

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

Date of Decision: 29.09.2016.

CRA-D-967-DB-2011

Nirmal Singh alias Nirma

....Appellant.

VERSUS

State of Punjab

....Respondent.

AND

CRA-D-1120-DB-2011

Jagjit Singh @ Jit and another

....Appellants.

VERSUS

State of Punjab

....Respondent.

CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Aman Pal, Advocate
for the appellant (in CRA-D-967-DB-2011).

Mr. Gopal Singh Nahal, Advocate
for appellant No.1 (in CRA-D-1120-DB-2011).

Mr. A.P.S. Deol, Sr. Advocate with
Mr. Vishal R. Lamba, Advocate
for appellant No.2 (in CRA-D-1120-DB-2011).

Mrs. Manjari Nehru Kaul,
Additional Advocate General, Punjab.

SNEH PRASHAR, J.

This judgment shall dispose of two appeals: CRA-D-967-DB-
2011 filed by appellant Nirmal Singh alias Nimma and CRA-D-1120-DB-

them (appellants) were held guilty and convicted by a common judgment of conviction and order of sentence dated 27.09.2011 recorded by learned Additional Sessions Judge, Patiala, in Session Case No.27-T of 2008 based on First Information Report No.82 dated 27.06.2007 registered at Police Station Sadar, Nabha. The appellants were sentenced as under:-

Convict Jagjit Singh alias Jit

Sr. No.	Offence under Section	Sentence awarded	Fine imposed	In default of payment of fine
1.	302 IPC	Imprisonment for life	Rs.5000/-	R.I. for six months
2.	324 IPC	R.I. for two years	Rs.500/-	R.I. for one month
3.	506 IPC	R.I. for one year	Rs.500/-	R.I. for one month

Convict Nirmal Singh alias Nimma

Sr. No.	Offence under Section	Sentence awarded	Fine imposed	In default of payment of fine
1.	302/34 IPC	Imprisonment for life	Rs.5000/-	R.I. for six months
2.	324/34 IPC	R.I. for one year	Rs.500/-	R.I. for one month
3.	506 IPC	R.I. for six months	Rs.500/-	R.I. for one month

Convict Sobha Singh

Sr. No.	Offence under Section	Sentence awarded	Fine imposed	In default of payment of fine
1.	302/34 IPC	Imprisonment for life	Rs.5000/-	R.I. for six months
2.	324/34 IPC	R.I. for one year	Rs.500/-	R.I. for one month
3.	506 IPC	R.I. for six months	Rs.500/-	R.I. for one month

It was ordered that all the sentences shall run concurrently.

The case of the prosecution garnered from the record was as under:-

Complainant Joga Singh, resident of village Mehas were three

was working in Punjab Home Guard) were both elder to him. About two years ago, 12-13 boys of the village of complainant Joga Singh including Harmeek Singh alias Bhola and Jagjit Singh alias Jit had gone for pilgrimage to Gurudwara Hemkunt Sahib on bicycles. Harmeek Singh had borrowed a sum of Rs.1,000/- from Jagjit Singh alias Jit in the presence of complainant Joga Singh.

On 27.06.2007 at about 4:00 p.m., complainant Joga Singh had gone on a scooter to the shop of Sandeep Singh alias Sonu, an electrician, for getting the starter of an electric motor. Three days earlier, Sandeep Singh had installed an electric motor on the bore in their field, but as the starter was out of order, the electric motor was not working. After procuring the starter, complainant Joga Singh kept the same in the front basket of his scooter and asked Sandeep Singh to accompany him for fitting the starter in the motor. As they were about to leave, Jagjit Singh alias Jit and Nirmal Singh alias Nimma arrived there and Jagjit Singh asked complainant Joga Singh to return the amount which was taken at the time of pilgrimage by Harmeek Singh alias Bhola. Complainant Joga Singh replied that as the amount had been borrowed by Harmeek Singh, the demand should also be raised from him. On this, Jagjit Singh alighted from his motorcycle and gave fist blows on the left eye, left side of abdomen and on the back of complainant Joga Singh. Thereafter, Jagjit Singh and Nirmal Singh boarded the motorcycle and went away. Complainant Joga Singh alongwith Sandeep Singh came to his fields where Sandeep Singh fixed the starter in the motor and then they returned to the shop.

