

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA, AT CHANDIGARH**

Date of Decision: July 07, 2015

Criminal Appeal-D 1179-DB of 2010

Naresh Kumar & another --- Appellants

Versus

State of Haryana ---Respondent

WITH

Criminal Appeal -D-10-DB of 2011

Balwinder Singh @ Billu ---Appellant

Versus

State of Haryana ---Respondent

AND

Criminal Appeal D-136-DB of 2011

Gagan Kumar ---Appellant

Versus

State of Haryana ---Respondent

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

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Shri R.S. Mamli, Advocate for the appellants
(In Criminal Appeal D-1179-DB of 2010).

Shri S.S. Dinarpur, Advocate for the appellant
(In Criminal Appeal-D-10 of 2011).

None for the appellant in Criminal Appeal D-136-DB of 2011

Shri Dhruv Dayal, Deputy Advocate General, Haryana,
for the respondent-State.

1. *Whether Reporters of local papers may be allowed to see the Judgment? Yes/No*
2. To be referred to the Reporter or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

MAHAVIR S. CHAUHAN, J.

On November 09, 2007 Sunny (PW2), Sonu son of Mukhtiar Singh (the deceased) and Sonu aka Raj Kumar son of Kishan Lal (PW3) were bursting crackers at the house of Sunny son of Brij Mohan. Responding to repeated phone calls of Balwinder Singh aka Billu (appellant) all the three of them went to Jhansa Octroi on the motorcycle of Pintu, a friend of Sunny. Balwinder Singh aka Billu (appellant) then called them to the house of Shunty aka Parvesh Kumar son of Puran Chand (appellant). Pintu dropped Sunny (PW2), Sonu (the deceased) and Sonu aka Raj Kumar (PW3) in the street of Gurunanakpura mohalla and went away. When they reached near the house of Shunty aka Parvesh Kumar (appellant), Balwinder Singh aka Billu (appellant) armed with a sword, Gagan Kumar (appellant) armed with a 'Danda', Shunty aka Parvesh Kumar (appellant) armed with a pole-axe (Gandasi), Naresh Kumar (appellant) armed with a 'Danda', Sunny son of Puran Chand (juvenile) armed with a pole-axe, and Savitri armed with a 'Danda' were present there in front of main gate of the house and on seeing them started abusing them. Sunny (PW2) asked the accused not to abuse them. Balwinder Singh aka Billu (appellant) exhorted other accused not to allow any of them escape and inflicted a sword blow on right side of head of Sunny (PW2). Shunty aka Parvesh Kumar (appellant) administered a blow of pole-axe on left side of his head. Balwinder Singh aka Billu (appellant) inflicted another sword

blow on back of his shoulder. Gagan Kumar (appellant) administered a 'Danda' blow on right side of knee and another on left hand, Naresh Kumar (appellant) a 'Danda' blow on the back and Sunny (juvenile) a 'Gandasi' blow on finger of right hand of Sunny (PW2). He also received injuries on his right arm. Shunty aka Parvesh Kumar (appellant) also injured left hand of Sonu (the deceased) with the 'Gandasi' he was carrying. Balwinder Singh aka Billu (appellant) inflicted a sword blow on his head while Gagan Kumar hit him on his left knee with the 'Danda' he was wielding. The accused also caused injuries on the person of Sonu (PW3). Geeta (PW1), sister and Om Pati (PW4), mother of Sonu (the deceased) having been informed of the occurrence, reached the spot and found that appellants Balwinder Singh aka Billu, Gagan Kumar, Naresh Kumar and Shunty aka Parvesh Kumar were riding two motor cycles and were carrying Sonu (the deceased) on the motor cycle being driven by Gagan Kumar (appellant) and after throwing Sonu (the deceased) on the roadside sped away. When asked by these witnesses, Sonu (the deceased) told them that he had been belaboured and injured with 'Gandasis' and swords by the accused. They took Sonu (the deceased) to LNJP Hospital, Kurukshetra where he was medico-legally examined there by Dr. N.P. Singh (PW13) vide Medico Legal Report, Exhibit P40. From LNJP Hospital, Kurukshetra Sonu (the deceased) was taken to Post Graduate Institute of Medical Education & Research, Chandigarh (PGIMER, for short) but could not withstand the effect of the injuries and died on the way. Dead body of Sonu was taken to LNJP Hospital, Kurukshetra. Inspector Ram Chander (PW22), the Investigating Officer, on receipt of information regarding death of Sonu (the deceased) went to LNJP Hospital and prepared inquest report, Exhibit P55. A Board of Doctors,

