

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

CRA No.D-1058-DB of 2011 (O&M)
Date of Decision: 26.08.2015

Jaswinder Singh and another

..... Appellants

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE REKHA MITTAL

Present: Mr.S.S.Rangi, Advocate
for the appellants.

Mr. P.P.S. Thethi, Addl. AG,
Punjab for the State.

S.S. SARON, J.

This appeal has been filed by the appellants-Jaswinder Singh and Rajinder Singh @ Harjinder Singh sons of Bakshish Singh against the judgment and order dated 12.10.2011 whereby Jaswinder Singh (appellant No.1) has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code ('IPC'-for short) and Rajinder Singh @ Harjinder Singh (appellant No.2) who has been convicted for the offence under Section 302 IPC. Both of them have been sentenced to undergo life imprisonment; besides, pay a fine of Rs.20,000/- each and in default thereof undergo further rigorous imprisonment for two years.

The FIR in the case has been registered on the statement of Kuldeep Singh (PW-1), who is the son of Sohan Singh

(deceased in the case) made on 10.11.2007 before SI/SHO Police Station Bullowal, District Hoshiarpur. According to the complainant Kuldeep Singh, his father were four brothers. The eldest Bakshish Singh (since acquitted), was residing nearby but separate from them. The father of the complainant (Sohan Singh – deceased) had purchased a plot at Sham Chaurasi town. There were 'dek' (azedarach) trees in that plot. The son of the uncle of the complainant, i.e. son of Bakshish Singh, namely Harjinder Singh (appellant No.2) resident of Dhamian Kalan got settled an agreement between Sohan Singh (deceased), father of the complainant, and a person who deals with and does business of 'dek' (azedarach) trees, for a consideration of Rs.3500/-. The person who purchased the 'dek' (azedarach) trees after cutting the trees, paid the sale consideration to Harjinder Singh (appellant No.2). Harjinder Singh (appellant No.2) a day earlier to the complainant making his statement i.e. on 09.11.2007 at about 9.00 am came to the house of the complainant. At that time, the complainant, his father (Sohan Singh - deceased) and mother Harvinder Kaur (sic. Harmender Kaur) (PW-2) were present. Harjinder Singh (appellant No.2) as he came there, threw the money on a cot and said that the same may be counted. As the father of the complainant, i.e. Sohan Singh counted the money, these were Rs.3300/-. Sohan Singh (deceased) father of the complainant then asked Harjinder Singh (appellant No.2) that the settlement had been done for Rs.3500/- but he was giving Rs.3300/-. Harjinder Singh (appellant No.2), however, then said that the notes be picked up and at the same time he started hurling abuses. The complainant Kuldeep Singh and his mother (Harmender

Kaur PW-2) stopped him from abusing. Harjinder Singh (appellant No.2) then went away to his house and threatened that he would return and see him. After about half a hour, Bakshish Singh (since acquitted) armed with handle of a spade, Harjinder Singh (appellant No.2) carrying a 'dang', Jaswinder Singh (appellant No.1) carrying a 'danda' and Surjit Singh alias Bittu son of Avtar carrying a 'danda' all residents of Dhamian Kalan came in front of the gate of the house of the complainant. Then Bakshish Singh (since acquitted) raised a 'lalkara' and asked them to come out and they would teach them a lesson for abusing. The father of the complainant after opening the gate came out and at once Jaswinder Singh (appellant No.1) and Malkiat Singh caught hold of the father of the complainant from his arms and Bakshish Singh (since acquitted) gripped him with both his arms. They began to pull him in the street. In the meantime, Kulwinder Kaur (since acquitted) wife of Iqbal Singh of Dhamian Kalan, who was carrying a 'karad' type of a knife in her hand came at the spot. She handing over the knife said to take it and finish this work. Then Harjinder Singh (appellant No.2) took the knife from his brother's wife Kulwinder Kaur (since acquitted) and inflicted a blow with it on the left side waist of his father. As the blow hit the father of the complainant, he fell on the ground. The complainant and his mother raised an alarm. On hearing the alarm raised by them, Surjit Kaur (DW-4) wife of Avtar Singh resident of Dhamian Kalan came at the spot. They with great difficulty got their father freed from the assailants. On seeing the heavy quantity of blood oozing out from the father of the complainant, they along with their weapons fled from the spot. The complainant after arranging a vehicle brought his father and got

him admitted at Civil Hospital, Hoshiarpur. The doctor there on seeing his serious condition referred him to DMC (Dayanand Medical College), Ludhiana. On the date of making his statement i.e. 10.11.2007 at about 5.00 am in the morning, the father of the complainant died at DMC Hospital Ludhiana. All the accused in conspiracy with each other had killed the father of the complainant. This entire occurrence had been seen by the complainant and his mother Harvinder Kaur (sic. Harmender Kaur). During the scuffle, while trying to save the father of the complainant, the mother's sister of the complainant namely Surjit Kaur (DW-4) wife of Avtar Singh and some of the accused suffered injuries. He had heard his statement, which was accepted as correct. Kuldeep Singh (complainant) signed his statement in English, which was attested by SI/SHO Paramjit Singh (PW-10). On the basis of the said statement, SI/SHO Paramjit Singh (PW-10) found that a case for the offences under Sections 302, 148 and 149 IPC were made out. The statement was sent through Constable Paramjit Singh for recording FIR. After recording the FIR, its number was asked to be intimated. Besides, special reports were asked to be sent to the officers and the control room was also asked to be intimated. FIR (Ex.PA/2) was recorded by ASI Chaman Lal.