Thereafter, complainant Joga Singh parked the scooter at his

Singh, he went to Gurudwara Sahib Sidhsar, Alohran, where Balwinder Singh was performing duty. Complainant Joga Singh narrated the incident to Balwinder Singh who advised him to report the matter at Police Station Sadar, Nabha. Meanwhile, complainant Joga Singh received a telephonic call on his mobile phone from Kulwant Singh who advised that the matter may not be reported to the police and he will get the compromise effected. Kulwant Singh asked complainant Joga Singh and Balwinder Singh to come to Grid Chowk, Nabha from where they would go to village Mehas. Complainant Joga Singh, Balwinder Singh and Kulwant Singh then came to the shop of Sandeep Singh alias Sonu at village Mehas. Complainant Joga Singh telephonically contacted Jagjit Singh. After 15-20 minutes, Jagjit Singh and Nirmal Singh arrived at the spot on a motorcycle. Nishan Singh and Satnam Singh, uncles of complainant, Malak Singh, his brother and some other residents of the village also arrived at the spot.

The matter for arriving at a compromise was being negotiated but a dispute arose with regard to the wording of the compromise. Jagjit Singh took out a Kirch and gave a blow with the same hitting on the left side of chest of Balwinder Singh near the heart. When Jagjit Singh tried to give another blow to Balwinder Singh, complainant Joga Singh caught the Kirch with his right hand and tried to snatch the same. Jagjit Singh pulled out the Kirch resulting in injuries on the palm and fingers of complainant Joga Singh and his hand started bleeding. Jagjit Singh then inflicted two more Kirch blows in the chest and abdomen of Balwinder Singh who on being seriously injured fell on the ground. An alarm was raised. During this incident, Nirmal Singh alias Nimma had a scuffle with Satnam Singh

with Malak Singh. Complainant Joga Singh caught Jagjit Singh in his arms, but by giving a bite on his right arm, he got himself released. Jagjit Singh carrying his weapon and Nirmal Singh and Sobha Singh abusing and giving threats ran away towards the fields. Nishan Singh and Satnam Singh brought complainant Joga Singh and his brother to Civil Hospital, Nabha for treatment where Balwinder Singh was declared brought dead.

The police recorded the statement (Ex.PW12/A) of Joga Singh, based on which First Information Report (Ex.PW12/C) was recorded and a case under Section 302, 324, 323, 506/34 of the Indian Penal Code (for short, "IPC") was registered against appellants Jagjit Singh alias Jit, Nirmal Singh alias Nimma and Sobha Singh.

On completion of investigation and necessary formalities, the charge sheet was presented before the Court for trial.

The appellants were charge-sheeted for the commission of offence under Sections 302, 323, 324 and 506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

As many as 14 witnesses namely PW1 Dr. Sanjay Mathur, PW2 Dr. Chetan Goyal, PW3 Dr. Harjinder Singh, PW4 Bhupinder Singh Sidhu, PW5 complainant Joga Singh, PW6 Satnam Singh, PW7 HC Mohan Singh, PW8 Rajinder Singh, PW9 HC Nirmal Singh, PW10 Gurbakshish Singh, PW11 Jasbir Singh, PW12 Inspector Ajaib Singh, PW13 Inspector Bindu Bala and PW14 Pritam Singh, were examined by the prosecution to substantiate the charges.

After closure of prosecution evidence, in their statements recorded under Section 313 of the Code of Criminal Procedure (for short,

innocence as well as false implication.

In their defence, the appellants examined DW1 HC Karamjit Singh and DW2 HC Raja Singh.

Analyzing the evidence available on record and the submissions made by learned Additional Public Prosecutor and learned counsels representing the appellants, learned trial Court convicted and sentenced the appellants as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 27.09.2011 passed by learned trial Court, the appellants preferred these two appeals.

The submissions made by Mr. Aman Pal, learned counsel representing appellant-Nirmal Singh alias Nimma (in CRA-D-967-DB-2011), Mr. Gopal Singh Nahal, learned counsel representing appellant No.1 Jagjit Singh alias Jit, Mr. A.P.S. Deol, learned senior counsel representing appellant No.2 Sobha Singh (in CRA-D-1120-DB-2011) and Mrs. Manjari Nehru Kaul, learned Additional Advocate General, for State of Punjab have been heard and record perused.

