

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

Crl. Appeal D-416-DB of 2012

Date of Decision : July 25, 2016

Gurcharan Singh @ Billu and others

.....Appellants

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. T.S.Sangha, Senior Advocate with
Mr. Narinder Singh, Advocate
for the appellants.

Mr. S.S.Dhaliwal, Addl. A.G., Punjab.

Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants, namely, Gurcharan Singh @ Billu, Labh Singh, Harnek Singh, Gora Singh, Darshan Singh, Jagga Singh, Harwinder Singh, Bhola Singh son of Mahan Singh and Bhola Singh son of Dalip Singh alongwith seven others were charged for committing the offences punishable under Sections 148, 302, 307, 323, 149 IPC and Sections 27 and 30 of the Arms Act. Harwinder Singh, Bhola Singh son of Mahan Singh and

Bhola Singh son of Dalip Singh were also charged for committing the offence punishable under Section 30 of the Arms Act. During the trial of the case, Pritam Singh Chela Mahant Basant Singh-accused died and proceedings against him were dropped. Mithu Singh-accused was declared a proclaimed offender. Varinder Singh-accused was declared a juvenile and separate challan against him was presented in the Court of Juvenile Justice Board. Vide judgment and order dated 29.3.2012, learned Additional Sessions Judge, Bathinda convicted Gurcharan Singh @ Billu, Labh Singh, Harnek Singh, Gora Singh, Darshan Singh and Jagga Singh-appellants under Section 148 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months. Gurcharan Singh @ Billu-appellant was also convicted under Section 302 IPC whereas Labh Singh, Harnek Singh, Gora Singh, Jagga Singh and Darshan Singh-appellants were convicted under Sections 302/149 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year. Gurcharan Singh @ Billu, Labh Singh, Harnek Singh, Gora Singh, Jagga Singh and Darshan Singh-appellants were further convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- each

and in default of payment of fine, to further undergo rigorous imprisonment for six months. They were also convicted under Sections 307/149 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. Gurcharan Singh @ Billu, Labh Singh, Harnek Singh, Gora Singh, and Jagga Singh-appellants were further convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months. Gurcharan Singh @ Billu, Harwinder Singh, Bhola Singh son of Mahan Singh and Bhola Singh son of Dalip Singh-appellants were also convicted under Section 30 of the Arms Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month. All the substantive sentences were ordered to run concurrently. The period of detention undergone by Harwinder Singh, Bhola Singh son of Mahan Singh and Bhola Singh son of Dalip Singh during enquiry, investigation and trial of the case was ordered to be set off against the substantive sentences awarded to them. The remaining accused, who faced the trial were, however, acquitted of the charges against them.

Aggrieved of their conviction and sentence, the convicts filed the present appeal which stands admitted and the record of the case requisitioned from the learned trial Court.

The occurrence in question had taken place on 29.4.2006 at about 12.30 p.m. in the Gurdwara/dera of village Maur Kalan wherein Raju @ Jugraj since deceased alongwith PW6 Gurcharan Singh, PW7 Kulwant Singh, PW8 Jaswinder Singh, PW9 Hardip Singh, PW13 Makhan Singh, PW14 Kulwinder Singh and PW20 Gursewak Singh received injuries. FIR Ex.PW21/B came to be registered in relation to the occurrence at Police Station Maur Kalan on 29.4.2006 at 3.40 p.m. on the basis of statement Ex. PW19/A suffered by PW19 Kulwant Singh before PW21 SI/SHO Manjit Singh on 29.4.2006 at 3.30 p.m. near Kiran Hospital, Maur. Special report regarding the occurrence was received by the Sub Divisional Judicial Magistrate, Talwandi Sabo on 29.4.2006 at 8.00 p.m. Statement Ex.PW19/A suffered by PW19 Kulwant Singh is reproduced here-below:-

“Statement of Kulwant Singh s/o Hakam Singh, Ramdasia Sikh, r/o Maur Kalan, age about 45 years.

