

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.12529 of 2016 in/and
CRA No.D-1631-DB of 2014 (O&M)

Date of decision: 25.07.2016

Satnam Singh and Swaran Singh

... Applicants

Versus

State of Haryana and others

.... Respondents

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

Present: Mr. R.S. Bains, Advocate for the applicants.

S.S. Saron, J.

The applicants-Satnam Singh (PW-3) son of Swaran Singh and Swaran Singh (PW-1) son of Shyam Singh have filed the Criminal Miscellaneous application seeking leave to appeal against the acquittal of Sukhdev Singh son of Mukhtiar Singh, Gagandeep Singh son of Sukhdev Singh and Sukhwinder Singh alias Chhinda son of Darshan Singh (respondents No.2 to 4) by the learned Additional Sessions Judge, Kaithal in pursuance of his judgment and order dated 26.08.2014. In terms of the said judgment and order, Jagdish (accused No.1) son of Mukhtiar Singh has been convicted for committing the offences punishable under Sections 302 and 323 Indian Penal Code ('IPC' – for short); besides, Section 27 of the Arms Act, 1959. By a separate order passed on 05.09.2014, he (Jagdish) has been sentenced to undergo rigorous imprisonment for life; besides, pay a fine of Rs.1.00 lakh and in default in payment of

fine, undergo imprisonment for one year for the offence under Section 302 IPC. He has also been sentenced to undergo rigorous imprisonment for six months separately for the offences under Sections 323 IPC and Section 27 of the Arms Act; besides, pay a fine of Rs.2,000/- separately for each of the said offences and in default thereof undergo imprisonment for fifteen days. The sentences of imprisonments that have been imposed, however, have been ordered to run concurrently in respect of Jagdish (accused No.1), who is not a party in the present application seeking leave to appeal.

FIR (Ex.PAA) in the case was registered on the statement (Ex.PA) of Swaran Singh (applicant No.2-complainant) (PW-1) son of Shyam Singh, which he made before Inspector/SHO Rohtash Kumar, Police Station Siwan (PW-15). The complainant Swaran Singh stated that he was a resident of village Nagal, Police Station Siwan, District Kaithal and was aged 80 years. He had two sons. Dalbir Singh was his elder son while Satnam Singh (PW-3) was younger. They both resided separately in the village. The complainant resided with Dalbir Singh and he did agricultural work jointly with them. Satnam Singh had two sons, Rajvinder Singh aged 22 years who was the elder of the two sons and Richhpal Singh aged 20 year was the younger son (both deceased in the case). They had one acre of custodian land with them; while Mukhtiar Singh and Jagtar Singh sons of Makhan Singh, his wife's brothers had $4\frac{3}{4}$ acres of custodian land, which adjoined the one acre land of the complainant and his son Dalbir Singh. Out of the one acre custodian land of the complainant and his son Dalbir

Singh, their one kanal land was in the possession of Mukhtiar Singh and Jagtar Singh. The complainant had asked his brothers-in-law (wife's brothers) Mukhtiar Singh and Jagtar Singh for leaving the said one kanal land, which was in their possession. They, however, kept a grudge against him (Swaran Singh - PW1) on this account. During the night on 23.06.2013, when the complainant Swaran Singh was sleeping at the tube-well motor which he had taken on lease and the time would be at about 10:30 p.m., then Jagdish (accused No.1) son of Mukhtiar Singh and Gagandeep (respondent No.3) son of Sukhdev Singh residents of Nagal inflicted 'lathi' blows on his legs and arms while he was sleeping. The complainant raised an alarm then both of them (i.e. Jagdish Singh and Gagandeep Singh) fled away from the spot and went to their tube-well, while the complainant due to fear went to his house.

