

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 03.11.2015.

(1) CRM No.19507 of 2015 in/and
CRM-A No.982-MA of 2015 (O&M)

State of Haryana Appellant.

Versus

Suresh @ Sinu and others Respondents.

And

(2) CRA-AD No.59 of 2015(O&M)

Satyawan Appellant.

Versus

State of Haryana and others Respondents.

CORAM: Hon'ble Mr. Justice S.S. Saron.
Hon'ble Mr. Justice Amol Rattan Singh

Present: Mr. Raj Kumar Makkad, DAG, Haryana,
for the appellant in CRM-A No.982-MA of 2015 and
for respondent No.1 in CRA-AD No. 59 of 2015.

Mr. Vijay Pal, Advocate
for the complainant in CRM-A No.982-MA of 2015 and
for the appellant/applicant in CRA-AD No.59 of 2015.

S.S. Saron, J.

Suresh @ Sinu son of Satbir, Kuldeep son of Ramesh, Ishwar son of Madan and Vicky son of Sarjeet, who are respondents in both the cases were tried by the learned Additional Sessions Judge, Hisar for the offences punishable under Section 307 read with Section 34 of the Indian Penal Code ('IPC' - for short), Section 324 read with Section 34 IPC,

Section 323 read with Section 34 IPC and Section 506 read with Section 34 IPC. In terms of the impugned judgment and order dated 13.02.2015, they were acquitted of the said offences by the learned Additional Sessions Judge, Hisar.

Aggrieved against the said order, the State of Haryana has filed CRM No.A-982-MA of 2015 for grant of leave to appeal against the said acquittals; besides, Satyawar son of Ram Rakh (complainant) has filed CRA No.AD-59 of 2015 seeking acceptance of his appeal and setting aside the impugned judgment and order dated 13.02.2015 and for convicting and sentencing the accused-respondents namely Suresh @ Sinu, Kuldeep, Ishwar and Vicky in accordance with law for the offences under Sections 307/324/323/506/34 IPC.

The State of Haryana along with the application for grant of leave to appeal has filed CRM No.19507 of 2015 seeking condonation of 18 days delay in filing the application for grant of leave to appeal. Satyawar (complainant/victim) has filed CRM No.32635 of 2015 seeking condonation of 125 days' delay in filing the appeal.

The appeal filed by the complainant/victim-Satyawar is to be treated as an application for leave to appeal in view of the judgment of Hon'ble the Supreme Court in Satya Pal Singh v. State of M.P. and others MANU/SC/1119/2015, wherein it has been held that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the 'victim' including the legal heirs and others as defined under Section 2 (wa) of the Code of Criminal Procedure ('Cr.P.C.' - for short) under the proviso to Section 372 Cr.P.C. only after obtaining the leave of the High Court as

required under Sub Section (3) of Section 378 Cr.P.C. The appeal filed by the complainant Satyawar, who is a 'victim' being the injured in the case, against the acquittal of accused-respondents, is accordingly treated as an application for leave to appeal.

We have heard Shri Raj Kumar Makkad, learned Deputy Advocate General, Haryana appearing for the State and Sh. Vijay Pal, Advocate, appearing for the applicant Satyawar and with their assistance gone through the trial Court records, which was requisitioned.

FIR (Ex.P2) in the case has been registered on the statement (Ex.P1) of Satyawar (complainant) (PW2) made before Investigating officer in the case namely ASI Daya Nand (PW5) on 14.02.2012. The complainant stated that he was resident of village Mehanda and was aged 25 years. He did agriculture work. They were three brothers. The eldest brother (Balwan PW3) was residing separately from them. The complainant-Satyawar (PW2) a day earlier to his making the statement i.e. on 13.02.2012 was going home at about 7.30 p.m. after purchasing match sticks and 'biri' from the shop of Pappi son of Manphool resident of Mehanda. When he reached near the house of Madan son of Chottu Ram then from the street Kuldeep son of Ramesh, Ishwar son of Madan, Sinu (@ Suresh) son of Satbir Singh and Vicky son of Sarjeet residents of Mehanda (respondents) were already standing there. Sinu (@ Suresh) then said that Satyawar be caught hold of as it was an opportunity on that day. On Sinu (@ Suresh) saying this, Kuldeep and Ishwar then caught hold of Satyawar and Sinu (@ Suresh) attacked him with the knife that he was carrying in his hand, which hit him (Satyawar) towards the left side of his abdomen. Then Vicky attacked Satyawar with the knife he was carrying,

which hit him on his left shoulder. The complainant then raised an alarm of 'Mar Diya Mar Diya'. On hearing the alarm, the complainant's brother Balwan Singh (PW3) reached at the spot. On seeing him coming, the assailants along with their weapons ran away from the spot. The complainant otherwise would have been inflicted with more injuries. The reason for the incident of inflicting injuries was that about 8-10 days earlier to the occurrence, an altercation had taken place between the complainant and Vicky. Due to this altercation, Sinu (@ Suresh) by taking his friends with him had given a beating to the complainant. Later his brother Balwan (PW3) by making arrangements had got him for treatment and got him admitted at the Government Hospital, Hansi. The doctor there by giving first aid referred him to PGIMS (Post Graduate Institute of Medical Sciences), Rohtak. The complainant was under treatment at Rohtak. Sinu (@ Suresh) and his companions had said that on that day he was saved but in future when he was found, his life would be finished. His statement was recorded by ASI Daya Nand (PW5), which he heard and accepted as correct. Legal proceedings were asked to be initiated against the accused. The complainant signed in Hindi below his statement, which was attested by ASI Daya Nand, Police Station Sadar Hansi (PW5) on 14.02.2012.

