

PBGD030015972014



Presented on : 22-09-2014
Registered on : 22-09-2014
Decided on : 30-07-2024
Duration : 9 years, 10 months, 8 days

**IN THE COURT OF
Judicial Magistrate - Ist Class
AT ,Gurdaspur
(Presided Over by Ms. Ramneet Kaur)**

CHI/14/2015

State

Vs.

1. Kamal Kishore son of Parkash Chand,

2. Rahul Saini son of Kamal Kishore,

3. Vijay Kumar son of Mohal Lal,

4. Ravi Kumar son of Gurdas Mal,

5. Sanjeev Kumar son of Gurdas Mal,

All residents of village Mashrala, Tehsil and District Gurdaspur,

6. Sourav Saini @ Makhan son of Naresh Kumar resident of village Bhatoa,
Tehsil and District Gurdaspur,

7. Vicky @ Vikram son of Gurdial Singh resident of Sangalpura Road, Tehsil
and District Gurdaspur,

8. Rohni @ Roni @ Paramjit son of Santokh Raj resident of village Naimata,
Tehsil and District Gurdaspur.

.....Accused.

FIR No.30 Dated:27.05.2012
Under Section:324, 323, 34 IPC
Police Station: Behrampur

Present : Sh. Hardeep Kumar, Ld. A.P.P for the State assisted by
Sh. Simranjit Singh Dhillon, Adv. Counsel for
complainant.
All accused on bail with Counsel Sh. Gurmail Singh
Kahlon, Adv. and Sh. Ajaib Singh Hundal, Adv.

JUDGMENT

1. The above named accused persons have been sent up by the Officer Incharge of Police Station Behrampur, to face trial for the commission of offence punishable under Sections 324, 323, 34 IPC.

2. In brief prosecution story is that on 27.05.2012, one query was received, upon which ASI Harinder Pal Singh, along with the police party went to Civil Hospital, Gurdaspur and received the MLRs of Satpal, Yashpal and Joginder and Shoba Rani. He sought the opinion of the Doctor regarding the fitness of injured to give the statement. Doctor declared Yashpal unfit to give the statement and Satpal was found absent from his bed. Doctor declared Shoba Rani and Joginder Singh fit to give the statement and were discharged. Joginder Singh got recorded his statement to the effect that he is working with FCI. On 26.05.2012, he was on leave. On that day, he along with his brother Yashpal were coming by foot towards their village and reached near village Masrala Chownk, it was around 8:30pm, then Kamal Kishore armed with datar, Ravi Kumar armed with datar, Vijay Kumar armed with Kirpan, Rahul armed with baseball, Akshay Kumar armed with stick, Sanjeev armed with datar, Saurav Saini @ Makhan armed with Datar, Rohini armed with datar, Vicky @ Vikram armed with stick along with some other unknown persons armed with sticks came there. Kamal Kishore started abusing him and threatening him of not leaving him. Kamal Kishore gave the blow of reverse side of datar which hit on his right shoulder. Rahul gave the blow of baseball

which hit on his chest, Akshay Kumar gave the blow of stick which hit on his left shoulder. His brother came forward to his rescue, but they all also beaten him with their weapons. Saurav Saini also gave the blow of reverse side of datar which hit on his back, his brother fell down. He raised hue and cry. He ran to his house. All accused persons followed him. There, his brother Satpal came forward for his rescue. They also gave beatings to Satpal. In the mean time, Vijay Saini, Mamta, Vandana, Bholi wife of Vijay Kumar, Bholi wife of Suresh Kumar started pelting stones towards their house and caused damage. They entered their house and caused damage to the house and also took Rs.17,000/- and gold ornaments from their almirah. They raised hue and cry. All the accused persons ran away from the spot with their weapons. While leaving, they also caused damage to his haveli and stole the Tap(handpump). He and Rakesh Kumar called the Ambulance and got admitted in the hospital. His wife Shoba and his brothers were admitted in the hospital. The reason for resentment was that he was to recover some amount from Kamal Kishore. Statement of witnesses recorded. FIR got registered. After completion of necessary investigation, Challan under Sections 324, 323, 34 IPC was presented against accused persons.