Then in the morning on 24.06.2013 at about 6:00 a.m. the son of the complainant, namely, Satnam Singh (PW-3) and his grandsons Richhpal Singh and Rajvinder Singh sons of Satnam Singh went to the land which they had taken on lease for irrigating it with the tube-well. The complainant and his son Dalbir Singh also followed behind them. The complainant and his son were standing under a mulberry tree. At that time, in the adjoining field, which Mukhtiar Singh etc. had taken on lease from Hoshiar Singh son of Gurcharan Singh, Mukhtiar Singh son of Makhan Singh carrying a 'gandasi' in his hand was standing. Jagdish Singh (accused No.1) son of Mukhtiar Singh was carrying a double barrel gun. Amrik Singh son of Mukhtiar Singh was empty handed. Sukhdev Singh (respondent No.2) son of Mukhtiar Singh was carrying a 'lathi' in his

hand. Gagandeep Singh (respondent No.3) son of Sukhdev Singh was carrying a 'danda'; besides, the brother-in-law (wife's brother) of Sukhdev Singh, who was resident of Tharwa (i.e. Sukhwinder Singh alias Chhinda - respondent No.4), was carrying a 'lathi'. Ranjit Singh son of Jagtar Singh was carrying a 'gandasi' in his hand.

Mukhtiar Singh raised a 'lalkara' that Satnam Singh etc. be taught a lesson for demanding release of one kanal land. On his saying this, all of them proceeded towards the tube-well of the complainant. Then Jagdish Singh (accused No.1) son of Mukhtiar Singh at a distance of one-half 'killa' (acre) (measurement of distance in acres) from the double barrel gun that he was carrying fired at Rajvinder Singh, the grandson of the complainant, who was irrigating the paddy plantings. The fire arm shot hit Rajvinder Singh on the back of his right shoulder. On suffering the fire arm shot, Rajvinder Singh, the grandson of the complainant, fell down there. Then Amrik Singh, Sukhdev Singh (respondent No.2), Gagandeep Singh (respondent No.3) and the wife's brother of Sukhdev Singh resident of Tharwa (i.e. Sukhwinder Singh alias Chhinda - respondent No.4) and Ranjit Singh by dragging him took him to their tube-well and Mukhtiar Singh and Jagdish Singh came near the tube-well of the complainant. They asked the complainant side to run away otherwise they would shoot. Then Jagdish Singh (accused No.1) with a double barrel gun that he was carrying fired a shot at Richhpal Singh, the grandson of the complainant, which hit him on his chest and on suffering the fire arm shot, Richhpal Singh fell on the ground. Then Jagdish Singh with a double barrel

gun fired at Satnam Singh, the son of the complainant, which hit him on his left arm. Then both Mukhtiar Singh and Jagdish Singh went to their tube-well. The complainant and his son Dalbir Singh then proceeded towards the tube-well to be with Rajvinder Singh, the grandson of the complainant. Then Mukhtiar Singh raised a 'lalkara' that in case they came towards them then they would shoot at them. Someone had made a phone call to the police station and after sometime on seeing the police vehicle, Mukhtiar Singh etc. with their weapons went away from the spot along the fields towards village Gogh. Thereafter many persons from the village came at the spot. The complainant got his statement recorded, which was attested by Inspector/SHO Rohtash Kumar, PS Siwan (PW-15).

Police proceedings were recorded to the effect that on 24.06.2013 a telephone call was received at the police station, from which it was learnt that there was firing of gun shots at village Nagal. Satnam Singh and his two sons had been hit by bullets. They were asked to reach at the spot. On this information, the SHO along with SI Ved Parkash 301/A (PW-2), ASI Abhey Ram, HC Raghbir Singh 404, HC Subhash Chand 153, Constable Dilawar Singh 1090 on a government vehicle No.HR-68-7425 being driven by EASI Krishan Kumar 676 reached the place of occurrence at village Nagal for conducting necessary proceedings. There at the spot Swaran Singh (complainant) aforesaid made his above statement. Whatever he had got written was recorded and was read-over and explained to him. He after accepting his statement to be correct

put his left thumb impression below it, which was attested by Inspector/SHO Rohtash Kumar.

From the statement of the complainant Swaran Singh, offences under Sections 148, 149, 307 and 302 IPC; besides, Section 27 of the Arms Act were found to be made out. Accordingly by recording the writing it was sent to the Police Station through Constable Dilawar Singh No.1090 for necessary action. The FSL team through telephone was asked to reach at the spot. After registration of the FIR, its number was asked to be informed. The SHO along with his companions were conducting investigations at the spot. The special reports were asked to be sent to the higher officials through a special Constable. The statement was signed by Rohtash Kumar, Inspector/SHO, Police Station Siwan on 24.06.2013 at 10:30 a.m. The Special Report was received by the Duty Judicial Magistrate Ist Class, Kaithal on 24.06.2013 from ASI Suchitranand No.845 at 1.50 p.m. at his Camp Office.

