

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 11<sup>th</sup> September, 2009*  
*Judgment Delivered On: 24<sup>th</sup> September, 2009*

+ **CRL.A. 616/2001**

KEHAR SINGH & ANR. .... Appellants  
Through: Ms. Nilofar Qureshi, Advocate

versus

STATE .... Respondent  
Through: Mr. M.N.Dudeja, Advocate

**CRL.A. 119/2002**

UDAI VEER SINGH .... Appellant  
Through: Ms. Nilofar Qureshi, Advocate

versus

STATE .... Respondent  
Through: Mr. M.N.Dudeja, Advocate

**CRL.A. 643/2001**

KEHAR SINGH .... Appellant  
Through: Ms. Nilofar Qureshi, Advocate

versus

STATE .... Respondent  
Through: Mr. M.N.Dudeja, Advocate

**CRL.A. 644/2001**

VIMAL KUMAR @ PINTO .... Appellant  
Through: Ms. Nilofar Qureshi, Advocate

versus

STATE .... Respondent  
Through: Mr. M.N.Dudeja, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**PRADEEP NANDRAJOG, J.**

1. Criminal Appeals Nos.616/2001 and 119/2002 have been preferred by appellants; Udaiveer Singh, Kehar Singh and Vimal Kumar challenging the judgment and order dated 16.07.2001 passed by the learned Trial Judge in Sessions Trial pertaining to FIR No.658/97 registered against them. By virtue of the impugned judgment and order, appellant Udaiveer Singh has been convicted for the offences punishable under Sections 302/34 IPC and 392/34 IPC; appellants Kehar Singh and Vimal Kumar have been convicted for the offences punishable under Sections 392/34 IPC, 302/34 IPC, 392/397/34 IPC and 307/34 IPC. The appellants have been sentenced for each offence. Appellant Udaiveer Singh has been sentenced to undergo rigorous imprisonment for 7 years and pay a fine in sum of Rs.5,000/-; in default to undergo simple imprisonment for 6 months for the offence punishable under Section 392/34 IPC; imprisonment for life and a fine in sum of Rs.10,000/, in default to undergo simple imprisonment for 1 year for the

offence punishable under Section 302/34 IPC. Appellants Kehar Singh and Vimal Kumar have been sentenced to undergo rigorous imprisonment for 7 years and a fine in sum of Rs.5,000/- each, in default to undergo simple imprisonment for 6 months for the offence punishable under Section 392/34 IPC; imprisonment for life and a fine in sum of Rs.10,000/- each, in default to undergo simple imprisonment for 1 year for the offence punishable under Section 302/34 IPC; rigorous imprisonment for 7 years and a fine in sum of Rs.5,000/- each, in default to undergo simple imprisonment for 6 months for the offence punishable under Section 392/397/34 IPC and rigorous imprisonment for 7 years and a fine in sum of Rs.5,000/- each, in default to undergo simple imprisonment for 6 months for the offence punishable under Section 307/34 IPC. Benefit of Section 428 Cr.P.C. has been granted to the appellants. The sentences awarded to the appellants have been directed to run concurrently.

2. Criminal Appeal No.643/2001 has been preferred by appellant Kehar Singh challenging the judgment and order dated 16.07.2001 passed by the learned Trial Judge in Sessions Trial pertaining to FIR No.659/1997 registered against appellant Kehar Singh. By virtue of the impugned judgment and order, appellant Kehar Singh has been convicted for the

offence punishable under Section 25 Arms Act, for which offence he has been sentenced to undergo rigorous imprisonment for 4 years and pay a fine in sum of Rs.5,000/-; in default to undergo simple imprisonment for 6 months.

3. Criminal Appeal No.644/2001 has been preferred by appellant Vimal Kumar challenging the judgment and order dated 16.07.2001 passed by the learned Trial Judge in Sessions Trial pertaining to FIR No.660/1997 registered against appellant Vimal Kumar. By virtue of the impugned judgment and order, appellant Vimal Kumar has been convicted for the offence punishable under Section 25 Arms Act, for which offence he has been sentenced to undergo rigorous imprisonment for 4 years and a fine in sum of Rs.5,000/-; in default to undergo simple imprisonment for 6 months.

4. The facts as culled out by the prosecution are that on 22.01.1997 armed with country made pistols and a knife, the appellants entered into house bearing Municipal No.M-240, Guru Harkishan Nagar, Paschim Vihar, New Delhi owned by Ramesh Chander PW-19, and robbed Ramesh Chander PW-19 and his brother Subash Chand PW-17, who were present in the said house. After committing the robbery using the country made pistols and the knife, the appellants locked Ramesh Chander and Subash Chand in the said house by bolting the

entrance door of the said house from outside and fled from there. On hearing the shouts of Ramesh Chander and Subash Chand for help, the persons from the public started chasing the appellants.

