

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

Crl. Appeal -D No. 85-DB of 2011(O&M)

Date of Decision: September 20 , 2016.

Surender @ Monu and others

..... APPELLANT (s)

Versus

State of Haryana

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Jasjit Singh Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the appellants.

Mr. Raj Kumar Makkad, DAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellants being aggrieved of the judgment/order dated 18.12.2010/23.12.2010 passed by the learned Additional Sessions Judge, Jhajjar have filed this appeal. Appellant No.1 – Surender @ Monu son of Ved Parkash has been convicted for the offence punishable under Sections 302, 148, 323, 506 read with Section 149 IPC. He has been sentenced to undergo life imprisonment for the offence punishable under Section 302 IPC, besides, pay a fine of ₹10,000/- and in default thereof, to undergo rigorous imprisonment for one year. Appellants No.2 to 9 have been convicted for the

offences punishable under Sections 148/323/506 read with Section 149 IPC. All the appellants (including appellant No.1) have been sentenced to undergo rigorous imprisonment for six months for the offence punishable under Section 323 read with Section 149 IPC, besides, pay a fine of ₹500/- each and in default thereof, to undergo rigorous imprisonment for fifteen days. They have been sentenced to undergo rigorous imprisonment for six months for the offence punishable under Section 506 read with Section 149 IPC, besides, pay a fine of ₹500/- each and in default thereof, to undergo rigorous imprisonment for fifteen days. All the appellants have also been sentenced to undergo rigorous imprisonment for one year for the offence punishable under Section 148 read with Section 149 IPC, besides, pay a fine of ₹1,000/- each and in default thereof, to undergo rigorous imprisonment for thirty days. The sentences are ordered to run concurrently.

The prosecution was set in motion on the statement of complainant Sudhir (PW4) son of Balwan Singh. His statement (Ex.P3) was recorded by PW15 ASI Surinder Singh, Police Station Sasroli on 14.03.2008. The complainant Sudhir (PW4) stated that his mother Ram Rati was standing on the street in front of their house at about 4.00 p.m. on 13.03.2008. She was asking his aunt (Tayi) Sarli wife of Bhim Singh as to why she had thrown away suits of the last rites (Kaaj ceremony) of his grandmother. An altercation took place between the complainant's mother Ram Rati and his aunt Sarli. At about 5.00 p.m. on the same day, Ved Parkash son of Bharat Singh, Santosh wife of Ved Parkash, Suman wife of Rajbir and Sumitra wife of Narender, caste Jat residents of village Birohar started pelting bricks and stones upon their house

showing solidarity with Sarli. However, the complainant and other family members out of fear remained inside their house. The complainant's mother Ram Rati went to fetch water on the next day i.e. 14.03.2008 at about 2.00 p.m. Surender @ Monu (appellant No.1), Sombir @ Sonu (appellant No.9), Virender @ Nunia (appellant No.5) sons of Ved Parkash, Narender (appellant No.4), Rajbir (appellant No.3) sons of Bharat Singh sons of Bharat Singh, Santosh (appellant No.6) wife of Ved Parkash, Suman (appellant No.7) wife of Rajbir and Sumitra (appellant No.8) wife of Narender were sitting there. They told his mother that they would see to her. However, his mother returned home silently without reacting in any manner.

A mobile phone was stolen on the same day from the shop of the complainant's brother Satish. Satish was trying to apprehend the thief when suddenly, Surender @ Monu (appellant No.1), Sombir @ Sonu (appellant No.9), Ved Parkash (appellant No.2), Narender (appellant No.4), Rajbir (appellant No.3), Santosh (appellant No.6), Suman (appellant No.7) and Sumitra (appellant No.8) carrying 'Jaillies' and iron rods arrived over there. Satish fled from the scene and came home. He narrated the incident to his father. The complainant's father Balwan Singh came out of the house to pacify all the abovesaid persons. However, all of them carrying iron rods and 'Jaillies' attacked the complainant's father. A number of injuries were sustained by the complainant's father. His father raised a hue and cry. The complainant Sudhir alongwith Sonu son of Ramesh (a cousin brother of the complainant) tried to save his father.

