

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

CRA-AS-197-2019

Reserved on: 05.09.2023

Pronounced on: 15.09.2023

Gurmail Singh

. . . . Petitioner

Vs.

Davinder Singh and another

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Mahinder Singh, Advocate, for the appellant.

Mr. S.P.S. Sidhu, Advocate, for respondent No.1.

DEEPAK GUPTA, J.

Appellant Gurmail Singh was allegedly kidnapped by respondent – Accused Davinder Singh and others on 02.04.2009 in the alleged presence of his cousin Kulwinder Singh. On the statement of Kulwinder Singh, FIR No.140 dated 02.04.2009 under Sections 365 and 120B IPC was registered at Police Station Phase-I, Mohali. Sections 367, 386, 291, 506, 323 IPC and Section 25 of the Arms Act were added later on.

2. Though police filed the cancellation report, but Id. Judicial Magistrate took cognizance vide order dated 17.05.2013 and committed the case to the Court of Sessions. The said order dated 17.05.2013 was challenged by the accused-respondent before this Court by filing CRM-M-572-2014 but the same was dismissed on 27.02.2016. After holding trial, the respondent-accused Davinder was acquitted vide judgment dated 19.03.2019 passed by Id. ASJ, SAS Nagar, Mohali.

3. Aggrieved by the acquittal of respondent-Davinder Singh by way of impugned judgment, the appellant Gurmail Singh has filed the present appeal.

4. As per prosecution case, on 02.04.2009, Kulwinder Singh (PW2) made a statement *Ex.PW21/1* to the police to the effect that on that day, he along with his cousin Gurmail Singh (PW1 – *now appellant*), who is a property dealer, had come to the office of Deputy Commissioner, Mohali in his Accent car. As the office was closed, they came back to the parking in front of office of the Deputy Commissioner. It was about 5.30 pm, when in the meantime Davinder Singh (*Respondent herein*), the supporter of the other party, accompanied by 9-10 boys, who could be identified if produced before him, came and forcibly took Gurmail Singh in their car No. PB-65F-0021 after giving him beatings. Said Gurmail Singh was kidnapped in furtherance of their common intention and when he (complainant Kulwinder) raised alarm, the other boys fled away from the spot in a Lancer car and another car. On this statement, FIR *Ex.PW21/3* was initially registered under Section 365 and 120B IPC against Davinder Singh and 9-10 other unidentified persons.

5. Spot was inspected by Harbir Singh Atwal (PW21), the then SHO, Phase-I, Mohali along with complainant Kulwinder Singh and Jagtar Singh (PW3) and site plan *Ex.PW21/4* was recorded. On the night intervening 2/3.04.2009, Jagtar Singh received information on his mobile that victim Gurmail Singh had reached home and so, the police party reached the house of Gurmail Singh at Khuda Ali Sher and got his medical examination conducted by moving application *Ex.PW21/5*. Statement of

said Gurmail Singh was recorded under Section 161 Cr.P.C. Necessary investigation was carried out. However, after concluding investigation, cancellation report was presented before Ld. CJM, Mohali, who did not agree with the report furnished by the police and on finding prima facie grounds to proceed accused Davinder, took cognizance under Section 365, 367, 386, 291, 506 and 120 IPC and committed the case against accused Davinder Singh to the Court of Sessions.

6. Accused Davinder was charge-sheeted on 15.03.2016 under Section 120B, 365, 367, 386, 342, 506, 323 and 506 IPC, to which he pleaded not guilty and claimed trial.

7. After part examination of PW-Gurmail Singh i.e., victim, an application under Section 319 Cr.P.C was moved on 04.07.2016, which was allowed on 11.07.2016, summoning Chashamdeep Singh, Harvinder Singh @ Lucky, Sultan Singh @ Tani and Gagan as additional accused to face trial. Warrants of arrest & then proclamation were issued against them. However, these four accused were declared proclaimed offenders vide order dated 12.09.2016.

8. After examining as many as 21 witnesses, prosecution evidence was closed on 03.12.2018. In his statement recorded under Section 313 Cr.P.C, accused pleaded innocence and false implication, submitting that Gurmail Singh had taken an amount of ₹70 lakh from him and his family for investing in land deals, but as that deal was not materialised, so he demanded his money back. Instead of paying the money, said Gurmail Singh falsely implicated him in the present case by concocting a false story of kidnapping. To support his defence, accused examined two witnesses.

