

(2009) 09 P&H CK 0057

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Nachhattar Singh alias Khanda
and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Sept. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 21, 226, 32
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 313, 340, 482
- Penal Code, 1860 (IPC) - Section 120B, 148, 149, 195, 201

Citation: (2009) 4 RCR(Criminal) 409 : (2010) 4 SLR 220

Hon'ble Judges: Mehtab S. Gill, J; Jitendra Chauhan, J

Bench: Division Bench

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment dated 18.7.1998 of the learned Addl. Sessions Judge, Barnala, whereby he convicted Nachhattar Singh alias Khanda son of Bant Singh, Sira alias Jagsir Singh son of Nachhattar Singh, Amarjit Singh son of Kaula Singh, Nikka Singh son of Bawa Singh, Surjit Singh son of Jang Singh under Sections 364/302, 148/149, 201 IPC and sentenced them to undergo rigorous imprisonment for five years, RI for life, R.I. for one year and R.I. for five years respectively. Further they were directed to pay a fine of Rs. 1,000/-each under Sections 302 and 201 IPC, in default to undergo three months R.I.

2. During the pendency of the appeal, Seera alias Jagsir Singh son of Nachhattar Singh died allegedly by committing suicide, after he had been released on bail. Appeal against him thus abated.

3. We will be deciding both Criminal Appeal No. 332-DB of 1998 and Crl. Misc. No. 35100 of 2009 by a common order, as they are correlated.

4. Nachhattar Singh alias Khanda and Jagsir Singh alias Sira were also convicted u/s 364 IPC and sentenced to undergo five years R.I. and to pay a fine of Rs. 1,000/-, in default to further undergo R.I. for three months. All the sentences were to run concurrently.

5. The case of the prosecution is unfolded by the statement of Sukhdev Singh PW7 son of Bhag Singh, resident of Village Tallewal given to SI Sarabjit Rai PW14.

6. Sukhdev Singh stated, that he is an agriculturist and lives in Village Tallewal. He has three children. Jagseer Singh @ Sira is his elder son, Sukhdev Singh is younger to him and has a daughter, who is elder to both his sons. All are married. He has 12 acres of land, out of which 8 acres was given on lease to the Sarpanch of their village Nachhattar Singh @ Khanda son of Bant Singh for one year. Nachhattar Singh did not pay the lease money. He and Jagseer Singh demanded the money many times, but Nachhattar Singh refused to pay. Jagseer Singh then asked Nachhattar Singh to either pay the money or vacate the land so that they could lease the land to someone else. Nachhattar Singh started abusing them and stated, that he will not pay the money and also will not vacate the land. On 5.6.96, Sukhdev Singh along with his son Jagseer Singh and his daughter Sito were present in their house, at about 7.00 p.m., Nachhattar Singh and his son Seera Singh came to his house and in their presence asked Jagseer Singh to accompany them to their house and they would pay the lease money. Jagseer Singh went with them. Jagseer Singh did not return. Sukhdev Singh went to the house of Sarpanch Nachhattar Singh and enquired about Jagseer Singh from Nachhattar Singh's wife. She stated, that Jagseer Singh was not present in the house and he had gone away. Statement of Sukhdev Singh was recorded by SI/SHO Sarabjit Rai on 11.6.96. Sukhdev Singh further stated, that he has apprehension that his son had been kidnapped by Nachhattar Singh and his son Seera Singh with an intention to murder him. The motive for the commission of the offence was that Jagseer Singh used to demand the lease money of their land from Nachhattar Singh, which was not liked by him. Jagseer Singh had told them to vacate the land. Sarpanch Nachhattar Singh felt offended.

7. On the basis of this statement, FIR Ex. PE was recorded on 11.6.96 at 11.20 a.m. at Police Station Bhadaur and the special report reached the J.M.I.C., Barnala, on the same day at 5.30 p.m.

8. The prosecution to prove its case brought into the witness box, Dr. Krishan Gopal PW1, Amar Singh PW2, Gurdev Singh PW3, Mukhtiar Singh PW4, Karnail Singh PW5, Jangir Singh PW6, Sukhdev Singh PW7, Surjit Kaur PW8, Bikkar Singh PW9, Harcharanjit Singh PW10, Chamkaur Singh PW11, HC Ajaib Singh PW12, ASI Darshan Singh PW13, SI Sarabjit Rai PW14, C. Davinder Pal Singh PW15 and Sukhvinder Pal Singh PW16.

