

2024:PHHC:109972-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-391-DBA-2004
Reserved on: 14.08.2024
Date of decision: 23.08.2024

KAMALDEEP SINGH ...Complainant/Appellant
Versus
JAGTAR SINGH AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. J.P. Sharma, Advocate (legal aid counsel)
for the appellant.

Ms. Shruti Sharma, Advocate (legal aid counsel)
for respondents No. 1 and 3.

Mr. H.S.Deol, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the appellant, against the common verdict drawn on 21.01.2003, upon Sessions Case No. 47/FTC/2000/2002 and Sessions Case No. 59/FTC/2001/2002, by the learned Additional Sessions Judge (Adhoc) Fast Track Court, Hoshiarpur wherethrough in respect of charges drawn for offences punishable under Sections 324, 323/34 IPC, he made a verdict of acquittal qua all the accused.

FACTUAL BACKGROUND

2. On 4.6.2000 at about 6.00 p.m. Kamaldeep Singh (complainant) along with Lakhbir Singh were going to their fields on scooter, situated in the area of village Nainowal Vaid and on reaching the fields, they started cutting *bajra*

2024:PHHC:109972-DB



crop, when the accused persons Mohinder Singh, Jagtar Singh, Balkar Singh, Kuljit Singh and Lakhbir Singh came there. Jagtar Singh, Balkar Singh, Kuljit Singh and Lakhbir Singh were armed with *datar* whereas, accused Mohinder Singh was empty handed. Mohinder Singh raised *lalkara* saying that Kamaldeep Singh etc should be taught a lesson for getting filed a case against them by Ajit Singh. At this, the accused Jagtar Singh tried to give a *datar* blow on the head of Lakhbir Singh but the blow fell on the finger of the right hand of Lakhbir Singh. As a result of the said blow, little finger of the right hand of Lakhbir Singh was chopped of and the adjoining finger was also injured. Jagtar Singh gave another *datar* blow to Lakhbir Singh on his right hand and Kuljit Singh gave *datar* blow on the back of Lakhbir Singh. Kuljit Singh also gave *datar* blow to Kamaldeep Singh on his left arm. Accused Balkar Singh gave a *dang* blow on the head of Kamaldeep Singh. Kamaldeep Singh and Lakhbir Singh raised alarm. PWs Jaskaran Singh, Gurjit Singh and Jaswinder Singh reached the spot, who also witnessed the occurrence. It is also alleged that in self defence, they also inflicted injuries to the accused and thereafter the accused ran away with their respective weapons. The injured were taken to Civil Hospital, Chakkowal where they were medically examined. Statements of the injured were recorded. The accused were arrested.

INVESTIGATION PROCEEDINGS.

3. After completion of the investigation and necessary formalities, challan against accused Jagtar Singh, Balkar Singh, Kuljit Singh and Lakhbir Singh was presented. Feeling dis-satisfied with the police investigation,

Complainant Kamaldeep Singh filed criminal complaint against four accused

2024:PHHC:109972-DB



persons, wherein three of the accused were same as in the State case, whereas he arrayed the fourth accused as Mohinder Singh instead of Lakhbir Singh, who was arrayed as accused in the State case.

COMMITTAL PROCEEDINGS

4. Both the cases titled as State versus Jagtar Singh and others and Kamaldeep Singh versus Jagtar Singh etc. were committed for trial, to the Court of Sessions.

TRIAL COURT PROCEEDINGS.

5. On finding a *prima facie* case, charges under Sections 326/149, 324/149 and 323/149 IPC became framed, against all the accused, to which they pleaded not guilty, and, claimed trial.

6. In support of the prosecution case, the prosecution examined seven witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge concerned, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused examined Dr. Madan Lal Puri as DW-1 in their defence.

7. After conclusion of the trial, as, became entered upon the FIR (supra) and the complaint (supra), by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur, the latter proceeded to make the afore verdict of acquittal, upon, the accused-respondents.

**SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT
AND THE LEARNED STATE COUNSEL.**

8. The learned counsel appearing on behalf of the appellant/complainant and the learned Counsel for the State, have made a

2024:PHHC:109972-DB



vigorous submission before this Court that, the impugned verdict of acquittal suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, they argue that the impugned verdict be quashed and set aside by this Court and the accused be held guilty of the charged offences and sentenced accordingly.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS.

9. Contrarily, the learned counsel for the respondents has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

10. Before proceeding to delve into and also for making an adjudication in respect of the submissions (supra) addressed before this Court, it is deemed imperative to extract the relevant paragraphs, as occur in the impugned judgment of acquittal.

7. *First of all it is argued by the learned defence counsel that the injuries on the person of Lakhbir Singh have been fabricated by the complainant party in order to make false cross case. He has also argued that in a statement before police Lakhbir Singh admitted that he was made to drink liquor and when he was under the influence of liquor his finger was chopped off. Though he has denied this fact in the court but he was confronted with his statement Ex PD. Therefore, according to the learned defence counsel, it is proved from the cross examination of Lakhbir Singh that this is a false case. He has also argued that Lakhbir Singh accused has been challaned in the police case but in court the witnesses have not stated anything against him when examined in the court they have supported the complaint version and not the police version recorded in the challan case. He has also argued that injuries of Lakhbir Singh and Kamaldip Singh can be self suffered and the story as put up in the complaint and in the state case is contradictory and the weapon of offence*

2024:PHHC:109972-DB



have also been changed as per two versions and there is inordinate delay in lodging the report and the injuries of the accused have not been explained and therefore the prosecution has miserably failed to establish the charge against the accused beyond doubt and the accused are entitled to acquittal. I find substance in the contention of the learned defence counsel. The defence version is quite plausible as the complainant party belong to village Dhamian which is at a distance of about 15-16 kms. from the place of occurrence and the accused belong to village Nainowal Vaid where the occurrence has taken place. The witnesses came armed with weapons to attack the accused and caused injuries to Jagtar Singh, Kuljit Singh and Balkar Singh accused. In defence accused have examined Dr. M.L. Puri who has proved MLR Ex.DB, DC and DD of Jagtar Singh, Kuljit Singh and Balkar Singh, respectively. These documents show that there were as many as 14 injuries on the person of Jagtar Singh and 7 injuries on the person of Kuljit Singh and one injury on the person of Balkar Singh. There were six fractures on the person of Jagtar Singh and one fracture on the person of Kuljit Singh. These injuries were caused with sharp edged weapons and cannot be self suffered. Complainant party has not explained these injuries on the persons of accused which go to show that the genesis of occurrence has not been explained by witnesses. The witnesses are concealing real facts and have not disclosed as to how the fight originated. Keeping in view these injuries I have no hesitation in holding that the complainant party is aggressor and caused injuries to the accused party and in self defence if any injury was caused by the accused to the complainant party then they are not liable because the right of self defence in such a case is open to the accused party.

8. It is also clear from the statement of Lakhbir Singh PW3 that the injuries have been fabricated by the complainant party. No doubt he has stated that he was given injuries by Jagtar Singh accused with datar but in the cross examination he was confronted with his statement Ex. PD made to the police in which he has stated that when he went to village Nainowal Vaid they all had consumed liquor and after fight they had gone to village Dhamian and when they were going to Civil Hospital, Chakkowal, on the