5. The appellants continued to run and reached the road outside Richie Rich Restaurant, where Shamsheer Singh PW-2, Randeep PW-16 and Vijay PW-18 and Mandeep (herein after referred to as the "Deceased") were standing. Seeing the appellants being chased by the public persons, the aforesaid four persons also started chasing the appellants. After running some distance, the deceased caught hold of appellant Vimal at the road near National Market. Appellant Vimal shouted for help, upon which appellant Udaiveer Singh took out a knife and got freed Vimal from the clutches of the deceased by pointing the said knife at the deceased. Thereafter Udaiveer Singh told the other appellants that they should shoot the deceased in order to escape, upon which appellants Kehar Singh and Vimal Kumar fired shots at the deceased and the other three persons. A bullet hit the deceased and he fell down on the ground. Vijay PW-18, removed the deceased to the hospital whereas Shamsheer Singh PW-2 and Randeep PW-16, continued to chase the appellants.

6. Thereafter, appellant Udaiveer Singh separated from the other appellants and ran in a lane towards Paschim Vihar whereas Kehar Singh and Vimal Kumar ran in the direction of National Market. After running some distance, Kehar Singh and Vimal Kumar stopped Anil Kohli PW-3, who was travelling on a two-wheeler scooter. They snatched the scooter from Anil Kohli by threatening him with country made pistols and started travelling on the said scooter. After travelling for some distance, Kehar Singh and Vimal Kumar abandoned the scooter at the road near District Park and ran in the direction of the bushes situated near District Park, Peera Garhi.

7. In the meantime, Anil Kohli PW-3 rang up the police informing that firing has taken place near Bhairon Enclave and that the persons who were firing has snatched a white colored Bajaj scooter bearing registration No.DL 4F 0244. The information was received at the Police Control Room, pursuant to which Lady Const.Anju PW-7, recorded the said information in the PCR Form Ex.PW-7/A. The aforesaid information was further transmitted through wireless to Police Station Paschim Vihar where Lady Const.Santra Devi PW-8, recorded the DD Entry Ex.PW-8/A; noting the aforesaid information.

8. On receipt of the information recorded in the PCR Form, Ex.PW-7/A, and the DD Entry Ex.PW-8/A, a police team

consisting of SI Ghanshyam PW-9, HC Sanwar Mal PW-21, SI Ashok Kumar PW-22, Inspector Jai Singh PW-22 and Inspector Avtar Singh Parmar PW-24, reached the place where appellants Kehar Singh and Vimal Kumar were hiding viz.; the area around the bushes situated near District Park, Peera Garhi, where they were met by Randeep PW-16 and Shamsheer Singh PW-2. The aforesaid police officers saw appellants Kehar Singh and Vimal Kumar hiding in the bushes. The police officers asked the said appellants to surrender. On hearing the same, Kehar Singh and Vimal Kumar opened fire at the police officers upon which the police officers also opened fire at the said appellants. After sometime, the said appellants came out of the bushes and surrendered themselves to the police.

9. In the meantime, Const.Balwan, Duty Constable at DDU Hospital, informed Lady Const.Santra Devi PW-8, that the deceased has been declared as brought dead at the hospital pursuant to which Santra Devi recorded the DD Entry Ex.PW-8/B; noting the aforesaid information. On learning the information recorded in the DD Entry Ex.PW-8/B, SI Ghanshyam PW-9, proceeded to DDU Hospital to collect the MLC of the deceased.

10. Thereafter Inspector Avtar Singh Parmar PW-24, recorded the statement Ex.PW-16/A of Randeep and made an

endorsement Ex.PW-24/A thereon, and at around 8.15 P.M. forwarded the same through HC Sanwar Mal PW-21, for registration of an FIR. HC Sanwar Mal took Ex.PW-24/A to the police station and handed over the same to HC Daljeet Singh PW-10, who recorded the FIR No.658/97 Ex.PW-10/A at 9.35 P.M. on 22.01.1997.

11. Reverting back to the scene at the District Park, Peera Garhi, appellants Kehar Singh and Vimal Kumar were arrested by the police. They were disarmed i.e. the country made pistols were taken possession of by the police. Both pistols were found loaded with a live cartridge each. The said country made pistols and the cartridges were seized vide memos Ex.PW-22/D and Ex.PW-16/M. A personal search of the said appellants was conducted. Two gold rings and a sum of Rs.2,000/- were recovered from the possession of appellant Kehar Singh and the same were seized vide memo Ex.PW-24/B. A gold chain with locket, a wrist watch and a sum of Rs.7.025/- were recovered from the possession of appellant Vimal Kumar and the same were seized vide memo Ex.PW-24/C. Inspector Avtar Singh Parmar PW-24, prepared the rough site plan of the place where appellants Kehar Singh and Vimal Kumar were hiding; being Ex.PW-16/Q.

