



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3288-2009 (O&M)

Gurdeep Singh and another

... Petitioners

Versus

State of Punjab

... Respondent

Reserved on: 27.07.2026

Pronounced on: 31.07.2026

Uploaded on: 31.07.2026

Whether only the operative part of the judgment is pronounced ? No

Whether full judgment is pronounced ? Yes

CORAM: HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI

Argued by: Mr. Daldeep Singh, Advocate
for the petitioners.

Ms. Gurpreet Kaur Sarabha, AAG, Punjab.

RAMESH CHANDER DIMRI, J.

1. This judgment shall dispose of a Criminal Revision Petition filed against the judgment dated 10.11.2009 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Mansa vide which an appeal filed by the petitioners/accused (for brevity, 'petitioners') against the judgment of conviction dated 19.09.2007 and an order of sentence of that

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very date passed by learned Judicial Magistrate 1st Class, Budhlada (for brevity, 'Magistrate') arising out of an FIR No.81 dated 26.10.1998 registered under Sections 324, 323, 34 of the Indian Penal Code, 1860 (for brevity, '1860 Code') at Police Station Budhlada, District Mansa, thereby convicting and sentencing the petitioners for commission of offences under Sections 326, 324, 323 read with Section 34 of 1860 Code, was dismissed.

2. Prosecution case as contained in the FIR Ex.PA/3 is that on 17.10.1998 at about 11.00 pm, a ruqa was received in Police Station Budhlada from Primary Health Centre, Budhlada that PW2 Balla Singh son of Sh. Teja Singh resident of Village Kulana stood admitted to the said Centre with a history of injuries. On getting the said ruqa, PW4 ASI Sukhdev Singh of the said police station and others reached the said Primary Health Centre and obtained MLR of PW2 Balla Singh from the concerned doctor. He was declared unfit on the said date and therefore, his statement could not be recorded. On 18.10.1998, the said ASI etc. again went to the said Centre but the doctor concerned intimated that PW2 Balla Singh has been referred to Civil Hospital, Mansa. In turn, the said ASI etc. reached the said hospital but PW2 Balla Singh was declared unfit for the said purpose on that date also. Said ASI also received a ruqa about admission of the petitioner Gurdeep Singh resident of Village Kulana in PHC Budhlada with a history of injuries. On 19.10.1998, the said ASI etc. again reached Civil Hospital, Mansa for recording statement of the injured.

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He was declared fit for the said purpose. Accordingly, the said ASI recorded statement Ex.PA of PW2 Balla Singh. A translated version of the said statement has been filed by the petitioners on record as Annexure P-5/T. Such version is reproduced as under: -

“Statement of Balla Singh s/o Teja Singh, Jat, resident of Kulana, P.S. Budhlada, aged about 28 years.

I am resident of Village Kulana. Our residence is on pucca Budhlada road in our fields. Our fields are on the East side at higher level. On the West side, the fields of Gurbaksh Singh, Gobind Singh sons of Mehar Singh, Jat, resident of Kulana, are located across the road which are on lower level. Due to heavy rain, water from our fields overflowed and entered into the paddy fields of Gurbaksh Singh etc. across the road. They filed a complaint against us in the police station. On 17.10.98 in the night at about 09.00 PM, Police came and then I and Labh Singh son of Sadhu Singh went away to the village to call Tara Singh, my grandfather and other persons. In the meantime, the police and other respectable persons stopped the flow of water. Then I and Labh Singh were coming to our house at about 10.00 PM. The electric light from Sadhu Singh’s dhani was shining on the road. I saw that Gurbaksh Singh armed with gun, Gurdeep Singh son of Gurbaksh Singh

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armed with Ghop and Bhundi Singh son of Jaggar Singh Ramdasia who is servant of Gobind Singh armed with dang were standing on the road near the fields of Gurbaksh Singh. When we were about to pass by them, Gurdeep Singh gave blow with Ghop on my right elbow and Bhundi Singh gave blow with dang on the head. I fell down, then Gurdeep Singh gave blow with Ghop on right side of my chest. Bhundi Singh gave injuries with dang on my body. I and Labh Singh raised noise then Sadhu Singh came at the spot. In the meantime, they all three ran away along with their respective weapons. Thereafter, my father after arranging the vehicle got me admitted at Civil Hospital, Mansa, where I am under treatment. Due to grudge of overflow of rain water, they have caused injuries to me. I have got recorded the statement and heard the same, which is correct. I am complainant. Action be taken.

