

CRM-A-1598-2023 (O & M)

2024:PHHC:115966-DB



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1598-2023 (O & M)
Date of decision: 04.09.2024

Varinder Pal Singh

..... Appellant(s)

V/s

Rashwinder Singh Jeji @ Channi and ors.

...Respondent(s)

CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Jashandeep Singh Sandhu, Amicus Curiae,
for the appellant.

JASJIT SINGH BEDI, J.

CRM-47463-2023

For the reasons stated in application, same is allowed. Delay of 35 days in filing the application under Section 378(4) of the Code of Criminal Procedure is condoned.

CRM-A-1598-2023

Today the case was fixed for final arguments but none had appeared on behalf of the appellant. The present appeal is pending since 2023. In such circumstances, Mr. Jashandeep Singh Sandhu, Advocate, who



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is present in the Court in some other matter, is appointed as Amicus Curiae to assist the Court on behalf of the applicant. The Registry is directed to pay him requisite amount to the learned Amicus Curiae, as per rules.

2. The present application under Section 378(4) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 10.05.2023 passed by the Additional Sessions Judge, Patiala, acquitting accused/respondents No.1 to 3 and respondents No.5 to 8 of the offences under Sections 307, 326, 324, 452, 148, 149 IPC and convicting accused/respondent No.4 Balwinder Singh for the offences under Section 326 and 452 only and awarding a sentence of 03 years rigorous imprisonment to him.

3. The brief facts of the case of prosecution are that on 12.06.2008 Varinderpal Singh alongwith his sister Sarabjit Kaur and mother Bholi Rani were present at his resident. It was about 09.00 pm, Rashwinder Singh Jeji alias Channi, Jaswant Kaur, Rakeshinder Singh, Lalli, Balwinder Singh, Harjit, Rinku, Sundari and Maya Devi armed with deadly weapons i.e. sword, sticks and knife forcibly entered in the house of the complainant and raised a lalkara that they would not spare the complainant and would also take possession of the house forcibly. The complainant requested Balwinder Singh to talk with respect whereupon Jaswant Kaur exhorted the other accused to finish the complainant. Balwinder Singh inflicted a sword blow with the intention to kill the complainant towards his head but the complainant raised his hand and the sword hit on the thumb of his left hand.



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Rashwinder Singh inflicted a knife blow causing the complainant to sustain an injury near his left eye. Balwinder Singh inflicted another blow with the help of sword upon the head of the complainant but the complainant raised his hand to save himself and sustained injuries on the finger of the left hand. Maya Devi and Sundri Land instigated Harjit and Rinku and said that they should use a rope and kill the complainant by strangulation and Harjit and Rinku lifted the rope and put it around the neck of the complainant and twisted the same to kill the complainant by pressing the same. The mother and sister of complainant raised an alarm. People from the neighborhood came on the spot and rescued the complainant from the clutches of the accused. The accused fled away from the spot alongwith their respective weapons. The complainant got admitted in Rajindra Hospital, Patiala.

On the basis of above statement of the complainant, FIR under Sections 452,324,148,149 of IPC was registered. However, the police was helping the accused, who were quite influential. The accused threatened the complainant not to depose against them otherwise they would eliminate him. Medical record of injured was taken into possession. However, this FIR was cancelled leading to the filing of the complaint. After completion of preliminary evidence, the accused were summoned by the Trial Court vide order dated 21.04.2012 to face trial under Sections 307,326,324,452,148, 149 of the IPC.



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4. As the case was triable by the Court of Sessions, the case was committed to the said Court and the charges were framed under Sections 148, 149, 324, 326, 452 IPC.

5. The Prosecution examined PW-1/complainant Varinder Pal Singh. He deposed as per the statement given in the Trial Court as preliminary evidence. He proved the FIR as Ex.PW1/A, the medico-legal report as Ex.PW1/B, bed head ticket as Ex.PW1/C, X-ray Mark-X, application dated 19.06.2008 to SSP Patiala as Ex.PW1/D, registered postal receipts Ex.PW1/E to Ex.PW1/H, reminders to police Ex.PW1/J and Ex.PW1/K, complaint no.165T/2008 moved by the complainant in the court as Ex.PW1/L.

6. PW-2 Bholi Rani, an eyewitness corroborated the version of the complainant.

7. PW-3 Dr. Amandeep Singh Bakshi, Assistant Professor, Rajindra Hospital, Patiala, who conducted the medico legal examination on the person of Varinder Pal Singh deposed that the patient was admitted as a medico legal case in the emergency Ortho Ward the Department of Orthopedic with the alleged history of injury on the left hand. The said patient was operated on 13.06.2008 by the board of doctors including himself and Dr. Upkar, Dr. Yashwant and Dr. Ajay. During the said operation extensor tendon repair of patient was done under local anesthesia of the left index finger. The patient was discharged on 21.06.2008. The witness proved the original bed head ticket Ex.PW3/A. He also identified his signatures on



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it as Ex.PW3/A1. He also identified the operation note given by Dr.Ajay as Ex.PW3/A2 and also identified his handwriting and had signatures as Ex.PW3/A2 as he had seen him signing and writing. He also proved the medico legal case file of Varinderpal Singh as Ex.PW3/B.