9. During the course of arguments when the case came up for hearing, Sh. Vinod Ghai, learned Counsel for the appellants moved Crl. Misc. No. 35100 of 2009. It was

stated in the application that Jagseer Singh son of Sukhdev Singh is not dead, he is alive and a false and fabricated case has been registered against the appellants, which led to their conviction. Appellants had pleaded before the investigation officer and the police that they were innocent.

10. Before proceeding with the case, we held an enquiry to verify as to whether Jagseer Singh son of Sukhdev Singh resident of Village Tallewal, was alive or dead. We were told that he was lodged in Ludhiana jail in FIR No. 171 of 2008 Police Station Raikot. He was summoned to this Court. On his appearance in Court, he prayed that a counsel be appointed to assist him. We appointed Sh. S.S. Randhawa, Addl. A.G. Haryana as Amicus Curiae. We sent him back to Judicial lock up for a few days so that he could think over the matter.

11. Before recording Jagseer Singh's statement, Sh. Randhawa stated, that he had explained all the legal pros and cons to Jagsir Singh son of Sukhdev Singh and also advised him to state nothing but the truth. Thereafter Jagsir Singh's statement was recorded in Punjabi language, not on oath, which was read over and explained to him and he signed it, in token of its correctness.

12. Jagsir Singh stated that he was Jagseer Singh son of Sukhdev Singh, resident of Village Tallewal. His statement reads as under:

13. I know accused Nachattar Singh, Jagsir Singh @ Sira, Amarjit Singh, Nikka Singh and Surjit Singh and they belong to my village. Our land was leased out to Nachattar Singh etc. accused persons. The land belonging to some other person was also situated along with this land and this land was also leased out. Jagsir Singh @ Sira called me at about 7 O clock and took me away from my house. Thereafter, I went to my fields along with Jagsir Singh etc. Jagsir Singh asked me to start the motor. That is why, I accompanied them. When I went to the fields alongwith them, then a quarrel took place with Jagsir Singh etc. on the issue of irrigating the fields. When the accused persons namely Nachattar Singh, Nikka Singh, Jagsir Singh and Amarjit Singh and other 2-3 persons who are not known to me, started giving me beatings, then I ran away and went to Barnala. I remained underground there for 1/2 days. Thereafter I started working with trucks and continued working there for 5-6 years. I stayed at Village Dhanas, near Chandigarh for three years and went to Seonk for one year. During my stay for 12-13 years outside my house, I could not contact my parents and I did not go to my village. During this period, I could not contact any person of the village nor I could meet any of my relative. I even do not know that a false case of murder has been foisted against Nachattar Singh etc.

14. The name of my father is Sukhdev Singh and the name of my mother is Gurdev Kaur. I have four maternal uncles whose names are Jeet Singh, Gurdev Singh, Gurcharan Singh and Baaru. I do not know Karnail Singh son of Jagir Singh. I also do not know Jagir Singh son of Harnam Singh, who is a resident of Bhadaur.

15. Dated 8.9.09 R.O.& A.C. Signed Jagsir Singh in Punjabi.

16. From the statement of Jagsir Singh, we were convinced that he is the same person for the murder of whom the appellants have been convicted for committing his murder. None of the respondents arrayed in CrI. Misc. No. 35100 of 2009 contradicted the statement that the person in Court, is not Jagsir Singh son of Sukhdev Singh r/o village Tallewal, nor any prosecution witness contradicted the statement.

17. Learned Counsel for the appellants has argued, that Jagsir Singh son of Sukhdev Singh is alive. A case FIR No. 171, dated 8.12.2008, under Sections 420/465/467/468/471/195/211 read with Section 120-B IPC, Police Station Raikot, Ludhiana was registered against Jagsir Singh son of Sukhdev Singh for giving false evidence and fabricating a false lease deed Ex. PF. The complainant was S.I. Gurdial Singh, SHO Police Station Raikot. He has further argued that proceedings under Sections 82/83 of the Cr.P.C. have been initiated against Sukhdev Singh son of Bhag Singh, Surjit Kaur D/o Sukhdev Singh, Gurdev Kaur W/o Sukhdev Singh, Amar Singh son of Gurdial Singh, Karnail Singh son of Jangir Singh and Jangir Singh son of Harnam Singh which are pending before the Judicial Magistrate 1st Class, Jagraon in this very FIR. FIR No. 171 and all the consequential proceedings did not have any meaning and are a farce. The main culprits have not been named in the FIR and only Jagsir Singh son of Sukhdev Singh has been named.

