

Balbir Singh & Ors. *Versus* State of Punjab.

**IN THE COURT OF JASWINDER SHEEMAR,
ADDITIONAL SESSIONS JUDGE,
HOSHIARPUR. (UID NO.PB-0093).**

CIS No.CRA- 416 of 2019

CNR No.PBHO01-008726-2019

Date of Institution of Crl. Appeal: 12.09.2019

Date of Decision: 18.09.2023

Balbir Singh, aged 43 years son of Amar Singh, resident of village Tiora,
Police Station Indora, District Kangra, Himachal Pradesh.

.....Appellant-Accused.

Versus

State of Punjab.

.....Respondent.

Criminal appeal against the judgment and order passed by Ms. Prabha Prashar, PCS, Ld. Judicial Magistrate 1st Class, Hoshiarpur dated 30.08.2019 passed in case bearing FIR No.23 dated 06.04.2018 under Sections 323, 324, 451 read with Section 34 of the IPC, at Police Station Hajipur, District Hoshiarpur, vide which the accused was convicted under **Section 323** of the IPC and sentenced to undergo **rigorous imprisonment** for **three months** and fine of **Rs.1000/-** and in default of payment of fine to further undergo **simple imprisonment** for **15 days**, under **Section 324** of the IPC to undergo **rigorous imprisonment** for **six months** to pay fine of **Rs.1000/-** and in **default** of payment of fine to undergo **simple imprisonment** for **one month** and under **Section 451** of the IPC to undergo **rigorous imprisonment** for **six month** sand to pay **fine of Rs.1,000/-** and in **default** of of payment of fine to further undergo **simple imprisonment** for **one month**

Present: Appellant-accused on bail with Shri Raman Mehta, Advocate.
Shri Charanjit Singh, Addl. Public Prosecutor for State,

JUDGMENT:

This is an appeal filed by the appellant (**hereinafter referred as**

accused) against the **State of Punjab** against the impugned **judgment of conviction and order of sentence dated 30.08.2019** passed by the Ld. Trial Court.

2. In brief, facts of instant case are that on 04.04.2018, ASI Namdev Lal while present in the Police Station was handed over MLR alongwith medical chit of injured, whereupon he swung into action and reached Civil Hospital, Hajipur, where after getting the fitness, when contacted the injured, but the injured stated that he will record his statement after knowing about the names of accused. Thereafter, on receiving information from the injured, ASI Namdev alongwith other police copes again landed at Civil Hospital, Hajipur, where injured Shamsher Singh son of Ram Lal, resident of village Budhawar, Police Station Hajipur, District Hoshiarpur suffered his statement as below:

‘That he is running a mobiles repair and recharge shop at village Budhwar. On 02.04.2018, at about 5:30 PM, Balbir Singh son of Amar Singh, resident of village Tiora, Police Station Indora, District Kangra (Himachal Pradesh) and asked him why he is sending persons to his house for demanding money. I have not to return amount and he can do whatever he wish to do and thereafter having argumentation, he left the spot. Again injured intercepted him on the way and told him that he has to get back his money, therefore, on this account he has sent persons to his house. Then, meantime Balvir Singh took out iron pipe from his scooty and tried to give blow of iron pipe, however, injured snatched same from him and accused while giving filthy abuses fled away from spot. At about 8.30 pm, one Vikram Singh son of Charan Dass , resident of Mahadpur, PS Hajipur, District Hoshiarpur came to the shop of injured for recharge of mobile, meantime Balbir Singh alongwith

his son and unidentified persons entered in his shop. Balbir Singh gave blow with iron made of article, which hit on the right side of his head and second blow hit on back, one blow on the right leg knee. Due to hue and cry raised by injured, assailants fled away from spot. The assailants while leaving the shop demolished his shop. Thereafter, Bikram Singh son of Charan Dass alongwith Kuldeep Singh Sarpanch having made arrangement of transportation transsorted the injured to Civil Hospital, Hajipur. The motive behind the occurrence is that injured had given an amount of Rs. 10,000/- to accused for the purpose of purchase of land, to be given as earnest money, who had neither given land, nor returned the amount.

