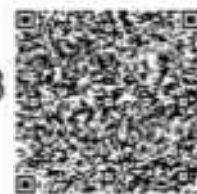


CRM-A-275-2022 (O & M)

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2024:PHHC:122666-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-275-2022 (O & M)

Date of decision: 17.09.2024

Subeg Singh

..... Appellant(s)

V/s

State of Punjab and ors.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kunwar Rajan, Advocate, for the appellant.

Mr. Eklavya Darshi, DAG, Punjab.

JASJIT SINGH BEDI, J.

The present application under Section 378 of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 10.11.2021 passed by the Sub Divisional Judicial Magistrate, Malout (Sri Muktsar Sahib).

2. The facts of the case in brief as put forth by the complainant are that he was an agriculturist. He and accused no.1 were real brothers and were residing separately. He and his brother Manjit Singh were having 10 acres of land. He averred that his parents were residing with Manjit Singh. Their father had given them three acres land each and sale deed of three acres had been executed in favour of his sister-in-law and they had kept 1 acre of land with themselves. He averred that he was having a common bore to be used by both of them turn wise. On 11.06.2016, at about 7.00 am. when he was watering his fields, then, Sukhwant Singh, his son was also present with him. At that time, Manjit Singh while carrying Kirpan, Beant Singh and Bhagwant Singh sons of Manjit Singh while carrying baseball bats came there and started abusing him. Manjit Singh raised a lalkara to cause injuries to him and he gave a Kirpan blow to him. In order to save himself, he raised both his hands and the Kirpan hit on the little finger of his left hand and it cut / amputated upper portion of his little finger. Then, Beant Singh gave him baseball blow and caused injuries on the thumb of his right hand and right shoulder. Then, accused Bhagwant Singh gave a baseball bat blow on him and caused him injuries on his right hand, due to which he fell down and at that time, Bhagwant Singh gave baseball blow to him in his stomach. He averred that his son Sukhwant Singh tried to rescue him from the clutches of accused, but he failed to save him. They raised an alarm and people started gathering there from the adjacent fields. On seeing them, the accused fled away from the spot along with their weapons. Thereafter, he

was taken to hospital ie CHC Chak Sherewala, from where, he was referred to Guru Gobind Singh Medical College, Faridkot after giving him first aid. He averred that the matter was reported to the police, and a case was registered against the accused. However, the police did not arrest any of the accused nor took any action against them. Therefore, the complaint had been filed.

3. In order to substantiate the aforesaid allegations against the accused, the complainant in his preliminary evidence examined, firstly, Dr. Devinderpal Singh, Junior Resident Department Orthopaedics, SGRD, Medical College & Hospital, Sri Amritsar, Tehsil and Distt. Sri Amritsar, as CWI and he tendered his affidavit in his evidence, which is on record as Ex.CA in which he made a deposition that on 11.06.2016 he medico-legally examined Subeg Singh S/o Gurdev Singh R/o Village Bhagsar, Distt. Sri Muktsar Sahib vide MLR No. DPS/05/CSW/2016 dated 11.06.2016 and found the following injuries on his person:-

Injury No.1	Incised wound with amputated half of the distal phalanx of the little finger of the left hand with clear cut margin fresh bleeding is present underlying bone and soft tissue visible.
Injury No.2:	Superficial laceration measuring 2 cm present obliquely on dorsal aspect of right wrist joint 2 cm away from left index finger MCP joint.
Injury No.3:	Pain the right shoulder joint restriction of movement present. No Redness, no swelling, no external mark of injury.
Injury No.4:	Pain and limitation of movement of the right thumb MCP joint.

Injury No.5:	Pain in the lower lumber region diffuse nature no mark of external injury, no redness, no swelling.
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The kind of weapon used for injury No. 1 was sharp in nature and blunt for injury No. 2 to 5. All injuries were kept under observation. The probable duration of all injuries with in 2-3 hours on 11.06.2016 at 1:00 PM and readmitted on 15.06.2016. The patient was made stable and treated and for further management of the injury No. 2 patient was referred to Civil Hospital, Sri Muktsar Sahib. Injury No. I was declared grievous in nature and injuries No. 2 to 5 were declared as simple in nature. Besides this, he also proved the certified copy of MLR No. DPS/05/CSW/2016 as Ex.C1, pictorial diagram as Ex.CI/A, declaration of injury report as Ex.C2.

4. The complainant examined HC Harjinder Singh No. 191/SMS, PS Lakhewali as CW2 and this witness proved FIR No. 24 dated 13.06.2016, PS Lakhewali and certified copy of the same as Ex Ex. C3. He also proved DDR No. 21 dated 25.06.2016 and certified copy of the same as Ex.C4.