including Dr. Narinder Pruthi (PW10), conducted autopsy on the dead body of the deceased Sonu vide Post Mortem Report (PMR), Exhibit P19. Sunny (PW2) was taken to and admitted in Mehta Surgical and Maternity Hospital, Kurukshetra where Dr. Surender Mehta (PW9) medico-legally examined him vide Medico Legal Report (MLR), Exhibit P12 and sent intimation (commonly called 'Ruqa'), Exhibit P14, to the Police Station. Inspector Ram Chander (PW22), the Investigating Officer, reached the aforesaid hospital where Sunny (PW2) made a statement (Exhibit P1) before him, based whereupon a formal First Information Report (FIR), Exhibit P1/B, was recorded by SI Kuldeep Singh (PW14) at Police Station, City, Thanesar.

02. Investigating Officer visited the spot of occurrence; prepared a visual site plan, Exhibit P56; and lifted blood stained earth, a T-shirt and jacket from the spot vide memorandum, Exhibit P10. He then went to the place where Sonu (the deceased) was said to have been thrown by the appellants and prepared a rough site plan, Exhibit P57. Accused were arrested. On being interrogated while in police custody, accused Savitri, Gagan Kumar, Balwinder Kumar aka Billu, Shunty aka Parvesh Kumar, and Naresh Kumar suffered disclosure statements and pursuant thereto got recovered, vide memoranda, Exhibits P24, P26, P33, P29 and P38, the 'Dandas', sword, and 'Gandasis' used by them in the occurrence. Appellants Gagan Kumar, Balwinder Singh aka Billu, and Shunty aka Parvesh Kumar also suffered disclosure statements, Exhibits P48 to P50 and thereby revealed that accused Puran Chand had provided shelter to them. Vide memorandum, Exhibit P44, they also pointed out the place where accused Vishal aka Monu had provided shelter to them. Further, vide memorandum,

Exhibit P46, the aforesaid appellants demarcated the place where they were provided shelter by accused Sunil Yadav.

03. On completion of investigation and other attendant formalities, accused Savitri, Gagan Kumar, Balwinder Singh aka Billu, Shunty aka Parvesh Kumar, Naresh Kumar, Puran Chand, Vishal Kumar (aka Monu), and Sunil Yadav were made to face trial. Learned Additional Sessions Judge, Kurukshetra (here-in-after referred to as, 'the trial court'), on hearing the prosecution and the defence and appraisal of the report submitted in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short, 'the Code') and its enclosures, formed an opinion that there were grounds to presume that the accused had committed offences punishable under Sections 148, 302 /149, 324/149, 323/149, and 212 of the Indian Penal Code, 1860 (for short, 'IPC') and charged them accordingly. Accused pleaded not guilty to the charge and claimed to be tried.

04. During the trial Dr. Surender Mehta (PW9) told the learned trial court that he medico-legally examined Sunny (PW2) at 10.35 p.m. on November 09, 2007 and, as recorded in MLR, Exhibit P12, found following injuries on his person:

- i. 4x.5 cms scalp wound at the left side of midline, obliquely placed, sharp margins . Advised X-Ray;
- ii. 3x.5 cms scalp wound at the right side of midline, obliquely placed, sharp margins. Advised X-Ray;
- iii. 3x.5 cms sharp wound at the base of right index finger;
- iv. diffused swelling on the lateral side of right knee, painful, blackish contusion, 6x5 cms in size, present, moment painful; advised X-Ray;
- v. 8x .25 cms sharp wound at the back of right scapula , vertically placed;

- vi. multiple contusions over the back;
- vii. small lacerated wound at the base of right hand over medial side;
- viii. transversely placed 6x.5 cms cut just below right shoulder with sharp margins; and
- ix. 3x.5 cms sharp bleeding wound 4 cms below injury No. 8.

