



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

I. **CRA-S-616-SB-2004**
Sardar Singh and others Appellants
Vs.
State of Haryana Respondent

II. **CRA-S-646-SB-2004**
Inder Dev Appellant
Vs.
State of Haryana Respondent

**Reserved on: 24.03.2025
Pronounced on: 25.03.2025**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Vikas Kumar, Advocate
for the appellants.

Mr. R.K.S. Brar, Addl. AG, Haryana.

DEEPAK GUPTA, J.

In a case arising out of FIR No.255 dated 10.11.2000 registered at Police Station Chhainsa, six accused namely Inder Dev, Sardar Singh, Nahar Singh, Shamsheer Singh, Satbir Singh and Ram Singh were tried for committing offences under Sections 323, 307 and 120-B of the IPC.

2.1 Vide judgment dated 10.03.2004, court of learned Additional Sessions Judge (Ad hoc), Faridabad held all six of them to be guilty and convicted them under Section 120-B IPC. In addition, accused Inder Dev was also held guilty and convicted under Sections 307 and 323 IPC. Vide a separate order of the even date, Inder Dev was sentenced as under:

307 IPC	<ul style="list-style-type: none"> • Imprisonment for a period of 7 years and to pay a fine of ₹2,000/- with default sentence of six months.
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323 IPC	<ul style="list-style-type: none"> • Fine of ₹1,000/- with default sentence of three months' imprisonment
120-B IPC	<ul style="list-style-type: none"> • Imprisonment for a period of 3 years and to pay a fine of ₹1,000/- with default sentence of three months' imprisonment.

All the sentences were directed to run concurrently.

2.2 The remaining five accused were sentenced to undergo rigorous imprisonment for a period of 3 years and to pay fine of ₹1,000/- each for committing the offence under Section 120-B IPC with default sentence of three months imprisonment.

3. Against the aforesaid conviction and sentence, the present two appeals were filed, one by Inder Dev, and the other by the remaining five convicts.

4. During pendency of the appeal, three of the appellants namely Sardar Singh, Shamsheer Singh and Satbir Singh have expired and as such, proceedings *qua* all three of them stood abated.

5. Thus, this court is now concerned with the appeals pertaining to appellant Inder Dev in CRA-S-646-SB-2004; and appellants Nahar Singh & Ram Singh in CRA-S-616-SB-2004.

6.1 As it emerges on perusal of the paper-book, on 10.11.2000 ASI Krishan Lal (PW-12) went to Escorts Medical Centre Faridabad, where Rattan (PW-2) met him and made statement Ex.PB stating therein that on 9.11.2000 at about 8:50 pm, he, his brother Mahabir (PW-1) and Mahabir's wife Parvati (PW-3) were sitting in the *Kotha* of the tubewell in the fields of village Jawa, where two young boys, aged about 20-25 years, came and pressed the mouths of Mahabir and Parvati. During scuffle, one of them fired shots upon Mahabir and the other upon Parvati. The shots hit the right hand, and left side abdomen of Mahabir, and the left side of the forehead of Parvati. Upon hearing the alarm raised by Rattan, several persons came there, at which the two assailants fled



away from the spot. It was claimed that he (Rattan), Mahabir and Parwati could identify the assailants, if they came face to face before them.

6.2 On the basis of the aforesaid statement Ex.PB, formal FIR was recorded under sections 323 & 307 IPC and section 25 of Arms Act (copy Ex. PJ) and investigation was initiated. Statements of Mahabir and Parwati were recorded under section 161 CrPC on 13.11.2000, who made statements on the same lines. On 27.12.2000, both Rattan and Mahabir made supplementary statements under section 161 CrPC that as per their enquiries, one of the assailants was Inder Dev resident of village Alika, without disclosing the basis of this belief. Accused Inder Dev was arrested on 4.1.2001. Nothing could be recovered from him. He alone was prosecuted by the police vide challan report dated 14.1.2001.

6.3 During pendency of the case against Inder Dev, the police carried out further investigation and submitted a supplementary challan under section 173(8) of CrPC against the remaining accused namely, Sardar Singh, Nahar Singh, Shamsheer Singh, Satbir Singh and Ram Singh on the basis of statements of PW-9 Rajender Singh, PW-10 Harkesh and the Mahender, who stated that they had over-heard conversation between the above accused persons while hatching a conspiracy to eliminate Mahabir PW-7 who was helping Jagdish in some land litigation with Sardar Singh accused.

6.4 On the basis of both the challan reports, the accused persons were charged on 23.8.2001 for the commission of the offences under sections 307, 323 and 120B IPC. They pleaded not guilty and claimed trial.

6.5 To prove its case, the prosecution examined as many as 12 witnesses. The material witnesses are Mahabir PW-1, Rattan PW-2, Parwati PW-3, Dr. Rakesh Singh PW-7, Raghubir Singh, Inspector Police PW-8, Rajender PW-9, Harkesh PW-10 and ASI Krishan Lal PW-12.

6.6 In their statements recorded under Section 313 Cr.PC, the accused pleaded their false implication by taking the plea of their strained relations with



Mahabir PW-1.

6.7 After hearing both the sides, trial court found all the accused to be guilty and convicted and sentenced them, as per details given earlier.

7. It is vehemently contended by learned counsel for the appellants that conviction of the appellants is the result of complete misappreciation of evidence on record, indicating their false implication. On the other hand, learned State counsel has defended the impugned judgment of conviction and order of sentence.

