

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

Crl. Appeal D-861-DB of 2002
Date of Decision : March 03, 2015

Kulwant Singh and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Aman Pal, Advocate
for the appellants.

Mr. Randhir Singh, Additional A.G. Haryana.

Mr. Sartaj Singh Gill, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants, namely, Kulwant Singh, Karam Singh, Gurdial Singh and Dalvinder Singh alongwith Balbir Singh and Sucha Singh were tried for committing offences punishable under Sections 148, 302/149, 325/149, 324/149, 323/149 and 506/149 IPC. Vide impugned judgment and order dated 8/10.10.2002, learned Sessions Judge, Kurukshetra acquitted Balbir Singh and Sucha Singh of the charges against them. The appellants were convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 250/- each and in default of payment of fine, to further undergo rigorous

imprisonment for one month. They were further convicted under Sections 323/149 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 250/- each and in default of payment of fine, to undergo further rigorous imprisonment for one month. They were further convicted under Sections 324/149 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/- each and in default of payment of fine, to undergo further rigorous imprisonment for two months. They were further convicted under Sections 325/149 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/- each and in default of payment of fine, to undergo further rigorous imprisonment for three months. They were also convicted under Sections 302/149 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one year. All the substantive sentences were ordered to run concurrently. Out of the fine amount, if realized, a sum of Rs.20,000/- was ordered to be paid to the heirs of deceased Harbhajan Singh @ Baboo.

Aggrieved of their conviction and sentences, the appellants filed the present appeal. At the same time, complainant-Swaran Singh filed Criminal Revision 2425 of 2002 wherein he sought enhancement of sentences of imprisonment of

the convicted accused. He also filed Criminal Revision 2426 of 2002 for challenging the acquittal of Balbir Singh and Sucha Singh-accused of the charges against them. As the appeal and the two revision petitions arise out of the impugned judgment of conviction and sentence passed by the trial Court, they are being disposed of by a common judgment.

The case of the prosecution as emanates from the first information report registered on the basis of statement made by complainant-Swaran Singh @ Sarni is that he was running a finance company under the name of Shri Ganesh near Hanuman Mandir in Shahabad. Accused-Dalvinder Singh used to work with him as a driver. About six months before the occurrence, Dalvinder Singh left the job. While settling the accounts, Dalvinder Singh promised to return the outstanding amount of Rs.4,000/- to the complainant after two months. About three months earlier when the complainant demanded the money, Dalvinder Singh stated that he had no money at that time and will pay the same later on. On the day of occurrence i.e. on 14.6.2000 at about 11.00 a.m., Dalvinder Singh met the complainant at bus stand of Shahabad. When the complainant demanded his money, Dalvinder Singh told him to reach his shop where he would pay the money. At about 12/12.30 p.m., when the complainant was coming from State Bank of Patiala, Shahabad branch to his office, he saw Dalvinder Singh having an

iron rod in his hand, Kulwant Singh having a gandasi, Karam Singh having a lathi and Gurdial Singh having a danda, who were accompanied by 3/4 persons, whose names he did not know and having rod and lathi in their hands, all residents of village Dera Jainpur standing in the street in front of his shop. They were on a tractor and a motor cycle. On seeing the complainant, Dalvinder Singh proclaimed that the complainant should not be allowed to go and be taught a lesson for demanding money. On saying this, Dalvinder Singh gave an iron blow hitting the complainant on his head whereas Kulwant Singh gave gandasi blow from its reverse side on his left hand. Karam Singh gave lathi blow on his right hand whereas Gurdial Singh gave danda blow on his back. Their other companions also started beating him with the dandas and rods. The complainant raised an alarm, which attracted his brother-in-law Harbhajan Singh @ Baboo and cousin Gursharan Singh to the spot. When they tried to rescue the complainant, they were also caused injuries by the accused with lathis, dandas and gandas. Baldev Raj, resident of Shahabad and many other persons from the market came and saved the complainant party from Dalvinder Singh and others. While leaving the spot, the accused threatened to kill all the members of the complainant party in case the money was ever demanded again. The accused ran away with their tractor and motor cycle. Later on, Baldev Raj and others got the complainant and his relatives admitted in

Community Health Centre, Shahabad. As Harbhajan Singh @ Baboo was having many injuries on his head, he was referred to PGI, Chandigarh.