05. Dr. N.P. Singh (PW13) revealed before the learned trial court that Sonu (the deceased), who was semi conscious, was brought to LNJP Hospital, Kurukshetra at 11.00 p.m. on November 09, 2007 by Geeta (PW1) with alleged history of assault and on being medico-legally examined at 11.50 p.m. on November 09, 2007, as recorded in MLR, Exhibit P12, following injuries were found on his person:

- i. Incised wound cutting the left hand from the middle and hanging down of middle from the base of finger and thumb. Bleeding was present. X-Ray was advised;
- ii. 6x1 cms incised wound over the dorsum of left hand above injury No. 1. X-Ray was advised;
- iii. Two incised wounds-4x.5 cms and 3.5x.5 cms, parallel to each other over left occipital region of head. Bleeding was present. X-Ray was advised; and
- iv. Two incised wounds – 2x .5 cms over the anterior lateral aspect of left ankle joint. Bleeding was present. X-Ray was advised.

According to him all the injuries were caused within the duration of six hours with sharp edged weapon and injury No. 1 was grievous in nature.

06. Dr. Narinder Pruthi (PW10) apprised the learned trial court that at 12.30 p.m. on November 10, 2007 he, alongwith other members of the Board of Doctors, conducted autopsy on the dead body of Sonu (the deceased) and, as recorded in Post Mortem Report, Exhibit P19, found

following injuries on his body:

- i. Two stitched wounds – 4 cms long and other 3.5 cms long, on the left occipital region. On dissection underlying haematoma was present and underlying bone was seen to be fractured. On further dissection intra cranial haematoma was present in the corresponding area;
- ii. 20x5 cms pinkish-blue contusion over the middle of upper left back and extending up to the back of left upper arm, placed horizontally;
- iii. 16x3 cms pinkish-blue contusion just below the above injury;
- iv. 8x3 cms pinkish-blue contusion on the posterior side of left arm in the middle third;
- v. 12x3 cms pinkish-blue contusion in the left infra scapular area obliquely placed.
- vi. Two abrasions with clotted blood. First one 3x2 cms in the middle of back on right side, the other one 4x2 cms in the middle of back on left side;
- vii. Diffused pinkish-blue contusion involving the outer aspect of left arm in its middle one third portion;
- viii. 10x2 cms obliquely placed bone deep incised wound on the dorsum of left hand extending from middle of wrist to base of left thumb. Underlying bones, muscles, ligaments, vessels torn;
- ix. 6x1/2 cms bone deep horizontally placed incised wound placed above injury No. 8;
- x. Left hand amputated at the level of metacarpo-phalangeal joint extending from left index finger up to base of left little finger. Amputated portion (comprising of all 4 fingers joined together) was attached to the rest of limb by a tag of skin on the ulnar side;
- xi. Incised wound on the left thumb starting from metacarpo-phalangeal joint extending up to inter phalangeal joint. Portion of the thumb distal to inter phalangeal joint was amputated and missing. Clotted blood in injury Nos. 8 to 11 was present.

- xii. 3.5 cms long stitched wound on the antero-lateral aspect of left leg (in its lower one third). On dissection the margins of wound were observed to be incised and underlying structures i.e. muscles and vessels were cut;
- xiii. 2.5x0.2 cms skin deep obliquely placed incised wound on the lateral aspect of left foot just below the left lateral malleolus;
- xiv. 1x0.5 cms lacerated wound on the anterior aspect of left leg in its middle one third;
- xv. Diffused pinkish-blue contusion in the area of 15x6 cms below left knee joint on the antero-lateral aspect of left leg. On dissection infiltration of blood present and the underlying left tibia was fractured;
- xvi. 2 cms stitched wound on the medial side of left ankle joint. On dissection margins appeared incised and underlying soft tissues were cut;
- xvii. Multiple abrasions of various sizes over right knee joint; and
- xviii. 10x7cms pinkish-blue contusion over the postero-lateral aspect of right lower chest wall and adjoining portions of abdominal wall involving diffused area.