Appellant No.1 – Surender @ Monu inflicted two iron rod blows

on the head of the complainant, who fell on the ground. Appellant No.3 – Rajbir son of Bharat Singh inflicted injuries with 'Jailly' on the waist of the complainant as he lay on the ground. Appellant No.6 – Santosh wife of Ved Parkash inflicted injuries with a 'Jailly' on the complainant's back. All the accused persons inflicted injuries upon his cousin brother Sonu as well. The complainant stated that his father Balwan Singh and Sonu themselves would disclose about the injuries sustained by them. The reason for the quarrel was regarding the distribution of ceremonial suits during the last rites ceremony of the complainant's grandmother. Appellant No.1 – Surender @ Monu and appellant No.9 – Sombir @ Sonu are stated to have inflicted injuries on his father Balwan Singh and his cousin brother Sonu without any reason. Complainant's brother Satish rushed to the spot on hearing the alarm raised by the injured persons. Satish rescued them from the accused persons, who would otherwise have caused more injuries to them. It was further stated by the complainant that all the accused while fleeing from the spot threatened them that though they had left them on that day but would not spare them in the near future at an opportune time. The complainant prayed for legal action to be taken against all the abovementioned persons. FIR (Ex.P4/A) under Sections 323, 506, 148, 149 IPC was registered on the basis of the abovesaid statement.

Injured Balwan Singh, Sudhir (complainant) and Sonu were taken to the General Hospital, Jhajjar. Message regarding arrival of the injured persons was received at Police Post, Sasroli. PW15 ASI Surinder Singh has deposed that on receipt of this information at about 4.00 p.m., he proceeded to General Hospital, Jhajjar. The medical reports of Balwan Singh, Sudhir and

Sonu were obtained by PW15 ASI Surinder Singh. An application (Ex.P32/A) was moved before the Medical Officer, General Hospital, Jhajjar regarding the fitness of the injured to make a statement. Balwan Singh was declared unfit to make a statement while Sudhir and Sonu were declared fit to record their statements. Accordingly, statement (Ex.P4) of Sudhir was recorded on the basis of which formal FIR No.37 dated 14.03.2008 (Ex.P4/A) under Sections 323, 506, 148, 149 IPC was registered.

Thereafter PW15 ASI Surinder Singh alongwith the police party proceeded to the place of occurrence. Rough site plan (Ex.P59) was prepared. Blood-stained soil was lifted and converted into a separate parcel after putting the seal of 'SS'. The injured Balwan Singh was referred to PGIMS, Rohtak for X-ray and orthopeadic opinion by the Medical Officer, General Hospital, Jhajjar. However, Balwan Singh succumbed to his injuries at PGIMS, Rohtak on 15.03.2008. The message regarding death of Balwan Singh was received at Police Station Salhawas from PGIMS, Rohtak. The offence punishable under Section 302 IPC was subsequently added. The special report (Ex.P34) was sent to the higher police officials on 15.03.2008 at 12.00 a.m.(midnight).

PW13 SI/SHO Sat Narain, Police Station Salhawas stated that the inquest report (Ex.P8) was prepared on 16.03.2008. An application (Ex.P7) for conducting the post-mortem on the deadbody of Balwan Singh was moved. Bed Head Ticket (Ex.P58) in respect to the deceased Balwan Singh was obtained. The post-mortem on the deadbody of Balwan Singh was conducted by PW9 Dr. Viney Kumar, Medical Officer, Forensic Medicine Department, PGIMS, Rohtak. Post-mortem report is Ex.P10. As per the post-mortem

report, nine injuries were found on the body of Balwan Singh. The cause of death of the deceased was due to the injuries described and complications thereof. All the injuries were ante-mortem in nature and sufficient to cause death in due course. The time between the death and post-mortem was six to thirty-six hours.

The X-ray report (Ex.P55) of injured Sandeep was obtained on 07.04.2008 by PW13 SI Sat Narain. In respect to the injured Sudhir and Sonu, it was stated by the doctor at General Hospital, Jhajjar in response to the application (Ex.P56) that no X-ray was conducted on the said injured persons. Surender @ Monu (appellant No.1), Ved Parkash (appellant No.2), Rajbir (appellant No.3), Narender (appellant No.4) and Virender @ Nunia (appellant No.5) were arrested on 18.03.2008. A 'Jailly' each was recovered from Ved Parkash (appellant No.2), Rajbir (appellant No.3) and Narender (appellant No.4) vide Ex.P15, Ex.P18 and Ex.P21, respectively. Iron rods were recovered from Surender @ Monu (appellant No.1) and Virender @ Nunia (appellant No.5) vide Ex.P24 and Ex.P27, respectively. Santosh (appellant No.6), Suman (appellant No.7) and Sumitra (appellant No.8) were arrested on 26.03.2008 by PW13 SI Sat Narain from Sasroli Chowk. A 'Jailly' each was recovered from Santosh (appellant No.6) and Suman (appellant No.7) vide Ex.P41 and Ex.P44, respectively. A 'lathi' was recovered from Sumitra (appellant No.8) vide Ex.P47. Sombir @ Sonu (appellant No.9) was arrested on 04.04.2008 from the Bus Stand of village Bahu. A 'Jailly' was recovered on his disclosure statement.