8. This Court has considered submissions of both the sides and have perused the record.

9. Evidence produced by prosecution reveals that Inder Dev accused is the daughter's son of Sardar Singh accused. He was known to the PWs Mahabir, Rattan and Parwati even prior the incident in question. Mahabir PW-1 has admitted in his cross-examination that the said Inder Dev was the daughter's son of Sardar Singh and claims that he had seen him running from the spot. Rattan PW-2 has similarly admitted that Inder Dev was son of Sardar Singh's daughter and the said Inder Dev had studied in his village up to 7th standard and further that he was known to him because he was residing in his neighbourhood. Similar admissions are made by PW-3 Parwati, Raghubir Singh Inspector PW-8, Rajender PW-9, and ASI Krishan Lal PW-12.

10. Thus, it stands firmly established that Inder Dev accused was known to the complainant as well as the injured. Despite this, the complainant Rattan PW-2 did not mention the name of Inder Dev in his statement Ex. PB which is the foundation of the FIR. Still further, injured Mahabir PW-1 and his wife Parwati PW-3 did not name said Inder Dev as one of the assailants in their statements under section 161 Cr.PC made on 13.11.2000. It was for the first time that Rattan and Mahabir came out with the version on 27.12.2001 through their supplementary statements under section 161 CrPC that it was their belief that one of the assailants was Inder Dev. Even in these statements, they did not



disclose the basis of this belief. It is also worth mentioning that Rattan PW-2 during the trial admitted that he could not identify the assailants at the time of incident and for this reason, he could not tell their names before the police. Thus, it appears to be a case of total false implication of Inder Dev accused by the witnesses, who are not reliable at all.

11. Still further, Mahabir and Rattan PWs are not found to be credible witnesses. Mahabir PW admitted during the trial that he had made statement dated 27-12-2000 under section 161 CrPC. In the said statement, there is no averment that Rajender & Harkesh PWs had told him about any conspiracy hatched by Sardar Singh and others to eliminate him. He was also confronted with supplementary statement Ex. DA made on 27-2-2001, in which also he did not allege so. Rattan PW-2 has stated during the trial that the factum of conspiracy hatched by accused persons was revealed to him after 3 days of the incident, when Mahabir PW-1 told him after gaining consciousness. He further claimed that he had revealed aspect of conspiracy to the police after 3 days in the hospital. However, both the brothers never made any such statement before the police during investigation at any stage. It is also note-worthy that Rajender PW-9 has himself admitted that he had not disclosed the factum of the alleged conspiracy to anybody and that he had disclosed the same to the police after 10-15 days. Harkesh PW-10 has likewise stated that he had disclosed this aspect to the police after 10-15 days. Harkesh PW-10 also stated after hearing alleged conversion, he did not inform Rattan etc. Even the claim made by these witnesses that they had disclosed this aspect to the police after 10-15 days is wrong, as for the first time the police had recorded their statement on 12-3-2001.

12. Further, Parwati PW-3 stated in her cross-examination that Inder Dev had fired shots from a distance of less than 3 feet. If that was so, there should have been blackening around the wounds of her husband, whom these shots were allegedly hit. Dr. Rakesh Singh PW-7 has, however, admitted in his cross-examination that there was no blackening noticed around the injuries of both Mahabir and Parwati. It thus falsifies the prosecution version.



13. Further no pistol has been recovered from Inder Dev accused during investigation.

14. The contention that Inder Dev accused had refused to join the test identification parade and so, adverse inference should be drawn against him, has no merit in the facts and circumstances of the case. As noted above, Inder Dev is the daughter's son of Sardar Singh accused. He had studied in the village of Sardar Singh accused. He was known to witnesses Mahabir PW-1, Rattan PW-2 and Parwati PW-3, as has been admitted by these witnesses. Still, they did not name him in their first version made before the police, as they had not identified him at the time of incident. Inder Dev is named by them for the first time on 27-12-2000, alleging that the firing was made by Inder Dev. All they stated was that they had made investigations from which they were satisfied that Inder Dev had fired the shots. Mahabir PW-1 was duly confronted with the said statement dated 27-12-2000. So there is no force in the contention that an adverse inference has to be drawn against Inder Dev as he had refused to join the test identification parade. Adverse inference cannot be drawn against the accused on account of his non-participation in the test identification parade as during the trial, the witnesses admitted at the time of incident, they had not identified the accused.

15. The accused, other than Inder Dev, have been implicated via section 120B IPC. The relevant witnesses in this regard are PW-9 Rajender and PW-10 Harkesh. PW-9 Rajender claims to have over heard conversation between the accused persons while hatching conspiracy to eliminate Mahabir on 5.11.2000. He came out with this version for the first time before the police on 12.3.2001. He has admitted that he did not disclose this conspiracy to Jagdish, Mahabir and any respectable person of his village. Like-wise, PW-10 Harkesh claims to have over-heard conversation between the accused on 4.11.2000 hatching a conspiracy to finish Mahabir. In his cross-examination, he admitted that after hearing this conversation, he did not go the houses of Jagdish or Rattan to inform them about this plan. He further admits that he did not disclose this information to any Panch, sarpanch and Lambardar in the village. He also admits that he did



not inform the police when it came in village soon after the incident.

16. The charge of conspiracy, based upon the alleged over-hearing of conversations in between the accused, appears to be motivated to falsely implicate the accused. It is strange that on all the dates i.e. 4.11.2000, 5.11.2000 and 7.11.2000, the witnesses found the accused persons indulging in similar conversation openly but still, none of them reported or conveyed the same to the injured or any respectables of the village.

17. On account of entire discussion as above, impugned judgments of conviction and order of sentence, as passed by the trial court, cannot be sustained. Both the appeals are accepted. All the appellants – accused are acquitted of the charges. They are discharged from their respective bonds.

(DEEPAK GUPTA)
JUDGE

25.03.2025

Neetika Tuteja

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No