

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

Criminal Appeal-D - 439-DB of 2012

Date of Decision: July 16, 2015

Dharambir and another

--- Appellants

Versus

State of Haryana

---Respondent

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

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Shri R.S. Cheema, Senior Advocate with Shri Hemant Bassi,
Advocate for the appellants

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

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

MAHAVIR S. CHAUHAN, J.

Having been convicted and sentenced to imprisonment for life with fine amounting to Rs. 5000/- and in default of payment of fine to further rigorous imprisonment for three months, each, under Section 302 of the Indian Penal Code, 1860 (for short, IPC); rigorous imprisonment for one year with fine amounting to Rs. 1000/- and in default of payment of fine further rigorous imprisonment for one month each, under Section 325, IPC; and rigorous imprisonment for six months, each, under Section 323, IPC, vide judgment of conviction dated April 07, 2012 and order on quantum of sentence dated April 09, 2012 by learned Additional Sessions Judge,

Fatehabad (here-in-after referred to as 'the trial court), convicts Dharambir son of Hari Singh and Satbir son of Lal Chand have brought the instant appeal with a prayer that the impugned judgment/order be set aside and they be acquitted of the offences of which they have been convicted and sentenced.

Prosecution story:

02. Stated briefly, prosecution story indicates that Dharambir, who was Sarpanch (headman) of village Chandrawal, was booked on the allegation of playing a fraud in disbursement of old age pension. Uncle of Anil (PW1) (namely, Mahabir-PW3) was a witness against him in that case. At or around 07.30 p.m. on February 10, 2011, Anil (PW1) and his elder brother-Satbir (PW5) returned to their house from village Bhuna (where Anil was running a karyana shop) in a car. They had just reached in front of their house when an Innova car bearing registration No. HR 22F 8900 being driven by Dharambir stopped in front of their house. Satbir son of Lal Chand and three/four others were accompanying him. Dharambir alighted from the car and called out Anil's father (Jagdish Sharma-PW2) saying that he would be taught a lesson for becoming a false witness against him. Jagdish Sharma (PW2) came out of the house and urged Dharambir to speak nicely. The latter, however, continued abusing the former and even attempted to enter his house. On hearing the noise Sonu wife of Satbir and Bimla (PW4) mother of Anil (PW1) also came out in the street. Sonu (the deceased) told Dharambir that he being inebriated should go home and should talk in the morning. Upon this Dharambir caught hold of Sonu's hand, dragged her towards his car and tried to throw her in the car. Jagdish Sharma (PW2) and Phool Singh (Court Witness) rescued Sonu from him.

Dharambir then took out an iron rod from the car and hit Sonu's head therewith. Anil (PW1) tried to rescue Sonu. Thereupon Dharambir firstly drove his car backwards and then, with an intention to kill them, drove it forward and ran over Sonu and Jagdish Sharma (PW2). Sonu received injuries on her waist and head while Jagdish Sharma (PW2) received injuries on his legs and other parts of his body. Several inhabitants of the locality converged on the scene whereupon Dharambir fled the spot in the car alongwith his companions. Anil (PW1), Raghubir (PW6) and Satbir (PW5) took Sonu and Jagdish Sharma (PW2) to General Hospital, Fatehabad. Jagdish Sharma (PW2) was admitted there but Sonu (the deceased), in view of her serious condition, was referred to Post Graduate Institute of Medical Sciences, Rohtak (for short, PGIMS), after giving first aid and conducting her medico-legal examination.

03. Dr. Sushil Kumar Yadav (PW10) sent intimation (Ruqa), Exhibit P13, intimating the police of admission of Sonu and Jagdish Sharma (PW2) in the hospital. ASI Maya Ram (PW13) reached General Hospital, Fatehabad. But Doctor declared Sonu and Jagdish Sharma (PW2) unfit to make a statement. However, Anil (PW1) met ASI Maya Ram (PW13) and suffered statement, Exhibit P1, before him. Based on statement, Exhibit P1, ASI Raghubir Singh (PW12) recorded a formal First Information Report (for short, FIR), Exhibit P25, under Sections 148, 149, 323, 325 and 307, IPC. Investigating Officer (PW13, ASI Maya Ram) reached the spot of occurrence; drew a visual site plan, Exhibit P26, of the place of occurrence; recovered broken bangles vide memorandum, Exhibit P27; and recorded statements of witnesses.

