

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

Crl. Appeal D-1191-DB of 2011
Date of Decision : August 24, 2015

Suraj Bhan @ Bhera and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

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

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for appellants-Suraj Bhan @ Bhera and Jaidev @ Dhola.

Mr. Rajbir Sehrawat, Advocate
for appellant-Harminder @ Kala.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

Mr. Rajesh Garg, Senior Advocate with
Mr. Virender Soni, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants were tried for committing the offence punishable under Section 120-B IPC with the allegations that they alongwith their co-accused Bahadur Singh, Satpal and Dharam Pal (since declared proclaimed offenders) agreed to commit illegal act of committing the murder of the family members of the complainant and in pursuance of agreement arrived at between them and their co-accused, committed the murders of Rajesh,

Amarjit, Thandi Ram and Prem Singh. They, alongwith their co-accused, were also tried for the offence punishable under Section 449 IPC for committing house trespass in order to commit the murders. They were further tried for committing the offence punishable under Sections 302/149 IPC for forming an unlawful assembly, the common object of which was to ruin the family of the complainant and in pursuance of common object of that unlawful assembly they caused the deaths of Rajesh, Amarjit, Thandi Ram and Prem Singh. They were also tried for committing the offence punishable under Section 307 read with Section 149 IPC for forming an unlawful assembly and in pursuance of the common object of that unlawful assembly, fired at Diwan and Mehtab under such circumstances that if by that act they and their co-accused had caused the deaths of above said Mehtab and Diwan, they would have been guilty of murder.

Vide judgment and order dated 12/16.11.2011, learned Additional Sessions Judge, Rohtak convicted them for the offence under Section 302 read with Section 120-B IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.10,000/- each and in default of payment of fine, to undergo rigorous imprisonment for three months. Appellants-Suraj Bhan and Harminder were also convicted under Section 302 read with Section 149 IPC and sentenced them to undergo rigorous

imprisonment for life and to pay a fine of Rs.20,000/- each and in default of payment of fine, to undergo rigorous imprisonment for six months. Besides, Suraj Bhan and Harminder were convicted under Section 307 read with Section 149 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 month. All the sentences were ordered to run concurrently. The period undergone by them during the investigation and trial of the case was ordered to be set off against the sentences awarded to them. Hence, the present appeal.

It may not be out of place to mention here that Murti Devi and Santosh were also tried alongwith the appellants but only for the offence punishable under Section 216 IPC. However, they were acquitted of the said charge vide impugned judgment passed by the trial Court.

The facts leading to the passing of the impugned judgment of conviction are that on the night intervening 11/12.6.2006, an information was received on telephone in Police Station Sadar, Rohtak from Police Control Room, Rohtak to the effect that firing had taken place in village Shimli resulting in the death of many persons. Upon this, ASI Megh Raj alongwith ASI Balwan Singh, HC Jai Bhagwan, HC Ramphal, HC Kanwar Singh,

C. Rajiv and C. Rustam reached village Shimli where they met complainant-Suresh Kumar, who got recorded his statement that they were six brothers, who live jointly in the village. The eldest was Thandi Ram, aged 55 years, whereas the younger to him were Mahender, aged 50 years, Prem Singh, aged 47 years, Rambir, aged 44 years, complainant himself, aged 42 years, and Rajesh, aged 32 years. The complainant was serving in Haryana Police and posted at Sonapat. The remaining brothers did agricultural work in the village. The complainant's nephew, namely, Diwan Singh alongwith his three sons lived in a field known as Daburwala field after constructing a house there. The field was adjoining the village. Complainant's nephew Ajit, who was son of Thandi Ram, had studied upto plus two. Dharam Pal, resident of the village, suspected Ajit to be having illicit relations with his daughter Shashi. For that reason, Dharam Pal, alongwith his three sons and other family members, nursed a grudge with the family members of the complainant. Fearing reprisal, the complainant party had sent Ajit out of the village. A congregation of the villagers was held wherein Thandi Ram and Diwan Singh had apologized to Dharam Pal and his brother but still the latter kept a grudge in their minds. Dharam Pal and his brother did not behave properly with Thandi Ram and Diwan Singh. Later on, it was learnt that after solemnizing the marriage of Shashi, they

would see the complainant and his family members. The marriage of Shashi was solemnized on 5.2.2006. Thereafter, Dharam Pal and his brother Bahadur Singh and Satpal and others shifted their household goods from village Shimli to Najafgarh.