5. The complainant examined Sukhwant Singh as CW3 and himself as CW4. Upon stepping into witness box, they deposed on almost similar lines as the complainant.

6. The complainant examined Gurwinder Singh as CW5. Upon stepping into witness box, he deposed that on 11.06.2016 at about 07:30 AM, he was present at his fields when he heard the raula. Then he saw a

hit his left hand and after that Beant Singh armed with baseball gave blows on Subeg Singh on the right hand and secondly he again gave a blow which hit his right shoulder. After that Bhagwant Singh gave blows of a baseball on Subeg Singh which was hit on his right hand and then he fell down on the earth and again Bhagwant Singh gave a blow on the abdomen. When he raised a hue and cry then all person fled away with their respective weapons. He saw the whole occurrence with his own eyes at the spot.

7. After appreciating the preliminary evidence led by the complainant, all accused persons were ordered to be summoned to face trial for the offences punishable under Section 323, 326 of IPC read with Section 34 IPC vide order dated 01.07.2019 passed by my learned Predecessor.

8. On appearance of the accused No. 1 to 3, namely, Manjeet Singh, Beant Singh and Bhagwant Singh, the complainant again examined five witnesses in his pre-charge evidence i.e. firstly, complainant examined Dr. Devinderpal Singh, as CWI in his pre-charge evidence as CW-1 and he tendered his affidavit in His evidence, which is on record as Ex.CA in which he made deposition that on 11.06.2016 at 10:30 AM. He was on his emergency duty at CHC Chak Shere Wala, Sri Muktsar Sahib. Then the patient, namely, Subeg Singh S/o Gurdev Singh aged 55 years male R/o Village Bhagsar, Tehsil and Distt. Sri Muktsar Sahib came along with Sukhwant Singh son of Subeg Singh had for his medical examination. He had done the medico legal examination of the patient under MLR No. DPS/05/CSW/2016 and found the following injuries on his person:-

Injury No.1	Incised wound with amputated half of the distal phalanx of the little finger of the left hand with clear cut margin fresh bleeding is present underlying bone and soft tissue visible.
Injury No.2:	Superficial laceration measuring 2 cm present obliquely on dorsal aspect of right wrist joint 2 cm away from left index finger metacarpophalangeal joint.
Injury No.3:	Pain the right shoulder joint restriction of movement present. No external mark of injury. No Redness, no swelling present.
Injury No.4:	Pain and limitation of movement of the right thumb MCP joint.
Injury No.5:	Pain in the lower lumbar region generalised and diffuse in nature no migration of pain, no mark of external injury, no redness, no swelling.

Injury No. 1 was caused by sharp weapon. All other injuries were caused by blunt weapon. Patient was well oriented, fully conscious. Vitals of the patients were normal. Patient was admitted to the hospital and kept under observation. According to the X-ray report number X-645/15-06-2016, injury number 1 was declared grievous in nature and injuries No. 2 to 5 were declared as simple in nature. Besides this, he also proved the certified copy of MLR No. DPS/05/CSW/2016 as Ex.C1, pictorial diagram as Ex.C1/A, declaration of injury report as Ex.C2.

9. Complainant examined himself as CW-2 and his son Sukhwant Singh as CW3 respectively in his pre-charge evidence. Upon stepping into witness box, they deposed on almost similar lines as the complainant.

10. The, complainant examined Gurwinder Singh as CW4. Upon stepping into the witness box, he deposed that on 11.06.2016 at about 07:30 AM, he heard the raula, at that time he was visiting his fields. His fields were adjoining to fields of Subeg Singh. The accused persons were fighting with Subeg Singh. Then he rescued Subeg Singh from the accused persons and thereafter, accused Manjit Singh etc. fled away from the spot along with their respective weapons. Then, they admitted Subeg Singh at Chack Sherewala. He identified the accused persons.

During cross examination of this witness, the defence put the application moved to SHO, PS Lakhewali dated 07.05.2016 and the same was marked as Mark A.

11. The, complainant examined ASI Shivraj Singh No. 575/SMS, PS Lakhewali as CW5. Upon stepping into witness box, he deposed that he brought the summoned record of FIR No. 24 dated 13.06.2016, PS Lakhewali and attested copy of same was Ex.C3 and attested copy of DDR No. 21 dated 26.05.2016 was Ex.C4. Same were attested by MHC Harjinder Singh.

During cross-examination of this witness, the defence put some documents i.e. photocopy of inquiry report as mark DA and photocopy of investigation report as mark DB (marked as D in evidence).