2024:PHHC:109972-DB



way Jaskaran Singh administered more liquor to him and he became drunk and then they inflicted datar blow on the finger of his right hand and then they got themselves admitted in the hospital. He has also stated in Ex PD that he had not participated in the fight and kept aside due to fear. He was confronted with portion A to A-1, B to B-1 and C to C-1 of Ex. PD in which these facts were recorded. He has also stated in Ex. PD that he had not received any injury in the occurrence and he was confronted with portion D to D-1 wherein it is so recorded. He has also admitted that he along with Kamaldip Singh are facing trial in a cross case for causing injuries to the accused. He has also stated that in Ex. PD he had stated that Mohinder Singh had raised lalkara exhorting his co-accused to kill them. He was confronted with his statement Ex. PD wherein this fact was not recorded. It means that he has implicated Mohinder Singh accused in the court and in the police version he has not implicated Mohinder Singh. Learned counsel for the complainant has stated that Ex. PD bears the signature of Lakhbir Singh and is also attested by two witnesses and therefore it is not a statement under Section 161 CrPC and how the Investigating Officer recorded this statement is not explained and therefore this statement Ex PD cannot be taken into consideration. I am not inclined to accept this argument because it is a previous statement of this witness recorded by Investigating Officer Though according to Section 161 Cr.PC signature of the witnesses are not required to be taken on that statement but if the I.O. has obtained the signature of the witnesses and attestation of other persons then it does not loose the status of a previous statement. Therefore, this statement can be used for contradicting the witness and for the purpose of confrontation. Kamaldip Singh PW2 has also stated in the cross examination that he had named Mohinder Singh as one of the assailants in his statement Ex PB recorded by police but he was confronted with that statement in which the name of Mohinder Singh has not been mentioned. He has also stated that in his statement Ex.PB he has not stated that Jagtar Singh gave him kirpan blow on the left forearm and he was confronted with portion A to A-1 of Ex PB where it is so recorded. He has also stated that he had not stated in Ex. PB that Lakhbir Singh gave him a datar blow on his head. He

2024:PHHC:109972-DB



was confronted with portion B to B-1 of Ex PB where it is so recorded. He has further stated that he had not stated to police that Kuljit Singh and Jagtar Singh were armed with dangs and Balkar Singh was armed with gandasi. He was confronted with Ex PB where it is so recorded. He has also admitted that he along with other witnesses are facing trial in a cross case for causing injuries to Balkar Singh, Jagtar Singh and Kuljit Singh. So it is clear that in the complaint case the witnesses have implicated Mohinder Singh but have not implicated Lakhbir Singh accused. In the complaint case and in the State case there is a contradiction of weapons carried by the accused. In complaint case it is stated that accused Jagtar Singh and Kuljit Singh were armed with datar whereas in the state case it is alleged that they were armed with kirpans. In Ex. PB, Kamaldip Singh has stated that accused Kuljit Singh, Jagtar Singh were armed with dangs and Balkar Singh was armed with gandasi. So, these contradictions make it clear that the case of the complainant party is very much doubtful and the story given by them to the police is contradictory to the story put up by them in the complaint.

9. *There is also inordinate delay in lodging the report with police. Occurrence took place on 4.6.2000 at 6.30 pm but the statement of the complainant in this case was recorded on 13.06.2000 at 1.20 pm in Civil Hospital, Chakkowal and the complaint has been filed on 15.2.2001. This great delay has not been explained by witnesses which is fatal to the prosecution case.*

INFERENCES OF THIS COURT.

11. The above made reasons for acquittal are well grooved on a well appreciation of the evidence existing on record, thereby the above extracted reasons, which coaxed the learned trial Judge concerned, to record a finding of acquittal against the accused, thus are required to be validated.

12. The reason for accepting the above extracted reasons becomes quartered on the score, that the evidence on record does suggest, that the defence

2024:PHHC:109972-DB



the six injuries/fractures occurring on the person of Jagtar Singh and of one fracture occurring on the person of Kuljit Singh, especially when the said injuries were evidently caused by sharp edged weapons and as such could not be inferred to be self inflicted. Moreover therebys the learned trial Judge ably concluded, that as such the genesis of the prosecution case became enveloped in a shroud of doubt, but leading him to further well conclude that rather than the accused, thus the complainant party was the initator of the aggression besides also made an apt conclusion that only in the exercising of the right of private defence, that the accused party had caused injuries on the complainant. Resultantly the injuries, if any, which became inflicted by the accused upon the complainant party, did fall within the exceptions to criminal liability, inasmuch as, the defence was able to prove that they became inflicted in the valid exercisings by the accused of their right to private defence of body.