Further statement of complainant-Suresh Kumar was that on 10.6.2006 after taking three days' leave, he had come from Sonapat in order to construct house in the Daburwala field. His uncle Diwan Singh alongwith his family members had already been living in the said field. During the night of 11.6.2006, the complainant and his family members went to sleep after taking their meals. The complainant slept on the roof of the kitchen which was constructed adjacent to the street whereas his brother Prem Singh was sleeping in the street which was in front of the Baithak of the house. Rajesh slept in the open Gher situated behind the Baithak and complainant's nephew Amarjit was also sleeping at that place. Azad Kaur wife of Mahender Singh, Prem Kaur wife of Thandi Ram and Meena wife of Rajesh were sleeping on the cots in the street in front of their residential house. Besides the moon light, electric bulb fitted on the house was also emitting light. Rambir and his wife Guddi were sleeping on the roof of their residential houses constructed towards the street while Thandi Ram was sleeping in the joint house constructed in the Daburwala field which was at a distance of 1½

kill, Diwan Singh and his son Mehtab were sleeping in front of the house. At about 12.15 a.m., the complainant heard firing of shots. He woke up and saw Dharam Pal, Bahadur Singh, Satpal, Suraj Bhan sons of Sarup Singh, Harminder @ Kala and Jaidev @ Dhola sons of Bahadur Singh standing in the street and holding weapons in their hands. On noticing carefully, the complainant saw guns in the hands of Satpal, Bahadur Singh and Suraj Bhan. There were two other persons with them whom the complainant did not know. They were also carrying weapons/ammunition in their hands. Satpal fired from his gun at Prem Singh. The complainant hurled bricks and stones from the roof and also raised an alarm. Prem Kaur, wife of Thandi Ram, who was sleeping in the street, raised an alarm. Suraj Bhan fired shots at her. Accused-Dharam Pal proclaimed that no member of the family of the complainant be spared. On this, all the persons sleeping in the Gher reached the place where Rajesh and Amarjit were present. Rajesh, while trying to get up from the cot, was fired at and he breathed his last there. Amarjit tried to run away but he was also fired at and died as a result thereof. Complainant-Suresh Kumar and his brother Rambir kept on hurling bricks and stones from the roof besides raising alarm. Both of them went hurriedly to the field for informing their family members. However, before they could reach there, they saw

Dharam Pal, Satpal, Bahadur Singh, Suraj Bhan and both sons of Bahadur Singh alongwith two other unknown persons duly armed with weapons had already reached in the field and fired shots on Thandi Ram, who was still sleeping. Hearing the alarm, complainant's nephew Diwan Singh and his son Mehtab, who were sleeping in the under construction house got up and they also challenged the assailants. On account of firing, Diwan Singh, his son Mehtab, Prem Kaur, wife of Thandi Ram and Amarjit son of Mahender Singh had received injuries. The complainant's brother Prem Singh, Rajesh and Thandi Ram died at the spot. The firing of shots and the alarm raised by the complainant party attracted many villagers and on seeing them, all the assailants escaped from the spot. The injured were transported in a van and got admitted in PGIMS, Rohtak. Later on, Amarjit died in the said hospital. The complainant narrated about the incident to his brother Mahender at Rohtak on telephone, who further informed the police on telephone. On learning about the arrival of the police in the village, the complainant got recorded the statement on the aforementioned lines.

Statement (Ex. PA) made by complainant-Suresh Kumar was recorded by ASI Megh Raj on 12.6.2006 at 5.30 a.m. and on its basis FIR (Ex. PA/2) was registered at Police Station

Sadar, Rohtak on 12.6.2006 at 6.30 a.m. which was completed at 8.10 a.m. The Special Report was received by the Illaqa Magistrate on the same day.

SI Rajender Singh, SHO, Police Station Sadar, Rohtak reached the spot and enquired about the matter from ASI Megh Raj. He also summoned the FSL team, dog squad and finger print expert at the spot. Blood stained clothes and cots were taken into possession. Rough site-plans of the places of occurrence were prepared. Inquest proceedings on the dead bodies of the deceased were conducted. The statements of the witnesses were recorded.

Post-mortem on the dead body of Amarjit son of Mahender aged 24 years was conducted by PW5 Dr. Kulpratibha on 12.6.2006, who noticed three injuries on the dead body. The cause of death in the opinion of the doctor was due to shock and haemorrhage on account of injuries to both the lungs and the heart caused by a fire arm. On the same day, the doctor also conducted post-mortem on the dead body of Thandi Ram and found one injury on his head which was caused by a fire arm. Similarly, post-mortems on the dead bodies of Prem Singh and Rajesh were conducted on the same day and fire arm injury was noticed on each of the two deceased which resulted in their deaths.