8. PW-4 Jagdish Singh, Radiographer in the department of Radio Diagnosis, Rajindra Hospital, Patiala, proved the X-ray examination reports of Varinderpal Singh as Ex.PW4/A and Ex.PW4/B. He deposed that the said report was prepared by Dr.K.M.Mohindra, Jr. Resident of the department of Radio Diagnosis, Rajindra Hospital, Patiala. He identified his writing and signatures as he had worked with him and had seen him writing and signing. He also proved the X-ray films as Mark-P1 to Mark-P12. He deposed that Dr.K.M.Mohindra had already left the department and as per official record his whereabouts were not traceable.

9. Thereafter, the evidence of the complainant was closed by order of the Court.

10. The statements of the accused were then recorded under Section 313 Cr.PC wherein the entire incriminating evidence, appearing against the accused was put to the accused to which the accused pleaded innocence and false implication. Accused Rashwinder Singh Jeji raised the plea which is reproduced as under:-

"I am innocent. I have not committed any offence. The complainant has falsely implicated me and other alleged accused in his case on false allegations. On 12.06.2008 Jiwan Kumar a local Akali leader alongwith his lady supporter tried



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to forcibly dispossess us from our property. Police was informed and chowki incharge Darshanjit Singh came at the spot. The chowki incharge directed both the parties to appear before chowki alongwith documents of ownership of plot. The complainant lodged a false complaint based for registration of case FIR No.137 dated 27.06.2008, under Sections 452,324,248,149 of IPC at P.S. Civil Lines, Patiala against me and other persons. I am government employee and working in education department. We had moved an application before the then SSP Patiala to investigate the matter. The matter was investigated by SHO Ashok Kumar and it was found that we are innocent. Cancellation report was forwarded to the illaqa Magistrate Patiala. The father of complainant Jiwan Kumar had filed a civil suit for permanent injunction against me and my brother to grab out the plot and the said suit was dismissed vide judgment dated 22.12.2014. Thereafter, father of complainant filed civil appeal against the said judgment and the said civil appeal had also dismissed vide judgment dated 20.01.2016. The main motive of the complainant and his father that they want to grab the property and due to said reason present false complaint has filed against me and others. The injuries on the person of complainant are fabricated injuries. Neither me nor any other alleged co- accused had attacked upon the complainant."

11. Accused Ravinder Kaur, Rakesh Inder Singh, Balwinder Singh, Harjit, Rinku, Sunderi, Maya Devi raised the plea that they were innocent. They had not committed any offence. The complainant had falsely implicated them. They adopted the plea of Rashwinder Singh Jeji.



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12. The accused examined in defence evidence DW-1 HC Jarnail Singh, who produced the original record of FIR No.35 dated 28.12.2015, registered under Section 7,13(1), (D) read with Section 13(2) 88 of PC Act of P.S. Vigilance Bureau, Patiala. He proved the true copy of the same as Ex.DW-I/A.

13. Accused Rashwinder Singh tendered into evidence attested copy of FIR No.205 dated 09.09.2010, under Sections 420, 167, 211, 192, 193, 197, 120-B of IPC and Section 7,13(2) of PC Act in P.S. Civil Lines, Patiala as Ex.DA.

14. The counsel for the accused tendered into evidence copy of judgment dated 20.01.2016 Ex.D1, certified copy of judgment and decree dated 20.12.2014 as Ex.D2, certified copy of statement of Jiwan Kumar as Ex.D3, certified copy of cross-examination of Jiwan Kumar as Ex.D4, certified copy of plaint titled as Jiwan Kumar Vs. Rashwinder Singh as Ex.D5, certified copy of written statement filed by Rashwinder Singh as Ex.D6, certified copy of replication as Ex.D7, certified copy of plaint filed by Bholi Rani as Ex.D8, certified copy of written statement filed by Sunderi Devi as Ex.D9, certified copy of written statement filed by Nand Lal father of Jiwan Kumar Ex.D10. certified copy of replications filed by Bholi Rani Ex.D11 and Ex.D12, certified copy of statement of Jiwan Kumar Ex.D13, certified copy of order dated 29.08.1998 Ex.D14, certified copy of vakalatnama signed by Bholi Rani Ex.D15 and certified copy of application filed by Bholi Rani Ex.D16.



