

**In the Court of Ms.Poonam Kashyap,
Judicial Magistrate First Class-4, Moga**

CNR No. PBMO030006562018**Case No. CHI/110/2018****Presented on : 09-03-2018****Registered on : 09-03-2018****Decided on : 19-10-2021**

State	Versus	1. Gurcharan Singh, aged about 33 years son of Joginder Singh, resident of village Malek Akalianwala, District Moga. 2. Bakhshish Singh, aged about 38 years, S/o Joginder Singh, resident of village Malek Akalianwala, District Moga. 3. Balvir Kaur, aged about 68 yers, Wife of Joginder Singh, r/o village Malek Akalianwala, District Moga. FIR No. 59 dated 18.05.2016 Under Section 326,324,323,34 IPC, Police Station Kot Ise Khan.
-------	--------	--

Present: Sh. Gurpreet Singh, Learned APP for the State.
All the accused on bail with counsel Sh. S.K. Sharma,
Advocate.

JUDGMENT

1. The above named all the accused have been sent to this Court to face trial by the SHO of Police Station Kot Ise Khan for offences under Sections 326,324,323,34 IPC.

2. Brief facts of the prosecution story are that on 17.05.2016, ASI Baljinder Singh was present at police station Kot Ise Khan, where MHC produced him MLR No. JND/41/CHC/KIK/16 of Balvir Kaur and MLR No. JND/44/CHC/KIK/16 of Gurdial Singh for further proceeding. Then ASI Baljinder Singh alongwith HC Gurpreet Singh reached Civil Hospital, Kot Ise Khan and sought the opinion of the doctor whether the injured were fit to make their statements. The doctor opined that the injured were fit to make their statements. Then Gurdial Singh and Bakhshish Singh got recorded their statement to ASI Baljinder Singh that

the talk for compromise is going on between the parties. Then on 18.05.2016, ASI Baljinder Singh alongwith other police officials again visited Civil Hospital Kot Ise Khan and injured/complainant Gurdial Singh got recorded his statement to ASI Baljinder Singh to the effect that on 14.05.2016, at about 06:30 PM he along with his brother Chanan Singh, his nephew Boota Singh and Dalwinder Singh were doing work in their field on tractor Swaraj which was driven by Boota Singh i.e. they were cultivating their land with tractor. At that time Gurcharan Singh armed with Kirpan, Bakshish Singh armed with Gandassi, Joginder Singh armed with Daang alongwith Balvir Kaur W/o Joginder Singh all residents of Village Akalian Wala came to their field. Joginder Singh raised a Lalkara by saying “Fad Lo Inna Nu Aj Ehna Nu Jamin Vich Vattan Paun Da Majja Dikha daiya” then Gurcharan Singh had given blow of Kirpan towards his head and he raised his hands to save the blow and Kirpan hit on his right little finger. Gurcharan Singh had again given blow of Kirpan towards his head and he again raised his hands to save the blow and the blow of Kirpan hit on right ring finger. Then Bakhshish Singh gave blow of Gandassi towards his head and same hit on his right temporal region from its reverse side. He raised alarm “ Mar Dita Mar Dita” then his nephew Boota Singh and Bohar Singh came there. Then all the all the accused ran away after causing injuries to him with their respective weapons. He was admitted to civil hospital Kot Ise Khan by Boota Singh after arranging the vehicle. He was medicolegally examined and treated at Civil Hospital Kot Ise Khan. The motive behind the occurrence was that, there was a dispute of land with all the accused and they are in possession of the said land. All the accused party stopped them from cultivating the land and due to this grudge all the accused party caused injuries to him. On the basis of this statement case FIR No. 59 dated 18.05.2016, Under Section 326,324,323,34 IPC was registered against the all the accused. All the accused were arrested. On completion of investigation and other formalities, challan against all the accused was presented in the Court.

3. On presentation of challan, copies of documents were supplied to all the accused free of costs as per the mandate of Section 207 Cr. P.C

4. Finding a prima facie case, all the accused were charge-sheeted for offence punishable under Section 326,324,34 IPC to which they pleaded not guilty and claimed trial.