PW8 Dr. R.Sahu had conducted medico-legal

examination of Amarjit on 12.6.2006 at 1.41 a.m. and noticed three injuries on his person which were caused by a fire arm. Prem Kaur, wife of Thandi Ram, was also subjected to medico-legal examination on the same day at 1.15 a.m. The doctor had found three injuries on her person, which were caused by a fire arm. Similarly, Diwan Singh and his son Mehtab were also medico-legally examined on the same day at 1.16 a.m. and 1.18 a.m., respectively. While Mehtab was found to have three injuries on his person, Diwan Singh had only one injury. All the injuries were caused by a fire arm.

Further case of the prosecution is that though the FIR (Ex.PA/2) was registered for the offences under Sections 148/149/307/302 IPC and Section 25 of the Arms Act on 12.6.2006 yet on 12.6.2006 itself, on the basis of the statements of the witnesses, Section 120-B IPC was also added in the case. On 16.6.2006, appellant-Jaidev @ Dhola was summoned through production warrants from Tihar Jail, Delhi and after being joined in the investigation, was formally arrested in the case. On 26.6.2006, the police recorded the statements of Mahender Singh and Narender under Section 161 Cr.P.C. and on the basis of their statements, added offence under Section 216 IPC against Santosh and Murti Devi, who were arrested on 28.6.2006. Appellant-Harminder @ Kala was arrested on 30.6.2006 from

CRPF Group Centre, Jharoda Kalan whereas appellant-Suraj Bhan was arrested on 1.8.2006, who was posted in Tripura in CRPF. The three co-accused of the appellants, namely, Bahadur Singh, Dharam Pal and Satpal could not be arrested despite issuance of warrants against them and they were got declared proclaimed offenders. SI Rajender Kumar, after completing the investigation of the case, prepared report under Section 173 Cr.P.C. and presented the same in the Court. Following commitment of the case, the appellants and their two co-accused, namely, Murti Devi and Santosh were charge-sheeted for the aforementioned offences to which they pleaded not guilty and claimed trial. As stated above, the trial of the case ended with the acquittal of Murti Devi and Santosh of the charge under Section 216 IPC whereas the appellants were convicted and sentenced, as mentioned above.

The undisputed facts of the case are that on account of alleged firing resorted to by the accused, four persons, namely, Thandi Ram, Prem Singh, Rajesh and Amarjit were killed whereas Diwan Singh, Mehtab and Prem Kaur had received injuries. Further, the three appellants, namely, Suraj Bhan @ Bhera, Jaidev @ Dhola and Harminder @ Kala, who were named as accused in the FIR and shown to be present at the time of the occurrence, were arrested and sent up for trial. Their co-

accused, namely, Bahadur Singh, Satpal and Dharam Pal, who were also shown to be the assailants, could not be arrested and were declared proclaimed offenders.

During their examination under Section 313 Cr.P.C., the three appellants had asserted that they were not present at the place of occurrence. According to appellant-Jaidev @ Dhola, he stood lodged in Tihar Jail on account of proceedings under Sections 107/151 Cr.P.C. initiated on 8.6.2006 vide DD No. 6B of Police Station Najafgarh upto 16.6.2006 and in this regard he relied upon the testimony of DW1 Subhash Batra, Assistant Superintendent, Jail No. 7, Tihar Jail, Delhi. Appellant-Harminder @ Kala had claimed that from 27.2.2006 to 20.6.2006, he was undergoing basic training at RTC, CRPF, Neemuch (MP) and in this regard, he relied upon the testimony of DW2 Satyabir Singh HC, who brought his summoned record of Mess Attendance Register, Daily Parade Register, Recruits Training Progress Register, Final Result and RTs Arrival Departure. Appellant-Suraj Bhan pleaded that in the month of June, 2006 he was present on his duty of Platoon 6th Batallion (CRPF) at Kuwar Ghat, Tripura and produced DW3 HC Baljeet Singh in order to bring on record the original copy of attendance register from May 2006 to June 2006. Despite the same, the trial Court did not accept the respective pleas of Harmender @ Kala and Suraj Bhan qua their