On the basis of the statement of injured, after registration of FIR, during investigations, site plan was prepared. Balbir Singh filed an application regarding his innocence, but he was found involved. The accused was arrested on 29.08.2018. Accused while suffering statement got recorded that he has no son and in this regard he has produced his ration card. The accused has further stated that no unidentified person was accompanying him. The injured has suffered supplementary statement that Balbir Singh has altercation with him and demolished his shop and out of anger he has got recorded the name of son of accused and one unidentified person accompanying him. Therefore, offence under Section 34 IPC was deleted vide Rapat No. 28 dated 10.01.2019. The investigation was completed and the final report was presented in the Court.

3. On appearance of the accused in the Court, copies of all the documents along with the report and relied upon by the prosecution, were

supplied to them as envisaged U/s **207 Cr.P.C** by the Ld. Magistrate.

4. After **hearing** the Learned APP for the State and the Learned defence counsel for the accused, finding a prima-facie case for the commission of offences punishable **under Sections 323, 324 and 451 of the IPC**, the accused was accordingly charge sheeted **under Sections 323, 324 and 451 of IPC**, to which, he pleaded not guilty and claimed trial. Consequently, the case was fixed for the evidence of the prosecution.

5. The prosecution in order to prove its case, examined PW1 Kuldeep Singh (Ex-Sarpanch), PW2 Shamsher Singh (injured), PW3 Bikram Singh, PW4 AsI Jagjit Singh, PW5 Dr. Harminder Singh, PW6 ASI Namdev and closed the prosecution evidence.

6. The statements of accused were recorded **under Section 313 Cr.P.C**, in which, all the incriminating circumstances appearing against accused were put to them, to which, he denied and pleaded that he has been falsely implicated in this case, infact, on 02.04.2018 at about 6:30 pm The complainant and his friend namely Amnit Kumar, Shubham, Kuldeep Singh, Bikram Singh beaten him badly and to that effect the had gone to Police Station Indora, at about 8:30 AM where he suffered statement and to that effect DDR No.18 dated 02.04.2018 was entered. On behalf of his statement FIR No.135 dated 31.05.2018 was registered at P.S. Indora, District Kangra on the order of Judicial Magistrate 1st Class. The accused opted to lead defence evidence

7. In **defence**, the accused examined HC Madan Singh DW1 and closed his defence evidence.

8. After hearing the arguments raised by the learned Assistant Public

Prosecutor for the State as well as the learned defence counsel for the accused and going through the record of the case, the learned trial Court vide impugned **judgment, dated 30.08.2019**, held the accused guilty and convicted and sentenced him.

9. **Feeling aggrieved** by the impugned judgment of conviction and order of sentence dated 30.08.2019, the accused preferred the present appeal for setting aside the impugned judgment of conviction and order of sentence dated **30.08.2019** passed by the leaned trial Court and prayed that he be acquitted as per rules.

10. **Notice** of this appeal was issued to the State, through Ld. Addl. Public Prosecutor for the State, who appeared and contested the appeal.

11. The record of the learned trial Court was also **requisitioned** and **perused**.

12. I have **heard** learned counsel for the accused, learned Additional Public Prosecutor for the State assisted by Ld. counsel for complainant and gone through the file very carefully and minutely with their kind assistance.

13. It is vehemently contended by learned counsel for the accused that the judgment of conviction and order of sentence dated **30.08.2019**, passed by the Ld. Trial Court, is against facts, arbitrarily, illegal, and passed in mechanical manner. The prosecution has failed to prove its case beyond reasonable doubt. The judgment under appeal and order of sentence is not sustainable in the eyes of the law and same is liable to be set aside. The order under appeal is erroneous in law. From the testimonies of the witnesses it create a strong suspicion on the prosecution version. PW1 categorically admitted in his cross-examination that he has not seen the alleged occurrence. He has admitted that an FIR was registered at Police Station Indora (HP).

PW1 has admitted that he used his influence being Sarpanch of village and got the false medical as well as false FIR registered against the accused. The facts, however, ignored by the Ld. Trial Court. Further PW2 Shamsheer Singh admitted that he had beaten the accused and to that effect a news was also published in the newspaper and he is also stated that there was intimacy between the employees of Hospital with each other and it create strong suspicion on prosecution version. Further, there is delay in lodging FIR which remained unexplained. Pwe has admitted that the police has recorded his statement on the same day at night time on 02.04.2018, but why the police of P.S. Hajipur has not registered the FIR on the same date. From the testimony of PW5 Dr. Harinder Singh the medical papers seems to have been manipulated in order to help the prosecution case. From the cross-examination of PW6 it comes out to surface that he has done defective investigation and it create strong suspicion on the prosecution story. The Ld. Trial Court has ignored the defence witnesses. From the testimony of dW1 it is clear that complainant party has caused injuries to the accused persons after entering Himcahal Pradesh, regarding the said occurrence FIR has been registered against the complainant party in P.S. Indora (HP) and the complainant party in order to save their skin have got registered the present FIR against the accused. Therefore, the grounds of appeal have got merits and the impugned judgment of conviction and order of sentence are required to be set aside.