Stated that I am resident of aforesaid address and working as Electrician at Maur Mandi. I have four sons, out of them the elder one is Raju @ Jugraj Singh who is a baptised Amrit Bhai Sikh and is doing the work of gas welding and he was also a Pathi (who recites the Gurbani) and a bachelor. There is a historical Gurdwara of Ninth Patshahi in

our village. Mahant Pritam Singh Chela Basant Singh r/o Maur Kalan has been looking after this Gurdwara for about 30/35 years. About 150 acres agricultural land is in the name of this Gurdwara. Entire income of this land was being misappropriated by Pritam Singh and his son namely Gurcharan Singh @ Billu both and they were not spending any money for the development of Gurdwara Sahib. So, there was a resentment among the residents of village about this matter. About a week ago, residents of our village assembled at Gurdwara Sahib regarding income and management of looking after the Gurdwara. With the consent of residents of village, I, Kulwant Singh @ Kailash, Hardip Singh s/o Bhola Singh, Jaswinder Singh S/o Gurmit Singh went together to the aforesaid Pritam Singh and his son namely Gurcharan Singh @ Billu in the Gurdwara Sahib and requested to maintain the accounts of income and expenditure of Gurdwara Sahib, but they replied that we were nobody to ask about the accounts and they are free to do any thing and thereafter we had returned. Today, the residents of village including me and my son Raju @ Jugraj Singh, my elder brother Jora Singh went to the Gurdwara Sahib at 12.30 p.m. to talk again with them. When we entered from the outer main gate, we saw that Gurcharan Singh @ Billu s/o Pritam Singh armed with 12 bore gun, Darshan Singh s/o Sunder Singh Jat r/o Khiala Khurd armed with 12 bore DBBL gun, Labh Singh s/o Mehar Singh, Jat r/o Kutiwal Kalan armed with Mouser, Jagga Singh s/o

Gurbakhash Singh, Jat r/o Khiala Kalan armed with 12 bore DBBL, Harnek Singh s/o Arjan Singh, Jat r/o Maur Kalan armed 12 bore DBBL, Gora Singh s/o Ram Singh Jat r/o Chanarathal armed with 12 bore DBBL, Inderjit Singh s/o Gurcharan Singh Jat r/o Maur Kalan, Malkit Singh s/o Dharam Singh Jat r/o Phaphre Bhai Ke, Narinder Singh s/o Sajjan Singh Nai r/o Maur Kalan, Varinder Singh s/o Bagicha Singh, Jat r/o Chandu Kalan, PS Ratia, Mithu Singh s/o Jarnail Singh, Jatt r/o Maur Kalan, Bhajan Singh s/o Sajjan Singh, r/o Maur Kalan, Rajinder Singh s/o Jaswant Singh r/o Jodhpur Pakhar, Charanjit Singh s/o Harbhajan Singh r/o Maur Kalan and Kabal Singh s/o Jangir Singh r/o Maur Khurd armed with sticks (Dangs) and swords were standing on the Chobara (a room on the first floor). With them, father of Billu, Mahant Pritam Singh Chela Basant Singh was also standing. When we reached near the main building of Gurdwara Sahib, suddenly, Mahant Pritam Singh raised Lalkara that they be rendered accounts of Gurdwara Sahib at that time. On saying this, aforesaid Gurcharan Singh @ Billu fired from 12 bore DBBL which was held in his hand, towards us which hit on the left side of chest, left side of neck, above the left eye and left side of forehead of my son Raju @ Jugraj Singh. On being hit by the fire shot, my son fell down on the ground and aforesaid persons armed with weapons fired with their respective weapons on the residents of village with the intention to kill them. With the said gun shots, Kulwant Singh @ Kailash and 6 other persons r/o village were injured. With the

help of my brother Jora Singh, I was taking my son on scooter to Civil Hospital but my son Raju died on the way due to receipt of gun shot injuries. After handing over the dead body of my son Raju to my brother Jora Singh for taking the same to the Hospital, I was going to Police Station for reporting the matter that you met on the way and I have got recorded the statement to you. At the time of occurrence, some other persons were also accompanying Mahant Pritam Singh to whom I can identify on seeing them. Above said Mahant Pritam Singh and others, in connivance with each other and after making preparation fired on residents of our village, with the intention to kill them since they demanded accounts with regard to the income and expenditure of Gurdwara Sahib and thereby killed my son Raju and injured other seven residents of village. I have heard the statement which is correct. Legal action be taken against the aforesaid accused.”