SI/SHO Paramjit Singh (PW-10) conducted investigation in the case. He went to the dead house of DMC Hospital, Ludhiana and prepared inquest report (Ex.PB) with respect to the dead body of Sohan Singh. The dead body was identified by Kuldeep Singh and Surinder Singh. The dead body along with papers and request for conducting postmortem examinations was handed over to HC Dharam Singh and HC Hansraj for getting the postmortem

examination done at Civil Hospital, Hoshiarpur. Kuldeep Singh complainant produced the blood stained clothes i.e. 'kameez' (shirt), 'pajama' and undershirt. A parcel of the same was prepared and sealed with the seal bearing impression 'PS'. These were taken in police possession vide recovery memo (Ex.PC), which was attested by the witnesses. Thereafter, Paramjit Singh SI/SHO (PW-10) along with the complainant and other police officials went to the place of occurrence and prepared rough site plan (Ex.PO) with correct marginal notes. The blood stained earth was taken in possession by the police after a parcel had been prepared and sealed with seal impression 'PS' vide memo (Ex.PO/1). A pair of slippers was also taken in possession by the police vide memo (Ex.PO/2). SI/SHO Paramjit Singh (PW-10) also recorded statements of witnesses; besides, HC Raj Kumar, Photographer (PW-12) was called at the spot, who took photographs. Raids were conducted at the houses of the accused but the accused were not found. SI/SHO Paramjit Singh (PW-10) then along with other police officials went to Government Hospital, Sham Chaurasia to record the statements of Surjit Kaur (DW-4) and Jaswinder Singh. The doctor there declared both the injured fit for making the statements. However, Surjit Kaur (DW-4) and Jaswinder Singh did not get their statements recorded. Then SI/SHO Paramjit Singh (PW-10) returned back to the police station and deposited the case property in an intact condition with the MHC. On the following day, the postmortem examination on the dead body of Sohan Singh was conducted at Civil Hospital at Hoshiarpur. HC Dharam Singh (PW-9) produced the clothes of deceased after postmortem examination had been conducted. SI/SHO Paramjit Singh (PW-10) prepared a

parcel of the same and sealed the same with his seal bearing impression 'PS'. The clothes were taken in possession by the police vide recovery memo (Ex.PN). He (PW-10) then on 15.11.2007 recorded the statements of Surjit Kaur (DW-4) and Jaswinder Singh. Mangi Ram, Municipal Commissioner, Sham Chaurasia on 17.11.2007 produced the accused Jaswinder Singh (appellant No.1) and Harjinder Singh alias Sukhjinder Singh (appellant No.2). They both were joined in the investigation and were arrested in the present case. Intimation of their arrest were given to their relatives on telephone. Bakshish Singh (since acquitted) was arrested at Bus Stand, Dhamian Kalan on 07.02.2008 and intimation of his arrest was given to his relatives. During interrogation, Bakshish Singh made a disclosure statement (Ex.PQ/2) that he had concealed the 'dasta' (handle) of the 'kahi' (spade) beneath the straw field and he knew about it and could get the same recovered. The said disclosure statement was signed by the accused as a token of its correctness. It was attested by ASI Jasbir Singh, HC Mohan Lal. Bakshish Singh accused in pursuance of his disclosure statement took the police party to the place that he had disclosed and got recovered the 'dasta' (handle) (Ex.P3) of the 'kahi' (spade). A rough sketch (Ex.PQ/A) of the 'dasta' (handle) was prepared and the 'dasta' (handle) was taken in possession by the police vide memo (Ex.PQ /B). SI/SHO Paramjit Singh (PW-10) then reached the police station and deposited the case property with the MHC. The accused were put in police lock up. The photographs were taken in possession by the police vide memo (Ex.PR). He (PW-10) also recorded the statements of the witnesses. After completion of the investigation, police report (challan) of the accused was

prepared by him. During deposition in Court, SI/SHO Paramjit Singh (PW-10) had seen the 'dasta' (handle) of the 'kahi' (spade) (Ex.P3), a pair of slippers (Ex.P4) and Parcel of clothes (Ex.P5 and Ex.P6).

The police report ('challan') that was filed in the Court of the learned Judicial Magistrate Ist Class on 15.02.2008 was considered by the said Court. In terms of order dated 23.02.2008, it was observed that from the perusal of the report under Section 173 of the Code of Criminal Procedure ('Cr.P.C. - for short) and documents annexed with it, prima facie offences under Sections 302, 201 read with Section 34 IPC appeared to be made out against the accused, which were exclusively triable by the Court of Sessions. The case was, therefore, committed to the learned Sessions Judge, Hoshiarpur for trial for 08.03.2008.

