

**CRR-2505-2009****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****CRR-2505-2009****Date of Decision:- 07.05.2025****VISHAL ARORA****.....Petitioner****VERSUS****STATE OF PUNJAB****.....Respondent****CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present:- Ms. Dheerja, Amicus Curiae
for the petitioner.****Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.****JASJIT SINGH BEDI, J.**

The present revision petition has been filed impugning the judgment dated 05.09.2009 passed by the Addl. Sessions Judge, Jalandhar whereby the appeal filed against the judgment of conviction and order of sentence dated 08.05.2009 passed by the Addl. Chief Judicial Magistrate, Jalandhar Sahib has been dismissed.

2. The FIR in the present case came to be registered on 30.12.2001. The judgment of conviction was passed on 08.05.2009 by the Addl. Chief Judicial Magistrate, Jalandhar. The appeal filed against the order of conviction was dismissed on 05.09.2009 by the Addl. Sessions Judge, Jalandhar. The instant revision petition was filed on 16.09.2009 and has come up for final hearing now i.e. after a period of more than 23 years from the date of registration of the FIR.

3. The brief facts of the case are that the present case was registered on the basis of the statement of complainant Gurmej Singh son of

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Bawa Singh to the effect that he is resident of B-I/3, Janta Colony, Jalandhar. On 29.12.2001 at about 7.45 PM, Vishal Arora son of Dharam Pal resident of Nauhrian Mohalla, Jalandhar along with 5-6 other persons came to the spot and asked the complainant as to why he had constructed khurlis in their property. The complainant replied that he had constructed the khurlis in his own property and he had been residing on the said property for the last 23 years. Then, the persons who accompanied Vishal Arora raised lalkaras and Vishal Arora gave a sword blow which hit on the fingers of his left hand. He fell down on the ground but Vishal Arora kept on giving sword blows from its reverse side which hit on his forehead. Then, Vishal Arora gave kick blows in his stomach and chest. He raised alarms 'Mar Ditta' 'Mar Ditta', which attracted his son Gurvinder Singh, his wife Mohinder Kaur and Tehal Singh son of Bawa Singh, who rescued him from the clutches of the accused. They also caught hold Vishal Arora at the spot. Thereafter, the above said persons got him admitted in Civil Hospital, Jalandhar for treatment.

4. On the basis of this statement, an FIR under Sections 323/324/148/149 of IPC was registered against the accused. During investigation, the Investigating Officer visited the place of occurrence and prepared a rough site plan with its correct marginal notes. Statements of witnesses were also recorded. The accused was arrested formally. On completion of all the necessary formalities, the challan against the accused was presented before the court.

5. On perusal of statements of witnesses and the documents on the

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file, prima facie a case under Sections 326/323 of IPC was disclosed against the accused and he was charge-sheeted accordingly. He pleaded not guilty and claimed trial.

6. The prosecution examined complainant Gurmej Singh as PW-1. He proved his statement Ex. PA on the basis of which FIR against the accused was registered and also supported the version of the prosecution.

PW-2 Mukesh Kumar, the alleged eye witness of the occurrence also supported the version of the prosecution.

PW-3 Amrik Singh also supported the version of the prosecution.

PW-4 Dr.Harjit Singh proved the medico-legal report of the injured/complainant as EX.PW4/A, pictorial diagram Ex.PW4/B and x-ray report Ex.PW4/C.

6. On the closure of the evidence of the prosecution, the statement of the accused was recorded under Section 313 Cr.P.C. in which the entire incriminating evidence was put to him. He denied the same and pleaded false implication. In defence evidence, the accused examined Rashpal Singh as DW-1.

7. Based on the evidence led, the accused/petitioner came to be convicted and sentenced by the Court of Addl. Chief Judicial Magistrate, 08.05.2009 vide judgment and order of sentence dated 08.05.2009 as under:-

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
323 IPC	RI for 06 months	Rs.500/-	RI for 01 month
324 IPC	RI for 01 year	Rs.1000/-	RI for 02 months



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8. The aforementioned judgments are under challenge in the present revision petition.

9. During the pendency of the instant revision petition, the sentence of the accused/petitioner was suspended vide order dated 16.11.2009

10. The Amicus Curiae for the accused/petitioner contends that the judgment of conviction is based on conjectures and surmises. The prosecution witnesses are discrepant in material particulars. The defence has not been properly considered. Therefore, the impugned judgments are liable to be set aside. In addition, she contends that in case this Court was to come to a finding that the prosecution had established its case beyond reasonable doubt, then keeping in view the fact that the occurrence was of the year 2001 and the case had come up for final hearing now after a gap of more than 23 years, the accused/petitioner may be released on probation or his sentence be reduced to the period already undergone by him subject to payment of compensation.

