



CRA-S-1742-SB-2003 and another connected case

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on: 22.01.2025

Pronounced on:- 14.02.2025

(1)

CRA-S-1742-SB-2003

Ravi Gupta and others

....Appellants

Versus

State of Punjab

....Respondent

(2)

CRA-S-1862-SB-2003

Pargat Masih alias Nitu

....Appellant

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. H.S. Dhindsa, Advocate
for the appellant Jaswinder Singh
in CRA-S-1742-SB-2003.

Mr. Rahul Dhanda, Legal Aid Counsel
for the appellant Pargat Masih alias Nitu
in CRA-S-1862-SB-2003.

Mr. Kewal Singh, Addl. A.G. Punjab.

AMARJOT BHATTI, J.

1. Both cases i.e. CRA-S-1742-SB-2003 and CRA-S-1862-SB-2003 are taken up together with the consent of learned counsel for parties,



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arising out of common judgment of conviction and order of sentence qua appellants/convicts Ravi Gupta, Yogesh Khurana, Jaswinder Singh and Pargat Masih alias Nitu, passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana.

2. Appellants/convicts Ravi Gupta, Yogesh Khurana, Jaswinder Singh and Pargat Masih alias Nitu filed aforesaid appeals against judgment of conviction and order of sentence dated dated 03.09.2003 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana in Sessions Case bearing No. 21 dated 03.03.2000, titled as “State Vs. Pargat Masih alias Nitu and others” vide which appellants are sentenced as under :-

Name of Convict(s)	Offence U/s	Sentence	Fine	In default of fine or a part thereof
1. Ravi Gupta 2. Yogesh Khurana	366 IPC	Rigorous imprisonment for seven years each.	Rs. 1,000/- each	Further rigorous imprisonment for three months each.
3. Jaswinder Singh 4. Pargat Masih alias Nitu	376(2)(g)	Rigorous imprisonment for ten years each.	Rs. 1,000/- each	Further rigorous imprisonment for three months each.

3. During the pendency of appeal filed by Ravi Gupta and others bearing CRA-S No. 1742-SB of 2003, as per information received from learned Chief Judicial Magistrate, Ludhiana vide letter No. 1279 dated 30.07.2019, appellant Ravi Gupta expired on 25.11.2009 and appellant Yogesh Khurana expired on 16.01.2016. Therefore, proceedings qua them stood abated.

4. As per the facts of case, complainant ‘SB’, mother of victim ‘S’ gave her statement that she is a household lady having two sons and two daughters. Her eldest daughter i.e. victim ‘S’ was about 16 years of age who

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was working in Alamgir Public Call Office, Gill Road, Ludhiana. Earlier, victim was working at Jhankar Public Call Office, Daba Road, Ludhiana. On 07.03.1999, victim went to attend her duty at Public Call Office and did not return home till 06:00 pm. Complainant went to Public Call Office for making inquiry and she was told by owner of PCO that her daughter did not come to attend her duty on that day. Complainant returned home and waited for her daughter to come but she did not return home. At about 09:00 pm, she alongwith her husband tried to locate her daughter from her friends but failed. Even thereafter, they kept on searching her and during this period Rupinder Kaur wife of Pavittar Singh disclosed that on 12.03.1999, Ravi Gupta who was residing in front of her house received call from victim and even she talked with her. Rupinder Kaur disclosed that she was told by Ravi Gupta to keep this fact a secret. Therefore, she did not tell anybody. Complainant went to Ravi Gupta to inquire about her daughter but he did not disclose anything. Complainant returned home and thereafter, Yogesh Khurana came to her house and asked her that what would she do in case her daughter did not return home. Complainant got suspicious and inquired from Yogesh Khurana about whereabouts of her daughter, who in return disclosed that he was sent by Ravi Gupta. Complainant stated that she suspected Ravi Gupta, Yogesh Khurana and Jaswinder Singh owner of Public Call Office where victim was employed earlier, might had abducted victim. On the basis of this statement, case was registered under Section 363, 366 of IPC.

