

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

Date of decision: 06.05.2015

(1) CRA No.D-471-DB of 2010
Ajaypal Singh Appellant.

Versus

State of Punjab Respondent.

(2) CRA No.D-914-DB of 2010
Gurpinder Singh @ Bal Appellant.

Versus

State of Punjab Respondent.

(3) CRA No.S-1171-SB of 2010
Balwinder Singh and another Appellants.

Versus

State of Punjab Respondent.

(4) CRA No.D-59-DB of 2011
Kulwinder Singh Appellant.

Versus

State of Punjab and others Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms. G.K. Mann, Advocate
for the appellants (in CRA No.D-471-DB of 2010 and
CRA No.S-1171-SB of 2010.)

Mr. Baltej Singh Sidhu, Advocate
for the appellants (in CRA No.D-914-DB of 2010).

Mr. H.S. Baath, Advocate
for the complainant and appellants
(in CRA No.S-59-SB of 2011.

Mr. Arshwinder Singh, Addl. AG, Punjab.

RAMENDRA JAIN, J.

By this common judgment, we shall dispose of four criminal appeals, three of which have been filed by the convicted-accused namely Ajaypal Singh (CRA No.D-471-DB of 2010), Gurbinder Singh @ Bal (CRA No.D-914-DB of 2010) and third jointly by Balwinder Singh son of Rattan Singh and Balwinder Singh @ Kala (CRA No.D-1171-SB of 2010). The fourth appeal is by the complainant Kulwinder Singh (CRA No.D-59-DB of 2011).

The convicts-accused assail the impugned judgment of conviction and order of sentence dated 13.04.2010, whereby they have been convicted and ordered to undergo the sentences in the following manner:-

Accused	Under Sections	Sentence awarded
Gurbinder Singh	148 IPC	To undergo imprisonment for one year.
	302 IPC,	To undergo imprisonment for life and pay a fine of Rs.5,000/- and in default thereof, undergo further imprisonment for two months.
	323 IPC,	To undergo imprisonment for six months.
	324/149 IPC	To undergo imprisonment for two years.

Ajaypal Singh	148 IPC	To undergo imprisonment for one year.
	302/149 IPC,	To undergo imprisonment for life and pay a fine of Rs.5,000/- and in default thereof, to undergo further imprisonment for two months.
	323 IPC,	To undergo imprisonment for six months.
	324/149 IPC	To undergo imprisonment for two years.
Balwinder Singh	148 IPC	To undergo imprisonment for one year.
	323 IPC,	To undergo imprisonment for six months.
	324 IPC	To undergo imprisonment for two years.
Balwinder Singh @ Kala	148 IPC	To undergo imprisonment for one year.
	323 IPC,	To undergo imprisonment for six months.
	324/149 IPC	To undergo imprisonment for two years.

All the substantive sentences were ordered to run concurrently.

The complainant Kulwinder Singh in his appeal seeks modification of the impugned judgment and order to the extent that respondents No.2 and 3 in the said appeal i.e. Balwinder Singh son of Rattan Singh and Balwinder Singh @ Kala be also

convicted for the offences under Section 302/149 Indian Penal Code (IPC - for short) and the judgment of the learned trial Court acquitting them for the said offences be set aside.

The brief facts of the prosecution case, relevant for the decision of these appeals are that Kulwinder Singh (complainant) son of Natha Singh is resident of village Lakhna District Amritsar. He is an agriculturist. He has two elder brothers and two sisters, who are married. He is still a bachelor and resides with his parents and brother. On 06.02.2006, SI/SHO Manjit Singh of Police Station Valtoha along with ASI Charan Singh, Head-constable Gursahib Singh, Constable Swinder Singh and Sarwan Singh was present at village Bhangla in an official 'Gypsy' vehicle, which was being driven by Constable Balwinder Singh. They were present in connection with investigation of a criminal case, i.e. FIR No.17 of 2006, under Section 392 IPC. There SI/SHO Manjit Singh received information on his mobile from MHC Sanjeevan, that a medical 'ruqa' (memo) Ex.PM had been received regarding the admission of injured Kulwinder Singh (complainant in the case) and Bohar Singh (deceased in the case) in Dhawan Hospital, Bhikhiwind. On receiving the said information, SI/SHO Manjit Singh reached there and sought opinion of the doctor to record the statement of the injured. The doctor disclosed to SI/SHO Manjit Singh that Bohar Singh (deceased) had been referred to Guru Nanak Dev Hospital, whereas, injured Kulwinder Singh

(complainant) was fit to make a statement. Accordingly, the statement of injured Kulwinder Singh son of Natha Singh aged about 22 years, resident of village Lakhna District Amritsar was recorded.