The occurrence took place at 5:30 p.m. in the area of village Mehas, District Patiala. Balwinder Singh (deceased) and complainant Joga Singh were injured during the occurrence. Balwinder Singh died on account of the injuries suffered by him. PW1 Dr. Sanjay Mathur conducted postmortem examination on the dead body of Balwinder Singh and found the following injuries on his person:-

“1. 2.5” x 0.8” stab wound fusiform in shape with clean cut margins present on the left side of the chest running in a horizontal direction 0.5” below and lateral to the left nipple.

The wound was cutting the skin, subcutaneous tissue through the lower border of the fourth rib, pleura, lung tissue and puncturing the left ventricle of the heart, which had a horizontal tear 2.5 cm long in its lateral wall. Left pericardial and pleural cavities were full of blood.

2. *1.5" x 0.5" obliquely placed stab wound fusiform in shape present on the lateral surface of left side of the chest, 1.6" below and lateral to the injury no.1. The wound was extending through the skin, subcutaneous tissue, puncturing the underline lung tissue in a medial direction. Left chest cavity is full of blood.*

3. *2 cm long vertically running superficial wound with clean cut margins, the wound cutting through only the skin and present on left side of the abdomen. 2.5" lateral to mid line and 2" above the level of umbilicus."*

As per opinion of PW1 Dr. Sanjay Mathur, the cause of death was shock and haemorrhage as a result of the aforesaid injuries which were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

Complainant Joga Singh was medico legally examined by PW3 Dr. Harjinder Singh. The copy of the medico legal report of the injured was proved by the doctor as Ex.PD wherein the injuries found on the person of the complainant were described as under:-

"1. 3.5 x 1.5 cm incised wound present horizontally on the Palmer surface inner side right hand 4 cm from the inner side right wrist joint, 4 cm from proximal IP joint little finger right

hand, 3 cm centre of palm right hand. Margins were regular. Bleeding was present and associated with pain and tenderness. X-ray was advised alongwith ortho consultation.

2. *C. shaped (curved teeth bite). Abraded confused present on the outer side right forearm in its middle associated with pain and tenderness. X-ray was advised.*

3. *Abraded confuses 1 x 1/2 cm with bluish discoloration associated with swelling over the upper lid left eye associated with pain and tenderness. Eye specialist consultation was advised.*

4. *Incised wound involving the Palmer surface of distal phalanx of middle finger right hand in its middle. Margins were regular. Bleeding was present associated with pain and tenderness. X-ray was advised alongwith ortho consultation.*

5. *Incised wound involving the distal part of Palmer surface of right finger of right hand. Margins were regular. Bleeding was present associated with pain and tenderness. X-ray was advised alongwith ortho consultation."*

All the aforesaid injuries on the person of the complainant were declared to be simple in nature. The kind of weapon used with regard to injuries No.1, 4 and 5 was stated to be 'sharp' and for the rest of the injuries to be 'blunt'.

To substantiate the charges, the prosecution examined two eyewitnesses of the occurrence, namely PW5 Joga Singh (complainant) and PW6 Satnam Singh (uncle of the complainant and the deceased). The

incident took place at the shop of Sandeep Singh alias Sonu, Electrician, when he had come to collect starter of the electric motor and Jagjit Singh alias Jit and Nirmal Singh alias Nimma had also come there and had asked him to pay the money taken by Harmeeek Singh alias Bhola from Jagjit Singh when they had gone on pilgrimage. As he told them to ask for the money from Harmeeek Singh alias Bhola, Jagjit Singh came down from his motorcycle and gave him fist blows on his left eye, back and chest and then went away alongwith Nirmal Singh on their Hero Honda motorcycle.

The second occurrence was stated to have taken place later during the day after complainant Joga Singh had got the starter fitted on his electric motor by Sandeep Singh and leaving the scooter, had taken the motorcycle of a relative of his brother Balwinder Singh and gone to village Sidhsar Alohran where Balwinder Singh was on duty and had told him about the occurrence. Balwinder Singh advised to report the matter to the police but then complainant Joga Singh received a message from Kulwant Singh son of Kabal Singh, who asked him not to go to the police and come to Grid Chowk, Nabha so that a compromise could be effected between him and Jagjit Singh. They all then gathered at the shop of Sandeep Singh alias Sonu at village Mehas. In the process of arriving at a compromise, an altercation started on the words to be used in the compromise on which Jagjit Singh took out a Kirch and gave a blow with the same hitting on the left side chest of Balwinder Singh. Jagjit Singh tried to gave another Kirch blow to Balwinder Singh, complainant Joga Singh caught the Kirch but pulling out the Kirch from his hand, leaving the palm and fingers of the complainant injured, he inflicted two more Kirch blows on the left phalanx