9. After hearing both the sides and appraising the record, Id. Additional Sessions Judge, SAS Nagar, Mohali vide impugned judgment dated 19.03.2019 recorded the acquittal of the accused Devender Singh (Respondent), against which, present appeal has been preferred by the victim i.e., Gurmail Singh.

10. (i) It is contended by Id. counsel for the petitioner that during investigation, statement of the appellant was recorded on 03.04.2009, wherein he gave detailed account of his abduction, the name of some of the accused such as respondent-Davinder Singh besides that of Chashamdeep Singh, Harvinder Singh @ Lucky and Sultan Singh @ Tani. He had also stated that semi-nude CD of appellant was prepared by the accused and an amount of ₹51-52 thousand, besides his mobile phone make Nokia N95 was snatched by the accused, who had also obtained his signatures/thumb impressions on some blank/written papers/stamp papers and also had forced him to write a suicide note.

(ii) It is contended that as part of investigation, blood-stained clothes of the appellant were taken into possession and the place, where the appellant was kept in confinement, was demarcated by the Investigating Officer i.e., PW21 Inspector Harbir Singh Atwal. However, respondent No.1 being well connected with investigating agencies, was not arrested. He sought anticipatory bail, which was dismissed by the Court of Id. Additional Sessions Judge, SAS Nagar, Mohali vide order dated 08.04.2009, but thereafter, he was allowed interim anticipatory bail by this High Court on 22.05.2009 in CRM-M-10394-2009. On the next date of hearing i.e., 29.05.2009, the aforesaid CRM-M-10394-2009 was dismissed as

withdrawn, as respondent No.1 had undertaken to surrender and applied for the regular bail. Instead of surrendering in terms of the order dated 29.05.2009, respondent moved an application before DGP, Punjab for proper investigation. Inquiry was conducted and respondent was found to have committed the offence along with co-accused. On finding the inquiry against him, respondent moved another complaint to ADGP (Crime), who marked fresh inquiry and based thereon ASI Mohinder Singh prepared a cancellation report, which was not accepted by the Court.

(iii) Ld. counsel contends that in the re-investigation conducted by ASI Gurnam Singh as per the order of the Court, the same report was prepared. On getting notice, appellant apprised the Court about the inquiry conducted by SP (Crime), which had culminated against the accused and it is on that basis that accused-respondent No.1 was summoned by the Court. Ld. counsel contends that an application for cancellation of bail granted to respondent No.1 was also moved, but the same was dismissed on 17.08.2017. CRM-M-36809-2017 filed before the High Court for cancelation of anticipatory bail was also dismissed by this Court on 09.02.2018. That order was challenged before the Hon'ble Supreme Court by filing Special Leave to Appeal (Criminal) No.3493 of 2018, in which notice was issued and, in the meantime, operation of the order dated 16.09.2013 and that of the impugned order dated 09.02.2018 of the High Court was stayed. Thereafter, application was moved by the appellant with the Trial Court to take respondent No.1 in custody and to direct the police to effect recovery of mobile phone, ₹51-52 thousand cash of the complainant, besides blank/ stamped/singed papers, pistol, car, semi-nude CD etc., but that application was kept pending without passing any order

and the impugned judgment of acquittal has been passed by mentioning that as per the order of Hon'ble Supreme Court, no direction had been given to take the accused in custody.

(iv) Ld. counsel for the appellant contends further that ld. trial Court, while passing the judgment of acquittal, ignored the testimony of victim-appellant Gurmail Singh (PW1), PW3-Jagtar Singh and PW21-Harbir Singh Atwal and the medical evidence on record. The documentary evidence, in the form of recovery memos and photographs, has also been ignored. Trial Court observed that prosecution had failed to examine material witnesses namely Jaswinder Singh and Sarabjit, but failed to notice the fact that their correct addresses were never provided by the prosecution and those witnesses had avoided to receive the summons at the given address. It is contended that it was for the police/investigating agency to procure the attendance of the prosecution witnesses and thus, in these circumstances, impugned judgment of acquittal is based on conjectures and surmises, and so the same is liable to be set aside.

(v). Concluding his submissions, ld. counsel for the appellant contends that there is no proper appreciation of the evidence on record; that no effort was made to call the material witnesses; that no recovery was effected from respondent No.1-accused due to connivance as said respondent had bribed the police and that complainant of the case Kulwinder Singh was won over by the respondent.