3. Copies of the challan form along with documents annexed with the same were supplied to all the accused free of costs as required under section 207 Cr.P.C.

4. On finding a prima facie case, a charge against all the accused persons under Sections 324, 323, 326 IPC read with Section 149 IPC and 148 IPC was framed. The contents of the charge were read over and explained to

all the accused persons in simple language. All accused pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined:-

PW-1 Joginder Singh, who tendered in evidence his statement
Ex.PW1/A,

PW-2 Yashpal @ Jaspal,

PW-3 Satpal,

PW-4 Shoba Rani,

PW-5 Dr. Gurnarinder Singh, who tendered in evidence MLR of
Satpal Ex.PW5/A, pictorial diagram Ex.PW5/B, final opinion report
Ex.PW5/C, MLR of Jaspal@ Yashpal Ex.PW5/D, pictorial diagram Ex.PW5/E,
final opinion report Ex.PW5/F, MLR of Joginder Singh Ex.PW5/G, pictorial
diagram Ex.PW5/H, MLR of Shoba Ex.PW5/I, pictorial diagram Ex.PW5/J,

PW-6 Retd. Sub-Inspector Harinderpal Singh, Investigating
Officer, who tendered in evidence applications for recording the statements of
injured Ex.PW6/A, Ex.PW6/B, Ex.PW6/C, Ex.PW6/D, statement of
complainant Joginder Pal Ex.PW1/A, police proceedings Ex.PW6/E, FIR
Ex.PW6/F, endorsement on ruqa Ex.PW6/G, site plan Ex.PW6/H, Ex.PW6/I,
Ex.PW6/J, application for recording the statement of Yashpal@ Jaspal
Ex.PW6/K, recovery memo of blood stained shirt of Jaspal Ex.PW6/L,
recovery memo of blood stained shirt of Satpal Ex.PW6/M, case property
Ex.MO1 and Ex.MO2,

PW-7 SI Sham Sunder, who tendered in evidence arrest cum
intimation memo of Kamal Kishore Ex.PW7/A, arrest cum intimation memo of
Rahul Saini and Saurav Saini Ex.PW7/B, personal search memos Ex.PW7/C

and Ex.PW7/D, recovery memo of iron datar from Saurav Saini and baseball from Rahul Saini Ex.PW7/E and Ex.PW7/F respectively, rough sketch of datar Ex.PW7/G, case property Ex.MO3 and Ex.MO4,

PW-8 HC Manpreet Singh, who tendered in evidence arrest cum intimation memo of Kamal Kishore Ex.PW7/A

PW-9 PHC Ramesh Kumar, who tendered in evidence arrest cum intimation memo of Rahul Saini and Saurav Saini Ex.PW7/B, personal search memos Ex.PW7/C and Ex.PW7/D, recovery memo of iron datar from Saurav Saini and baseball from Rahul Saini Ex.PW7/E and Ex.PW7/F respectively, rough sketch of datar Ex.PW7/G,

PW-10 ASI Gurnam Singh,

PW-11 ASI Sarwan Kumar,

PW-12 PHG Sham Lal, who tendered in evidence recovery memos Ex.PW6/L and Ex.PW6/M,

PW-13 Dr. Harleen Kaur, working in Dr. Daljit Singh Heart Care Clinic, Gurdaspur, who tendered in evidence application Ex.PW6/C, her written report Ex.PW13/A, application Ex.PW6/D, written report Ex.PW13/B,

PW-14 Retd. Dr. S.K. Hans, who tendered in evidence X-ray report Ex.PW14/A, X-ray films Ex.PW14/B,

PW-15 Dr. Ajay Mahajan, who tendered in evidence his report on X-ray examination Ex.PW15/A, X-ray films Ex.PW15/B and Ex.PW15/C,

PW-16 Dr. Sunil Chand, Medical Officer, Civil Hospital, Pathankot, who tendered in evidence his report Ex.PW16/A, (through V.C.), and thereafter, Ld. APP for the State has closed the prosecution evidence.