PW6 Satnam Singh was not a witness to the first occurrence that had taken place at the shop of Sandeep Singh (electrician) during which Jagjit Singh had given fist blows to complainant Joga Singh, but he was present when the parties had gathered for compromise at about 5:30 p.m. on the same day i.e. 27.06.2007 at the shop of Sandeep Singh. Corroborating the testimony of PW5 Joga Singh, PW6 Satnam Singh gave detailed narration of the second occurrence.

Importantly, PW5 Joga Singh and PW6 Satnam Singh unequivocally deposed that during the occurrence Nirmal Singh alias Nimma had a scuffle with Satnam Singh and Sobha Singh grappled with Malak Singh. Learned trial Court recorded a finding that all the three appellants-accused were sharing common intention at the time of commission of the crime. Accordingly, while Jagjit Singh alias Jit was convicted under Sections 302, 324 and 506 IPC, the other two Nirmal Singh alias Nimma and Sobha Singh were held guilty and convicted for commission of offence punishable under Sections 302 and 324 read with Section 34 IPC and 506 IPC.

Learned counsel for the appellants argued that the two witnesses on whose testimony the prosecution case rested, being near relatives of the deceased, were interested witnesses. The motive alleged was old, stale and trivial in nature. It appears improbable that Balwinder Singh, brother of the complainant would have been murdered on account of dispute between complainant Joga Singh and Jagjit Singh alias Jit over an amount of Rs.1000/- borrowed by a third person Harmeeek Singh from Jagjit Singh on a pilgrimage. Harmeeek Singh was not examined to prove the alleged

Balwinder Singh in any manner. Complainant Joga Singh, against whom it was alleged that Jagjit Singh had a grievance, was not first attacked at by Jagjit Singh or any of his companion. Even when the altercation was going on, complainant Joga Singh was not the target. As such, neither the motive nor the manner in which the occurrence took place appeared trustworthy.

On behalf of appellants Nirmal Singh alias Nimma and Sobha Singh, it was argued that their presence at the spot was not established. There was no evidence to prove that Nirmal Singh alias Nimma and Sobha Singh shared a common intention with Jagjit Singh alias Jit to commit any crime, what to say of heinous crime like murder. None of them was armed with any weapon. As per prosecution story also, they had accompanied Jagjit Singh to the spot for the purpose of compromise between him and complainant Joga Singh. They did not cause any injury either to the deceased or to any other person present with complainant Joga Singh. They did not extend any help to Jagjit Singh in causing injuries to deceased Balwinder Singh. The facts do not even indicate that they knew that Jagjit Singh was having a Kirch in his possession. Sobha Singh was not related to either of the parties and was not present when the first occurrence took place during day time in which Jagjit Singh had given first blows to complainant Joga Singh. The cause of the whole matter was not known to him. The allegation that Nirmal Singh had a scuffle with Satnam Singh and Sobha Singh grappled with Malak Singh, is not corroborated by any medical evidence as neither of them suffered any injury. With the said submissions, learned counsel argued that Section 34 IPC had been wrongly invoked by learned trial Court to convict the said two appellants under Section 302 IPC.

concerned, there is unimpeached testimony of PW5 Joga Singh and PW6 Satnam Singh. The money borrowed by Harmeeek Singh from appellant Jagjit Singh on a pilgrimage may be the genesis of the dispute but was not the motive which led to murder of Balwinder Singh. The motive arose when in the process of negotiating a compromise, an altercation pursued on the language to be used in the compromise. Therefore, it cannot be said that the motive was stale and trivial and hence improbable. The meeting of the parties had been convened to arrive at a compromise. From the side of the complainant, his paternal uncles, brothers and some other persons were present whereas with Jagjit Singh, Nirmal Singh and Sobha Singh were said to be present. The people participating in the meeting held for compromise could only be the eyewitnesses of the occurrence. Therefore, PW5 Joga Singh and PW6 Satnam Singh were natural witnesses. Otherwise also, it is also a settled proposition of law that the testimony of the witnesses cannot be put to suspicion merely because the witnesses are near relatives of the victim/deceased. The near relatives, in fact, would be the last persons to implicate anyone falsely for the murder of their kin and let the real culprit go scotfree.

