sustained three grievous injuries in the form of incised wounds in left ring finger, right knee and left foot and some abrasions. PW-7 Dr. Mukesh Joshi proved treatment record of the victim Ex.PW7/C and the injury report which is part of that record shows that four injuries which were grievous in nature and fractures on medial femoral condyle oblique, patella right and compound comminuted fracture proximal phalanx (left) ring finger were found on the person of the complainant. The learned trial Court had observed that though some of the injuries were grievous in nature but since they were not on vital parts of the body and hence could not be considered as dangerous to life and had accordingly, it had held the accused guilty for commission of offences punishable under Sections 324 and 326 of IPC. It has, however, been noticed that neither the specific fracture reports and X-ray films have been produced in evidence nor even the radiologist

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who had taken the X-ray films and had prepared the report that the complainant had sustained grievous injuries, had been examined. It is well settled principle of law that the X-ray taken by the radiologist to sustain the nature of the injury must be produced and proved before a Court of Law and that the evidence given by the Radiologist, the gravity and the nature of the injury has to be subscribed as clearly laid down under Section 320 of IPC. Reliance in this regard can be placed upon the case reported as **Nallasingam and others v. State**, 1993 (1) M.L.J. (Criminal) 6 wherein the injured had claimed that he had sustained fracture in the bone. In the absence of the X-Ray film and the testimony of some doctor, it was held by the High Court of Madras that grievous injury was not proved by proving X-ray film and X-ray report on record which could specifically point out that the victim had actually suffered a fracture in the bone in order to bring the case under the requirement of Section 320 of IPC. Reliance can also be placed upon **Gurpreet Singh v. State of Punjab**, 2019 (2) Law Herald 1018, wherein the opinion of doctor was based on report of a Radiologist who was not produced before the Court. Even the X-Ray film on the basis of which the injury was opined to be grievous in nature, was not produced on record. A Coordinate Bench of this Court had held that opinion of another doctor based on the report of Radiologist could not be taken to prove the guilt of the accused under Section 325 of IPC. Similarly in **Santoo v. State**, 1976 SCC OnLine All 267, X-ray report of injury caused to the complainant was prepared by “A”. The prosecution did not produce “A” before the Court. It was also not suggested that “A” was either dead or not available. A supplementary report was prepared by “B” on the basis of

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report prepared by “A”. It was held by High Court of Allahabad that report of “A” was inadmissible in evidence and the evidence of “B” based on supplementary report of “A” was also inadmissible in evidence. Reliance can also be placed upon **Faizan Ahmed Abdul Wahab Shah v. State of Maharashtra**, 2014 (1) Bombay C.R. (Criminal) 643, wherein it was observed by High Court of Bombay that there could not be any presumption that grievous hurt was caused without formal proof of fact of fracture. The fact of existence of fracture could not be diagnosed and certified in the absence of proof of X-ray plates, unless the fact of fractured bones was perceivable barely on perception by naked eyes and sheerly by clinical examination. It is being vivid and palpable. On applying the ratio of law as laid down in the above cited authorities to the peculiar facts and circumstances of the present case, it has been observed that though both PW-4 and PW-7 had deposed that the complainant had sustained grievous injuries on his person but neither of them had conducted radiological examination of those injuries. PW-4 deposed that on examination of medico legal report and bed head ticket of Joshi Hospital, they had opined on 25.10.2014, that three injuries found on the person of the injured complainant were grievous in nature. He stated that no radiological examination of the complainant was done at Civil Hospital, Bhunga but there was a suspicion of fracture of leg at that time. Further, in the evidence led by PW-7 Dr. Mukesh Joshi, it has nowhere come that he himself had conducted radiological examination of the injuries on the person of the injured which were opined to be grievous in nature neither this witness could produce X-ray report or X-ray film of the injured on record. In the

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absence of examination of the doctor who had conducted radiological examination of the victim and further in the absence of specific X-ray reports and X-ray films, no conclusion could obviously be drawn that the injuries which were opined to be grievous were in fact so in nature and were falling within the definition of Section 320 of IPC. Since while recording the findings of the guilt of the accused for commission of offence punishable under Section 326 of IPC, these facts had not been taken into consideration by learned trial Court at all, therefore, in our opinion, the findings as given by learned trial Court on that point cannot be stated to be sustainable in the eyes of law as the most essential requirement for holding the appellants-accused guilty for commission of offence punishable under Section 326 of IPC i.e. their having caused grievous injuries by them to the complainant has not been proved.