Police proceedings (Ex.P1/B) were recorded by ASI Daya Nand to the effect that doctors' memo along with MLR regarding Satyawar son of Ram Rakh resident of Mehanda being admitted in the Hospital at Hansi due to a fight, was received at the police station through a Peon on 13.02.2012. The doctor in his memo mentioned that he had referred the injured to PGIMS Rohtak. ASI Daya Nand along with Constable Satender Kumar reached PGIMS Rohtak on 14.02.2012 and an

opinion was obtained from the doctor regarding fitness of the injured Satyawan. The doctor mentioned that the injured Satyawan was fit to make a statement. ASI Daya Nand after reaching the bed of the injured recorded his statement. He after accepting his statement to be correct signed below it in Hindi, which was attested by ASI Daya Nand. According to the MLR, Satyawan had suffered two injuries, which were stated to be caused with a sharp weapon. From the statement of the injured and the MLR, offences under Sections 323, 324, 506, 34 IPC were found to be made out.

The writing was sent to the police station through Constable Satender Kumar. The number of the FIR was asked to be intimated after registration of the case. ASI Daya Nand was busy at PGIMS Rohtak. The writing was received at the Police Station Hansi on 14.02.2012. ASI Jaipal Singh (PW4) made an endorsement (Ex.P1/C) to the effect that case FIR No.50 dated 14.02.2012 (Ex.P2) had been registered for the offences under Sections 323, 324, 506 and 34 IPC at PS Sadar Hansi.

ASI Daya Nand (PW5) conducted the investigation in the case. He visited the place of occurrence on 15.02.2012 and inspected the spot where the incident had taken place. Rough site plan (Ex.P4) of the place of occurrence was prepared. During inspection of spot, Balwan (PW3) produced blood stained shirt and pant. The shirt had a cut with the knife. The shirt and pant were converted into a parcel, sealed with the seal 'SS' and taken in possession vide recovery memo Ex.P5. The seal after use was handed over to Balwan (PW3). ASI Daya Nand (PW5) submitted an application Ex.P5/A before the doctor on 29.02.2012 regarding the nature of injury on the person of the complainant. Dr. Naresh Kumar Verma, Senior Medical Officer, General Hospital, Kaithal (PW10) in his

opinion Ex.P16, regarding the nature of injuries, declared injury No.1 as dangerous to life. Accordingly, offence under Section 307 IPC was added in the case. Suresh @ Sinu was arrested on 02.03.2012. He was interrogated and he made a disclosure statement (Ex.P6) which was signed by him and attested by EASI Subhash Chander. In pursuance of his disclosure statement, he led the police party to his house and got recovered a knife Ex.P13 (MO) from the bricks lying near 'Gandasa'. Sketch Ex.P7 of the knife Ex.P13 (MO) was prepared and the same was taken in possession vide recovery memo Ex.P8. Rough site plan Ex.P9 of the place of recovery was also prepared. By an application Ex.P10 opinion of the doctor was sought on 30.03.2012 with regard to the knife Ex.P13 (MO) that had been recovered. Dr. Naresh Kumar Verma (PW10) gave an opinion Ex.P17 that possibility of injury No.2 by the knife shown to him was there. Statements of Subhash Chand Draftsman, DSP Office, Hansi (PW8) and other witnesses were recorded. The case property was deposited with the MHC Malkhana. ASI Daya Nand (PW5) prepared the final report in terms of Section 173 Cr.P.C. and the same was filed only against Suresh @ Sinu in the Court of the learned Illaqa Magistrate, Hansi on 25.04.2012 by Krishan Lal SI/SHO whose signatures he identified.

The learned Sub Divisional Judicial Magistrate, Hansi before whom the report under Section 173 Cr.P.C. was filed observed that during investigation, the prosecution had collected sufficient evidence and presented the 'challan' against the accused Suresh @ Sinu for the offences punishable under Sections 307, 323, 324 and 506 IPC. It appeared from the documents placed on the file on behalf of the prosecution that at the said stage the accused Suresh @ Sinu had committed an offence punishable

under Section 307 IPC which was exclusively triable by the Court of Sessions. Accordingly, vide order dated 13.06.2012, the case was committed to the Court of learned Sessions Judge, Hisar for trial.

The learned Additional Sessions Judge, Hisar to whom the case was assigned vide order dated 06.07.2012 framed charges against the accused Suresh @ Sinu for the offences punishable under Sections 323, 324, 307 and 506 read with Section 34 IPC. Suresh @ Sinu heard and understood the charge. He pleaded not guilty and claimed trial.