12. SI Ashok Kumar PW-22, prepared the endorsement Ex.PW-22/B in respect of the recovery of a country made pistol from the possession of appellant Kehar Singh whereas Inspector Jai Chand PW-23, prepared the endorsement Ex.PW-23/A in respect of the recovery of a country made pistol from the possession of appellant Vimal Kumar. Pertaining to the recovery of the country made pistol from the possession of appellant Kehar Singh, FIR No.659/97 under Sections 25/27 of Arms Act was registered against Kehar Singh. Pertaining to the recovery of the country made pistol from the possession of appellant Vimal Kumar, FIR No.660/97 under Sections 25/27 of Arms Act was registered against Vimal Kumar.

13. Thereafter Inspector Avtar Singh Parmar PW-24, proceeded to the place where Kehar Singh and Vimal Kumar fired shots at the deceased and the other three persons. Inspector Avtar Singh Parmar found that the ground at the said place was stained with blood and that two empty cartridge cases were lying therein. He lifted the blood, blood stained earth from the place of the murder of the deceased and seized the said materials as also the earth control and the two empty cartridge cases vide memo Ex.PW-16/D. Const.Dharambir PW-5, photographer, was summoned to the place of the murder of the deceased. He took six photographs Ex.PW-5/A-1 to Ex.PW-

5/A-6 of the place of the murder of the deceased; negatives whereof are Ex.PW-5/B-1 to Ex.PW-5/B-6.

14. After conducting investigation at the place where the deceased was murdered, Inspector Avtar Singh Parmar returned to the place where Kehar Singh and Vimal Kumar were apprehended and interrogated them. We need not note the contents of their confessional statements inasmuch as the same are completely inadmissible in evidence as they admit of guilt. We note that no recovery was effected nor was a fact discovered by the police pursuant to the said statements made by appellant Kehar Singh and Vimal Kumar. Thereafter Kehar Singh and Vimal Kumar pointed out the place where the deceased was murdered; the place where the scooter of Anil Kumar was snatched as also the place where robbery was committed i.e. the house of Ramesh Chander vide memos Ex.PW-16/G, PW-16/H and PW-16/T respectively.

15. Inspector Avtar Singh Parmar accompanied by SI Ashok Kumar PW-22, Inspector Jai Chand PW-23, Kehar Singh and Vimal Kumar proceeded to Kapasehra where he arrested appellant Udaiveer Singh from outside a house. The personal search of appellant Udaiveer Singh was conducted. Two wrist watches and a sum of Rs.5,300/- was recovered from the

possession of Udaiveer Singh and the same were seized vide memo Ex.PW-24/D.

16. On being interrogated by Inspector Avtar Singh Parmar PW-24, in the presence of SI Ashok Kumar PW-22 and Inspector Jai Chand PW-23, appellant Udaiveer Singh made a disclosure statement Ex.PW-16/I wherein he confessed to the offences being committed by him along with the other two co-accused and stated that he can get recovered the knife used by him. Pursuant thereto, he led the aforesaid police officers to a park and got recovered a knife lying hidden in the grass. The said knife was seized vide memo Ex.PW-16/C. Inspector Avtar Singh Parmar PW-24, prepared the sketch of the said knife; being Ex.PW-16/O. Thereafter appellant Udaiveer Singh pointed out the place where the deceased was murdered as also the place where the robbery was committed i.e. the house of Ramesh Chander, vide memos Ex.PW-16/J and Ex.PW-16/L respectively.

17. On the next day i.e 23.01.1997 the appellants led the police to the residence of one Om Parkash and pointed out towards Om Parkash as the person who conspired with them for commission of the offence of robbery at the residence of Ramesh Chander. The police arrested accused Om Parkash.

18. Since the deceased was declared brought dead at the hospital, his body was transferred to the mortuary of DDU Hospital at 2.45 P.M. at 23.01.1997 where Dr.Komal Singh PW-11, conducted the post-mortem and gave his report Ex.PW-11/A which records following injuries on the person of the deceased:-

“1. A stellate shape (elliptical) entry wound of bullet about 2.4 cm X 3 cm present over 6<sup>th</sup> ICS of ant. chest 8.8 cm from R nipple & 2.4 cm from mid line. Margin inverted. Blackening around the wound present. Clotted blood present over it.

2. An exit wound of above bullet present on post side of chest (back) 4.5 cm from mid line at the level of T4-T5. Wound on 1.5 cm X 1 cm margins inverted. No blackening around it.”