14. On the other hand, Ld. Additional Public Prosecutor of the State vehemently refuted the contentions raised by the Ld. Counsel for accused and argued that the Ld. Trial Court rightly came to the conclusion that prosecution has successfully brought home the accused with the offence levelled against him and rightly convicted him and sentenced accordingly. The Ld. Trial Court has rightly held that prosecution by way of examining all the material witnesses has proved the guilt

of the accused. There is no delay in lodging the FIR. The registration of FIR at P.S Indora has got nothing to do with the present FIR case. The grounds of appeal have got no merits. Therefore, the judgment of conviction passed by the Ld. Trial Court required to be upheld. Furthermore, the order of sentence also require no interference in appeal. Therefore, the appeal deserves to be dismissed.

15. After giving thoughtful consideration to the contentions raised by respective counsel for the parties, at the very outset, it is worthwhile to mention here that PW2 Shamsher Singh (injured) has set the police machinery into motion by **suffering statement dated 06.04.2018 Ex.PA**, on the basis of which **FIR Ex.PW4/A** was registered on 06.04.2018, under **Sections 323, 324 and 451 and 34 IPC** against as many as three persons i.e. **accused Balbir Singh and two unknown persons initially**. From the elaboration of facts and other material placed on record, it is evident that out of two unidentified persons referred by Shamsher Singh in his statement **Ex.PA** before police, one stated to be son of accused and one unknown person. However, when accused was arrested, he stated that he has no son and there was no unknown person accompanying him, whereupon Shamsher Singh had suffered supplementary statement that since accused had an altercation with him, therefore, he got recorded the name of son of accused and unknown person in fit of rage, therefore, vide Rapat No.28 dated 10.01.2019 the offence under Section 34 of the IPC was deleted.

16. **The ocular evidence is in the shape of testimonies of sterling witnesses namely PW2 Shamsher Singh, PW1 Kuldeep Singh Ex-Sarpanch and PW3 Bikram Singh.** From the testimony of PW2, it comes out to surface that on 02.04.2018 at about 5:30 PM, accused came to his shop situated at village Budhwar, and started questioning him why he went to his house for demanding

money, as he has entered into an agreement to sell with accused. The accused stated to have informed him that he will neither return money nor execute agreement and to do whatever he wish to do and after arguing he walked away therefore PW2 stated to have followed him and stopped at some distance from his shop and meantime he took out iron rod from his scooty. However, same was snatched by PW2, whereupon accused went away and again at about 8:30 PM, he while armed with rod came to his shop and gave a rod blows, one hit on the right side of the head, other on back and third on right leg knee and he also damaged computer and other articles lying in the shop and then left away. At that time Bikram Singh PW3 stated to be present in the shop and witnessed the occurrence and afterward PW1 Kuldeep Singh (Ex-sarpanch) had taken him to Civil Hospital Hajipur for treatment.

17. No doubt, PW2 Shamsher Singh(injured) while testifying in the Court stated that PW3 Bikram Singh was present in his shop at the time of occurrence and Kuldeep Singh stated to have taken him to Civil Hospital Hajipur, for treatment, apart from it, PW1 Kuldeep Singh (Ex-sarpanch) himself clarified during his cross-examination that he has not seen the occurrence and he does not know who has given injuries to complainant.

