

CRA-D-248-DB-2004 (O & M)

2025:PHHC:064109-DB



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101)

CRA-D-248-DB-2004 (O & M)

Reserved on: 06.05.2025

Date of Pronouncement:13.05.2025

Kala Singh and anr.

.... appellants

V/s

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. H.S. Randhawa, Advocate as Amicus Curiae
for the appellants.

Mr. Siddharth Attri, AAG, Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 16.12.2003 passed by the Additional Sessions Judge, Ferozepur.

2. The instant FIR came to be registered on 29.06.2001. The accused-appellants came to be convicted vide judgment of conviction and order of sentence dated 16.12.2003. The present appeal against the judgment of conviction and order of sentence was filed on 09.03.2004. The matter has come up for final hearing now after almost 24 years of the registration of the FIR.



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3. The prosecution story, in brief, is that PW-5/Kahan Singh, complainant had three sons, namely, Jagir Singh (deceased), Jaipal Singh and Kashmir Singh PW-6, and all of them were agriculturists in village Chuhriwala Chisti. They had a piece of land measuring two kanals and land measuring four kanals of the accused abutted their land. They had a common water channel for irrigating those parcels of land with the help of tube-well water. On 28.03.2001, the complainant irrigated his land with the help of that water channel at about 10.00 A.M. He came back to his house at about 5.00 P.M., and at that time Mangat Singh met him in the village and lodged a protest that the water which was being used by him for irrigating land had damaged his wheat crop after making a way in the water channel. The complainant replied that the same might have occurred on account of the holes made by mice. The accused started abusing the complainant. Villagers intervened and stopped them from quarrelling. Mangat Singh issued a threat that he and his co-accused Kala Singh would teach them a lesson. Apprehending that a quarrel might take place the complainant went to the house of Pritam Singh Ex.Sarpanch to inform him about such a quarrel but he was not available in his house. After coming back to his house, he sent his son Kashmir Singh to the house of Jagga Singh Sarpanch for calling him but he was also not found present in the house. On the same day, at about 7.00 P.M. Mangat Singh accused armed with a *kirpan* and Kala Singh accused armed with a *khanda* came in the street in front of their house



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while raising abuses. On hearing those abuses, Jagir Singh, deceased, who was residing separately from the complainant in the nearby house came to that place and the complainant also came out of the gate of house in the street. Mangat Singh while abusing, hurled a blow with his *kirpan* towards him and in order to save himself he raised his right hand and as a result thereof he received an injury on the back side of that hand. When Jagir Singh raised an alarm, Kala Singh gave blows with his *khanda* on his head, left thumb and left arm. On hearing the alarm, Kashmir Singh came out of the house in order save them from the accused and Mangat Singh gave a blow with his *kirpan* on his left shoulder. Preeto Bai accused also came to the spot while armed with a *dang* and gave three blows with the same to Kashmir Singh. In the meanwhile, Jeet Singh and other villagers collected at the spot and all the accused escaped from that place with their respective weapons. All the injured were removed to Civil Hospital, Fazilka, and were admitted at that place. They were medically examined by Dr. Narinder Sethi PW-1, who found four injuries each on the person of Jagir Singh and Kashmir Singh and one injury on the person of Kahan Singh which were detailed by him in the M.L. reports Ex.P1 to Ex.P3, respectively. On the receipt of information regarding admission of the injured in the hospital. Harcharan Singh, ASI PW-9 accompanied by other police officials went to that place. Jagir Singh died as a result of the injuries received by him and on his death Dr.Narinder Sethi sent a ruqa Ex-P-25 to the police station. On the