04. Dr. Sushil Kumar Yadav (PW10) medico-legally examined

Sonu and Jagdish Sharma (PW2) vide Medico Legal Reports, Exhibits P11 and P12, respectively.

05. On February 10, 2011 SI Subhash Chander (PW16) took over investigation of the case; on receipt of information that Sonu had breathed her last he converted the offence from Section 307, IPC, to Section 302, IPC; reached General Hospital, Hisar; and prepared Inquest Report, Exhibit P30.

06. On police request, Exhibit P29, Dr. Suresh Kumar (PW15) conducted post mortem on the dead body of Sonu vide Post Mortem Report, Exhibit P31.

07. Appellants Dharambir and Satbir were arrested on February 11, 2011. While in police custody, Dharambir and Satbir suffered a disclosure statements, Exhibits P20 and P21, respectively, and pursuant thereto got demarcated, vide memorandum, Exhibit P22, the place where the Innova car was concealed by them and also got recovered the Innova car vide memorandum, Exhibit P23.

08. On completion of investigation a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short 'the Code') was prepared and was presented before the learned Jurisdictional Magistrate.

Charge:

09. On committal of the case to the Court of Session, learned trial court heard the prosecutor and the defence; appraised the report and its enclosures; found a prima facie case punishable under Sections 323, 325 and 302 read with Section 34, IPC, against them; and charged the appellants for those offences.

10. Appellants pleaded not guilty to the charge and claimed to be tried.

Prosecution evidence:

11. During trial, Dr. Sushil Kumar Yadav (PW10) revealed that he medico-legally examined Sonu and Jagdish Sharma (PW2) vide Medico Legal Reports, Exhibits P11 and P12, respectively, and found following injuries on their persons:

Sonu:

- i. A 10x4 cms x 2 mm lacerated wound on the back. Muscles were crushed and there was tenderness in right hypochondrium. X-Ray of LS spine A.P. and lateral, and abdomen, and ultrasound of abdomen advised. Injury was caused by blunt weapon and was kept under observation.
- ii. Multiple abrasions on left side of face of various shapes and sizes (3 cms x 1 cm, 2 cms x 1 cm, 2 cms x 1 cm) Injury was simple and was caused by a blunt weapon.
- iii. Abrasion on right side of face. Bleeding was present. X-Ray of skull, A.P. and lateral, was advised. Injury was caused by blunt weapon and was kept under observation.

Jagdish Sharma:

- i. Swelling and tenderness over left thigh and movements were painful and restricted. Advised X-Ray. Injury was caused by blunt weapon and was kept under observation.
- ii. A 3x1 cms abrasion over right elbow. X-Ray was advised. Injury was caused by blunt weapon and was kept under observation.
- iii. Abrasion over left foot at the base of great toe.
- iv. A 2x0.5 cms lacerated wound on the base of left great toe. X-Ray was advised. Injury was caused by blunt weapon and was kept under observation.
- v. Abrasion over medial malleolus of left foot.

Dr. Sushil Kumar Yadav (PW10) also disclosed that Sonu and

Jagdish Sharma (PW2) had arrived in the hospital with history of physical

assault alongwith roadside accident at 07.30 p.m. (on February 10, 2011) near village Chandrawal.

12. Dr. Suresh Kumar (PW15) proved on record Post Mortem Report, Exhibit P31, in respect of Sonu and apprised the learned trial court that at 12.10 p.m. on February 11, 2011 he conducted autopsy on the corpse of Sonu and found the following injuries on her person:

- i. One abrasion on the left side of the face (5 x 4 cms).
 - ii. One abrasion on the right side of the face (3x 3 cms).
 - iii. One lacerated wound on the parietal eminence (5 x 1 cms).
 - iv. Multiple abrasions on the right arm.
 - v. Multiple abrasions on the right thigh.
 - vi. Multiple abrasions on the right upper part of the back.
 - vii. One lacerated wound on the right side of the back just above the right hip (10 x 5 cms). On dissection, liver was found to have a lacerated wound on the posterior surface (10 x 7 cms). Peritoneal cavity was full of blood.
- Remaining organs were pale and healthy.