5. The point for determination in the present case is as under:-

Whether at the time, place and manner as suggested by the prosecution, the accused Gurcharan Singh in furtherance of common intention with co-all the accused Bakshish Singh and Balbir Kaur, voluntarily caused grievous hurt to complainant Gurdyal Singh with their respective weapons i.e Kirpan and thereby committed offence punishable U/s 326 IPC and whereas his co-all the accused Bakshish Singh and Balbir Kaur committed an offence punishable U/s 326 IPC r.w.s. 34 IPC and the accused Bakshish Singh in furtherance of common intention with all co-accused Gurcharan Singh and Balbir Kaur, voluntarily caused grievous hurt to complainant Gurdyal Singh with their weapon i.e. Gandassi and thereby committed offence punishable U/s 324 IPC whereas your co-all the accused Gurcharan Singh and Balbir Kaur committed an offence punishable U/s 324 IPC r.w.s. 34 IPC ?

6. The learned APP for the state argued that the prosecution has been successful in proving the guilt of all the accused as alleged by way of evidence oral as well as documentary. All the prosecution witnesses have fully supported the prosecution version while corroborating that of each other. The medical evidence led by the prosecution has corroborated the ocular evidence. The injuries on the

person of complainant are duly proved. The infliction of the injuries as such at the face and hands of the all the accused is also proved beyond shadow of doubt. Therefore, all the accused are liable to be held guilty and punished under law.

7. On the other hand, the learned defence counsel controverted all the contentions raised above. He vehemently argued that the prosecution has failed to prove its case against any of the all the accused beyond shadow of reasonable doubt. The testimonies of witnesses examined by the prosecution are not sufficient to relate the guilt of any of the accused with the commission of alleged offence. Only the interested witnesses are examined and no independent witness is examined. There are discrepancies in their statements on the material points. Also, there are contradictions in the medical evidence while read in context of the ocular evidence. All the accused have been falsely implicated in the present case because the complainant and his family have the enmity with all the accused person and they have not even on talking terms with each other. The learned defence counsel further argued that all the accused were falsely implicated in the present case. The complainant in connivance with the witnesses has got the present case falsely implicated just to save themselves from the consequences of that case which was registered against the complainant's nephew Boota Singh and Others in the cross case by the all the accused Gurcharan Singh, Bakshish Singh and Balbir Kaur. The prosecution case is based on falsely concocted story of the complainant. It is settled proposition of law that the prosecution has to stand on its own leg to prove its case. As it has failed to do so in the present case, all the all the accused deserve acquittal.

8. I have gone through the arguments advanced by the learned APP for the State and learned defence counsel and have also perused the file with their kind assistance.

9. In order to prove its case, prosecution has examined PW-1 Gurdayal Singh, PW-2 Bohar Singh, PW-3 HC Gurpreet Singh, PW-4 HC Jarnail Singh, PW-5 Ex ASI Baljinder Singh, PW-6 Dr. Amrik Singh. The prosecution has proved the following documents on record:-

Ex P-1 Statement of complainant.

Ex PW3/A	Ruqa
Ex PW3/B	FIR
Ex PW3/C	Site Plan
Ex PW3/D to F	Memo of joining into the investigation of accused Bakshish Singh, Joginder Singh and Balbir Kaur.
Ex PW3/G	Recovery memo of gandassa
Ex PW3/H	Personal search memo of above stated accused persons
Ex PW4/A	Memo of joining into investigation of accused Gurcharan Singh.
Ex PW4/B	Personal search memo of accused Gurcharan Singh.
Ex PW4/C	Recovery memo of Kirpan
Ex PW4/D	Prepared sketch of Kirpan
MO1 and MO2	Case property i.e. gandassa and Kirpan
Ex PW6/A to	The skiagrams report
Ex PW6/C	
Ex PW6/D	Xray report register
Ex PW6/E	MLR of complainant Gurdial Singh prepared by Dr. Jashandeep
Ex PW6/F	Supplementary report of Dr. Amrik Singh regarding declared injury no. 1 and 2 as grievous.

Thereafter, learned APP for the State closed prosecution evidence on dated 04.12.2019.

10. Statement of all the accused under Section 313 Cr. P.C was recorded, in which all the incriminating evidence appearing against all the accused by way of prosecution evidence was put to them to which they pleaded not guilty.

11. All the accused did not examine any witness in defence evidence but placed upon record the copy of jamabandi for the year 2015-2016 i.e. Ex DA.