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receipt of the information regarding the death of the injured, Karamjit Singh SHO PW-8 reached the hospital. Ruqa Ex.P-25 was produced before him by the ASI. He gave application Ex.P7 to the doctor for enquiring about the fitness of the complainant to make his statement, who was declared fit to make a statement by the doctor vide his endorsement Ex.P7/A. The S.H.O. recorded the statement of the complainant Ex-P13 about this occurrence and after making his endorsement Ex.P13/A upon the same sent it to the police station on the basis of which FIR Ex.P13/C under the aforesaid section was recorded by Lekh Raj ASI. The SHO gave an application Ex.P6 for enquiring about the fitness of Kashmir Singh to make his statement who was declared fit by the doctor vide his endorsement Ex.P6/A. Thereafter, the SHO recorded statement of that injured also. He prepared the inquest report Ex.P9/Ex.P-15 in respect of the dead body of Jagir Singh and sent the same for post mortem examination under the supervision of Pritam Singh HC and Surinder Singh PHG, alongwith his application Ex.P10. Accompanied by other police officials, he went to the place of occurrence and after inspecting the same prepared the rough site plan Ex.P17 with correct marginal notes. He collected ordinary earth and blood stained earth from that place and converted those into separate parcels which were sealed by him with his seal 'KS' and were taken into possession vide memo Ex.P16. The autopsy on the dead body of the deceased was conducted by Dr. M.K.Singh PW-2 who found ante-mortem injuries on the dead body which were detailed by him in



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the post mortem report Ex.P-8. He opined that the cause of death was due to cardio respiratory arrest as a result of injury to brain due to injuries no.1 and 2 which were sufficient to cause death in the ordinary course of nature. After the post mortem examination wearing apparels found on the dead body were produced by Pritam Singh HC before the SHO who converted the same into parcel MO-1 and sealed with his seal 'KS'. The sealed parcel was taken into possession vide memo Ex.P17. On coming back to the police station, SHO deposited all these sealed parcels with Harbhagwan AMHC PW-7. On 01.04.2001, SHO came to know that Kala Singh accused had been discharged from the hospital. Thereafter, he conducted a raid at his house and he was found present at that place. He interrogated the accused in the presence of Lekh Raj ASI and Harcharan Singh ASI upon which he made a disclosure statement Ex.P18 that he had kept concealed an iron '*Kapa*' in the shape of a "*Khanda*" in the ceiling of the cattle room of his *haveli* about which only he had the knowledge and could get the same recovered. In pursuance of that disclosure statement, he got recovered the said weapon MO-2. The SHO converted it into a parcel and sealed the same with his seal 'KS'. The sealed parcel was taken into possession vide memo Ex.P19. The SHO also prepared the rough site plan Ex.P20 of the place of recovery and on coming back to the police station deposited the sealed parcel with Harbhagwan AMHC. On 03.04.2001, Pritam Singh Ex.Sarpanch produced Mangat Singh accused before Harcharan Singh ASI in the police station. At



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that time that accused was having a *kirpan* without a sheath and the same was taken into possession vide memo Ex.P21 and was deposited with the said AMHC. On 05.04.2001 Balwinder Singh MHC joined his duty. Case property of this case was delivered to him by the AMHC. On 11.04.2001 Pritam Singh Ex.Sarpanch produced Preeto Bai before Harcharan Singh ASI in the police station. At that time, she was found in possession of a *dang* which was taken into possession vide memo Ex.P22. The map of the place of occurrence Ex.P12 was got prepared on scale from Mathra Dass, draftsman PW4. The sealed parcel containing blood stained earth, ordinary earth and *Kapa* made of iron in the shape of a *Khanda* were sent to the Forensic Science Laboratory, Punjab, Chandigarh, through the Baldev Singh constable PW-3 and were delivered at that place with seals intact on 11.04.2001. After analysis, it was reported by the Assistant Director of the Laboratory, vide her reports Ex.P23 Ex.P24, that the said weapon was stained with human blood and one of the parcels contained earth stained with human blood. After completion of the investigation, the challan was submitted before the SDJM, Fazilka, who committed the same to the Court of Session.

4. The Trial Court framed charges against the accused under Sections 302, 323, 324, 326/34 IPC to which they pleaded not guilty and claimed trial.



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5. The Prosecution examined Dr.Narinder Sethi/PW-1, Dr.M.K. Singh/PW-2, Baldev Singh Constable/PW-3, Mathra Dass, Draftsman/PW-4, Kahan Singh, complainant/PW-5, Kashmir Singh/PW-6, Harbhagwan HC/PW-7, Karamjit Singh Inspector/PW-8 and Harcharan Singh ASI/PW-9.