During the investigation of the case, SI Manjit Singh reached Civil Hospital, Maur and prepared inquest on the dead body of Raju @ Jugraj. The dead body was, thereafter, entrusted to HC Bahadur Singh for post-mortem. He was informed by MHC Buta Singh that Gursewak Singh, Bhola, Makhan Singh and Kulwinder Singh, residents of village Maur Kalan were also admitted in Civil Hospital Maur due to gun shot injuries whereas Gurcharan Singh, Kulwant Singh, Hardeep Singh and Jaswinder Singh were admitted in Civil Hospital, Mansa due to gun shot

injuries. Accordingly, SI Jagrup Singh was sent to Civil Hospital, Mansa for recording their statements. He asked MHC Buta Singh to send force to the spot and to request senior officers to reach the spot. SI Manjit Singh alongwith complainant-Kulwant Singh reached the spot i.e. Gurdwara Sahib 9th Patshahi, Maur Kalan. Many people had gathered there. It was learnt that the accused were sitting in the room built on the first floor of the Gurdwara and were armed with weapons. Keeping in view the gravity of the situation and complainant-Kulwant Singh was feeling tense, he was relieved after joining Atma Singh. The accused were sitting in the langar hall of the Gurdwara. They were asked to come out. All the sixteen accused came out with their respective weapons. Gurcharan Singh was armed with 12 bore double barrel gun bearing No.45040 on which BSA Guns Ltd. England was written. Said gun was taken into possession. Two live cartridges of 12 bore on which mark SPECIAL was written were taken out. From the search of Gurcharan Singh three live cartridges on which Mark SPECIAL was written were recovered from his pocket. The recovered gun and cartridges were put into separate parcels which were sealed by SI Manjit Singh with his seal bearing impression MS and same were taken into possession in different parcels which were duly sealed vide separate recovery memos. Gurcharan Singh was handed over to the police. From accused Labh Singh mouser No. 904017 was recovered. One live round

7.63 was taken out from the said mouser. The mouser and round so recovered were put into separate parcels which were sealed by SI Manjit Singh with his seal bearing impression MS and were taken into possession vide separate recovery memo. Accused Labh Singh was handed over to the police. From third accused Darshan Singh son of Sunder Singh, Jat, resident of village Khiala Khurd 12 bore double barrel gun was recovered. Live cartridges of same bore were recovered from the said gun. No. 13456-A/7/Y99 was written on the said gun which was made by Budhu & Sons. Two live cartridges of 12 bore were recovered from pocket of the accused. The recovered 12 bore double barrel gun and four live cartridges of 12 bore were put into separate parcels, which were sealed by SI Manjit Singh with his seal bearing impression MS and same were taken into possession vide separate recovery memo. Accused Darshan Singh was handed over to the police party. From 4th accused Jagga Singh 12 bore double barrel gun was recovered. On opening the said gun, same was found containing two live cartridges of 12 bore on which Mehar Singh & Sons was written. The gun was bearing No. 4288-87 and on the body of the gun Pritam Singh & Sons was written. The gun and two live cartridges so recovered were put into two separate parcels which were sealed by SI Manjit Singh with his seal bearing impression MS and same were taken into possession vide separate recovery memo. Accused Jagga Singh was handed over to the police party.