The FSL report is Ex.PX. Human blood was found on the blood-

stained earth (Ex.2), the Pyjama of the deceased (Ex.3), one of the iron rods (Ex.5) and a Jailly (Ex.11). After completion of the investigation, the final report under Section 173 Cr.P.C. was presented on 27.04.2008. The offence punishable under Section 302 IPC being exclusively triable by the court of Sessions, the case was committed to the court of Sessions vide order dated 28.05.2008 by the learned Additional Chief Judicial Magistrate, Jhajjar. Charges for the offences punishable under Sections 302/323/506/148/149 IPC was framed against all the appellants on 07.08.2008 to which they pleaded not guilty and claimed trial.

The prosecution examined as many as seventeen witnesses to prove its case.

The appellants pleaded innocence and false implication. They denied all the incriminating circumstances and evidence put to them under Section 313 Cr.P.C. It was specifically stated by the appellants that Bhim Singh the real brother of deceased Balwan Singh had contested the assembly elections of the Haryana Vidhan Sabha. The family of the accused had opposed him openly in the village (Bhim Singh is the husband of Sarli with whom complainant's mother allegedly had an altercation). Therefore, Bhim Singh had a grudge against their family. It was stated that Bhim Singh openly threatened them with dire consequences for opposing him in the elections. The appellants were falsely implicated in this case at the behest of Bhim Singh who is a retired Deputy Superintendent of Police. All the family members including women folk have been falsely roped in. Rajbir, Ahlmad of the court of Judicial Magistrate First Class, Jhajjar was produced in defence.

The learned trial court on considering the facts and circumstances as well as the evidence on record concluded that the prosecution has proved beyond reasonable doubt that appellant No.1 – Surender @ Monu is guilty of the offence punishable under Section 302 IPC alongwith Sections 323/506/148 read with Section 149 IPC. However, appellants No.2 to 9 were found guilty of the offences punishable under Sections 323/506/148 read with Section 149 IPC. The appellants were accordingly sentenced as detailed in the foregoing paras. Hence aggrieved by their conviction and sentence, the appellants have filed this appeal. It is to be noticed that no appeal has been filed by the State or the complainant for enhancement of the sentence imposed upon appellants No.2 to 9 or for their conviction under Section 302 IPC.

Learned counsel for the appellants has vehemently argued that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. All the members of the family of the accused including women-folk have been falsely roped in. This fact itself indicates the falsity of the prosecution case. It is submitted that there was no motive on the part of the appellants to have committed the murder of Balwan Singh. The dispute even if proved was between the complainant's mother and his aunt (Tayi) Sarli. The appellants are in no manner related to the said persons and neither have anything to do with them. There is no question of their getting embroiled in somebody else's family dispute and that also to the extent of causing death of a person, namely, Balwan Singh.

Learned counsel for the appellants submits that the delay in lodging of the FIR points to the false implication of the appellants. The incident is alleged to have occurred at 2.00 p.m. on 14.03.2008. Statement of

the complainant Sudhir was recorded at 5.15 p.m. on 14.03.2008 at General Hospital, Jhajjar. FIR No.37 (Ex.P4/A) was registered at 6.25 p.m. on 14.03.2008 but the Special Report was sent at 12.00 midnight on 15.03.2008. It is thus submitted that the delay in sending the Special Report casts a doubt on the prosecution version.

It is further argued that the presence of PW6 Sandeep son of Bhim Singh and Sarli, has been rightly disbelieved by the trial court. PW6 Sandeep is alleged to have received injuries in the melee on 14.03.2008 in which Balwan Singh lost his life. However, his name does not find mention in the statement (Ex.P4) got recorded by the complainant Sudhir. Statement of PW6 Sandeep was recorded three days after the incident to try and project that he was injured in this incident thereby, seeking to lend credibility to the prosecution version. The trial court, it is submitted, has rightly concluded that there was no question of Sandeep son of Bhim Singh coming to the rescue of Balwan Singh in case the occurrence had taken place due to acrimony between the mother of the complainant and mother of PW6 Sandeep i.e. Sarli wife of Bhim Singh. Therefore, the entire prosecution version becomes suspect. The place of occurrence where injuries were allegedly inflicted upon Balwan Singh and others is a public place. There is no evidence to prove the altercation between the complainant's mother and Sarli on 13.03.2008 at 4.00 p.m. or the threats meted out to the complainant's mother on 14.03.2008 when she went to fetch water. Neither has any evidence been led to prove the theft of mobile phone from the shop of Satish. The material witnesses Ram Rati and Satish have not been examined by the prosecution.