According to him cause of death of Sonu was hemorrhagic shock due to the injury to vital organ, viz. liver, which was ante mortem in nature and sufficient to cause death in the ordinary course of nature.

13. Anil (PW1) and Jagdish Sharma (PW2), after having treaded the dotted line when examined in chief, in their deferred cross-examination discomfited the prosecution and made it lose whatever was gained in their examination in chief. They were, then, declared hostile. Mahabir (PW3), Bimla (PW4), Satbir (PW5), Raghubir (PW6) and Jhaman Lal (PW7) straightaway refused to go the prosecution way and were declared hostile.

14. ASI Maya Ram (PW13), SI Subhash Chander (PW16), ASI Raghubir Singh (PW12), HC Raj Kumar (PW14), Balwant Singh, Draftsman (PW11), HC Ram Sarup (PW9) and C. Jagraj Singh (PW8) highlighted how investigation progressed and culminated into the report under Section 173(2) of the Code.

Court witness:

15. Phool Singh (CW1) though cited as a prosecution witness, was given up by the learned Public prosecutor. But, as is evident from order dated September 28, 2011 of the learned trial court, he moved an application, through his counsel, asking for his examination as a witness. The application, however, was dismissed. He then approached this Court by way of Criminal Miscellaneous No. M-33161 of 2011 with a similar prayer which was granted vide order dated November 26, 2011. He was ultimately examined as a Court Witness. He deposed to say that at or around 07.30 p.m. on February 10, 2011, he was attracted to the spot, viz. house of Jagdish Sharma (PW2) where the appellants and four/five others were quarrelling with Jagdish Sharma (PW2) while Sonu and Satbir (PW5) were rescuing him. He also joined the rescuers. While fighting, they went a long distance towards Bhuthan Road where Dharambir's hand fell on Sonu and they separated the two. Dharambir then rushed to his vehicle; initially drove it in the reverse gear; and then sped it forward striking Sonu and Jagdish Sharma (PW2). Both of them went unconscious and were taken to hospital. He also revealed that (at his instance) FIR No. 34 dated February 10, 2011 under Sections 406 and 409, IPC, was recorded at Police Station, Bhuna against fourteen persons including appellant Dharambir .

Compliance of Section 313 of the Code:

16. Inculcating circumstances appearing in the prosecution evidence, when put to the appellants in terms of Section 313 of the Code, were denied and plea of their innocence and false implication was reiterated by them .

Evidence in defence:

17. Appellants examined Rajesh Soni (DW1) and Dy. S.P. Arun Kumar (DW3) in their defence.

Judgment of conviction/order on quantum of sentence:

18. Learned trial court, on appraisal of the evidence and assessing the submissions made for and against the case of the prosecution, came to the conclusion that the prosecution was able to prove its case beyond reasonable doubt and, accordingly, convicted and sentenced the appellants as here-in-before stated.

Submissions for and against the Judgment of conviction/order on quantum of sentence:

19. We have heard learned counsel for the parties and have also examined the record of the case.

20. Learned senior counsel appearing for the appellants has argued with great intensity that while Mahabir (PW3), Bimla (PW4), Satbir (PW5), Raghubir (PW6) and Jhaman Lal (PW7) have refused to own the prosecution story evidence of Anil (PW1) and Jagdish Sharma (PW2) cannot be relied upon because after deposing in their examination-in-chief propitious to prosecution's account of the occurrence they have enacted a somersault and have testified contrary to the mainstay of the prosecution story and have, thereby, exhibited scant respect for the truth. Conceding that evidence of a hostile witness can be relied upon at least to the extent the witness supports the case of the prosecution, learned senior counsel has submitted that it can be done only if the witness passes the test of credibility as has been held in **Sat Paul versus Delhi Administration, 1976 (1) SCC 727, Balu Sonba Shinde versus State of Maharashtra, 2002 (7) SCC 543, State of Rajasthan versus Bhawani and another, 2003 (7) SCC 291** and **Javed Masood versus State of Rajasthan, 2010 (3) SCC 538.**

