

## Malkiat Singh and ors. Vs State of Punjab

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 17, 1987

**Citation:** (1988) 1 RCR(Criminal) 206

**Hon'ble Judges:** S.S.Sodhi, J

**Advocate:** Arun Nehra, Bhupinder Pal Kaur, R.S. Cheema, Advocates for appearing Parties

### Judgement

S.S. Sodhi, J.

1. The petitioners stand variously sentenced for offences under Sections 326, 325, 324 read with Section 149 and Section 148 of the Indian Penal

Code in respect of the injuries said to have been caused by them to Gurdial Singh and his brother Nazir Singh at about 8 A.M. on April 14, 1981.

2. The petitioners Malkiat Singh, Santa Singh and Jit Singh are real brothers while Darshan Singh and Ghona alias Nirmal Singh are the sons of

Malkiat Singh.

3. According to the prosecution, Gurdial Singh and his brother Nazir Singh were cutting fodder in their barsin field when Malkiat Singh armed with

a salang, Sana Singh with a soti and the other petitioners with Gandasa, came there. Malkiat Singh raised lalkara and started the assault by giving a

blow in the head of Gurdial Singh, Darshan Singh, thereafter gave a gandasa blow on his left hand and he and Ghona caused other injuries with

their gandasas on the person of Gurdial Singh. Nazir Singh raised an alarm and stepped forward to rescue his brother Gurdial Singh. He too was

caused injuries by the petitioner Jagjit Singh with his gandasa. Gurdial Singh and Nazir Singh were eventually rescued by their brother Maghar

Singh, who happened to come there. The petitioners thereafter went away with their respective weapons.

4. Gurdial Singh and Nazir Singh were brought to the Civil Hospital, Barnala by their brother Maghar Singh where there were medically examined

by PW 1 Dr. R.S. Sandhu, who found as many as 11 injuries on the person of Gurdial Singh with two of them being grievous while Nazir Singh

have five simple injuries on his person. This medical examination took place at about 11 A.M. on the day of the incident, that is, April 14, 1981.

Soon thereafter, Head Constable Des Raj of police station Barnala came to the Hospital. This police station is about three miles from the place of

incident. On reaching the hospital, Head Constable Des Raj enquired from the doctor whether Gurdial Singh and Nazir Singh were fit for make a

statement. As per the endorsements made on Exhibit PD and PE, the doctor opined that neither of them was fit to make a statement. It may be

mentioned here that having regard to the place of occurrence, his case pertained to police station Mehal Kalan. The matter was consequently

referred to that police station from where PW 6 AIS Malkiat Singh came and eventually recorded the statement exhibit PH on the basis of which

the present case came to be registered.

5. The case of the prosecution rests upon the testimony of the two injured, namely PW 2 Gurdial Singh and PW 2 Nazir Singh, while as regards

their injuries, there is the testimony of PW 1 Dr. R.S. Sandhu, PW 6 ASI Malkiat Singh deposed to the investigation done by him.

6. When examined under Section 313 of the Code of Criminal Procedure, 1973, the petitioners came forth with a counter version denying thereby

having caused any injuries to either Gurdial Singh or Nazir Singh. They, on their part, put forth the story that they had been caused injuries by the

sons of Maghar Singh the brother of Gurdial Singh and Nazir Singh and it was in selfdefence that they had caused some injuries to them, that is,

sons of Maghar Singh. It is pertinent to note that they did not admit to having caused any injuries to Gurdial Singh and Nazir Singh. Two witnesses

were examined in defence, namely D.W 1 Dr. T.S. Mittal, who deposed with regard to the injuries on the person of the petitioners and DW 2

Lachhman Singh who claimed to have witnessed the occurrence as per the defence plea.

7. The trial magistrate, taking into account, the material on record, convicted all the petitioners under Sections 326, 325 and 324 read with Section

149 and Section 148 of the Indian Penal Code and sentenced them to various terms of imprisonment thereunder, the maximum being 11/2 years

rigorous imprisonment and fine. This order was affirmed in appeal by the Additional Sessions Judge, Barnala.

8. In revision here, delay in the lodging of the first information report was put forth as a ground to cast doubt upon the conviction of the appellants

on the plea that the incident had in fact occurred in a manner different and distinct from that deposed to by the two injured Gurdial Singh and Nazir

Singh.