Further case of the prosecution is that on receipt of ruqa from the doctor alongwith medico-legal reports of complainant-Swaran Singh, his brother-in-law Harbhajan Singh @ Baboo and cousin Gursharan Singh, ASI Maya Ram reached Community Health Centre, Shahabad and recorded the statement of complainant-Swaran Singh on 14.6.2000 at 5.40 p.m. and on its basis FIR No. 130 dated 14.6.2000 under Sections 323, 324, 148, 149 and 506 IPC was registered at Police Station Shahabad at 5.50 p.m. During the investigation of the case, offence under Section 325 IPC was added to the FIR as one of the injuries received by complainant-Swaran Singh was found to be grievous. Harbhajan Singh @ Baboo succumbed to his injuries at PGI, Chandigarh on 16.6.2000 at 5.00 a.m. and, accordingly, offence under Section 302 IPC was also added to the FIR. The dead body was subjected to post-mortem on 17.6.2000 in General Hospital, Sector-16, Chandigarh. The investigation was, thereafter, taken over by Inspector Mam Chand, who tried to trace the accused but could not find them. On 20.6.2000, Gurdev Singh, Ex-Sarpanch of village Kishangarh produced Kulwant Singh, Karam Singh, Dalvinder Singh and Gurdial Singh-accused before him. At that time, accused-Kulwant Singh produced

gandasi Ex.P2, accused-Dalvinder Singh produced tractor and iron rod Ex. P3, Karam Singh produced danda Ex. P4 while Gurdial Singh produced motor cycle which were taken into possession vide various recovery memos. It may also be noticed that after receipt of another ruqa from the doctor regarding accused-Karam Singh and Kulwant Singh, ASI Maya Ram went to the hospital and made an application on which the doctor gave opinion that both of them were not fit to make statements. Further, in the statements made by Gursharan Singh and Baldev Raj under Section 161 Cr.P.C., Balbir Singh and Sucha Singh were also named as accused.

Upon completion of investigation and presentation of challan followed by commitment of the case, all the six accused were charged for committing the aforementioned offences to which they pleaded not guilty and claimed trial.

At the trial of the case, the prosecution examined PW1 Dr. R.L.Arya, Medical officer, Community Health Centre, Shahabad Markanda, who deposed that on 14.6.2000 at about 1.40 p.m., he medico-legally examined complainant-Swaran Singh and found the following injuries on his person:-

- “1. 5.0 cms x 1 cms x 1 cm lacerated wound, with profused bleeding and surrounded with bluish contusion was present on the right fronto-parietal region of scalp. X-ray was advised.

2. 1 cm x 0.5 cm x 0.5 cm lacerated wound was present on the dorsum of left hand with underneath swelling and tenderness. X-ray was advised.
3. Diffuse swelling, reddish in colour with underneath swelling and tenderness of right wrist and lower fore-arm was found present. X-ray was advised.”

He further deposed that on the same day at 2.00 p.m., he medico-legally examined Gursharan Singh and found the following injuries on his person:-

- “1. An incised wound 3 cms x 1 cm x 0.5 cm with sharp margins and profused bleeding was found present on the medial side of ring finger of left hand. Underneath swelling was present. X-ray was advised.
2. A reddish contusion 3 cms x 2 cms with tenderness was present on the left side of chest. X-ray was advised.
3. A reddish contusion 5 cms x 2 cms was found present on anterior side of right thigh.”

He also deposed that on the same day at 1.30 p.m., he medico-legally examined Baboo @ Harbhajan Singh and found the following injuries on his person:-

- “1. Diffused bluish swelling with tenderness was found present on both sides of forehead in fronto parietal region of scalp. X-ray and C.T.

scan was advised.

2. Bleeding through both the nasal orifice was found present. Swelling of the nose was also present. X-ray was advised.
3. Lacerated wound 1 cm x 0.5 cm x 0.5 cm was found present on index finger of left hand with underneath swelling. X-ray was advised.
4. A reddish abrasion 1 cm x 1 cm was found present on the dorsum of right foot.”