*Attested
Sukhdev Singh ASI
P.S. Budhlada
19.10.98”*

*Balla Singh above
LTI*

3. MLR of the said PW contained 07 injuries. Injuries No.1 to 5 on his person were found to be simple having been caused by a blunt weapon whereas injuries No.6 & 7 were described as caused by sharp-edged weapon. Injuries No.5 to 7 were kept for X-ray. On the basis of the

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said statement and contents of the said MLR, said ASI found offences under Sections 323, 324, 34 of 1860 Code to have been committed and decided that further action in the matter shall be taken on receipt of X-ray report. Since he received intimation about the petitioner Gurdeep Singh also receiving injuries, he found statement of PW2 Balla Singh as doubtful and decided that the said statement shall be entered in roznamcha for verification by SHO concerned and further action shall be taken only after such verification. He accordingly entered the said statement in the roznamcha.

4. Thereafter, on 26.10.1998, the said ASI recorded statement of the petitioner Gurdeep Singh son of Gurbax Singh resident of Village Kulana. Its true translation has been filed on record by the petitioners. It is reproduced as under: -

“I am permanent resident of Village Kulana and do agricultural work. On the road going towards the village my field is towards South, which is low. Towards North there are the fields of Teja Singh son of Gurdial Singh and Sadhu Singh son of Chanan Singh which are on higher level. Due to water entering our fields the paddy crop had got lodged. Teja Singh released the water of his fields towards the road. We built a bundh adjoining our fields on the road to stop the water from flowing into our fields and we had also given information to

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Police Station Budhlada. The police arrived at the spot and stopped the flow of water at around 9 PM. Teja Singh was at home, his son Balla Singh was not found. Bhundi Singh and I sat on guard on the road near our fields. At about 10 PM Balla Singh son of Teja Singh armed with gandasa and Labh Singh son of Sadhu Singh armed with Kasia came near us and started releasing water. I stepped forward to stop them. Balla Singh directly gave gandasa blow on me which hit on the palm of left hand, Labh Singh caused injuries to me with Kasia on my left elbow and left gurj and Bhundi Singh rescued me. While stopping flow of water they caused injuries to me. Thereafter in the morning my father got me admitted at Hospital where I am under treatment. I have got recorded the statement, I am complainant. Action be taken. Sd/ Gurdeep Singh, Attested Sukhdev Singh ASI P.S. Budhlada.

5. On the basis of the said statements, the following proceedings filed by the petitioners on record were recorded: -

“Police Proceedings: Myself ASI alongwith C-Gurdeep Singh 212, PHG Mara Singh, PHG Gurcharan Singh, on 18.10.98, had gone to record statement of Balla Singh at CH Mansa, when one ruqa from Medical Officer, PHC Budhlada was received that Gurdeep Singh S/o Gurbaksh Singh Jat resident