19. The doctor further opined that the afore-noted injuries found on the person of the deceased are caused by firearm. Injury found on the heart of the deceased was sufficient to cause immediate death. The injuries found on the person of the deceased were ante-mortem in nature and of same duration.

20. After the post-mortem, the doctor handed over the blood stained clothes and blood sample of the deceased on a gauze to Const.Mahinder Singh PW-6, who seized the same vide memo Ex.PW-24/E.

21. On 24.09.1997 SI Mukesh PW-12, a draftsman, prepared the site plan to scale Ex.PW-12/A where the deceased was murdered.

22. The seized materials; namely, the clothes and blood sample of the deceased and the earth and blood lifted from the place of the murder of the deceased were sent to CFSL for serological examination. Likewise, the country made pistols recovered from the possession of appellants Kehar Singh and Vimal Kumar and the empty cartridge cases recovered from the place of the murder of the deceased were sent to CFSL for ballistic examination. Vide CFSL report Ex.PW-24/F, it was opined that the blood lifted from the place of the murder of the deceased was human blood; that human blood was detected on the clothes of the deceased; that earth lifted from the place of the murder of the deceased was stained with blood, origin whereof could not be determined and that blood group of the deceased was A. Vide CFSL report Ex.PW-24/G it was opined that the country made pistols recovered from the possession of appellants Kehar Singh and Vimal Kumar were found in working order and were capable of firing; that two of the empty cartridge cases sent to the CFSL were fired from the country made pistol recovered from the possession of Vimal Kumar and one of the empty cartridge case sent to the CFSL

was fired from the country made pistol recovered from the possession of Kehar Singh.

23. Armed with the aforesaid materials, a challan was filed against the appellants. It be noted here that vide order dated 22.04.1998 learned Trial Judge discharged accused Om Parkash. Needless to state, charges were framed against the appellants, which read as under:-

#### CHARGE

“I, R.L.Chugh, Addl. Sessions Judge, Delhi do hereby charge you:-

1. Udai Veer Singh S/o Sadhu Singh
2. Kehar Singh S/o Prahlad Singh
3. Vimal Kumar @ Pintoo S/o Jangir Singh

as under:-

Firstly, that on 22.7.97 at about 5: 30 PM at Main Road, opposite, National Market, Meera Enclave, peera garhi chowk within the jurisdiction of PS Paschim vihar in furtherance of your common intention you. (Kehar Singh) and your (Vimal Kumar) fired at and killed Mandeep and thereby committed an offence punishable u/s 302/34 IPC and within the cognizance of this court.

Secondly, that on the aforesaid, date, time and place, in furtherance of your common intention you (Kehar Singh) and you (Vimal Kumar) fired at Mandeep with the intention to kill and thereby committed an offence punishable u/s 307/34 IPC and within the cognizance of this court.

Thirdly, that on the aforesaid date, time and place, in furtherance of your common intention near National Market on outer ring road you (Kehar Singh) and you (Vimal Kumar) showed deshi kattat to Anil

Kumar s/o O.P. Kohli and robbed him of his scooter No.DL 4S F 0244 and you all thereby committed an offence punishable u/s 392/34 IPC and with you (Kehar Singh) and you (Vimal Kumar) also committed an offence punishable u/s 397 IPC as you were armed with deshi katta when committed the robbery of the scooter.

Fourthly, on the aforesaid date, time and place in furtherance of your common intention you (Kehar Singh) and you (Vimal Kumar) wrongfully confined mandeep who were pursuing you and thereby committed an offence punishable u/s 342/34 IPC and within the cognizance of this court.

Further on the aforesaid date, time and place you all were party to criminal conspiracy to commit an offence murder, attempt to murder, robbery and thereby committed an offence punishable u/s 120 (b) IPC and within the cognizance of this court.

Further on the aforesaid date, time and place you all in furtherance of your common intention robbed Ramesh Chand and Subash of gold chain and cash and other gold articles mentioned in the police report., and thereby committed an offence punishable u/s 392/34 IPC and within the cognizance of this court.

Further on the aforesaid date, time and place you all in furtherance of your common intention in the jungle of Paschim Vihar you (Kehar Singh) and you (Vimal Kumar) fired with katta at the police party which had surrounded you and wanted to apprehend you with the intention of killing them and thereby committed an offence punishable u/s 307/34 IPC and within the cognizance of this court.

And I hereby direct that you be tried by this court for the aforesaid charge”

24. Charges under Sections 25/27 Arms Act were also framed against appellants Kehar Singh and Vimal Kumar in respect of FIR's Nos.659/97 and 660/97 registered against them.