5. Later on, victim was recovered by complainant, her husband and other respectables of locality. She was produced before Chief Judicial

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Magistrate, Ludhiana on 10.09.1999 for recording of her statement under Section 164 Cr.P.C. and statement was recorded by the then Judicial Magistrate First Class, Ludhiana. Victim disclosed that earlier she was working at Jhankar Public Call Office from 23.01.1999 to 23.02.1999. Jaswinder Singh was owner of said Public Call Office. She was getting salary of Rs. 800/- per month. On 01.03.1999, she joined Alamgir Public Call Office, owned by one Nirmal Singh at a salary of Rs. 1,000/- per month. On 07.03.1999 at about 07:30 am, she was going to attend her duty. On her way a little ahead of her house, accused Jaswinder Singh, Ravi Gupta, Yogesh Khurana and one more person came in Maruti van. Accused Ravi Gupta was driving the van, Jaswinder Singh was on co-driver seat and Yogesh Khurana and other person were sitting at back seat of the van. Jaswinder Singh asked victim as to where was she going and she replied that she was going to attend her duty. Jaswinder Singh forcibly put her in van and Yogesh Khurana put a handkerchief on her mouth, as a result she became unconscious. On gaining consciousness, she found herself in a room where Ravi Gupta, Yogesh Khurana, Jaswinder Singh along with another person and one lady were present. She requested them to leave her as she wanted to go home. Thereafter, all four accused referred above committed rape with her against her wishes. She was kept in that room for 5-6 days and during these days, they all committed forcible rape with her. Said unknown lady remained with her in room. Victim was left at Phillaur in unconscious state. On gaining senses, she found herself sick and she was surrounded by other persons. She kept silent. One of the boy took her to a doctor for getting medicine. On

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inquiry from doctor, she came to know that she was in Phillaur and from there she called her brother on telephone and disclosed him about her whereabouts. She again went back to room along with a boy and in evening, parents of victim along with her brother and 3-4 other persons came and took her back in house. She further stated that Jaswinder Singh and Ravi Gupta committed rape with her when she was employed in Jhankar Public Call Office and one of their servant Sewa Singh tried to outrage her modesty. Offence under Section 376, 366-A, 376 of IPC were added.

6. After completion of investigation, initially challan was presented against Pargat Masih alias Nitu and Surjit Kaur. Whereas, Jaswinder Singh, Yogesh Khurana, Ravi Gupta and Rupinder Kaur were kept in Column No. 2 of challan report. Accordingly, Pargat Masih alias Nitu and Surjit Kaur were chargesheeted on 18.05.2000 under Section 366, 366-A of IPC. Statement of victim was recorded as PW1. Thereafter, on application filed under Section 319 Cr.P.C, additional accused Ravi Gupta, Yogesh Khurana and Jaswinder Singh were also summoned to face trial along with other accused.

7. On appearance of all accused Pargat Masih alias Nitu, Surjit Kaur, Ravi Gupta, Yogesh Khurana and Jaswinder Singh, they were chargesheeted on 14.07.2001 under Section 363, 365, 366, 366-A and 376 of IPC to which they all pleaded not guilty and claimed trial.

8. In order to prove the facts of case, prosecution examined victim 'S' as PW1, Dr. Kiran Chawla, Medical Officer, Civil Hospital, Ludhiana as PW2, complainant 'SB' as PW3, HC Santosh Kumar as PW4, ASI Harbhajan Singh as PW5, Shri Rakesh Kumar, Sub Divisional Judicial Magistrate,



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Malerkotla as PW6, SI Harjinder Singh as PW7 and ASI Malkiat Singh as PW8. Thereafter, learned Addl. Public Prosecutor for State tendered into evidence the Chemical Examiner Report as Ex.PB and closed prosecution evidence.

9. Statements of all accused were recorded under Section 313 Cr.P.C. by the trial Court to which they pleaded innocence and false implication at the instance of Rajesh Kumar alias Raju, President of Daba Shop Keeper Association.

