

Surinder Kumar Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Nov-29-2012

Appellant : Surinder Kumar

Respondent : State of Haryana

Judgement :

In the High Court of Punjab and Haryana at Chandigarh(1) Criminal Appeal not D-771-DB of 2002Date of decision:29.11.2012 Surinder Kumar ...Appellant v.

State of Haryana ...Respondent ...Coram: Hon'ble Mr.Justice Satish Kumar Mittal
Hon'ble Mr.Justice Inderjit Singh(2) Criminal Revision No.2243 of 2002
....Karamjit Kaur ...Petitioner v.

State of Haryana and another ...Respondents ...Present: Mr.Bhupinder Singh
Thind, Advocate for the appellant in Criminal Appeal not D-771-DB of 2002.

Mr.R.K.S.

Brar, Additional Advocate General, Haryana for the respondent-State.

Mr.S.S.Dinarpur, Advocate for the complainant and petitioner in Criminal Revision No.2243 of 2002.....Inderjit Singh, J.

This judgment will dispose of above Criminal Appeal not D- 771-DB of 2002 filed by Surinder Kumar and Criminal Revision No.2243 of 2002 filed by Karamjit Kaur

as these arise out of the same judgment and order dated 14.8.2002/21.8.2002 passed by the learned Additional Sessions Cr.

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Revision No.2243 of 2002 [2].Judge, Panchkula.

The criminal appeal and criminal revision have been filed against the judgment and order dated 14.8.2002/21.8.2002 passed by the learned Additional Sessions Judge, Panchkula, whereby accused-appellant Surinder Kumar has been held guilty for the offence under Section 302 of the Indian Penal Code (`IPC - for short).Accused-Vishal has been acquitted of the charge framed against him.

Accused-appellant Surinder Kumar has been sentenced to undergo imprisonment for life and to pay a fine of `25,000/- and in default of payment of fine to further undergo rigorous imprisonment for three years for the offence under Section 302 IPC.

The brief facts of the prosecution case are that the FIR in the present case was registered on the statement Ex.PG of Smt.

Karamjit Kaur in which she stated that her husband Ajaib Singh, who was working as Loco-driver in Railways Department at Kalka had gone to the house of his officer Surinder Kumar, Loco Inspector at his residence not L44B, Railway Colony, Kalka on 18.2.2000 at about 7.00 p.m.for getting his leave sanctioned.

Ajit Singh, driver also accompanied him.

The complainant stated that as narrated to her by Balwinder Singh, at about 7.30 p.m.at the time of getting leave sanctioned, Ajaib Singh had altercation with Surinder Kumar and as her husband reached near the gate of Surinder Kumar, Vishal Kumar son of Surinder Kumar caught hold of her husband from neck by abusing him and Surinder Kumar gave Kulhari blow on the head of her husband.

Ajaib Singh fell down on the ground and became unconscious.

Then he was admitted in CHC, Kalka for treatment by Randhir Singh and Cr.

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Revision No.2243 of 2002 [3].Balwinder Singh PWs.

At about 9.00 p.m., Balwinder Singh came to the house of the complainant and told all these facts to her.

Then the complainant went to the Community Health Centre, Kalka with Balwinder Singh and found her husband unconscious and after that the doctor referred him to PGI, Chandigarh.

On 19.2.2000, Ajaib Singh expired during treatment in PGI, Chandigarh.

She also stated in her statement that the incident had been witnessed by Ajit Singh, Driver, Randhir Singh and Balwinder Singh.

This statement was recorded at Police Station, Kalka by ASI Avtar Singh on 19.2.2000 at 5.00 p.m.After recording the statement, 'Ruqa' was sent to the Police Station, on the basis of which formal FIR was registered.

ASI Avtar Singh also visited PGI, Chandigarh on 18.2.2000 and 19.2.2000 for recording the statement of the patient but the doctor declared Ajaib Singh as unfit.

After recording the FIR, ASI Avtar Singh again reached PGI, Chandigarh at 5.30 p.m.He conducted inquest proceedings.

Post-mortem on the dead body was conducted in General Hospital, Sector 16, Chandigarh.

On 19.2.2000, the investigation was taken over by SI Mukesh Kumar from ASI Avtar Singh.

SI Mukesh Kumar inspected the spot and prepared rough site plan Ex.PN.

He arrested accused Surinder Kumar in this case and recorded disclosure statement Ex.PJ.

On completion of investigation, he also prepared report under Section 173 Cr.P.C.on 10.4.2000.