13. Furthermore, a reading of the above extracted reasons, as made by the learned trial Judge, thus for recording a finding of acquittal vis-a-vis the accused reveals, that they were well anviled on a well appraisal being made of the statements of PW-3 Lakhvir Singh and PW-2 Kamaldip Singh, whereby he became well led to conclude that the injuries have been conjured by the complainant party, thus for only falsely implicating the accused.

14. The further reason being that there were major inter-se contradiction(s) in inter-se their testification(s) made before the learned trial Judge vis-a-vis their previously made statements before the police officer concerned. The said major inter-se contradictions are :

a) PW-3 Lakhbir Singh, in his testification stated that he was

2024:PHHC:109972-DB



given injuries by accused Jagtar Singh with *datar*. However, on his being cross examined, when he became confronted with his previous statement made to the police, thereins he had rather stated that he had not participated in the quarrel and that after the fight, rather his alongwith the complainant and other persons had gone to village Dhamian. Since he further stated therein that on the way to Civil Hospital, Chakkowal, Jaskaran Singh administered him liquor and when he was under the influence of liquor, his finger was chopped off and he was got admitted by them in the Hospital. Resultantly therebys he belied his presence at the crime site.

b) Further, PW-3 in his cross examination stated that he had not stated to the police that at the time of occurrence he did not receive any injury. However, when he was confronted with portion D to D-1 of his previous statement Ex.PD made to the police, rather thereins it became so recorded.

c) PW-3 in his cross examination stated that he had in his previous statement Ex.PD made before the police, stated that Mohinder Singh had raised *lalkara* for exhorting the other co-accused to kill them. However, when he was confronted with his previously made statement Ex.PD, thereins the said fact was not recorded. The above begets an inference that he had implicated Mohinder Singh as accused in the Court, whereas, in his complaint before the police he had not implicated him as an accused. Resultantly therebys when there are glaring inter-se contradiction(s) inter-se his testification made before the learned trial Judge vis-a-vis his previously made statement before the police officer concerned, thereupon his testimony becomes bereft of evidentiary vigor, and, thus is required to be discarded.

2024:PHHC:109972-DB



d) PW-2 Kamaldip Singh on his being cross examined stated that he had named Mohinder Singh as one of the assailants in his earlier made statement Ex.PB before the police. However, when he was confronted with the said made statement Ex.PB, therein the said fact was not mentioned.

e) Further, there is also an apposite inter-se contradiction, as to the carrying of weapons by the accused in the State case vis-a-vis the version spelt out by the complainant in the complaint case, inasmuch as, in the complaint case, it is stated that accused Jagtar Singh and Kuljit Singh were armed with *datar*, whereas, in the State case it was alleged that they were armed with *kirpans*.

15. In aftermath, the above material discrepancies and inter-se contradiction(s) inter-se the testification(s) made by the prosecution witnesses, thus before the Court vis-a-vis their respectively previously made statements in writing before the police, but naturally creates a doubt qua the veracity of the prosecution version. Hence, the benefit of doubt is to be assigned to the accused.

16. Moreover, there is an inordinate delay in the lodging of the report with the police, as the occurrence took place on 04.06.2000, whereas, the statement of the complainant was recorded on 13.06.2000 and the complaint was filed on 15.02.2001. The said delay is immense and since no satisfactory explanation has been given by the complainant for the happening of the said delay. Resultantly the said unexplicated inordinate delay, begets an inference, that the version set forth by the complainant, thus was a concocted and engineered version.

FINAL ORDER OF THIS COURT.

In consequence, for all the reasons stated (supra), this Court finds no

2024:PHHC:109972-DB



merit in the appeal, and, the same is accordingly dismissed. The impugned verdict of acquittal, as made by the learned trial Court concerned, is maintained, and, affirmed.

18. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. Since the main case itself has been decided, thus all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

23.08.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No