12. I have heard learned APP for the State as well as learned defence Counsel for all the accused and gone through record and documents carefully.

13. Learned APP for the State has argued that from the testimony of prosecution witnesses case of the prosecution has been duly proved. He has prayed that all the accused be convicted for the charge framed against them. On the other hand, learned defence counsel has argued that all the accused have been falsely implicated in this case. He has argued that all the accused be acquitted.

14. After having heard learned APP for the State, learned defence counsel and on the examination of the evidence on record, the Court carves out following points for determination :-

- A) Whether the prosecution has been able to prove the case against all the accused under Section 326 read with section 34 of IPC?
- B) Whether the prosecution has been able to prove the case against all the accused under Section 324 read with section 34 of IPC?

POINTS FOR DETERMINATION A AND B

15. To prove its case, the prosecution has examined PW1 Gurdayal Singh. He has deposed that on 14.05.2016, at about 06:30 PM he along with his brother Chanan Singh, his nephew Boota Singh and Dalwinder Singh were doing work in their field on tractor Swaraj which was driven by Boota Singh i.e. they were cultivating their land with tractor. At that time Gurcharan Singh armed with Kirpan, Bakshish Singh armed with Gandassi, Joginder Singh armed with Daang alongwith Balvir Kaur W/o Joginder Singh all residents of Village Akalian Wala came to our field. Joginder Singh made a Lalkara by saying “Fad Lo Inna Nu Aj Ehna Nu Jamin Vich Vattan Paun Da Majja Dikha daiya” then Gurcharan Singh had given blow of Kirpan towards his head and he raised his hands to save the blow and Kirpan hit on his right little finger. Gurcharan Singh had again given blow of Kirpan towards his head and he again raised his hands to save the blow and the blow of Kirpan hit on right ring finger. Then Bakshish Singh gave blow of Gandassi towards his head and same hit on his right temporal region from its reverse side. He raised alarm “Mar Dita Mar Dita” then his nephew Boota Singh and Bohar Singh came

there. Then all the all the accused ran away after causing injuries to him with their respective weapons. He was admitted to civil hospital Kot Ise Khan by Boota Singh after arranging the vehicle. He was medicolegally examined and treated at the said hospital. The motive behind the occurrence was that, there was a dispute of land with all the accused and they are in possession of the said land. All the accused party stopped them from cultivating the land and due to this grudge all the accused party had caused injuries to him. He also identified all the all the accused. His statement is Ex.P1 was recorded by the police on which he identify his thumb impression. X-Ray of his injuries were also done. But in his cross examination, he has stated that the land in dispute is measuring 18 kanals. He further stated that the land in question falls in the jurisdiction of village Malek Akalian. He further stated that he has no knowledge whether any cases were pending with regard to land in question at Zira and Ferozepur. It might be possible that the land in question was on lease with one Katha Singh who might be grand father of accused. He further stated that he has no knowledge under whose names the khasra girdawari fall at present.

16. Prosecution has further examined PW-2 Bohar Singh. He has deposed that on 14.05.2016, at about 06:30 PM he along with Gurnam Singh S/o Darshan Singh were proceeding towards the fields on link road for walking. When they reached near the field of Gurdayal Singh where he found that Gurdayal Singh, Chanan Singh, Dalwinder Singh, Boota Singh, Jugraj Singh, Bhupinder Singh were cultivating their land on Sawaraj Tractor. At that time Joginder Singh armed with Daang, Gurcharan Singh armed with Kirpan, Bakshish Singh armed with Gandashi and Balvir Kaur W/o Joginder Singh empty handed, all residents of village Akalian Wala had came there in the field of Gurdayal Singh with raising high noises. They also had gone in the field and Joginder Singh made a Lalkara by saying that "Aj Ehna Nu Jamin vich Vatta Vahun Da Majja Das Daiya" then Gurcharan Singh gave Kirpan blow towards Gurdayal Singh and Gurdayal Singh raised his hands to save the blow and Kirpan hit on the little finger of right hand, the Gurcharan Singh again given second blow upon Gurdayal Singh towards