From accused Gora Singh son of Ram Singh double barrel 12 bore gun was recovered. On opening the same it was found containing two live cartridges on which SPECIAL 12 bore was written. The gun was bearing No.5043 and on the body of the gun POPULER GUN WORKS was written. From the pocket of shirt which he was wearing one cartridge of 12 bore was recovered on which words SPECIAL was written. 12 bore double barrel gun and three cartridges of 12 bore so recovered were put into separate parcels and both the parcels were sealed by SI Manjit Singh with his seal bearing impression MS and same were taken into possession vide separate recovery memo. Accused Gora Singh was handed over to the police party. From the sixth accused Harnek Singh 12 bore double barrel gun was recovered. On opening the same it was found to contain two live cartridges of 12 bore on which Shaktiman Express was written and one live cartridge on which Shaktiman was written was recovered from pocket shirt. On the body the gun was bearing No: 63689 and Made in India (Ordinance) was written. The gun and three live cartridges were put into two separate parcels which were sealed by SI Manjit Singh with his seal bearing impression MS and same were taken into possession vide separate recovery memo. The accused was handed over to the police party. The arms and ammunition mentioned above recovered from six accused was handed over to the police in sealed parcel. Then from the roof of

the Langar Hall 13 empty cartridges of 12 bore on which Shaktiman Express was written and two empty rounds of 7.63 mouser scattered at different places were recovered. The empty cartridges and empty rounds were put into separate parcels and sealed by SI Manjit Singh with his seal bearing impression MS and same were taken into possession vide separate recovery memo. Blood stained crush stones were recovered from the place where stairs were leading. The said blood stained crush stones were converted into parcels which were sealed by SI Manjit Singh with his seal bearing impression MS and were taken into possession vide separate recovery memo. In the meantime, Kulwant Singh complainant again came at the spot. Inspection of the spot was conducted and at his instance site plan of the place of occurrence was prepared.

Complainant Kulwant Singh told SI Manjit Singh that his young son had died so he was upset at the time of making his earlier statement. Due to gathering of many people and cries of injured he forgot to state that at the time of firing by the accused, Jagnandan Singh, former Sarpanch, son of Karam Singh, resident of village Gehri Bara Singh, P S Kotfatta who was already known to him was also with the accused. He was also carrying 12 bore double barrel gun. He also fired at them. After the death of his son, Jagnandan Singh after handing over his double barrel 12 bore gun to Gora Singh fled from there from the stairs on the rear

side. SI Manjit Singh recorded his supplementary statement under Section 161 Cr.P.C. Thereafter complainant insisted that his son had died so it was necessary for him to go to his house and further proceedings were conducted in the presence of Atma Singh. The complainant was relieved. In the presence of witnesses SI Manjit Singh interrogated accused Gurcharan Singh @ Billu. Accused was formally arrested on 30.4.2006 since day changed by that time. Mahant Pritam Singh and accused Inderjit Singh were arrested. Kirpan was recovered from the latter and was taken into possession vide separate recovery memo. Accused Kabal Singh son of Jangir Singh was arrested. Kirpan was recovered from him. The same was taken into possession vide separate recovery memo. The other accused were also arrested. During interrogation accused Rajinder Singh produced one Kirpan which was taken into possession vide separate recovery memo. SI Jagraj Singh who had gone to Civil Hospital, Mansa to record statements of injured came back and he produced four MLRs pertaining to injured Kulwant Singh, injured Gurcharan Singh, injured Jaswinder Singh and injured Hardip Singh and four parcels of clothes pertaining to injured and told that injured were referred to PGI, Chandigarh. Said parcels were taken into possession. Then burnt vehicles Tata Sumo, Maruti car, Motorcycle Hero Honda, Scooter Bajaj Chetak and two bicycles were taken into possession. One broken Contessa Car parked in the room meant

to store the chaff was also taken into possession.

Accused Gurcharan Singh while in custody made statement. Offence under Sections 435, 436, 427, 148, 149 IPC was added in this case. On the basis of statement of Gurcharan Singh accused Report No. 31 dated 30.4.2006 was recorded and said report was sent to senior officers. HC Bahadur Singh produced parcel of the clothes of Raju @ Jagraj Singh. One parcel of pellets and post mortem report were taken into possession vide separate recovery memos. Further investigation was conducted by Sh. Surinderpal Singh, SHO since earlier SHO Manjit Singh was transferred. On 1.5.2006 statement of injured Kulwinder Singh, Gurmail Singh who were admitted in Civil Hospital, Maur and of Kulwant Singh, Hardip Singh who were admitted in Civil Hospital, Mansa were got recorded through ASI Harjit Singh. Injured Kulwinder Singh also made statement that accused Gora Singh fired shot straight from 12 bore double barrel gun hitting on his left wrist, left shoulder and right thigh. Injured Makhan Singh made statement that accused Darshan Singh fired shot with 12 bore gun straight at him hitting on his forehead and left shoulder. Injured Gursewak Singh made statement that accused Jagnandan Singh fired shot with 12 bore gun hitting on his left arm. Injured Kulwant Singh made statement that accused Harnek Singh fired shot with 12 bore gun hitting on the left side of his abdomen and accused Inderjit Singh caused injuries on his left