21. Further, according to the learned senior counsel for the appellants, deposition of Phool Singh (CW1) is inconsequential besides being unacceptable and unreliable firstly because it does not disclose commission of an offence by the appellants, secondly because it runs contrary to the case put up on behalf of the prosecution, thirdly because what is stated by this witness does not find support from the other facts emerging from the evidence, fourthly because his presence on the spot of occurrence at the time of the occurrence is highly doubtful in so far as he, admittedly, is residing in a different street and his deposition does not disclose the purpose of his presence on the spot of occurrence, and lastly because he being author of a criminal case against appellant Dharambir (FIR No. 34 dated February 10, 2011) had every reason to depose against him and his anxiety in the matter is brought to the fore by the fact that after having been given up by the learned Public Prosecutor he moved an application, through his counsel, to get his deposition recorded and after having failed before the learned trial court, approached this Court to seek a direction in the matter and even concealed (in his petition filed before this Court) the factum of registration of FIR No. 34 dated February 10, 2011 against appellant Dharambir at his instance. His admission that there was no animosity between the appellants and the complainant party leaves the appellants without a motive to cause injuries to Sonu and Jagdish Sharma (PW2). Then, there is no evidence to establish that Jagdish Sharma (PW2) stood as a false witness against the appellants in any case.

22. Still further, damage to the Innova car belonging to appellant Dharambir has not been explained and the very genesis of the occurrence has been concealed by the prosecution, submits the learned senior counsel

elaborating that in the report submitted under Section 173(2) of the Code the occurrence is shown to have happened on Bhuna-Bhuthan Road but in the visual site plan, Exhibit P26 and scaled site plan, Exhibit P18, the Innova car is shown to be parked in front of house of Jagdish Sharma (PW2) and if SI Subhash Chander (PW16) is to be believed, distance between the place where the Innova car is stated to have hit Sonu (the deceased) and the street shown by ASI Maya Ram (PW13) in site plan, Exhibit P26, as the place to which Sonu and Jagdish Sharma (PW2) were pushed by appellant Dharambir, is 60 to 80 feet. Phool Singh (CW1) has said, in the first instance, that the Innova car when driven by appellant Dharambir first backwards and then forward, hit Sonu and Jagdish Sharma (PW2) but he has later added that appellant Dharambir's vehicle had run over them. However, Dr. Sushil Kumar Yadav (PW10) and Dr. Suresh Kumar (PW15) did not find any tyre marks on the persons of Sonu and Jagdish Sharma (PW2) and crush injuries on the person of Sonu and, as such, rule out receipt of injuries by them on account of having been run over by the Innova car of appellant.

23. On the contrary, learned State counsel has argued, with no less vehemence, that in the evidence available on record, more particularly statements of Anil (PW1) and Jagdish Sharma (PW2) in their examination in chief and deposition of Phool Singh (CW1), as corroborated by medical evidence brought on record by Dr. Sushil Kumar Yadav (PW10) and Dr. Suresh Kumar (PW15), it has been sufficiently proved that the appellants caused injuries to Sonu and Jagdish Sharma (PW2) and Sonu died of the injuries received by her on being run over by appellant Dharambir by the Innova car with an intention to kill her.