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of Kulana, was admitted in injured condition. On return, opinion was sought from the doctor to record the statement of the injured, who declared injured was unfit. Today again alongwith PHG Mara Singh and PHG Gurcharan Singh, I reached at PHC Budhlada and after taking the opinion that injured was capable to record statement, the statement of Gurdeep Singh was recorded word by word and read over, who after acknowledging it to be correct put his signature under his statement which was verified by me. In MLR No.175/98/KRG of Gurdeep Singh total three injuries, injury No. 1, 2 blunt and kept for X-ray, injury No.3 with sharp weapon had been mentioned and kept for consideration. From the statement of the complainant and MLR offence under section 323/324/34 IC is made out. This statement is concerning the earlier statement recorded by Balla Singh son of Teja Singh resident of Kulana. In this regard with the action taken on Balla Singh's statement the proceeding will be carried out. Sd/ Sukhdev Singh ASI P.S. Budhlada, Civil Hospital, Health Center Budhlada 9:30 AM. The entry of statement was made as per rules. True Copy Sd/- Jasveer Singh A/MHC P.S. Budhlada dated 26.10.98. Police Proceeding: The investigation of the above rapat was conducted by SI Joga Singh-SHO who directed myself SI that

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facts have been found correct. By taking the X-Ray Film and X-Ray Report of Balla Singh son of Teja Singh - Jat resident of Kulana, inquiry be made about the nature of injuries. Today myself ASI obtained X-Ray Film and Report from Civil Hospital, Mansa, and the doctor. From the investigation of X-Ray Report and MLR offences u/s 324/323/34 IPC have been made out. With regard to the ziman of report the nature of injury, further action will be taken as the situation arises. Sukhdev Singh ASI P.S. Budhlada dated 26.10.98.”

6. On the basis of said statement of Balla Singh and police proceedings, FIR Ex.PA/3 dated 26.10.1998 was registered. A cross-case in respect of the said statement of the petitioner Gurdeep Singh was also registered. During investigation, Section 326 of 1860 Code was added to the FIR and on conclusion, the petitioners Gurdeep Singh and Bhundi Singh were found to be involved in the commission of offences of the FIR in question whereas third accused Gurbax Singh was found to be innocent by the police. Accordingly, on conclusion of the investigation, a report under Section 173 of the Code of Criminal Procedure, 1973 (for brevity, ‘1973 Code’) was filed against the petitioners before the Court concerned. Final report in the said cross-case was also filed against PW2 Balla Singh and PW3 Labh Singh.

7. After receipt of the said report/s, concerned Magistrate

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complied with Section 207 of the 1973 Code and thereafter, heard the State of Punjab as well as the defence on the issue of framing of charges against the petitioners. After such hearing, it chargsheeted them under Sections 326, 323, 324, 34 of 1860 Code. The petitioners pleaded not guilty to the charges and claimed trial. In his evidence, PW2 Balla Singh also indicted the said Gurbax Singh as armed with a gun participating in the occurrence of the FIR. The prosecution then filed an application under Section 319 of 1973 Code. After hearing the State on the said application, the trial Court, vide order dated 29.08.2001, summoned the said Gurbax Singh as an additional accused. On appearance of the said Gurbax Singh, prosecution and the defence were again heard on the issue of framing of charges against the petitioners and another. After such hearing, they all three were chargsheeted under Sections 326, 323, 324, 34 of 1860 Code. They pleaded not guilty to the charges and claimed trial. In its evidence, the prosecution examined the following four witnesses: -

Sr. No.	Name of the witness	Nature of evidence
1.	PW1 Dr. Kuldeep Rai	Medico Legal Examination witness
2.	PW2 Balla Singh	Complainant/injured
3.	PW3 Labh Singh	Eyewitness
4.	SI Sukhdev Singh	Investigating Officer

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8. In addition to examination of the said witnesses, the prosecution also proved the following documents in support of its case: -