Learned counsel for the appellants has urged that there is a discrepancy in the medical evidence inasmuch as three injuries are reflected to have been suffered on the head of Balwan Singh as per the evidence of PW12 Dr. Sher Singh, Medical Officer, General Hospital Jhajjar. Whereas only two injuries were found present on the head of Balwan Singh (deceased) as per the post-mortem report and the evidence of PW9 Dr. Viney Kumar, Medical Officer, Forensic Medicine Department, PGIMS Rohtak. It is thus prayed that the conviction of the appellants is not sustainable. They should be acquitted of the charges against them.

In the alternate, learned senior counsel for the appellants has submitted that with regard to appellant No.1 – Surender @ Monu the offence qua him does not fall within the ambit of Section 300 IPC. The evidence on record does not prove that the appellant No.1 had any intention to cause the death of Balwan Singh. Therefore, his conviction should be converted to that under Section 304 Part I IPC rather than Section 302 IPC and the sentence imposed upon him should accordingly be reduced from life imprisonment to a lesser one.

Learned counsel for the State while refuting the said arguments submits that the appellants have been rightly convicted by the learned trial court. There is clear, cogent and sufficient evidence on record to prove the culpability of the appellants in this case. There is a specific eye-witness account duly corroborated with medical evidence. It is further submitted that no ground is made out for converting the offence qua appellant No.1 to a lesser offence. The witnesses PW6 Sandeep and PW7 Sonu @ Sumit have clearly

deposed that an iron rod blow was inflicted by appellant No.1 on the head of Balwan Singh. Surender @ Monu is the person who has been specifically attributed with a head injury to the deceased. Therefore, it cannot be said that the said appellant did not have an intention to kill Balwan Singh. Learned counsel for the State submits that appellant No.1 has been rightly convicted for the offence punishable under Section 302 IPC and there is no ground for convicting him for a lesser offence and reducing the sentence imposed upon him. It is, thus, prayed that the impugned judgment and order passed by the learned Additional Sessions Judge, Jhajjar be upheld and the conviction and sentence imposed upon the appellants be maintained.

We have given our thoughtful consideration to the contentions as raised by the learned counsel appearing for the parties and with their assistance have gone through the records of the case.

The complainant Sudhir (PW4) while deposing before the learned trial court has reiterated the facts as mentioned by him in his statement (Ex.P4). It is further relevant to note that PW4 Sudhir in his statement (Ex.P4) or his examination-in-chief does not attribute any specific injury by any of the appellants on the person of his father Balwan Singh (since deceased). In Ex.P4 he has stated that injured themselves would reveal about the injuries suffered by them. It is in his cross-examination that he states that appellant No.1 – Surender @ Monu inflicted a blow with an iron rod on the head of Balwan Singh and thereafter dealt a second blow on the nose of Balwan Singh.

PW7 Sonu @ Sumit an injured witness has stated that he was present at his residence on 14.03.2008. When he heard the noise of a quarrel in the street, he went out and saw appellant No.1 inflicting a blow with an iron

rod on the head of his uncle (Taya) Balwan Singh and another blow on his nose. Thereafter Balwan Singh fell on the road. Appellant No.4 – Narender inflicted a 'Jailly' blow from the blunt side i.e. Lathi side on the chest of Balwan Singh. Appellant No.8 – Sumitra inflicted a Lathi blow on the left arm of Balwan Singh. Appellant No.9 – Sombir @ Sonu inflicted a 'Jailly' blow from the blunt side on the right elbow of Balwan Singh. When PW7 Sonu @ Sumit tried to rescue his uncle Balwan Singh, appellant No.2 – Ved Parkash inflicted a 'Jailly' blow from the blunt side on the left shoulder of Sonu @ Sumit. Appellant No.5 – Virender @ Nunia inflicted an iron rod blow on the waist of Sonu @ Sumit. Appellant No.7 – Suman inflicted a 'Jailly' blow from the blunt side on the left arm of Sonu @ Sumit. PW7 Sonu @ Sumit stated that the accused persons also caused injuries to his brothers Sudhir and Sandeep. Appellants No.2 and 3 caused injuries on the waist of his uncle Balwan Singh. Appellant No.5 – Virender @ Nunia inflicted injuries on the right elbow of his uncle. Sonu @ Sumit raised an alarm on which his father, mother and brother Satish arrived on the spot and saved them from the clutches of the accused persons. PW7 Sonu @ Sumit has admitted that he was serving in the Haryana Police. This witness has further admitted that his uncle Bhim Singh was a retired Deputy Superintendent of Police from Haryana Police and he was well respected in the village with considerable influence in the village Panchayat.