18. There is one important circumstance creating a doubt over the credibility of prosecution version. The rough site plan Ex.PG of the place of occurrence had been prepared by ASI Kewal Krishan on 02.12.2013. He deposed that he had prepared this site plan after visiting the spot, but it was not deposed by him as to on whose identification, he had prepared the same. In this site plan, he is shown to have specifically marked the place wherein the accused had opened an attack upon the victim and had assaulted him and also the place where eye-witness Santosh Kumari was present. PW-1 being injured was obviously not in a position to accompany the Investigating Officer to identify the place of occurrence on 02.12.2013. PW-2 did not say that she had identified the place of occurrence in the presence of the Investigating Officer. The opinion recorded in the index of this site

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plan Ex.PG has not been proved either by PW-1 or PW-2. It is well settled proposition of law that any information derived from the witnesses during investigation and recorded in the index of a map must be proved by the witnesses concerned and not by the Investigating Officer. Since in this case, the information as to the identification of place of occurrence is sought to be proved by the evidence of PW-1 only, the same manifestly offends against the provisions of Section 162 of Cr.P.C. and cannot be considered to be admissible, in our opinion. In this regard, reliance can be placed upon case reported as **State of Rajasthan v. Bhawani and another**, (2003) 7 SCC 291, wherein the Investigating Officer had prepared site plan on the basis of statements given by the witnesses. Many things mentioned in the site plan had been noted by the Investigating Officer on the basis of statements of such witnesses. It was held by the Hon'ble Supreme Court that what the Investigating Officer personally saw and noted alone would only be admissible in evidence and rough sketch prepared by him on the basis of statements made to him by the witnesses showing the place where the deceased was hit and also the places where the witnesses were at the time of incident, would not be admissible in evidence in view of provisions of Section 162 of Code of Criminal Procedure as it will be no more than a statement made to the police during investigation.

19. Similar proposition of law was laid down in **Sat Kumar v. State of Haryana**, (1974) 3 SCC 643 & **Ibra Akanda v. Emperor**, AIR 1944 Calcutta 339. Since in the present case, it has not been proved that the site plan Ex.PG of the place of occurrence had been prepared by the Investigating Officer on the basis of identification of the either of the eye-

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witnesses and rather it appears that he himself had prepared the site plan, therefore, a doubt has certainly been created as to the correctness and admissibility of this site plan in evidence as it has not been proved as to how he came to know that point “A” was exactly the place where the victim had been hit by the accused and point “B” was the place from where the eye-witness Santosh Kumari had seen the injured while being assaulted. No knowledge could be presumed to have been imputed to the Investigating Officer personally in the absence of identification of this site plan by some eye-witness and, therefore, this site plan cannot be considered to be admissible in evidence and hence, even it has not been established beyond doubt that any incident took place at the place of occurrence as shown in this site plan due to which the entire prosecution version has become doubtful.

20. Proceeding further and coming to the plea of alibi as taken by both the appellants-accused, the appellant Rajvir Singh had set up a case that as on 30.11.2013, he had gone to Jalandhar to receive his brother-in-law Sh. Gurdit Singh who had come from Kuwait and was not present at place of occurrence. To prove his defence, the appellant-accused Rajvir Singh has examined DW-1 Balvir Singh, DW-4 Gurdit Singh and himself stepped into the witness box as DW-5. He deposed that he had gone to Jalandhar on the night of 29.11.2013 itself and had stayed overnight in the house of his friend and on 30.11.2013, he had picked his brother-in-law Gurdit Singh from Bus Stand Jalandhar and thereafter both of them had gone to Village Bhogpur at about 10:15 AM and at about 11:30/11:45 AM they had gone towards Tanda. DW-1 Balvir Singh, Homeopathic

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Practitioner deposed that on 30.11.2013 at about 12:30/01:00 PM, the accused along with brother-in-law had come to his clinic at Tanda to take medicine. DW-4 Gurdit Singh, brother-in-law of Rajvir Singh also supported his stand to this effect. The learned trial Court had disbelieved the version of defence witnesses and the plea of alibi as set up by the accused. It may be mentioned that 'alibi' is not an exception envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the facts in issue are relevant. The latin word "alibi" means elsewhere and that word is used for convenience when an accused takes recourse to defense that when the occurrence took place, he was far away from that place that it is extremely improbable that he would have participated in the crime. Undoubtedly, burden is on the prosecution to prove that an accused was present at the scene and participated in the crime and such burden is not lessened by the mere fact that the accused has taken the plea of alibi. However, once the prosecution succeeds in discharging the burden, then it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. It will also be relevant to mention here that the accused also produced on record Mark DW4/D CCTV footage stated to be containing their presence at Tanda. This CCTV footage had not been formally proved in evidence as the author of the compact disc containing this CCTV footage had not been examined neither his certificate under Section 65-B of Indian Evidence Act had been produced on record. Therefore, no scientific evidence or documentary evidence could come on

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record to show presence of accused Rajvir Singh at Tanda or Jalandhar as on 30.11.2013. However, irrespective of the fact that the evidence led by the appellants cannot be considered to be sufficient to establish the plea of their 'alibi' still, in view of the discussion as made above to the effect that the prosecution itself has failed to discharge the burden of proving its case as against the appellant beyond doubt and has not succeeded in producing evidence of such nature which could establish the complicity of the appellant in the subject offences, we are inclined to hold that the guilt of the appellants had not been establish beyond doubt.

21. Accordingly, the findings of guilt of the appellant-accused for commission of offences punishable under Sections 324 and 326 of IPC cannot be stated to be sustainable in the eyes of law. The same are hence reversed. Accordingly, the appeal is accepted. The impugned judgment and order of trial Court are set aside. The appellants are acquitted of the charges for which they had been held guilty and convicted. Their bail bonds stand discharged.

22. All the pending criminal miscellaneous application(s), if any, automatically stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

01.06.2023
manju/pooja saini

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No