Investigation in the case was conducted by Inspector Rohtash Kumar (PW-15), who was posted as SHO at Police Station Siwan on 24.06.2013. When he reached the spot, the dead bodies of Richhpal Singh and Rajvinder Singh were lying in the field. Swaran Singh (complainant) and his family members were found present there. The dead bodies were photographed by Inspector Rohtash Kumar, with his digital camera. A photographer¹ was also called at the spot and he took photographs. The scene of crime team² was also informed and asked to reach at the spot. The DSP

1. Photographer Shamsher Singh (PW-13) was called at the spot and he took photographs Exs.P1 to P13.

2. The In charge Scene of Crime Team Krishan Kumar Senior Scientific Officer, Police Lines, Kurukshetra (PW-12) visited the spot and prepared the scene of crime visit report Ex.PRR on 26.06.2013.

and SP also visited the spot. Inspector Rohtash Kumar (PW-15) recorded the statement of the complainant Swaran Singh at the spot. The statement Ex.PA was read over to him and he after admitting the same to be correct put his thumb impression. Inspector Rohtash Kumar (PW-15) made his endorsement Ex.PTT beneath it. The statement was sent through Constable Dilawar Singh to Police Station Siwan. The dead body of Richhpal Singh was inspected. Blood stained earth from the spot near the dead body was lifted. It was put in a plastic 'dibbi' (box) and the same was made into a parcel which was sealed with the seal of 'RK'. The seal after use was handed over to SI Ved Parkash. The plastic 'dibbi' (box) was taken in possession by the police vide recovery memo Ex.PC. It was signed by SI Ved Parkash and ASI Abhay Ram as witnesses. Near the dead body of Rajvinder, there was a pair of slippers which were taken in possession by converting them into a parcel. The statements of Dalbir Singh son of Swaran Singh, SI Ved Parkash, ASI Abhay Ram and Ramesh Kumar Sarpanch were recorded by Inspector Rohtash Kumar (PW-15) under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' - for short). Inquest proceedings in terms of Section 174 Cr.P.C. in respect of both the dead bodies were conducted at the spot. The spot was also inspected by the scene of crime team comprising of Krishan Kumar, Senior Scientific Officer (PW-12). Rough site plan Ex.PUU with correct marginal notes was prepared. Constable Dilawar Singh through whom the 'ruqa' (memo.) was sent to the police station also returned back at the spot and handed over the case file to Inspector Rohtash Kumar (PW-15).

Both the dead bodies were taken to General Hospital, Kaithal for postmortem examination. A 'ruqa' (memo.) regarding admission of Satnam Singh (PW-3) in the hospital was received with the medico legal report (MLR). An application Ex.PVV was moved by Inspector Rohtash Kumar (PW-15) to the Medical Officer, General Hospital, Kaithal for taking opinion regarding the fitness of Satnam Singh, injured for making a statement. The doctor by his endorsement Ex.POO declared the injured fit to make a statement. The statement of Satnam Singh injured was recorded at General Hospital, Kaithal by Inspector Rohtash Kumar (PW-15).

An application Ex.PHH along with inquest papers of Rajvinder Singh was moved for conducting the postmortem examination on the dead body of Rajvinder Singh. A Board of Doctors of consisting of Dr. Satya Pal Singh, Dr. Aman Sood (PW-10) and Dr. Minakshi/Dr. Suman was constituted to conduct the postmortem examination. The doctors after the postmortem examination had been conducted, handed over to Inspector Rohtash Kumar (PW-15), the postmortem report Ex.PJJ along with an envelope, police papers, sample seal and parcels, which were taken in possession vide recovery memo Ex.PE. These were attested by SI Ved Parkash (PW-2) and ASI Abhay Ram.

Another application Ex.PGG was moved along with inquest papers before the doctor for conducting the postmortem examination of Richhpal Singh. After postmortem examination, the doctor handed over to Inspector Rohtash Kumar (PW-15), the inquest papers duly initialed along with postmortem report Ex.PKK along with sample seal, parcels and two x-rays of the chest. These

were taken in possession by the police vide recovery memo Ex.PD, which was attested by SI Ved Parkash and ASI Abhay Ram. The dead bodies were thereafter handed over to their family members.