PW6 Sandeep son of Bhim Singh has stated that he was returning from his fields after watering them on 14.03.2008 at about 2/2.30 p.m. When he was near his home, he noticed that his uncle Balwan Singh and the accused

persons were fighting. Appellant No.2 – Ved Parkash, appellant No.4 – Narender, appellant No.3 – Rajbir, appellant No.6 – Santosh, appellant No.8 – Sumitra, appellant No.7 – Suman, appellant No.1 – Surender @ Monu, appellant No.9 – Sombir @ Sonu and appellant No.5 – Virender @ Nunia had 'Jaillies' and iron rods in their hands. Appellant No.1 – Surender @ Monu inflicted an iron rod blow on the head of his uncle Balwan Singh and thereafter another on the nose of Balwan Singh. Balwan Singh fell to the ground on receipt of the said injuries. Appellant No.4 – Narender gave a 'Jailly' blow from its blunt side on the chest of his uncle Balwan Singh, as he lay on the ground. Appellant No.8 – Sumitra inflicted a 'lathi' blow on the hand of Balwan Singh. Appellant No.9 – Sombir @ Sonu inflicted a 'Jailly' blow from blunt side on the right elbow of Balwan Singh. Appellant No.5 – Virender @ Nunia inflicted an iron rod blow on the right elbow of Balwan Singh. Appellant No.2 – Ved Parkash inflicted a 'Jailly' blow from blunt side on the backside of Balwan Singh. Appellant No.3 – Rajbir inflicted a 'Jailly' blow from blunt side on the backside of the chest of Balwan Singh. When PW6 Sandeep tried to save his uncle, appellant No.9 – Sonu inflicted a 'Jailly' blow from its blunt side on Sandeep's head. Appellant No.3 – Rajbir inflicted a 'Jailly' blow on Sandeep's right shoulder. He also inflicted a 'Jailly' blow from its blunt side on PW4 Sudhir's back. Appellant No.6 – Santosh inflicted a 'Jailly' blow from its blunt side on the left shoulder of Sudhir. Appellant No.2 – Ved Parkash inflicted a 'Jailly' blow from its blunt side on the backside of the chest of Sonu @ Sumit. Appellant No.5 – Virender @ Nunia also inflicted an iron rod blow on the back side of the chest of Sonu @ Sumit. Appellant No.7

– Suman inflicted a 'Jailly' blow from its blunt side on Sonu's left arm. She also kicked his uncle Balwan Singh. When they raised alarm, Sandeep's uncle Ramesh and his aunt Darshna were attracted to the spot and they rescued them. In his cross-examination PW6 Sandeep has admitted that his father Bhim Singh had contested the Assembly Elections. However he could not tell as to how many votes he received in the elections or whether the accused persons had voted for his father in the Assembly Elections. PW6 Sandeep has stated that there was a 'certain exchange of words' between his mother Sarli and complainant's mother Ramrati on 14.03.2008. It was stated by PW6 Sandeep that he was not admitted in the hospital on 14.03.2008 but he got his wounds treated (stitched) in the village itself.

As per the medico-legal report and evidence of PW12 Sher Singh, seven injuries were found on the person of Balwan Singh when he was examined on 14.03.2008 at General Hospital, Jhajjar. The injuries noted in the medico-legal report as well as in the affidavit (Ex.P12/A) of Dr. Sher Singh are as under:-

- “i. 3.6 x 2.0 cm abrasion with fresh bleeding was present on the vertex of the scalp. Advice X-ray and CT head.
- ii. 5.0 x 2.6 cm contusion was present on the right side of the parietal region of this scalp. There was pain and tenderness on palpation, so advice X-ray skull AP and Lateral View and CT Head.
- iii 4.0 x 3.0 cm reddish contusion was present on the right side of the forehead, so advice x-ray skull <AP and Lateral View.
- iv. 2.5 x 1.0 cm abrasion with fresh bleeding was present on the middle part of the nose. There was history of bleeding from the B/L nostrils. So advice X-ray and ENT surgeon opinion at

PGIMS, Rohtak.

v. There was swelling present on the upper lip with lacerated wound of size 2.0 x 0.5 cm was present on the inner side of the upper lip. There was fresh bleeding present the upper centre incisors were loss from the gum and there was fresh bleeding present. So advice X-ray and dental surgeon opinion PGIMS, Rohtak dental department.

vi. 5.0 x 3.0 cm contusion with abrasion was present middle part of the right fore arm. There was fresh bleeding present, there was pain and tenderness and the moments of the right fore arm were partially restricted. So advice X-ray right fore arm middle part AP and lateral view.