With all the above submissions, prayer is made for setting aside the impugned judgment of acquittal.

11. Refuting the aforesaid contentions, ld. counsel for respondent No.1-accused argued that power of this Court in considering the appeal against acquittal is quite limited, inasmuch as there is a double presumption of innocence in favour of the respondent-accused. Ld. counsel contends further that ld. trial Court has properly appreciated the evidence on record and has rightly recorded the acquittal. Prayer is made for dismissal of the appeal.

12. I have considered submissions of both the sides and have appraised the record.

13. Before analysing the evidence on record, it is to be noted that having secured acquittal from the trial Court, there is a double presumption in favour of the accused. First is the initial presumption as a cardinal principle of criminal jurisprudence that accused is presumed to be innocent unless found guilty. That initial presumption is re-enforced by the judgment of acquittal recorded by the Trial Court. Reliance in this regard can be placed upon ***Chandrappa Versus State of Karnataka, (2007) 4, SCC 415***, wherein it was held by Hon'ble Supreme Court as under:

“42. From the above decision, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

1. An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

2. The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it, may reach its own conclusion, both on questions of fact and of law.

3. *Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasis the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

4. *An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

5. *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”*

14. This legal position was reiterated by Hon’ble Supreme Court in ***Vinod Kumar Vs. State of Haryana 2015 (1) RCR (Criminal) 532***. Articulating the same legal proposition in ***Dhanapal Vs. State 2010 (5) RCR (Criminal) 353*** as relied in ***Sudarshan Kumar Vs. State of Himachal Pradesh 2015 (1) RCR (Criminal) 496***, Hon’ble Supreme Court held as under:

“1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re- appreciate the entire evidence on record. It can review the

trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."

15. It is by keeping in mind the above legal position that this appellate court is required to consider the contentions raised by the parties and appreciate the evidence on record.

16. In the present case, the perusal of the trial Court record along with the impugned judgment of the acquitted recorded by the trial Court on 19.03.2019 would reveal that statement of PW1 Gurmail Singh (appellant herein) is not corroborated by any convincing evidence. To the contrary, Id. trial Court has rightly noticed various loopholes in his statement, which makes his testimony to be unworthy of credit.

17. As per the prosecution version, it is Kulwinder Singh, the complainant in the FIR and who is the cousin of Gurmail Singh (appellant), in whose presence said Gurmail Singh was allegedly kidnapped. However, said Kulwinder Singh, examined as PW2, has not supported the prosecution. According to his testimony, in 2009, he had accompanied his cousin Gurmail Singh in a car to Phase-I, Mohali. His cousin met three

persons aged about 50 years in the parking of Phase-I, Mohali and then Gurmail Singh while talking with them accompanied them in their Indica Car. Kulwinder Singh states further that he kept waiting for Gurmail Singh but later on came to know that he had been kidnapped. He along with Jagtar Singh, son-in-law of Gurmail Singh reached Police Station, Phase-I, Mohali and reported the matter to the police. PW2 is unable to disclose the number of the car, in which Gurmail Singh had gone with the persons referred by him. He specifically stated that he does not know the accused and cannot identify the accused present in the Court. He specifically stated that accused, present in the Court, is not amongst the persons, who had kidnapped his cousin. Though PW2-Kulwinder Singh was declared hostile and was subjected to lengthy cross-examination on the part of the prosecution, but nothing fruitful to support the prosecution could be elicited.

18. PW3-Jagtar Singh is the son-in-law of Gurmail Singh. As per his testimony, on 02.04.2009 at about 6.00 pm, Kulwinder Singh came to his house and told that he had accompanied Gurmail Singh to DC Office, Mohali, from where Davinder along with others had kidnapped Gurmail Singh. PW3-Jagtar Singh identified accused Davinder Singh. As is clear from the statement of PW3-Jagtar Singh, his testimony is based on hearsay, as to what was told to him by Kulwinder Singh. Said PW3-Jagtar Singh is not the eyewitness of the occurrence. Besides, the testimony of PW3-Jagtar Singh is diametrically contrary to PW2-Kulwinder Singh, who has denied the accused to be amongst the kidnappers.