Sr. No.	Exhibit	Nature of document
1.	Ex.PA	Statement of Balla Singh
2.	Ex.PA/1	Police proceedings
3.	Ex.PA/2	Ruqa dated 17.10.1998
4.	Ex.PA/2	Police proceedings
5.	Ex.PA/3	Carbon copy of FIR.
6.	Ex.PA	MLR of the injured
7.	Ex.PA/1	Skiagram showing the injuries
8.	Ex.PA/3	Opinion of the Doctor
9.	Ex.PA/4	Rough site plan of place of occurrence.
10.	Ex.PA/4	Opinion of the Doctor
11.	Ex.PA/5	Arrest memo
12.	Ex.PA/5/1	Opinion of the Doctor
13.	Ex.PA/5	Opinion of the doctor
14.	Ex.PA/6	Opinion of the Doctor
15.	Ex.PA/6	Personal search memo
16.	Ex.PA/7	Opinion of the Doctor
17.	Ex.PA/7	Recovery memo of Ghop
18.	Ex.PA/8	Recovery memo of Dang
19.	Ex.PA/9	Personal search memo

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20.	Ex.PA/10	Receipt issued by gun house
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9. On conclusion of the prosecution evidence, statements of the petitioners under Section 313 of the 1973 Code were recorded. In such statements, they pleaded false implication and stated that it was PW2 Balla Singh and PW3 Labh Singh who caused injuries to the petitioner Gurdeep Singh on the date and time in question.

10. After recording such statements, the petitioners and another examined following two witnesses in their defence: -

Sr. No.	Name of the witness	Nature of evidence
1.	DW1 Dr. Kuldeep Rai	Medico Legal Examination witness
2.	DW2 Gurvinder Singh	Ex-Sarpanch of Village Kulana

11. In addition to examination of the said defence witnesses, the petitioners also proved the following documents in support of their case: -

Sr. No.	Exhibit	Nature of document
1.	Ex.DW1/A	MLR of petitioner Gurdeep Singh
2.	Ex.DW1/B	Skiagram showing the injuries

12. On conclusion of the evidence, the learned Magistrate heard the parties on merits of the case. After such hearing, it convicted the



petitioners under Sections 326, 324, 323 read with Section 34 of 1860 Code but acquitted the said Gurbax Singh of the charges framed against him. The petitioners were sentenced in the following terms: -

Gurdeep Singh	Under Section 326 of 1860 Code	Rigorous imprisonment for 2½ years with fine of Rs.1000/-. In default of payment of fine, to further undergo RI for one month.
	Under Section 324 of 1860 Code	Rigorous imprisonment for 1½ years.
	Under Section 323 read with Section 34 of 1860 Code	Rigorous imprisonment for 03 months.
Bhundi Singh	Under Section 326 read with Section 34 of 1860 Code	Rigorous imprisonment for 1¼ years with fine of Rs.500/-.
	Under Section 324 read with Section 34 of 1860 Code	Rigorous imprisonment for 09 months.
	Under Section 323 of 1860 Code	Rigorous imprisonment for 06 months.

13. Aggrieved of such conviction and sentence, the petitioners filed an appeal before the Court of Sessions, Mansa. The said appeal was decided by the learned Additional Sessions Judge (ad hoc), Fast Track Court, Mansa through its judgment dated 10.11.2009. Sentence of the petitioner No.1 Gurdeep Singh under Section 326 of 1860 Code was reduced from 2½ years to 02 years and that awarded under Section 324 of 1860 Code was reduced from 1½ years to 06 months. Similarly, sentence of the petitioner No.2 Bhundi Singh under Section 326/34 of 1860 Code was reduced from

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1¼ years to 01 year and that awarded under Section 324/34 of the said Code was reduced from 06 months to 03 months. With the said modification in sentence, it dismissed the appeal.

14. Aggrieved of the said dismissal, the petitioners filed the present revision petition. It was admitted on 18.12.2009 and sentence of the petitioners was ordered to be suspended on 23.12.2009. They are now stated to be on bail.

15. I have heard Mr. Daldeep Singh, Advocate, learned counsel for the petitioners and Ms. Gurpreet Kaur Sarabha, learned AAG, Punjab, on merits of the petition in question.