Inspector Rohtash Kumar (PW-15) along with the police force searched for the accused in village Nagal, Kheri Ghulam Ali and other villages. When they were at the bus stand Kangthali, one Baljinder Singh resident of Sotha met him and he produced Jagdish (accused No.1) and Sukhdev (respondent No.2) before him. Both were interrogated at the bus stand Kangthali. Jagdish (accused No.1) was interrogated first. He during his interrogation made a disclosure statement Ex.PF, which was reduced into writing and was thumb marked by the accused. It was attested by SI Ved Parkash and ASI Abhay Ram. Then Sukhdev (respondent No.2) was interrogated and he made a disclosure statement Ex.PG which was reduced into writing. It was signed by the accused and attested SI Ved Parkash and ASI Abhay Ram.

Jagdish (accused No.1) in pursuance of his disclosure statement got recovered a 12 bore double barrel gun (Ex.MO/9) along with two empty cartridges (Ex.MO/10 and Ex.MO/11) and one live cartridge from the place where these were concealed. The gun was converted into a parcel. The empty and live cartridges were also converted into separate parcels and sealed with the monogram of 'RK'. The seal after use was handed over to SI Ved Parkash. The parcels were taken in possession vide recovery memo Ex.PH, which was attested by SI Ved Parkash and ASI Abhay Ram. Site plan Ex.PXX of the place of recovery was prepared. Both the accused i.e. Jagdish and Sukhdev Singh demarcated the place of occurrence and

demarcation Ex.PJ was prepared, which was thumb marked by Jagdish and signed by Sukhdev. The supplementary statements of SI Ved Parkash and ASI Abhay Ram were recorded by Inspector Rohtash Kumar (PW-15). Both the accused along with the case property were brought to police station Cheeka and the case property was deposited with the MHC of Police Station Siwan.

Inspector Rohtash Kumar (PW-15) along with SI Ved Parkash, HC Raghubir and Constable Shishpal on 25.06.2013 went in a Government vehicle to Police Station Cheeka. Both the accused Jagdish and Sukhdev Singh were taken out from the lock up. They were interrogated by Inspector Rohtash Kumar (PW-15) in the presence of SI Ved Parkash and HC Raghubir. They were produced in the Court and two days police remand was taken from the Court. Then the accused were taken to General Hospital, Kaithal where they were medically examined. An application Ex.PQQ/1 was moved by Inspector Rohtash Kumar (PW-15) for taking opinion regarding the nature of injuries on the person of Satnam Singh. The doctor made his endorsement Ex.PQQ on the same. The said endorsement was to the effect that the injuries on the Satnam Singh were caused by firearm.

Inspector Rohtash Kumar (PW-15) then went to CHC, Siwan with the accused where Swaran Singh complainant met him. An application Ex.PCC was moved by Inspector Rohtash Kumar (PW-15) for conducting the MLR of Swaran Singh complainant. The complainant was examined by Dr. Navraj Singh, MO, CHC Siwan (PW-8) and MLR (Ex.PDD) dated 25.06.2013 after medical examination was handed over to Inspector Rohtash Kumar (PW-

15). A search for the accused was then carried out in Kheri Ghulam Ali, Nagal and then they returned to Police Station Siwan. The statement of EASI Suchitranand was recorded under Section 161 Cr.P.C.

Both the accused Jagdish and Sukhdev Singh were taken out from the police lock up on 26.06.2013. Jagdish accused retracted from his previous statement. Then he was interrogated and he made a disclosure statement (Ex.PYY). Similarly Sukhdev Singh was interrogated. He made a disclosure statement Ex.PZZ. Both the accused were then taken for effecting recoveries. Jagdish got recovered the license of his double barrel gun in terms of his disclosure statement from the place it was concealed. It was taken in possession by the police vide recovery memo (Ex.PAAA). The recovery memo was attested by ASI Chander Bhan and thumb marked by Jagdish (accused No.1). Sukhdev then got recovered a 'lathi' (Ex.MO/12) from the place where it was concealed in pursuance of his disclosure statement. The 'lathi' was measured and its sketch (Ex.PBBB) was prepared. The 'lathi' was converted into a parcel and the parcel was taken in possession by the police vide recovery memo (Ex.PCCC). The statement of Chander Bhan ASI was recorded under Section 161 Cr.P.C. Rough site plan (Ex.PDDD) of the place of recovery was prepared.