arm and on the left side of waist with Dala (brick bat). Injured Jaswinder Singh made statement that accused Jagga Singh fired shot straight with 12 bore gun hitting on his left and right thigh. The doctor told that injured Hardip Singh and Gurcharan Singh were referred to PGI. On 2.5.2006 injured Gurcharan Singh while in custody made disclosure statement and got recovered two arms licences, one in his own name and other in the name of Darshan Singh from the disclosed place. ASI Kaur Singh was sent to record statements of Hardip Singh and Gurcharan Singh at PGI, Chandigarh and he recorded their statements. Injured Hardip Singh made statement that Labh Singh fired shot straight from mouser hitting on his right elbow. He also recorded statement of Gurcharan Singh who was already discharged from the hospital. He made statement that Gurcharan Singh son of Pritam Singh, resident of Chanarthal fired shot straight with 12 bore gun hitting on his right side neck, right and left shoulders and right side of chest. The concerned doctor handed over to him a parcel containing pellets and one letter. Dr. Sushil Garg handed over pellets recovered from the body of injured Gursewak Singh. Accused Gora Singh used double barrel gun of Bhola Singh son of Dalip Singh, Harnek Singh used double barrel gun of Harwinder Singh son of Pritam Singh and accused Jagga Singh used double barrel gun of Bhola Singh son of Mahan Singh. The arms licenses of said guns were taken into possession and those persons were

arrested under Section 30 of Arms Act. Jagnandan Singh was arrested. Report of FSL, Chandigarh was received.

The investigation of the DDR recorded under Sections 435, 436, 148, 149 IPC at the instance of accused Gurcharan Singh was also conducted. During investigation it was found that fire was not shot by the persons named in the said report. The mob had set the property on fire. On the application of wife of Jagnandan Singh inquiry was got conducted from SP (D), Mansa and Jagnandan Singh was found innocent so his name was kept in column No.2 of the challan. After completion of necessary formalities of investigation, challan against the accused was presented in the court.

In support of its case, the prosecution examined Dr.Sadhu Singh PW1, Dr. Kuldeep Rai PW2, Dr. Nishan Singh PW3, Dr. Vijay Kumar Singla PW4, Dr. Harpal Singh PW5, Gurcharan Singh PW6, Kulwant Singh @ Kailasha PW7, Jaswinder Singh PW8, Hardip Singh PW9, Rajinder Kumar Gupta, draftsman PW10, Hardial Singh PW11, Balwinder Singh, Junior Assistant Licence Branch, D C Office, Bathinda PW12, Makhan Singh PW13, Kulwinder Singh PW14, ASI Harjit Singh PW15, SI Dinesh Kumar PW16, HC Surjit Singh PW17, AMHC Balwinder Singh PW18, Kulwant Singh PW19, Gursewak Singh PW20, SI Manjit Singh PW21, DSP Surinderpal Singh PW22 and ASI Kaur Singh PW23. Learned APP gave up PWs Dr. Charanjit Garg,

Dr.S.S.Romana, Sh. Sukhdev Singh Chehal DSP, Constable Kaur Singh, Jagdish Singh Patwari, ASI Jagdish Kumar, SI Jugraj Singh as unnecessary. Learned APP also gave up PWs Jora Singh and Atma Singh being won over by the accused. The prosecution failed to conclude the evidence. Vide detailed order dated 8.3.2011 evidence of prosecution was closed by order.