6. The accused were examined and their statements were recorded under Section 313 Cr.P.C. All the incriminating circumstances appearing against them in the prosecution evidence were put to them in order to enable them to explain the same. They denied all those circumstances and pleaded their false implication. They stated that Kahan Singh, complainant wanted to irrigate his fields forcibly with the diesel engine of Mangat Singh and he was prevented from doing so by Mangat Singh and Kala Singh. On that both those accused were attacked by Jagir Singh, Kahan Singh and Kashmir Singh and injuries were caused to them and Preeto Bai, Mangat Singh and Kala singh caused injuries to the members of the complainant party in their self defence. All of them were medically examined for their injuries by the doctor in Civil Hospital, Fazilka. Statements of Mangat Singh and Kala Singh were recorded by the police about this occurrence but no action was taken against the complainant party. The police investigated the case so as to help the complainant party, who was aggressor. They were called upon to enter their defence but they did not produce any evidence in defence.

7. Based on the evidence led, while the accused-appellant No.3/Preeto Bai was convicted under Section 323 IPC only and released on



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probation for a period of 02 years under Section 360 Cr.P.C., the accused-appellants No.1 and 2, namely, Kala Singh and Mangat Singh came to be convicted and sentenced by the Court of the Additional Sessions Judge, Ferozepur, vide judgment of conviction and order of sentence dated 16.12.2003 as under:-

Name of the accused	Offence under Section	Sentence	Fine	In default of payment of fine
Kala Singh	302 IPC	Life Imprisonment	Rs.4,000/-	02 years
	326/34 IPC	03 years	Rs.1,000/-	06 months
	324/34 IPC	01 year	--	--
Mangat Singh	302/34 IPC	Life Imprisonment	Rs.4,000/-	02 years
	326 IPC	03 years	Rs.1,000/-	06 months
	324 IPC	01 year	--	--

8. The aforementioned judgment of conviction and order of sentence dated 16.12.2003 passed by the Additional Sessions Judge, Ferozepur is under challenge before this Court.
9. During the pendency of this appeal, the sentences of the accused-appellants, namely, Kala Singh and Mangat Singh were suspended by this Court vide order dated 11.09.2008.
10. The learned Amicus Curiae for the appellants contends that the investigation in the present case is a tainted one. PW-8/Karamjit Singh Inspector stated that he had recorded the statement of the



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injured-accused/Mangat Singh during investigation (cross-case) but the same has not been made a part of the record. Similarly, PW-9/Harcharan Singh ASI stated that all the accused had made statements before him about their injuries which he did not record. Three accused including the appellants and Preeto Bai wife of Mangat Singh suffered 10 injuries which stand unexplained by the prosecution. As the genesis of the occurrence stands suppressed, the prosecution case is doubtful and therefore, the accused are liable to be acquitted for the offences in question. Reliance is placed on ***‘Arvind Kumar @ Nemichand & Ors. versus State of Rajasthan 2022(2) RCR (Criminal) 392.*** In the alternative, he contends that as the genesis of the occurrence is not clear and injuries have been suffered by both sides, it would be a case of a free fight where the individual role of each of the accused would have to be considered as it would not be a case of common intention envisaged under Section 34 IPC. Reliance is placed on ***‘Ram Swarup and others versus State of Haryana 1994 SCC(Cri) 29’.***

11. The learned counsel for the State, on the other hand, contends that as per the FIR, after the accused/Mangat Singh had threatened him, PW-5/Kahan Singh (complainant) had gone to the house of Pritam Singh/Ex. Sarpanch and sent his son Kashmir Singh to the house of Jagga Singh/Sarpanch fearing that the accused party would commit some offence on account of a dispute regarding a water course. The occurrence took place near the house of the complainant party when the accused party came armed



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with a *khanda* and *kirpan*. From the facts and circumstances of the case, common intention as envisaged under Section 34 IPC is writ large. Though, three persons from the accused side, namely, Kala Singh, Mangat Singh and Preeto Bai have received simple injuries, the same are not required to be explained, though, Kashmir Singh/PW-6 has stated in his examination-in-chief that they had also caused injuries to the accused side in their self-defence. He, further, contends that though the investigation may have been defective, it cannot be held that it was tainted to the extent that would entail acquittal of the accused. In case of defective investigation, all that is required is that the Court examine the evidence with more care and caution. In the instant case, the same has been done. He, thus, prays that the present appeal is liable to be dismissed.