his head and Gurdayal Singh raised his hands to save the blow and Kirpan hit on right ring finger of Gurdayal Singh. Bakshish Singh had given blow of Gandashi towards the head of Gurdayal Singh and Gandashi hit on the right temporal region of Gurdayal Singh. Gurdayal Singh raised rolla "Maar Ditta Maar ditta" then Boota Singh had came near to Gurdayal Singh to save him. Then all the all the accused ran away with their respective weapons. Boota Singh had admitted Gurdayal Singh at Civil Hospital Kot Ise Khan after arranging the vehicle. The motive behind the occurrence was that there was dispute of land between Gurdayal Singh and all the accused party. Gurdayal Singh is in possession of the land and all the accused party stopped Gurdayal Singh from cultivating the land. Due to this grudge all the accused had caused injuries. He further identified all the all the accused in the court. His statement was recorded by the police. But in his cross examination, he has stated that Gurdayal Singh complainant is related to him from the village. He further stated that the land in question falls under the jurisdiction of village Malek Akalian District Moga. But he has no knowledge whether the land in question was earlier under the ownership of Ruldu Singh or was earlier on lease with accused person.

17. Prosecution has further examined PW-3 HC Gurpreet Singh. He has deposed that on 18.05.2016, he was posted at PS Kot Ise Khan. On that day, he along with the Investigating Officer and another police officials visited CHC Kot Ise Khan, the Investigating Officer obtained fitness certificate of complainant Gurdayal Singh and recorded his statement Ex.P1 and prepared police proceeding Ex.PW3/A and send the same police statement on the basis of which FIR Ex.PW3/B was registered. Then on 19.05.2016 they visited the place of occurrence and the Investigating Officer prepared site plan Ex.PW3/C after inspecting the spot. On 20.06.2016 all the accused Bakshish Singh, Joginder Singh and Balvir Kaur joined investigation vide memo Ex.PW3/D to Ex.PW3/F in compliance of bail order. all the accused Bakshish Singh produced Gandassa before the Investigating Officer, which was taken into possession, vide memo Ex.PW3/G. The Investigating Officer conducted personal search of above said all the accused person vide memo

Ex.PW3/H. He attested the above said memos. His statement was recorded by the Investigating Officer . He identified all all the accused in the court but in his cross examination, nothing important has came out.

18. Prosecution has further examined PW-4 HC Jarnail Singh. He has deposed that on 18.06.2016, he was posted at PS Kot Ise Khan. On that day, he accompanied the Investigating Officer, ASI Baljinder Singh in investigation in the present case. The Investigating Officer had joined all the accused Gurcharan Singh in investigation vide memo Ex.PW4/A and prepared personal search memo Ex.PW4/B. Above said memos were witnessed by me. The Investigating Officer had recovered one Kirpan from all the accused and same was taken into possession vide memo Ex.PW4/C, after preparing sketch is Ex.PW4/D. The Investigating Officer recorded his statement but in his cross examination, nothing important has came out.

19. Prosecution has further examined PW-5 Retired ASI Baljinder Singh. He has deposed that on 18.05.2016 he was posted at PS Kot Ise Khan. On that day, he along with HC Gurpreet Singh and another police officials visited CHC Kot Ise Khan, he obtained fitness certificate of complainant Gurdayal Singh and recorded his statement Ex.P1 and prepared police proceeding Ex.PW3/A and send the same police statement on the basis of which FIR Ex.PW3/B was registered. Then on 19.05.2016 they visited the place of occurrence and he prepared site plan Ex.PW3/C after inspecting the spot. On 20.06.2016 all the accused Bakshish Singh, Joginder Singh and Balvir Kaur joined investigation vide memo Ex.PW3/D to Ex.PW3/F in compliance of bail order. all the accused Bakshish Singh produced Gandasha before me, which was taken into possession, vide memo Ex.PW3/G. He conducted personal search of above said all the accused person vide memo Ex.PW3/H. He recorded the statement of witnesses. On 18.06.2016 he was posted at PS Kot Ise Khan. On that day, he accompanied by HC Jarnail Singh in investigation in the present case. He joined all the accused Gurcharan Singh in investigation vide memo Ex.PW4/A and prepared personal search memo Ex.PW4/B. He recovered one Kirpan from all the accused and same was taken into possession vide memo Ex.PW4/C, after preparing sketch is Ex.PW4/D.