All the accused were examined under Section 313 Cr.P.C. and the incriminating evidence appearing against them was put to them. They denied the same and pleaded false implication and innocence. Accused Gurcharan Singh further pleaded that his father Mahant Pritam Singh Chela Basant Singh had been serving as a Mahant in Gurudwara 9th Patshahi, Maur Kalan for the last 45 years. He was handed over Mahantship of said Gurudwara by Jathedar Baba Santa Singh Mahant 96 Karori Budha Dal, Gian Singh Rarewala, Bhupinder Singh Mann Ex Minister, Teja Singh Ex Minister, Kartar Singh, President of the Committee with the consent of the Panchayats of the villages. Mahant Pritam Singh used to spend income from the land of the Gurudwara on Langar, Path of Kotri Sahib, Barsi of Mahants for healing the poor persons, on other religious works and also on Kar Sewa. The Gurudwara was declared Sikh Historic Gurudwara vide notification dated 10.7.1959. A case relating to the Gurudwara with SGPC, Amritsar and Mahant Basant Singh, Mahant Pritam Singh remained pending in Bathinda Court and in

the High Court at Chandigarh. The said case was decided on 11.8.2004 in favour of his father Mahant Pritam Singh. It is further pleaded that Kulwant Singh @ Kailasha, Bhupinder Singh @ Bhinda, Jagdip Singh Master, Harjinder Singh @ Binder, Karamjit Singh, Malkit Singh electrician, Hardip Singh, Jaswinder Singh, Gursewak Singh, Kulwinder Singh, Makhan Singh, Gurcharan Singh, Mukhtiar Singh, Simarjit Singh, Balkaran Singh, Sukhdev Singh, Hargobind Singh, Gurcharan Singh @ Charna, Bhola Singh, Sohan Singh @ Chhoto, Jarnail Singh @ Fauji, Gurbachan Singh @ Fauji, Jagdev Singh, Jaskaran Singh, Darshan Singh, Baldev Singh, Sukhmander Singh, Sikander Singh, Darbara Singh, Buta Singh, Bharpur Singh, Babu Singh, Basant Singh, Amrik Singh and Jagga Singh wanted to take forcible possession of Gurudwara building and land. They along with other desperate persons used to make announcement through loud speaker to take forcible possession of the Gurudwara building and land. They also took oath in Gurudwara Tittar Sahib for the same. They used to say that Mahant Pritam Singh and Sewadars will be burnt alive and would be ousted from Gurudwara Sahib. In that regard his father Mahant Pritam Singh had called respectables of the area in the Gurudwara on 29.4.2006 consisting of Darshan Singh, resident of Khiala, Kabul Singh resident of Kutiwal, Harnek Singh, resident of Maur Kalan, Rajinder Singh, resident of Jodhpur Pakhar, Kabul Singh of Maur Khurd for furnishing the account of

the income of the Gurudwara as well as of the land. He, his father and his son Inderjit Singh were already present in the Gurudwara Sahib as sometimes they used to reside at Gurudwara along with other Granthies. Sewadars were also present. At about 12/12.30 noon on 29.4.2006, they were present in the Darbar Hall. Then they heard noise of huge stampede and lalkaras. They all left Darbar Hall and rushed to first floor of Langar Hall apprehending danger to their lives. From the upper storey, they saw that besides above said persons there was mob of 2000/2500 persons armed with gandasas, Swords, guns, oil cans, small gas cylinders etc.. They entered the Gurudwara premises. They (accused) after going up stairs bolted the door from the inside of the stairs leading to the upper storey. The above mentioned persons and mob were raising lalkara that they would burn them alive and would set them ablaze. In the meantime, PW Kulwant Singh @ Kailasha set the wheat husk room below residential room on fire. Jagraj Singh, Kulwant Singh, Jagdip Singh, Master Atma Singh, Gurcharan Singh, Hardip Singh, Bhupinder Singh, Gursewak Singh, Jaswinder Singh, Harjinder Singh, Kulwinder Singh, Makhan Singh etc. set Tata Sumo vehicle, Contessa car, motorcycle, bicycle, one cow and one buffalo ablaze and closed the routes of their escape. Above said persons then came up stairs and broke open the grill of the window where he had taken shelter. Then being under fear, he fired 2/3 shots in the air with his 12 bore licenced gun to scare