Bhim Singh, Inspector on 21.2.2000, interrogated accused Surinder Kumar who made disclosure statement Ex.PJ that he had kept conceal a `Kulhari' in bushes on Paploha Road, Near Workshop of Electricity Board and in pursuance of his disclosure statement he got Cr.

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Revision No.2243 of 2002 [4].recovered a `Kulhari' Ex.PL which was taken into Police possession vide recovery memo Ex.PM.

after preparing sketch.

Statements of witnesses were recorded.

After necessary investigation, challan was presented in Court.

On presentation of challan, the trial Court finding prima facie charge against the accused, framed charge for the offence under Section 302 read with Section 34 IPC.

The accused pleaded not guilty to above charge and claimed trial.

In support of its case, the prosecution examined PW-1 Nachhattar Singh, who is father of Ajaib Singh.

He deposed that after receiving telephonic call from Karamjit Kaur regarding admission of Avtar Singh in PGI, Chandigarh, he went there.

Ajaib Singh died on 19.2.2000 at about 1.30 p.m.PW-2 Constable Babu Ram and PW-3 HC Mohinder Singh are formal witnesses, who tendered in evidence their affidavits Ex.PB and Ex.PC respectively.

PW-4 Dr.

Krishan Vij mainly deposed regarding conducting the post-mortem on the dead body of Ajaib Singh along with Dr.

Amrinder Sandhu on 20.2.2000 and found the following injuries:- Radish linear abrasion (5 cm x 5 cm.) was present longitudinally upon the back of chest on the left side in the middle of left half covering lower portion of scapular region.

Two linearly running radish abrasion 5 cm and 3 cm long respectively on the back of abdominal region on the left side 10 cm below the inferior angle of scapula.

Two radish abrasions with scab with dimensions of 2 cm x 0.5 cm and 2.5 cm x 0.5 cm.

respectively were present on the lateral aspect of the left thigh against the Cr.

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Revision No.2243 of 2002 [5].tubercular prominence.

Radish abrasion with scab 3.5 cm x 0.5 cm irregularly placed on the frontal aspect of left leg in its middle portion.

Radish diffused irregularly scattered minor abraded areas covering front of left knee, particularly, lower portion of the knee.

Radish abrasion with scab 2.5 cm x 1 cm.

on the front of right leg in its middle.

Radish abrasion with scab 1.5 cm x 0.5 cm on the lateral aspect of right leg six cm above the lateral malleolus.

Abraded area radish in appearance with scab present on the front of right knee 3 cm x 2.5 cm covering the most protruded aspect.

Radish abrasion with scab 1.5 cm x 0.5 cm on the lateral aspect of lower part of right knee.

Three irregularly scattered linear abrasions with scab radish in appearance on the dorsum of right hand was present.

Radish abrasion with scab 1.5 cm x 0.5 cm on the right arm just lateral to posterior prominence of the right elbow.

Radish abrasion with scab on the front of Nos.1 cm x 0.5 cm two cm below the nasal depression.

Meted hair was present in the left frontal area.

On shaving the hair, incised wound 2.1 cm long and 0.5 cm wide, obliquely running was present on the left frontal region 10 cm above the glabella just lateral to the mid line.

Another incised wound 3 cm x 0.25 cm running obliquely joined the lateral extremity of the previous one in its lower end and running obliquely upwards.

Margins were swollen and weakly adhered.

Clotted blood was present.

On removing the Cr.

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Revision No.2243 of 2002 [6].scalp clotted and fluid blood was present underneath.

Right temporal and adjoining area showed presence of clotted blood.

Right parieto temporal area showed linear fracture running irregularly.

Superio extremity was placed at a point just below the parietal aminence.

Going forward and downwards anteriorly involving the temporal area ending at point just lateral and above the right orbit.

Subdural haematoma involving right front temporal area was present showing dark chocolate coloured clotted blood.

Deep intra cerebral haemorrhage was also present.

The intervening depressed area between the two cerebella hemisphere showed contused area.

The cause of death was given as coma due to head injury.

Injuries were ante-mortem and head injury was sufficient to cause death in the ordinary couRs.of nature.

He also stated that both the incised wounds on the head could be possible with the `Kulhari' shown to him on that day in the Court.

PW-5 Manohar Lal Constable mainly deposed that on 22.3.2000, he prepared site plan.

On 28.3.2000, he prepared scaled site plan Ex.PF.