Besides, peritoneal cavity was full of blood and liver was seen to be lacerated at multiple points and areas. In the opinion of the Board of Doctors cause of death was hemorrhage and shock as a result of the above-described injuries which were ante-mortem in nature and sufficient to cause death in ordinary course. Probable time that elapsed between injuries and death was a few hours and between death and post mortem was within 24 hours.

07. Geeta (PW1), Om Pati (PW4), Sunny (PW2), and Sonu aka Raj Kumar (PW3) gave oral account of the occurrence. Sunny (PW2), and Sonu alias Raj Kumar (PW3), however, deviated a little from the mainstay of the

case of the prosecution and were declared hostile. Sanjay Kumar (PW5) proved on record photographs, Exhibits P2 to P6, of the place of occurrence. Head Constable Sudeep Kumar placed on record scaled site plans, Exhibits P7 and P8. Som Parkash (PW19) deposed to say that accused Puran Chand used to provide shelter to appellants Balwinder Singh aka Billu, Gagan Kumar and Shunty aka Parvesh Kumar. Inspector Ram Chander (PW22), Inspector Surender Singh (PW17), Sub Inspector Ram Kumar (PW12), Head Constable Ramesh Kumar (PW20), Constable Sube Singh (PW21), Constable Rajesh Kumar (PW18), Dy. S.P. Randhir Singh (PW16), EHC Randhir Singh (PW15), Inspector Kuldeep Singh (PW14), Head Constable Jagdish Chander (PW11), Head Constable Ram Kishan (PW8) and Moharrir Constable Rajbir Singh (PW7) highlighted various facets and phases of investigation besides providing the necessary links in the prosecution version.

08. On close of case on behalf of the prosecution, all the incriminating circumstances appearing in the evidence of the prosecution were put to the accused as required by Section 313 of the Code. Accused denied all these circumstances and reiterated plea of their innocence and false implication.

09. Accused did not lead any evidence in defence.

10. Learned trial court on appraisal of the evidence in the light of the submissions made at the bar, came to conclusion that the prosecution was able to prove guilt of appellants Naresh Kumar, Shunty aka Parvesh Kumar, Balwinder Singh aka Billu and Gagan Kumar punishable under Section 302 read with Section 34, IPC, only and could not establish their guilt as regards other offences and complicity of other accused in the

commission of the crime and, accordingly, while acquitting Savitri, Puran Chand, Vishal Kumar (aka Monu) and Sunil Yadav, convicted and sentenced the appellants to imprisonment for life with fine amounting to Rs. 5000/- and in default of payment of fine to further rigorous imprisonment for a term of six months, each, under Section 302 read with Section 34, IPC, vide judgment of conviction/order of sentence dated November 29, 2010.

11. To assail the correctness of judgment of conviction/order of sentence dated November 29, 2010 and to seek their acquittal Naresh Kumar and Shunty aka Parvesh Kumar have brought Criminal Appeal D-1179-DB of 2010, Balwinder Singh aka Billu has filed Criminal Appeal D-10-DB of 2011 and Gagan Kumar has preferred Criminal Appeal D-136-DB of 2011 which, in view of commonality of facts and law, are proposed to be disposed of by this common judgment being penned in Criminal Appeal D-1179-DB of 2010.