He further deposed that on the same day, he dispatched ruqa Ex. PD to Police Station Shahabad about the admission of the injured as well as of referring Baboo to PGI Chandigarh. He further deposed that on 15.6.2000 at 1.00 p.m., he again examined Swaran Singh and found the following additional injuries on his person:-

- “1. A reddish contusion 4 cms x 3 cms was found present on the left shoulder. Movements of the shoulder were painful and restricted. X-ray was advised.
2. A reddish contusion 4 cms x 2.5 cms was found present on the right shoulder. Movements of the same were normal.
3. A lacerated wound 1 cm x 0.5 cm x 0.5 cm was found present on the anterior side of right leg in its lower 1/3rd. Brownish blood crusts were found deposited on the margins of the wound.”

He further testified that he made endorsement Ex.PE/1 on the application Ex. PE produced by ASI Maya Ram to the effect that Baboo @ Harbhajan Singh had been referred to PGI, Chandigarh. He also deposed that injury No.4 found on the person of Swaran Singh was declared grievous in nature vide report Ex. PF/1 given by him.

PW2 Dr. Sanjay Sethi, Medical Officer, Community Health Centre, Shahabad Markanda testified that on 14.6.2000 he declared Swaran Singh and Gursharan Singh fit to make statement by making endorsement Ex. PH/1 on application Ex.PH moved by ASI Maya Ram. He further testified that on the same day at 3.05 p.m., he medico-legally examined Karam Singh-accused and found the following injuries on his person:-

- “1. A lacerated wound was found present over the left temporo-parietal area 12 cm x 0.5 cm. Fresh bleeding was present. X-ray was advised.
2. Multiple linear bruises of varying sizes were found present over the posterior aspect of chest area. Local tenderness was present. X-ray was advised.
3. Two abrasions were found present over the base of right little finger of the size ranging from 0.25 to 0.5 cm. Fresh bleeding was present. X-ray was advised.”

He further testified that on the same day at 3.10 p.m.,

he medico-legally examined accused-Kulwant Singh and found the following injuries on his person:-

- “1. Diffuse swelling was found present over the left occipital parietal area. Local tenderness was present. X-ray was advised.
2. Diffuse swelling was found present over the medial aspect of left ankle area. Local tenderness was present. X-ray was advised.
3. Complained of pain in the middle of left thigh area. No external injury mark was seen. X-ray was advised.
4. Diffuse swelling was present at the base of left thumb area. Movements were painful and restricted. X-ray was advised.
5. Complained of pain all over the chest area. No external injury mark was seen. X-ray was advised.”

He also testified after seeing the x-ray reports of both the accused, no bone injury was detected on their persons and as such, all those injuries were simple in nature.

PW3 Dr. S.R.Goyal, Senior Medical Officer, Chandigarh Administration, Chandigarh stated that on 17.6.2000, he conducted post-mortem on the dead body of Harbhajan Singh @ Baboo and noticed the following injuries:-

- “1. A stitched wound was found on the right side of the head as shown in the diagram 3 inches

x 4 inches x 3 inches on right front parietal region extending upto occipital region.

2. Vertical stitched wound was found present on the left side of the skull in left parietal region extending upto the temporal region.
3. Abrasion on the left hand was found on its dorsal surface at the base of left index finger.
4. Abrasion was found present on the dorsum of right foot 1 x 1 cm.”

He also stated that there was fracture of frontal bone, right parietal, occipital bone, left parietal bone and left temporal bone and base of left proximal phalanx of left index finger. In his opinion, the cause of death was shock and haemorrhage as a result of multiple injuries (head injury). All the injuries were ante-mortem and sufficient to cause death in ordinary course of nature.

PW4 Constable Karnail Singh, who had delivered the special report, tendered into evidence his affidavit Ex. PQ.

PW5 Ram Singh, Assistant, Central Registration Department, PGI, Chandigarh produced the summoned record relating to Harbhajan Singh.

PW6 Constable Mukesh Kumar testified that he had prepared scaled site-plan Ex. PU after going to the main bazar on 12.7.2000 and at the instance of Swaran Singh and Gursharan Singh.

PW7 ASI Baldev Singh testified that on receipt of ruqa

Ex. PV from ASI Maya Ram, he registered first information report Ex. PV/2.

PW8 ASI Ram Kumar deposed that on 26.7.2000, he had recorded the statements of PWs Mukesh Kumar, Draftsman and Constable Karnail Singh under Section 161 Cr.P.C. and after completion of investigation, he prepared final report under Section 173 Cr.P.C.