6. After the closure of the prosecution evidence, statements of all the accused persons under Section 313 Cr.P.C. was recorded in order to enable them to explain the incriminating evidence appearing against them to which they denied and pleaded false implication and deposed that they are innocent and they have not committed any offence. They also pleaded that Joginder Singh has registered a false case against them.

7. In defence evidence, accused persons examined:-

DW-1 Kuldeep Singh,

DW-2 Dr. Jatinder Pal Singh, Assistant Professor Department of Forensic Medicine and Toxicology, Govt. Medical College, Amritsar, who tendered in evidence his original opinion Ex.DW2/A, report to SP (D) Gurdaspur vide office letter Ex.DW2/B, application moved by SP(D) to SMO Ex.DW2/C, medico-legal record Ex.DW2/D,

Also, Ld. Defence Counsel has tendered in defence evidence certified copy of Judgment dated 22.02.2019 titled as State Vs. Akshay Saini Ex.D1,

and thereafter, accused persons closed the defence evidence.

8. I have heard Ld. APP for the State and Ld. Defence Counsel and have carefully gone through the file. It was upon the prosecution to prove allegations levelled against accused persons beyond the shadow of reasonable doubt. Prosecution to prove its version examined:-

PW-1 Joginder Singh, who deposed that he is working in FCI department and in the month of May, 2012, he came on leave, to his village. On 26.05.2012, he along with his brother Yashpal were coming from Behrampur towards his village Mashrala by foot and at about 8:30pm, Kamal

Kishore armed with datar, Ravi Kumar armed with datar, Vijay Kumar armed with kirpan, Rahul @ Papal armed with datar, Vicky armed with sota and three unknown person came there and Kamal Kishore gave filthy abuses to him and threatened him of dire consequences, then, Kamal Kishore gave reverse side datar blow which hit on his right shoulder, then accused Rahul @ Papal gave baseball blow which hit on his chest. Then, Akshay gave dang blow which hit on his left shoulder. His brother Yashpal came forward to rescue him, then all the accused persons with intention to kill his brother Yashpal, gave injuries to him. Then, Makhan Singh gave reverse side of datar blow which was hit on his backside. Then, he raised hue and cry and when he moved towards his house, all accused followed him and he hid himself in the house, then his brother Satpal Singh came forward to rescue him, then all accused gave injuries to him, then, Vijay Saini, Mamta Rani, Vandana Bholi, Bholi also came there and started pelting bricks towards his house due to which his house was got damaged, then all the above accused trespassed his house and committed theft of currency notes of Rs.17,000/-, two gold rings, one gold necklace, one pair of gold ring and accused persons also caused injuries to his wife. They raised hue and cry and many people gathered there and all accused ran away from the spot. Thereafter, accused persons also damaged his haveli and committed theft of handpump and then, he and Rakesh Kumar telephonically called the ambulance and they got admitted at Civil Hospital, Gurdaspur where they were medically examined. He further deposed that the motive behind the occurrence was that he had given Rs.42,200/- to accused Kamal Kishore as he was in dire need of money and when he requested to return his money, he along with other co-accused persons caused injuries to him and his family.

PW-2 Yashpal (being interchangeably used with name Jaspal at different places), who deposed that on 26.05.2024, he along with his brother Joginder Pal coming from Behrampur by foot to their village, and when they reached the outskirts of the village, then accused Kamal Kishore armed with datar, Rahul @ Papal armed with baseball, Naresh Pal armed with datar, Ravi Kumar armed with datar, Sanjeev Kumar armed with datar, Vijay Kumar armed with kirpan, Rohini armed with datar, Vicky armed with sota, three unknown persons armed with sota were present there and accused Ashok Kumar gave filthy abuses to them and Kamal Kishore raised lalkara to catch hold of them. Accused started assaulting his brother Joginderpal and when he moved forward to rescue his brother, Kamal Kishore gave datar blow towards him and when he raised his hand in order to save himself, it hit on his right thumb. Rahul @ Papal gave baseball blow which hit near his left ear. Accused Ravi Kumar gave datar blow which hit on left side of his forehead, Sanjeev Kumar gave reverse datar blow which hit on his right shoulder. Accused Makhan Singh gave datar blow which hit on the upper side of his left forehead and he fell on the ground and became unconscious. They got admitted in Civil Hospital Gurdaspur where he was medically treated. He further deposed that the motive behind the occurrence was that his brother had given money to Kamal Kishore and when he requested to return the same, then accused Kamal Kishore along with co-accused persons caused injuries to them.