18. Learned Counsel has vehemently argued, that the statements given on oath in Court by Amar Singh PW2, Gurdev Singh PW3, Mukhtiar Singh PW4, Karnail Singh PW5, Sukhdev Singh PW7, Surjit Kaur PW8, Bikkar Singh PW9 and the two Investigating Officers i.e. ASI Darshan Singh PW13 and Sarabjit Rai PW14 were made falsely to implicate the appellants, though these witnesses knew that Jagsir Singh son of Sukhdev Singh was alive. They have been successful having the appellants convicted. Because of the false and fabricated evidence brought before the Court, documentary as well as oral, appellants had to undergo five years rigorous imprisonment for no fault of theirs. All those who gave false evidence on oath be adequately punished as per law.

19. Learned Counsel for the State has argued, that when the State came to know that Jagseer Singh son of Sukhdev Singh resident of Village Tallewal was alive, FIR No. 171, dated 18.12.2008, under Sections 420/195/211/465/467/468/471/120-B IPC, Police Station Raikot, District Ludhiana was registered against him by SI Gurdial Singh, SHO, Police Station Raikot. Proceedings under Sections 82/83 of the Cr.P.C. were initiated against Sukhdev Singh son of Bhag Singh, Surjit Kaur D/o Sukhdev Singh, Gurdev Kaur W/o Sukhdev Singh, Amar Singh son of Gurdial Singh, Karnail Singh son of Jangir Singh and Jangir Singh son of Harnam Singh in the Court of the Judicial Magistrate 1st Class, Jagraon. Exemplary punishment be given to the prosecution witnesses and others who falsely implicated the appellants.

20. We have heard the learned Counsel for the parties and perused the record with their assistance.

21. A false and fabricated case was registered against the appellants. Jagsir Singh son of Sukhdev Singh resident of Village Tallewal was alive when FIR Ex. PE under Sections 364/201 IPC was registered against the appellants. Later on, Section 302 IPC was also added. He was shown to be murdered but in fact he had run away. False evidence was procured and a false story was built up, to have the appellants convicted which the complainant party was succeeded in doing so. Personal enmity was the sole driving force.

22. Going through the statements of the witnesses given in Court which have been reproduced as under, it is clear that the prosecution witnesses knew that they were stating falsehood before the learned trial Court with the sole purpose to falsely implicate the appellants, so that they be convicted, which they succeeded in doing so.

23. Amar Singh PW2 is the alleged eye witness to the occurrence. He has stated on oath as under:

I found that Jagsir Singh s/o sukhdev Singh was lying on the ground in a passage. I found that Nikka Singh had caught hold of his arms and Jagsir Singh s/o Nachhattar Singh accused was exhorting that he should be killed. Nachhattar Singh was armed with Kasia and he inflicted a injury on the back side of chest. Amarjit Singh with his gandasia inflicted an injury on his neck on back side. Surjit Singh who was armed with Kasia inflicted injury on the right foot. All the accused told me that in case I disclosed about this incident to anybody then they shall also inflict injuries to me. On account of fear I left that place and sat at a distance of about 1 Killas. Thereafter I found that they left the place of occurrence in a tractor of blue colour and one red colour cultivator was attached to it. I found on bundle lying on the cultivators. After about 10 days I suffered a statement to the police in which I narrated the incident. Out of fear I did not go to the police earlier.

24. Gurdev Singh PW3, the real maternal uncle of Jagseer Singh son of Sukhdev Singh allegedly identified the dead body. He has stated on oath as under:

Jagsir Singh deceased was the son of my sister. alongwith others had been searching for Jagsir Singh. When we reached at village Ghareli we found that his dead body was lying in water channel. The information regarding this had already been given to the police which was present at that place. I identified the dead body. I also identified the dead body at the time of post-mortem examination.

25. Mukhtiar Singh PW4, who has allegedly given the last seen account, his statement on oath is as under:

On 5.6.96 I was present at Changra Patti in my fields at about mid night. I was irrigating my Narma crop. Electric bulb installed at my motor was emitting light at that time. I found one tractor of blue colour make Mohindra to which one cultivator was attached coming from the side of Tajoke. One bundle was lying on the

cultivator. The accused present in court were on that tractor. They are known to me. It was being driven by Amarjit Singh. They stopped their tractor near the Kanal minor and threw the bundle which was lying on the cultivator into the canal minor. All the accused returned on the same passage. My statement was recorded by police.