In the trial, the statement of Satyawar (PW1) was recorded on 28.09.2012. He inter alia stated that Kuldeep and Ishwar caught hold of his hands and thereafter Sinu gave a knife blow which hit towards the left side of his abdomen. Then Vicky also gave a knife blow which hit him on his left shoulder. During the cross examination of Satyawar, the learned public prosecutor on 28.09.2012 filed an application under Section 319 Cr.P.C., which was signed by Satyawar (complainant) for summoning Kuldeep, Ishwar and Vicky to face trial along with Suresh. The learned counsel for the defence stated that he did not want to cross examine the witness (Satyawar) before decision of the application under Section 319 Cr.P.C. The application under Section 319 Cr.P.C. filed by the prosecution was allowed by the learned Additional Sessions Judge, Hisar vide order dated 12.10.2012. Accordingly, Kuldeep son of Ramesh, Ishwar son of Madan and Vicky son of Sarjeet were also summoned to face trial along with accused-Suresh @ Sinu for the commission of offences punishable under Sections 323, 324, 307 and 506 IPC. The said accused Kuldeep, Ishwar and Vicky filed an application for pre-arrest bail, which was allowed by the learned Additional Sessions Judge, Hisar vide order dated 30.10.2012.

They were directed to surrender before the Court on or before the date fixed i.e. 09.11.2012.

On appearance of the said accused Kuldeep, Ishwar and Vicky, the learned Additional Sessions Judge, Hisar on 09.11.2012 framed charges against all the four accused namely Suresh, Kuldeep, Ishwar and Vicky on the allegation that on 13.02.2012, they all in the area of village Mehanda in furtherance of their common intention caused simple injuries to the complainant Satyawar with blunt weapon and thereby committed an offence punishable under Section 323 read with Section 34 IPC. Besides, they in furtherance of their common intention caused simple injuries to Satyawar (complainant) with the sharp edged weapon and thereby committed an offence punishable under Section 324 read with Section 34 IPC. Further, they all in furtherance of their common intention caused injuries with a knife to complainant Satyawar with an intention to kill him and under such circumstances that if by that act, they had caused his death; they would have been guilty of murder and thereby committed an offence punishable under Section 302 read with Section 34 IPC. Lastly, they in furtherance of their common intention committed criminal intimidation by threatening complainant Satyawar to kill as and when he got a chance and thereby committed an offence punishable under Section 506 read with Section 34 IPC. All the said offences were within the cognizance of the Court and the said accused were directed to be tried by the Court of Additional Sessions Judge, Hisar for the aforesaid offences. The contents of the charges were read over and explained to the accused in simple Hindi to which they pleaded not guilty and claimed trial.

The prosecution in order to establish its case examined as many as twelve witnesses; besides, tendered documents in evidence including FSL report Ex.P19 and closed its evidence on 12.10.2014. The statements of the accused were recorded in terms of Section 313 Cr.P.C. and the substance of the evidence appearing against them was put to them. They pleaded that they were innocent and had been falsely implicated due to rivalry in the family.

In defence, Dr. Manoj Mangla (DW1), Medical Officer, CHC Mandi Dabwali was examined who tendered his affidavit Ex.DW1/A and certified copy of MLR Ex.DW1/B relating to the injuries suffered by Suresh @ Sinu accused. Besides, the statements (Ex.D1 and Ex.D2) of Pappi son of Manphool and Jaivir recorded by ASI Daya Nand (PW5) on 23.02.2012 were got tendered in evidence from his cross examination. The statement (also marked Ex.D1) of Balwan (PW3) recorded on 14.02.2012 by ASI Daya Nand was also got tendered in evidence in the cross examination of Balwan on 28.01.2014.

The learned Additional District Judge, Hisar, vide impugned order dated 13.02.2013 has acquitted the respondents Suresh @ Sinu, Kuldeep, Ishwar and Vicky and aggrieved against the same, the State of Haryana and the complainant-Satyawan, as already noticed have filed applications for grant of leave to appeal.

Learned counsel for the State of Haryana and the learned counsel for the victim Satyawan have submitted that the learned trial Court has committed a grave error in acquitting the accused - respondents and it has misread the evidence and material on record. It is submitted that the evidence of Satyawan (PW2) and Balwan (PW3) are consistent and the

same coupled with the medical evidence on record clearly establishes the case of the prosecution. It is submitted that merely because ASI Daya Nand (PW5) in his cross examination stated that in his investigation it had come that initially Satyawar (complainant) inflicted knife injury to Suresh @ Sinu (accused) and after that Suresh accused snatched the knife and inflicted injury to Satyawar, is of no consequence and it does not in any manner not support the prosecution case. It is also submitted that the injuries said to be suffered by Suresh @ Sinu were superficial injuries and non-explanation of the said injuries was not in any manner fatal to the prosecution case.

We have given our thoughtful consideration to the matter and perused the record of the case.

The prosecution case is that Satyawar (complainant) (PW2) on 13.02.2012 was returning to his home at about 7.30 p.m. after purchasing match sticks and 'biri' from the shop of Pappi son of Manphool resident of Mehanda. When Satyawar reached near the house of Madan son of Chottu Ram then from the street Kuldeep son of Ramesh, Ishwar son of Madan, Sinu (@ Suresh) son of Satbir Singh and Vicky son of Sarjeet residents of Mehanda (respondents) were already standing there. Sinu then said that Satyawar be caught hold of as it was an opportunity on that day. On Sinu saying this, Kuldeep and Ishwar caught hold of Satyawar and Sinu attacked him with the knife he was carrying in his hand, which hit him towards the left side of his abdomen. Then Vicky attacked Satyawar with the knife he was carrying, which hit him on his left shoulder. The complainant then raised an alarm of 'mar diya mar diya'. On hearing the alarm, the complainant's brother Balwan Singh (PW3) reached at the spot.