PW-3 Satpal who deposed that on 26.05.2012, he along with his wife were present in their house and he heard noises from outside and he came out of his house and he saw accused Mamta, Vandana, Bholi, Bholi wife of

Suresh Kumar pelting bricks bats on the person of Shoba Rani wife of Joginder Pal and he entered the house of his brother Joginder Pal and at that moment, his brother Joginder Pal was coming to his house and he asked him, as to what happened and he told that the accused chased him and also caused injuries to him and he closed the gate of his house. Accused forcibly opened the gate of the house of Joginder Pal by pushing it and entered the house and juvenile Akshay Kumar gave dang blow which hit below his lower lip. Accused Vijay Kumar gave kirpan blow which hit on left side of his belly, and accused Makhan Singh gave datar blow which hit on his right wrist. Accused stolen Rs.17,200/- and one necklace, one gold ring from the house of Joginder Pal. Thereafter, accused entered into their haveli and stolen the handpump and also damaged the tin shed. Thereafter, they were got admitted to Civil Hospital, Gurdapsur by Suresh Kumar @ Vijay.

PW-4 Shoba Rani, who deposed that on 26.05.2012, at about 9:00pm, she along with her children was present at her house and her husband came from the outside who was in injured condition and upon asking, he told her that all the accused have caused injuries to his persons while he was coming towards his house and they also caused injuries to Yashpal and he be rescued. And, in the meantime, Mamta, Bholi, Bholi wife of Rakesh Kumar, Vijay Saini, Vandana entered into their house and caught hold of her from her hairs and accused Vijay Saini gave brick blow which hit on the right side of her belly and her brother-in-law Satpal came forward to rescue her and all the accused assaulted him and caused injuries to Satpal. Accused started damaging their house and they went into one room of their house where accused came and broke the almirah and committed theft of her gold ornaments i.e. ear rings,

gold necklace, gold chain, two gold rings and Rs.17,000/- in cash from the almirah. Thereafter, accused persons ran away from the spot and entered into their haveli and damaged the tin shed and also uprooted the handpump installed in the haveli and took away handpump while running away from the spot.

PW-5 Dr. Gurnarinder Singh, Medical Officer, Civil Hospital Gurdaspur, who deposed that on 26.05.2012, he medico-legally examined Satpal son of Amar Chand, Jaspal son of Aamir Chand, Joginder Singh son of Aamir Chand, Shoba Rani wife of Joginder Singh and he deposed regarding the injuries on their persons.

PW-6 Retd. Sub-Inspector, Harinderpal Singh, who deposed that on 27.05.2012, he was present at PS Behrampur and MHC received query regarding the admission of injured in Civil Hospital, Gurdaspur. He along with police party went to the hospital and moved application to Doctor for recording the statement of injured and doctor declared injured fit to give the statement and declared injured Yaspal unfit to give the statement. Complainant Joginder Singh recorded his statement. On 02.06.2012, he again went to the hospital and moved application for recording the statement of Yashpal and doctor gave endorsement that injured is fit to give the statement. Yashpal produced blood stained shirt before him which was taken into police possession. And he deposed regarding the manner of investigation. He further tendered in evidence case property Ex.MO1 and Ex.MO2,

PW-7 SI Sham Sunder, who deposed that on 14.10.2012, he along with the police party present at T-point village Mattam and he got a secret information regarding the accused Kamal Kishore on the basis of which, he

arrested the accused with the help of police party and he deposed regarding the manner of investigation. He also tendered in evidence case property Ex.MO3 and Ex.MO4,

PW-8 HC Manpreet Singh, who deposed that on 14.10.2012, he along with police party was handed over by IO ASI Sham Sunder and were present at T-point village Mattam and he deposed regarding the manner of investigation.