The complainant Kulwinder Singh stated that he was an agriculturist. His two elder brothers and sisters were married and he was a bachelor. He was, however, residing with his parents and brothers only. His elder brother Bohar Singh (deceased) was employed in the Punjab State Electricity Board and was assigned duty at Amarkot. On that day, i.e. 06.02.2006, the time would be about 12.30 p.m. (afternoon), he was standing at Bhullar Book Stall, Amarkot. Adjacent to the said book stall is the shop of New Bajwa Medical, where his father's sister's (bhua's) son namely Bittu @ Sukhwinder Singh son of Rasal Singh, resident of village Lakhna and Balwinder Singh, owners of the Medical Store, were sitting. At that time, Gurbinder Singh @ Bhai son of Amar Singh, resident of Amarkot carrying a 12 bore double barrel gun, his cousin (i.e. his father's sister's son) Balwinder Singh @ Kala son of Darbara Singh armed with a 'dang', Ajaypal Singh son of Resham Singh, resident of Bandala, armed with a 'dang', Balwinder Singh son of Rattan Singh, resident of Bangala armed with a 'kirch' and Harpreet Singh @ Happy empty handed came outside the shop. In the meantime, Ajaypal Singh, Balwinder Singh and Balwinder Singh @ Kala entered the shop and started slapping him

(complainant - Kulwinder Singh) and dragged him outside. Gurbinder Singh gave a blow with the 'butt' of his gun on his head, due to which a fire shot got triggered in the air. Thereafter, Balwinder Singh inflicted a 'kirch' blow on the back of his head, due to which he fell on the ground and while he lay on the ground, then Ajaypal Singh, Balwinder Singh @ Kala and Harpreet Singh @ Happy kicked him. Thereafter, another 'kirch' blow was inflicted by Balwinder Singh and he (Kulwinder Singh - complainant) put his left hand in front and it hit him on his left hand and another blow hit him on his right leg and on his ankle. When Bittu (Sukhwinder Singh) and Balwinder Singh came forward to save him from the above assailants, then Harpreet Singh @ Happy, who stays in the house of Bhai (Gurbinder Singh), exhorted to Bhai (Gurbinder Singh) that in case they come to rescue Kulwinder Singh, they were not to be left because they used to pester and trouble their daughter. Then, Gurbinder Singh fired another shot in the air. In the meanwhile, his brother Bohar Singh (deceased) and his co-employee Jarmal Singh also reached at the spot. Ajaypal Singh, Balwinder Singh and Balwinder Singh @ Kala manhandled him. Ajaypal Singh raised a 'lalkara' that Bohar Singh (deceased) be also taught a lesson for the mistake committed by Kulwinder Singh (complainant). On saying this, Gurbinder Singh reloaded his gun and fired a shot aiming at Bohar Singh in order to kill him, which hit him in his abdomen and resultantly he fell on the

ground. On raising alarm of 'marta-marta', the above assailants fled away from the spot along with their respective weapons. He (complainant) and his brother Bohar Singh were got admitted at Dhawan Hospital, Bhikhiwind, but due to the serious condition of his brother Bohar Singh, the doctor referred him to Guru Nanak Dev Hospital. The motive behind the occurrence was that Gurbinder Singh and his family had a suspicion that he (complainant) had relations with their girl and due to this reason only the above assailants had caused injuries to them. Legal action was asked to be taken against the above assailants.