12. We have heard learned counsel for the parties besides appraising the record.

13. It has been argued on behalf of the appellants that Sunny (PW2), to whom statement, Exhibit P1-which led to registration of FIR, Exhibit P1/B, is attributed and Sonu alias Raj Kumar (PW3) have refused to support the prosecution story while Geeta (PW1) and Om Pati (PW4) have made improvements over their statements recorded under Section 161 of the Code as regards the deceased having told them about the occurrence as also the occurrence of October 17, 2007 and have, thus, rendered their evidence unworthy of credence. It has also been pointed out on behalf of the appellants that Dr. N.P. Singh (PW13) has very categorically stated that when admitted in the hospital, Sonu (the deceased) was semi-conscious and

was unable to speak. This revelation also brings out falsity of the case of the prosecution that Sonu (the deceased) had revealed the factum and manner of occurrence before Geeta (PW1) and Om Pati (PW4). Even otherwise, according to learned counsel for the appellants, Geeta (PW1) and Om Pati (PW4) are planted witnesses as is evident from the fact that in respect of the occurrence that took place on November 09, 2007 Geeta (PW1) is shown to have made a statement on November 10, 2007 and Om Pati (PW4) on January 18, 2008. Towards the end it has been contended that Mogli, who is said to have informed Geeta (PW1) and Om Pati (PW4) about the occurrence has not been examined as a witness even though his evidence was of utmost importance and the motorcycles used in the occurrence have not been recovered.

14. On the contrary, on behalf of the respondent State it has been argued that as per Dr. Narinder Pruthi (PW10) and PMR, Exhibit P19, on the person of Sonu (the deceased) as many as eighteen injuries were found; Sunny (PW2) and Sonu alias Raj Kumar (PW3) though have brought some discomfort for the prosecution but, at the same time, have proved the occurrence and their evidence to that extent can be taken into account; presence of Geeta (PW1) by the side of Sonu (the deceased) immediately after the occurrence is established by the fact that she took him to LNJP Hospital, Kurukshetra as deposed to by Dr. N.P. Singh (PW13); statement made by Sonu (the deceased) before Geeta (PW1) and Om Pati (PW4) is in the nature of a dying declaration and is admissible in evidence being a relevant fact under Section 32 of The Indian Evidence Act, 1872 (Evidence Act for short); and Geeta (PW1) and Om Pati (PW4) having proved the occurrence and having stood the test of cross-examination successfully and

their evidence having been supported to a great extent by Sunny (PW2) and Sonu alias Raj Kumar (PW3), non-examination of Mogli and non-recovery of motorcycles are rendered of no consequence.

15. No other or further point has been urged on either side.

16. Sunny (PW2) and Sonu alias Raj Kumar (PW3) no doubt have been declared hostile. Still, portions of their evidence which inspire confidence and support the case of the prosecution can be relied upon because even the evidence given by a hostile witness may contain elements of truth. Merely because a witness deviates from his statement made in the FIR or under Section 161 of the Code, his evidence cannot be held to be totally unreliable. To make it clear, evidence of a hostile witness can be relied upon at least up to the extent he supports the case of the prosecution. Evidence of a person does not become effaced from the record merely because he has turned hostile though his deposition must be examined more cautiously to find out as to what extent he has supported the case of the prosecution. After perusing and considering the evidence of such a witness as a whole, with due caution and care, in the light of other evidence on the record, if credit of the witness is found to be not completely shaken that part of his testimony which is found to be creditworthy can be acted upon. Sunny (PW2) has very categorically stated when he, alongwith Sonu (the deceased), and Sonu alias Raj Kumar (PW3), was celebrating Diwali at the house of Sunny son of Brij Lal (juvenile), was called by appellant Balwinder Singh alias Billu first to Jhansa Road and then to the house of Shunty alias Parvesh Kumar and they, accordingly reached there on the motorcycle of Pintu. It is thereafter that he deviated from the mainstay of the case and has stated that they were attacked by some persons with muffled