10. In defence, accused examined Sukhbir Singh as DW1, Arjan Singh as DW2, Nirmal Singh as DW3, Gurmail Singh as DW4, Jaswinder Singh as DW5, Ajit Singh as DW6, Gurdev Singh as DW7 and A.S. Rai, SSP, Sangrur as DW8.

11. After hearing arguments advanced by learned Additional Public Prosecutor for the State and learned counsel representing accused persons, accused Surjit wife of Sarup Masih was acquitted of the charges framed against her, whereas, accused namely Pargat Masih alias Nitu, Ravi Gupta, Jaswinder Singh and Yogesh Khurana were held guilty and convicted under Section 366 and 376 of IPC and sentenced under Section 366 and 376(2)(g) of IPC vide judgment of conviction and order of sentence dated 03.09.2003 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana. Feeling aggrieved of this judgment of conviction and order of sentence, abovenamed appellants filed appeals bearing CRA-S Nos. 1742-SB and 1862-SB of 2003.

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12. Learned counsel for appellants Jaswinder Singh in CRA-S-1742-SB-2003 argued that facts of case and evidence on record were not rightly appreciated by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana. Alleged victim was rightly held major by the trial Court. Infact prosecution did not lead any convincing evidence on record to establish that she was minor at the time of alleged occurrence. Alleged victim was medically examined by Dr. Kiran Chawla PW2 after a long gap on 11.09.1999. Copy of her MLR is Annexure PA. On the basis of medical record, said doctor categorically stated in cross-examination that victim was more than 19 years of age. During trial, victim was confronted with her photographs Ex.DA and Ex.DB in bridal costume. She admitted Jaswinder Singh son of Lal Singh present with her in said photographs. Victim showed her total ignorance regarding said photographs. In fact, victim performed marriage with Jaswinder Singh son of Lal Singh of village Panj Dhera on 12.03.1999 at Gurudwara Baoli Sahib, Nur-Mahal, District Jalandhar. To prove this fact, witnesses were examined in defence but same were totally ignored by trial Court while deciding present case. Testimony of prosecutrix as PW1 is not reliable. Investigation was carried out by Sh. A.S. Rai, SP (City), Ludhiana and Sh. Uppal Joshi, SP(D), Ludhiana. It was found that said victim was in contact with other young men with whom she was having affair. During investigation, present appellant Jaswinder Singh along with other co-accused were found to be innocent and accordingly, they were not challaned initially. Victim wrongly claimed that she was kept confined in a room or she was raped by the accused named by her. She got married with

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Jaswinder Singh son of Lal Singh and lived with him in his village. She visited different places and was meeting other persons living in village. In case any such occurrence had taken place, she could have disclosed the same to any respectable of village or could have lodged report with police. Therefore, without appreciating the evidence led by prosecution as well as witnesses examined in defence, appellant Jaswinder Singh was wrongly held guilty and was sentenced by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana under Section 366 and 376(2)(g) of IPC. Therefore, judgment of conviction and order of sentence passed against present appellant may kindly be set aside by accepting present appeal.

13. Learned counsel representing appellant Pargat Masih alias Nitu in CRA-S-1862-SB-2003, apart from aforesaid points raised during arguments, further added that initially victim did not name present appellant when her statement was recorded under Section 164 Cr.P.C. In fact, victim 'S' was having relationship with many persons and during investigation, letters written by her came into picture. Regarding the act and conduct of victim, witnesses were examined in defence which are not considered by trial Court for the decision of case. Version put forward by victim is highly doubtful and she is not a trustworthy witness. She married Jaswinder Singh son of Lal Singh and started living along with him in his village as his wife. She was brought back from said village by her parents and regarding this fact, Jaswinder Singh son of Lal Singh stepped into the witness box as DW5 and his version is also supported by his brother Nirmal Singh DW3. This aspect of case has been totally ignored by trial Court. Therefore, judgment of

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conviction and order of sentence passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana is not on sound footing and the same be set aside by accepting present appeal.