9. There is indeed a time gap of about 36 hours in the incident and the report of it to the police. Both the courts below have duly considered this

aspect of the matter and no exception can be taken to their reasoning whereby this delay stands accounted for. It will be recalled that Gurdial

Singh had as many as 11 injuries on his person two of which were grievous. Nazir Singh too had a number of injuries on his person. Seeing this, it

is no wonder that the primary anxiety of their brother Maghar Singh was to get them medically treated at the hospital. Further, after their medical

examination, when Head Constable Des Raj came there, there is the opinion of the doctor that neither Gurdial Singh nor Nazir Singh was in a fit

condition to make a statement. The recording of their statements, had thus, of necessity to be postponed. In the meanwhile, the police station

concerned was contacted and the Assistant SubInspector Malkiat Singh then came from there and recorded the statement of these two injured.

This indeed constitutes a very plausible and credible explanation for the delay that occurred. No doubt it is thus warranted in the prosecution case

on this account.

10. The main stress of the counsel for the petitioners, in assailing their convictions, was founded upon the injuries on the person of the petitioners,

the contention being that these had been caused during the incident and had not been explained by Gurdial Singh and Nazir Singh. This argument is

founded upon the testimony of DW 1 Dr. T.S. Mittal. This witness deposed that he examined the injured petitioners Darshan Singh, Nirmal Singh

and Malkiat Singh at about 11 A.M. on April 14, 1981. He found a lacerated wound on the right parietal region of Darshan Singh. Six injuries on

the person of Nirmal Singh and five on Malkiat Singh. All these injuries were found to be simple in nature caused by blunt weapons.

11. The important aspect regarding the injuries on the petitioners is with regard to their duration so that the time they were caused, could be fixed.

In this behalf, it is pertinent to note that in fixing this time. Dr. T.S. Mittal sought to express his disagreement with the observations in Dr. Modi's

book on Medical Jurisprudence to the effect that the colour of a bruise turns to bluishred after 24 hours. According to him, the colour of the bruise

remains bluishred upto a period of 48 hours and it then turns greenish, Yellowish and brownish. It was on this basis that he opined that the injuries

on the persons of the petitioners had been caused within 12 hours. Both the courts below, after duly considering this aspect of the matter, came to

the conclusion that the injuries on the petitioners did not tally in time with those of Gurdial Singh and Nazir Singh implying thereby that they were

suffered by the petitioners at some other time. It is pertinent to note here that in the counterversion, given by the petitioners, in their statements

under Section 313 of the Code of Criminal Procedure, 1973, Gurdial Singh and Nazir Singh had no role to play. The alleged assailants of the

petitioners, named there, being the sons of Maghar Singh. If this was so, there is no explanation forthcoming of how Gurdial Singh and Nazir Singh

came to suffer these injuries. Considering their nature and extent, it cannot be assumed that they were in any manner self suffered. Further, it cannot

be accepted that Gurdial Singh and Nazir Singh would leave out the real culprits and pick upon some one else to the fastened with criminal liability

for those injuries.

12. Taking an over all view of the circumstances of the case, as they emerge from the evidence on record, there can be no manner of doubt that

the incident here took place entirely as per the prosecution version. This being so, no exception can be taken to the convictions of the petitioners.

13. In the matter of sentence, however, keeping in view the fact that the incident had taken place a couple of years ago and the matter has been

pending in court during all this period, some reduction in the terms of imprisonment is indeed called for. At the same time, the amount imposed as

fine deserves to be enhanced. Consequently, the sentence of the petitioner Ghona Singh alias Nirmal Singh under Section 326 read with Section

149 of the Indian Penal Code is reduced to one years" rigorous imprisonment and a fine of Rs. 1,000/ on each count, in default of payment of

which, he shall undergo nine months rigorous imprisonment. Similarly, in the case of the petitioners Malkiat Singh, Santa Singh and Darshan Singh,

their sentence on both counts under Section 326 read with Section 149 of the Indian Penal Code are reduced to one years"s rigorous

imprisonment and a fine of Rs. 1,000/ each on each count in default nine months" rigorous imprisonment each, in the case of the petitioner Jit

Singh, his sentence under Section 326 read with Section 149 of the Indian Penal Code is also reduced to one years"s rigorous imprisonment and a

fine of Rs. 1,000/ in default nine months" rigorous imprisonment on each count. The sentences on the other counts of all the petitioners are,

however, upheld and affirmed. All the sentences of imprisonment shall run concurrently. Out of the fine, if recovered, a sum of Rs. 7,500/ shall be

paid as compensation to Gurdial Singh while the balance shall be paid to the other injured Nazir Singh. This appeal is consequently hereby

accepted to this extent.

14. The revision petition filed by the complainant Gurdial Singh for enhancement of sentence is dismissed.

JUDGMENT accordingly.