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15. Based on the evidence led, only Balwinder Singh-accused/respondent No.4 was convicted for having committed the offences under Section 326 and 452 IPC and he was sentenced to undergo rigorous imprisonment for 03 years and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months. The rest of the respondents-accused were acquitted.

16. The present appeal has been preferred against the acquittal of the accused/respondents No.1 to 3 and 5 to 8 and for the conviction of Balwinder Singh-accused/respondent No.4 under Sections 326 and 452 IPC only.

17. The Amicus Curiae for the appellant contends that the Trial Court had acquitted all the accused except one without proper appreciation of the evidence on record. In fact, the medical evidence was totally in consonance with the ocular account. It was apparent that all the accused had been part of an unlawful assembly, had trespassed into the house of the complainant and had caused various injuries. Further, Balwinder Singh, the only convict ought to have been sentenced appropriately and the 03 years sentence imposed upon him was grossly inadequate in view of the case of the complainant and the evidence led in support thereof. He, therefore, contends that the judgment dated 10.05.2023 passed by the Additional Sessions Judge, Patiala to the extent that it acquitted respondents No.1 to 3 and 5 to 8 of the offences under Sections 148, 307, 149, 324, 326, 452 IPC



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was liable to be set aside and the sentence of the convicted accused/respondent No.4-Balwinder Singh ought to be enhanced.

18. We have heard the learned Amicus Curiae and examined the record.

19. In the instant case, on the statement of the complainant, FIR Ex.PW1/A was registered. There are material contradictions in the statement of the complainant recorded before the police and his testimony in the court regarding number of accused, weapons carried by them and their role in the occurrence.

From the perusal of the FIR it transpires that at the time of recording his statement with the police the complainant did not name accused Sunderi being present at the time of occurrence. However, later on in the complaints filed by the complainant, she was also introduced as an accused in the present case.

Besides this, there is also a contradiction with regard to which of the accused were holding weapons. As per statement of the complainant before the police as revealed from FIR Ex.PW1/A, he stated at that time Balwinder Singh was armed with a Kirpan, Rashwinder Singh was armed with a knife and rest of the accused were empty handed. But in his testimony before the court he deposed that all the accused were armed with the deadly weapons i.e. knife, sword and sticks, in their hands.

With regard to the role of Maya Devi and Jaswant Kaur, it is recorded before the police that when his mother Bholi Rani and sister



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Sarabjit Kaur came forward to rescue him from the clutches of the accused, Maya Devi and Jaswant Kaur caught hold of them. Whereas as per as per the averments in the complaint and testimony of the complainant before the court Jaswant Kaur raised a lalkara and instigated Rashwinder Singh to kill the complainant. Maya Devi instigated Harjit Singh and Rinku to kill the complainant with the help of rope. No such allegations have been levelled in the statement of the complainant on the basis of which FIR was registered.

It is the case of the complainant that the police had obtained his signatures on blank papers and, on the other hand, he has admitted that the police had recorded his statement on the basis of which the FIR in the instant case was registered. It is also not out of place to mention that in the FIR the name of wife of Rakeshinder Singh was recorded as Jaswant Kaur, but later on, name of wife of Rakeshinder Singh was mentioned as Jaswant Kaur @ Ravinder Kaur when during the inquiry the accused produced the Adhaar Card etc., the documents in order to show the name of wife of Rakeshinder Singh as Ravinder Kaur and not Jaswant Kaur. Even otherwise, since there are contradictory allegations against Jaswant Kaur and Maya Devi the testimony of the complainant qua the role of Jaswant Kaur @ Ravinder Kaur and Maya Devi cannot be relied upon. Further, it has not been proved that at the time of occurrence accused Sunderi was present at the spot.

20. Now, it is to be seen as to what evidence has been brought on record by the prosecution to prove the allegations against Rashwinder Singh, Rakesh Inder Singh, Harjit and Rinku. As per the ocular version of the



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complainant, accused Rashwinder Singh caused an injury on his eye with the knife and accused Balwinder Singh caused injuries on his left hand thumb and on index finger of the left hand. Accused Harjit Singh and Rinku tried to strangle the complainant with the rope.

As far as the medical evidence is concerned, the MLR of the complainant has been exhibited by the complainant as Ex.PW1/B, but the same has not been proved on record by examining the doctors who at the first instance, attended to the complainant in the Emergency and issued the said MLR. Mere exhibition of the MLR by the complainant in his statement is not sufficient to prove the injuries sustained by the complainant. Even the name of the doctor who has issued the MLR is not mentioned in the list of witnesses attached with the complain for the reasons best known to the complainant.