The learned Additional Sessions Judge, Hoshiarpur to whom the case was assigned framed charges on 08.05.2008 against Bakshish Singh son of Khushia as also Jaswinder Singh and Rajinder Singh alias Harjinder Singh sons of Bakshish Singh on the allegations that on 09.11.2007 at about 9.30 am, in the area of Dhamian Kalan, the accused Rajinder Singh alias Harjinder Singh (appellant No.2) in furtherance of common intention with the other accused, committed murder by intentionally causing the death of Sohan Singh and thereby he (Rajinder Singh alias Harjinder Singh-appellant No.2) committed offence punishable under Section 302 IPC whereas Bakshish Singh and Jaswinder Singh committed offence punishable under Section 302 read with Section 34 IPC. It was directed that the accused be tried by the said Court on the above charges. The contents of the charges were read over and

explained to the accused, which they heard and understood and pleaded not guilty, besides, claimed trial.

Thereafter, amended charges were framed on 06.05.2009 against the aforesaid three accused as also Manjit Singh alias Bittu son of Avtar Singh and Kulwinder Kaur (since acquitted) wife of Iqbal Singh on the allegations that they on 09.11.2007 at about 9.30 am in the area of Dhamian Kalan were members of an unlawful assembly and in prosecution of the common object of the said assembly did commit an offence of rioting armed with deadly weapons which were when used likely to cause death and thereby they all committed an offence punishable under Section 148 IPC. Secondly, on the same date, time and place, Rajinder Singh alias Harjinder Singh (appellant No.2) in prosecution of the common object of all, committed murder by intentionally causing the death of Sohan Singh and thereby he committed an offence punishable under Section 302 IPC whereas accused Bakshish Singh, Jaswinder Singh, Manjit Singh and Kulwinder Kaur (since acquitted) committed the offence punishable under Section 302 read with Section 149 IPC within the cognizance of the Court. The accused were directed to be tried by the Court of learned Additional Sessions Judge, Hoshiarpur of the said charge.

The prosecution in order to establish its charges examined as many as twelve witnesses; besides, tendered documents in evidence and closed its evidence. The statements of the accused in terms of Section 313 Cr.P.C. were recorded. Rajinder Singh alias Harjinder Singh (appellant No.2) in his statement pleaded that he was innocent and had been falsely implicated in the case. Neither he nor his co-accused companions caused injuries to

Sohan Singh. Rather Jaswinder Singh (appellant No.1) son of Bakshish Singh was returning to his house on 09.11.2007 at 9.00 am with green fodder on a cart. He (Jaswinder Singh) heard a noise from the side of the house of Sohan Singh and he reached there and saw that Kuldip Singh (complainant PW-1) armed with a 'kirpan', his mother Harvinder Kaur (sic. Harmender Kaur) (PW-2) armed with a 'danda', Kushwinder Singh armed with a 'sua' (poker), Dalbir Singh armed with a 'kirpan' and Sukhi armed with a 'gandasa' had encircled him (appellant No.2) and he tried to save himself from the clutches of aforesaid Kuldip Singh (PW-1) and others. The accused raised a 'lalkara' and then Kuldip Singh (PW-1) inflicted injuries on the fingers of right hand of Jaswinder Singh (appellant No.1) while Harvinder Kaur (sic. Harmender Kaur) (PW-2) gave a 'danda' blow and the other accused also inflicted injuries to Jaswinder Singh (appellant No.1), who fell on the ground. The said occurrence was witnessed by Surjit Kaur (DW-4) wife of Avtar Singh resident of Dhamian. Then Kuldip Singh (PW-1) and his companions ran away with their respective weapons. In this connection, Jaswinder Singh (appellant No.1) son of Rajinder Singh alias Harjinder Singh (appellant No.2) lodged a report with the police against Kuldip Singh (PW-1) and others but the police did not register a case. Rather the police in connivance with Kuldip Singh etc. registered a case against him (Rajinder Singh alias Harjinder Singh – appellant No.2) and his companions. In fact this was just a counter blast to the injuries inflicted to Jaswinder Singh by Kuldip Singh (PW-1) etc. In this connection, inquiry was also conducted by Senior Police officers, however, the investigation was mainly disbelieved and as a result thereof Manjit Singh alias Bittu son of

Avtar Singh and Kulwinder Kaur (since acquitted) wife of Iqbal Singh of village Dhamian were declared innocent and they were not 'challaned' by the police.

Bakshish Singh (since acquitted) in his statement under Section 313 Cr.P.C. stated that he was aged about 75 years and was also physically unfit to embrace Sohan Singh (i.e. take in his grip by embracing him). It was wrong that Harjinder Singh (appellant No.2) gave Rs.3300/- instead of Rs.3500/- to the accused (sic. - deceased Sohan Singh), which was received by him as sale proceeds of the 'dek' trees. His son namely Jaswinder Singh (appellant No.1) had also filed a complaint against Kuldip Singh complainant (PW-1), his mother Harvinder Kaur (sic. Harmender Kaur) (PW-2) and others under Sections 326, 323, 148, and 149 IPC for causing injuries to him. The same was pending in the Court of learned Judicial Magistrate Ist Class Hoshiarpur. All the accused i.e. Kuldip Singh (PW-1) and others were ordered to be summoned by the Court to face trial. The accused Kushwinder, Raghubir, Sukhi intentionally and wilfully did not appear in Court. As such proceedings under Sections 82 and 83 Cr.P.C. were going on against them. They had been falsely implicated in the case.