away the above said persons and the mob in order to save himself and others. When mob did not go backward and started damaging the building and attempted to climb on the upper storey where they had taken shelter then he fired shots in the right of private defence of his person and all other persons in the Gurudwara who had taken shelter in the above said rooms and of the property. He had fired shots from the roof. No other accused challaned in this case was armed with any type of weapon i.e. fire arm, kirpan, lathi etc.. Press reporters and photographer Jeev Ratan Dass also reached at the spot who took photographs and prepared CDs which had been placed on the judicial file. In case he had not fired shots, they all would have been burnt alive by the above said 27 persons and mob. SDM, Talwandi Sabo, SSP Bathinda, SP (D), D C along with large force consisting of many police station arrived at the spot along with fire brigade. The fire was extinguished by the fire brigade otherwise they would have been murdered alive. The police force controlled the mob and pushed them backward. When police was sure that no harm would be done to them, then SI Manjit Singh alongwith other police officials came upstairs and asked the names of all the persons present there. The witnesses examined by the prosecution did not know the names of outsiders which were arrested from the upper room. Kulwant Singh complainant was not present at the time of alleged occurrence. SI Manjit Singh

recorded his statement under Section 154 Cr.P.C and a cross case was registered against the above said persons. Some of the said persons were detained by the police on the next day and subsequently they were let off due to political influence. The above named 37 persons are facing trial in cross complaint pending in the court. Except him no other person was armed with firearm. Guns were brought from respective villages along with their licenses and same were fired in the police station. The police also took into possession burnt vehicles. On the spot, recovery memos were prepared. Police also recorded statements of all accused under Section 161 Cr.P.C. Account of income of the Gurudwara was furnished to the respectables and committee constituted by Mahant Pritam Singh and members of the committee were Gurjant Singh, Ajmer Singh and others. His co-accused Narinder Singh was a cook, Rajinder Singh was Granthi, Harbhajan Singh used to recite path and Harnek Singh used to clean utensils. Mahant Pritam Singh had donated Rs. 80,000/- for construction of room in Civil Hospital and Rs. 2,000/- were given to the Youth Club. He used to spend money for various beneficial schemes for the poor persons. Other accused adopted the plea of accused Gurcharan Singh.

In their defence, the accused examined Sh. Sukhdev Singh Chahal, SP as DW1, Inderjit Singh son of Gurcharan Singh as DW2, Sikander Singh, Secretary, the Chanarthal Multi Purpose

Co-operative Agricultural Service Society Limited as DW3 and Balkaran Singh son of Mukand Singh as DW4. DW HC Jasvir Singh was given up as unnecessary.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court vide impugned judgment and order convicted and sentenced the appellants, as mentioned above.

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

PW6 Gurcharan Singh, PW7 Kulwant Singh, PW8 Jaswinder Singh and PW9 Hardip Singh have deposed that it was Mahant Pritam Dass who used to look after the Gurdwara. PW19 Kulwant Singh testified that the Gurdwara was in the name of Shri Teg Bahadur and situated at Maur Kalan where Gurcharan Singh, Basant Singh and Pritam Singh used to reside for the last 30/35 years and the Gurdwara owned 100 to 105 killas of land. He admitted about Mahant Pritam Singh Chela Mahant Basant Singh incharge of the Gurdwara affairs. Civil suit for possession was filed by the Gurdwara and managing committee of the Gurdwara consisting of Ajmer Singh as its President and Harchand Singh as its member. Suit was filed on 26.11.1974 which was decreed on 9.8.1977. The decree was upheld upto the High Court. Thus, Mahant Pritam Singh was not running the Gurdwara arbitrarily. There is also no evidence that he embezzled the money of the