25. For convenience, learned Trial Court could have tried all the charges framed against the appellants jointly in terms of Section 220 of the Code of Criminal Procedure. However, three separate trials were instituted. The first trial was with respect to the FIR No.658/97; the second trial was with respect to the FIR No.659/97 and the third trial was with respect to the FIR No.660/97. Since the evidence recorded in three trials was similar, we consider it appropriate to note the evidence recorded in the trial pertaining to the FIR No.658/97.

26. At the trial pertaining to the FIR No.658/97, the prosecution examined 24 witnesses.

27. We need not note the testimony of the various police officers for the reason they have parroted the facts noted herein above by us pertaining to the seizures effected, the arrest of the appellants, the disclosure statements made by them and the recovery effected pursuant to the disclosure statement of Udaiveer Singh.

28. Anil Kohli PW-3, deposed that on 22.01.1997 appellants Kehar Singh and Vimal Kumar snatched his scooter from him after threatening him with country made pistols.

29. Subash Chand PW-17 and Ramesh Chander PW-19, deposed that on 22.01.1997 the appellants unlawfully entered

the house of Ramesh Chander and robbed them of their valuable possessions after threatening them with the country made pistols and a knife. They further deposed that the articles seized vide memos Ex.PW-24/B, Ex.PW-24/C and Ex.PW-24/D were the articles which were robbed by the appellants from them on 22.01.1997.

30. Randeep PW-16, deposed in harmony with his statement Ex.PW-16/A. He deposed that on 20.1.1997 at about 5:45 PM he along with the deceased who was his brother, Shamsheer Singh and Vijay was standing on the road outside Richie Rich restaurant when he saw that the appellants were being chased by the public persons. On seeing the same, they also started to chase the appellants. After running some distance, the deceased caught hold of appellant Vimal Kumar upon which Vimal Kumar called the other two appellants for help. Appellant Udaiveer Singh pointed a knife towards the deceased and got freed Vimal Kumar from the clutches of the deceased. Udaiveer Singh caught hold of the deceased and told the other appellants that they should shoot the deceased in order to escape upon which Kehar Singh and Vimal Kumar fired shots at him and the deceased. He managed to duck the bullets but one bullet hit the deceased due to which the deceased fell down on the ground. Vijay stopped near the

deceased whereas he and Shamsheer Singh continued to chase the appellants. After some distance, Kehar Singh and Vimal Kumar snatched a scooter from Anil Kohli and started travelling on the said scooter whereas Udaiveer Singh in the direction of National Market. Thereafter he and Shamsheer Singh continued to chase Kehar Singh and Vimal Kumar by taking lift in a car. Kehar Singh and Vimal Kumar abandoned the scooter and hid in the bushes near DTC Depot at Peera Garhi. Thereafter a police team came at the said place. Kehar Singh and Vimal Kumar opened fire at the police officers upon which the police officers also fired a shot at the said appellants. The said appellants were overpowered by the police officers namely Inspector Avtar Singh Parmar, SI Ashok Kumar, Inspector Jai Singh and HC Malkiat Singh.

31. Shamsheer Singh PW-2, deposed in harmony with the testimony of Randeep PW-16.

32. Vijay PW-18, deposed that on the fateful day he along with the deceased, Randeep and Shamsheer Singh was standing on the road opposite Richie Rich restaurant when he saw that the public persons were chasing the appellants. On seeing the same, they also started chasing the appellants. After some distance, they apprehended the appellants upon which the appellants took out country made pistols and a

knife. On seeing the arms in the hands of the appellants, he and Shamsheer Singh left, while the deceased and his brother Randeep continued to chase the appellants. The accused hid in a slum dwelling. A lady told them the accused are hiding in a slum dwelling. Thereafter he, the deceased, Randeep and Shamsheer demolished the slum dwelling in which the appellants were hiding whereupon the appellants came out and opened firing at them. He, the deceased, Randeep and Shamsheer ran to save their lives. After sometime he found out that the deceased has been shot. He removed the deceased to the hospital where he was declared as brought dead.

33. In their examination under Section 313 CrPC, the appellants denied everything and pleaded innocence. They stated that they have been falsely implicated by the police.

34. In defence, the appellants examined 5 witnesses. We need not note the testimony of the said witnesses as nothing much turns thereon.