14. On the other hand, learned counsel representing State of Punjab argued that prosecution case is duly proved on record from the testimony of victim examined as PW1. She was abducted on 07.03.1999 in the morning when she was going to attend her duty in Alamgir Public Call Office, Gill Road, Ludhiana. She was ravished by appellants along with other co-accused for about 4-5 days by keeping her in a room, at unknown place. Ultimately, she was recovered on 27.08.1999 and was produced before the police. Her statement was recorded under Section 164 Cr.P.C. where she named appellants specifically and specific role is attributed to them. Statement of victim recorded under Section 164 Cr.P.C. is proved by examining Rakesh Kumar, Sub Divisional Judicial Magistrate, Malerkotla as PW6. Medical record is proved by Dr. Kiran Chawla as PW2. Mother of the victim also stepped into witness box as PW3 and supported the version of her daughter. Investigation carried on by police is proved by examining ASI Harbhajan Singh as PW5 and SI Harjinder Singh as PW7. Evidence led in defence is afterthought. Therefore, judgment of conviction and order of sentence dated 03.09.2003 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana does not require any interference and appeals preferred by appellants Jaswinder Singh and Pargat Masih alias Nitu may kindly be dismissed.

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15. I have considered the arguments advanced by learned counsel representing appellants Jaswinder Singh and Pargat Masih alias Nitu, learned counsel representing State of Punjab and have gone through the trial Court record carefully.

FIR was registered on the statement of complainant 'SB' mother of victim 'S', who stated that on 07.03.1999, her daughter i.e. victim left the house at about 07:30 am and thereafter, she did not return home. She went to Alamgir Public Call Office, Gill Road, Ludhiana to know about her daughter and there she was informed that victim did not attend office on that day. Complainant along with her husband tried to search whereabouts of victim but could not locate her. In the meantime, she came in contact with Ravi Gupta as she was told by one Rupinder Kaur that on 12.03.1999, Ravi Gupta made her talk to victim on telephone. Thereafter, Yogesh Khurana also came into picture at the instance of Ravi Gupta and for this reason she suspected Jaswinder Singh owner of Jhankar Public Call Office, Daba Road, Ludhiana, Ravi Gupta and Yogesh Khurana for missing of her daughter i.e. victim 'S'. Matter was investigated. Police could not locate whereabouts of victim.

16. Finally, complainant along with her family members located whereabouts of victim and was brought back home on 27.08.1999. Thereafter, victim was produced before Magistrate and her statement was recorded under Section 164 Cr.P.C. Ex.PW6/A, where she narrated the occurrence that on 07.03.1999, when she was going for her work, on the way, Jaswinder Singh, Ravi Gupta, Yogesh Khurana along with one unknown person came in a van and stopped her as to where was she going. She was forcibly put in van and

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was made unconscious by Yogesh Khurana by putting a handkerchief on her mouth. She regained her senses in a room where aforesaid named accused persons were present along with unknown lady. Victim alleged that she was raped by said Jaswinder Singh, Ravi Gupta, Yogesh Khurana and said unknown person for a period of 5-6 days. Thereafter, she regained her senses in an open place surrounded by other people. She was taken to a doctor by one boy and from there she came to know that she was in Phillaur. She made a call to her family by using the phone of said doctor and ultimately, she was rescued by her family.

17. Considering the aforesaid facts, one thing is clear that she was allegedly abducted on 07.03.1999 and she returned home on 27.08.1999. She remained away from house for a period of about 5 months and 20 days. Alleged occurrence took place on 07.03.1999 and matter was reported to police for first time on 18.03.1999. Entire case of prosecution is based on sole testimony of victim who has been examined as PW1. Victim is claiming that she was kept confined in a room for about 5-6 days where she was ravished by accused namely Ravi Gupta, Yogesh Khurana, Jaswinder Singh and one unknown person, regarding rest of time period, victim has not given any explanation. Onus was heavily on prosecution to prove the guilt of accused beyond the shadows of reasonable doubt and for this purpose, testimony of sole prosecution witness i.e. victim was required to be of sterling quality. She should have come with truthful version which may inspire confidence. She was required to give detail of events which took place during the period from 07.03.1999 to 27.08.1999. In the statement given by victim as PW1, she has



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merely stated about period of 5-6 days alleging that she was repeatedly raped by aforesaid accused persons.