Gurdwara. He had constituted a committee of five members and used to open the Golak in their presence. PW6 Gurcharan Singh could not deny the said fact. He also could not deny the suggestion that Mahant Pritam Singh donated Rs.80,000/- for a room in Civil Hospital, Rs. 1,20,000/- to the club and Rs. 61,000/- for Senior Secondary School besides some money for marble flooring for the darbar hall. Thus, it can be safely held that there was a committee of the management of the Gurdwara and money was being spent on the Gurdwara and other public premises. However, at the same time the complainant party had a legal right to go to the Gurdwara and even request Mahant Pritam Singh to render the accounts to them. Merely because they were not the members of the committee is no ground to hold that they had no right to go to the Gurdwara. Further, it cannot be said that in order to enforce their legal right, the complainant was to take recourse to law. Merely because the complainant was not a representative of the public or the Municipal Committee, still the complainant party could go to the Gurdwara and ask for accounts. Further, the complainant party going in a large number to the Gurdwara is no indication of the fact that it wanted to overawe the Gurdwara management.

Coming to the actual occurrence, it may be noticed that PW8 Jaswinder Singh stated that some villagers went to the Gurdwara Sahib at about 12.30 p.m. and they entered the main

gate of the Gurdwara in order to reach the main building. On the other hand, the appellants had closed the entry point into the Gurdwara which may have agitated the crowd and, accordingly, the crowd decided to forcibly enter the Gurdwara building.

SI Manjit Singh, who had investigated the case, stepped into the witness box as PW11. In his cross-examination, he testified that he recorded the statement of Gurcharan Singh @ Billu-appellant under Section 154 Cr.P.C. The said statement having been recorded on 30.4.2006, it cannot be said that the defence version was belated. Moreover, no suggestion was put to the PWs nor any stand taken by the accused during their examination under Section 313 Cr.P.C.

PW6 Gurcharan Singh deposed that none of the accused had come down from the roof of the chobara to cause injury to any one on the side of the complainant. Similar was the stand of PW13 Makhan Singh and PW14 Kulwinder Singh. Under these circumstances, only Gurcharan Singh @ Billu-appellant can be held responsible under Section 302 IPC for committing the murder of Raju @ Jugraj by firing at him. The remaining appellants could be said to have formed an unlawful assembly, common object of which was not to commit the murder of Raju @ Jugraj. As such, their conviction under Sections 302/149 IPC cannot be sustained. At the same time, no case is made out for upsetting the conviction of the appellants under Sections 307 and

307/149 IPC and also under Sections 27 and 30 of the Arms Act. Similarly, the conviction of the appellants under Section 148 IPC requires no interference as they were members of the unlawful assembly, common object of which was to cause injuries to Gurcharan Singh, Jaswinder Singh, Kulwant Singh, Hardip Singh, Makhan Singh, Kulwinder Singh and Gursewak Singh.

Resultantly, the conviction and sentence of Gurcharan Singh @ Billu-appellant under Section 302 IPC is upheld. The conviction and sentences of Labh Singh, Harnek Singh, Gora Singh, Darshan Singh and Jagga Singh-appellants under Sections 302/149 IPC is set aside. The conviction of Gurcharan Singh @ Billu, Labh Singh, Harnek Singh, Gora Singh, Darshan Singh and Jagga Singh-appellants under Sections 307 and 307/149 IPC are upheld. However, their substantive sentences of imprisonment on both the counts are reduced to the one already undergone by them. The fine of Rs. 5,000/- alongwith its default clause is maintained. The conviction and sentences of Gurcharan Singh @ Billu, Harwinder Singh, Bhola Singh son of Mahan Singh and Bhola Singh son of Dalip Singh-appellants under Section 30 of the Arms Act is maintained. The conviction and sentences of Gurcharan Singh @ Billu, Labh Singh, Harnek Singh, Gora Singh and Jagga Singh-appellants under Section 27 of the Arms Act is also maintained. The conviction and sentences of Gurcharan Singh @ Billu, Labh Singh, Harnek Singh, Gora Singh, Darshan

Singh and Jagga Singh-appellants under Section 148 IPC is also maintained. All the substantive sentences of imprisonment shall run concurrently.

The appeal is, accordingly, disposed of.

**(T.P.S. MANN)
JUDGE**

July 25, 2016
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**(GURMIT RAM)
JUDGE**