12. After hearing the arguments on the point of charge, a prima facie case for offences punishable under Sections 323, 326 and 34 IPC was found to be made out against the accused persons vide order dated

14.11.2019. They were charge sheeted for the said offences, to which they pleaded not guilty and claimed trial.

13. In the after charge evidence, the complainant himself appeared as CW-2, Sukhwant Singh appeared as CW-3 and Gurwinder Singh appeared as CW-4 for their further cross-examinations and were further cross-examined in this case on 10.12.2019 by the defence counsel.

14. Thereafter, accused Manjit Singh, Beant Singh and Bhagwant Singh suffered a joint statement on 07.01.2020 that they did not want to further cross-examine Dr. Davinderpal Singh and ASI Shivraj Singh after charge and their earlier cross-examination be considered in after charge evidence also. Further, complainant after tendering site plan as Ex.C5 and jamabandi as Ex.P6 (read as Ex.C6) closed his after charge evidence vide his separate statement dated 07.01.2020.

15. Thereafter, the statements of the accused persons, namely, Manjit Singh, Beant Singh and Bhagwant Singh, under section 313 Cr.P.C. were recorded in which they denied the complainant's case and the accused Beant Singh took the stand that he was innocent. He had been falsely implicated in this case at the instance of the complainant. They did not cause any injury to complainant. No alleged occurrence took place. Injuries upon the complainant person were self-inflicted. The complainant had made a concocted story and had leveled false allegations against him, his brother and his father. Actually, the complainant was his real uncle. His grandfather, namely, Gurdev Singh was having 10 acre land at village Bhagsar. His grand

father Gurdev Singh gave 1/3 share of above said land to Subeg Singh and 1/3 share given to his father and remaining land about 3 acre kept lying with his grandfather Gurdev Singh. His grand father Gurdev Singh executed sale deed of his share in favour of his mother Simarjeet Kaur. Due to this reason, Subeg Singh kept grudge against them and he demanded half share out of the above said land. Due to this reason he filed a false case against them only to put pressure upon them with ulterior motive. Further, accused Bhagwant Singh took the stand that he was innocent. He had been falsely implicated in this case at the instance of the complainant. They did not cause any injury to complainant. No alleged occurrence took place. Injury upon the complainant person were self-inflicted. The complainant made a concocted story and leveled false allegations against him, his brother and his father. Actually, the complainant was his real uncle. His grandfather, namely, Gurdev Singh had 10 acre land at village Bhagsar. His grand father Gurdev Singh gave 1/3 share of above said land to Subeg Singh and 1/3 share given to his father and remaining land about 3 acre kept lying with his grandfather Gurdev Singh. His grand father Gurdev Singh executed sale deed of his share in favour of his mother Simarjeet Kaur. Due to this reason, Subeg Singh kept grudge against them and he demanded half share out of the above said land. Due to this reason he filed false case against them only to put pressure upon them with ulterior motive. Further, accused Manjit Singh took the stand that he is innocent. He had been falsely implicated in this case at the instance of the complainant. They did not cause any injury to

complainant. No alleged occurrence took place. Injury upon the complainant person were self-inflicted. The complaint made a concocted story and leveled false allegations against him and his sons. Actually, complainant was his real brother. His father, namely, Gurdev Singh having 10 acre land at village Bhagsar. His father Gurdev Singh gave 1/3 share of above said land to Subeg Singh and 1/3 share given to him and remaining land about 3 acre kept lying with his father Gurdev Singh. His father Gurdev Singh executed sale deed of his share in favour of his wife Simarjeet Kaur. Due to this reason, Subeg Singh was kept grudge against them and he demanded half share out of the above said land. Due to this reason he filed false case against them only to put pressure upon them with ulterior motive.

16. In their defence evidence, accused Beant Singh tendered certified copy of plaint of civil suit titled as Subeg Singh Vs. Gurdev Singh etc as Ex.D1, written statement in civil suit titled as Subeg Singh Vs. Gurdev Singh etc as Ex.D2, order dated 01.02.2019 passed by the court of Sh Harvinder Singh Sindhia, Ld. ACJ(SD) in civil suit titled as Subeg Singh Vs. Gurdev Singh etc as Ex.D3, self declaration as Mark C. photocopy of girdhwari Mark D. jamabandi Mark E, photocopy of newspaper cutting as Mark F, vide his separate statement dated 12.02.2020.