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

Evidence of hostile witnesses:

25. Wheel of justice was set in motion by Anil (PW1) by making statement, Exhibit P1, before ASI Maya Ram (PW13) and thereby revealing that his uncle (Mahabir-PW3) was a witness in a criminal case lodged against appellant Dharambir; on the fateful day he (Dharambir) accompanied by the other appellant, Satbir and three/four others, came in front of his house in an Innova car and called his father (Jagdish Sharma-PW2) out to teach him a lesson for becoming a false witness against him and not only continued abusing Jagdish Sharma (PW2) but also attempted to enter his house ignoring his importunes to speak nicely; on hearing the noise Sonu and Bimla (PW4) also came out in the street; Sonu told Dharambir that he being drunk should go home and should talk in the morning; Dharambir caught hold of Sonu's hand, dragged her towards his car and tried to throw her in the car; Jagdish Sharma (PW2) and Phool Singh (Court Witness) rescued Sonu from him. Dharambir then took out an iron rod from the car and hit Sonu's head therewith, then drove his car backwards and then, with an intention to kill them, drove it forward and ran over Sonu and Jagdish Sharma (PW2); and in the process Sonu received injuries on her waist and head while Jagdish Sharma (PW2) received injuries on his legs and other parts of his body. Anil (the complainant) appeared as PW1 before the learned trial court and not only retold on oath the entire prosecution story but also added that besides Dharambir and Satbir, Mahender, Umed, Sunder and Telu were also there in the Innova car and alongwith Satbir had helped Dharambir by pushing Jagdish Sharma (PW2) in front of the car. He also revealed that his uncle Mahabir (PW3)

was cited as a witness against Dharambir. However, when cross examined on behalf of the appellants he disowned the statement, Exhibit P1, saying that a number of residents of his locality, who were present in the hospital, had got prepared various documents, including Exhibit P1, and on the asking of those persons he had only appended his signatures on Exhibit P1 though it was not even read over to him. He has gone to the extent of saying that whatever was recorded in statement, Exhibit P1, was reiterated by him in his examination-in-chief on being pressurized and tutored by those persons and the police officials under the threat of being prosecuted if he did not state so before the learned trial court and, in fact, Sonu and Jagdish Sharma (PW2) did not receive injuries in front of their house, rather they received injuries in a road accident at the junction of main road and 'Sarpanch Wali Gali' when they were thrown away by the strike of a vehicle; and at the time it was dark and he did not see Dharambir driving the offending vehicle.

26. Jagdish Sharma (PW2), who, as per case of the prosecution, was injured in the occurrence, has also gone the same way as Anil (PW1).

27. Other witnesses of the occurrence, namely Mahabir (PW3), Bimla (PW4), Satbir (PW5), Raghubir (PW6) and Jhaman Lal (PW7) have outrightly refused to go the prosecution way.

28. Learned State counsel though has been right in contending that evidence of a hostile witness can be taken into account to the extent it supports the case of the prosecution but, to borrow words of the Hon'ble Supreme Court from **Sat Paul versus Delhi Administration** (supra), "... in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court by the party calling him his evidence cannot, as a

matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto". Anil (PW1), author of the FIR and Jagdish Sharma (PW2), the person who is said to have received injuries in the occurrence, as afore-stated, have refused to own their statements, Exhibit P1 and Exhibit P2, respectively, and after having deposed in their examination in chief propitious to the prosecution version, have, in their cross examination, enacted a new story totally converse to the one put up on behalf of the prosecution. Learned trial court relied upon the evidence of these witnesses saying, "... testimony of Anil (PW1) and Jagdish (PW2) and Phool Singh (court witness) regarding the occurrence is quite trustworthy and reliable and the same deserves to be relied upon" because, according to the learned trial court, "This is not a case where testimony of Anil and Jagdish stands shattered in their cross-examination. Rather, present one is the case where they have, in an unholy manner, tried to favour the accused in their cross-examination by turning hostile and thereby exposing themselves in the process.....". We, however, find ourselves unable to subscribe to this view because by disowning their

statements, Exhibits P1 and P2, and by saying that these statements were made by them on the asking and under the pressure of residents of the locality and by propounding in their cross-examination a story diagonally opposite to the one put forth by the prosecution, Anil (PW1) and Jagdish Sharma (PW2) have exhibited that they are persons of very weak character and pliable disposition; have no respect for truth and propriety; and, as such, cannot be said to have passed the test of credibility. Evidence of these witnesses, therefore, deserves to be and is hereby rejected.