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

13. The prosecution case has been set-up by Kahan Singh/PW-5. He stated about the two incidents which took place on the day of occurrence. The first incident relates to the verbal altercation which took place between him and Mangat Singh about irrigation of the land from the common water channel and the second incident relates to the causing of injuries to him, Jagir Singh and Kashmir Singh by the accused. He stated that on the day of occurrence at about 10,00 A.M. they irrigated the land from the tubewell and returned to their house at 5.00 P.M. He was present in the house when Mangat Singh accused came there and made a complaint that he had allowed



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the water to enter his fields. He replied that the same was not done by him intentionally and that might have been a result of holes made by mice. Then the accused started abusing him to which he protested. People intervened to stop them from quarreling. Thereafter the accused-Mangat Singh left the spot saying them he would settle the dispute after the arrival of Kala. At about 6.30/7.00 P.M. he was standing at the gate of his house when Mangat Singh accused armed with a *kirpan* and Kala armed with a *khanda* came there and started abusing. Jagir Singh also came to the spot. Mangat Singh accused hurled a blow with his *kirpan* towards his head and he tried to save himself by raising his hand and in the process received that blow on that hand. When Jagir Singh came ahead Kala, gave blows with his *khanda* on his head, left arm and left shoulder. Preeto Bai also came the to the spot with a *dang* and gave blows with same on the head and left shoulder of Kashmir Singh. Thereafter, Mangat gave a blow with the help of a *kirpan* on the left shoulder of Kashmir Singh. Jeet Singh came to the spot and all the accused ran away with their respective weapons. All of them were removed to Civil Hospital, Fazilka, where they were medically examined. Statement of this complainant has been supported by Kashmir Singh PW-6. No doubt both of them are closely related to Jagir Singh but their testimony cannot be discarded merely on account of their relationship.

14. The ocular evidence produced by the prosecution has been fully corroborated by the medical evidence furnished by the statement of Dr.



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Narinder Sethi PW-1. He stated that on 28.03.2001 he examined Jagir Singh and found the following injuries on his person:-

- 1) *An incised wound measuring 16 cm x 2.5 cm was present on the middle of the head starting from the point 5 cm above the left pinna and extending upwards. The wound was bone deep. X-ray and opinion of surgical expert was advised*
- 2) *An incised wound measuring 14 cm x 2.5 cm was present on the head starting from the upper and of injury no.1 extending downwards and backwards on the back of head. The wound was bone deep. Fresh bleeding was present. X-ray and opinion of Surgical specialist was advised.*
- 3). *An incised wound measuring 4 cm x 2 cm was present on inner surface of left fore-arm, 17 cm below the elbow joint. Fresh bleeding was present. X-ray was advised.*
- 4) *An incised would measuring 3 cm x 2 cm was present on the outer aspect of base of left thumb. Fresh bleeding was present. X-ray was advised.*

He testified that the carbon copy of the M.L. report is Ex.P1 and the pictorial diagram showing the seat of injuries Ex.P1/A. He further stated that on the same day at 10.05 P.M. he examined Kashmir Singh and found the following injuries on his person:-

- 1) *An abrasion of 2 cm x 2 cm was present on the left parietal region of the head, 9cm above the left pinna. Oozing of blood was present from the wound.*
- 2) *An abrasion measuring 25 cm x 2 cm was present on the middle of left clevical region extending upwards and going on*



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upper part of back. Oozing of blood was present. X-ray was advised.

3) An abrasion measuring 10 cm x 0.3 cm was present on the shoulder region left side. Oozing of blood was present. X-ray was advised.

4) An incised wound measuring 5 cm x 1cm was present on the outer aspect of the left shoulder joint. The wound was skin deep. Fresh bleeding was present.