PW9 HC Surinder Singh testified that he moved application Ex. PM before the Medical Officer at Shahabad, who gave his opinion Ex. PM/1. He also deposed that prior to that, he had moved application Ex. PW before the doctor at PGI, who gave his opinion Ex. PW/1.

PW10 Swaran Singh, at whose instance the investigation had commenced, stated about the manner in which the occurrence had taken place. He also deposed about the motive which prompted the accused to launch an attack upon him, his brother-in-law and his cousin. He also deposed about the arrest of the four accused, who are the convicts in the case and recovery of various weapons from them.

PW11 Dr. Om Parkash Parsad, Senior Resident, Department of Neuro Surgery, PGI, Chandigarh deposed that on 16.6.2000 vide ruqa Ex. PY, he informed the police about the death of Harbhajan Singh @ Baboo. He also proved the death summary Ex. PY/1.

PW12 Dr. Puneet Mittal, Senior Medical Officer, Casualty, Emergency Department, PGI Chandigarh proved his opinion Ex. PW/1 on the application Ex. PW moved by HC Surinder Singh to the effect that Harbhajan Singh @ Baboo was unfit to make statement.

PW13 Dr. Ram Kumar, Senior Resident, Neuro-Surgery Department, PGI, Chandigarh testified that on 14.6.2000 Harbhajan Singh @ Baboo was admitted in PGI, Chandigarh. He was unconscious. His CT scan was done which showed right side temporo parietal extra dural haematoma with left acute sub-dural haematoma. He was operated upon and right side extra dural haematoma was evacuated. After repeat CT scan, left side extra dural haematoma was also evacuated. In the post-operative period, the injured did not improve and remained unconscious. He had cardiac arrest at 4.40 a.m. on 16.6.2000 and declared dead at 5.00 a.m. Medico-legal case summary Ex.PR was brought on record. The doctor also opined that the death of the patient was due to the head injury.

PW14 Gursharan Singh, who was also an eye-witness of the occurrence and had received injuries at the hands of the accused, testified in detail about the occurrence. According to him, on 14.6.2000 at about 12/12.30 noon, he was present at a workshop near the shop/office of injured Swaran Singh. He had gone there for the repairs of starter of the tubewell motor. He

found all the six accused persons at the spot and causing injuries to Swaran Singh. When he alongwith Harbhajan Singh @ Baboo rushed towards Swaran Singh to rescue him, they were also caused injuries.

PW15 Inspector Mam Chand testified about the arrest and recovery of the weapons from the four convicts.

PW16 Baldev Raj, resident of village Mugal Majra, District Kurukshetra testified that a little more than two years ago, when he had gone to Hanuman Market, Shahabad and it was noon time, he heard noise of Harbhajan Singh @ Baboo and Swarna @ Swaran Singh, who were lying down whereas Gursharan Singh was standing there. All the six accused caused injuries to Harbhajan Singh @ Baboo, Gursharan Singh and Swaran Singh. He also stated about the accused extending a threat while leaving the spot on a tractor and a motor cycle. Thereafter, the three injured were transported to Government Hospital, Shahabad from where Harbhajan Singh @ Baboo was referred to PGI, Chandigarh as his condition was serious.

PW17 ASI Maya Ram testified about the recording of statement Ex. PV of Swaran Singh @ Sarni and registration of FIR Ex. PV/2 on its basis. He also deposed about collecting opinion regarding Karam Singh and Kulwant Singh being unfit to make statements. He further stated that after receipt of VT message, he went to PGI, Chandigarh and prepared inquest

report Ex. PO/3 on the dead body of Harbhajan Singh @ Baboo. He then got the dead body subjected to post-mortem in General Hospital, Sector-16, Chandigarh.