Vii. Two reddish contusion of various sizes and shapes were present on the left side of the trunk at the lower part. There was pain and tenderness. So advice X-ray left side of the lower part of the trunk.”

Nature of injuries and kind of weapons are mentioned as under:-

“No.1 to 3 are subject to X-rays report and CT head.

No.4 subject to X-ray and ENT surgeon opinion at PGIMS, Rohtak.

No.5 was subject to X-ray report and dental surgeon opinion and 6 was subject to X-ray report.

Kind of weapon used was blunt”

Balwan Singh was referred to PGIMS, Rohtak for X-ray of the head, CT Scan and for further management. As per the post-mortem report and evidence of PW9 Dr. Viney Kumar, the injuries found on the deadbody are as under:-

“1. An inverted U shaped sutured wound of total length 22 cms with 16 sutures in place located at right temporal region.

2. Medial to injury 1 and 2 cms medial to it was a contusion of

size 5x4 cms at mid of scalp at right parietal area. On deep dissection subcutaneous haematoma was present at site of injury 1 & 2 described extending in frontal and parietal region of both side. Extra-dural haematoma was present at operated and nearby region of size 10x10 cms irregular area. Two bony plates were in place with good apposition at operated site. Meninges were haemorrhagic at temporal-parietal region of both sides. Blood clots were present at fissures of brain at right temporal zone. Brain matter was disfigured by blood clots.

3. Contused lacerated wound of size 2x1 cms with dried blood clot was present at nasal bridge. On deep dissection, no fracture was found.

4. Contused lacerated wound of size 1x1 cms was present at upper lip's median region with one suture in place.

5. Contused lacerated wound of size 1x2 cms was present at inner side of lower lip.

6. Upper left 2nd tooth was missing with wound left with raw surface.

7. Contusions were present at left arm's antero lateral region of size 9x5 cms and at tip of left shoulder as 3x2 cms. No fracture observed.

8. Contusion abrasion was present at right anterior fore-arm upper half of size 5x3 cms & at lower half of size 3x2 cms. Rt. Ulna was fractured at lower end.

9. Contusion was present at left elbow of size 2x1 cms.”

PW12 Dr. Sher Singh also examined PW7 Sonu @ Sumit son of Ramesh Kumar and the injuries on his person were noted as under:-

“i. 11.5x5.0 cm reddish contusion was present on the left arm middle part, there was pain on palpation but no tenderness.

ii. Multiple abrasions of various sizes and shapes were present on the left scapula middle part, there was pain on palpation but no

tenderness.

Iii. 12.0x2.5 cm reddish contusion was present on the back of the trunk right side and extending to the left side of the vertical column. There was pain and tenderness on palpation. The movements of the right side of the trunk were partially restricted, so advice X-ray right side of the trunk and AP and Lateral view and Orthopedic surgeon at PGIMS, Rohtak.”

It was opined that Injury No.1 and 2 were simple and Injury No.3 was subjected to X-ray report and orthopaedic surgeon opinion. However, injured Sonu @ Sumit was not subjected to x-ray. The injuries on the person of PW4 Sudhir noted by PW12 Dr. Sher Singh are as under:-

“i. 7.5 x 1.0 cm lacerated wound was present on the right parietal region of the scalp, there was fresh bleeding present. Margins of the wound were irregular, wound was muscle deep, so advice X-ray and CT head.

ii. 3.5 x 2.0 cm reddish contusion was present of the left shoulder, there was pain and tenderness on palpation movement of the joint of the left shoulder were partially restricted, so advice X-ray left shoulder joint, AP and Lateral View and Orthopedic surgeon opinion.

iii. Multiple abrasions of various size and shapes were present of the left side of the trunk, there was fresh bleeding present.”

Injuries No.1 and 2 were subjected to x-ray and orthopaedic surgeon opinion. Injury No.3 was mentioned to be simple. Kind of weapon used was blunt. PW4 Sudhir was not subjected to x-ray.

It is to be noted that the learned trial court has convicted appellants No.2 to 9 for the offences under Sections 148/323/506 read with Section 149 IPC. It is held that all the accused formed an unlawful assembly

but the object of the said assembly was only to cause hurt or apply criminal force. In the incident simple hurt was caused. There was no common object to cause the death of Balwan Singh. Appellant No.1 – Surender @ Monu acted beyond the common object of the unlawful assembly. Therefore, he alone was held liable for the murder of Balwan Singh.