He testified that the correct carbon copy of the M.L.report is Ex.P2 and the pictorial diagram showing the seat of injuries is Ex.P2/A. He also stated that on that very day at 10.35 P.M. he examined Kahan Singh and found the following injuries on his persons:-

1) An incised would measuring 8 cm x 3cm was present on the back of right hand, 2cms above the base of fingers, Underlying soft tissues tendens, bones were cut. Fresh bleeding was present.

He declared that injury to be grievous and testified that the carbon copy of the M.L.report is Ex.P3 and the pictorial diagram showing the seat of injury is Ex.P3/A.

15. As per PW-8/Karamjit Singh Inspector on the receipt of information regarding death of Jagir Singh, he went to Civil Hospital, Fazilka and made an application for enquiring about the fitness of the complainant to make his statement. After he was declared fit to make the



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statement, he recorded the same and sent it to the police station after making his endorsement. He prepared inquest report Ex. P15 in respect of the dead body of Jagir Singh and sent the same for post mortem examination. It was stated by Dr.M.K.Singh PW-2 that on 29.03.2001 at 11A.M. he conducted the autopsy on the dead body of Jagir Singh and found the following injuries:-

- 1) Stitched wound 16 cm x 1cm on left parietal area reaching towards left ear. On dissection underlying tissues were cut and congested, Underlying bone was cut. Underlying brain was cut. Blood was present in sub-dural and epidural space.*
- 2) Stitched wound on left parietal area starting from upper and of injury no.1 and extending backwards towards occipital area. On dissection underlying tissues cut and congested. Underlying bone was cut, underlying brain was cut. Blood in sub-dural and epidural space.*
- 3) Stitched wound 4cm x 1cm on inner aspect of left fore-arm 17 cms below elbow, underlying muscles were cut. Bone was normal.*
- 4) Stitched wound 3cm x 1 cm on the base of left thumb underlying tissues were cut and congested.*

He testified the carbon copy of the post-mortem report is Ex.PB. He opined that the cause of death was cardio respiratory arrest as a result of injury to the brain due to injuries no.1 and 2 which were sufficient to cause death in the ordinary course of nature.



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16. Other corroborative evidence has also been produced by the prosecution. It was stated by Karamjit Singh Inspector PW-8 that from the hospital he went to the spot and after inspecting the same prepared the rough site plan Ex.P17 with correct marginal notes. He collected blood stained earth and ordinary earth from the spot and put the same in two separate boxes which were converted into parcels. He sealed those parcel with his seal 'KS' and took those into possession vide memo Ex.P17. After coming back to the police station he deposited those parcels with Harbhagwan Addl. M.H.C. On 01.04.2001 he arrested Kala accused and interrogated him in the presence of Harcharan Singh ASI and Lekh Raj ASI, upon which he made disclosure statement Ex.P18 that he had kept concealed one *Khanda* in the ceiling of his cattle house about which only he had the knowledge and could get the same recovered from that place. The accused in pursuance of his disclosure statement got recovered the *Khanda* from the said place which was converted into a parcel and was sealed with the seal of 'KS'. Sealed parcel was taken into possession vide memo Ex.P19. The statement of the Inspector regarding recovery of the *Khanda* from the possession of Kala accused in pursuance of his disclosure statement has been fully corroborated by Harcharan Singh ASI PW-9, in whose presence the disclosure statement was made and the recovery was effected. From their statements it stands proved that Kala Singh accused got recovered the *Khanda* in pursuance to his disclosure statement.



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17. According to Karamjit Singh Inspector that sealed parcel was deposited by him on the same day with Harbhagwan AMHC. Harbhagwan AMHC was examined in the Court as PW7. He proved on record his affidavit Ex.P14. He deposed therein that all the case property of this case was over handed by him to Balwinder Singh MHC on 05.04.2001. Baldev Singh constable PW-3 proved on record his affidavit Ex.P11. He deposed therein that the sealed parcels containing blood stained earth and ordinary earth and the *Khanda* were delivered to him by the MHC on 10.04.2001 and he delivered the same to the Forensic Science Labortary, Punjab, Chandigarh on 11.04.2001 without tampering with the contents thereof. The *Khanda* and one parcel containing earth were found to be blood stained. This evidence further corroborates the other evidence produced by the prosecution.