Evidence of Phool Singh (CW1):

29. Evidence of Phool Singh (CW1) is also found to be of no assistance to the case of the prosecution. He claims that when he reached the spot, on hearing the noise, he found that Anil (PW1), Satbir (PW5) and Sonu were rescuing Jagdish Sharma (PW2) and he also joined them to rescue Jagdish Sharma (PW2). It indicates that this witness saw the appellants grappling with Jagdish Sharma (PW2) but as per FIR, Exhibit P25, the two sides did not grapple with each other at any point of time. According to the FIR, Exhibit P25, on hearing the noise, Sonu came out of the house and asked appellant Dharambir that they would talk in the morning because at that time he was drunk whereupon Dharambir caught hold of Sonu from her hand, dragged her towards his car and attempted to throw her inside the car but she was rescued by Phool Singh (CW1) and Jagdish Sharma (PW2) and thereafter appellant Dharambir took out an iron rod from the car and hit Sonu therewith on her head and after she was rescued by Anil (PW1), he (appellant Dharambir) drove the car firstly backwards and then drove it forward and with an intention to kill them, ran over Sonu and Jagdish Sharma (PW2). But according to this witness both

the sides went a long distance towards Bhuthan Road while quarrelling, appellant Dharambir's hand fell on Sonu but they separated them, thereafter appellant Dharambir rushed towards his car, boarded it, drove it firstly backwards and then forward striking Sonu (the deceased) and Jagdish Sharma (PW2). The story put forth by him, evidently runs contrary to the one put up by the prosecution. Even otherwise, were it that this witness was present at the spot at the time of the occurrence, appellant Dharambir, instead of targetting Sonu and Jagdish Sharma (PW2), would have targetted him as he was the author of the FIR registered against Dharambir.

Further, as per his admission, his house is not there in the street where the occurrence is stated to have happened, it, rather, falls in a different street on the back of house of Jagdish Sharma (PW2). It is nobody's case that he is related to or otherwise connected with either side. His deposition is conspicuously silent with regard to purpose of his visit to the spot. His claim that while lifting Sonu and Jagdish Sharma (PW2) to put them in a vehicle for being taken to the hospital, his clothes were stained with blood is belied by the fact that no blood stained clothes of this witness were handed over to the police. On one hand he showed a great concern for the complainant party by intervening in the scuffle and lifting the injured to put them in the vehicle for being taken to the hospital but on the other did not think it proper to accompany them to the hospital.

Deposition of this witness that he did not notice any damage to Innova car of appellant Dharambir runs contrary to memorandum, Exhibit P23, Inspection Report, Exhibit P9, according to which its front and hind panes and right side hind window pane were broken and there were dents on many places on its right side.

Further, his statement that Sonu (the deceased) and Jagdish Sharma (PW2) were run over by the Innova car of appellant Dharambir is falsified firstly by Anil (PW1) and Jagdish Sharma (PW2) by refusing to own the prosecution story and then by medical evidence in so far as Dr. Sushil Kumar Yadav (PW10) and Dr. Suresh Kumar (PW15) did not notice any tyre marks or crush injuries on the body of Sonu and Dr. Suresh Kumar (PW15) has been very specific in saying that injuries on the person of Sonu were not by running over by a vehicle. Dr. Sushil Kumar Yadav (PW10) has also stated that there were no tyre marks on the person of Jagdish Sharma (PW2).

It also emanates from the record, rather is revealed by this witness CW1, Phool Singh), that he is author of FIR No. 34 dated February 10, 2011 under Sections 406 and 409, IPC, recorded at Police Station, Bhuna naming appellant Dharambir and thirteen others as accused. On September 28, 2011 when he was given up by the learned Public Prosecutor he moved an application through an advocate to get his deposition recorded and after his prayer was rejected by the learned trial court he approached this Court vide Criminal Miscellaneous No. M-33161 of 2011 to seek a direction to the learned trial court to record his evidence, which was allowed. Before the learned trial court he has admitted in his cross examination that he did not disclose before this Court that he is author of FIR No. 34 dated February 10, 2011 under Sections 406 and 409, IPC, recorded at Police Station, Bhuna naming appellant Dharambir and thirteen others as accused.