11. The Counsel for the State on the other hand has filed a custody certificate of the accused/petitioner dated 04.05.2025 and the same is taken on record. He contends that prosecution witnesses are consistent regarding the manner in which the occurrence took place. The medical evidence is totally in consonance with the ocular account. Therefore, the present petition is liable to be dismissed.

12. I have heard the learned counsel for the parties.

13. The FIR was lodged on the statement of complainant Gurmej

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Singh with the allegations that on 29.12.2001 at about 7.45 PM, the accused along with 5-6 persons came and asked why he has made khurlis in his land. Then he stated that he had been living there for the last 23 years. Then the accused persons inflicted injuries upon the person of the complainant with sharp edged weapon i.e. sword which hit upon the fingers of his left hand and Vishal Arora also gave a sword blow from its reverse side which hit upon his forehead. Vishal Arora also gave kick blows in his chest. He raised an alarm on which his son Gurvinder Singh wife Mohinder Kaur and Tehal Singh came at the spot and rescued him from the clutches of the accused. People gathered at the spot and caught hold of accused Vishal Arora at the spot. So as per his version, many people collected at the spot at the time of said occurrence. Mukesh Kumar who has been examined by the prosecution as an eye witness as PW-2 did not witness the occurrence. He stated when he went at the spot Gurmej Singh was lying injured and Vishal Arora was caught hold by Gurvinder Singh and Tehal Singh. He nowhere stated in his examination-in-chief that he has witnessed the occurrence. Similarly, PW-3 Amrik Singh appeared in the witness box and stated that when he went at the spot, he saw blood was oozing from the head of complainant- Gurmej Singh. He nowhere stated that he has witnessed the occurrence.

14. The prosecution examined injured Gurmej Singh as PW-1. As per his version, accused Vishal Arora gave a sword blow which hit upon the fingers of his left hand and another sword blow from the reverse side of the sword which hit upon his head. He also gave kick blows in his chest and other parts of body. To prove the injuries by medical evidence, the



prosecution examined PW-4 Dr. Harjit Singh. As per medical legal report Ex.PW4/A, the complainant suffered five injuries. Injuries No.2 and 3 on the finger of left hand and injury No.1 on the forehead and injuries No.4 and 5 on the scapular region. PW-4 stated on oath that injuries No.2 and 3 were incised wounds. Fresh bleeding was present and injury was kept under observation for x-ray examination. After receiving the x-ray report, injury No.2 was declared as grievous which was caused with sharp edged weapon. However, Radiologist had not been examined by the prosecution. PW-4 Dr. Harjit Singh did not opine about the presence of crepitus at the time of medico-legal examination with regard to injury No.2. So, in the absence of crepitus, injury No.2 could only be declared grievous after the report of Radiologist i.e. after conducting x- ray examination. So non-examination radiologist, certainly affects the case of prosecution with regard to proving injury under section 326 IPC. Since there was no crepitus nor was there any amputation or cut sufficiently to opine the nature of injury as grievous, so without the report of radiologist, nature of injuries could not be ascertained. Therefore, the accused was rightly acquitted for not having committed an offence under Section 326 IPC.

15. However, non-examination of Radiologist does not preclude the court to come to the conclusion that injuries No.2 and 3 were caused with a sharp edged weapon and offence under Section 324 1PC is made out, because oral evidence of PW-1 Gurmej Singh, coupled with the evidence of PW-4 Dr. Harjit Singh, is sufficient to conclude that injuries No.2 and 3 on the person of complainant were simple in nature, but caused with sharp

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edged weapon and remaining injuries on the person of complainant were simple in nature caused with blunt weapon.

16. Minor discrepancies as to who caught hold of the accused or regarding admission of the complainant in hospital is not fatal to the prosecution case.

17. In view of the above discussion, I find no infirmity in the judgments of the Trial Court as well as of the Lower Appellate Court. Therefore, the present revision stands dismissed.

18. Admittedly, the occurrence pertains to the year 2001 and more than 23 years have passed ever since then. A perusal of his custody certificate would show that he does not have any criminal antecedents and is a first time offender. Therefore, the sentence of the accused/petitioner is reduced to the period already undergone by him i.e. 02 months and 13 days. The fine amounts and sentence in default shall however remain intact.

19. The present revision petition stands disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

07.05.2025

Jitesh

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>