16. Learned counsel for the petitioners has argued that the case in question is a case of version and cross-version; that the impugned judgments have not dealt with the issue as to who was the aggressor in the occurrence in question; that the same have also not dealt with the issue as to whether any of the parties exceeded their right of private defence; that PW2 Balla Singh and PW3 Labh Singh were also tried in cross-case registered on the statement of the petitioner Gurdeep Singh and were convicted and sentenced on 19.09.2007 by the same Court; that in view thereof, present revision petition deserves to be accepted; that irrespective of the said arguments, there is no evidence on record to substantiate the evidence given by PW1 Dr. Kuldeep Rai about grievous nature of injury on the person of

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PW2 Balla Singh; that in the absence of such evidence, opinion given by him in that regard is inconsequential; that once the said opinion is excluded from consideration, at the maximum, an offence under Sections 324, 323, 34 of 1860 Code, even if the prosecution case would have been believed to be true, was made out against the petitioners; and that in view thereof, the petitioners may be granted probation. He has accordingly firstly prayed for acceptance of the revision petition in entirety and in the alternative, for part acceptance of the same by setting aside the conviction and sentence of the petitioners under Section 326 of 1860 Code and then for grant of probation to the petitioners. In support of his arguments, he has taken me to the evidence on record some portion of which has been appended to the petition in question through an application.

17. On the other hand, learned AAG, Punjab has argued that the impugned judgments of conviction and order of sentence are as per law and evidence on record; that the revisional jurisdiction is always a limited jurisdiction and evidence cannot be re-appreciated while exercising the same; and that if the conclusion arrived at by the Courts below is taken in true sense thereof, there is no ground available for exercise of revisional jurisdiction under Section 401 of 1973 Code against the impugned judgments and order. She has accordingly prayed for dismissal of the

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revision petition.

18. After such hearing and perusal, I may state that revisional powers of this Court can be exercised in terms of Section 401 of 1973 Code. Since the petitioners have filed a revision petition against the impugned judgments and order, it has to be dealt within the parameters prescribed in the said Section. Said section is therefore reproduced as under:-

“401. High Court's powers of revision.—

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is

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brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

19. I may also state that in respect of scope of revisional powers of a High Court, a three Judge Bench of Hon’ble the Supreme Court, in the report ***Pakalapati Narayana Gajapathi Raju & others Vs. Bonapalli Peda Appadu & another, (1975) 4 SCC 477***, observed as under:-

“3. Section 439 (1) of the Code of Criminal Procedure provides that in exercise of revisional jurisdiction, the High Court may exercise any of the powers conferred on a court of appeal. This provision is made expressly subject to sub-section (4) of Section 439 under which nothing contained in the section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. Section 439 has been interpreted in several decisions of this Court which have taken the view that the revisional jurisdiction, when invoked by

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a private complainant against an order of acquittal, ought not to be exercised lightly and that it can be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. (See Satyendra Nath Dutta v. Ram Narain, (1975) 3 SCC 398; Akalu Ahir v. Ramdeo Ram, (1974) 1 SCR 130; Changanti Kotaiah v. Goginoni Venkateshwara Rao, (1973) 3 SCR 867. It is clear from these decisions that the revisional jurisdiction cannot be invoked merely because the lower court has not appreciated the evidence properly. The High Court has in its judgment referred to the decisions of this Court but in applying those decisions it has transgressed the limits of its revisional powers.”

20. In respect of scope of revisional powers of a High Court, a three Judge Bench of Hon’ble the Supreme Court, in the report ***Duli Chand Vs. Delhi Administration, (1975) 4 SCC 649***, observed as under:-

“4. Now, the jurisdiction of the High Court in a Criminal Revision Application is severally restricted and it cannot embark upon reappreciation of the evidence, but even so, the learned single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of

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the appellant. This was, however, of no avail, as the learned single Judge found that the conclusion reached by the lower Courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant.

5.The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purpose of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse. The High Court came to the conclusion that the evidence clearly established that the death of the deceased was caused on account of the negligent driving of the bus by the appellant.”.