17. The accused persons examined only one witness i.e. C. Sham Chand No. 1265/SMS, PS Lakhewall as DW-1. Upon stepping into the witness box, he made the statement in his examination in chief to the effect that he had brought the summoned record of complaint/application register

of 2016 from SP Office, Muktsar. Inquiry was conducted by Maninder Singh, DSP in relation to FIR No. 24/2016 dated 13.06.2016, PS Lakhewali. During inquiry offence under Section 326 of IPC was not found to be made out and it was found that after inflicting self injury, the complainant got himself admitted in hospital. Besides this, he also proved inquiry report Ex. D4.

18. The counsel for the accused persons tendered a Jamabandi as Ex.D5, Khasra girdawri as Ex.D6 and photocopy of registry as Mark X, vide his separate statement dated 10.03.2021.

19. Based on the evidence led, the respondent-accused came to be acquitted vide a judgment dated 10.11.2021.

20. The aforementioned judgment is under challenge before this Court.

21. The learned counsel for the appellant/complainant contends that the complainant and other witnesses which had been examined had been disbelieved without any cogent reason whatsoever. The medical evidence was totally in consonance with the ocular account. The Trial Court had wrongly held that the injuries received by the injured purportedly caused by the accused were self-suffered. He, therefore, prays that the leave to appeal be granted.

22. The learned counsel for the State while supporting the case of the appellant/complainant contends that the impugned judgment was not

based on proper appreciation of the evidence on record and, therefore, judgment of acquittal was liable to be set aside.

23. We have heard the learned counsel for the parties and examined the record.

24. The accused have been charged for the offences punishable under Section 326 read with Section 34 of IPC and Section 323 read with Section 34 of IPC on the basis of the allegation in brief that accused No. 1 Manjit Singh gave a Kirpan blow on the complainant and in order to save himself from said blow, the complainant raised his both hands and Kirpan blow fell on the little finger of his left hand, due to which front portion/ part of front phalanx of little finger of left hand of complainant was cut / amputated and fell down on the earth. Thus, causing him grievous injury with sharp edged weapon. Thereafter, accused No. 2 and 3 namely Beant Singh and Bhagwant Singh gave blows of base ball bat on the complainant due to which complainant suffered simple injuries. Aforesaid version of complainant regarding causing him aforesaid grievous injury with the sharp edged weapon e. cutting/ amputating down of the upper portion of phalanx of little finger of left hand of complainant seems to be doubtful because complainant Subeg Singh as CW-2 during his cross-examination dated 11.09.2019 stated that Manjit Singh was standing in front of him and accused Beant Singh and Bhagwant Singh were standing behind him and further during his cross-examination dated 10.12.2019 in after charge evidence, CW-2/complainant Subeg Singh stated that when alleged blow of

Kirpan caused him injury then his hand was in front of his mouth which was straight and his fingers were towards the sky and accused Manjit Singh was standing 1-1½ feet away from him and blow of said Kirpan hit him from the backside of his hand. As per this version of complainant, blow of Kirpan was given to him by accused Manjit Singh from his front side and complainant's hand was in front of his mouth and his fingers were towards the sky, so, in our opinion, if in such a situation/ scenario, a Kirpan blow is given to anyone then after cutting / amputating the upper portion of little finger of the injured, kirpan will also cause injury on remaining fingers of said hand but no such injury, as per the version of the complainant or as per the other ocular evidence on record or as per medical evidence on record was found on any other portion of left hand of the complainant.

Therefore, quite apparently, the said alleged injury on the little finger of the left hand of the complainant cannot be caused with a Kirpan in the manner as disclosed / stated by the complainant. This fact renders the version of the complainant to this effect quite doubtful. Moreover, CW-1 Dr. Devinderpal Singh, who had medically examined the complainant on the date of alleged occurrence i.e. 11.06.2016, during his cross examination dated 26.08.2019 stated that "possibility cannot be ruled out that injury No. 1 can be caused with friendly hand". This statement of the Doctor also supports the aforesaid observations that the version of the complainant regarding causing of the said injury to him by the accused persons is doubtful. Further, even by examining DW-1 C Sham Chand accused persons

have proved on record the inquiry report Ex.D4 conducted pursuant to the FIR registered on the basis of the same incident (copy of which is lying on record as Ex.C3), as per which also, on the date of the alleged occurrence accused Manjit Singh was not found to be armed with Kirpan or armed with any weapon and at the spot during quarrel no injury was caused on the hand of complainant, no blood oozed out from any part of body of complainant and it was also found that since Gurdev Singh i.e. father of complainant and accused No. 1 transferred 22 Kanals of land to his daughter-in-law Simarjeet Kaur, so for getting equal share in the land of his father, the complainant Subeg Singh himself caused injury on the little finger of his left hand with a friendly hand and got registered the false case against the accused persons. Thus, it was found that section 326 was not made out in this case. This inquiry report also supports our aforesaid observations and creates a doubt in the version of the complainant.