He identified all the accused in the court. He had seen the case property which is MO1 and MO2 but in his cross examination, he has stated that he does not remember when the MLR was handed over to him. He received four MLRs from MHC. Firstly, he written the statement of Gurdial Singh and then Bakshish Singh. He further stated that they reached at the place of occurrence at about 5:30 PM. The place of occurrence is Shaide Shah Wala. As per his knowledge, the possession and ownership of the place of occurrence is of Bakshish Singh etc.

20. Prosecution has further examined PW-6 Dr. Amrik Singh. He has deposed that on 16.05.2016, he was working as medical officer, CHC Kot Isse Khan. On that day he conducted X-ray examination of Gurdial Singh S/o Piar Singh and reported the skiagrams Ex.P6/A to Ex.PW6/C. He further proved his report register which is Ex.PW6/D. The patient was medicolegally examined by Dr. Jashanddep Sharma and MLR Ex PW6/E was prepared. He has also proved his supplementary report Ex PW6/F on which he identified the signatures of Dr. Jashandeep Sharma. Dr. Jashandeep Sharma has left the job and have permanently gone abroad but in his cross examination, he has stated that possibility of fracture of right hand as mentioned above due to mechanical accident cannot be ruled out.

21. Statements of all the accused Gurcharan Singh, Bakshish Singh and Balbir Kaur were recorded under section 313 Cr.PC, wherein entire incriminating evidence was put to them. However, the all the accused refuted the entire evidence as false and claimed themselves as innocent because all the accused are in possession of the land in dispute with the order of the court and Gurdial Singh etc. want to take possession illegally. They caused injuries to all the accused and the injury of the complainant was self suffered. All the accused opted to lead defence evidence. But, subsequently all the accused closed his evidence without adducing even an iota of evidence in defence.

22. After hearing rival contentions of Ld. APP for the State and Ld. Defence counsel, I have minutely analyzed the record placed on file with their able assistance.

23. Having this view of the matter, it would be pertinent to refer to some of the important facts of the case as unfolded in the story put forth by the prosecution. Perusal of challan submitted U/s 173 Cr.PC reveals that MLR i.e. Ex PW6/E of complainant/injured Gurdyal Singh(PW1) was received in the police station on 18.05.2016 because on dated 17.05.2016, the Complainant Gurdyal Singh has not recorded his statement as detailed by him in his statement as above stated and the same has not been discussed here for the sake of brevity.

24. In order to comprehend the controversy, it would be pertinent to briefly recapitulate the version of prosecution as well as defence side. Right from the inception of trial, it is categoric case of the prosecution that on the date of occurrence 14.05.2016, complainant Gurdyal Singh alongwith his brother Chanan Singh, his nephew Boota Singh and Dalwinder Singh were doing work in their field on tractor Swaraj which was driven by Boota Singh and all the accused assaulted upon the complainant with lethal weapons thereby inflicting grievous injuries on the person of complainant. But the ld counsel on behalf of all the accused has stated that in order to save his skin in the cross case titled as State Vs. Boota Singh and others which was registered by the one of the accused Bakshish Singh as a complainant in that cross case. Therefore, Complainant Gurdyal Singh got registered the present FIR against the all the accused persons by concocting a false story. To my mind , it has been rendered apparently clear, in view of the version that occurrence has been taken place.

25. Further, learned counsel Shri Swaranjit Sharma, appearing for the all the accused persons has submitted that there has been delay in lodging the FIR and sending the copy of the FIR to the court. Therefore, the prosecution failed to give a fair picture with regard to genesis of the crime. It is pertinent to mention here that on being approached by Investigating Officer, the doctor on duty sent the M.L.R of the complainant to the police station Kot Ise Khan and declared the injured person as fit to suffer statement on 17.05.2016 Although on 17.05.2016 the injured person was declared as fit to suffer statement, but Gurdyal Singh showed his inability to suffer statement because there was

chances of compromise between both the parties. Thereafter, the police never went to the Civil Hospital, Kot Ise Khan, till 18.05.2021 i.e. the date of registration of FIR. In view of the afore- mentioned facts and circumstances, it is apparently clear that delay in the present case can not fatal the prosecution. Even otherwise, it is a settled law that delay ipso facto is not fatal for the case of prosecution. Rather, its effect is to be seen in the light of other facts and circumstances brought on record by both the sides.