On seeing him coming, the assailants along with their weapons ran away from the spot. The complainant otherwise would have been inflicted with more injuries. The reason for the incident of inflicting injuries was that about 8-10 days earlier to the occurrence, an altercation had taken place between the complainant Satyawar and Vicky. Due to this altercation, Sinu by taking his friends with him had given a beating to the complainant. Later Balwan by making arrangements had got Satyawar for treatment and got him admitted at the Government Hospital, Hansi. The doctor there by giving first aid referred him to PGIMS Rohtak. The complainant was under treatment at Rohtak. Sinu and his companions had said that on that day Satyawar was saved but in future when he was found, he would be finished.

The medical evidence with respect to the injuries inflicted on Satyawar (complainant) has been brought on record in the deposition of Dr. Naresh Kumar Verma, Senior Medical Officer, General Hospital, Kaithal (PW10) who tendered in evidence his affidavit Ex.PW10/A. The following injuries were noticed on the person of complainant-Satyawar:-

- (i) There was incised wound on left shoulder region measuring 4 cm x 1.5 cm x 1 cm. Fresh blood was oozing from the same side. Advice surgeon opinion.
- (ii) There was incised wound/stab wound in left renal area on the abdomen with omentum (part) coming out of it. Advice surgeon opinion.

On police application Ex.P5/A, Dr. Naresh Kumar Verma (PW10), on 29.02.2012 gave an opinion (Ex.P16) regarding the nature of the injuries and he opined that injury No.1 on the person of Satyawar was

dangerous to life. On another application (Ex.P10) Dr. Naresh Kumar Verma (PW10) regarding giving opinion on the weapon i.e. the knife and he gave his opinion Ex.P17 on 30.03.2013 that possibility of injury No.2 by the knife shown to him was there.

In cross examination, it is *inter alia* stated by Dr. Naresh Kumar Verma (PW10) that at that time, the colour of injury No.2 was red and no scab formation was started. As per discharge summary from PGIMS, Rohtak, he declared injury No.2 dangerous to life.

Dr. Surinder Singh Bhakar, Senior Resident Medical College, Kalicut Kerala (PW11) was examined by the prosecution. He stated that on 13.02.2012 he was posted as Senior Resident in the Department of Surgery Unit No.1 PGIMS, Rothak. On that day, he admitted Satyawan (complainant) in PGIMS Rohtak, in the Department of Surgery. He was operated for injury in the abdomen with intestinal injury with hemoperitonium. The injury if not treated was dangerous to life. After operation, the patient was kept in the Department of Surgery and treated. He was discharged on 25.02.2012 in good condition. The discharge slip Ex.P18 was issued under his supervision. The admission in evidence of the discharge slip was objected to being a Photostat. In his cross examination, he (PW11) stated that he had not brought the bed head ticket or treatment chart with him on that day. It was also stated as correct that Ex.P18 was only a photostat. It was stated as correct that discharge slip Ex.P18 was neither signed by him nor it was written by him.

The learned trial Court in its impugned judgment and order considered the evidence on record and held that the prosecution had failed to prove that Kuldeep, Ishwar and Vicky had directly or indirectly

participated in the prosecution of common intention and acted as active participants in helping other accused for inflicting injuries by sharp edged weapon/knife on the person of the injured. The prosecution, it was said, had miserably failed to prove that the three accused namely Kuldeep, Ishwar and Vicky had inflicted any injury or participated in the common intention along with Suresh @ Sinu. It was also said that the prosecution even failed to establish beyond doubt that accused Suresh @ Sinu inflicted injuries at the first moment on the person of Satyawan. Rather Sinu @ Suresh it was held acted in his right of private defence when Satyawan acted as an aggressor and had inflicted injuries with a knife on the person of Suresh @ Sinu. He (Sinu) in exercise of his right of private defence by snatching the same knife from the complainant/assailant inflicted injuries on his person. Thus he was very much protected by the right of private defence for the injuries inflicted on the body of injured/complainant Satyawan. Accordingly, taking all factors that had been discussed, the contradictions in the testimonies of Satyawan (PW2) and his brother Balwan (PW3), the non examination of independent witness Pappi son of Manphool, the delay in lodging the FIR and the right of private defence exercised by Suresh @ Sinu, he (Sinu) and other accused were acquitted of the charges framed against them.

The question, therefore, that requires consideration is whether Suresh @ Sinu acted in the right of his private defence as also the role of accused other than Suresh @ Sinu i.e. of accused Kuldeep, Ishwar and Vicky. Besides, what would be the effect of the injuries that were suffered by Suresh @ Sinu in the incident that had occurred on 13.02.2012. The accused in their defence examined Dr. Manoj Mangla, Medical Officer,

CHC Mandi Dabwali (DW1). He tendered in evidence his affidavit (DW1/A) and certified copy of MLR (Ex.DW1/B) in respect of Suresh @ Sinu. According to the affidavit, Dr. Manoj Kumar Mangla (DW1) on 13.02.2012 was posted as Medical Officer at General Hospital, Hansi. On the said day at about 11.40 p.m., he medico legally examined Suresh. It was a case of assault and the following injuries were found on his person:-

- “1. H/o (History of) multiple incised wounds was present over left shoulder on anterior aspect 3-4 in number of maximum size about 6 cm x 0.5 cm & minimum size 3 cm x 0.5 cm. Pain was present. No fresh bleeding was present. Adv-X-ray left shoulder-AP/Lateral view.
2. H/o (History of) multiple incised wounds was present over left forearm on antero-lateral aspect 5-6 in number of maximum size 6 cm x 0.5 cm & minimum size 3 cm x 0.5 cm. No fresh bleeding was present. Pain was present. Adv. X-ray left forearm-AP /Lateral view.
3. A braised wound was present over left hand's index finger on dorsal aspect of size about 1 cm x 1cm.
4. A braised wound was present over right hand's ring finger on palmer aspect of size about 1cm x 1 cm.”