When statement of victim was recorded as PW1, she admitted that Jaswinder Singh was the one who was owner of Jhankar Public Call Office, Daba Road, Ludhiana where she had worked for him for a period of about one month. She knew Ravi Gupta as well as Yogesh Khurana who was running a cloth shop in same locality where she was residing. Later on, name of said unknown person came out to be Pargat Masih alias Nitu. During cross-examination, victim admitted that even Surjit Kaur arrayed as accused was known to her who is wife of Sarup Masih. Victim claimed that she did not know husband of Surjit Kaur namely Sarup Masih. Victim levelled allegations against Jaswinder Singh and Ravi Gupta who allegedly committed rape upon her while she was working in Public Call Office of Jaswinder Singh. Fact remains that she left the job of Jaswinder Singh and started working with Alamgir Public Call Office, Gill Road, Ludhiana. Even then no report was lodged with police nor she disclosed about this incident to her family members, until her statement was recorded for the first time under Section 164 Cr.P.C. on 10.09.1999.

18. In the case in hand, when FIR was lodged on the statement of complainant i.e. mother of victim, she stated that her daughter was 16 years of age at the time of alleged occurrence i.e. 07.03.1999. Learned trial Court dealt in detail regarding age of victim in para No. 27 of judgment and finally came to conclusion that as per oral statements of witnesses supported by medical record, prosecution failed to establish that victim was 16 years of age, thus,

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considering the evidence she was treated as more than 18 years of age. Aforesaid findings given by learned trial Court are not challenged either by the State of Punjab or by complainant by filing any appeal or revision. Considering the evidence on record, said finding arrived at by learned trial Court is fully justified.

19. Other important aspect of present case is whereabouts of victim from the alleged date of occurrence i.e. 07.03.1999 till she was brought back home on 27.08.1999. So far as victim is concerned, she has not given any explanation regarding her whereabouts for aforesaid long duration. On the other hand, appellants/accused have led evidence in defence. There is statement of Jaswinder Singh son of Lal Singh examined as DW5 who categorically stated that he belonged to village Panj Dhera, Police Station Phillaur. Earlier he was married to Paramjit Kaur and out of this wedlock he was having a daughter. Thereafter, he took divorce from his wife Paramjit Kaur. He wanted to marry again. Bira Masih of his village suggested a match and in this connection he was called to Satluj Hotel, Phillaur where girl was to come along with her relatives for matrimonial alliance. He, accompanied with his brother Nirmal Singh, his wife Balwinder Kaur, mother Kartar Kaur etc. came to the hotel and saw victim 'S' accompanied by a lady known as '*Pandatain*'. Their marriage was settled. They decided to visit Gurudwara Baoli Sahib on the next day for performing marriage i.e. '*Chunni Charauna*' ceremony. On reaching the Gurudwara on next day, *Akhand Path* was going on. Said '*Chunni Charauna*' ceremony was performed in Gurudwara. *Ardaas* was performed. Deposing witness confirmed photographs of his marriage

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Ex.DA and Ex.DB. He took his wife to his house along with family members and they resided in a joint family in village Panj Dhera. She remained in his house for a period of about five and a half months and thereafter, one day her mother, brother along with 2-3 persons came. They stayed for some time, took tea and left the house taking away the alleged victim amicably. The witness confirmed that during this period when victim fell ill, she was taken to a doctor for treatment at Ladowal and Phillaur. He confirmed that victim lived happily in his house and also attended social functions. Aforesaid facts were also confirmed by Nirmal Singh DW3, brother of Jaswinder Singh. Appellants examined Sukhbir Singh as DW1 in defence, who also confirmed marriage of alleged victim 'S' with Jaswinder Singh son of Lal Singh on 12.03.1999 by performing '*Chunni Charauna*' ceremony and also admitted photographs of couple Ex.DA and Ex.DB. Photographs are also proved on record by examining Arjan Singh as DW2 of Lilly Studio, Phillaur who confirmed that photographs Ex.DA and Ex.DB were clicked by him. Victim examined as PW1 was duly confronted with photographs Ex.DA and Ex.DB during her cross-examination, where she admitted that in said photographs, she is wearing bridal attire and boy in said photographs is namely Jaswinder Singh. She also conceded that lady standing beside her was sister-in-law of Jaswinder Singh.