PW-6 Surinder Kumar Constable mainly deposed regarding delivery of special report to Illaqa Magistrate.

PW-7 Karamjit Kaur is the complainant, who mainly deposed as per prosecution version.

PW-8 Dr.

Bhawani Shankar Sharma mainly deposed regarding the admission of Ajaib Singh in P.G.I., Chandigarh on 18.2.2000.

He also deposed regarding his instructions Ex.PH to his junior doctors for treatment.

PW-9 Balwinder Cr.

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Revision No.2243 of 2002 [7].Singh has mainly deposed that he along with Randhir Singh had gone to Gurdwara and when they reached near the house of accused Surinder Kumar, Ajit Singh, Railway driver was standing there.

He inquired from Ajit Singh what had happened.

He told that dispute had taken place between Surinder Kumar and Ajaib Singh.

When they reached the spot, they found that Ajaib Singh was lying on the ground with injuries.

He deposed that Ajit Singh told them that Surinder Kumar gave the 'Kulhari' blow to Ajaib Singh.

After that they carried Ajaib Singh to Civil Hospital, Kalka.

He also deposed that he went to the residence of Ajaib Singh to inform his wife and when he along with wife of Ajaib Singh reached Civil Hospital, Kalka, Ajaib Singh was already referred to PGI, Chandigarh.

PW- 10 Randhir Singh mainly deposed the same facts as deposed by PW-9 regarding visiting Gurdwara but he stated that after he along with Balwinder Singh reached the spot and had seen the occurrence himself.

He also deposed regarding the disclosure statement and then the recovery of 'Kulhari' by the accused in pursuance of his disclosure statement.

PW-11 Ajit Singh is also an eye witness to the occurrence.

He also deposed as per prosecution version.

PW-12 SI Mukesh Kumar mainly deposed regarding partly investigation.

PW-13 Dr.

Sudhir Gupta, Medical Officer, CHC, Kalka mainly deposed that on 18.2.2000 Ajaib Singh patient came to hospital at about 9.50 p.m.as his condition was serious so he referred him to P.G.I, Chandigarh.

Ex.PR was the `Ruqa' in terms of which he had sent the information to the Police regarding patient Ajaib Singh.

PW-14 Dr.

Pradeepta Kumar Sethi, Senior Resident, Gastroentrology, P.G.I., Cr.

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Revision No.2243 of 2002 [8].Chandigarh mainly deposed that ASI Avtar Singh submitted an application for obtaining the opinion of patient Ajaib Singh whether he was fit to make the statement or not and he declared the patient unfit to make the statement at 12.45 p.m.He also deposed that dead body was referred to General Hospital, Sector 16, Chandigarh for post-mortem.

PW-15 SI Avtar Singh is the Investigating Officer, who mainly deposed regarding the investigation of the case.

PW-16 Bhim Singh, Inspector/SHO, Sadar, Bahadurgarh also mainly deposed regarding partly investigation conducted by him in this case.

At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C.and were confronted with the evidence of the prosecution.

They denied the correctness of the evidence and pleaded themselves as innocent.

A separate written defence version was given in which it is stated that case is false.

Ajaib Singh (deceased) never came to the house for obtaining permission for getting leave.

The leave application was to be sanctioned by the Senior Loco Inspector, namely, Ishar Singh and in his absence, Om Parkash, Loco Inspector and in their absence by him.

On the day of occurrence, both Ishar Singh and Om Parkash were on duty and were available.

It was also stated that witnesses, namely, Randhir, Singh, Ajit Singh, Balwinder Singh and Ajaib Singh (deceased) belonged to Uttar Railway Mazdoor Union.

As he was checking them, therefore, they had the grudge and they had falsely involved him and his son in this case and he denied the correctness of the evidence and stated himself as innocent.

Cr.

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Revision No.2243 of 2002 [9].In defence, they produced DW-1 Sanjay Kumar, who mainly produced true copy of the summoned record i.e.daily diary No.35 dated 18.2.2000 of Police Post, P.G.I., Chandigarh.

DW-2 Anil Joshi, Secretary, District Red Cross Society, Panchkula mainly deposed that one ambulance of Red Cross Society is attached with CHC, Kalka and produced the Log Book maintained by the driver of the ambulance.

DW-3 Ishar Singh, retired Senior Loco Inspector mainly deposed regarding sanction of leave by the Senior Loco Inspector-I and in his absence by Loco Inspector-II Om Parkash.

DW-4 Dr.