It can be said without hesitation that the presence of appellants Nirmal Singh and Sobha Singh with Jagjit Singh at the time of occurrence stands duly established from the consistent and trustworthy evidence of the prosecution. However, the fact is that neither the complainant nor any other person of his group suffered any injury at the hands of either Nirmal Singh or Sobha Singh. It is also not the allegation that any of them was armed with any weapon. Sobha Singh was not even part of the first incident but

place at the shop of Sandeep Singh (electrician) during which Jagjit Singh gave fist blows to complainant Joga Singh. Importantly, in the said incident also no overt act was assigned to Nirmal Singh. At that moment as well, Jagjit Singh demanded money given by him to Harmeeek Singh and on feeling offended by the answer of complainant Joga Singh that he should ask for the money from Harmeeek Singh and not from him, had alighted from his motorcycle and had gone to complainant Joga Singh and given him fist blows. There also, it cannot be said that there was a pre-concerted or pre-arranged plan between Jagjit Singh and Nirmal Singh to cause hurt to complainant Joga Singh. At the spur of the moment also, Jagjit Singh alias Jit on his own had come down from his motorcycle and given fist blows to complainant Joga Singh.

Ordinarily, a person is responsible for his own act. A person can also be vicariously responsible for the act of others if he had the common intention to commit the offence. The words “common intention” imply a pre-arranged plan and acting in concert pursuant to the plan. Here, it shall be relevant to reproduce Section 34 IPC which reads as under:-

“Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

As is clear from the language of Section 34 IPC, it carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously liable for the acts of

“common intention” implies a pre-arranged plan and acting in concert pursuant to the plan. Thus, the common intention must be there prior to the commission of the offence in point of time, which need not be a long gap.

Under Section 34 IPC, a pre-concert in the sense of distinct previous plan is not necessarily to be proved. The common intention to bring about a particular result may also well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of crime showing a pre-arranged plan and prior concert. The common intention may develop in the course of the fight but there must be clear and unimpeachable evidence to justify that inference. A common intention under Section 34 IPC is to be understood in a different sense from the “same intention” or “similar intention” or “common object”. The persons having similar intention, which is not the result of the pre-arranged plan cannot be held guilty of the criminal act with the aid of Section 34 IPC. In **Virendra Singh vs. State of Madhya Pradesh, JT 2010(8) SC 319**, dealing with Section 34 IPC, the Hon'ble Apex Court observed as under:-

“Section 34 is not a substantive offence. It is imperative that before a man can be held liable for acts done by another, under the provisions of this section, it must be established that there was common intention in the sense of a pre-arranged plan between the two and the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are

both present, this section cannot apply.

Likewise, in **Girija Shankar vs. State of U.P. (2004) 3 SCC 793**, it was held by the Hon'ble Apex Court as under:-

“Section 34 as been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under [Section 34](#) if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true concept of the section is that if two or more persons intentionally do an act jointly, the position in law is just the same is if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application

of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision."

Similar is the view taken in **Abdul Sayeed vs. State of Madhya Pradesh, 2010(10) SCC 259.**

Reverting to the facts of the instant case, the star question which arises for adjudication in this appeal is whether appellants Nirmal Singh alias Nimma and Sobha Singh can be convicted u/s 302 IPC with the aid of Section 34 IPC. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled, first that the mental element or the intention to commit the criminal act conjointly with another or others; and the second is the actual participation in one form or the other in the commission of the crime.

The story of the prosecution, as observed above, was that after the first occurrence had taken place during day time, in which appellant Jagjit Singh had given fist blows to complainant Joga Singh and he (complainant) had gone and informed about the occurrence to his brother Balwinder Singh, who was on duty in village Sidhsar, Alohran and had been advised to report the matter to the police, complainant Joga Singh had received a message on his mobile phone from one Kulwant Singh, who told him not to report the matter to the police as he would get the compromise effected. Kulwant Singh called the complainant and Balwinder Singh to meet him at Grid Chowk, Nabha, from where all three of them came to the