As regards nature of injuries, Injuries No.1 and 2 it was mentioned were kept under observation. The kind of weapon was mentioned as sharp and the duration of injuries was less than 24 hours. In cross examination, it was stated by Dr. Manoj Kumar Mangla (DW1) that in the history of the assault, the injured did not disclose the place of

occurrence and the name of the accused. General condition of the patient i.e. Suresh it is mentioned was normal. Injuries No.2, 3 and 4 were simple and superficial in nature, which could be result of striking against a hard object. He did not remember if he had received any x-ray report of injuries No.1 and 2 during the investigation. It is stated that if there had been no underneath fracture in injuries No.1 and 2 then these were also termed to be simple injuries. It is stated as incorrect to suggest that he had prepared false MLR and sworn false evidence (sic.-affidavit) or was deposing falsely.

The nature of injuries on the person of Suresh @ Sinu as seen above show that there was a history of multiple incised wounds which were present over the left shoulder on the anterior aspect 3-4 in number of the maximum size of about 6 cm x 0.5 cm and minimum size 3 cm x 0.5 cm. Besides, history of multiple incised wounds were present over left forearm on antero-lateral aspect 5-6 in number of the maximum size of 6 cm x 0.5 cm and minimum size 3 cm x 0.5 cm. No fresh bleeding was present on the injuries on the left shoulder or the left forearm. X-ray was advised for both the said injuries No.1 and 2; however, no x-ray report had been brought on record by the accused. Be that as it may the injuries No.1 and 2 on the person of Suresh @ Sinu are multiple incised wounds and these had been suffered within 24 hours from time of his examination on 13.02.2012 at 11.40 p.m., which would mean that these were caused in the incident that had occurred on 13.02.2012 itself.

It may also be noticed that in cross examination Satyawar (PW2) has brought out the relationship between the parties and it has been demonstrated that they are from the same household. It is mentioned that

he (Satyawar PW2) and Balwan (PW3) are sons of Ram Rakh son of Prabhu. Prabhu has four other brothers namely Sukhdey, Chhotu, Dalip and Shri Chand. Sunil (not present at the time of incident) is son of Ram Prashad son of Sukhdey. Ishwar (accused) is son of Madan son of Chhotu. Vikas (Vicky - accused) is son of Surjit and Kuldeep (accused) is son of Ramesh; and Surjit and Ramesh are sons of Dalip, Suresh @ Sinu (accused) is the son of Satbir son of Shri Chand. Therefore, the complainant Satyawar (PW2), his brother Balwan (PW3) and the accused are grandsons of real brothers namely Prabhu, Sukhdey, Chhotu, Dalip and Shri Chand. According to Satyawar, his family i.e. Prabhu and the family of Sukhdey had good relations. It is stated as correct that there was one group of himself (Satyawar), Balwan (PW2) i.e. his brother and Sunil son of Ram Prashad son of Sukhdey. The opposite group was that of Vikas (accused) son of Surjit, Kuldeep (accused) son of Ramesh (Surjit and Ramesh are sons of Dalip); besides, Suresh (accused) son of Satbir son of Shri Chand and Ishwar (accused) son of Madan son of Chhotu. The house of Madan son of Chhotu, that is, father of accused Ishwar, it is stated, is situated at a distance of 2 ½ acres from the shop of Pappi. He (PW2) also stated that except for himself no other person sustained injury of any kind. He had not pointed out the place of occurrence i.e. near the house of Madan son of Chhotu (i.e. the father of accused Ishwar) to the police as he was admitted in the hospital. It is stated as correct that Ram Prashad son of Sukhdey (i.e. father of Sunil) was convicted in a case of injuries to Satbir (i.e. father of accused Suresh). It is voluntarily stated that no conviction was held (passed) against Ram Prashad by the Court as he was acquitted in appeal. He could not produce the judgment of such acquittal. No case was

pending against Sunil son of Ram Prashad, Anil son Ram Prashad and Krishan @ Dholu son of Sukhdey under Sections 323, 324 and 34 IPC in the Court at Hansi on the allegations that they inflicted injuries to Shri Chand and others.

The gist of the cross examination of Satyawar (PW2) is that there were two groups within the same family of their grand-fathers who were brothers and there was litigation between them on earlier occasions also some of which were compromised. On the date of his deposition, only the present case was pending in which injuries were caused to him.