alibi by observing as follows:-

“62. As regard accused Harminder is concerned, in order to prove his alibi, the accused has examined DW2 Satyabir Singh, Head Constable, who when appeared in the witness box has stated that he has brought the summoned record of Mess Attendance Register, Daily Parade Register of IIIrd Wing, Recruits Training Progress Register, Final Result and RTs Arrival Departure relating to training document of accused Hariminder Singh son of Shri Bahadur Singh No. 050710017 RT/GD of GC CRPF Jharoda Kala, New Delhi, for the period from February 2006 to June, 2006 and accused Harminder was undergoing basic training w.e.f. 27.2.2006 to 20.6.2006 RTC, CRPF, Neemach (MP). This witness has also placed on record attested copy of RTs Arrival and Departure Ex.D3, attested copy of Daily Parade Statement Ex.D4, attested copy of Mess Attendance Register Ex.D5 and Final Result Ex.D6. Recruit Progress Record weekwise Ex.D7 pertaining to accused Harminder. This witness has also stated that accused Harminder remained present during his training period. In this regard, it is pertinent to mention here that this witness in his cross-examination has admitted that it is correct that there is no signatures or initial of accused Harminder during the training period on any document i.e. RTs Arrival and Departure Register, Daily Parade Statement, Mess Attendance Register, Final Result and Recruit Progress Record Weekwise. This witness has also

admitted that he was not present when the presence of accused Harminder was marked. In this regard, it is pertinent to mention here that DW2 is a witness of record. He had not seen accused Harminder personally during the period at Neemach (MP). The record does not bear signatures of accused Harminder. This witness has not prepared the said record. Thus, from the statement of DW2, it cannot be said that accused had been able to prove that he was present at Neemach (MP) on the day when the occurrence took place. Such type of record could be created even after the incident because no person who prepared the above said record had been examined by the accused in this case. Thus, the defence of alibi taken by accused Harminder stands belied.

63. As regard the plea of alibi of accused Suraj Bhan is concerned, he has examined Baljeet Singh HC, who when appeared in the witness box as DW3 has stated that he has brought the original summoned record pertaining to HCRO Suraj Bhan (accused) of Platoon 6th Batallion, C.R.P.F. at Kuwar Ghat, Tripura and in the month of June, 2006, he was present on his duty at the above said address. This witness has also placed and proved on record copy of attendance register from May, 2006 to June 2006 as Ex.DW3/A. Again, the statement of this witness cannot be relied upon in view of the fact that this witness has not prepared the aforesaid record. Further, he had not seen accused Suraj Bhan during his presence in the said Batallion. Not only

this, this witness has admitted that presence of Suraj Bhan has been shown to be marked as "P" by the concerned officer, who records the daily attendance of all the officials in the attendance register. He do not know as to which officer recorded the presence of Suraj Bhan and other officials in the month of June, 2006, he was not posted in May and June, 2006 at Kuwar Ghat (Tripura) and he has no personal knowledge about this case. Due to non-examination of the person, who marked the presence of accused Suraj Bhan and due to not availability of signatures on record, it cannot be stated that accused was present at the above said place on the day of incident. Thus, the plea of alibi taken by accused Suraj Bhan is also not proved. Thus, the arguments raised by learned counsel for the accused that accused Harminder and Suraj Bhan were not present at the time and place of occurrence, is devoid of merit. It is pertinent to mention here that Hon'ble Supreme Court in case titled as State of Kerala Vs. Anilchaandra @ Madhu and Ors. 2009 (2) RCR 755 has held that it is the duty of the person who plea alibi to prove it beyond reasonable doubt, but in the present case both the accused had failed to prove it. Hence, their plea of alibi stand not proved. "

At the same time, the trial Court did accept the fact that appellant-Jaidev @ Dhola was confined in Tihar Jail on the date of the incident and as it was only a minor crime i.e. security proceedings under Sections 107/151 Cr.P.C., possibility could not

be ruled out that he might have intentionally gone in jail so that he may not be held liable for the conspiracy of this case and his remaining in jail proved that he was a conspirator in the case.