All the above-mentioned circumstances indicate that Phool Singh (CW1) was not present on the spot at the time of the occurrence and has been trying to thrust himself as a witness of the occurrence presumably

to settle his own scores against appellant Dharambir. Concealment of registration of FIR No. 34 dated February 10, 2011 by him against appellant Dharambir and others on the day of occurrence itself, in his petition filed before this Court, also indicates that he was hell-bent to persecute appellant Dharambir and to succeed in his ill designs did not even bother for propriety.

30. In view of the circumstances enumerated in the preceding paragraph, we find it a bit difficult to rely upon the deposition of Phool Singh (CW1).

31. There is no other evidence in proof of case of the prosecution.

Motive:

32. In a case based on direct evidence absence or inadequacy of motive, no doubt, is of little consequence but if the prosecution comes out with a specific motive attributable to the assailant(s), its failure to establish the same certainly works against it. In the instant case appellant Dharambir is shown to have come to the spot of occurrence to teach Jagdish Sharma (PW2) a lesson for having become a witness against him but it comes out from the record that Mahabir (PW3) (and not Jagdish Sharma-PW2) was a witness against appellant Dharambir. It emerges from the record (deposition of PW1, Anil) that houses of Mahabir (PW3) and Jagdish Sharma (PW2) are separate from each other. It has also been admitted by Phool Singh (CW1) that there was no previous enmity between the appellants and family of complainant-Anil (PW1). Jagdish Sharma (PW2) is father of Anil (PW1). That being so, annoyance of appellant, Dharambir, if any, was towards Phool Singh (CW1) and Mahabir (PW3). As such, he had reason to come to house of Jagdish Sharma (PW2) and to call him out to teach him a lesson.

Be that as it may, prosecution has stopped short of attributing any motive to either of the appellants to kill Sonu. Thus, prosecution's plea that appellant Dharambir had a motive to kill Sonu and to injure Jagdish Sharma (PW2) evaporates in the air.

Role of appellant Satbir:

33. It may not be out of place to point out here that in the FIR, Exhibit P25, no role has been attributed to appellant Satbir except that he was one of the occupants of the Innova car statedly driven by appellant Dharambir. Anil (PW1) and Jagdish Sharma (PW2) though stated in their examination in chief that appellant Satbir alongwith his companions, pushed Jagdish Sharma (PW2) in front of the Innova car but, as noticed in the earlier part of this judgment, evidence of these witnesses is found to be unworthy of credit as they have enacted a new story in their cross examination, which runs contrary to the prosecution story as also to the statements made by them in their examination in chief.

Damage to Innova car not explained:

34. When recovered vide memorandum, Exhibit P23, the Innova car, statedly used in the occurrence, was found to have its front glass cracked, hind glass, glass on the driver's side and the side glass broken and front bumper to be dented. Similarly in the Inspection Report, Exhibit P9, front and hind panes and right side hind window pane of the car were broken and there were dents on many places on its right side. Prosecution has not explained how the car was damaged. Phool Singh (CW1) has gone to extent of saying that he did not notice any damage to the car. From this it emerges that the prosecution has concealed true facts and genesis of the occurrence and has thereby rendered its version unreliable.

Conclusion:

35. In view of the above, the impugned judgment/order cannot sustain and are hereby set aside. The appeal succeeds and is accepted. Appellants are acquitted of the offences of which they stand charged and convicted.

36. Appellant Satbir is on bail. His bail bonds are discharged.

37. Appellant Dharambir is in custody. If not wanted in any other case, he shall be forthwith set at liberty.

38. Amount of fine, if already deposited by them, shall be refunded to the appellants as per procedure known to law.

[T.P.S. Mann]
Judge

[Mahavir S. Chauhan]
Judge

July 16, 2015
adhikari