Therefore, counsel for accused have led convincing evidence in defence to prove the fact that victim performed marriage with Jaswinder Singh by way of '*Chunni Charauna*' ceremony and she lived in his house along with family for a period of five and a half months. Complainant i.e.

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mother of victim examined as PW3 also conceded that victim was recovered from village Panj Dhera i.e. residential house of Jaswinder Singh son of Lal Singh DW5. Version put forward by victim examined as PW1 does not convince the mind of this Court that on 07.03.1999, she was actually abducted or continuously raped for about 5-6 days by appellants/accused Ravi Gupta, Yogesh Khurana, Jaswinder Singh and Pargat Masih alias Nitu. It has come in testimonies of Jaswinder Singh DW5 and Nirmal Singh DW3 that one day prior to marriage of Jaswinder Singh with victim, they had collected at Satluj Hotel, Phillaur and thereafter, marriage was performed on next day in Gurudwara on 12.03.1999. Victim examined as PW1 conveniently did not narrate anything for long duration when she lived in house of Jaswinder Singh son of Lal Singh DW5. It has come in evidence that when victim fell ill, she was taken to a doctor at Ladowal as well as Phillaur for treatment. She was moving around and despite this, there was no effort on her part to raise alarm or to lodge report with police in case she was forcibly detained. Victim has not levelled any allegation against Jaswinder Singh son of Lal Singh or his entire family nor she levelled allegation against Sukhbir Singh, Granthi DW1 that her marriage was performed without her consent. Victim has preferred to remain silent regarding aforesaid facts which came into light from the testimonies of witnesses examined in defence.

20. It is matter of record that initially challan was presented against appellants/accused Pargat Masih alias Nitu and Surjit Kaur and during investigation other accused named by victim were found to be innocent. Later on, they were summoned on application under Section 319 Cr.P.C. SI

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Harjinder Singh PW7 during his cross-examination admitted that statements of Nirmal Singh, Balwinder Kaur, Biran Masih, Jasbir Singh, Kartar Kaur, Lal Singh, Sarpanch Hira Singh, Balwinder Masih, Jaswinder Singh, all residents of Panj Dhera were recorded, who confirmed marriage of victim with Jaswinder Singh son of Lal Singh, which lasted for about six months. Learned counsel for appellants also examined A.S. Rai, SSP, Sangrur as DW8, who had investigated the present case along with SI Harjinder Singh, Inspector Paramjit Singh, DSP Gurjit Singh and found Jaswinder Singh, Ravi Gupta and Yogesh Khurana as innocent. In the case in hand, learned trial Court has totally ignored the testimonies of witnesses examined in defence without any valid justification. Facts which came into light during cross-examination of victim as PW1 and surrounding circumstances are not properly appreciated. Therefore, in the light of aforesaid factual position, version put forward by victim 'S' is not trustworthy and her sole statement regarding alleged occurrence cannot be safely relied upon.

21. Consequently, judgment of conviction and order of sentence dated 03.09.2003 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Ludhiana is set aside and accordingly, appeal bearing No. CRA-S-1742-SB-2003 preferred by appellant Jaswinder Singh and appeal bearing No. CRA-S-1862-SB-2003 preferred by appellant Pargat Masih alias Nitu are allowed. Both appellants are acquitted of the charges framed against them.

22. Photocopy of this order be placed on the file of connected case mentioned above.



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23. Pending miscellaneous application(s), if any, in both appeals, stand(s) disposed of accordingly.

**(AMARJOT BHATTI)
JUDGE**

14.02.2025

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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No