26. Karnail Singh PW5 has allegedly stated on oath the extra judicial confession made by appellant Nachhattar Singh, Seera @ Jagsir Singh and Amarjit Singh, which is as under:

About 7 months ago Nachhattar Singh and his son Seera and Amarjit Singh came to my house at about 8 AM. Nachhattar Singh was known to me earlier. They disclosed to me that the son of Sukhdev Singh known as Seera was killed by them. They further disclosed that Nikka Singh and Surjit Singh also joined hands with them for killing him. They also told me that they had thrown his dead body in a minor canal. They also narrated to me individually the facts of the crime lateron. I produced all the three of them to the police.

27. Sukhdev Singh PW7, father of Jagseer Singh, is the complainant. He has stated on oath as under:

Jagsir Singh deceased was my son. Sito is my daughter. I won 12 killas of land at village Tallewal. I had given on lease 8 Killas of land to Nachhattar Singh for a period of one year. Two Killas of land was given to Amar Singh on share basis. No money was given by Nachhattar Singh to me. Number of times I raised demand regarding this lease money from Nachhattar Singh. My son also raised a demand from Nachhattar Singh or in the alternative he should vacate the land so that the same be given to some other person. Nachhattar Singh bore a grudge with regard to this demand made by my son. He openly proclaimed that neither he would vacate the land nor he would pay lease amount.

About 11 months ago I was present at my house alongwith my daughter and my son. At about 7 P.M. Nachhattar Singh and his son Jagsir Singh @ Seera entered our house and told my son Jagsir Singh that they were ready to pay the lease money and he should accompany them. My son left with them. But he did not come back. Late in the evening I went to the house of Nachhattar Singh and I met his wife and enquired from him as to where was Nachhattar Singh and she told that he had gone to my house. Next day I searched for my son and Nachhattar Singh and his son but they were not available. I searched for my son for about 7 days and then on 11.6.96 I lodged a report at P.S. Bhadaur. My statement was recorded by police which was read over to me and after admitting it to be correct I signed the same in token of its correctness. Ex. PE is the carbon copy of the FIR which bears my signatures. Police accompanied me to my house and recorded the statement of my daughter Sito. Police also prepared site plan of my house at my instance.

While going to Sandhu Kalan I met Gurdev Singh alongwith police and he disclosed that in the minor canal located in the area of Ghareli one dead body is lying. We visited that place and I identify the dead body of my son. On examination of dead body I had found that he had injury on his left leg and his hair had grown grey. My son was aged 19 years. Writing was scribed with regard to lease of land with Nachhattar Singh, which was scribed by my daughter and it was thumb-marked by me. The same is Ex. PF. Nachhattar Singh also thumb-marked this writing. Again said I had signed this writing. Bikkar Singh attested it alongwith Lal Singh.

28. Surjit Kaur (PW8) D/o Sukhdev Singh has stated qua the motive. She is the scribe of lease deed Ex. PF. She has stated on oath:

My father owns 12 Killas of land out of which 8 Killas of land was leased out to Nachhattar Singh accused. Writing was scribed in this regard by me and the same is Ex. PF. I identify the signatures of my father on this writing. Nachhattar Singh thumb-marked it and Lal Singh and Bikkar Singh attested it. No money was given by Nachhattar Singh to my father. On 5.6.96 my father and my brother Jagsir Singh and myself were present at the house. At about 7 P.M. Nachhattar Singh came to our house with his son Jagsir Singh. They told my brother Jagsir Singh that they were ready to give money and he should accompany them and collect the same. My brother went with them but did not return. Search was carried out and later on his dead body was recovered. Police visited our house and my statement was recorded.

29. Bikkar Singh PW9 is the alleged attesting witness to the lease deed Ex. PF. This was forcibly got signed from appellant Nachhattar Singh in the police station. He has stated on oath as under:

A writing was scribed regarding land of Sukhdev Singh in favour of Nachhattar Singh. I attested the same. It is Ex. PF. It was also attested by Lal Singh and thumb-marked by Nachhattar Singh.

30. The two investigating officers i.e. Darshan Singh ASI PW13 and SI Sarabjit Rai PW14 arrested the appellants and planted Kasia Ex.P1 on Nachhattar Singh, gandas Ex.P2 on Amarjit Singh, tractor Ex.P4 on Nikka Singh and kasia Ex. P3 on Surjit Singh.