From the above statement Ex.PA of injured Kulwinder Singh - complainat, the offences under Sections 307, 324, 323, 148, 149 IPC and Section 27 of the Arms Act were found to have been committed. Therefore, SI/SHO Manjit Singh by making his endorsement Ex. PW10/A over the statement that he recorded, sent the same through Constable Sarwan Singh to the Police Station for registration of a case (FIR). On this, ASI Charan Singh recorded formal FIR Ex. PC. In the meanwhile, Balwinder Singh Bajwa produced one empty cartridge before SI/SHO Manjit Singh which was taken in possession, vide memo Ex. PW1/D, after converting it into a sealed parcel sealed with the seal 'MS'. Thereafter, SI/SHO Manjit Singh visited the spot, accompanied by the aforesaid Balwinder Singh Bajwa and prepared its rough site plan Ex. PW10/E. He then proceeded to

M/s Amandeep Hospital, Amritsar, where injured Bohar Singh was admitted. He enquired regarding his fitness but he was declared as per opinion of the doctor not fit to make his statement. On the next date i.e. 07.02.2006 upon the application Ex. PW10/C of the SI/SHO Manjit Singh, the doctor again vide his endorsement Ex. PW10/C/1 declared Bohar Singh, unfit to make his statement. However, the doctor produced a parcel duly sealed by him, containing some pellets, which he removed from the body of injured Bohar Singh during operation, which were taken in possession vide memo Ex. PK. Clothes of Bohar Singh deceased produced before the aforesaid Investigating Officer by one Daljit Singh, were also taken in possession vide memo Ex. PJ, after converting them into a parcel and sealed with the seal 'MS'.

On 08.02.2006, SI/Inspector Manjit Singh, Investigating Officer, on receipt of information about the death of injured Bohar Singh, reached Amandeep Hospital and conducted the inquest proceedings Ex. PW10/F under Section 174 of the Code of Criminal Procedure (Cr.P.C. - for short) and sent his dead body for post-mortem examination with a written request Ex. PW10/G. He also took in possession the medical record of deceased Bohar Singh Ex. PW10/H. On 10.02.2006, he arrested the accused Gurbinder Singh, Balwinder Singh @ Kala, Ajaypal Singh and another Balwinder Singh from Baba Deep Singh School, Amarkot. The accused was formally

arrested vide memo Ex.PD which was attested by SI Charan Singh and Surjit Singh. A 12 bore DBBL gun with two live cartridges in its barrel was recovered from Gurbinder Singh. One live cartridge of the same bore was recovered from the pocket of the accused. He also recovered a 'dang' each from Balwinder Singh @ Kala and Ajaypal Singh; besides, one 'kirch' was recovered from Balwinder Singh son of Rattan Singh. The sketch of the 'kirch' Ex.PH was prepared. Rough site plan Ex.PW-10/J was also prepared. Ajaypal made a disclosure statement Ex.PJ that he had concealed a motorcycle on the back side of his house in the area of village Bhangala, which was used by him and his companions Gurbinder Singh and Harpreet Singh while fleeing from the place of occurrence. In pursuance of the disclosure statement, motorcycle No.PB-02-AD-9176 make Yamha was recovered from the place that was disclosed.

After completion of necessary formalities, police report under Section 173 Cr.P.C. was filed in the Court of learned Judicial Magistrate Ist Class, Patti on 08.04.2006 against the accused Gurbinder Singh alias Bai son of Amar Singh, Ajaypal Singh son of Resham Singh, Balwinder Singh son of Rattan Singh and Balwinder Singh @ Kala son of Darbara Singh for the commission of offences under Sections 302, 324, 323 read with Section 34 IPC and Sections 25/27 of the Arms

Act. Harpreet Singh @ Happy was placed in column No.2 of the police report declaring him innocent.

Copies of challan as envisaged under Section 207 Cr.P.C. were supplied to the accused-appellants. Since the aforesaid offences were exclusively triable by the Court of Session, therefore, the learned Judicial Magistrate First Class, Patti vide order dated 19.04.2006 committed the case to the Court of Session at Amritsar.

After hearing learned Public Prosecutor for the State and learned counsel for the accused, the learned Additional Sessions Judge, Amritsar on perusal of the record finding the prima facie case for the commission of offences punishable under Sections 302/334/323/34 IPC and Section 25 of the Arms Act charge-sheeted the accused Gurbinder Singh, Ajaypal Singh, Balwinder Singh and Balwinder Singh @ Kala vide order dated 06.06.2006.