faces. Not only has he admitted his signatures on statement, Exhibit P1, (saying that his signatures were obtained by the police on blank paper) but his presence on the spot at the time of the occurrence is also established by the fact that Dr. Surinder Mehta (PW9) admitted him in his hospital at 10.35 p.m. on November 09, 2007 (as recorded in MLR-Exhibit P12) and found nine injuries on his person. Even the Investigating Officer moved an application, Exhibit P63-A, to have opinion of the doctor if he was fit to make a statement on November 10, 2007, after receipt of intimation, Exhibit P14, and has deposed as PW22 to say that after Sunny (PW2) was declared fit to make a statement by the doctor vide certificate, Exhibit P54/A he recorded his statement, Exhibit P1, correctly without any addition or omission. Interestingly, defence has chosen not to cross-examine Inspector Ram Chander (PW22), the Investigating Officer on this aspect of the matter nor has he been confronted with a suggestion that Sunny (PW2) did not make statement, Exhibit P1, before him or that whatever was stated by the witness was not correctly recorded in that statement or that signatures of the witness were obtained on a blank paper which has been used to manufacture the statement, Exhibit P1. Similarly, Sonu aka Raj Kumar (PW3) after supporting the case of the prosecution till arrival of the Sunny (PW2), Sonu (the deceased) and this witness on the spot introduced a twist in the story saying that they were attacked by some persons with muffled faces and refused to own statement, Mark A, which, as per case of the prosecution was made by him during the course of investigation. The defence, however, thought it unnecessary and wasteful to confront the Investigating Officer with a suggestion that this witness did not make such a statement before him. It may be added here that it is well settled proposition of law that if a

party cross-examining a witness chooses not to cross-examine a witness in respect of a fact deposed to by him and not to put its own case to the witness, that party is deemed to have accepted as correct the statement made by the witness.

17. Geeta (PW1) and Om Pati (PW4), sister and mother, respectively, of Sonu (the deceased) have testified that on November 09, 2007 when they were present at their house, at about 10.00 p.m. a boy named Mogli came to their house and told them that Sonu (the deceased) was being belaboured by the appellants and their accomplices in Guru Nanak Mohalla and on reaching there they found that the appellants were riding two motorcycles and on one of the motorcycles being driven by appellant Gagan Kumar, Sonu (the deceased) was lying in the lap of appellant Shunty aka Parvesh Kumar; the appellants threw Sonu (the deceased) near “Khera” and went away; Sonu (the deceased) told them that he was belaboured and injured by “Gandasis” and swords by the appellants and their accomplices; and they (PWs Geeta and Om Pati) took him to LNJP Hospital, Kurukshetra and thence to PGIMER, Chandigarh but he died on the way. These witnesses have deposed that the appellants had a hostile animus towards Sonu (the deceased) and alongwith Ashok and Mannu, had caused injuries to him on October 17, 2007 also. Geeta (PW1) has also stated that the appellants were known to her as previously they were friendly with Sonu (the deceased) and, as such, used to visit their house. Statement made by Sonu (the deceased) before these two witnesses is, in effect, in the nature of dying declaration and is admissible in evidence being a relevant fact under Section 32 of the Evidence Act. Though it is contended on behalf of the appellants that these witnesses have made improvements

over their statements recorded under Section 161 of the Code but while Om Pati (PW4) has been confronted with her statement (Mark B) recorded under Section 161 of the Code as regards her statement with regard to the revelation made by Sonu (the deceased) before her and the occurrence of October 17, 2007, but this exercise has not been done as regards statement of Geeta (PW1) to the effect that Sonu (the deceased) had told her that he was belaboured and injured by “Gandasis” and swords by the appellants and their accomplices. Incidentally, statements, Mark A and Mark B, stated to have been made by these witnesses before the Investigating Officer under Section 161 of the Code have not been proved in accordance with law and, as such, cannot be termed as “Evidence” within the meaning of Section 3 of the Evidence Act and cannot be relied upon to disbelieve their statements made before the learned trial court. Section 145 of the Evidence Act states, A witness may be cross-examined as to previous statement made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. It is obvious from a perusal of Section 145 of Evidence Act that it applies only to cases where, the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement before that previous statement is proved as per law of evidence so as to enable the court to rely upon that statement in view of the fundamental and elementary legal proposition that a statement made to a police officer by any person

examined in the course of investigation recorded under Section 161 of the Code is not and cannot be treated as substantive evidence except when falling within the provisions of Clause (1) of Section 32, or with regard to a discovery under Section 27 of the Evidence Act. If proved, the statement earlier in time has to prevail otherwise not. To put the things straight, statements made by Geeta (PW1) and Om Pati (PW4) during the course of investigation having not been proved, cannot be allowed to have precedence over their depositions made before the learned trial court or say whatever they have stated before the learned trial court has to be taken as correct more so because they passed the litmus test of cross-examination successfully.