PW-9 PHC Ramesh Kumar, who deposed that on 07.02.2013, he was posted as PHC at PS Behrampur and on that day, Gurmej Sing and Rajiv Kumar produced the accused Rahul Saini and Saurav Saini along with bail Orders of the Hon'ble Supreme Court and he deposed regarding the manner of investigation,

PW-10 ASI Gurnam Singh, who deposed that 07.02.2013, he was posted as MHC at PS Behrampur and on that day, IO/ASI Sham Sunder deposited case property i.e. baseball and datar and he stored the same into police malkhana after making an entry at register no.19,

PW-11 ASI Sarwan Kumar, who deposed that on 14.10.2012, he was member of police party headed by ASI Sham Sunder, when upon the secret information, IO arrested accused Kamal Kishore,

PW-12 PHG Sham Lal, who deposed that on 02.06.2012, he was member of police party ASI Harinderpal Singh went to the Civil Hospital where Yashpal handed over his blood stained shirt to IO and deposed regarding the manner of investigation,

PW-13 Dr. Harleen Kaur, working in Dr. Daljeet Singh, Heart Care Clinic, Gurdaspur, who deposed that on 27.05.2012, he was posted as

Medical Officer at Civil Hospital, Gurdaspur and gave her written reports on the applications Ex.PW13/A and Ex.PW13/B qua fitness to give statement,

PW-14 Retd. Dr. S.K. Hans, who deposed that on 28.05.2012, he was posted as Orthopedist at Civil Hospital, Gurdaspur and he conducted the X-Ray examination of right hand of Jaspal @ Yashpal son of Amir Chand,

PW-15 Dr. Ajay Mahajan, Medical Officer, Civil Hospital, Gurdaspur, who deposed that on 28.05.2012, he conducted X-ray examination of skull of Jaspal @ Yashpal son of Amir Chand,

PW-16 Dr. Sunil Chand, Medical Officer, Civil Hospital Pathankot, who deposed through VC that on 31.05.2012, he after receiving the X-ray report conducted MLR of Satpal Singh son of Aamir Chand and gave his report Ex.PW16/A.

In defence evidence, accused persons examined:-

DW-1 Kuldeep Singh, who deposed that he knows Vijay Kumar personally and he studied with him at Govt. Sen. Sec. School, Behrampur and Vijay Kumar is a retired teacher. On 26.05.2012, at about 8/8:15pm, Vijay Kumar and his wife Rakesh Kumari and his son Akshay Saini came to his house at village Bathawala from Pathankot. Master Vijay Kumar and his family remained in his house till 10:00pm and after taking dinner, Master Vijay Kumar and his family left his house for going to their village Mashralla. He came to know the next day, that Master Vijay Kumar and his family are innocent and he had suffered statement regarding this fact in the enquiry conducted by the police,

DW-2 Dr. Jatinder Pal, Singh, Assistant Professor Department of Forensic Medicine and Toxicology, Government Medical College, Amritsar,

who deposed that on 25.06.2014, he was member of Board of Doctors constituted by the SMO for giving opinion regarding the injury no.2 on the person of Satpal and he gave his original opinion that the injury no.2 was present on vital area of body, was small injury measuring 2x0.5cm and depth was not probed as per the MLR and appears to be caused by light sharp weapon and at the side of injury the bone is superficial and deposed that the possibility of injury is being self inflicted and caused by friendly hand cannot be ruled out. And, he gave his medico-legal record Ex.DW2/D.