Rajinder Singh Chauhan also deposed regarding entries in the emergency register regarding the ambulance but he could not state whether the ambulance had gone from Kalka to Panchkula on 18.2.2000.

DW-5 Ashok Kumar Bhardwaj mainly deposed regarding documents Exs.DX.1, DX.2 and DX.3.

DW-6 Parvesh Kumar, Inspector deposed that on 18.2.2000, she was posted at Police Post PGI, Chandigarh as Officer-in- charge.

She had entered DD No.35 on 18.2.2000 at 10.55 p.m.Ex.DA is the copy of DD No.35.

She mainly deposed that after receiving `Ruqa', she inquired from Karamjit Kaur about the patient and at that time Karamjit Kaur had informed her that her husband Ajaib Singh was admitted because of injuries received by him in a motor accident caused by unknown vehicle and she gave the information on telephone to HC Gurdial Singh, Police Station, Kalka.

DW-7 Dr.

Haroon Salaria, Senior Resident, Department of Neuro Surgery, P.G.I., Chandigarh stated that he attended patient Ajaib Singh during his admission in P.G.I. He was admitted on 18.2.2000 at 9.45 p.m. and died on 19.2.2000 at 1.30 p.m. The initial version was that the Cr.

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Revision No.2243 of 2002 [10].patient had sustained injury at home on 18.2.2000 at 6.30 p.m.No details or cause of injury were given.

Subsequently, the Police version and also as per the entries in the death certificate there is history of allegedly sustaining road traffic accident by unknown vehicle.

After going through the evidence and material on record, the learned trial Court convicted and sentenced the accused-appellant for the offences as mentioned above.

However, accused-Vishal Kumar has been acquitted of the charge framed against him.

At the time of arguments, learned counsel for the appellant argued that the prosecution has failed to prove the guilt of appellant beyond reasonable doubt.

The accused-appellant is innocent and has been falsely implicated.

There is delay of 21 hours in recording the FIR which was used for falsely implicating the accused.

As per prosecution, occurrence took place at 7.30 p.m. but as per doctor's record the patient was admitted at 9.50 p.m. He argued that no blood stained earth was taken from the spot.

Presence of eye witnesses is also doubtful.

The abrasions, which are more than 12 on the body of the deceased, have not been explained.

The 'Kulhari', which was stated to have been recovered in pursuance of disclosure statement, was not blood stained.

SI Avtar Singh reached PGI, Chandigarh on 18.2.2000 and 19.2.2000 but Karamjit Kaur-complainant did not make any statement.

The complainant made oral statement to Inspector Parvesh Kumari, Officer-in-charge, Police Post, P.G.I. that Ajaib Singh received injuries in a road side accident and SI Parvesh Kumari, who was examined as defence witness, had proved the report Ex.DA and she gave the Cr.

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Revision No.2243 of 2002 [11].information to HC Gurdial Singh at Police Station, Kalka.

The learned counsel has also stated that as per document EX.PH, history regarding injuries were stated to be suffered at home and no details were given.

Even in the death summary, it was written as Rs.(road side accident) and the doctor DW-7 has stated that even in the death certificate it was written road side accident case.

Learned counsel for the appellant further argued that the statements of Balwinder Singh and Randhir Singh are totally contradictory though as per prosecution version both of them had gone at the spot together.

One PW says that the injuries were caused in their presence whereas the other says that the injuries had already been given and only Ajit Singh was standing there who told that the accused had given the injuries.

Learned counsel for the appellant next argued that there is no motive to cause the occurrence.

There is no document on record to show that deceased had gone to the house of the appellant for sanction of the leave.

As per DW-3, the appellant was not to sanction the leave.

Rather, it was Senior Loco Inspector-I, Ishar Singh, was to sanction the same and in his absence Loco Inspector-II Om Parkash was to sanction the leave.

Learned counsel for the appellant next argued that there are material contradictions in the statements of the witnesses and further there are also contradictions whether the statements of the witnesses were recorded on 19.2.2000 or 20.2.2000.

The witnesses says that statements were recorded on 20.2.2000 whereas the Investigating Officer says that the same was recorded on 19.2.2000.

Again there is contradiction whether statement of the complainant was recorded at Police Station or at Bus Stand.

Therefore, he Cr.

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Revision No.2243 of 2002 [12].argued that a reasonable doubt exists in the prosecution version and the appellant should be acquitted.

On the other hand, learned Additional Advocate General, Haryana appearing for the respondent-State argued that case of the prosecution has been duly proved by the eye witnesses, who have seen the occurrence.