Inspector Rohtash Kumar (PW-15) along with the police force then returned back and reached bus stand Siwan. Secret information was received there regarding Gagandeep (respondent No.3) being present at the bus stand, Cheeka and if a search was conducted, he could be apprehended. Inspector Rohtash Kumar

(PW-15) along with the police force reached Cheeka 'chowk' (crossing), Cheeka where a young boy was found present and on the directions of an informer he was apprehended. On inquiry, he disclosed his name as Gagandeep (respondent No.3). Inspector Rohtash Kumar (PW15) then along with Gagandeep and the police force returned to police station Siwan where the case property was deposited with the MHC. The statement of ASI Satyawan was recorded under Section 161 Cr.P.C.

Gagandeep (respondent No.3) was taken out from the police lock up and interrogated at police station Siwan on 27.06.2013. He suffered a disclosure statement from which he later retracted. On the same day i.e. 27.06.2013, Jagdish and Sukhdev along with Gagandeep were produced in Court. Jagdish and Sukhdev Singh were remanded to judicial custody while police remand of Gagandeep (respondent No.3) was obtained for two days. Gagandeep was medically examined. He was interrogated on 28.06.2013 and he made a disclosure statement (Ex.PK), which was attested by the witnesses and signed by him. Gagandeep (respondent No.3) then demarcated the place. This was objected to being not admissible. Memo (Ex.PN) was prepared in respect of the demarcation of the place where in the fields of Hoshiar Singh on 24.06.2013, Jagdish Singh son of Mukhtiar Singh and others got down from their vehicle and fired with a 12 bore gun on Richhpal Singh and Rajvinder Singh and committed their murder. Then Gagandeep (respondent No.3) led the police party and in pursuance of his disclosure statement (Ex.PK), got recovered a 'danda' (Ex.MO/13) from the place where it was concealed. The 'danda' was

measured and its sketch (Ex.PL) was prepared. It was converted into a parcel and taken in possession by the police vide recovery memo (Ex.PM). Rough sketch (Ex.PEEE) of the place of recovery was prepared and statements of SI Ved Parkash and HC Raghbir were recorded. Gagandeep was then taken to police station Siwan. When the police party had reached the bus stand Siwan, Baljinder Singh of village Tharwa produced accused Sukhwinder (respondent No.4) before Inspector Rohtash Kumar (PW-15). He was interrogated and arrested. The police party then went to police station Siwan and the case property was deposited with the MHC. The accused Sukhwinder and Gagandeep were kept in police station Siwan.

Sukhwinder (respondent No.4) was taken out from the police lock up on 29.06.2013. He was interrogated in the presence of SI Ved Parkash and HC Raghbir Singh. During interrogation he made a disclosure statement Ex.PO from which he later retracted. Sukhwinder (respondent No.4) was again interrogated and he made a disclosure statement Ex.PQ which was reduced into writing. It was attested by SI Ved Parkash and signed by the accused. Sukhwinder (respondent No.4) was produced in Court and a police remand for one day was obtained from the Court. Thereafter, he in pursuance of his disclosure statement (Ex.PQ), got recovered a 'lathi' (Ex.MO/14) from the place where it was concealed. The 'lathi' was measured and its sketch Ex.PR was prepared, which was attested by the witnesses. The 'lathi' was converted into a parcel and taken in possession vide recovery memo Ex.PS, which was attested by the witness and was signed by Sukhwinder Singh (respondent No.4).

On the same day, he demarcated the place of occurrence. A memo Ex.PT in respect of the same was prepared. The statement of HC Raghbir and supplementary statement of SI Ved Parkash were recorded.