The presence of Balwan (PW3) at the time of the incident has not been accepted by the learned trial Court. It is to be noticed that according to Satyawar (PW2) he raised an alarm upon which his brothers Balwan (PW3) reached at the spot and it is after seeing him that the assailants fled away from the spot. However, Satyawar (PW2) (at page 2) of the cross-examination states that none came for his rescue. After sustaining injuries, his brother reached the spot after 5-6 minutes. He (PW2) narrated the entire episode to his brother discussing therein the injuries that were inflicted on his body by the persons. It is stated that his brother Balwan (PW3) used to reside at Lucknow but he was present in village Mehanda on that day. He was shifted to the hospital by his brother Balwan (PW3) and father Ram Rakh. During further cross examination (at Page 3), it is, however, stated by Satyawar (PW2) that prior to his brother reaching at the spot he fell down and had remained lying there till his brother reached as he was unconscious. Therefore, at one stage Satyawar states that he narrated the entire episode to his brother and at the same time he also says he lay unconscious till his brother reached there. Besides,

Balwan (PW3) in his deposition states that his brother Satyawar raised an alarm and then he reached the spot and he freed his brother Satyawar from accused Kuldeep and Ishwar. Thereafter, the accused ran away along with their weapons. Then he (PW3) shifted his brother to General Hospital, Hansi. In cross examination, Balwan (PW3) states that after hearing the cry of his brother, he ran towards the house of Madan on foot. However, according to Satyawar (PW2), his brother Balwan reached the spot after 5-6 minutes of his sustaining the injuries; besides, he also states that he was unconscious when his brother reached the spot. According to Satyawar, he was taken to the hospital by Balwan (PW3) and his father Ram Rakh. However, according to Balwan (PW3) he shifted his brother to GH, Hansi and there is no mention of their father Ram Rakh being present. In the MLR (Ex.P15) of Satyawar it is mentioned by Dr. Naresh Kumar Verma (PW10) that Satyawar was accompanied by Ram Rakh i.e. his father. The name of Balwan (PW3) who is stated to have taken Satyawar to the hospital is not mentioned in the said MLR (Ex.P15). Therefore, the finding of the learned trial Court that Balwan (PW3) was not present at the time of the incident has correctly been recorded; besides, it has rightly been held that he was planted and that he did not see the occurrence.

The presence of Balwan (PW3) at the time of occurrence may, however, not in any case dilute the prosecution case so as to hold that the accused were not guilty of the offence but nevertheless it does show that the witness was planted and he was not present at the spot at the time of occurrence. This does affect the credibility of the prosecution evidence that has been produced. It is in this backdrop that the other evidence has to be seen and appreciated.

In the circumstances, the injuries that were inflicted upon Suresh @ Sinu need to be considered as regards the plea of private defence. ASI Daya Nand (PW5) in his cross examination accepted his signatures on Ex.D1 i.e. statement of Pappi son of Manphool Singh and Ex.D2 i.e. statement of Jaivir @ Pappu, which were recorded on 23.02.2012. There are in fact two documents on record, which have been exhibited as Ex.D1. One is the statement of Balwan (PW3) recorded under Section 161 Cr.P.C. on 14.02.2012. Balwan (PW3) was confronted with said statement during his deposition in Court on 28.01.2014. The other is the statement of Pappi son of Manphool Singh, which was exhibited on 01.07.2014 in the cross examination of ASI Daya Nand (PW5). Pappi, as already noticed, is the person whom the complainant Satyawar in his initial statement Ex.P1, on the basis of which FIR was registered, stated that he had on 13.02.2012 was returning from the shop of Pappi after purchasing 'biri' and match sticks and when he reached near the house of Madan at about 7.30 p.m. then he was attacked by the assailants. However, Pappi in his statement Ex.D1 states that on 13.02.2012 at about 8.00 p.m. Satyawar after purchasing 'biri' and match sticks had left. He came out and saw that Satyawar had been stabbed with a knife. Other shopkeepers were also present. The statement (Ex.D2) of Jaivir @ Pappu was also recorded by ASI Daya Nand. Jaivir @ Pappu stated that he was resident of village Mehanda and did daily labour work. He was present near his house on 13.02.2012 at about 7.30 pm. He was coming out of his house that Satyawar came there and fell down. He said that one should drink less and then Satyawar stated that he had been stabbed with a knife. He asked for a message being sent at his home. Jaivir was proceeding towards his house that Satyawar

followed him and reached home. At the house of Satyawar, his brother Balwan and father Ram Rakh were informed. Then Ram Rakh and Balwan by picking up 'lathi' reached the house of Ramesh son of Dalip (i.e. the house of the father of the accused Kuldip). Ramesh was informed at the house. Ramesh said that they were not part of the boys who had inflicted the knife. Jaivir returned to his house.

ASI Daya Nand (PW5) in his cross examination further stated as correct that in his investigation it had come from the inquiry that only a quarrel took place between Suresh and Satyawar and no other accused was present at the time of occurrence. He (PW5) recorded the statement of Pappi son of Manphool on 23.02.2012. He inquired from the nearby shopkeepers. On his inspection, no blood stained earth was found at the so called place of occurrence. The 'chhuri' (knife) was sent to FSL which was blood stained. It is stated as correct that in his investigation, it had come that firstly Satyawar inflicted knife injury to Suresh (accused) and after that Suresh (accused) snatched the knife and inflicted injury to Satyawar. It is stated as incorrect to suggest that he investigated the case in a tainted manner and concealed the material facts from the Court. It is also stated as incorrect to suggest that he was deposing falsely.