35. Holding that the testimonies of Anil Kohli PW-3, Subash Chand PW-17, Ramesh Chander PW-18, Shamsheer Singh PW-2, Randeep PW-16 and Vijay PW-18 duly corroborates the case set up by the prosecution against the appellants, vide three separate judgments, the learned Trial Judge has convicted the appellants for the offences of having committed robbery at the

residence of Ramesh Chander and having murdered the deceased. Additionally, appellants Kehar Singh and Vimal Kumar have been convicted for the offences of having robbed Anil Kohli of his scooter; attempted to murder the police officers who had come to arrest them and possessing firearms. However, the learned Trial Judge acquitted them of the charge of wrongfully confining the deceased and entering into a criminal conspiracy to commit murder of the deceased and robbery on the ground that the prosecution has not led any evidence to show that the deceased was wrongfully confined by the appellants and that the appellants entered into a criminal conspiracy.

36. It be noted here that the learned Trial Judge has not used the findings recorded in the CFSL reports Ex.PW-24/F and Ex.PW-24/G as an incriminating circumstance against the appellants as per which the firearms recovered from Kehar Singh and Vimal Singh were opined to be the ones from which the bullets were fired pertaining to which bullets used cartridges were apparently picked up by the police from the place where the deceased was murdered and the place where the exchange of fire took place.

37. At the hearing of the appeals, learned counsel for the appellants advanced under-noted three submissions in support of the appeals.

A That the case of the prosecution against the appellants has fallen like a house of cards, inasmuch as the evidence of Vijay PW-18, who was the key witness of the prosecution is at complete variance with the case set up by the prosecution against the appellants.

B That the sanctity of the CFSL report Ex.PW-24/G is in serious doubt. The counsel drew attention of the court to the seizure memos Ex.PW-16/D, the entry Ex.PW-13/A and the testimony of Inspector Avtar Singh Parmar PW-24, to show that two empty cartridge cases were seized from the place of the murder of the deceased and that no other empty cartridge cases were seized in the present case. Thereafter the counsel drew attention of the court to CFSL report Ex.PW-24/G which records that four empty cartridge cases marked as C1, C2, C3 and C4 respectively were sent to CFSL in the present case. As per the counsel, when only two empty cartridge cases were seized in the present case then how come four empty cartridge cases were sent to CFSL is a mystery. Counsel urged that the said discrepancy between the number of empty cartridge cases

seized in the present case and number of empty cartridge cases sent to CFSL shows that the police tampered with the case property and therefore, in such circumstances no reliance should be placed upon CFSL report Ex.PW-24/G.

C That the charges framed against appellants, particularly appellant Udaiveer Singh, were most defective and that the said serious infirmity in the trial of the appellants has vitiated the conviction and sentence awarded to them.

38. As already noted herein above, Vijay PW-18, has deposed at variance to the testimony of the other eye witnesses as to what actually transpired and how the accused were arrested. But, he has inculpated the accused in the murder of the deceased. We may note that Vijay deposed at variance with his statement recorded under Section 161 Cr.P.C. and was declared hostile.

39. In the decision reported as Sheikh Zakir v. State of Bihar AIR 1983 SC 911, the Supreme Court observed as under:-

“It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a Court from finding an accused guilty if there is otherwise acceptable evidence in support of the prosecution. In the instant case, both the Trial Court and the High Court have believed evidence of the prosecutrix and the evidence of the other prosecution witnesses who had been examined at the trial.”

40. In the decision reported as Bhola Ram Khushwaha v. State of M.P. AIR 2001 SC 229, the Supreme Court held that the fact of an independent witness turning hostile is not in itself a ground to acquit the accused.

41. In view of the dictum laid down by the Supreme Court in the afore-noted two decisions, we have no hesitation in holding that merely because Vijay PW-18, had turned hostile and deposed at variance with the case set up by the prosecution against the appellants, when there is overwhelming material on the record establishing the guilt of the appellants, the case of the prosecution cannot be thrown to the winds because of one witness turning hostile. As already noted herein above, the witnesses; namely, Anil Kohli PW-3, Subash Chand PW-17, Ramesh Chander PW-19, Randeep PW-16, Shamsheer Singh PW-2 and the police officers associated with the investigation and the apprehension of the appellants have fully supported the case of the prosecution. The aforesaid witnesses have impeccable character inasmuch as they have withstood the test of cross-examination. Nothing could be elicited from the cross-examination of the said witnesses which could cast a doubt on their veracity.

42. We agree with the submissions made by learned counsel for the appellants that the sanctity of CFSL report Ex.PW-24/G

is in serious doubt inasmuch as there is discrepancy between the number of empty cartridge cases seized in the present case and the number of the empty cartridge cases sent to CFSL. Therefore, we do not consider it appropriate to rely upon the said report as an incriminating piece of evidence against the appellants.

43. What is the effect of the exclusion of CFSL report Ex.PW-24/G from the list of incriminating pieces of evidence against the appellants on the finding of guilt of the appellants returned by the learned Trial Judge?