The statements of eye witnesses are duly supported by medical evidence and further the recovery of 'Kulhari' from the accused in pursuance of disclosure statement also supports and corroborates the prosecution version.

He argued that minor discrepancies are to occur due to gap of time and short memory.

He argued that the case of the prosecution is duly proved beyond any doubt and the appeal of the appellant having no merit should be dismissed.

Learned counsel for the complainant-Karamjit Kaur argued that there is cogent evidence on record that accused Vishal also took active participation in the commission of the offence.

He should also be convicted along with appellant-Surinder Kumar.

We have heard learned counsel for the parties and have gone through the evidence on record minutely and carefully with their assistance.

From the record, we find merit in the arguments of the learned counsel for the appellant.

FiRs. of all as per prosecution version the occurrence took place at about 7.30 p.m. on 18.2.2000 in presence of three eye witnesses and the injured was shifted to CHC, Kalka, from where he was referred to PGI, Chandigarh as per the advice of the doctor, who sent 'Ruqa' to the Police.

Even as per evidence of ASI Avtar Singh, he went to Cr.

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Revision No.2243 of 2002 [13].PGI, Chandigarh on 18.2.2000 and 19.2.2000.

Though the injured was unfit to make statement but complainant Karamjit Kaur was present there and she had not made any statement.

Rather, as per evidence, she stated that Ajaib Singh would get the statement recorded after gaining consciousness.

As per prosecution version, Karamjit Kaur was told regarding the occurrence by Balwinder Singh PW-9 at 9.00 p.m. on the same day and she got recorded those facts accordingly on 19.2.2000 at 5.00 p.m. There is no reason or ground for her not to state all these facts to ASI Avtar Singh.

The delay in the present case has not been explained and there is delay of about more than 21 hours in the present case.

We are conscious about the fact that delay in itself is not fatal to the prosecution case.

In the case of unexplained delay the Court is to scrutinize the evidence very cautiously and carefully.

We have re-appreciated the evidence in this context very carefully and cautiously.

As per prosecution version only one or two 'Kulhari' blows were given by accused Surinder Kumar.

It is nobody's case that Vishal was armed with any 'Danda' or he gave injuries by fist blows etc. on various parts of the body of Ajaib Singh.

As per post-mortem report there are more than 12 abrasions found on so many parts of the bodies i.e. on the legs, knees, thigh etc. and all these injuries have not been explained not supported and corroborated by any oral evidence.

There is nothing on the record how these injuries were suffered on various parts of the body of Ajaib Singh.

This fact creates reasonable doubt in the prosecution version.

Further as per PWs some altercation took place in the house of the accused and the injuries were caused outside the house of the accused but while Cr.

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Revision No.2243 of 2002 [14]. seeing the site plan Ex.PM, we find that the occurrence was stated to be outside the house just at the gate of the house which

is on the road.

The defence version is that these injuries had been caused in the road side accident.

As per document Ex.PH history regarding injuries were stated to be suffered at home and no details were given.

This document, Ex.PH, was regarding the admission of the patient at P.G.I., Chandigarh.

Even certificate recorded in the death summary, Rs.had been written which the witness says means road side accident.

Even the doctor DW-7 has stated that the initial version was that the patient had sustained injuries at home on 18.2.2000 at 6.30 p.m.but no details or cause of injuries were given.

Subsequently, the Police version and also as per entries in the death certificate there is history of alleged sustaining injuries by road traffic accident by unknown vehicle.

These facts further create reasonable doubt in the prosecution version.

Again the fact that why Karamjit Kaur had not made statement to ASI Avtar Singh when he visited P.G.I., Chandigarh also creates reasonable doubt in the prosecution version.

The statement of DW-6 Parvesh Kumari, Inspector, who was Officer-in-charge of Police Post, PGI has stated that she inquired from Karamjit Kaur-wife of Ajaib Singh after receiving the 'Ruqa' from the doctor and she informed her that her husband Ajaib Singh was admitted because of injuries received by him in a motor accident caused by unknown vehicle.

As per DW-6, she made report DD No.35, which has also been duly proved in the present case, as it is in her hand.

She also stated that telephonic information was also given to Head Constable Gurdial Singh of Police Station, Kalka.

This statement of DW-6 Cr.

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Revision No.2243 of 2002 [15].Inspector Parvesh Kumari further creates doubt in the prosecution version.

Next we find that no blood stained earth was taken by the Police.