The prosecution in support of its case examined complainant Kulwinder Singh PW1. However, during his cross-examination, learned Public Prosecutor moved an application under Section 319 Cr.P.C. to summon Harpreet Singh @ Happy as an additional accused. He had in fact been found innocent during investigation and had been placed in column No.2 of the police report under Section 173 Cr.P.C. The application under Section 319 Cr.P.C. was allowed by the learned Additional Sessions Judge, Amritsar vide order dated 28.09.2006. Accused

Harpreet Singh @ Happy, in pursuance of summoning order appeared in the Court. However, it was submitted on 12.12.2006 that he was a juvenile. The learned trial Court, after evidence was led by both the sides, declared him to be a juvenile vide order dated 13.03.2007. Accordingly, his case was separated from the other accused and he was directed to appear before the Juvenile Court (Chief Judicial Magistrate) Amritsar on 19.03.2007.

The learned trial Court on the same day i.e. 13.3.2007 observed that Harpreet Singh had been declared a juvenile but the total number of accused in the case was five. Therefore, it was observed that they were forming an unlawful assembly armed with deadly weapons. As such prima facie a case for the offence under Sections 148, 302, 324, 323 read with Section 149 IPC was committed by the accused; besides, prima facie a case for the offence under Section 27 of the Arms Act was made out against Gurbinder Singh. Accordingly they were charged for the said offences.

The prosecution in support of its case examined in all 14 witnesses i.e. PW-1 complainant Kulwinder Singh, PW-2 eye-witness Jarmal Singh, PW-3 HC Balwinder Singh, PW4 Sukhwinder Singh @ Bittu, PW-5 SI Charan Singh, PW-6 HC Sukhchain Singh, PW-7 Dr. Vijay Dhawan, PW-8 Daljit Singh, PW-9 HC Harjinder Singh, PW-10 MHC Sanjeevan Singh, PW11 SI Manjit Singh, PW-12 Paramjit Singh, PW-13 Dr. Kirpal Singh,

PW-14 Dr. Narinder Singh. Moreover, the documents i.e. statement of Kulwinder Singh Ex.PA/PI and endorsement thereon, PW10/A, affidavit of PW3 HC Balwinder Singh Ex. PB, FIR Ex. PC, arrest memo of appellant accused Gurbinder Singh Ex. PD, recovery memo of gun .12 DBBL Ex. PE, recovery memos of 'dang' Ex. PF and Ex. PG, rough sketch of iron 'kirch' Ex. PH, its recovery memo Ex. PI, recovery memo of clothes of deceased Bohar Singh Ex. PJ, disclosure statement of accused Ajaypal Singh Ex. PJ, recovery memo of motorcycle bearing No. PB-02-AD/9176 Ex.PK, recovery memo of the parcel containing pellets removed from the body of deceased Bohar Singh Ex. PK, affidavit of HC Sukhchain Singh Ex. PL, statement of HC Harjinder Singh Ex. PW8/A, affidavit of MHC Sanjeevan Singh Ex. PW9/A, applications by SI Manjit Singh, Investigating Officer to the doctor regarding the fitness of complainant injured Kulwinder Singh and Bohar Singh to record their statements Ex. PW10/B and Ex. PW10C and Ex. PW10C/1 respectively, recovery memo of empty cartridge 12 bore Ex. PW10/D, rough site plan of the place of occurrence Ex. PW10/E, inquest report Ex. PW10/F, rough site plan of the place of arrest of accused Ex. PW10/J, medical record of Bohar Singh Ex. PW10/H and Ex. DX, rough site plan of recovery of motorcycle Yamaha bearing No. PB02-AD-9176 Ex. PW10/LK, application for post-mortem of deceased Bohar Singh Ex. PW10/L, letter seizing the Arms Licence of accused Gurbinder Singh Ex.

PW11/A, Post-mortem report of Bohar Singh Ex. PW12/A and pictorial diagram of the seat of injuries of Bohar Singh Ex. PW12/B were relied upon.

It is pertinent to mention here that inadvertently, the learned trial Court numbered two witnesses Sukhwinder Singh @ Bittu, and SI Charan Singh as PW4 twice and the said mistake continued upto the last examination of Dr. Narinder Singh as PW14. Similarly, documents i.e. EX. PJ and Ex. PK are also exhibited twice.