18. Meaning thereby, PW1 Kuldeep Singh (Ex-Sarpanch) was not an eye-witness to the occurrence, therefore, there remain doubt in testimony of PW2 Shamsher Singh and PW3 Bikram Singh. It is worth mentioning here that there is another **FIR No.135** dated 31.05.2018 proved on record as **Ex.D2** by DW1 HC Madan Singh, against Shamser Singh, Amit Kumar, Shubham Singh, Bikram Singh under Section 323, 325, 504, 506 and 120-B, 211, 212 and 218 etc at Police Station Indora (HP), at the instance of Balbir Singh and this fact is not denied by prosecution witnesses, even copy of DDR, **Ex.D1** pertaining to occurrence dated 02.04.2018. In

this regard, cross-examination of PW1 is quite surprising, during which he had blatantly admitted that **no injury was caused by accused to PW2 in the present case, but he has used his influence being Sarpanch of the village Budhawar and got the false medical prepared as well as false FIR registered against the accused to save their own skin alongwith other person.** Even, from the cross-examination of PW1, it comes out to surface that admittedly his wife Prem Lata is serving as Asha Worker in Budhawar Hospital. PW2 has also admitted that they have given beatings to the accused and in this regard a news item was also published in the newspaper. PW2 admitted that Budhawar Hospital comes under Civil Hospital, Hajipur and the officials of both the Hospital have intimacy with each other.

19. PW5 Dr. Harinder Singh (MO) in his cross-examination had categorically admitted that Ex.PW5/B does not bear the name of relative or friend who has brought the alleged patient. The column number and date of police docket, name of constable, date and hours or report sent to police and identification mark are blank. He has not brought the original of Ex.PW5/B with him in the Court. He has further admitted that as per medical jurisprudence complaint of pain on any Person is not injury. The possibility of injury No.1 cannot be ruled out as self inflicted or friendly hand. However, he shown his ignorance whether any Asha worker is serving in the Civil Hospital Budhawar. He has also admitted that in Ex.PW5/B the stage of health of alleged patient is not mentioned. He further admitted that page No.7 of Ex.PW5/A of BHT is completely blank except signatures. He had further admitted that on page No.2 of Ex.PW5/C Shamsheer Singh has given in writing to take leave to go home. Further, he has admitted that there are no entries in take out put chart which is part of Ex.PW5/C. He has also admitted that the page No.8 of Ex.PW5/C is blank and he cannot tell anything about Ex.PW5/A.

20. Therefore, from the above discussion it comes out to surface as to admittedly PW2 used his influence being Sarpanch of the village Budhawar by getting false medical prepared as well as false **FIR No.135** dated 31.05.2018 proved on record as Ex.D2 registered against Shamser Singh, Amit Kumar, Shubham Singh, Bikram Singh under Section 323, 325, 504, 506 and 120-B, 211, 212 and 218 etc at Police Station Indora (HP), in order to save their skin. As well as wife of PW2 used her clout in the Hospital being Asha Worker working there. Even otherwise, the kind of injuries reported in MLR Ex.PW5/B of PW2, there are two injuries i.e. complaint of pain back and right leg, whereas there was no corresponding external injury.

21. Therefore, on the basis of discussion made by me in the preceding paragraphs of the judgment, dent in the prosecution case has been created by the prosecution witnesses their selves, therefore the guilt of the accused cannot be said to be proved beyond reasonable doubt. The Ld. Trial Court has **erred** in holding that prosecution has proved the guilt of the accused beyond reasonable doubt. The grounds of appeal have got **merits**. All the grounds of appeal stands **explained**. The findings of Ld. Trial Court are **reversed**. The appeal is **allowed** and the accused is ordered to be acquitted.

22. A copy of this judgment along with learned Trial Court record be transmitted forthwith to the quarter concerned. Appeal file be consigned to the Record Room.

Announced in open Court on this 18th day of September, 2023

(Jaswinder Sheemar),
Addl. Sessions Judge, Hoshiarpur.
(UID No.PB-0093).

‘Rajbir Singh, JW Gr-II’

Paramjit Singh & Ors. Versus State.

CIS No.CRA- 185 of 2018
CNR No.PBHO01-002773-2018

Present: Appellant-accused on bail with Shri Raman Mehta, Advocate.
Shri Charanjit Singh, Addl. Public Prosecutor for State,

Arguments heard. Vide my separate detailed Judgment, the judgment of conviction passed by the Ld. Trial Court is **reversed** and accused has been **acquitted** from the charges framed against him. Trial court record along with copy of Judgment be sent back. Appeal file be consigned to the Judicial Record Room, Hoshiarpur, after its due completion.

Announced in open Court on this 18th day of September, 2023

(**Jaswinder Sheemar**),
Addl. Sessions Judge, Hoshiarpur.
(UID No.PB-0093).

‘Rajbir Singh, JW Gr-II’