Inspector Rohtash Kumar (PW-15) on 04.07.2013 recorded the statement of MHC Ram Juari and Constable Kanwaljit Singh. Then he along with the police force went to the Tehsil Office Siwan on 06.07.2013. There he moved an application Ex.PFFF to the Naib Tehsildar, Siwan for appointing a Patwari to prepare a scaled site plan of the place of occurrence. The scaled site plan Ex.PY was prepared. Photographs were obtained from Shamsheer Singh Photographer (PW-13) on 18.07.2013. His statement under Section 161 Cr.P.C. was recorded.

On completion of the investigation, Police report in terms of Section 173 Cr.P.C. was prepared and filed in the Court of the learned Sub Divisional Judicial Magistrate, Guhla on 03.08.2013. The learned Magistrate from perusal of the police report observed that it revealed that the accused had been sent up for trial alleging commission of offences under Sections 302, 307, 323 read with Section 34 IPC; besides, Section 27 of the Arms Act. Since the offences under Sections 302 and 307 IPC were exclusively triable by the Court of Sessions Judge at Kaithal, the case was committed to the said Court vide order passed on 07.08.2013. The case was received in the Court of learned Additional Sessions Judge, Kaithal on 16.08.2013.

The learned Additional Sessions Judge heard arguments on the charge on 23.10.2013 and perused the police report under

Section 173 Cr.P.C. along with the documents. A prima facie case for the commission of offences punishable under Sections 323, 307 and 302 read with Section 34 IPC; besides, Section 27 of the Arms Act, it was observed, were made out. Accordingly, charge-sheet was framed on the allegations against accused Jagdish son of Mukhtiar Singh, Sukhdev Singh son of Mukhtiar Singh, Gagandeep son of Sukhdev and Sukhwinder alias Chhinda son of Darshan Singh on the allegations that they on 23.06.2013 at about 10.30 pm in the area of village Nagal in furtherance of their common intention voluntarily caused simple hurt to Swaran Singh (PW-1) with blunt weapons and thereby committed an offence punishable under Section 323 read with Section 34 IPC. Secondly, on 24.06.2013 at about 6:00 a.m. in the area of village Nagal, they all in furtherance of their common intention caused the murder of Rajvinder Singh and Richhpal Singh and thereby committed an offence punishable under Section 302 read with Section 34 IPC. Thirdly, on the same date, time and place, they all in furtherance of their common intention voluntarily caused injuries to Satnam Singh and Swaran Singh with such intention or knowledge and under such circumstances if by causing the injuries, they had caused the death of Satnam Singh and Swaran Singh, they would have been guilty of murder and thereby had committed an offence punishable under Section 307 read with Section 34 IPC. Lastly, on the same date, time and place, Jagdish being a licensed holder of DBBL 12 bore gun misused the same by firing upon Satnam Singh, Rajvinder Singh and Richhpal Singh and committed the murders of Rajvinder Singh and Richhpal Singh and caused injuries to Satnam Singh

thereby he committed an offence punishable under Section 27 of the Arms Act. The accused were directed to be tried of the said charges. The charges were read over and explained to the accused in simple Hindi. They understood the charge and pleaded not guilty and claimed trial.

The prosecution in order to establish its case examined as many as fifteen witnesses; besides, tendered in evidence the FSL reports (Ex.PU) and (Ex.PV) as also other documents.

The statements of the accused in terms of Section 313 Cr.P.C. were recorded and the substance of the evidence appearing against them was put to them. Jagidsh (accused No.1) stated that it was a false case and the same was registered against him in connivance of the complainant party and the police after due deliberations on a fabricated story. All the members of his family were falsely involved in the case. The custodian land was being ploughed by his family for the last 40-45 years. The complainant party was ploughing the land without giving any charges to the custodian department. He prepared one acre of land for paddy plantation on 23.06.2013. Swaran Singh complainant also got paddy planted in one acre of land. He (Jagdish) requested the labourers who were working in the field of Swaran Singh complainant to plant paddy on the next morning in his one acre of land. Swaran Singh complainant started abusing him and there was exchange of hot words with him. On this, they grappled with each other. After that the complainant (Swaran Singh) felt insulted and went to his house.