26. To my mind , Prompt and early reporting of the occurrence by the informant (complainant) with all its vivid details gives an assurance regarding its true version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same and Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint may prove to be fatal. In this very particular case of delay, it also cannot be presumed that the allegations were an after thought or had given a coloured version of events. The court has to carefully examine the facts before it, for the reason, that the complainant party may initiate criminal proceedings just to harass the other side with mala fide intentions or with ulterior motive of wreaking vengeance. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law. But in this very particular case, he has given proper explanation regarding registration of F.I.R on dated 18.05.2016. In this regard, I have taken the support from the case law titled as [Sahib Singh v. State of Haryana](#), AIR 1997 SC 3247.

27. In the instant case, the occurrence took place at about 6.30 p.m. on 14.05.2016. The occurrence had taken place in village Saide Shah Wala And complainant Gurdyal Singh had injured in this occurrence. He was shifted to the hospital. So, after making all these arrangements, but in the hospital when police had come to record his statement on dated

17.05.2016 then he stated that there was a chances of compromise between the parties and during this period , eminent inhabitants of the village have made efforts for of compromise but the same has not been effected and due to this, he has not recorded his statement and register FIR . On dated 18.05.2016 ,he had made his way to the Police Station to lodge report with the police. **In view of the above, this court has reached an inescapable conclusion that there is no delay in lodging the FIR with the police in this case.**

28. Learned counsel for the accused has argued that no independent witness qua alleged occurrence has been examined by the prosecution while testimony of PW-2 Bohar Singh being interested witness cannot be taken into consideration. I find no force in the contention of learned defence counsel that PW-2 Bohar Singh being close friend or neighbourer of complainant Gurdial Singh is an interested witness and as such, much reliance cannot be placed upon his testimony. It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be reliable. Relationship is not a factor to effect credibility of a witness. It is more often then that not a relation would not conceal actual culprit and make allegation against an innocent person. It is the quality and intrinsic worth of evidence that is to be considered and deposition by the relation or an interested party need not be as a matter of course. A relation or any interested witness is not incompetent to depose in a criminal case. A related witness is normally to be considered independent unless he has enmity against the accused. After perusal of the evidence, it has came to the knowledge of this Court that Bohar Singh is not the brother or nephew of complainant Gurdial Singh. But he is close friend or neighbourer of the complainant belongs to the same village. If the complainant wanted to take the benefit of evidence of his brother or nephew then he would examine Boota Singh or Chanan Singh in his favour because both of them were also the eye witnesses of the place of occurrence but complainant Gurdial Singh has not examined them in his favour. Rather, he has examined Bohar Singh who was also the eye witness of the occurrence in his favour. Meaning thereby, the prosecution

witness Bohar Singh has not been designated as interested witness. In order to fortify my view I have taken the support from the case law titled as **Ram Bharosey Versus State of UP, AIR,2010 SC 917**, where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same.

29. Turning to the facts of the present case, merely because PW-2 Bohar Singh happens to be the close friend or neighbour of the complainant, would not justify him being branded as interested witness. If such a wide proposition as stated by the defence counsel is accepted, the evidence of all the witnesses who are relatives of a victim of a violent crime would be rendered unacceptable. His testimony is duly corroborated with prosecution story. Even accused persons did not deny their presence at the time and place of occurrence as they also got registered case as cross version against complainant qua the occurrence. Hence, testimony of PW-2 Bohar Singh being interested witness cannot be discarded.

30. Learned counsel for the accused has argued that accused persons have been falsely implicated in the present case. While arguing this point he referred the testimony of PW-1 Gurdial Singh wherein he deposed qua dispute regarding the land. By referring the said portion of statement, Learned counsel for all the accused wanted to argue that complainant had a motive to falsely implicate all the accused in the present case. Motive is double edged weapon and it can be used by either party. It might be possible that all the accused persons had caused injuries to complainant due to previous enmity. Mere arguing that the complainant had a motive due to previous enmity it cannot be said that prosecution story is false. All the accused should prove the place where they were actually present, when the occurrence was taken place but all the accused

persons had neither taken plea of alibi during the trial, no evidence was led qua said fact, even learned counsel for all the accused did not ask any suggestion to PW1 qua the fact that all the accused person were not present at the place of occurrence, when it was taken place. The testimonies of Pws are duly corroborated with medical evidence and therefore, the burden shifted upon all the accused to rebut the prosecution story by leading positive evidence qua false implication but they failed to do the same.