In fact there are mistakes in recording the statements under Section 313 Cr.P.C. and this part of the statement of Bakshish Singh to the effect that he was aged about 75 years and was also physically unfit to embrace Sohan Singh (i.e. take in his grip by embracing him), has inadvertently been repeated while recording the statements of Jaswinder Singh (appellant No.1) and also of Rajinder Singh alias Harjinder Singh (appellant No.2). This is apparent from the fact that in the heading of the statement of

Rajinder Singh alias Harjinder (appellant No.2) his age is mentioned as 47 years. However, while recording his statement he states that he is 75 years old. In fact , it is Bakshish Singh (since acquitted), who is the father of the appellants Jaswinder Singh and Rajinder Singh alias Harjinder Singh, who is aged about 75 years. Besides, it has also been recorded in the statement of Rajinder Singh alias Harjinder Singh (appellant No.2) that he was physically unfit to embrace the deceased Sohan Singh in his grip. This also seems to be a mistake as the role attributed to Harjinder Singh alias Rajinder Singh (appellant No.2) is that Kulwinder Kaur (since acquitted) one of the accused had handed a knife to Harjinder Singh alias Rajinder Singh (appellant No.2) asking him to finish Sohan Singh. Then Harjinder Singh alias Rajinder Singh (appellant No.2) inflicted a knife blow, which hit Sohan Singh on his left flank and he fell on the ground bleeding from the wound.

Jaswinder Singh (appellant No.1) has deposed/stated on the same lines as his brother Rajinder Singh alias Harjinder Singh (appellant No.2). In his case also it is wrongly recorded that he was 75 years of age and was physically unfit to take Sohan Singh deceased by embracing him in his grip. The role attributed to Jaswinder Singh (appellant No.1) is that after Sohan Singh (deceased) opened the gate and came out Jaswinder Singh (appellant No.1) and Manjit Singh caught hold of him from his arms and Bakshish Singh embraced him in his grip and the scuffle started. However, the said mistakes are mere irregularities and do not affect the prosecution case or prejudice the defence.

In defence, the appellants examined Ashwani Guleria,

Criminal Ahlmad of the Court of Judicial Magistrate Ist Class,

Hoshiarpur as DW-1. He proved the complaint Ex.DB in the case of Jaswinder Singh v. Kuldeep Singh etc., which was filed by Jaswinder Singh (appellant No.1 herein) against Kuldeep Singh, Harvinder Kaur, Khushwinder Singh, Raghubir Singh alias Kaka and Sukhi under Sections 323, 324, 326, 506, 148 and 149 IPC. After recording preliminary evidence, the accused were ordered to be summoned by the learned Judicial Magistrate Ist Class, Hoshiarpur vide summoning order dated 30.09.2009 (Ex.DC). The case was pending for appearance of the accused.

Dr. Harjinder Singh, Medical Officer, Mini PHC, Nasrula (DW-2) was examined. He was posted as Medical Officer in Civil Hospital, Hoshiarpur on 09.11.2007. He was on duty at CHC, Sham Chaurasia and on that day he conducted the medico legal examination of Jaswinder Singh (appellant No.1) and he found as many as four injuries on his person.

Dr. Sanjeev Kumar, Medical Officer (DW-3), deposed that in November, 2007, he was posted as Orthopaedic Surgeon at CHC, Sham Chaurasia. He was asked about the orthopaedic opinion of injury No.1 of the right hand of patient Jaswinder Singh (appellant No.1) by Dr. Harjinder Singh (DW-2).

Surjit Kaur wife of Avtar Singh was examined as DW-4, who stated at the time of the incident, she saw Sohan Singh (deceased) was catching hold of Bakshish Singh. Jaswinder Singh (appellant No.1) was intervening to save his father. Kuldeep Singh (PW-1), the complainant in the present case, inflicted a 'kirpan' blow on the right hand finger of Jaswinder Singh (appellant No.1). Harvinder Kaur (PW-2) gave a 'danda' blow on the head of Jaswinder Singh (appellant No.1). Thereafter, he (Jaswinder Singh)