A perusal of the evidence on record reveals a consistent ocular version presented by the injured PW7 Sonu @ Sumit, PW4 Sudhir and PW6 Sandeep. Even if the evidence of PW6 Sandeep son of Bhim Singh is ignored, there is a clear-cut version presented by the complainant Sudhir (PW4) and PW7 Sonu. These two witnesses received injuries in the incident which occurred on 14.03.2008 at about 2.00 p.m. They were taken to the General Hospital, Jhajjar alongwith Balwan Singh, who succumbed to his injuries on 15.03.2008. The evidence of PW12 Dr. Sher Singh is categoric to the extent that he examined all the said three persons on 14.03.2008. The injuries suffered by them have been detailed by PW12 Dr. Sher Singh. Intimation regarding their admission was immediately given to the police authorities. The statement of Balwan Singh could not be recorded as he was declared unfit to make a statement. The statement of Sudhir (PW4) was recorded promptly at 5.15 p.m. at 14.03.2008 itself. The FIR was registered at 6.25 on 14.03.2008 under Sections 323/506/148/149 IPC. Balwan Singh died at 10.50 a.m. on 15.03.2008. The Special Report was sent at 12.00 noon at 15.03.2008 itself. Therefore, there is no delay whatsoever in sending of the Special Report. The argument raised by learned counsel for the appellants in regard to delay, therefore, cannot be accepted.

The ocular version is duly corroborated by the medical evidence. It is clear that all the accused persons had indeed formed an unlawful assembly and inflicted injuries on Balwan Singh and others. Keeping in view the evidence on record, we feel that the learned trial court has rightly held that the common object of the unlawful assembly was only to cause hurt/simple hurt or apply criminal force. The common object was not to cause the murder of Balwan Singh. The accused have used their 'Jellies' from the blunt side. None of the accused except appellant No.1 – Surender @ Monu has been attributed with an injury on a vital part of Balwan Singh, deceased.

Much stress has been laid on the absence of motive qua the appellants in this case. However, we do not find merit in this argument for the reason that in a case where there is a credible eye-witness account duly corroborated by medical evidence, absence of motive becomes irrelevant. Absence of motive by itself cannot form the basis of acquittal of the appellants in the wake of overwhelming evidence on record to prove their culpability. The presence of the witnesses at the place of occurrence is natural and normal. There is nothing on record which would persuade us to question the credibility of these witnesses. Appellants No.2 to 9 have been rightly convicted for the offences punishable under Sections 148/323/506 read with Section 149 IPC.

However, there is merit in the submission of learned senior counsel for the appellants regarding the quantum of sentence imposed upon appellants No.2 to 9. Appellants have been facing these proceedings since March, 2008. They were convicted by the learned trial court on 18.12.2010. Appellants are members of the same family. Appellant No.2 is the father of

appellants No.1, 5 and 9. Appellant No.2, 3 and 4 are real brothers being sons of Bharat Singh. Appellant No.6 – Santosh is the wife of appellant No.2. Appellant No.7 – Suman is the wife of appellant No.3 and appellant No.8 – Sumitra is the wife of appellant No.4.

In view of the peculiar facts and circumstances of the case, we feel that the ends of justice would be met if the sentence of imprisonment imposed upon appellants No.2 to 9 is reduced to the period already undergone by them while maintaining their conviction.

We also find merit in the contention of learned senior counsel for the appellants in respect to the conviction of appellant No.1 – Surender @ Monu being unjustified under Section 302 IPC. A perusal of the medical evidence reveals that at the time of medical examination of Balwan Singh at the General Hospital, Jhajjar, out of eight (8) injuries on his person, the following three injuries were reflected on his head:-

- “i. 3.6 x 2.0 cm abrasion with fresh bleeding was present on the vertex of the scalp. Advice X-ray and CT head.
- ii. 5.0 x 2.6 cm contusion was present on the right side of the parietal region of this scalp. There was pain and tenderness on palpation, so advice X-ray skull AP and Lateral View and CT Head.
- iii 4.0 x 3.0 cm reddish contusion was present on the right side of the forehead, so advice x-ray skull <AP and Lateral View.”

Another injury present on the nose was,

“ 2.5 x 1.0 cm abrasion with fresh bleeding was present on the middle part of the nose. There was history of bleeding from the B/L nostrils. So advice X-ray and ENT surgeon opinion at

PGIMS, Rohtak.”.

As per PW9 Dr. Viney Kumar (one of the doctors who conducted the post-mortem) following two injuries were detected on the head of Balwan Singh (deceased):-

“1. An inverted U shaped sutured wound of total length 22 cms with 16 sutures in place located at right temporal region.

2. Medial to injury 1 and 2 cms medial to it was a contusion of size 5x4 cms at mid of scalp at right parietal area. On deep dissection subcutaneous haematoma was present at site of injury 1 & 2 described extending in frontal and parietal region of both side. Extra-dural haematoma was present at operated and nearby region of size 10x10 cms irregular area. Two bony plates were in place with good apposition at operated site. Meninges were haemorrhagic at temporal-parietal region of both sides. Blood clots were present at fissures of brain at right temporal zone. Brain matter was disfigured by blood clots.”

