

**IN THE COURT OF ASHISH THATHAI, PCS,
SUB DIVISIONAL JUDICIAL MAGISTRATE,
NIHAL SINGH WALA (UID No.PB-0355)**

IPC Police Challan No.130 of 2019
Date of Presentation of Challan:23.09.2019
CIS No.CHI/131/2019
CNR No.PBMOA1-000588-2019
Date of Decision:25.01.2022

S T A T E

Versus

1. Jodha Singh son of Gurmail Singh, resident of village Khote, Tehsil Nihal Singh Wala, District Moga.
2. Gurpreet Singh alias Mattu son of Gurmail Singh, resident of village Khote, Tehsil Nihal Singh Wala, District Moga.

.....Accused

FIR No:-129 Dated 20.08.2018,
Under Section 341,294,34 of IPC,
Police Station Nihal Singh Wala.

Present:- Mr.Amrit Mittal, Learned Assistdant Public Prosecutor
for the State.
Accused Jodha Singh and Gurpreet Singh alias Mattu on
bail, with Ms.Harpreet Kaur, Advocate.

J U D G M E N T

1. The above named accused persons have been sent up by police of Police Station Nihal Singh Wala to face trial for the commission of offences under Sections 341,294 read with Section 34 of IPC.

2. Brief facts of the case as alleged by the prosecution are that on 20.08.2018, ASI Nirmal Singh was present at Police Station Nihal Singh Wala, where MHC Kanwaljit Singh handed over to him one application No.785/LPC dated 20.08.2018 moved by Mahinder Singh son of Paramjit Singh, resident of village Khote. The contents of the said application are that on 19.08.2018, he along-with his family members was present in his house. Above-named accused namely Jodha Singh and Gurpreet Singh alias Mattu came in front of his house and abused him and his family members and also used obscene words. Due to fear, they did not come out from their house. So, action may kindly be taken against them.

3. The allegations of the above application was found to be genuine and offence under Sections 341,294 read with Section 34 of IPC was found to be made out and the present case was registered against the accused Jodha Singh and Gurpreet Singh alias Mattu. Thereafter, ASI Nirmal Singh along-with police party and complainant visited the spot at village Khote, where spot was inspected in the presence of complainant and visual site plan of the place of occurrence was prepared. Accused were arrested and their ground of arrest memo, and personal search memo were prepared.

Accused were released on bail. Necessary legal formalities were completed and on completion of investigation the challan against accused Jodha Singh and Gurpreet Singh alias Mattu was presented before the court.

4. Upon appearance of the accused, they were supplied with copies of police report and other documents appended therewith, as mandatory requirement under Section 207 Cr.P.C free of cost.

5. On finding a prima-facie case against both the accused, they were charge sheeted under Section 341 read with Section 34 of IPC and under Section 294 read with Section 34 of IPC, to which they did not plead guilty and claimed trial.

6. In order to prove its case the prosecution had examined following witnesses:-

PW-1	Mahinder Singh	Complainant
PW-2	Ram Singh	Eye Witness

Documents proved:-

Ex.P1	Statement of Complainant Mohinder Singh
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Thereafter, learned Assistant Public Prosecutor for the

State closed prosecution evidence by suffering a statement to the effect that complainant had turned hostile and no useful purpose will be served by summoning other formal witnesses.

7. In view of the fact that there is no iota of evidence against the accused, therefore, recording of statements of accused under Section 313 Cr.P.C was dispensed with.

8. Learned Assistant Public Prosecutor for the State had argued that all the allegations leveled by the prosecution against the accused stand proved beyond a reasonable doubt and thus, both the accused are liable to be convicted for the offences with which they have been charged with.

9. On the other hand, the learned counsel for the accused has argued that the prosecution has failed to prove the identity of the accused as material witnesses i.e. PW-1 Mahinder Singh (complainant) and PW-2 Ram Singh (eye witness) had turned hostile in their examination-in-chief and thus the identity of both the accused does not stand establish on the file. Hence, learned defence counsel prayed that both the accused may be acquitted.

10. I have heard Learned Assistant Public Prosecutor for the

state and learned counsel for the accused and have gone through case file minutely.

11. **Firstly**, it is pertinent to mention here that in order to prove the identity of both the accused, the most important witnesses that have been examined by the prosecution is PW-1 Mahinder Singh (complainant) and PW-2 Ram Singh (eye witness) .

The careful perusal of the testimonies of PW-1 Mahinder Singh (complainant) and PW-2 Ram Singh (eye witness) shows that in their examination-in-chief they failed to identify any of the accused and had turned hostile. Meaning thereby, the most essential ingredient i.e. the identity of both the accused has not been proved beyond shadow of reasonable doubt.

12. **Secondly**, no doubt, statement of a hostile witness should not be thrown overboard and so much part of the statement of hostile witness which is consistent with the prosecution story can still be taken help to convict the accused person. In ***State of Rajasthan Vs. Teg Bahadur, 2004(4) R.Cr.R. Page 538***, Hon'ble Supreme Court of India has held that evidence of a hostile witness would not be totally rejected if submitted in favour of the prosecution or accused but it can be subject to close scrutiny and

that portion of the evidence, which is consistent with the case of the prosecution or defence may be accepted. But in the present case there is nothing in the case file, which can connect the accused present in court with the offences alleged.

13. Thus, in view of the above-said evidence on the record, when the material and star witness i.e. PW-1 Mahinder Singh (complainant) and PW-2 Ram Singh (eye witness) had not supported the prosecution story and had turned hostile, this court has no other option but to acquit the accused persons.

Accordingly, accused Jodha Singh and Gurpreet Singh alias Mattu are acquitted from the charges framed against them under Section 341 read with Section 34 of IPC and Section 294 read with Section 34 of IPC. Their bail bonds and surety bonds stand discharged. The case property if any be disposed of under rules. File be consigned to the record-room after due compliance.

Pronounced:-
25.01.2022.

Angrej Singh, STG-II.

Sd/-
(Ashish Thathai), PCS,
Sub Divisional Judicial Magistrate,
Nihal Singh Wala,
(UID No.PB-0355).

List of Witness of the Prosecution:-

PW-1	Mahinder Singh	Complainant
PW-2	Ram Singh	Eye Witness

List of Documents of the prosecution:-

Ex.P1	Statement of Complainant Mohinder Singh
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Sd/-

(Ashish Thathai), PCS,
Sub Divisional Judicial Magistrate,
Nihal Singh Wala,
(UID No.PB-0355).