31. SI Sarabjit Rai PW14 has stated on oath, that he recovered gandas Ex.P2 from Amarjit Singh vide Recovery Memo Ex.PK/1. He has further stated, that he recovered kasia Ex. P1 from Nachhattar Singh vide Recovery Memo Ex. PL. He recovered kasia Ex.P3 on 20.6.96 from appellant Surjit Singh vide Recovery Memo Ex. PN. He recovered tractor No. PB-31-3099 on 20.6.96 vide Recovery Memo Ex.PO/1. SI Sarabjit Rai PW14 and ASI Darshan Singh PW13 were part and parcel to falsely implicate the appellants. They were also part of the conspiracy in falsely giving evidence before the learned trial Court so that appellants are convicted. Recoveries were made from appellants of weapons they never used.

32. Jagseer Singh son of Sukhdev Singh was not murdered, he was alive. Since he was not murdered the question of kasia Ex P1, gandasa Ex.P2 and Kasia Ex.P3, being used could not arise. Not only this, the Serologist report Ex. PX shows human blood on kasia Ex. P1, gandasa Ex.P2 and kasia Ex.P3, which as per the Chemical Examiner report Ex. PB were blood-stained. From where did this human blood come on the kasia and gandasa? Learned Counsel for the appellants has argued that appellants were tortured in Police custody and it is their blood which has been planted on the weapons of offence.

33. In the Inquest report Ex. PC, the maternal uncles of Jagseer Singh son of Sukhdev Singh, namely, Gurdev Singh son of Chuhar Singh PW3 and Jeet Singh son of Chuhar Singh identified the unknown dead body to be that of Jagsir Singh son of Sukhdev Singh. Both these witnesses also identified the dead body of some unknown person as that being of Jagseer Singh son of Sukhdev Singh, resident of Village Tallewal, when it was brought before Dr. Krishan Gopal PW1, who prepared the post mortem report Ex. PA.

34. From the above statements given on oath, the alleged recoveries made, identifying an unknown body, it is clear that false and fabricated evidence both oral and documentary was created by Amar Singh PW2, Gurdev Singh PW3, Mukhtiar Singh PW4, Karnail Singh PW5, Sukhdev Singh PW7, Surjit Kaur PW8, Bikkar Singh PW9, ASI Darshan Singh PW13, SI Sarabjit Rai PW14 and Jeet Singh son of Chuhar Singh. Both Darshan Singh PW13 and Sarabjit Rai PW14 investigated the case with a bent of mind, to falsely implicate the appellants. This was done for extraneous considerations. Darshan Singh DSP and Madan Gopal S.P., the supervisory officers, also did not scrutinize the case diary and the investigation in a professional manner.

35. Appellants as per their statements u/s 313 Cr.P.C. have stated, that right from the beginning they were telling the police officials, that they were being falsely implicated, but no one listened to them.

36. Perjury has been committed by the complainant party and the Investigating Officers. They stated lies before the learned trial Court, to get a favourable verdict of conviction against the appellants, which they succeeded in doing so.

37. With the above discussion, appeal is allowed. Appellants are acquitted of all the charges framed against them. Their conviction and sentences are set aside.

38. Nachhattar Singh alias Khanda son of Bant Singh, Sira alias Jagsir Singh son of Nachhattar Singh, Amarjit Singh son of Kaula Singh, Nikka Singh son of Bawa Singh, Surjit Singh son of Jang Singh filed Criminal Misc. No. 35100 of 2009 u/s 482 Cr.P.C. for awarding compensation of Rs. 20 lacs each, for the mental torture they suffered for 13 years, for illegal confinement of 5 years and for malicious prosecution. It has been urged that Amar Singh son of Gurdial Singh, resident of Village Tallewal, Gurdev Singh son of Chuhar Singh resident of Village Raisar, Mukhtiar Singh son of Kishan Singh resident of Tajoke, Karnail Singh son of Jangir Singh resident of

Dhilwan, Nabha, Jangir Singh son of Harnam Singh resident of Bhadaur, Sukhdev Singh son of Bhag Singh resident of Tallewal, Surjit Kaur d/o Sukhdev Singh resident of Tallewal, ASI Darshan Singh and SI Sarabjit Rai be prosecuted for giving false evidence.

39. Notice of Crl. Misc. No. 35100 of 2009 was given to the above and all of them were arrayed as respondents.

40. Mukhtiar Singh son of Kishan Singh, resident of Village Tajoke, Karnail Singh son of Jangir Singh resident of Village Dhilwan Distt. Barnala, Jangir Singh son of Harnam Singh, resident of Bhadaur Distt. Barnala, Surjit Kaur D/o Sukhdev Singh, resident of Village Tallewal Distt, Barnala, State of Punjab through Harbhajan Singh, SP Headquarters Barnala, ASI Darshan Singh, SI Sarabjit Rai, DSP Darshan Singh and SP Madan Gopal filed their replies.