The above said deposition of ASI Daya Nand (PW5) regarding Satyawar first inflicting the knife injury to Suresh and then Satyawar snatching the knife and inflicting injury to Satyawar was not challenged by the prosecution by re-examining him. Section 154 of the Evidence Act, 1872 relates to question by a party to his own witness. It is provided that the Court may, in its discretion, permit the person who calls the witness to put any question to him which might be put in cross examination by the

adverse party. The grant of permission though is to be exercised in a judicious manner. In Dayabhai Chhaganbhai Thakkar v. State of Gujarat, AIR 1964 SC 1563 it was said by Hon'ble the Supreme Court that Section 154 of the Evidence Act does not in terms or by necessary implication confine the exercise of the power by the Court before examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the Court to exercise the power when the circumstances demand. To confine this power to the stage of examination in chief is to make it ineffective in practice. It was further said that it was not seen why the Court could not during the course of cross examination (sic. re-examination) of the witness permit the person calling him as a witness to put questions to him which might be put in cross examination by the adverse party.

The prosecution in fact was liable to put its case as concerns a particular witness and if the case is not put to the witness the Court is to presume that his account had been accepted. In the circumstances when the prosecution did not seek permission to re-examine ASI Daya Nand (PW5) on the question that in his investigation it had come that Satyawar first inflicted knife injury to Suresh (accused) and after that Suresh snatched the knife and inflicted injuries to Satyawar, the same is liable to be accepted that it was Satyawar who was the aggressor. Therefore, the findings of the learned trial Court that Suresh @ Sinu (accused) had acted in his right of private defence when also seen in the context of the statements Ex.D1 of Pappi son of Manphool and Ex.D2 of Jaivir @ Pappu, is correct. This is more-so for the reason that injuries on the person of Suresh @ Sinu have not been explained.

In Lakshmi Singh and others v. State of Bihar, AIR 1976 SC 2263 it was held by Hon'ble the Supreme Court that where prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution is untrue; and (2) that the injuries probabilise the plea taken by the appellant i.e. the accused. It was further held that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

“(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”

The fact that injuries on the person of Suresh @ Sinu which have been brought on record in the deposition of Dr. Manoj Mangla DW1,

who has deposed affidavit Ex.DW1/A and also tendered in evidence certified copy of MLR Ex.DW1/B, which show that there was history of multiple incised wound present on left shoulder and over left forearm; besides, a braised wound over left hand index finger on dorsal aspect and also a braised wound over right hand ring finger on palmer aspect give further credence to the fact that the genesis and the origin of the occurrence had been suppressed or in any case not presented in a true and correct manner. Besides, the defence version which explains the injuries on the person of the accused is rendered probable so as to throw out the prosecution case. In cross examination, Satyawar (PW2) stated that except for himself no other person sustained injury of any kind. Therefore, he denies the injury on the person of Suresh @ Sinu, which would also mean that as laid down in proposition (2) of Lakshmi Singh's case (supra) that the witnesses who denied the presence of the injuries on the person of the accused were lying on a most material point and, therefore, their evidence was unreliable. In the circumstances, the learned trial Court also rightly held that the genesis of the fight had been concealed by the prosecution.

The question regarding exceeding the right of private defence on the part of Suresh @ Sinu was also considered. It was held that he did not exceed the right because injuries on the person of injured Satyawar were also caused by sharp edged weapon and there were also two sharp edged injuries on the person of Suresh (accused). It was noticed that the contents of Ex.D2 i.e. the statement of Jaivir recorded by ASI Daya Nand (PW5), which was termed as an admitted document, reflected that at the time of the incident the injured i.e. Satyawar was under the influence of liquor. It was also noticed that this was though not reflected in the MLR

relied upon by the prosecution; however, the document prepared by the I.O. during the investigation and admitted during cross examination could not be lost sight off by the Court only due to the reason that it goes against the prosecution stand. It was held that in such circumstances the accused could not be said to have exceeded his right of private defence to ascertain and evaluate the gravity of force given by knife to the injured. It was noticed that it was imperative to mention that as per admitted stand of the I.O. the injured i.e. Satyawar was the first assailant who caused injuries to accused Suresh. This indeed, as already noticed has been so stated by ASI Daya Nand (PW5) in his cross examination. He (PW5) stated as correct that in his investigation it had come that Satyawar firstly inflicted knife injury to Suresh and after that Suresh snatched the knife and inflicted injury to Satyawar.

Satyawar, therefore, was admittedly the aggressor and it cannot be said that Suresh @ Sinu (accused) has exceeded his right of private defence. Besides, it can be said that the role attributed to the accused other than Suresh @ Sinu namely Kuldeep, Ishwar and Vicky is highly doubtful. In fact they had not even been sent up for trial and were summoned as additional accused under Section 319 Cr.P.C. The learned trial Court, in the aforesaid facts and circumstances, has taken a reasonable view and in any case a possible view in acquitting the accused and it is well known where two views are possible, the findings of the trial Court in acquitting the accused reached at on the appreciation of evidence are not to be normally disturbed.

In the circumstances, there is no ground to interfere with the conclusions reached at by the learned trial Court and the applications

seeking leave to appeals are liable to be dismissed. The question of delay in filing the applications seeking leave to appeals in both the cases are, therefore, only academic and the same are also liable to be dismissed.