Allegations against accused persons are that on 26.05.2012, at around 8:30pm, all the accused persons armed with weapons as detailed above attacked Joginder Singh, Yashpal Singh when they were near the chownk village Mashrala. Thereafter, complainant Joginder Singh ran towards his house and all the accused persons followed him. Brother of the complainant Satpal and wife of Joginder Singh, Shoba Rani were also beaten and inflicted injuries. Prosecution examined complainant Joginder Singh as PW-1, Yashpa Singh as PW-2, Satpal as PW-3 and Shoba Rani as PW-4. PW-4 Shoba Rani has deposed that on the said day, her husband Joginder Pal, came at home in injured condition and told her that accused persons have inflicted injuries upon him. In the meantime, Mamta, Bholi, Vijay Saini, Vandana entered the house and caught hold of her from hairs. Vijay Saini gave brick blow which hit on right side of her belly. Her brother in law Satpal came forward to rescue her. All the accused persons also inflicted injuries upon him. She further submitted that accused persons damaged their house, and they went to one room of their house and accused also entered their room and broke almirah lying in the room and committed theft of gold ornaments and Rs.17,000/- in cash from almirah.

Thereafter, accused ran away from the spot and also took handpump from their haveli. Hence, she submitted that when they were in the room at that time, accused persons took gold ornaments and cash of Rs.17,000/- from the almirah, but in her cross-examination, she submitted that she had not seen accused stealing gold ornaments and cash, etc. Had she been present at the spot, she would have seen accused committing theft as alleged. Hence, her entire version becomes unbelievable and her evidence cannot be read in support of the prosecution version.

It is further argued by Ld. Defence Counsel that no independent witness has been examined by the prosecution in support of their version. Complainant Joginder Singh and injured Yashpal, Satpal and Shoba Rani are relatives of complainant Joginder Singh. But, it is a settled law that if the witnesses are capable of proving their version without any independent witness, their deposition cannot be discarded on this point merely because no independent witness examined. Hence, if the deposition of the witnesses examined by the prosecution are able to prove to the guilt, prosecution story cannot be disbelieved only because no independent witness was examined. Reliance is being placed on the case law titled as **Bhajan Singh @ Harbhajan Singh Vs. State of Haryana, Crl Appeal No.562 of 2007 D/d.04.07.2011 by The Hon'ble Supreme Court of India**, wherein it has been held that *Conviction based on evidence of father of deceased and an injured witness- Conviction upheld- No neighbour, even if the witnessed the incident would like to come forward and depose against assailants.*

The testimony of an injured witness is accorded a special status in law – Such a witness comes with a build-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.

Ld. Defence Counsel has further argued that there are discrepancies in the deposition of prosecution witnesses. PW-2 Yashpal Singh has deposed to the effect that accused Ashok Kumar gave filthy abuses to them. He also submitted that Naresh Pal was armed with datar. It is vehemently argued that there is no person as Ashok Kumar and Naresh Pal arrayed as accused persons in the present FIR. But, in his cross-examination, he has submitted that he has wrongly named Ashok Kumar as accused. He has not named Ashok Kumar and Naresh Pal to the police. The alleged occurrence is qua the year 2012 and Yashpal was examined in chief for the first time in the year 2018 when he named Naresh Pal and Ashok Kumar as accused. Also, perusal of the file shows that when he was cross-examined for the second time in the year 2023, he has reflected his age to be 62 years. Hence, there is material lapse of time in the occurrence in the deposition of the witness. Also, the **Hon'ble Punjab and Haryana High Court** has held in the case titled as **Kuldeep Singh Vs. State of Punjab, Crl. Appeal NO.1419-SB of 2002 D/d 27.09.2010**, that *Contradiction in Statement of witnesses – Statement of witnesses made after many years there were contradictions in the statements – Improvement and contradiction in statement after many years by illiterate persons quite natural.*

Hence, the above stated contradictions are minor in nature as the witness has otherwise corroborated the prosecution version.