made a telephonic call to Jagjit Singh who arrived after 15-20 minutes alongwith Nirmal Singh. Nishan Singh and Satnam Singh, both paternal uncles of the complainant alongwith Malak Singh, brother of the complainant and some other residents of the village also arrived at the spot. The matter with regard to compromise was being negotiated when a dispute arose with regard to the wording of the compromise. It is then that Jagjit Singh took out a Kirch from his “*dub*” and inflicted Kirch blows on the chest, left phalanx and abdomen of Balwinder Singh. Complainant Joga Singh suffered injuries on his palm and fingers of his left hand when he in order to save his brother caught the Kirch after first blow, but Jagjit Singh managed to pull out the same to give two more blows with the same to Balwinder Singh. “Dub” is underneath the belt of a trouser/ pants/ pajama/ Dhoti and is normally not outwardly visible. Therefore, some evidence was certainly required to prove that Nirmal Singh and Sobha Singh were aware of the fact that Jagjit Singh possessed a 'Kirch' in his *dub*.

It was stated in the First Information Report and was also deposed by PW5 complainant Joga Singh that during the course of occurrence, Nirmal Singh had a scuffle with Satnam Singh and Sobha Singh had grappled with Malak Singh. It may be mentioned here that the testimony of PW6 Satnam Singh is some what in variance to said statement of PW5 Joga Singh. He deposed that Jagjit Singh gave Kirch blows to Balwinder Singh and complainant also suffered injuries on his right palm and fingers when he tried to stop Jagjit Singh from giving Kirch blows and then Nirmal Singh quarrelled with him whereas Sobha Singh had a scuffle with his nephew Malak Singh. So according to PW6 Satnam Singh, after

Singh, Nirmal Singh quarrelled with him and Sobha Singh had a scuffle with Malak Singh.

Be that as it may, none of the witnesses stated that Nirmal Singh and Sobha Singh entered into a scuffle with PW6 Satnam Singh and Malak Singh, brother of the complainant, in order to prevent them from rescuing deceased Balwinder Singh or the complainant. Moreover, the appellants, complainant and his near relations had gathered for a compromise. Negotiations of compromise were in process when Jagjit Singh took out a Kirch and attacked with the same on deceased Balwinder Singh. It was not the allegation that immediately on arrival Jagjit Singh had attacked on Balwinder Singh and given him Kirch blows which proved fatal to his life. Rather, Jagjit Singh alias Jit violently attacked on deceased Balwinder Singh when dispute arose over the language to be used in the compromise. Neither Nirmal Singh and Sobha Singh had any weapon nor they caused any injury to PW6 Satnam Singh or Malak Singh with whom they allegedly had a scuffle. The witnesses did not state that their intention of scuffle was to deter them from rescuing the deceased.

Apparently, from the facts and circumstances, it cannot be said that the violent attack with a 'Kirch', attributed to appellant Jagjit Singh was result of any pre-concert or a pre-arranged plan. The circumstances do not even indicate that Nirmal Singh and Sobha Singh knew or were conscious of the fact that Jagjit Singh was carrying a weapon called 'Kirch'. Therefore, it can not be held that Jagjit Singh caused the fatal injuries to Balwinder Singh in furtherance of a common intention shared with appellant Nirmal Singh or appellant Sobha Singh or that the common intention developed at

the given state of facts, had there been a scuffle Satnam Singh or Malak Singh would have certainly suffered some injury.

In view of the aforesaid discussion, we are of the considered opinion that there was no pre-meditated concert or pre-arranged plan between appellant Jagjit Singh alias Jit and appellants Nirmal Singh alias Nimma and Sobha Singh. The violent attack of Jagjit Singh alias Jit was not in furtherance of a common intention between the appellants. As such, appellants Nirmal Singh alias Nimma and Sobha Singh cannot be held vicariously liable for the act of Jagjit Singh alias Jit. Accordingly, they are acquitted of the charges levelled against them. They be set at liberty if not required in custody in any other case.

The judgment of conviction and order on quantum of sentence qua appellant Jagjit Singh alias Jit is upheld and affirmed. The appeals CRA-D-967-DB-2011 and CRA-D-1120-DB-2011 qua appellants Nirmal Singh alias Nimma and Sobha Singh are allowed whereas the appeal CRA-D-1120-DB-2011 of appellant Jagjit Singh alias Jit is dismissed.

(M. Jeyapaul)
Judge

(Sneh Prashar)
Judge

29.09.2016
jitender

Whether speaking/ reasoned : Yes

Whether Reportable : Yes