After closure of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded. The substance of the entire incriminating evidence brought on record against them was put to them. They denied the evidence and pleaded their innocence. They opted to lead evidence in their evidence, but closed the same without leading any. They simply relied upon the statement of PW2 Jarmal Singh and PW4 Sukhwinder Singh Ex. DA and Ex. DB respectively, FIR Ex. DC, got proved by them in the cross-examination of SI Manjit Singh, Investigating Officer PW10, Arms Licence of accused Gurbinder Singh Ex. DX and his application for renewal of the same Ex. DY was got proved in the cross-examination of PW12 Paramjit Singh, Retd. Senior Assistant of the office of Deputy Commissioner, Amritsar and consent given by Kashmir Kaur wife of Bohar Singh to Doctor for operation of her husband Ex. DX and case history given by

deceased Bohar Singh before his death Ex. DY to the doctor was got proved in the cross-examination of Dr. Narinder Singh PW14. The learned trial Court again wrongly exhibited Ex. DX and Ex. DY twice.

Thereafter, the learned trial Court after hearing the learned Public Prosecutor for the State and learned counsel for the accused, convicted and sentenced all the accused vide impugned judgment of conviction and order of sentence dated 13.04.2010, in the manner as indicated above in the opening part of this judgment.

Aggrieved with the same, the convict-appellants have preferred their respective appeals seeking their acquittal, whereas complainant Kulwinder Singh by way of his separate appeal has sought conviction of accused Balwinder Singh son of Rattan Singh and Balwinder Singh @ Kala for the offences punishable under Section 302 read with Section 149 IPC as well.

We have heard the learned counsel for the parties and have gone through the records of the case carefully.

Learned counsel for the appellants submitted that the prosecution has miserably failed to prove the motive of the accused in causing the death of Bohar Singh. In fact, the complainant Kulwinder Singh PW1 was not present at the spot at the time of incident. His presence at the spot has been shown falsely, by causing some self-inflicted injuries on his

person. In fact, it was a blind murder. Moreso, the injured, complainant Kulwinder Singh and deceased Bohar Singh were not got medico-legally from a government doctor and neither did they do so, which is fatal to the prosecution case. The impugned judgment of the learned trial Court, it is submitted, is based on surmises and conjectures, because as per prosecution story, the accused had a suspicion about some relations of the complainant Kulwinder Singh with their girl and, therefore, there was no reason for them to commit the murder of his brother Bohar Singh. In other words, it is not explained on record that why the actual culprit i.e. complainant Kulwinder Singh was let off and Bohar Singh an innocent person was shot dead, therefore, the entire prosecution story is false.

In response, learned counsel for the complainant Kulwinder Singh contended that the learned trial Court has erred in not convicting accused No. 2 and 3, namely, Balwinder Singh son of Rattan Singh and Balwinder Singh @ Kala, under Section 302 read with Section 149 IPC, because all the accused armed with deadly weapons had come prepared in a pre-planned manner with a common object to attack the complainant party and to commit the murder of Bohar Singh. Hence, there was ample evidence against them on the record for their conviction under Section 302 read with Section 149 IPC. The judgment and order of the learned trial Court is

supported to the extent the appellants have been convicted and sentenced.

We have given our thoughtful consideration to the submissions made by both the sides.

As per the prosecution story, accused Gurbinder Singh @ Bhai had a suspicion that the complainant-Kulwinder Singh was having an affair with their girl, so around 12:00/1:00 p.m. on 06.02.2006, he armed with a 12 bore DBBL gun accompanied by his cousin Balwinder Singh @ Kala armed with a 'dang', Ajaypal Singh armed with a 'dang', Balwinder Singh armed with a 'kirch' and Harpreet Singh @ Happy (Juvenile) empty handed came in front of M/s Bhullar Book Stall, Amarkot, adjacent to M/s New Bajwa Medical shop, where the complainant Kulwinder Singh was already present. The accused Ajaypal Singh, Balwinder Singh and Balwinder Singh @ Kala entered the shop and after slapping the complainant, dragged him out. Accused Gurbinder Singh gave a butt blow of his gun on the head of the complainant Kulwinder Singh as a result of which, the gun got triggered and one shot went in the air. Thereafter, Balwinder Singh gave a 'kirch' blow on the back of the head of the complainant Kulwinder Singh as a result of which he fell down. Ajaypal Singh, Balwinder Singh @ Kala and Harpreet Singh @ Happy then kicked him while he lay on the ground. Balwinder Singh also gave a 'kirch' blow on the left hand of the complainant Kulwinder Singh, besides, another