19. PW1-Gurmail Singh has given detailed sequence wise account of the occurrence. The statement of PW1-Gurmail Singh has been referred by Id. ASJ, SAS Nagar, Mohali dated 19.03.2019 in the following words: -

“Prosecution also examined victim Gurmail Singh as PW1, who deposed on oath that he is also dealing in property. On 2.4.2009, his cousin Kulwinder Singh had come to his village Khuda Ali sher. On that day, he along with Kulwinder Singh came to D.C office Mohali on Car No. CH-01-R-7319 make Accent. They went there to pursue the case of enquiry regarding the dispute of agricultural land situated in village Wazidpur, Block Majri. They went to the office of S.P. The DC office was closed since office timings were over and the Kanungo could not meet them in the office of D.C. After return from DC office, they came to the parking of DC office, where his car was parked. Kulwinder Singh was with him. It was about 5/.5.30 p.m. They were near their Car and in the meantime, Davinder Singh son of Harnek Singh, Chashamdeep Singh son of Kesar Singh, Harwinder Singh alias Lucky, Sultan Singh alias Dhani along with 9-10 other persons armed with Dandas and iron rods came there and started beating him. They were on Car of Davinder Singh bearing No. PB-65-F-0021, one another Lancer Car No. PB-65-D-0090 of black colour. They put him in a Car of Davinder Singh. Davinder Singh and Sultan Singh tied his arms from back. One person was sitting on the front side, whose name he came to know later on as Gagan who is running a paint shop at Scooter market Phase 7 Mohali. Davinder Singh was driving the Car and who was having pistol and pointed towards him. Harwinder and Sultan were beating him. They kept roaming in the area of Mohali and Sohana. When it became dark, they brought him to Mohali in a House No.2526 Phase 7 Mohali. Davinder Singh pointed a pistol towards him, whereas Sultan and Harwinder Singh gave beatings to him and obtained his thumb impressions and signatures on stamp papers and blank papers and they also dictated him to scribe a suicide note in his own handwriting to the effect that his wife and daughter were not maintaining good character and that his son in law Jagtar Singh also not a good person and he got fed up from them and due to this reason, he is committing suicide, for which nobody else is responsible. On the said suicide note, his signatures and thumb impressions were obtained with force. Thereafter he was taken to

bathroom, where he was made to wash his hands. In the meantime, other assailants came there in two vehicles. They also threatened and gave beatings to him with an intention to kill him. He was carrying a mobile phone make Nokia No. 98141-70691 which they also snatched along with Rs.52000/-, which he was carrying on his person. Thereafter accused took him to the motor of Narinder Singh resident of village Rasidpur in Fatehgarh Sahib, where he had constructed big husk room. He was again given beatings, threatened with the pistol and thereafter his hands and legs were tied at his back and he was locked in the husk room. All the accused went upstairs to have liquor and after consuming liquor, they came down and removed his clothes and filmed him in the nude. They also tried to sodomies him. They also tried to insert wooden rods in his anus. PW1 further stated that thereafter he was again loaded in the same Car and all the three Cars took him towards Chandigarh and they threw him on the main road near Sector 35 Chandigarh, opposite Kissan Bhawan. It was about 12 in the night. He hired a three-wheeler, paid him after reaching his house and rang up the police. The police took him to Civil Hospital Phase 6 Mohali, where he was medico-legally examined. The police took him to Sector 35 Chandigarh, where he showed the place of occurrence to them. He also led the police to the motor of Narinder Singh, where he was tied in the husk room. From the spot, the police took into possession a rope with which he was tied and also clicked photographs. The police also took him to House No.2526 Phase 7 Mohali and inspected the spot. He handed over his blood-stained clothes including pent, shirt and turban to the police, which were taken into police possession and PW1 further stated that the Investigating Officer SI Rajesh Kumar and Inspector Harbir Singh (SHO) and after making into a parcel, sealed them. His statement was recorded. He further stated that the motive behind this incident was a dispute regarding Sarpanchship, as a dispute is going on between him and Malkiat Singh, whose Chachi was contesting the election for Sarpanch against his wife. There was a dispute between him and Balwinder Singh regarding panchayat election. The above said Malkiat Singh and Balwinder Singh played behind the scene through accused Davinder Singh and other assailants named above as during his kidnapping all of them were in constant touch with each other telephonically. This witness had identified the accused Davinder Singh present in the Court. The recovery memo of his blood-stained clothes is Ex.PW1/A and this witness had

identified his signatures on the same. PW1 further stated that his blood-stained clothes were taken into possession by Inspector Harbir Singh and its parcel was prepared by him and was sealed with seal HS. During the course of examination of this witness, on the request of learned Addl. P.P, sealed parcel was opened and on opening the same, shirt and pent were found in the said parcel which were identified by this witness and the same are Ex.MO-1 and MO-2. He also handed over his turban to the police and same was returned to him as it was not blood stained. He further stated that during investigations, enquiries were conducted by many Enquiry Officers and his statements were recorded. Police did not help him to give justice. His mobile and money, pistol and cars used were not recovered by the police. He proved the photographs taken in the house of 2526 Phase 7 Mohali are Ex. P1 to Ex. P4.”