25. From the aforesaid material on record, it can be said that the version of the complainant is based on concealment and misstatement of facts. Besides injury No. 1, his version qua remaining injuries also becomes doubtful and even qua remaining injuries CW-1 Dr. Devinderpal Singh during his cross-examination dated 26.08.2019 stated that injuries No. 2 to 5 could be caused due to fall over the hard surface.

26. Further, as per the version of the complainant, after his medical examination at CHC Chack Sherewal on 11.06.2016, he was referred to GGS Faridkot but there is no medical record on file to show that any kind of

medical treatment was received by complainant from GGS Faridkot. Even CW-1 Dr. Devinderpal Singh did not in his deposition state that he referred the complainant to GGS Faridkot nor was this fact mentioned in the MLR of the complainant Ex.C1. No doubt factum of recording of the statement of complainant by the police at GGS hospital Faridkot is mentioned in the FIR Ex.C3, but in the absence of any medical record of the said hospital the aforesaid version of the complainant regarding referring him to GGS Hospital Faridkot by the Doctor from CHC Chack Sherewal seems to be incorrect.

27. Even as per MLR Ex.C1 as well as deposition of CW-1 Dr. Devinderpal Singh, the complainant was advised X-rays for injuries No. 1, 3, 4 and 5 on 11.06.2016 but as per that very statement of CW-1 Dr. Devinderpal Singh the said X-rays were got conducted by complainant on 15.06.2016 at same place i.e. CHC Chack Sherewal ie after a delay of 4 days. This fact is also corroborated by X-ray report Ex C2. So, this fact of delay in getting conducted X-ray by the complainant also creates a doubt in his version. Moreover, complainant has also not explained that if on 11.06.2016, he was referred to GGS hospital, Faridkot and he got admitted there, then why had he not got conducted his X-ray on 11.06.2016 at GGS hospital, Faridkot and why he preferred to get those X-rays conducted on 15.06.2016 at CHC Chack Sherewal. This fact also creates a doubt in the story put forth by the complainant.

28. The version contained in the inquiry report Ex.D4 that father of complainant and accused No. 1. transferred 22 Kanals of land to his daughter-in-law Simarjeet Kaur, so for getting equal share in the land of his father, complainant Subeg Singh himself caused injury on the littler finger of his left hand with friendly hand and got registered the false case against the accused persons, is also corroborated by the statement made by complainant Subeg Singh as CW-2 during his cross-examination dated 10.12.2019 on page No. 5 thereof, wherein he admitted that they were not happy with the execution of transfer deed of land by his father in favour of wife of accused Manjit Singh, So, motive behind filing of this case also becomes apparent from this version of the complainant.

29. Further, there are some contradictions in the statements of complainant / CW-2 Subeg Singh and his son Sukhwant Singh CW-3 During cross-examination of CW-2 on dated 11.09.2019, he stated that accused Manjeet Singh was standing in front of him but accused Beant Singh and Bhagwant Singh were standing behind him. whereas CW-3 Sukhwant Singh during his cross-examination on 11.09.2019 stated that at the time of the alleged occurrence Manjeet Singh was standing on the left side of his father and Beant Singh and Bhagwant Singh were standing on his right side. Further, CW-2 Subeg Singh during his cross-examination on 11.09.2019 stated that at the time of the alleged occurrence his son was cutting fodder whereas CW-3 Sukhwant Singh during his cross-examination on 11.09.2019 stated that at that time he was cutting grass with datri from the water course.

These contradictions in the statements of both these material the witnesses also create a doubt in the truthfulness of the version of the complainant because had there been any truth in his story then these contradictions would not have occurred. Similarly, there are also contradictions in the statements of CW-2 Subeg Singh and CW-4 Gurvinder Singh. CW-2 Subeg Singh during his cross- examination stated that he was taken to Faridkot in his car whereas CW-4 Gurwinder Singh during his cross-examination stated that they took Subegh Singh on the tractor. CW-3 Sukhwant Singh during his cross-examination on 10.12.2019 stated that at that time no person was present in the near by fields. From this statement, it seems that even the alleged eye witness of the occurrence CW-4 Gurwinder Singh was also not present, but he has been projected as the eye witness of the occurrence, so version of CW-4 can also not be believed.

30. As to how an application for leave to appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not

reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

31. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment dated 10.11.2021 passed by the Sub Divisional Judicial Magistrate, Malout (Sri Muktsar Sahib) whereby accused-respondent No.2 to 4, namely, Manjit Singh, Beant Singh and Bhagwant Singh have been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 17, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No