fell down and all the accused namely Kuldeep Singh, Harvinder Singh and others fled away after holding out threats to them. Jaswinder Singh (appellant No.1) was taken to Hospital where he was medically examined. Jaswinder Singh and Bakshish Singh were not having weapon nor he gave any injury to Sohan Singh. Inquiry was conducted by Senior Police officers. Manjit Singh and Kulwinder Kaur (since acquitted) were found innocent and they were not 'challaned' by the police. In cross examination, she (DW-4) inter alia stated that her elder sister Mahender Kaur was married to Bakshish Singh accused. Amongst the four five sons of Bakshish Singh one was Iqbal Singh who was in America. Kulwinder Kaur (since acquitted) accused was the wife of Iqbal Singh. It was incorrect to suggest that during days of occurrence, Kulwinder Kaur (since acquitted) accused was proclaiming in the village that she was going to join her husband in USA. It is stated as correct that the financial position of the family of Bakshish Singh was somewhat better than the others as his three sons were working abroad. She (DW-4) did not see any injury on the person of Sohan Singh (since deceased). Now she knew that Sohan Singh had died. It is stated as correct that on her return from Gurudwara Sahib she had seen Bakshish Singh accused and Sohan Singh (since deceased) grappling with each other. The occurrence lasted for about 2-3 minutes. It is stated as correct that injuries from the fingers of Jaswinder Singh were bleeding. It is stated as correct that blood was oozing from the head of Jaswinder Singh on account of 'danda' blow. She did not know if Sohan Singh (deceased) had bargained for the 'dek' trees on the day of occurrence. It is stated as correct that bargain for the sale of the 'dek' trees of Sohan Singh was got

struck by Harjinder Singh (appellant No.2). She did not know that the bargain was struck for Rs.3500/-. She voluntarily stated that she was not there. It is stated as correct that Harjinder Singh (appellant No.2) had brought a sum of Rs.3300/- for Sohan Singh as the sale price of the 'dek' trees and there was a shortage of Rs.200/-. It is stated as correct that a duel of words had taken place between Harjinder Singh (appellant No.2) and Sohan Singh (since deceased) over a shortage of Rs.200/-. It is stated as correct that thereafter Harjinder Singh (appellant No.2) left for his house. She had seen the second alleged occurrence between the parties. It is stated as incorrect to suggest that Sohan Singh (deceased) was given a dagger blow by Harjinder Singh (appellant No.2), which was handed over to him by Kulwinder Kaur (since acquitted) accused as a result of which he got serious injuries in his abdomen and later on he succumbed to the injuries. It is stated as incorrect that due to that injury he had died. It is stated as correct that Manjit Singh accused was her only son. She had not appeared anywhere in any Court earlier about the occurrence.

Sh.Sushil Kumar. Additional Commissioner of Police, Ludhiana appeared as DW-5. It is stated by him that in the month of December, 2007, he was posted as Superintendent of Police (Detective) in District Hoshiarpur. He conducted inquiry and investigation in the present openly and secretly on 11.12.2007. He (DW-5) also recorded statements of witnesses during the inquiry proceedings. In his inquiry he found Manjit Singh alias Bittu son of Avtar and Kulwinder Kaur (since acquitted) wife of Iqbal Singh both residents of village Dhamian Kalan to be innocent. He recorded his 'izimini' (case diary) dated 11.12.2007 bearing No.13. The Senior

Superintendent of Police recommended (sic. accepted) his report. After his report, 'challan' (police report) was presented and both these persons were put in column No.2 of the police report under Section 173 Cr.P.C. In cross-examination, it is stated that the investigation of SHO was supervised by DSP. He (DW-5) conducted inquiry independently. It was correct that Kuldip Singh (PW-1) son of the deceased (Sohan Singh) and Kulwinder Kaur (sic. Harmender Kaur PW-2) widow of the deceased were witnesses of the case. He (DW-5) joined both of them in his inquiry on 11.12.2007. He recorded 'zimini' (case diary) but their separate statements were not recorded by him under Section 161 Cr.P.C. He did not remember whether Jaswinder Singh was also injured in the said occurrence. It is stated as correct that the statement of Jaswinder Singh was recorded on 15.11.2007. It is stated as wrong to suggest that cross version of Jaswinder Singh was disbelieved by DIG, Jalandhar Range. He (DW-5) did not know whether husband of Gurwinder Kaur (sic. Kulwinder Kaur) was residing in USA. It was wrong to suggest that he had made recommendation of innocence of these two accused (i.e. Manjit Singh and Kulwinder Kaur) in order to favour them. It was wrong to suggest that he had given a wrong report. It was wrong to suggest that he had deposed falsely.

The learned Additional Sessions Judge, Hoshiarpur vide his judgment and order under appeal held that insofar as accused Harjinder Singh alias Rajinder Singh (appellant No.2) and Jaswinder Singh (appellant No.1) were concerned, the prosecution had proved that Harjinder Singh alias Rajinder Singh in furtherance of common intention along with Jaswinder Singh gave injury with a knife to

Sohan Singh causing his death. Therefore, Harjinder Singh alias Rajinder Singh had committed the offence under Section 302 IPC while Jaswinder Singh had committed the offence under Section 302 read with Section 34 IPC. Besides, as no injury had been attributed to accused Bakshish Singh, Manjit Singh alias Bittu and Kulwinder Kaur (since acquitted). They were acquitted of the charges framed against them under Sections 148, 302/149 IPC. The appellants Jaswinder Singh and Rajinder Singh alias Harjinder Singh were sentenced to undergo life imprisonment; besides, pay a fine of Rs.20000/- each and in default thereof undergo further rigorous imprisonment of two years. The said appellants Jaswinder Singh and Rajinder Singh alias Harjinder Singh aggrieved against their conviction and sentence have filed the present appeal.