41. State of Punjab in its reply stated, that Gurdial Singh SI, SHO Police Station Raikot, received secret information on 18.12.2008, that Jagsir Singh son of Sukhdev Singh, resident of Village Tallewal, Police Station Bhadaur, was living at Village Rattewal, Tehsil Balachaur, Distt. Bhagat Singh Nagar (Nawanshehar) and had changed his name to Baldev Singh son of Prem Singh. Jagsir Singh had knowingly run away from his house in 1996 on account of some dispute with Nachattar Singh alias Khanda son of Bant Singh (Present appellant). A false case was registered against the appellants. Raid was conducted on the basis of this information and FIR No. 171, dated 18.12.2008 under Sections 420, 195, 211, 465, 467, 468, 471, 120-B IPC at Police Station Raikot, was registered, against Sukhdev Singh son of Bhag Singh, Jagsir Singh son of Sukhdev Singh, Gurdev Singh son of Chuhar Singh, Jeet Singh son of Chuhar Singh and Balwinder Singh alias Binder son of Sukhdev Singh. Proceedings under Sections 82 and 83 Cr.P.C. were initiated against Sukhdev Singh son of Bhag Singh, Surjit Kaur D/o Sukhdev Singh, Gurdev Kaur w/o Sukhdev Singh, Amar Singh son of Gurdial Singh, Karnail Singh, Ex. Sarpanch son of Jagir Singh, Jagir Singh son of Harnam Singh, as they were not named in FIR No. 171, but their names cropped up during the course of investigation. The person for whose murder accused (Appellants) were convicted is alive. Final report u/s 173 Cr.P.C. was presented before the J.M.I.C., Jagraon.

42. Sukhdev Singh PW7 is the complainant. In his reply, he has stated that Jagsir Singh his son was alive and he informed SHO, Mahal Kalan on 18.12.2008. The SHO then informed DSP Raikot Narinder Pal Singh Ruby. It was Balwinder Singh brother of Jagsir Singh, who got Jagsir Singh arrested.

43. In FIR Ex. PE there is no mention of the lease deed Ex. PF. The lease deed came into existence after the appellants were arrested and tortured in the police station by Sarabjit Rai SI/SHO PW14, the Investigating Officer and thereafter this document Ex. PF was prepared in connivance with the complainant party, as per the appellants, they were tortured to sign on blank papers in the Police Station.

44. An eye witness account was given by Amar Singh PW2, who happens to be the neighbour of Sukhdev Singh PW7. In his reply, he has reiterated what has stated on oath before the Court. His statement was recorded u/s 161 Cr.P.C. on 15.6.96 i.e. after 10 days of the occurrence.

45. Mukhtiar Singh PW4 in his reply has stated that he is not aware whether alleged Jagsir Singh has been found alive or not. In his statement u/s 161 Cr.P.C. given on 15.6.96, he was the witness to the last seen evidence. All he said that he got ill and was afraid of the appellants (accused) and is the reason that he gave his statement to the police after 10 days. He has stated that he is related to Sukhdev Singh PW7.

46. Surjit Kaur PW8 in her statement in her reply has stated that she is not aware whether Jagsir Singh is alive or not. She has admitted that FIR No. 171, dated 18.12.2008 has been registered at Police Station Raikot. She has been named in that FIR. She has scribed document Ex.PF and is also witness to the last seen evidence.

47. Karnail Singh PW5 and Jangir Singh PW6 in their replies have reiterated that Nachhattar Singh, Seera @ Jagsir Singh and Amarjit Singh have made extra judicial confession before Karnail Singh and Nikka Singh and Surjit Singh before Jangir Singh. He is not aware whether alleged deceased Jagsir Singh has been found alive or not.

48. Darshan Singh ASI PW13 and the Investigating Officer Sarabjit Rai SI/SHO PW14 have denied their involvement but it is clear that both these witnesses were hand in glove with the complainant party. They created false evidence against the appellants. Darshan Singh DSP (retired) and Madan Gopal SP(D), Barnala (retd.), who were the supervisory officers though went through the whole evidence in a casual and cavalier manner.

49. Bikkar Singh PW9 is an attesting witness to the lease deed Ex. PF.

50. Gurdev Singh son of Chuhar Singh PW3 and Jeet Singh son of Chuhar Singh, the real maternal uncles of Jagsir Singh son of Sukhdev Singh, identified the dead body of an unknown person in the Inquest report Ex.PC. They also identified the dead body of an unknown person before Dr. Krishan Gopal PW1, who performed the post-mortem.