20. Thereafter, trial Court has referred about the MLR proved by PW6-Dr. Suman Bali revealing 12 injuries on the person of Gurmail besides x-ray examination conducted by Dr. Vijay Bhagat revealing that no fracture was detected. Ld. trial Court also took note of the statements of other prosecution witnesses including that of the investigating officer Harbir Singh Atwal-PW21 and then while discussing the testimony of PW1- Gurmail Singh, observed as under: -

“Gurmail Singh stepped into the witness box as PW1 and he submitted that he had went to the office of S.P to enquire regarding the dispute of agricultural land situated at Village Wazidpur Block-Majri. The D.C office was closed at that time and after returning from D.C office, he went to parking of DC office, where Davinder Singh, Chashamdeep Singh, Harwinder Singh, Sultan Singh along with 9-10 other persons armed with Dandas and iron rods came there and started beating him. They were on Car of Davinder Singh bearing No. PB-65-F-0021 and one another Lancer Car No. PB-65-D-0090. He submitted that they put him in a Car of Davinder Singh, where Davinder Singh and Sultan Singh tied his arms from back. There was another person namely Gagan sitting on the front side and Davinder Singh was driving the Car having pistol, who pointed

the pistol towards him, whereas Harwinder and Sultan were beating him and they kept roaming in the area of Mohali and Sohana. Victim Gurmail Singh stated in his statement before the Court that on becoming dark, accused brought him to House No.2526 Phase 7 Mohali, but in cross examination, he admitted that when he was taken from Phase 7 and 10, there were many traffic lights on the road. He also admitted that in the parking of DC office, there was a shed in which Advocates used to sit and outside the shed, there was a tea shop and also there are small booths. Here taking pause to the story of Gurmail Singh, it needs to be pointed out that during whole of this incident, Gurmail Singh had not raised raula(noise) and he never shouted during whole of this time specially when Davinder Singh who had pistol was himself driving the Car. It is pertinent to mention that occurrence is of month of April at about 5/5.30 P.M and there were almost more than two hours in falling of darkness, that means for two hours, accused were roaming in the streets of Mohali and as per Gurmail Singh only his hands were tied. His mouth was not gaged, but he had not raised noise during these two hours. Further, in examination in chief, this witness stated that Davinder Singh pointed pistol towards him, whereas Sultan Singh and Harwinder Singh gave beatings to him and obtained his thumb impressions and signatures on stamp and blank papers and they also dictated him to scribe a suicide note and afterwards, he was taken to bathroom for washing his hands and in the meantime, other assailants came there in two vehicles and they also threatened and gave beatings to him with an intention to kill him. His mobile phone and Rs.52000/- were snatched by them. Now it is pertinent to mention that as per the Investigating officer, accused Sultan Singh and Harwinder Singh were living in House No.2526 Phase 7 Mohali as paying guest and it was P.G run by Sarabjit Singh. That means this house No.2526 Phase 7 Mohali was a paying guest accommodation, in which there must be other persons and during whole of his evidence, Gurmail Singh had never said that his mouth was gaged and it is not understandable as to why Gurmail Singh never shouted. Further one thing more is there that House No.2526 Phase 7 Mohali is a residential house and that means there are other houses around the said house and people are residing therein and, in these circumstances, it is not understandable as to how the accused could take Gurmail Singh inside the said house by tying his hands and showing him pistol without anyone noticing the same.