Shri S.S.Rangi, Advocate, learned counsel for the appellants has contended that the prosecution case against the appellants is false as the prosecution has falsely implicated them. It is submitted that the prosecution has failed to explain the injuries suffered by Jaswinder Singh (appellant No.1) which makes the case absolutely doubtful. It is further submitted that the prosecution has suppressed the genesis and the origin of the occurrence and it has not presented the true version; besides, the witness are lying on a most material point and the defence that had been set up is probable and competes in probability with that of the prosecution. In any case, it is submitted that even if the prosecution case is to be accepted, though there is no ground for doing so, in that case also the case at the most would be only made out against Rajinder Singh alias Harjinder Singh (appellant No.2) for the offence under

Section 304 IPC.

In response, Shri PPS Thethi, Addl. AG, Punjab for the State has submitted that the prosecution has established and proved its case against the appellants beyond shadow of reasonable doubt. It is submitted that the presence of both the appellants at the time and place of occurrence is established. Therefore, both of them have rightly been convicted and sentenced by the learned trial Court, which conviction and sentence would not warrant any interference of this Court in appeal.

We have given our thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance perused the record of the case.

The prosecution case based on the statement of Kuldip Singh (PW-1), is that his father Sohan Singh, the deceased in the case, had purchased a plot of land at Sham Chaurasia on which 'dek' trees were standing. Harjinder Singh (appellant No.2), who is the son of the father's elder brother of Kuldip Singh (PW-1) had settled regarding sale of 'dek' trees with a business man, who deals in this work for a consideration of Rs. 3500/-. The business man with whom the deal was settled after cutting the trees had given a sum of Rs.3500/- to Harjinder Singh (appellant No.2). However, Harjinder Singh (appellant No.2) on 09.11.2007 at about 9.00 am threw the cash on a cot in the house of Sohan Singh and asked him to count the cash, which was Rs.3300/- and Rs.200/- were less. On this, a quarrel had ensued between them and Harmender Kaur (PW-2) the mother Kuldip Singh (PW-1) asked them not to quarrel. Harjinder Singh (appellant No.2) left the place and came back after about half a hour along with Bakshish Singh, Manjit Singh and Jaswinder Singh (appellant No.1) armed with 'dandas'. On coming

near their house, Bakshish Singh raised a 'lalkara' that Sohan Singh, the father of Kuldip Singh, should come out. Sohan Singh after opening the gate went out. Then Jaswinder Singh (appellant No.1 and Manjit Singh caught hold of Sohan Singh from his arms and Bakshish Singh embraced him in his grip. In the meantime, Kulwinder Kaur (since acquitted) came there and she handed over a knife to Harjinder Singh (appellant No.2) telling him that he should finish Sohan Singh. Harjinder Singh (appellant No.2) inflicted a knife blow on the left flank of Sohan Singh, who fell on the ground and started bleeding from the wound. All the accused then went away to their house. Kuldip Singh shifted Sohan Singh to the Civil Hospital, Hoshiarpur for treatment and on the advise of the doctor he was taken to Dayanand Medical College and Hospital, Ludhiana where his medical treatment was started. On the next day i.e. 10.11.2007 in the morning, the father of the complainant succumbed to his injuries. Police visited DMC Hospital in the afternoon and recorded statement Ex.PA of the complainant. In cross-examination of Kuldeep Singh, complainant (PW-1) the discrepancies that he had made were got confronted with. Harjinder Singh (appellant No.2) it is stated had received Rs.3500/- from the businessman and he (PW-1) had stated this to the police in Ex.PA. The attention of the witness (PW-1) was drawn to his statement (Ex.PA), where the said fact had not been mentioned. It is further stated that both Manjit and Jaswinder (appellant No.1) had caught hold of his father and they had gripped him. His (PW-1) father tried to get himself released. It is stated that after receipt of injury, his father fell down and at that time, he was wearing a 'kurta' - 'pyjama'. The 'kurta' was having a corresponding cut of

the knife and it was also stained with blood. It is also stated that there was no civil or criminal litigation going on between his father (Sohan Singh – deceased) and the accused. However, they were not on speaking terms but they were on visiting terms with each other. It is stated that Dalbir Kaur is the younger sister of Kulwinder Kaur (since acquitted). The latter is the brother's wife of Harjinder Singh (appellant No.2). It is stated as correct that Dalbir Kaur was residing in America. He (PW-1) did not know if Kulwinder Kaur (since acquitted) was to go to her sister Dalbir Kaur in America as Dalbir Kaur was due for delivery. It is stated as correct that accused Manjit @ Bittu and Kulwinder Kaur were found innocent and not 'challaned' (sent up for trial) by the Police.