'kirch' blow on his right leg. In the meanwhile, Bittu (Sukhwinder Singh) and Balwinder Singh came forward to rescue the complainant Kulwinder Singh whereupon, Hapreet Singh @ Happy exhorted not to leave them as Kulwinder Singh used to pester their girl. Immediately, thereafter, Gurbinder Singh fired in the air. However, in the meanwhile Bohar Singh brother of the complainant along with his colleague Jarmal Singh reached there with whom accused Ajaypal Singh, Balwinder Singh and Balwinder Singh @ Kala started an altercation. Ajaypal Singh raised a 'lalkara' that Bohar Singh too be taught a lesson, as his brother Kulwinder Singh (complainant) had committed made the mistake, whereupon Gurbinder Singh reloaded his gun and fired a shot from his shot gun towards Bohar Singh which hit him in his stomach, as a result of which he fell down and finally died in the hospital on 08.02.2006.

From the above factual position on the record, deceased Bohar Singh came at the spot all of a sudden and, thus, it cannot be said that the accused-appellants had any pre-plan or common object to commit his murder, because when they came in front of M/s Bhullar Book Stall, Amarkot, adjacent to M/s Bajwa Medical Store, by that time, they were not aware that deceased Bohar Singh would also come there along with his colleague Jarmal Singh.

In order to attract Section 149 IPC, the incriminating act to be done should be within the knowledge of all the members of an unlawful assembly as one likely to be committed in prosecution of common object. In 'Waman v. State of Maharashtra' AIR 2011 SC 3327 it was inter alia held that for convicting an accused with the aid of Section 149 IPC a clear finding of regarding common object of assembly must be given and the evidence given must disclose the not only the nature of the common object but also that the object was unlawful. In order to attract Section 149 IPC it must be shown that the incriminating act was done to accomplish the common object of that unlawful assembly. Besides, such act must be within the knowledge of other members as one likely to be committed in prosecution of common object. If members of the assembly knew or were aware of likelihood of a particular offence being committed in prosecution of a common object, they would be liable for the same under Section 149. In other words, the said person had prior concert with one or more other persons, named or unnamed, for committing the said offence.

Concededly, in the present case, death of Bohar Singh had taken place on account of firearm shot injury. On the fateful day i.e. 6.2.2006, while the fighting had started at first a 'lalkara' was raised by Harpreet Singh @ Happy that

Kulwinder Singh should not be spared for pestering their girl, whereupon, Gurbinder Singh fired a shot in the air. Hence the initial criminal act was done in pursuance of that 'lalkara'. Thereafter, Bohar Singh and his co-employee reached at the spot. Ajaypal Singh, Balwinder Singh and Balwinder Singh alias Kala started an altercation with him and Ajaypal Singh also raised a 'lalkara' that Bohar Singh be also made to learn a lesson for the mistake of Kulwinder Singh, whereupon, Gurbinder Singh reloaded his gun and fired a gun shot towards Bohar Singh which hit him in his abdomen, resultantly, he succumbed to his injury.

The 'lalkara' raised by appellant-Ajaypal Singh does not lead to the conclusion that he had prior concert with other appellants for committing the murder of Bohar Singh, rather in pursuance of 'lalkara' raised by Harpreet Singh @ Happy, the criminal act had already been committed, because upon his 'lalkara', Gurbinder Singh had fired a shot in the air. For the sake of clarity, the 'lalkara' of appellant-Ajaypal Singh by itself does not suggest that he had instigated Gurbinder Singh to kill Bohar Singh. At the most, it was an individual action of accused-Gurbinder Singh to fire a shot upon deceased Bohar Singh with an intention to kill him, which hit in his abdomen and proved fatal. In other words, it was a sudden act of accused Gurbinder Singh without any common