The observations made by the trial Court are as follows:-

“61 As regard this contention of learned counsel for the accused that accused Jaidev, Suraj Bhan and Harminder were not present on the date of incident in the village, is concerned. In this regard, it is mentioned here that so far as accused Jaidev is concerned, in order to prove his alibi, the accused has examined DWI Subhash Batra, who when appeared in the witness box has stated that as per record, accused Jaidev son of Bahadur Chand resident of 67, Nanu Ram park, Nazafgarh. Delhi was lodged on 8.6.2006 vide DD No. 6B dated 8.6.2006 in jail under Section 107/151 Cr.P.C., P.S. Nazafgarh and as per record he was confined in jail in said case upto 16.6.2006 and he was handed over to SI/SHO Rajender Singh of P.S./Sadar, Rohtak in this case. This witness has also placed on record copy of register Ex.D1 and Ex.D2. From the above said statement of this witness, it emerges that accused Jaidev was confined in Tihar Jail on the date of incident in a minor crime of Section 107/151 Cr.P.C. and possibility cannot be ruled out that he intentionally had gone in jail so that he may not held liable in

the conspiracy of this case because the offence under Section 107/151 Cr.P.C. is bailable and he could have easily got bail in the said crime. His remaining in the jail proved that he was conspirator in this case and it is further proved from the statement of PW2 Mahender Singh.“

On 5.11.2011, the appellants after tendering on record document Ex. D9 had closed their defence. Ex. D9 is the copy of the order dated 13.7.2009 passed by the Hon'ble Supreme Court while granting the concession of bail to appellant-Suraj Bhan. A perusal of the said order reveals that the plea taken by Suraj Bhan of serving under the Commander of the Commandant 6th Battallion CRPF, Kuwar Ghat (North Tripura) on the date of the incident and was present on duty from 23.2.2006 and even on the date on which the incident had taken place, was entertained and got duly verified by the State and the learned State counsel also submitted that on further enquiry, the certificate appeared to be genuine.

Out of the three appellants, the presence of appellant-Jaidev @ Dhola at the time of the occurrence has already been doubted by the trial Court. Even the presence of appellant-Suraj Bhan at the time of the incident is open to doubt in view of the enquiry got conducted by the Hon'ble Supreme Court as indicated in the order Ex. D9. If that be so, it cannot be said with certainty

that appellant-Suraj Bhan had participated in the incident which took place on the night intervening 11/12.6.2006 and in such a situation the conviction of appellant-Suraj Bhan for the offences punishable under Sections 302/120-B, 302/149 and 307/149 IPC cannot be sustained.

After holding that appellant-Jaidev @ Dhola was not present at the time of the occurrence and was rather lodged in Tihar Jail, the trial Court did not convict him for the offences punishable under Sections 302/149 and 307/149 IPC. He, alongwith his two co-appellants, stands convicted under Sections 302/120-B IPC.

Learned counsel for the appellants has submitted that in order to establish the charge of criminal conspiracy, the prosecution has relied upon the testimony of PW2 Mahender Singh, brother of the complainant, who had deposed before the trial Court that on 6.2.2006 at about 4.30/5.00 a.m., when he was returning alongwith his nephew Surender Singh son of Attar Singh after answering the call of nature, he saw that the light in the Baithak of Bahadur Singh was on and, therefore, he could see as to what was being done inside the Baithak. He, further, stated that through the window of the Baithak, he saw Bahadur Singh, Dharam Pal, Satpal, Suraj Bhan, Jaidev and Harminder and two unidentified persons talking amongst each other. They were

saying that the family of Bharat Singh be taught a lesson for teasing the daughter of Dharam Pal and to defame his family in such a way that the entire village should know about the result of such mischiefs. They were also saying that all the family members of Bharat Singh be finished and none should escape and they would also make such arrangement that their family members, who were in service and working would be out of reach of law. They were further saying that no one should know about their plans and in case their plans were leaked, the entire exercise would be futile and they would not be able to achieve their goal in future. PW2 Mahender Singh further deposed that after hearing the conversation amongst the accused, he and Surender Singh returned to his house and alerted the family members by apprising them about the plans of Dharam Pal and his family members. It is submitted that though PW18 SI Rajender Singh had testified about having recorded the statement of PW2 Mahender Singh on 12.6.2006 and consequently adding Section 120-B IPC in the case yet the entry regarding the addition of offence under Section 120-B IPC was made only on 16.6.2006. Further, qua the appellants, especially appellants-Suraj Bhan and Jaidev @ Dhola, there was only one piece of evidence i.e. of criminal conspiracy as is reflected in the statement of PW2 Mahender Singh. However, the factum of PW2 Mahender Singh

over hearing the conspiracy being hatched amongst the appellants and their co-accused has not been put to any of the appellants during their examination under Section 313 Cr.P.C. Thus, the said piece of evidence cannot be used against the appellants.

Learned State counsel as well as learned counsel for the complainant have submitted that during their examination under Section 313 Cr.P.C., it was put to the appellants that on the basis of statements of the witnesses, PW18 SI Rajender Singh had added Section 120-B IPC in the case on 12.6.2006 and as such it cannot be said that the incriminating circumstantial evidence of criminal conspiracy had not been put to the appellants.