21. In respect of such powers, a two Judge Bench of Hon’ble the Supreme Court, in the report ***Janata Dal Vs. H.S. Chowdhary, (1992) 4 SCC 305***, observed as under:-

“130. The object of the revisional jurisdiction under Section

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401 is to confer power upon superior criminal Courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some undeserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.

131. xxxx xxxx xxxx

132. The criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based

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on sound principles.”

22. While quoting observations made in ***Janata Dal***'s report (*supra*) with approval, a three Judge Bench of Hon'ble the Supreme Court, in the report ***T.N. Dhakkal Vs. James Basnett & another, (2001) 10 SCC 419***, observed as under:-

“9. We are in agreement with the above exposition of law. We are of the opinion that though the High Court has revisional jurisdiction under Section 401 of the Code and can exercise its discretionary jurisdiction to correct miscarriage of justice, but whether or not, there is justification for the exercise of that discretionary jurisdiction would depend upon the facts and circumstances of each case. The controlling power of the High Court under Section 401 of the Code being discretionary is required to be exercised only in the interest of justice, having regard to all the facts and circumstances of each particular case and not mechanically.”

23. In respect of revisional jurisdiction of a High Court, a two Judge Bench of Hon'ble the Supreme Court, in the report ***State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452***, observed as under:-

“Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned

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counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

24. Observations made in ***Duli Chand***'s report (*supra*) and those made in a report ***State of Orissa Vs. Nakula Sahu, (1979) 1 SCC 328*** as well as ***Puttumana Illath***'s report (*supra*) were approved by a three Judge Bench of Hon'ble the Supreme Court in the report ***Raj Kumar Vs. State of***

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Himachal Pradesh, (2008) 11 SCC 76.

25. I may also state that in the present case, PW2 Balla Singh and PW3 Labh Singh have put forth a case in which the petitioners allegedly caused injuries to them on 17.10.1998 around 10.00 pm. They in fact say that when they were returning from their village to their houses, the petitioners were sitting in their field and when they were about to pass through the petitioners, the petitioners inflicted injuries to them in the abovestated manner. As against their such stand, the petitioners say that on the abovestated date and time, when they were guarding the blockade put forth by them and the police to stop rainy water from entering their fields from the fields of PW2 Balla Singh and PW3 Labh Singh, the said two prosecution witnesses caused injuries to them in the manner set forth in the cross-case put forth by them. Deposition of PW4 ASI Sukhdev Singh has proved rough site plan Ex.PA/4 prepared by him on 09.12.1998. PW2 Balla Singh and PW3 Labh Singh have set forth the place of occurrence in question as Point 'C' mentioned in the said site plan. The said point in fact exists on a metalled road between Village Kulana and Budhlada. As per the said site plan, the petitioners were stated by PW2 Balla Singh to be present at Points 'A' & 'B' shown in the same and they caused injuries to the said PW at Point 'C'. PW2 Balla Singh and PW3 Labh Singh do not say that the petitioners trespassed into their side of the road to cause injuries to PW2 Balla Singh. As against the said stand of the said prosecution witnesses, the

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petitioners say that they were guarding a blockade put forth by them and the police to stop rainy water from entering their fields towards western side of the road and at that time, on the abovestated date, PW2 Balla Singh and PW3 Labh Singh came to the place of such guard and inflicted injuries to the petitioner Gurdeep Singh. In an occurrence involving version and cross-version, it has to be seen as to who was the aggressor. If one party is established as aggressor, it has also to be seen as to whether the opposite party involved in the occurrence exceeded its right of private defence. So far as right of private defence is concerned, in terms of Section 96 of 1860 Code, anything done in the exercise of such right is not an offence. Section 97 of the said Code talks of private defence of the body and of property, whereas Section 99 thereof prescribes the situations wherein no right of private defence is available. Section 101 of the said Code prescribes the circumstances under which the right of private defence extends to causing any harm other than death to a person whereas Section 102 of 1860 Code talks of commencement and continuance of the right of private defence of the body. Section 104 of the said Code defines the situations when a right of private defence of property extends to causing any harm other than death to a person. Section 105 of the said Code talks of commencement and continuance of the right of private defence of property. The said Sections, since the same are material for deciding the petition in question, are reproduced as under: -