object with any other co-accused. Only role attributed to Ajaypal Singh is that he along with accused Balwinder Singh and another Balwinder Singh @ Kala entered the book shop and slapped complainant Kulwinder Singh and dragged him outside. By that time, Bohar Singh had not reached at the spot. He had no intention and common object of committing the murder of complainant or his brother Bohar Singh, because, had it been so, he would not have only slapped the complainant Kulwinder Singh, rather would have caused serious injuries to him and Bohar Singh both. Resultantly, accused Ajaypal Singh cannot be said to have committed the offence under Section 302 read with Section 149 IPC. Thus, the conviction and sentence recorded by the trial Court against him under Section 302 read with section 149 IPC, is set aside and he is acquitted of the said charges.

The argument of learned counsel for the appellants-accused that injuries found on the person of the appellants were self-inflicted and he was not present on the spot, is also devoid of any merit, because as per the prosecution story, after the incident, deceased Bohar Singh and complainant Kulwinder Singh were undisputedly shifted to Dhawan Nursing Home, where PW-7 Dr. Vijay Dhawan medico legally examined them. Ruqa Ex.PM was forwarded by PW-7 Dr. Vijay Dhawan, without any delay to SHO Police

Station, Bhikhiwind/Valtoha. The same mentions three injuries on the person of the complainant Kulwinder Singh. As per statement of Jarmal Singh PW-2 Ex. DA relied upon by accused-appellant Sukhwinder Singh @ Bittu, since condition of Bohar Singh was serious, he was referred to Guru Nanak Dev Hospital, Amritsar. PW14 Dr. Narinder Singh, Consultant Surgeon of M/s Amandeep Hospital, Amritsar has categorically stated in his cross-examination that as per bed head ticket of deceased Bohar Singh, he was admitted in their hospital in an injured condition on 06.02.2006 around 3.15 p.m. by his friend Satinder Singh. As per the record of Bohar Singh, he had given the history of his injuries, while there was an assault on his brother by some unknown persons. His above deposition is also corroborated by history sheet of Bohar Singh Ex. DY.

It is worthwhile to mention here that PW14 Dr. Narinder Singh and PW7 Dr. Vijay Dhawan being independent persons had no ill-will or motive against the appellant-accused to get them falsely implicated by showing false injuries.

Even otherwise, complainant Kulwinder Singh and Bohar Singh did not come face to face, after receipt of injury and their admission in M/s Dhawan Nursing Home, because Bohar Singh was immediately further shifted to Amandeep

Hospital, Amritsar in a serious condition. Hence, no manipulation or concoction in the prosecution story can be expected and resultantly, the presence of complainant Kulwinder Singh at the spot is very much established on the record.

There is also no force in the argument of learned counsel for the appellants that since deceased Bohar Singh and complainant Kulwinder Singh were not examined by a Government doctor, therefore, the prosecution story cannot be believed qua their injuries. The deposition of PW14 Dr. Narinder Singh of Amandeep Hospital, Amritsar, is fully corroborated by PW13 Dr. Kirpal Singh, Lecturer, Government Medical College, Amritsar who conducted the post-mortem examination of the dead body of Bohar Singh. Vide post-mortem report Ex. PW12/A, he found three injuries on the person, shown in the pictorial diagram Ex. PW12/B near heart and kidney. PW11 SI Manjit Singh, Investigating Officer, has specifically stated that on 07.02.2006, he again went to Amandeep Hospital, Amritsar to record the statement of Bohar Singh, but the doctor had declared him unfit to make a statement vide his endorsement Ex. PW10/C/1 upon his application Ex. PW10/C. However, the doctor had handed over to him a sealed parcel Ex. PK, containing some pellets removed from the body of deceased Bohar Singh, during the

operation, which he took into possession vide memo Ex. PK. The statement of PW14 Dr. Narinder Singh, who performed surgery upon Bohar Singh and PW13 Dr. Kirpal Singh who conducted the postmortem examination on the dead body of Bohar Singh, are consistent with the medical record. They are in consonance with each other. More so, when the defence side has miserably failed to put any dent in the medical record of injured Kulwinder Singh and deceased Bohar Singh though prepared by the private doctors, during their medical treatment, therefore, the same is held to be genuine.