When examined under Section 313 Cr.P.C., Gurdial Singh, Balbir Singh and Sucha Singh-accused pleaded that they were innocent and falsely implicated in the case. At the same time, accused-Kulwant Singh, Karam Singh and Dalvinder Singh took up the plea that Dalvinder Singh was employed with Manohar Lal Sharma and complainant-Swaran Singh on their finance company for the last 1½ years before 14.6.2000. He left the job some 1½ months before 14.6.2000. He used to drive a vehicle of the finance company. Swaran Singh and Manohar Lal Sharma did not pay him his salary for some time and because of that reason he left the job. Swaran Singh and Manohar Lal Sharma owed a sum of Rs. 3,500/- to him in lieu of his salary but did not pay the same. Some 5 or 6 days prior to 14.6.2000, he went to the finance company to demand the balance amount of his salary where Manohar Lal Sharma met him and promised to pay the balance amount in 4/5 days. He was advised to come in the presence of Swaran Singh, the other partner of the finance company. On 14.6.2000 at about 11.30 a.m., he went to the finance company where Manohar Lal Sharma and Swaran Singh were found present. He demanded the balance amount of his salary upon which Swaran Singh got enraged and started abusing

him in the name of his sister and mother. He objected to his conduct upon which he caused him fist and slap blows and illegally confined him by making him sit in the office of the finance company. He was not permitted to move out. On hearing commotion in the finance company, one Kuldeep Singh and one another came upstairs but despite that Swaran Singh forcibly made him sit there. Some one from the market informed his father Kulwant Singh about his confinement by Swaran Singh. His father alongwith Karam Singh had come in the bazar of Shahabad for purchasing fertilizer etc. On coming to know about his confinement by Swaran Singh, they came to the finance company to get him released. His father Kulwant Singh asked Swaran Singh that it was not good on his part to illegally detain him. Upon this, Swaran Singh started abusing Kulwant Singh also. However, Kulwant Singh asked him to accompany him downstairs. When Dalvinder Singh alongwith his father Kulwant Singh and uncle Karam Singh was coming downstairs, Swaran Singh armed with a danda chased them. He gave a danda blow to Kulwant Singh upon which there ensued a quarrel. Kulwant Singh also picked up a danda lying in front of the shop and wielded the same in self defence which might have hit Swaran Singh. Swaran Singh got enraged and started throwing bearings and other articles lying in the nearby shop of scrap dealers and mechanic of electric motors. In the meantime, Harbhajan Singh

@ Baboo arrived there. Swaran Singh continued throwing bearings etc. towards Dalvinder Singh and his relatives and in that process one of the bearings hit Kulwant Singh while one hit Karam Singh on their heads. Another bearing thrown by Swaran Singh hit Harbhajan Singh @ Baboo on his forehead and he fell down. Neither he himself nor his uncle Karam Singh had caused any injury to any body. He also stated that Gurdial Singh, Sucha Singh and Balbir Singh were not at all present at the time of the scuffle. Later on, he shifted his father Kulwant Singh and uncle Karam Singh to Community Health Centre, Shahabad and got them admitted there. The police came in the hospital around 2.25 p.m., on that day and recorded the statement of his father Kulwant Singh. Later on, Swaran Singh after exerting political influence and in connivance with the police got him and his relatives falsely implicated in the case. Swaran Singh had even influenced the doctors and got prepared false record about his injuries as well as that of Gursharan Singh. Gursharan Singh and Baldev Raj were not present at the time of commotion.

In defence, the accused produced DW1 Gurdial Singh, who deposed that he was running a shop of pesticides in Hanuman Mandir Market, Shahabad and knew complainant-Swaran Singh, who was having a shop on the first floor which was a few shops away from his shop in the same market. He further deposed that about 2/2¾ years ago at about 12.30 p.m.,

he heard the noise coming from the shop of complainant-Swaran Singh. After coming out, he saw people coming down from the shop of the complainant while making noise and uttering abuses. They included Kulwant Singh-accused and Swaran Singh-complainant. Swaran Singh inflicted danda blow to Kulwant Singh. Kulwant Singh took out a bamboo from tarpaulin of a shop and started wielding the same. One bamboo hit Swaran Singh on the head. He also suffered blows of bamboo on other parts of the body. Karam Singh-accused and Harbhajan Singh @ Baboo, who were present there rushed towards the shop. Swaran Singh entered the shop of an electrician and after lifting ball bearings from there, started throwing the same. Karam Singh was hit by one ball bearing and so also Harbhajan Singh @ Baboo on his forehead. Baboo fell down and became unconscious. Karam Singh sat down holding his head with his hand. The people of the market separated the parties. Later on, the injured on both the sides were sent in separate rickshaws to the hospital. During the enquiries made by the police, he had narrated whatever was seen by him.