18. Evidence of Geeta (PW1) and Om Pati (PW4) cannot be discarded on the ground that their statements under Section 161 of the Code were recorded after some delay because the defence has chosen not to call upon the Investigating Officer to explain the reasons for such delay (refer ***Banti V. State of M.P., AIR 2004 SC 261, Ramanand Yadav V. Prabhu Nath Jha, AIR 2004 SC 1053, Ranbir and others V. State of Punjab, AIR 1973 SC 1409, and Bodh Raj @ Bodha V. State of J&K, AIR 2002 SC 3164***). Even otherwise, these witnesses have passed the acid test of cross-examination and credibility.

19. Presence of Geeta (PW1) by the side of Sonu (the deceased) immediately after the occurrence (which took place at or around 10.00 p.m. on November 09, 2007) is confirmed by the fact that she, as recorded in MLR, Exhibit P40, had brought Sonu (the deceased) to LNJP Hospital, Kurukshetra at 11.00 p.m. on November 09, 2007, where he was medico-legally examined at 11.50 p.m. True, Dr. N.P. Singh (PW13) has said that on admission in LNJP Hospital, Sonu (the deceased) was semi conscious

and unable to speak but, as noticed here-in-above, the occurrence took place at or around 10.00 p.m.; PWs Geeta and Om Pati reached the place (Khera) where Sonu (the deceased) was thrown by the appellants and the factum and manner of occurrence were revealed before them by Sonu (the deceased), immediately thereafter (as, according to PW Geeta it takes about ten minutes to reach “Khera” from her house and Mogli had told about the occurrence at about 10.15 p.m.). As per Post Mortem Report, Exhibit P19, there were as many as eighteen injuries on the person of Sonu (the deceased) and it has come in the evidence of Om Pati (PW4) that Sonu (the deceased) was profusely bleeding. Therefore, no wonder Sonu (the deceased) narrated the sequence of events before PWs Geeta and Om Pati and by the time he was examined by the doctor, was rendered incapable of speaking owing to profuse bleeding from the injuries he received at the hands of the appellants.

20. Evidence of Geeta (PW1) and Om Pati (PW4) is corroborated to a great extent by depositions of Sunny (PW2) and Sonu aka Raj Kumar (PW3) as also the medical evidence and recovery of weapons of offence i.e. a bamboo stick vide memorandum, Exhibit P26 at the instance of appellant Gagan Kumar, a “Gandasi” (Exhibit P30) vide memorandum, Exhibit P29, at the instance of appellant Shunty aka Parvesh Kumar, a sword (Exhibit P35) vide memorandum Exhibit P39, at the instance of appellant Balwinder Singh aka Billu, and a bamboo stick vide memorandum, Exhibit P38 at the instance of appellant Naresh Kumar.

21. In view of overwhelming evidence, as discussed here-in-above, non-recovery of the motorcycles and non-examination of Mogli as a witness are rendered of no consequence because recovery of motorcycles would

have been of corroborative value alone while examination of Mogli would have served no purpose but would have multiplied the number of witnesses which would have been contrary to intent of Section 134 of the Evidence Act according to which no particular number of witnesses is required for the proof of any fact.

22. As a consequence, we do not see any justification to interfere with the judgment of conviction/order of sentence. Accordingly, findings of conviction and order on quantum of sentence recorded by the learned trial court are hereby affirmed. As a natural consequence, the appeals fail and are dismissed.

23. Appellants Naresh Kumar and Balwinder Singh aka Billu are on bail. Their bail bonds are cancelled. They shall forthwith surrender before the concerned jail authorities and on their failure to do so shall be re-arrested and committed to custody by learned Chief Judicial Magistrate, Kurukshetra to serve the unexpired part of sentence awarded to them by the learned trial court as affirmed by this Court.

[T.P.S. Mann]
Judge

[Mahavir S. Chauhan]
Judge

July 07, 2015
adhikari