Ld. Defence Counsel has further argued that for proving the MLR of Yashpal, no radiographer has been examined. Prosecution examined PW-4

Dr. SK Hans, who deposed that on 28.05.2012, he conducted X-ray examination of Yashpal of his right hand, but no bone injury was seen and he tendered his X-ray report as Ex.PW14/A and X-ray film Ex.PW14/B. Prosecution also examined PW-15 Dr. Ajay Mahajan who deposed that on 28.05.2012 that he conducted X-ray examination of his skull and no bone injury was detected and he tendered in his X-ray report as Ex.PW15/A and X-ray film as Ex.PW15/B and Ex.PW15/C. Hence, they have duly given their reports on the basis of X-ray films and can be read in evidence.

Prosecution has also examined PW-16 Dr. Sunil Chand who deposed that on 31.05.2012, on receiving the X-ray report of Satpal he gave his report Ex.PW16/A. And as per his report, there was fracture of 9th rib of left side. But, now when he has seen the X-ray s films annexed with the file, he has stated that the said X-ray films are quite old and not clear. Ld. Defence Counsel has argued that when X-ray is not clear, his report cannot be taken into consideration. But, perusal of his report Ex.PW16/A reflects that report has been given on 31.05.2012 and with the passage of time, it is obvious that the conditions of X-ray film would deteriorate. But, as the considerable amount of period of time has already elapsed, the reliance over report Ex.PW16/A is sufficient to reach to the conclusion. Hence, it stands proved that Satpal has sustained grievous injury on his 9th rib. But, it was upon the prosecution to prove that the said injury has been inflicted by accused persons only. The deposition of PW-3 Satpal reflects that it was accused Vijay Kumar who gave kirpan blow to him which hit on left side of his belly. Hence, the fracture on 9th rib is relating to this injury near the belly of Satpal. Hence, attack has been given with sharp edged weapon by Vijay Kumar to Satpal. PW-

6 Retd. Inspector Harinder Pal Singh has deposed that injured Satpal produced the blood stained shirt which was taken into police possession vide memo Ex.PW6/M. He in his cross-examination submitted that there is no cut on the clothes produced by Satpal and Yashpal. Hence, the version of Satpal that he was given kirpan blow, leads to the assumption that his clothes would have received a cut as the said infliction had led to the fracture on his rib. Moreover, perusal of the entire evidence on record led by the prosecution reflects that the kirpan has not been recovered from Vijay Kumar. Moreover, there are no allegations against Vijay Kumar put forth by the Investigating Officer that he has done any act which caused disappearance of the kirpan. Also, no explanation given by the prosecution as to why kirpan not recovered from Vijay. Also, only baseball from Rahul and datar from Sourav Saini have been reflected to have been recovered from those accused persons during investigation. No other weapon from any other accused has been recovered during investigation. No explanation given for the same. Hence, from the above discussion, it is clear that there is grievous injury on the person of Satpal as reflected in medical evidence. But, there was a heavy onus upon the prosecution to prove that it was inflicted by accused persons. PW-3 Satpal has given specific attributions against specific accused persons. From his deposition, it comes up that the injury on his rib is reflected to have been caused by Vijay Kumar with kirpan, but kirpan has not been taken into police possession. Hence, it cannot be concluded that Vijay Kumar has inflicted any injury upon Satpal with kirpan. Hence, the allegations against accused persons under Section 326 IPC read with Section 149 IPC does not stands proved.

It is further argued by Ld. Defence Counsel that the alleged occurrence is stated to have occurred at 8:30pm on 26.05.2012. He further contended that it was quite dark and the place where alleged occurrence is stated to have occurred does not have any source of light. Also, IO PW-6 Sub Inspector Harinder Pal has submitted that there is no source of light in the street and the house. Although, it is not acceptable that there was no source of light in the house. For that purpose, cogent evidence should have been led as now-a-days electricity supply is an amenity which is widely available to each and every house. Reliance has been placed on the case law titled as **Israr Vs. State of U.P. CrI Appeal No.1425 of 2004. D/d 06.12.2004 by the Hon'ble Supreme Court of India**, wherein it has been held that *Identification of accused persons- Occurrence took place on moon-lit night- A known person can be identified from a distance even without much light*. In the present case also, complainant, injured and accused persons are residents of same village. Moreover, PW-3 Satpal has submitted that there are two lights in their street. Hence, it cannot be concluded that accused persons could not have been identified by complainant and other injured persons at the spot.