18. It is a case where the accused have not denied the occurrence itself. They have come up with a cross version. In their statements under section 313 Cr.P.C. they took up the plea that Kahan Singh, complainant wanted to irrigate his fields forcibly with the diesel engine of Mangat Singh and Kala Singh and they prevented him from doing so. On that Jagir Singh, Kahan Singh and Kashmir Singh attacked them and Preeto Bai thereby causing injuries. They, in their self defence caused injuries to those members of the complainant party. The fact that injuries of the same duration were found on the person of all these accused stands proved from the statement of Dr. Narinder Sethi PW1. He stated during his cross-examination that on



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28.03.2001 at 10.55 P.M. he examined Kala Singh and found the following injuries on his person:-

- 1) A lacerated wound measuring 9 cm x 1cm was present on the left parietal region of the head extending to the frontal portion. The wound was 12 cm above the left pinna. Fresh bleeding was present on the wound. X-ray was advised.*
- 2) A lacerated wound measuring 5 cm x 21 cm was present on the right parietal region of the head. 15 cm above the right pinna. Fresh bleeding was present on the wound. X-ray was advised.*
- 3) A reddish swelling measuring 7 cm x 4 cm was present on the back of the left fore-arm. 13 cm below the elbow joint. Tender and X-ray was advised.*
- 4) A reddish swelling measuring 5 cm x 3 cm was present on the outer aspect of right fore-arm. 3 cms above the wrist joint. X-ray was advised.*

He further stated that on the same date at 11:P.M. he examined Preeto Bai and found the following injuries on her person:-

- 1) A lacerated wound measuring 4 cm x 1 cm was present on the left parietal region of the head. 6 cm above the left pinna. Wound was bone deep. Fresh bleeding was present on the wound.*
- 2) The patient complained of pain in the left shoulder region with no mark of external injury, was seen. Movements of the Joint were normal.*



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He also stated that on that very day at 11.10 P.M. he examined Mangat Singh and found following injuries on his person:

- 1) A lacerated wound measuring 4 cm x 1 cm was present on the right frontal region of the head. The wound was deep to the layers of the scalp. Fresh bleeding was present on the wound. X-ray was advised.*
- 2) A reddish contusion measuring 4cm x 3 cm was present on the tip of left shoulder. X-ray was advised.*
- 3) A reddish diffuse swelling was present on the back of left hand. X-ray was advised.*
- 4) A reddish contusion measuring 7cm x 4cm was present on the left lumber region of the back. Tender.*

19. In the instant case, it cannot be said that the prosecution has failed to explain the injuries on the person of the accused. No doubt, it was never stated by the complainant-Kahan Singh (PW-5) that they had also caused injuries to the accused but it was categorically stated by Kashmir Singh PW-6 that they, in their self defence had caused injuries to all the accused. Be that as it may, in the context of non-explanation of injuries on the accused side by the prosecution, the Hon'ble Supreme Court in '***Shajahan and others versus State of Kerala and another 2007(2) RCR (Criminal) 503***', held as under:-

13. Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the



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evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in Ramlagan Singh v. State of Bihar, AIR 1972 Supreme Court 2593 prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In Hare Krishna Singh and others v. State of Bihar, AIR 1988 Supreme Court 863, it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused.



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It is more so when the injuries are simple or superficial in nature. In the case at hand, trifling and superficial injuries on accused are of little assistance to them to throw doubt on the veracity of the prosecution case. (See Anil Kumar v. State of U.P., 2004(3) Apex Criminal 547 : 2004(4) RCR(Criminal) 358 (SC) :JT 2004(8) SC 355).