44. None whatsoever. The learned Trial Judge has also not used the report against the appellants. The testimony of the eye witnesses who have withstood the test of cross examination is sufficient to convict the appellants. Subhash Chand PW-17 and Ramesh Chander PW-19 have identified the appellants as the ones who entered their house and after threatening them with firearms committed robbery of the articles which were seized from the appellants as per seizure memos Ex.PW-24/B, Ex.PW-24/C and Ex.PW-24/D. They identified the valuables which were recovered. Anil Kohli PW-3 deposed against appellants Kehar Singh and Vimal Kumar and inculpated them of having snatched his scooter after threatening him with country made pistols. Randeep PW-16

and Shamsheer Singh PW-2 implicated the appellants in the murder of the deceased.

45. This takes us to the submission predicated upon the language of the charge framed and in particular against appellant Udaiveer Singh.

46. It is apparent that the charge has been framed in a casual manner. What has surprised us is the fact that qua the deceased Mandeep who died as a result of firearm injury, a charge for the offence punishable under Section 307/34 IPC has been framed. We fail to understand said charge being framed for the reason, pertaining to the death of Mandeep, the charge punishable with the offence of murder has been framed against the accused.

47. A perusal of the charge shows that all the three appellants have been put to notice of the charge; the defect in the charge is of not naming Udaiveer Singh with reference to the acts constituting the offence of which the accused were charged of.

48. One basic requirement of a fair trial in criminal cases is to give precise information to the accused as to the accusation against him. This is vitally important to the accused in the preparation of his defence. In all trials under the Code of

Criminal Procedure, the accused is informed of the accusation against him in the beginning itself. In case of serious offences the Code requires that the accusations are to be formulated and reduced to writing with great precision and clarity. This “charge” is then to be read and explained to the accused.

49. Charge serves the purpose of notice or intimation to the accused, drawn up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial. In simple words, the object of a charge is to warn an accused of the case he is to answer. Framing of charge against an accused is not a mere ritualistic formality. Courts have to be most vigilant while framing charges against the accused. As observed by Supreme Court in the decision reported as Willie (William) Slaney v State of MP AIR 1956 SC 116:-

“Now there is no doubt that a charge forms the foundation of a sessions trial and is a most important step in it. The accused must know and understand what he is being tried for and must be told in clear and unambiguous terms: Section 271(1). There can be no shirking that or slurring over it, and this must appear on the face of the record....”

50. Having stated the importance of framing a charge against an accused, we proceed to examine the correctness of

the charges framed against the appellants and the effect of the deficiencies pointed out.

51. A perusal of the charges framed against the appellants; contents whereof has been noted in para 23 above, goes to show that the same suffers from the following four defects:-

I Name of appellant Udaiveer Singh does not find a mention in the substance of the charges framed against him. While framing the charge the acts of co-accused constituting the offence have been brought out, omitting reference to Udaiveer Singh.

II Charges have been framed against the appellants for murdering the deceased as also for attempting to murder the deceased. When the appellants murdered the deceased, where was the occasion for framing a charge against the appellants for attempting to murder the deceased?

III The gist of offence of criminal conspiracy is an agreement between the accused to break the law. In the instant case, by no stretch of imagination, it can be said that there was an agreement between the appellants to murder the deceased inasmuch as they could not have anticipated that they would be chased and apprehended by the deceased after they had committed the offence of robbery at the residence of

Ramesh Chander. Therefore, the appellants have wrongly been charged under Section 120-B IPC.

IV The fifth charge against the appellants that they entered into a criminal conspiracy to commit “robbery”. It is apparent from the narrative of the investigation as also from the evidence of the witnesses of the prosecution that two robberies were committed in the present case. The first robbery was committed at the residence of Ramesh Chander by all the appellants whereas the second robbery was committed by appellant Kehar Singh and Vimal Kumar in respect of the scooter of Anil Kohli. In such circumstances, it was incumbent upon the learned Trial Judge to state the details of the robbery in the substance of the charge.

52. What is the effect of framing of defective charges on the conviction and sentence awarded to the appellants?

53. The answer to the afore-noted question lies in the decision of Supreme Court reported as Willie Slaney (supra). After examining the scheme of Code of Criminal Procedure with respect to framing of a charge against an accused person, Supreme Court observed as under:-

“41. We do not mean to imply that laxness of procedure should be encouraged in the matter of the charge any more than this Court encourages it in matters relating to Section 342; nor do we mean to suggest that a trial can be regarded as good when the

accused does not know what he is being tried for and is not told and the matter is not explained to him as Section 271 requires. Of course, the rules should and ought to be punctually observed. But Judges and Magistrates are fallible and make mistakes and the question is what is to be done in the exceptional class of case in which there has been a disregard of some express provision.