Then on 23.06.2013 at about 9:00/10:00 p.m.; Swaran Singh, his sons Dalbir Singh and Satnam Singh, his grandsons Richhpal Singh and Rajvinder Singh (both since deceased) and nephews of Swaran Singh attacked his house along with arms. Their house was situated in the fields at a distance of four-five acres from the village 'abadi' (habitation). The complainant side, it is stated, was residing in the village 'abadi'. The main gate of their house was closed from inside. However, their women requested the complainant party to go away stating that the matter would be settled in the morning.

It is further stated by Jagdish that he went to the fields of Hoshiar Singh on 24.06.2013, which were on lease with them. He was near the water storage tank for the tube-well. He was carrying his licensed gun as he apprehended danger from the complainant side due to the incident on the previous night. It is alleged that in the meantime Swaran Singh complainant armed with his licensed gun along with his aforesaid sons, grandsons and nephews who were also armed with 'lathis' and 'gandasis' came at the tube-well of Hoshiar Singh. Swaran Singh, it is alleged, fired shot from his gun upon him. However, the said fire hit Rajvinder on the upper part of his left arm. No other accused was present there nor was the body of Rajvinder dragged by any of them as alleged by the prosecution. Richhpal Singh was having a 'gandasi' and when he was in the process of attacking Jagdish, he felt immediate danger from the complainant party and fired on the lower portion of Richhpal Singh. However, he at once sat down and the fire hit him on his chest and he died there. Gagandeep Singh, Sukhdev Singh

and Sukhwinder Singh, it is stated, were not present at the spot. At about 06:30 p.m. (sic. a.m.), Jagdish on seeing the police party went away from the spot. The dead body of Richhpal Singh was shifted by the complainant to the tube-well of Baljeet Singh whose land was taken on lease by them. It is stated by Jagdish that he did not cause any injury to Satnam Singh, as alleged. He was innocent in the present case and the case had been manufactured (sic. planted) by the complainant party in connivance with the police.

Sukhdev Singh (respondent No. 2), in his defence, stated that he was innocent. All the male members of the family of Mukhtiar Singh and Jagtar Singh were involved in this case after due deliberations and consultations after manufacturing and concocting a story by the complainant in connivance with the police. He was not present at the spot, as alleged. He was handicapped and did not have one hand as the same was amputated thirty years earlier. He had been operated for heart on 29.06.2011 and a pace-maker had been put in his heart. He was still under treatment from Government Hospital, Kaithal being in judicial custody.

Gagandeep Singh (respondent No.3), in his defence, stated that he was innocent. All the male members of the family of Mukhtiar Singh and Jagtar Singh were involved in this false case after due deliberations and consultations and after manufacturing and concocting a story by the complainant in connivance with the police. He was not present at the spot, as alleged. He was a student of B.A. Final year and was studying at R.K.S.D. College, Kaithal, at that time.

Sukhwinder Singh alias Chhinda (respondent No.4), in his defence, stated that he was innocent. Being a close relative of Mukhtiar Singh, he had been falsely involved in the present case after due deliberations and consultations and after manufacturing and concocting a story by the complainant in connivance with the police. He was not present at the spot, as alleged.

In defence, 'Jamabandi' of the year 2012-13 was tendered in evidence as Ex. DB and the defence evidence was closed.

The learned Additional Sessions Judge, Kaithal, after considering the evidence and material on record, has convicted Jagdish (accused No.1) while Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4) have been acquitted. The applicants seek leave to appeal against the acquittal of respondents No.2 to 4.

Learned counsel appearing for the applicants has submitted that the learned trial Court erred in rejecting the first incident that had occurred on 23.06.2013 at about 10:30 p.m. when the complainant-Swaran Singh was sleeping at his tube-well situated on the land which they had taken on lease and injuries were caused to him. The said incident, which had occurred a day earlier to the actual incident, has not been accepted merely on the ground that the complainant did not inform the police about the incident. It is stated that the complainant Swaran Singh was 80 years old and it was at about 10:30 p.m. when the incident had occurred. Thereafter, on the next day at about 06:00 a.m. his grandsons were killed. Therefore, there was no time to inform about

the previous incident that had occurred on 23.06.2013. It is submitted that the other ground for discarding the earlier incident by the learned trial Court was that there were no injuries or blood present on the person of the complainant. It is submitted that the injuries were caused with 'lathis' and 'dangs', which were internal injuries. Moreover, the delay in the medical examination of the complainant is not deliberate due to the unfortunate incident that had occurred on 24.06.2013.