In respect to the injury on nose, it was noted as “Contused lacerated wound of size 2x1 cms with dried blood clot was present at nasal bridge. On deep dissection, no fracture was found.”

PW12 Dr. Sher Singh in his cross-examination has mentioned that Injuries No.1 to 3 on the head of Balwan Singh (mentioned in the medico-legal report submitted by him) are independent injuries and not the result of a single blow. As per the post-mortem report and evidence of PW9 Dr. Viney Kumar, injury No.1 is an inverted U-shaped sutured wound of a total length of 22 cms with 16 sutures in place, located in the right temporal region. It is thus apparent that two of the three injuries mentioned by Dr. Sher Singh in the medico-legal report may have been converted into one after sutures/requisite

medical treatment administered to Balwan Singh.

Dr. Sher Singh further stated that in case there is no fracture of the nasal bone, the injury would be simple in nature. As per the evidence of PW9 Dr. Viney Kumar, no fracture was found on the nasal bone. At this stage, it is pertinent to note that the complainant Sudhir (PW4) has not stated about the infliction of injuries by appellant No.1 – Surender @ Monu on the head of Balwan Singh at the outset i.e. in his statement (Ex.P4). PW4 Sudhir has also not detailed the said injuries in his examination-in-chief before the learned trial court, though he has stated about the same in his cross-examination. As per Sudhir (PW4), appellant No.1 – Surender @ Monu inflicted one iron rod blow on the head of Balwan Singh and another one on his nose. The injured PW7 Sonu @ Sumit stated that one iron rod blow was inflicted by appellant No.1 on the head of Balwan Singh and a second blow on his nose. PW6 Sandeep has also stated about one iron rod blow being inflicted on the head of Balwan Singh by Surender @ Monu. All the abovesaid witnesses have stated that the said appellant inflicted only one blow on the head of Balwan Singh and another on his nose with an iron rod.

At this stage, it is useful to refer to Section 299 IPC which reads as under:-

299. Culpable homicide.— Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 300 IPC reads as under:-

“300. Murder. —Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is

caused is done with the intention of causing death, or—

Secondly —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

It has been held by the Hon'ble Supreme Court in **Virsa Singh v. State of Punjab, 1958 AIR (SC) 465** that the prosecution must prove the following facts before it can be established that the offence is covered under Section 300 'Thirdly' of the Indian Penal Code:-

“12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 “thirdly”;

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do

with the intention of the offender.”

In the present case as mentioned above, three injuries were found present on the head of Balwan Singh (deceased). Appellant No.1 – Surender @ Monu is attributed with one of the injuries on the head alongwith another on the nose of Balwan Singh. Appellants No.2 to 9 were convicted for the offences punishable under Sections 148, 323, 506 read with Section 149 IPC. It is proved on record that all the accused formed an unlawful assembly but there is no common object to cause death of Balwan Singh.

Accordingly, we find that appellant No.1 – Surender @ Monu is guilty of 'homicide not amounting to murder'. It is considered just and expedient to convict appellant No.1 – Surender @ Monu for the offence punishable under Section 304 Part-I IPC rather than under Section 302 IPC.

Accordingly, the judgment of conviction of appellant No.1 – Surender @ Monu is modified from Section 302 IPC to conviction under Section 304 Part-I IPC and he is sentenced to undergo rigorous imprisonment for ten years, besides, pay a fine of ₹10,000/- and in default thereof, undergo rigorous imprisonment for six months. Besides, he shall pay compensation of ₹2,00,000/- to the legal heirs of the deceased Balwan which shall be deposited in the court of learned Chief Judicial Magistrate, Jhajjar within two months from the receipt of copy of this order. The learned Chief Judicial Magistrate, Jhajjar shall disburse the amount to the LRs of deceased Balwan after identifying them. The conviction and sentence of Surender @ Monu-appellant No.1 for the offences under Sections 323 read with Section 149, 506/149 and 148/149 IPC is maintained which shall, however, run concurrently with

sentence under Section 304 Part-I IPC. The conviction of the other appellants No.2 to 9 is maintained but their sentences of imprisonment are reduced to the period already undergone. However, the order of payment of fine and the period of imprisonment ordered for default of payment of fine as ordered by the learned trial court shall remain intact and as it is.

The Appeal accordingly stands disposed of.

(**S.S.SARON**)
JUDGE

(**LISA GILL**)
JUDGE

September 20 , 2016.
'om'

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No