Harminder Kaur (PW-2) is the wife of deceased Sohan Singh. She (PW-2) also deposed on the same lines as her son Kuldeep Singh, complainant (PW-1). She (PW-2) was cross-examined by the learned counsel for the defence. In cross-examination it is inter alia stated by her that Bakshish Singh had embraced her husband (deceased) from the back while Manjit Singh and Jaswinder Singh (appellant No.1) caught hold of his arms by standing on either side. She (PW-2) saw Harjinder Singh (appellant No.2) inflicting a knife blow to her husband. She could not say whether the knife was automatic or not. The blade of the knife was long but she could not give the exact length. She (PW-2) was confronted with her statement (Ex.DA) with the portion B to B1 where it is stated by her that her sister Surjeet Kaur and the members of the other party also received injuries. She (PW-2) voluntarily stated that she did not state the said lines.

In the circumstances from the oral evidence on record

and the deposition of Dr. Harjinder Singh, Medical Officer, Mini PHC, Nasrula (DW-2) it is quite evident that for a petty amount of Rs.200/- a fight had ensued between the Harjinder Singh (appellant No.2) and his paternal uncle Sohan Singh (deceased). The said skirmish was regarding the sale of 'dek' (azedarach) trees for which Harjinder Singh (appellant No.2) had received Rs.3500/-. The said amount was to be given to Sohan Singh (deceased) but he (Harjinder Singh) gave Rs.3300/- only and that too by throwing them on a cot in the house of Sohan Singh. On this account, a quarrel ensued between Harjinder Singh (appellant No.2) and Sohan Singh (deceased). Harjinder Singh (appellant No.2) left the place and returned after half a hour along with Bakshish Singh (since acquitted), Manjit Singh (since acquitted) and Jaswinder Singh (appellant No.1) who came there armed with 'dandas'. On coming near, the house of Sohan Singh; Bakshish Singh raised a 'lalkara' that Sohan Singh should come out. Sohan Singh opened the gate of his house and came out. Jaswinder Singh and Manjit Singh caught hold of the arms of Sohan Singh while Bakshish Singh held him by embracing him ('japha'). In the meantime, Kulwinder Kaur (since acquitted) came there and handed over a knife to Harjinder Singh (appellant No.2) who inflicted a single knife blow on the left flank of Sohan Singh. The latter fell on the ground and was bleeding from the wound that had been inflicted.

The said sequence of events and circumstances show that the incident had occurred without premeditation in a sudden fight and in the heat of passion of the sudden fight. However, the inflicting of the knife injury by Rajinder Singh alias Harinder Singh (appellant No.2) was evidently such that by doing the said act, he

had the intention of causing the death of Sohan Singh. This is quite evident from the fact that the dispute between the nephew and his uncle, that is, between Rajinder Singh alias Harjinder Singh (appellant No.2) and Sohan Singh (deceased) was for a petty amount of Rs.200/- and it is quite unlikely that Harjinder Singh alias Rajinder Singh (appellant No.2) had even after going home and returning with the other accused really wanted to commit the murder of Sohan Singh. It is only during the discussion at the spur of the moment in the sudden quarrel and in the heat of passion that the injury was inflicted by him on the lower side of the chest of Sohan Singh.

Dr. Naresh Kumar, Medical Officer, Civil Hospital, Hoshiarpur (PW-4) on medical examination of Sohan Singh found a single freshly bleeding incised wound of size 2.5 x 0.5 cm in the left axillary line at the level of sub costal angle for which he advised surgical opinion. Dr. Jaswinder Singh (PW-5), who conducted the postmortem examination on the dead body of Sohan Singh also found an incised wound 2.5 x 0.5 cm non stitched transversely placed with clotted blood around was present on lower 1/3rd of left side of chest in mid axillary line. On dissection of chest and abdominal cavity, the wound was extending inwards to abdominal cavity injury in the intestine and left kidney. The abdominal cavity contained about one liter of blood. On examination of left kidney, it was sutured (surgically) and the intestines were showing stitching; besides, a stitched wound (surgically for laprotomy) and two stitched wounds (surgical) for colostomy were found. These are injuries due to surgical procedure that was carried out and only one injury has been attributed to Rajinder Singh alias Harjinder Singh

(appellant No.2). Besides, evidence of a scuffle is also there from the injuries that have been suffered by the side of the accused.

In defence the accused examined Dr. Harjinder Singh, Medical Officer, Mini PHC, Nasrula (DW-2). He was posted as Medical Officer in Civil Hospital, Hoshiarpur on 09.11.2007. He was on duty at CHC, Sham Chaurasia and on that day he conducted the medico legal examination of Jaswinder Singh (appellant No.1) and he found as many as four injuries on his person that is three oblique incisional wounds at the middle phalanx of little finger of right arm, middle phalanx of index finger of right hand and middle phalanx of middle finger of right hand. The wounds were 1.5 cm in length 2 mm wide and 3 mm bone deep present at middle phalanx of little finger of right hand; 1 cm in length 2 mm wide and 2 mm deep at the middle phalanx of index finger of right hand and 1cm in length 1 mm wide present at middle phalanx of middle finger of right hand respectively. The fourth injury was an abrasion and swelling of 3 x 3 cm present on the centre of skull, 12 cm posterior to interior hairline and 10 cm above the right pinna. Clotted blood was present. Weapons used for injuries No.1, 2, 3 was sharp and blunts were injury No.4. On receipt of orthopadeic opinion by Dr. Sanjeev Kumar injury No.1 was declared as grievous and rest of the injuries were declared simple. According to the cross-examination of Dr. Harjinder Singh (DW-2) the fingers are not vital parts of the body. Injury No.1 was committed for x-ray examination. As per x-ray report, no fracture was found in injury No.1. The duplicate report of x-ray report was Ex.PX. Injury No.4 was an abrasion on the head. Injury No.4, it is stated, could be sustained by the patient if the affected portion of head was rubbed against the wall.