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“96. Things done in private defence.— Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property.— Every person has a right, subject to the restrictions contained in section 99, to defend—

First — His own body, and the body of any other person, against any offence affecting the human body;

Secondly. — The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

99. Acts against which there is no right of private defence. -

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that

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direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Extent to which the right may be exercised.— *The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.*

Explanation 1.— *A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.*

Explanation 2.— *A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.*

101. When such right extends to causing any harm other than death.— *If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions*

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mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

102. Commencement and continuance of the right of private defence of the body.— *The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.*

104. When such right extends to causing any harm other than death.— *If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.*

105. Commencement and continuance of the right of private defence of property.— *The right of private defence of property commences when a reasonable apprehension of danger to the property commences.*

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The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.”

26. A perusal of the said provisions shows that every person has a right subject to the restrictions contained in Section 99 of the said Code to defend his moveable or immoveable property or that of any other person against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit the said offence. A right of private defence was dealt with by the Hon'ble Supreme Court in the report **Darshan Singh Vs. State of Punjab and**

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another, (2010) 2 Supreme Court Cases 333. While referring to its earlier decisions on the availability of such right, it delineated the following principles about such right: -

“(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminus with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to

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modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

27. Applying the said provisions and principles to the present case, I may state that true it is that PW2 Balla Singh and PW3 Labh Singh say that they were attacked by the petitioners when they were crossing the petitioners on the road. At the same time, a perusal of the site plan Ex.PA/4 shows that the occurrence in question, in fact, took place on left side of the road when one proceeds from Village Kulana towards Budhlada on the said

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road whereas houses of PW2 Balla Singh and PW3 Labh Singh were situated on right side of the road. In terms of statement Ex.PA of PW2 Balla Singh itself, family of the petitioners had complained against the family of the said two prosecution witnesses against releasing rainy water in their fields because of which on 17.10.1998 itself at about 09.00 pm, police had come to the spot and had blocked the release of the said water in the fields of the petitioners. May be that the said two prosecution witnesses have deposed that when they were returning to their houses from their village, the petitioners caused injuries to them in the abovestated manner. At the same time, when the release of water to the fields of the petitioners had already been got stopped by the police on the abovestated date at about 09.00 pm, what was the reason for the petitioners to cause injuries to the said two prosecution witnesses at 10.00 pm when they were returning to their houses, has not at all been brought on record. In fact no reason for the occurrence in question having been taken place at 10.00 pm on the abovestated date has been rendered by the said two prosecution witnesses. As against their stand, deposition of DW2 Gurvinder Singh, Ex-Sarpanch of Village Kulana, establishes that on the abovestated date, the petitioners were guarding their fields and specifically release of rainy water from the fields of the said prosecution witnesses to their fields and in that process, when the said two prosecution witnesses tried to open the blockade got installed by the police at 09.00 pm but were tried to be stopped by the petitioners, the said two