51. Learned Counsel for the appellants (Accused) has vehemently argued, that all the above persons, who have been named above, should be prosecuted u/s 340 of the Cr.P.C. and also under Sections 193/195/196 IPC. Further FIR No. 171, dated 18.12.2008 under Sections 420, 195, 211, 465, 467, 468, 471 and 120B IPC at Police Station Raikot, which was registered on the basis of the statement of a police official may be quashed, as this FIR was only to save the investigating officer/officers and the private individuals whose do not figure in the FIR. If the police wanted to register an FIR truthfully, they would have named the persons who gave false evidence against the appellants and also those who made the fictitious document

Ex.PF.

52. Lastly, the learned Counsel has argued, that this is a case of blatant misuse of law. A murder which never had taken place, by collecting and giving false evidence, for an offence which the appellants did not commit, appellants (Accused) were convicted and sentenced to undergo life imprisonment. All the appellants after undergoing a sentence of five years, were released on bail, on the basis of the law laid down in *Dharam Pal v. State of Haryana* 1999 (4) R.C.R. (Criminal) 600. Appellants (accused) were tortured physically in the police station, mentally and were boycotted socially. They be given compensation of Rs. 20 lacs each, which should be paid by the State.

53. Learned Counsel for the State has argued, that it is not only the responsibility of the State to give compensation but the private respondents are also liable.

54. Learned Counsel for the intervener National Human Rights Commission, Sh. Akshay Bhan has cited two judgments of the Honble Supreme Court in [D.K. Basu Vs. State of West Bengal](#), and *Sube Singh v. State of Haryana and Ors.* 2006 (1) RCR (Criminal) 802. He has further pleaded, that monetary compensation not less than Rs. 15 lacs per individual be granted to the appellants for the grave violation of their human rights.

55. Learned Counsels Sh. Puran Singh Hundal, Sr. Advocate with Sh. Abhishek Sethi, Advocate, Sh. H.S.Rakhra, Advocate, Sh. H.R. Nauhria, Advocate, Sh. Jasdeep Singh Gill, Advocate and Sh. Sant Pal Singh Sidhu, Advocate have argued, that as a case has been registered against some of their clients (respondents), but proceedings u/s 340 Cr.P.C. may be initiated against them, they would not like to dwell on the merits and demerits of the case, which may jeopardize the rights of their clients in any proceeding in a Court of law, if so initiated by the Court or the State. We were in agreement with the learned Counsels and thus did not insist that they should take a definite stand.

56. Appellants had been in custody for five years and were released on bail by this Court by suspending their sentences on the basis of the law laid down in *Dharam Pal v. State of Haryana* 1999 (4) R.C.R. (Criminal) 600. FIR Ex.PE was registered against the appellants on 11.6.96 and till date they are facing prosecution. The trial including appeal took 13 long years to conclude. Seera @ Jagsir Singh son of Nachhattar Singh, one of the accused when he came on bail, committed suicide. Appellants faced insult and humiliation for so many years. They were disgraced in society. The best years of their life were spent in jail. Not only were the appellants disgraced and humiliated in society, but their kith and kin also must have gone through a lot of mental agony and torture during this period. Appellants were branded as murderers. Appellant Nachhattar Singh was the Sarpanch of the village. As per learned Counsel Sh. Vinod Ghai, Advocate, appellant Nachhattar Singh was also a candidate to contest elections for the State Assembly, if this case had not

been foisted on him. During this period, appellants faced a lot of hardship economical also. It has been stated, that appellant Nachhattar Singh had to sell his agricultural land to pursue the case. The productivity of his land also decreased, as there was no one to look after it. During these 13 years, if they were free men, they would have earned a substantial amount for their family members from the land they owned.

57. In D.K. Basus case (supra), the Honble Supreme Court has held as under:

17. Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty thus, is a sacred and cherished right under the Constitution. The expression "life or personal liberty" has been held to include the right to live with human dignity and thus, it would also include within itself a guarantee, against torture and assault by the State or its functionaries.

58. Honble Supreme Court in para 30 has stated as under:

30. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation.

59. Honble Supreme Court in paras 40 and 41 has stated as under:

40. Ubi Jus Ibi Remedium -There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

41. Prosecution of the offender is an obligation of State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and

give judicial redress for legal injury is compulsion of judicial consequence.