Therefore, this fact also creates doubt regarding the place of occurrence i.e.where the occurrence took place whether it is on the road or in the house.

As per prosecution version, the occurrence took place inside the house whereas site plan Ex.PN shows that it took place on the outer gate of the house on the road.

Again though 'Kulhari' was stated to be got recovered in pursuance of disclosure statement but this 'Kulhari' was found not stained with blood.

Therefore, this 'Kulhari' cannot be connected with the crime.

As such type of 'Kulharis' are easily available.

No independent witness was joined at the time of recovery of this 'Kulhari'.

Further from the evidence on record, we find that though the motive of the visit of Ajaib Singh to the house of appellant has shown to get leave sanctioned but as per DW-3 the leave was to be sanctioned by Senior Loco Inspector-I i.e.by him (Ishar Singh).In his absence, it was to be sanctioned by Loco Inspector-II, Om Parkash, and in the absence of both of them, then the Loco Inspector-III i.e.the appellant had to sanction the leave.

Therefore, the motive and visit of Ajaib Singh to Surinder Kumar's house is also not proved.

No application of any type for getting leave sanctioned was produced on the record or taken into possession nor it was got recovered from the appellant.

Therefore, motive for causing the occurrence also not proved.

On the other hand, the appellant in written defence has taken the plea that as he was their In-charge and used to check whether they were coming in uniform or not, not consuming liquor etc. at duty time, the Cr.

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Revision No.2243 of 2002 [16].witnesses were aggrieved and they had deposed falsely against him.

Otherwise also, there is no explanation why any of the eye witnesses had not reported the matter to the Police.

As per prosecution version, Ajit Singh Driver had seen the occurrence and he had accompanied Ajaib Singh to the house of Surinder Kumar-appellant but as per doctor's record patient was brought by Balwinder Singh and Randhir Singh and not by Ajit Singh.

As per complainant Karamjit Kaur's statement, she was informed by Balwinder Singh.

The presence of Ajit Singh also looks doubtful at the spot.

Similarly, the statements of Balwinder Singh and Randhir Singh PWs are contradictory on the material point which also creates doubt whether these PWs had seen the occurrence.

As per prosecution version and statements of these PWs, they both had gone together on the spot.

PW-9 Balwinder Singh had stated that the injuries had already been caused and Ajaib Singh was lying on the ground with injuries and Ajit Singh told him that Surinder Kumar gave the 'Kulhari' blow to Ajaib Singh, whereas PW-10 Randhir

Singh had stated that `Kulhari' blows were given in their presence.

As per PW-7 Karamjit Kaur, she had not seen the occurrence and her statement regarding the occurrence is hearsay.

PW-11 Ajit Singh also stated that Vishal brought Ajaib Singh outside the house by pushing him and Vishal and Ajaib Singh were grappling with each other.

By that time Surinder Kumar had given two `Kulhari' blows on the head of Ajaib Singh.

Hearing the noise, Randhir Singh and Balwinder Singh also reached there.

This witness Ajit Singh was also confronted with his statement.

There are also contradictions whether one blow was given or two blows were given.

There Cr.

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Revision No.2243 of 2002 [17].is also discrepancy regarding the statement of PW-9 Balwinder Singh.

The Investigating Officer says that he recorded his statement on 19.2.2000 whereas PW-9 Balwinder Singh in his cross-examination says that his statement was recorded by the Police on 21.2.2000 at Police Station.

Ajit Singh in his cross-examination stated that his statement was recorded on 20.2.2000 whereas the Investigating Officer says that he recorded his statement on 19.2.2000.

There is also discrepancy whether the statement of the complainant was recorded at Police Station or at bus stand.

Therefore, from the above discussion, we find that reasonable doubt exists in the prosecution version.

The defence version that it is a case of road side accident creates a reasonable doubt in the version of the prosecution.

The benefit of doubt is to go to the accused.

Therefore, we find merit in Criminal Appeal not D-771-DB of 2002 filed by Surinder Kumar and the same is allowed and the impugned judgment of conviction and order of sentence are set aside.

He is acquitted of the charge.

As he is on bail, his bail bond and surety bond shall stand discharged.

As regards Criminal Revision No.2243 of 2002 filed Karamjit Kaur, as the appeal of the main accused has been accepted and there is no cogent evidence against accused Vishal, therefore, we do not find any merit in the criminal revision and the same is dismissed.

(Satish Kumar Mittal) (Inderjit Singh) Judge Judge November 29, 2012.

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