20. From the statement of PW-8/Inspector Karamjit Singh it is apparent that he had come to know that the accused had suffered injuries on their person. He admitted during his cross-examination that when he had gone to the hospital he had made an application to the doctor for enquiring about the fitness of the injured to make their statements and all of them were declared fit. According to him, he had not recorded the statements of the accused under Section 161 Cr.P.C. Similarly, PW-9/Harchand Singh ASI in his cross-examination also admitted that the accused had made statements before him about the injuries suffered by them but he did not record their statements. When these police officials had come to know about the injuries on the person of the accused as well, they were required to ascertain as to how they (accused side) had received injuries and whether they had suffered them in the same occurrence. Therefore, it cannot be said that the investigation in this case was entirely fair. However, mere defective investigation cannot be made a ground for the acquittal of the accused or for coming to the conclusion that the prosecution version is doubtful. It is a circumstance which imposes an onerous duty on a Court to ascertain



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whether the prosecution version is correct or the version put forward by the accused is correct.

21. In view of the defective investigation, defence of the accused and the medical evidence regarding the injuries on their person of the same duration and the attempt by Kashmir Singh PW-6 to explain those injuries, the controversy narrows down as to which party was the aggressor. The complainant/Kahan Singh (PW-5) and Kashmir Singh/PW6 have stated that it was the accused who came armed in front of the gate of the house of the complainant. There is no dispute about the fact that the occurrence had taken place at that place itself. There is a statement of the Investigating Officer/PW-8 Karamjit Singh to the effect that blood stained earth was collected from the place of occurrence when he went there alongwith Jeet Singh an eye-witness. The accused themselves have suggested to the PW-5/Kahan Singh-complainant that Mangat Singh accused was coming from the fields when he was stopped by the complainant, Jagir Singh and Kashmir Singh who caused injuries to Mangat Singh after which the other accused came to the spot and caused injuries to the complainant party. Thus, even the accused have not denied the fact that the occurrence had taken place in front of the gate of the house of the complainant. According to the accused, it were the members of the complainant party who had the motive to cause injuries to them (accused party) as they (complainant party) had tried to irrigate their (complainant party's) land, with the help of their (accused



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party's) diesel engine and they (accused party) had prevented them (complainant party) from doing so. However, the accused have not been able to substantiate their defence by producing any evidence or by eliciting the facts during the cross-examination of the prosecution witnesses.

22. Further, from the evidence on the record it cannot be held that the accused had no access to their house other than going past the house of the complainant. PW-5/Kahan Singh-complainant was cross-examined by the accused regarding the situation of their respective houses. He stated that the house of the accused was situated on the backside of their house. He made it clear that there was a separate street for going to the house of the accused. He denied the suggestion that the accused were to pass in front of their (complainant party's) house in case they had to go from their (accused party's) house to their fields. No evidence has been produced by the accused nor have they been able to substantiate their defence from the cross-examination of the prosecution witnesses that there was no other passage for going from their house to their fields except from the street in front of the house of the complainant. This itself shows that the version put forward by the prosecution is correct and the accused party duly armed with sharp edged weapons such as a *khanda* and *kirpan* came into the street in front of the house of the complainant party and opened the attack.

23. In ***Arvind Kumar @ Nemichand and ors. (supra)***, the Hon'ble Supreme Court held that where the investigation was colourable and



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involved suppression of motive and injuries on the person of the accused then the prosecution case would become doubtful. In this case, two accused persons had received 42 injuries and many of them were not simple in nature. The Court came to the conclusion that there were too many loopholes and thus, acquitted the accused. In the instant case, however, from the evidence on record, it is apparent that it was the accused party which was the aggressor party. The injuries on the accused persons are simple in nature and are not required to be explained in light of *Shajahan and others (supra)* but nonetheless PW-6/Kashmir Singh has stated in his evidence that they too caused injuries to the accused party in their self-defence.

24. From the evidence produced on the record, the version put forth by the prosecution of the complainant party being assaulted by the accused side and they causing injuries to the accused side in self-defence, is more probable than the version set-up by the accused. Thus, it was the accused who were the aggressor party. They came in front of the house of the complainant, duly armed with sharp edged weapons and caused injuries to him, Kashmir Singh and Jagir Singh-deceased. The injuries on the person of the complainant party are more grave in nature than the simple injuries sustained by the accused side. Once the accused were the aggressor party, it cannot be held that they had a right of private defence against the complainant side.

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25. In view of the aforementioned discussion, we find no merit in the present appeal and the same stands dismissed.

27. The pending applications, if any, shall stands disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

13.05.2025
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No