31. Further, learned defence counsel has tried to assail the story put forth by the prosecution on the ground that **there is enmity between the complainant and all the accused persons** that is why complainant has concocted this false story in order to take revenge and such injuries are nothing but self implicated.

32. So far as injuries suffered by the complainant as mentioned in the cross-examination of Dr.Amrik Singh (PW6) are concerned, the injury no.1 & 2 are grievous injuries suffered by complainant Gurdyal Singh (PW1) respectively. Even otherwise perusal of medico-legal report of complainant Gurdyal Singh (Ex.PW6/E) reveals that complainant Gurdyal Singh suffered Injury No.1 and 2 are grievous in nature caused with with a respective weapon i.e. Kirpan and Gandassi .It is highly improbable that a person would suffer false injury of this much gravity, merely in order to entrap the all the accused persons in a false case.

33. One thing which is pertinent mention here that the ocular evidence is completely supported by medical evidence. Dr.Amrik Singh as PW6 who proved injuries on the person of Gurdyal Singh given by the present all the accused namely Gurcharan Singh, Balbir Kaur and Bakshish Singh. He has proved MLR of Gurdyal Singh, which is Ex.PW6/E and his supplementary report, which is Ex.PW6/F.

34. After scrutinizing the testimonies of P.W. 6 Dr. Amrik Singh, ,this court is of the considered view that we should not reject the medical evidence and direct evidence of P.Ws Gurdyal Singh and Bohar Singh on the strength of the uncanny opinion expressed by the doctors.

35. The evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. Evidence of a related witness can be relied upon provided it is trustworthy. Such evidence is carefully scrutinised and appreciated before reaching to a conclusion on the conviction of the all the accused in a given case.

36. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present at the time of occurrence. **Thus, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness".** Thus, the evidence of an injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. I have placed reliance upon the following case laws passed by **Hon'ble Supreme Court of India**

1. [Abdul Sayeed v. State of Madhya Pradesh](#), (2010) 10 SCC 259;
2. [Kailas & Ors. v. State of Maharashtra](#), (2011) 1 SCC 793;
3. [Durbal v. State of Uttar Pradesh](#), (2011) 2 SCC 676; and
4. [State of U.P. v. Naresh & Ors.](#), (2011) 4 SCC

37. Learned counsel for the accused further argued that there are major contradictions between the testimonies of prosecution witnesses regarding the injuries. This Court is of the considered opinion that there might be some minor contradictions in the prosecution version but the same don't render the trial fatal. The evidence adduced in the present case, despite minor discrepancies clearly establishes the involvement of the accused on the date of occurrence. In case, titled as **Munniappan Versus State of Tamilnadu**, reported in 2010(4) RCR(Criminal 268, The Hon'ble Court held that an undue importance should not be

attached to omissions, contradictions and discrepancies which don't go to the root of the matter and shake the basic version of the prosecution witnesses. Therefore, this Court should come to a conclusion as to whether the residuary evidence is sufficient to convict all the accused. As the mental abilities of a human beings cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of the witnesses.

38. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, may not prompt the Court to reject the evidence in its entirety. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the all the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. In this regard, I have taken the support from the case law titled as [Vijay @ Chinee v. State of M.P.](#), (2010) 8 SCC 191.

39. In the instant case, this court could not find any major contradiction either in the evidence of the witnesses or any conflict in medical or ocular evidence which may tilt the balance in favour of the all the accused persons. There had been minor improvement, embellishment etc., which remain insignificant and have to be ignored.

40. Thus, as a result of afore-mentioned discussion, It has been rendered crystal clear that short comings pointed out by learned defence counsel in the case of prosecution have turned out to be insufficient to

create even a trivial dent in the story put forth by the prosecution. On the other hand, complainant Gurdial Singh has stepped into witness box as PW1 and he has put forth the entire version with minute details and attributed categorical role to both of the all the accused persons. He has clearly explained the injuries inflicted upon his persons by the all the accused persons. His testimony in this regard has been further corroborated by the medical evidence brought on file by Dr.Amrik Singh (PW6). Since all the injuries detailed by witness Gurdial Singh (PW1) find mentioned in his medico- legal report (Ex.P6/E.). Furthermore, testimony of witness Gurdial Singh has been further corroborated by witness Bohar Singh (PW-6), who is none else but the eye witness of the occurrence. Testimony of all these witnesses has withstood the test of cross-examination and has remained unshattered. Thus, on the basis of afore-mentioned evidence adduced by the prosecution, the case of the prosecution stands duly proved.