After hearing learned counsel for the parties and perusing the case file, the trial Court acquitted Balbir Singh and Sucha Singh-accused of the charges against them by giving benefit of doubt as they were not named as the assailants at the time of registration of the FIR. Their involvement was pointed out

by complainant-Swaran Singh by making supplementary statement on 19.6.2000. Even Gursharan Singh and Baldev Raj in their respective statements under Section 161 Cr.P.C. had not named them as assailants. However, the trial Court after believing the testimonies of PW10 Swaran Singh, PW14 Gursharan Singh and PW16 Baldev Raj in regard to the ocular account of the occurrence which stood duly corroborated by the medical evidence, convicted and sentenced the four accused, who are the appellants in the present appeal.

Having heard learned counsel for the parties and scanning the evidence minutely with their able assistance, this Court finds that the occurrence in question had taken place on 14.6.2000 at 12.30 p.m. In the said occurrence, injuries were received by PW10 Swaran Singh, PW14 Gursharan Singh and Harbhajan Singh @ Baboo, since deceased. Soon after the occurrence, all the three injured were shifted to Community Health Centre, Shahabad, Markanda where they were medico-legally examined by PW1 Dr. R.L.Arya between 1.30 p.m. and 2.00 p.m. The condition of Harbhajan Singh @ Baboo was found to be serious as he had received injuries on his head and, accordingly, he was referred to PGI, Chandigarh. After receipt of ruqa Ex. PF from Dr. R.L.Arya, PW17 ASI Maya Ram reached Community Health Centre, Shahabad where he recorded statement Ex. PV of PW10 Swaran Singh on 14.6.2000 at 5.40

p.m. On its basis, FIR Ex. PV/2 under Sections 148, 324/323/149/506 IPC was registered at Police Station Shahabad by PW7 ASI Baldev Raj on 14.6.2000 at 5.50 p.m. As it was an ordinary case, the copy of the FIR was required to be sent through ordinary dak to the Ilqa Magistrate. As such copy of the FIR was not immediately sent as special report to the Ilqa Magistrate after the registration of the FIR. Aforementioned Harbhajan Singh @ Baboo while lying admitted in PGI, Chandigarh suffered cardiac arrest on 16.6.2000 at 4.50 a.m. and breathed his last at 5.00 a.m. Accordingly, offence under Section 302 IPC was added to the FIR. Consequent to addition of offence under Section 302 IPC, the special report was sent and received by the Ilqa Magistrate on 16.6.2000 at 10.00 a.m. Thus, it cannot be said that there was any delay in the lodging of the FIR. Moreover, if the FIR had to be ante timed, then names of even Balbir Singh and Sucha Singh as accused could have been mentioned therein but the fact remains that only four accused i.e. the present appellants, who were named as accused and at the same time it was stated that they were accompanied by 3/4 other persons and had caused injuries. In their testimonies PW10 Swaran Singh and PW14 Gursharan Singh, who had received injuries in the occurrence had described in detailed the manner in which they had received injuries at the hands of the appellants. Their statements are duly corroborated

by PW16 Baldev Raj, who was attracted to the spot on hearing the alarm raised by the complainant party. During his cross-examination, he testified that he had come to Shahabad on that day to purchase jawar seeds. However, he could not purchase the same on that day and purchased it next day. He further deposed that on the day of the occurrence, he purchased some goods from Hanuman Gali. He further stated that he had purchased only grease pump but did not take any bill thereof. Merely because, he happened to belong to the village of PW10 Swaran Singh is not enough to doubt his presence at the spot. He fairly admitted that he had been challaned by the police in one or two Excise cases. According to him, he had never been convicted in any such case. He denied the suggestion that he had been challaned in 20/25 cases under the Punjab Excise Act and convicted in 3/4 such cases. He also denied the suggestion that FIR No. 379 dated 15.7.1998 was registered against him as well as Swaran Singh and others in Police Station Shahabad. He, however, admitted it to be correct that a case under Section 307 IPC etc. was registered at his instance being injured against Ashok Kumar etc. in the year 1996 in Police Station Shahabad. The defence did not bring on record any such case under the Punjab Excise Act in which said witness stood convicted. Even no document has been produced in respect of FIR No. 379 dated 15.7.1998, said to have been registered against Baldev Raj,

Swaran Singh and others. Under these circumstances, Baldev Raj has to be considered as an independent witness, having no axe to grind against any of the appellants or to unnecessarily support the version of PW10 Swaran Singh and PW14 Gursharan Singh. For the sake of arguments, even if it is held that PW16 Baldev Raj had not witnessed the occurrence, there are testimonies of PW10 Swaran Singh and PW14 Gursharan Singh, who bore the stamp of the occurrence being injured witnesses and their statements duly corroborated by the medical evidence.