Accordingly, the applications seeking leave to appeal filed by the State and the complainant/victim Satyawar are dismissed; besides, the applications seeking condonation of delay in filing the respective applications for leave to appeal are also dismissed.

(S.S. Saron)
Judge

(Amol Rattan Singh)
Judge

03.11.2015
Anil/A.Kaundal

Having gone through the detailed judgment of my learned brother S. S. Saron, J., received by me 3 weeks ago, I agree with the reasoning given therein, for dismissing the applications seeking leave to appeal against the judgment of the learned trial Court, acquitting the respondents of the charges framed against them with regard to offences punishable under Sections 307, 323, 324, 506/34 IPC.

As regards signing the detailed judgment after the retirement of my learned brother, the detailed reasoning given in the judgment being only in furtherance of the order of dismissal pronounced by us in Court, I see no impediment in doing so.

In this context, a judgment of the Privy Council in **Firm Gokal Chand Jagan Nath v. Firm Nand Ram Das- Atma Ram** AIR 1938 PC 292 and two of the Supreme Court, in **Surendra Singh and others v. State of Uttar Pradesh** AIR 1954 SC 194 and **Iqbal Ismail Sodawala v. The State of Maharashtra and others** (1975) 3 SCC 140, can be cited.

In *Firm Gokal Chand*, it was held by their Lordships as follows:-

“A further point was raised by the appellants. They urged that the judgment of the High Court appealed from was not a valid judgment because it failed to comply with Order 41, Rule 31, Civil Procedure Code. The relevant facts on this issue are that the hearing in the High Court was before two Judges, Harrison and Agha Haider JJ., and was actually delivered by the former Judge, the latter agreeing. The judgment was delivered on 22nd February 1933, but Harrison J. went on leave before signing the judgment, which was signed by Agha Haider J., the Deputy Registrar appending a note that Harrison J. had gone on leave before signing the judgment he delivered. Order 41, Rule 31

requires that the judgment of the Appellate Court shall be in writing and shall state various matters, and “shall at the time that it is pronounced be signed and dated by the Judges or by the Judges concurring therein.”

8. The Rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words. Indeed the Rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable. The Rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required; to comply with for that object. No doubt in practice Judge do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the Court and the interest of litigants must prevail. The defect is merely an irregularity. But in truth the difficulty is disposed of by Sections 99 and 108. Civil Procedure Code section 99 provides that no decree shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. That Section comes in the part dealing with appeals from original decrees. But Section 108 applies the same provision to appeals from appellate decrees and it is always in the discretion of the Board to apply the principle on appeal to His Majesty in Council. In their Lordships' judgment the defect here was an irregularity not affecting the merits of the case or the jurisdiction of the Court, and is no ground for setting aside the decree.”

That of course was a matter pertaining to a civil case. In *Surendra Singh*, which was in the case of a criminal appeal before the Allahabad High Court, it was held that a draft judgment, even signed, cannot be taken to be a judgment pronounced by a Judge. In that case, after having signed the draft of a judgment that had been reserved and sending it to the other member of the Division Bench, the hon'ble Judge who had sent the draft (Bhargava, J.) unfortunately died before the judgment was pronounced.

In such a situation, their Lordships of the Supreme Court held that the judgment subsequently pronounced by Kidwai, J. could not be held to be a valid judgment and therefore the death sentence upheld in the case of one of the appellants and the sentences for lesser periods for different offences in respect of the other appellants, could not be held to be operative and that hence, the appeals would have to be reheard by the High Court. Thus, in that case the judgment was never actually pronounced by Bhargava, J. before he died and what was signed and sent by him to Kidwai, J. was a draft judgment. Therefore, it was held that it could not be presumed that Bhargava, J., (had he remained alive), could not have changed his mind before pronouncing the judgment.

In the present case the judgment having been duly pronounced in Court, to the effect that the appeal of the appellant is dismissed, the situation as existed in *Surendra Singhs'* case (supra) is not applicable.

In *Sodawalas'* case (supra), it was not a judgment in appeal that was in question but the judgment of the trial Court itself, which had been pronounced in Court but had not been delivered after signature and transcription, to the accused.

Referring to the judgment in *Surendra Singhs'* case as also to *Firm Gokal Chand*, it was held that the learned Sessions Judge not appending his signatures to the judgment at the time it was pronounced, due to it not having been transcribed, was a procedural irregularity which would not vitiate the conviction of the accused.

In the present case, though there is no issue of any transcription from one language to another, but nonetheless, the judgment drafted by my learned brother being, to repeat, in elaboration of and giving reasoning for what was pronounced in Court, in my opinion, it would be appropriate to issue the judgment formally even now, though a very long time has elapsed since its pronouncement.

It needs to be noticed here that in **Vinod Kumar Singh v. Banaras Hindu University and others** (1988) 1 SCC 80, it was held by the Supreme Court that a judgment which has been pronounced but not signed, can be even modified, if there are adequate reasons for the same, in which situation, the matter should be placed for further consideration, upon notice to parties.

That situation again does not arise in the present case, as the detailed judgment is not different to the order pronounced in Court on 03.11.2015.

Consequently, I agree with the judgment of my learned brother S.S. Saron, J.

(AMOL RATTAN SINGH)
JUDGE

January 29, 2018
dinesh