He (DW-2) could not say for how many days the patient had remained in the hospital. He could not say if the patient was not required to be admitted for such injuries.

Dr. Sanjeev Kumar, Medical Officer (DW-3) also appearing for the defence, deposed that in November, 2007, he was posted as Orthopadeic Surgeon at CHC, Sham Chaurasia. He was asked about the orthopadeic opinion of injury No.1 of the right hand of patient Jaswinder Singh (appellant No.1) by Dr. Harjinder Singh (DW-2). On examination, there was a stitched wound on middle phalanx of right little finger on interior aspect. Movements of flexion of right little finger was actively lost at I.P. joint. Hence the wound was explored. Flexor tendons were found to be cut, hence the injury could be regarded as grievous in nature and could cause permanent handicap of flexion movements. Flexor tendons were repaired. X-ray hand showed no gross bone injury. In cross-examination, he (DW-3) inter alia stated that he examined the patient in the morning on 14.11.2007 but he could not tell the exact time and he did not record the time on the bed head ticket. The patient remained under his treatment upto 19.11.2007. It was stated as correct that flexor was not a bone. It is also stated in reply to a question as to whether it was correct that on 19.11.2007 no permanent damage was caused to a patient that the damage was (sic. whether) permanent or not was always seen in the nature of the course of time regarding anything in life. He stated that he had read the classification of injuries given in the IPC. He (DW-3) was questioned as to whether it was correct that unless and until the damage to the flexor was permanent as provided in the Indian Penal Code, the injury could not be said to be grievous. It is stated

by him as correct to say that until and unless the loss of function to the part was permanent, the injury could not be regarded as permanent in nature but it was also correct to say that in no way after damage to a tendon it could be 100 % brought to the normal shape and function as it was before injury. So in his opinion the loss whether it may be in part or in total was always going to be permanent in nature especially in case of movement of fingers of the hand.

The said injuries on the person of the accused have indeed not been explained by the prosecution. In **Lakshmi Singh v. State of Bihar**, AIR 1976 SC 2263, it was held that in a murder case, the non-explanation of injuries sustained by the accused at the time of occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:-

- "1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable;
3. that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused

assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

The nature of injuries that have been suffered by the side of the defence indeed goes to show that a skirmish or a fight had occurred, which was sudden in nature and in the heat of passion though with the intention of causing death, Rajinder Singh alias Harjinder Singh (appellant No.2) inflicted the injury. However, the fact that the incident had occurred all of a sudden it could not be said that there was any common object or for that matter even conspiracy of others to commit the act of murder. Therefore, it is for the said reason that the accused other than Rajinder Singh alias Harjinder Singh (appellant No.2) and Jaswinder Singh (appellant No.1) have been acquitted. However, there being no common object on the part of others to commit the murder of Sohan Singh, the benefit of doubt is also liable to be extended to Jaswinder Singh (appellant No.1) and it cannot be said that he had the common intention to commit the murder of Sohan Singh. It is only Rajinder Singh alias Harjinder Singh (appellant No.2) who committed the fatal act and he is liable for the consequences of the same. His case, however, would fall within exception IV to Section 300 IPC inasmuch as the act of inflicting the knife blow was done without premeditation in a sudden fight in the heat of passion upon a sudden quarrel without him having taken undue advantage or acting in a cruel or unusual manner but as he had at the time of inflicting the injury, therefore, it would be a case of culpable

homicide not amounting to murder, which in the facts and circumstances would fall under Section 304 Part I IPC for which he is liable to be convicted and sentenced. The act by which death of Sohan Singh had been caused would also warrant that he pays a compensation of an amount of Rs.1 lac to Harminder Kaur (PW-2) widow of Sohan Singh (deceased).

Accordingly, the appeal is partly allowed. The conviction and sentence of Jaswinder Singh (appellant No.1) passed by the learned trial Court is set aside and he is acquitted of the charges. Insofar as Rajinder Singh alias Harjinder Singh (appellant No.2) is concerned, his conviction and sentence for the offence under Section 302 IPC passed by the learned trial Court is set aside and he is instead convicted for the offence punishable under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for ten years; besides, he shall pay compensation of Rs.1 lac to Harminder Kaur (PW-2) widow of Sohan Singh (deceased).

The compensation shall be deposited within three months in the Court of learned Chief Judicial Magistrate, Hoshiarpur, which shall be disbursed to Harminder Kaur widow of Sohan Singh.

Jaswinder Singh (appellant No.1), if not required in any case be set at liberty forthwith.

(S.S. SARON)
JUDGE

26.08.2015
A.Kaundal

(REKHA MITTAL)
JUDGE