Having heard learned counsel for the parties, this Court finds that during their examination under Section 313 Cr.P.C., the appellants were not made aware about the statement of PW2 Mahender Singh in regard to his over hearing the alleged criminal conspiracy being hatched by the appellants and their co-accused. Merely because PW18 SI Rajender Singh had added Section 120-B IPC in the case on 12.6.2006 is not sufficient to conclude that the necessary details regarding the evidence of criminal conspiracy having been hatched amongst the appellants and their co-accused was put to the appellants. Section 313 of

the Code of Criminal Procedure requires the examination of the accused so as to apprise the accused about the circumstances collected by the prosecution in order to establish his involvement in the crime. The object of the law is to bring the substance of accusation to the accused so that he may explain each and every circumstance appearing in the evidence brought before the Court. Such an examination is not a mere formality. On the other hand, it is a procedural safe guard for an accused in order to give him an opportunity to explain the facts and circumstances appearing against him in the evidence. In **Nar Singh Vs. State of Haryana**, (2015) 1 SCC 496, the Hon'ble Supreme Court after referring to the various judgments on the issue, spelt out various courses which are available to the Appellate Court as and when a plea of omission, to put a question to the accused on the vital piece of evidence is raised, by summarizing them as follows:-

- (i) Whenever a plea of non-compliance of Section 313 Cr.P.C. is raised, it is within the powers of the appellate court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate court any reasonable explanation of such circumstance, the court may assume that the accused has no acceptable explanation to offer;
- (ii) In the facts and circumstances of the case, if

the appellate court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate court will hear and decide the matter upon merits.

- (iii) If the appellate court is of the opinion that non-compliance with the provisions of Section 313 Cr.P.C. has occasioned or is likely to have occasioned prejudice to the accused, the appellate court may direct retrial from the stage of recording the statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under Section 313 Cr.P.C. and the trial Judge may be directed to examine the accused afresh and defence witness if any and dispose of the matter afresh;
- (iv) The appellate court may decline to remit the matter to the trial court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”

Learned counsel for the appellants has submitted that once the Court finds that there was non-compliance of Section 313 Cr.P.C., the trial of the case itself is vitiated and the appellants deserve to be acquitted of the charges against them. However, as has been held in the case of Nar Singh (Supra), this

Court is of the opinion that non-compliance of the provisions of Section 313 Cr.P.C. has occasioned prejudice to the accused as the relevant deposition of PW2 Mahender Singh qua the hatching of criminal conspiracy has not been put to the appellants, more-so, when the said material of criminal conspiracy is the only evidence against appellant-Jaidev @ Dhola and arguably qua Suraj Bhan whose presence at the time of the incident is rendered doubtful in view of the enquiry got conducted by the State and brought to the notice of the Hon'ble Supreme Court, reference of which has been made in the order Ex.D9.

As the main thrust of argument of learned counsel for the appellants is on the question of non-compliance of Section 313 Cr.P.C., this Bench does not intend to consider the appeal on merits viz. the testimonies of PW1 Suresh Kumar, PW3 Prem Kaur and PW4 Mehtab, who had deposed about the ocular account of the incident but only on the main question viz. whether non-compliance of the mandatory provisions of Section 313 Cr.P.C. vitiated the trial and the conviction of the appellants.

Resultantly, the impugned judgment of conviction and sentence with respect to the appellants is set-aside. The matter is remitted back to the trial Court for proceeding with the same afresh from the stage of recording of statements of the appellants under Section 313 Cr.P.C. The trial Court shall examine the

appellants under Section 313 Cr.P.C. in accordance with law by marshaling the evidence on record and by putting specific and separate questions to them with regard to incriminating evidence and circumstance and shall also afford them an opportunity to examine the defence witnesses, if any, and proceeding with the matter.

Since the case relates to the year 2005, the trial Court is directed to expedite the matter and dispose of the same in accordance with law, preferably within a period of six months from the date of receipt of a copy of the judgment. Since the conviction and sentences of the appellants are being set-aside, the appellants, who are presently in custody but were earlier on bail during the trial of the case, would be at liberty to move for bail, if so advised. In the event of such bail application being moved by the appellants, the trial Court shall consider the same in accordance with law.

The appeal is, accordingly, disposed of.

However, nothing stated above be construed as an expression of any opinion on the merits of the case.

(T.P.S. MANN)
JUDGE

August 24, 2015
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(GURMIT RAM)
JUDGE