Further, the complainant examined PW-3 Dr.Amandeep Singh Bakshi, Assistant Professor, Rajindra Hospital, Patiala, who deposed that on 12.06.2008, he was posted as Senior resident in Government Medical College and Rajindra Hospital, Patiala. On that day, patient Varinderpal Singh was admitted in Emergency Ortho Ward department as medico legal case and at that time, he was having an injury on left hand. He was operated on 13.06.2008 and during the said operation extensor tendon repair of the said patient was done under the local anesthesia of left index finger. He was discharged on 21.06.2008. He proved the original bed head ticket of Varinderpal Singh as Ex.PW3/A and the case summary which is under his



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signatures as Ex.PW3/A1 (12 pages), operation notes of the said patient which were in the handwriting of Dr.Ajay, Junior Resident as Ex.PW3/A2 and identified his writing and signatures having seen him writing and signing and proved the medical case file of Varinderpal Singh as Ex.PW3/B (12 pages).

From the perusal of MLR Ex.PW1/B, Original bed head ticket Ex.PW3/A, case summary Ex.PW3/AI, operation notes Ex.PW3/A2 and medical case file Ex.PW3/B, no history of the patient has been mentioned that the patient has been admitted in the hospital with the alleged history of assault, though it has been mentioned that the case is a MLC.

Adverting to the cross-examination of PW-3, who stated that Varinderpal Singh might have been admitted in the Emergency by the Medical Officer and, thereafter, referred to Ortho ward, the Emergency Medical Officer who referred the patient is not a member of the Orthopedic unit. The medico legal examination of Varinderpal Singh was not done by him nor was the same done by any of the member of the Orthopedic unit nor was the same prepared in his presence. Even from his cross-examination it has not been proved as to who had issued the MLR Ex.PW1/B. But from the testimony of Dr. Amandeep Singh Bakshi, it has been established that Varinderpal Singh complainant on 12.06.2008 was referred to the department of Orthopedic with regard to his injury in his hand for which he was operated upon. The X-ray report of Varinderpal Singh which had been prepared by Dr.K.M.Mohindra, who had left the hospital at the time of



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the evidence was proved by PW-4 Jagdish Singh, Radiographer in the department of Radio Diagnosis, Rajindra Hospital, Patiala. He identified the signatures of Dr.K.M.Mohindra on the said report as he had worked with him in the same department and had seen him signing and writing and proved the report as Ex.PW4/A, Ex.PW4/B and X-ray films as Mark P1 to P12. As per X-ray Ex. PW4/A, the complainant had a fracture of the middle phalanx of the index finger of the left hand and for the said injury he was operated by PW-3 Dr. Amandeep Singh Bakshi. So the ocular evidence of the complainant qua receiving the injury on the index finger of the left hand, which is attributed to Balwinder Singh accused is fully proved with the medical evidence on record in the testimony of Dr.Amandeep Singh Bakshi.

As per the cross-examination of Dr.Amandeep Singh Bakshi on Ex.PW3/A at page no.7 there is a note given by his junior resident based on the MLR lying in the medico legal file to seek opinion of a surgeon and his unit called a surgeon to examine and no significant injury was noted by the surgeon on the file with regard to the said injury no.4 and the report is dated 14.06.2008. But neither the doctor who sought the said opinion nor the doctor who gave the opinion was examined. Besides this, the note regarding the injury on the neck of patient Varinderpal Singh was given on the basis of the MLR, but since the MLR itself has not been proved on record, hence, mere mentioning of the note on the bed head ticket by a junior resident of department of Orthopedica, is not sufficient to prove the injury on the neck of the complainant Varinderpal Singh. Therefore, with the medical evidence



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on record, the injuries no. 1, 2 & 4 on the body of the complainant have not been proved on record. However, it has been established that in the occurrence, the complainant received the fracture on the index finger i.e. injury no. 3 for which he was operated by PW-3 Dr. Amandeep Singh Bakshi.

21. As far as the charge under section 307 IPC is concerned, no doubt it is a settled proposition of law that for the offence under Section 307 IPC, the intention of the accused is to be seen and not actual injuries sustained by injured, but keeping in view the fact that the complainant in his first statement before the police nowhere recorded that he had been attacked by the accused with the intention to kill him and it was, thereafter, in the subsequent complaint moved by the complainant to the higher authorities i.e. Senior Superintendent of Police, Patiala that the complainant improved his version by adding that accused had attacked him with intention to kill him, therefore, the Complainant/prosecution has failed to prove the offence under Section 307 IPC against the accused.

22. As to how an 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



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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.”

23. 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 10.05.2023 passed by the Additional Sessions Judge, Patiala, whereby accused-respondent No.1 to 3 and 5 to 8 have been acquitted and accused-respondent No.4/Balwinder Singh has been convicted for the offences under Sections 326 and 452 IPC only. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 04, 2024

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