42. As an illustration, we give a case in which a Sessions Judge in a sessions trial having no charge before him from the committal court omits to frame one himself but instead, carefully and painstakingly, explains the particulars and the substance of the offence as in Section 242 and complies with the spirit and object of Section 271 but omits to observe its technical form. Then, when the witnesses are examined, the accused shows by his cross-examination that he knows just what he is being tried for. He is examined fully and fairly under Section 342 and his answers show that he is under no delusion. He calls witnesses in defence to meet the very point or points the prosecution seek to make out against him. He puts in a written statement and is defended by an able lawyer who raises no objection from start to finish. Will a technical defect in a case like that vitiate the trial? If the Code says Yes, then there is an end of the matter. But, in our opinion, the Code very emphatically says No; but even if that is not the case and even if the very plain and clear words of Sections 232 and 535 are susceptible of two meanings, surely they should be construed so as to accord with what will best serve the ends of justice. We have put a case in which there neither is, nor can be, prejudice. Surely, it would be a travesty of justice to brand a conviction in a case like that as illegal. And yet that must be done if these words that are otherwise plain are construed in a strained and unnatural manner. On the other hand, there is nothing in the view we take to imperil or harass an accused however innocent he may be. How does the technical formula of a charge afford greater protection than the "explaining" under Section 271(1) and the examination under Section 342? And yet, on the argument before us, an omission to observe these other rules that are of the substance is curable when there is no prejudice but not the sacred ritual of the framing of the charge; once that is there, the accused cannot be heard to say that he did not understand however much that may be the fact. Surely, this cannot be right.

43. Now, as we have said, Sections 225, 232, 535 and 537(a) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is

emphatic that whatever the irregularity it is not to be regarded as fatal unless there is prejudice. It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction. Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done, what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. If all these elements are there and no prejudice is shown, the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one.

44. In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage. If it was not, and particularly where the accused is defended by counsel (*Atta Mohammad v. King-Emperor*<sup>15</sup>) it may in a given case be proper to conclude that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars, provided it is always borne in mind that "no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused" (*Abdul Rahman v. King-Emperor*<sup>16</sup>). But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases "however" alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges,

are sometimes prone to argue and to act as if there were.” (Emphasis Supplied)

54. The afore-noted judicial decision has consistently been followed by Supreme Court. Some of the notable decisions of Supreme Court which have followed the dictum laid down in Willie Slaney's case (supra) are State of AP v Thakkidiram Reddy (1998) 6 SCC 554, Gurpreet Singh v State of Punjab (2005) 12 SCC 615, Ramji Singh v State of Bihar (2001) 9 SCC 528 and Sanichar Sahni v State of Bihar 2009 (8) SCALE 680.

55. The law on the issue can be summarized to the effect that unless the convict is able to establish that the defect in framing the charges has caused “real” prejudice to him, in that he was not informed as what was the real case against him due to which he could not defend himself properly, no interference is called in the conviction and sentence awarded to the said convict.

56. In the instant case, learned counsel for the appellants could not point as to what prejudice has been caused to the appellants due to framing of defective charges. The appellants have never raised any grievance against the same at the time of framing of the charge or during the course of trial. The appellants were represented by counsel throughout the trial. When the witnesses of the prosecution were examined, the appellants shown by cross-examination of the witnesses, that

they know just what they are being tried for. The appellants were examined fully and fairly under Section 313 Cr.P.C. and their answers show that they were under no delusion. Therefore, it cannot be held even by any stretch of imagination that any prejudice has been caused to the appellants on this very score. It may be noted that the appellants had engaged separate counsel and each counsel cross examined all the witnesses. The witnesses detailed the role of Udaiveer Singh while deposing and his counsel cross examined them. It is apparent that Udaiveer Singh understood the charges against him relating to the robbery committed in the house of PW-17 and PW-19 as also the murder of the deceased.

57. We thus reject the third submission advanced by the learned counsel for the appellants.

58. However, as a note of caution, we add that the learned Trial Judges should be vigilant while framing charges against an accused. It is unfortunate, but we are noticing defective charges being framed in a large number of matters. To the good fortune of the prosecution, in no case, save and except the instant case, have learned counsel for the accused raised grievance with respect to the language of the charge. It appears that ignorance of the counsel is neutralizing the deficiency in the charges which are being framed in a large

number of matters or may be people have become used to defective language and comprehend what is being conveyed.

59. In view of the above discussion, we dismiss the above captioned appeals.

60. The appellants are on bail. We cancel the bail bond and the surety bonds furnished by the appellants and directed them to surrender and suffer the remaining sentence.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(INDERMEET KAUR)**  
**JUDGE**

**September 24, 2009**  
**mm**