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prosecution witnesses caused injuries to the petitioners, appears to be nearer to the contents of the said site plan. In fact, if the said site plan is seen minutely, it shows that fields of the petitioners start from Point 'A' & 'B' wherein the petitioners were stated to be present at the time of occurrence in question. In view thereof, there does not appear to be any occasion for the petitioners to come to Point 'C' on the road to cause injuries to PW2 Balla Singh without a cause and without the said prosecution witness saying anything to them. Rather, it appears that the story put forth by the defence that the said two prosecution witnesses attempted to open the said blockade and when were tried to be stopped, they caused injuries to the petitioners, appears to be genesis of the occurrence. Not doubt, the petitioners have not come forward with a plea that in the said occurrence, they also caused injuries to PW2 Balla Singh. At the same time, it was for PW2 Balla Singh to narrate version and cross-version of the same occurrence before the police and Court. However, he did not come forward with the same. Keeping in view the contents of the said site plan and evidence on record, it appears that PW2 Balla Singh and PW3 Labh Singh were the aggressors to the fields of the petitioners and when they tried to open the blockade put forth by the petitioners and the police for stopping rainy water from entering their fields but were tried to be stopped, the occurrence in question took place in which both the parties received injuries. In fact, on 19.09.2007 itself, PW2 Balla Singh and PW3 Labh Singh were convicted for causing

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injuries to the petitioner Gurdeep Singh on the same date and were sentenced under Sections 324, 323 read with Section 34 of the 1860 Code. Nothing has been brought forward to show that the said judgment of conviction and order of sentence have not attained finality. Although the said judgment does not determine PW2 Balla Singh and PW3 Labh Singh as aggressors in the occurrence in question or as the persons who exceeded their right of private defence of person or property, yet, once they have been convicted for the said offences in respect of the occurrence taking place on the same date and time, it comes out that they have in fact been indicted for causing injuries to the petitioner Gurdeep Singh in the occurrence in question.

28. At the same time, the impugned judgments do not at all discuss as to who was the aggressor in the present case and if PW2 Balla Singh and PW3 Labh Singh were the aggressors which fact can be concluded from the site plan Ex.PA/4, as to whether the petitioners exceeded their right of private defence of person or property. Without determining the petitioners and the said two prosecution witnesses either as aggressors or having exceeded their right of private defence, the petitioners could not have been convicted in the present case. The impugned judgments of conviction, since the same have not dealt with the said issues, turn out to be materially perverse and against the settled legal principles.

29. There is one more angle of the matter. No doubt the

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prosecution has examined PW1 Dr. Kuldeep Rai in support of its contention that injury No.6 caused to PW2 Balla Singh was grievous in nature. At the same time, a perusal of his deposition shows that he had rendered the opinion mentioned in the document Ex.PA/3 on the basis of X-ray report prepared by Dr. S.P. Bansal and also surgical notes of bed head ticket of PW2 Balla Singh prepared by him. At the same time, the said X-ray report and surgical notes were not at all proved in accordance with law. Dr. S.P. Bansal has also not been examined in support of the said report and notes. In the absence of his examination and proof of the said documents in accordance with law, opinion rendered by PW1 Dr. Kuldeep Rai that injury No.6 on the person of PW2 Balla Singh was grievous in nature cannot be legally sustained and confirmed. Therefore, even if the petitioners would have been determined either as aggressors or having exceeded their right of private defence, for the absence of such proof, I would have set aside conviction and sentence of the petitioners under Section 326 of the 1860 Code and would have granted benefit of probation to the petitioners in the present case under Sections 324 and 323 of the 1860 Code.

30. The abovestated reasoning and discussion show that the impugned judgments of conviction have ignored the settled legal principles. The same are unreasonable and contain glaring features which have caused gross miscarriage of justice. Such judgments have neglected to exercise proper precaution and have caused undeserved hardship to the petitioners.

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Revisional powers should be exercised to do real and substantial justice. The above-stated facts and observations make the present case a fit case for exercise of revisional jurisdiction against the impugned judgments and order.

31. For what has been stated above, I am of the considered opinion that the impugned judgments and order cannot legally be sustained. The same, with all consequential proceedings, are accordingly set aside. In turn, the petitioners are acquitted of the charges framed against them in the case in question by extending benefit of doubt to them. Their bail and surety bonds stand discharged.

32. Present revision petition is allowed in the abovestated terms. Interim application/s, if any, stand/s disposed off.

31.07.2026
vishnu

[RAMESH CHANDER DIMRI]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No