Also, Ld. Defence Counsel has argued that accused Vijay Kumar was not present at the spot. To prove the same, they examined DW-1 Kuldeep Singh, who deposed that on 26.05.2012, at around 8/8:15pm Vijay Kumar after checkup of his eyes from Pathankot, came to their house at village Bathanwala and remained there till 10:00pm. And, thereafter, they left for their house at Mashrala. But, it is only an oral version. If Vijay Kumar has got his checkup of his eyes from Pathankot, the record of his checkup from the doctor would have been more cogent evidence to prove the version of the accused. But, no such

evidence brought on record. Hence, it does not stand proved that accused Vijay Kumar was not present at the spot on the day of alleged occurrence.

9. Hence, in view of the discussion above, it is safely gathered that prosecution has been able to prove that allegations against accused persons i.e. Kamal Kishore, Rahul Saini, Vijay Kumar, Ravi Kumar, Sanjeev Kumar, Sourav Saini, Vicky @ Vikram, Rohni, that they in prosecution of their common object, voluntarily caused hurt to Joginder, Yashpal and Satpal with dangerous weapons like datar and baseball. Hence, they are acquitted for offence punishable under Section 326 IPC read with Section 149 IPC and convicted for offence punishable under Section 323, 324, 148 IPC r.w. Section 149 IPC. Let they be heard on question of sentence.

Pronounced:

Dated:30.07.2024

Daljeet Kaur, Steno Gr. III

(Ramneet Kaur), PCS,

Judicial Magistrate Ist Class/Gurdaspur.

UID No. PB0326

QUESTION OF SENTENCE

Present : Sh. Hardeep Kumar, Ld. A.P.P for the State assisted by Sh. Simranjit Singh Dhillon, Adv. Counsel for complainant.
Convict Kamal Kishore, Rahul Saini, Vijay Kumar, Ravi Kumar, Sanjeev Kumar, Sourav Saini, Vicky @ Vikram, Rohni in person represented by Counsel Sh. Gurmail Singh Kahlon, Adv. and Sh. Ajaib Singh Hundal, Adv.

This Court has heard Ld. APP for the State as well as convicts, on the question of sentence. Convicted persons have been heard on the question of sentence. The convicted persons requested for taking lenient view. But, Ld. APP for the State has argued that accused persons have committed grave offence and should be dealt with strictly. Hence keeping in view the facts, convicted persons are sentenced as under:-

Sr. No.	Convicts	Under Section(s)	Period of sentence	Fine	In default of payment of fine, the detention for the period of sentence
1	Kamal Kishore	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment
		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
2	Rahul Saini	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment
		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
3	Vijay Kumar	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment
		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
4	Ravi Kumar	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment
		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
5	Sanjeev Kumar	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment

		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
6	Sourav Saini @ Makhan	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment
		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
7	Vicky @ Vikram	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment
		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
8	Rohni@ Roni @ Paramjit	323 IPC	6 months of Rigorous Imprisonment	Rs.200/-	7 days of rigorous imprisonment
		324 IPC	1 years of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment
		148 IPC	1 year of Rigorous Imprisonment	Rs.500/-	15 days of rigorous imprisonment

All the sentences shall run concurrently and the period of custody undergone by the accused persons, during the investigation, inquiry or trial of this case shall be set off against the terms of imprisonment imposed upon them in this Judgment. Also, the period for imprisonment in default of payment of fine shall run concurrently with the sentence imposed upon the accused persons. Fine paid and receipt issued. Case property, if any be disposed of

after the period of revision/appeal, if under, as per rules. File be consigned to the Record Room, after due compliance.

Pronounced:
Dated:30.07.2024
Daljeet Kaur, Steno Gr. III

(Ramneet Kaur), PCS,
Judicial Magistrate Ist Class/Gurdaspur.
UID No. PB0326