41. As a sequel of my afore-mentioned discussion and in context of the given factual matrix, it is apparently clear that prosecution has successfully proved it on record beyond the shadow of reasonable doubt that all the accused persons had inflicted injuries on the person of Gurdial Singh (PW1) with their respective weapons. Therefore, in view of the evidence adduced by the prosecution it stands proved on record beyond the shadow of reasonable doubt that the accused Gurcharan Singh in furtherance of common intention with co- accused Bakshish Singh and Balbir Kaur has grievously injured Gurdial Singh complainant with the help of weapon i.e Kirpan and injury no.1 is the result of the same. Therefore, accused Gurcharan Singh is, hereby convicted under section 326 of Indian Penal Code whereas his co-all the accused Bakshish Singh and Balbir Kaur committed an offence punishable U/s 326 r.w.s. 34 IPC. Similarly, the accused Bakshish Singh voluntarily caused hurt to complainant Gurdial Singh with the weapon i.e. gandassi and injury no.2 is the result of the same and thereby Bakshish Singh committed an offence punishable U/s 324 whereas his co-all the accused Gurcharan Singh and Balbir Kaur in furtherance of common intention with all the accused Bakshish Singh, committed an offence punishable U/s 323 IPC

r.w.s. 34 IPC. Let all the accused persons be taken into custody and be heard on the quantum of sentence.

Pronounced in open Court

Dated:19.10.2021

Raj Kumar, STG-I

(direct dictation on computer)

(Poonam Kashyap)
Judicial Magistrate Ist Class,
Moga.UID NO . PB00561

QUANTUM OF SENTENCE

Present : Sh. Gurpreet Singh Ld. APP for the State.
Convicts in custody with counsel Sh. S.K. Sharma, Adv.

42. I have heard the convicts on the quantum of sentence. They have prayed for taking lenient view in the matter of sentence as they are poor persons and only bread winner of their family. Ld. APP for the State has opposed the submissions.

43. I have considered the prayer of the convicts. Keeping in view the facts of the case, age and antecedents of the convicts and gravity of offences so committed by the convicts, I am of the considered opinion that convicts Gurcharan Singh, Balbir Kaur and Bakshish Singh are not entitled to concession of probation. Accordingly, convicts Gurcharan Singh and Bakshish Singh are sentenced to undergo as under:-

Name of convict	Under Section	Rigorous Imprisonment	Fine in rupees	In default of payment of fine further undergo simple imprisonment for the period
Gurcharan Singh	326 IPC.	Three years	Rs. 2000/-	Three months
	324 IPC.r.w.s 34 IPC	One year	Rs. 1000/-	Two months
Bakshish Singh	326 IPC.r.w.s 34 IPC	Three years	Rs. 2000/-	Three months
	324 IPC	One year	Rs. 1000/-	Two months.
Balbir Kaur	326 IPC..r.w.s 34 IPC	Three years	Rs. 2000/-	Three months.
	324 IPC.r.w.s 34 IPC	One year	Rs.1000/-	Two months

All the sentences shall run concurrently. However, the period of detention/imprisonment already spent by the all the accused during enquiry, investigation or trial of the case, if any, be set off from the substantive sentences to be undergo by him.

44. Fine paid. Case property be dealt as per rules after the expiry of period of appeal/revision. A copy of this judgment be provided to him free of costs. File be consigned to the Judicial Record Room.

Pronounced in open Court.

Dated:19.10.2021

Raj Kumar, STG-I

(direct dictation on computer)

(Poonam Kashyap)
Judicial Magistrate Ist Class,
Moga.UID NO . PB00561

Present: Sh. Gurpreet Singh, Learned APP for the State.

All the accused on bail with counsel Sh. S.K. Sharma,
Advocate.

Defence evidence closed. Arguments heard. Vide my separate
detailed Judgment of even date, accused have been convicted and
sentenced as detailed therein. File be consigned to the record room.

Dated:19.10.2021

Raj Kumar, STG-I

(direct dictation on computer)

(Poonam Kashyap)
Judicial Magistrate Ist Class,
Moga.UID NO . PB00561