Further Gurmail Singh had stated that the accused had removed his clothes and filmed him in nude and tried to sodomize him and inserted wooden rod in his anus. Now it is pertinent to mention that Gurmail Singh was medically examined on 3.4.2009 i.e. immediately next day and Dr. Suman Bali had appeared before this Court in the present case as PW6 and proved on record the injuries suffered by Gurmail Singh on his body, which are about 12 in numbers, but she had specifically submitted in her cross examination that there was no anal injury to the patient, therefore it is not believable that if accused had tried to insert wooden rod in the anus of victim Gurmail Singh, but he had not received any injury. When these facts were put to Gurmail Singh in his cross examination, he submitted that this fact was not recorded by the police in his statement. He also submitted that he had told the Doctor at the time of his medical examination, but he further submitted that he had not received any treatment for the alleged injury nor he asked the Investigating Officer to get him medically examined pertaining to the above said injury. Thus, all these aspects are creating serious doubt to the story of Gurmail Singh victim. Further in his examination in chief, he had stated that afterwards, they took him to the motor of Narinder Singh of village Rasidpur in a husk room, where again he was beaten and threatened with pistol. His hands and legs were tied and he was again beaten and locked in the husk room. All the accused went upstairs to have liquor and then the accused took him towards Chandigarh and threw him on the main road near Sector 35 Chandigarh opposite Kissan Bhawan at about 9 P.M at night, from where he hired three-wheeler and paid him after reaching his home and rang up the police. Here again pause is taken, as Sector 35 Chandigarh Kissan Bhawan is a very busy area, where traffic is moving all around night and there are many rickshaw puller, auto-rickshaw standing at the roundabout of Sector 35 Chandigarh, but no one had seen Gurmail Singh being thrown at the roundabout. Moreover, he had failed to inform or seek help at the roundabout, rather he simply hired auto-rickshaw and went home. The conduct of Gurmail Singh again raised suspicion. It is not also understandable as to why the accused had left him at round about after only inflicting injuries upon him specially when Gurmail Singh knew their identity. He was also aware of the places he was taken to, as he was never been blindfolded. Even it is not clear as to why accused kidnapped him at the first place when they never called for ransom and if they had already

got scribed suicide note from accused, then why they let him alive and had left him only after few hours from kidnapping, thus story of victim do not inspire must confidence. He further submitted that he was got medically examined by the police and he took the police to Sector 35 Chandigarh and showed the place of occurrence and he also took the police to the motor of Narinder Singh, where the police also took into possession a rope and also clicked photographs and the police also inspected the House No.2526 Phase 7 Mohali. He submitted that motive behind the incident was the dispute regarding Sarpanchship, as Chachi of Malkiat Singh was contesting election against the wife of Gurmail Singh and there was dispute between him and Balwinder Singh regarding Panchayat election and Malkiat Singh and Balwinder Singh were playing through accused Davinder Singh on phone from behind the scenes. He proved photographs as Ex. P1 to Ex. P4, bill of phone as Mark A, photographs of Village Rasidpur as Mark C1 to Mark C-18, call details Mark D and various other documents pertaining to different other litigation along with blood-stained clothes and Car as MO-1 to MO-3. As already discussed above, there are serious doubts raised to the story of Gurmail Singh and in cross examination, he admitted that many FIRs are lodged against him and his family members in different matters pertaining to forging, cheating etc. He admitted that envelope of the photographs bears date 30.11.2011.”

21. During arguments before this Court, except to the extent that Id. trial Court has wrongly mentioned the time to be 9.00 pm when Gurmail Singh was allegedly thrown at the main road near Sector 35, Chandigarh opposite Kissan Bhawan, though in fact he was allegedly thrown at 12-12.30 AM in the night as per the prosecution, no other factor could be pointed by Id. counsel for the appellant so as to shatter the observations made by the Id. trial Court.

22. After considering the entire evidence on record, I find that Id. trial Court has rightly observed about the testimony of PW1-Gurmail Singh so as to hold him as a witness unworthy of credit. The only alleged eye witness namely Kulwinder Singh has not supported him. PW3-Jagtar

Singh, son-in-law of Gurmail Singh is not reliable, as his statement is based on hearsay. There are inherent improbabilities in the statement of PW1-Gurmail Singh. No material witnesses have been examined by the prosecution like the person, who was present in the parking at the time when Gurmail Singh was allegedly kidnapped, though it was day time. Nobody has been examined from the place where Gurmail Singh was allegedly kept in confinement despite the fact that it was a residential area. Even the owner of the mechanic room, where he was allegedly taken, has not been examined.

23. Taking into consideration all the aforesaid facts and circumstances, it is held that appellant has failed to make out a case so as to set aside the impugned judgment of acquittal. Said judgment of acquittal is hereby upheld. Finding no merit, present appeal is hereby dismissed.

15.09.2023

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No