60. Honble Supreme Court in para 43, 44 and 54 has stated as under:

43. Till about two decades ago the liability of the Government for tortuous act of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or basic-human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortuous acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In *Neelabati Bahera v. State* [supra] the decision of this Court in [State of Jammu and Kashmir Vs. Dr. Ashok Kumar Gupta and others](#), wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained.

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. Public Law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

54. Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The

award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

61. In Sube Singh's case (supra), Honble Supreme Court has observed under:

17. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation u/s 357 of Code of Civil Procedure.

62. Strangely in FIR No. 171, dated 18.12.2008 under Sections 420, 195, 211, 465, 467, 468, 471 and 120B IPC registered at Police Station Raikot, a number of names have been left out as already discussed. FIR should have been registered on the basis of the statement of one of the appellants (alleged accused) and not on the statement of a police official of Police Station Raikot. The FIR smells of mala fide and it has been registered to save the skin of a few private persons and police officials, especially the investigating officers. Witnesses who gave false evidence on oath have also been left out.

63. We have no alternative but to quash FIR No. 171, dated 18.12.2008 under Sections 420, 195, 211, 465, 467, 468, 471 and 120-B IPC Police Station Raikot and further all its consequential proceedings are also set aside.

64. SHO Police Station Bhadaur (District Barnala) is directed to register a fresh FIR on the basis of the statement of Nachattar Singh @ Khanda son of Bant Singh Village Tallewal or any other appellant (Alleged accused) and to start investigation afresh and proceed as per law.

65. We do not want to go any further into the details of the reply respondents (witnesses) have given, lest it affects their trial when a fresh FIR is registered against them.

66. Appellant Nachhattar Singh lost his son Jagsir Singh. In the present case, appellants had been arrayed as an accused. Appellants have suffered an irreparable loss. They have gone through a lot of mental agony and have been economically ruined by the misdeed of the functionaries of the State of Punjab. It is not only the private respondents, who are responsible for falsely implicating the appellants, but a major part of the responsibility falls on the shoulders of four police officials i.e. the Investigating Officer Sarabjit Rai PW14, ASI Darshan Singh PW13, Darshan Singh DSP and Madan Gopal SP. It is the solemn and sovereign function of the State to prosecute criminals but not the innocent. State is duty bound to do a fair and truthful investigation and thereafter present the challan before the competent Court. Such was the meticulous falsehood presented before the trial Court that the trial Court also believed the evidence which was brought before it. The trial Court did not have any alternative but to convict the appellants.

67. We are of the considered opinion that the entire burden of paying compensation to appellants i.e. Nachhattar Singh alias Khanda son of Bant Singh, Sira alias Jagsir Singh son of Nachhattar Singh, Amarjit Singh son of Kaula Singh, Nikka Singh son of Bawa Singh, Surjit Singh son of Jang Singh rests squarely on the shoulders of the State of Punjab. Taking all the circumstances into consideration i.e. five years rigorous imprisonment which the appellants have undergone, mental agony and torture they have gone through, the loss of face they have suffered during the trial and till the date i.e. for the last 13 years. An irreparable damage which has been done to them psychologically and physically cannot be repaid with any amount of money. They have demanded a compensation of Rs. 20 lacs each, which in the present circumstances is a fair amount.

68. We award Rs. 20 lacs each to all the appellants, which shall be paid by the State of Punjab within 30 days from date of passing of this order. The Chief Secretary, Punjab and the Home Secretary, Punjab are directed to deposit a sum of Rs. One crore with the Registrar of the Punjab and Haryana High Court, which shall be further paid to the appellants, namely, Nachhattar Singh alias Khanda son of Bant Singh, Amarjit Singh son of Kaula Singh, Nikka Singh son of Bawa Singh, Surjit Singh son of Jang Singh and the legal heirs of Sira alias Jagsir Singh son of Nachhattar Singh (deceased).

69. The learned trial Court is directed to initiate proceedings u/s 340 of the Criminal Procedure Code against Amar Singh PW2, Gurdev Singh PW3, Mukhtiar Singh PW4, Karnail Singh PW5, Sukhdev Singh PW7, Surjit Kaur PW8, Bikkar Singh PW9, ASI Darshan Singh PW13, SI Sarabjit Rai PW14, Jeet Singh son of Chuhar Singh, Jagsir Singh son of Sukhdev Singh, Balwinder Singh alias Binder son of Sukhdev Singh, Gurdev Kaur w/o Sukhdev Singh and Jagir Singh son of Harnam Singh and any other person so liable for committing perjury.