Role attributed to accused Balwinder Singh and Balwinder Singh @ Kala is that they armed with 'kirch' and 'dang' respectively, came in front of M/s Bhullar Book Stall, Amarkot, adjacent to M/s Bajwa Medical shop and entered into the shop and slapped complainant Kulwinder Singh and dragged him outside. Accused-Balwinder Singh gave a 'kirch' blow on the back side of the head of complainant Kulwinder Singh whereupon he fell down on the ground. Thereafter, Balwinder Singh @ Kala, Ajaypal Singh and Harpreet Singh @ Happy kicked him. Accused Balwinder Singh gave another 'kirch' blow to complainant Kulwinder Singh which hit him on his left hand and another blow on his right leg above the ankle. Causing of the above injuries to complainant Kulwinder

Singh by accused-appellant Balwinder Singh and Balwinder Singh @ Kala, do not by itself show that they had any common object or intention to commit the murder of complainant Kulwinder Singh or Bohar Singh. Had it been so, they would not have instigated accused Gurbinder Singh to cause fire arm injury to deceased Bohar Singh, rather themselves, would have caused sufficient injuries to complainant Kulwinder Singh or Bohar Singh. All the injuries caused by them to complainant Kulwinder Singh were found simple in nature by PW7 Dr. Vijay Dhawan and, thus, their role by any stretch of imagination does not fall under Section 302 read with Section 149 IPC.

More so, at the time, when the appellant-accused caused injuries to complainant Kulwinder Singh, they were not sure that deceased Bohar Singh would also appear at the spot and would succumb to fire arm shot of appellant-accused Gurbinder Singh.

The statements of PW-1 complainant Kulwinder Singh, PW2 Jarmal Singh, PW3 Balwinder Singh and PW4 Sukhwinder Singh @ Bittu, are in consonance with each other. Despite their lengthy cross-examination, nothing favourable to the accused could be elicited. Their statements are fully corroborated by medical evidence, which leads to the conclusion that only accused Gurbinder Singh caused the

death of Bohar Singh, without any common object with other co-accused. Hence, in view of the discussion above, argument raised by the learned counsel for the complainant Kulwinder Singh that Balwinder Singh and Balwinder Singh @ Kala should have also been convicted under Section 302 read with Section 149 IPC, being devoid of any merit is hereby turned down.

Sections 148 and 149 IPC are not attracted in the case, because the prosecution has been miserably failed to prove that the accused by forming an unlawful assembly, with a common object had committed the murder of Bohar Singh. Hence, they have wrongly been convicted under Section 149 IPC, rather their action falls under Section 34 IPC, because in furtherance of their common intention, they had gone to the spot to cause injuries to complainant Kulwinder Singh and his brother Bohar Singh reached there by chance.

In view of the discussion above, appellant-accused Gurpinder Singh alone is held guilty under Section 302 read with Section 34 IPC. Conviction of appellant-accused Ajaypal Singh under Sections 302 and 149 IPC is hereby set aside. However, his conviction and sentence under Sections 323 and 324 read with Section 34 IPC instead of Sections 149 and 148 IPC is hereby maintained. Similarly conviction and

sentence of accused Balwinder Singh and Balwinder Singh @ Kala is also maintained under Sections 323 and 324 read with Section 34 IPC instead of Sections 148 and 149 IPC. Their order of sentence passed by the learned trial Court shall remain intact.

Before parting with this judgment, we deem it appropriate that some compensation should be awarded to the legal heirs of Bohar Singh under Section 357 Cr.P.C. In the facts and circumstances of the case, we award compensation of Rs. one lac, to be paid by appellant-accused Gurbinder Singh, to the legal heirs of Bohar Singh. We also deem it appropriate to award some compensation to the complainant Kulwinder Singh under Section 357 Cr.P.C. Hence all the accused-appellants Ajaypal Singh, Balwinder Singh and Balwinder Singh @ Kala shall pay compensation to the complainant to the tune of Rs.30,000/- each

But for the aforesaid modification in the impugned judgment of conviction and sentence dated 13.4.2010, the above appeals are disposed of.

(S.S. SARON)
JUDGE

(RAMENDRA JAIN)
JUDGE

06.05.2015
'yogesh'