As regards the injuries said to have been suffered by appellants Karam Singh and Kulwant Singh, which have been brought on record by PW2 Dr. Sanjay Sethi, Medical Officer, Community Health Centre, Shahabad, suffice it to say that all these injuries were simple in nature. Qua those injuries, no cross-case was initiated by the police against the complainant party. Even the accused did not file any criminal complaint against the complainant party that it was the aggressor and injuries were caused to the complainant party by the accused in exercise of right of self defence.

It was the prosecution case that that target of assault was PW10 Swaran Singh and not Harbhajan Singh @ Baboo, brother-in-law of Swaran Singh. The weapons carried by Karam Singh, Gurdial Singh and Dalvinder Singh were blunt. Even gandasi held by Kulwant Singh-appellant was shown to have

been wielded from its reverse side in causing injuries to Harbhajan Singh @ Baboo, since deceased. At the time of medico-legal examination of Harbhajan Singh @ Baboo, PW1 Dr.R.L.Arya had noticed four injuries i.e. lacerated, swelling, contusion and bleeding. None of these injuries could have been caused if the gandasi had been wielded by Kulwant Singh from its right side. Further, the motive which impelled the appellants to open the assault was trivial in nature. Complainant-Swaran Singh had been impressing upon Dalvinder Singh-appellant to return the amount of Rs. 4,000/- but Dalvinder Singh had been asking for more time to clear the outstanding amount. Even on the day of the occurrence, complainant-Swaran Singh had come across Dalvinder Singh at Bus Stand, Shahabad and re-iterated his demand for payment of money. Going by the circumstances available on the record, this Court finds that at no stage did any of the appellants intended to cause the murder of Harbhajan Singh @ Baboo. On the other hand, the intention was to cause injuries, which were likely to cause death and this would make the appellants liable for committing the offence under Section 304 Part-I IPC, instead of Section 302 IPC. At the same time, the conviction of the appellants under Section 148 IPC and also for the offences under Sections 325, 324 and 323 IPC with the aid of Section 149 IPC cannot be sustained as the prosecution has not been able to prove that at the time of the occurrence, some one

else was accompanying the appellants and had taken part in the commission of the crime. Consequently, the conviction of the appellants under Sections 325, 324, 323 with the aid of Section 149 IPC has to be converted to one with the aid of Section 34 IPC.

It has been found as a matter of fact that Balbir Singh and Sucha Singh-accused were not shown to be present at the time of the occurrence. Their names were not mentioned at the time of making of statement Ex. PV by Swaran Singh. Their names cropped up only during the investigation of the case. Under these circumstances, no case is made out for upsetting the acquittal of Balbir Singh and Sucha Singh as recorded by the trial Court. Similarly, no case is made out for enhancing the sentences of imprisonment of the appellants as they are being acquitted under Section 302 IPC and, instead, convicted under Section 304 Part-I IPC for which they can be required to undergo imprisonment for seven years.

Resultantly, the conviction and sentences of the appellants under Section 148 IPC is set-aside. Their conviction and sentence under Sections 302/149 IPC is also set-aside. Instead, they are convicted under Sections 304 Part-I/34 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. The

conviction of the appellants under Sections 325/149, 324/149 and 323/149 IPC are converted to Sections 325/34, 324/34 and 323/34 IPC, respectively. However, their sentences of imprisonment and fine alongwith their default clauses for the said offences, as ordered by the trial Court are maintained. The substantive sentences of imprisonment shall run concurrently. Resultantly, Criminal Revision 2426 of 2002 is dismissed whereas Criminal Appeal D-861-DB of 2002 and Criminal Revision 2425 of 2002 are disposed of in the terms indicated above.

**(T.P.S. MANN)
JUDGE**

**(MAHAVIR S. CHAUHAN)
JUDGE**

March 03, 2015
ajay-1