It is submitted that in the second incident that occurred on 24.06.2013 both the grandsons of the complainant, who were the sons of Satnam Singh (applicant No.1), had died and respondents No. 2 to 4 were also responsible for their death. Strong reliance is placed on the deposition of the complainant-Swaran Singh (PW-1) and applicant No.1 - Satnam Singh (PW-3).

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the applicants and with his assistance have gone through the trial Court records, which were requisitioned.

The complainant-Swaran Singh while appearing as PW-1 reiterated his statement (Ex.PA) on the basis of which FIR (Ex.PAA) was registered on 24.06.2013. As has already been noticed, the sons of the complainant-Swaran Singh (PW-1), namely, Satnam Singh (applicant No.1) and Dalbir Singh, were residing separate in the village. Their cultivation, however, was joint. Satnam Singh (applicant No.1) had two sons, namely, Rajvinder Singh and Richhpal Singh (both deceased in the case). The complainant had one acre of custodian land in village Nagal. Mukhtiar Singh and

Jagtar Singh sons of Makhan Singh were the wife's brothers of Swaran Singh-complainant (PW-1). They had 4¾ acres of custodian land in village Nagal. The custodian lands of Swaran Singh - complainant (PW-1) and that of Mukhtiar Singh and Jagtar Singh, his brothers-in-law, were adjacent to each other. Mukhtiar Singh and Jagtar Singh according to the complainant had illegally occupied one kanal of custodian land of the complainant-Swaran Singh. He asked them to leave his illegally occupied land. On this, Mukhtiar Singh and Jagtar Singh kept a grudge against the complainant.

The complainant was sleeping on the land which he had taken on lease during the night on 23.06.2013 when at about 10:30 p.m. injuries were caused to him with 'lathis' on his legs and hands by Jagdish (accused No.1) as also Gagandeep Singh (respondent No.3) son of respondent No.2 - Sukhdev Singh. He (complainant) raised an alarm and both the accused, i.e. Jagdish and Gagandeep Singh, went to their tube-well. The complainant due to fear came to his village.

In respect of the second incident, it is stated by the complainant that Satnam Singh, his son with his two grandsons, namely, Rajvinder Singh and Richhpal Singh on 24.06.2013 at about 05:45/06:00 p.m. (sic. a.m.) went to their agricultural land which they had taken on lease. They had gone for irrigating it. Immediately, he (complainant) along with his elder son, namely, Dalbir Singh followed them. The complainant and his son - Dalbir Singh were standing under the mulberry tree. Mukhtiar Singh son of Makhan Singh had also taken agricultural land on lease from

Hoshiar Singh. The land taken on lease by Mukhtiar Singh was near the land taken on lease by the complainant. It is further stated that Jagdish Singh (accused No.1), Mukhtiar Singh son of Makhan Singh, Sukhdev Singh (respondent No.2) son of Mukhtiar Singh, Gagandeep Singh (respondent No.3) son of Sukhdev Singh, Ranjit Singh son of Jagtar Singh, Amrik Singh son of Mukhtiar Singh, Chhinda alias Sukhwinder Singh (respondent No.4) son of Darshan Singh, who is the brother-in-law of Sukhdev Singh (respondent No.2) were near their tube-well.

Jagdish Singh (accused No.1) was carrying a double barrel gun. Mukhtiar Singh and Ranjit Singh were carrying a 'gandasi' each. Sukhwinder Singh alias Chhinda (respondent No.4) had a 'dang/lathi'. Amrik Singh was empty handed. Sukhdev Singh (respondent No.2) was carrying a 'lathi' in his hand. Gagandeep Singh (respondent No.3) was having a 'danda' in his hand. The grandson of the complainant, namely, Rajvinder Singh went to irrigate the paddy plantings. At that time, Mukhtiar Singh raised a 'lalkara' and said that a lesson be taught to Satnam Singh (applicant No.1) for asking for one kanal land to be vacated. According to the complainant, all the seven assailants came towards their tube-well. When they had reached near his grandson Rajvinder Singh, then Jagdish Singh (accused No.1) fired a shot from his gun which hit on the right shoulder of Rajvinder Singh, who fell down. Five accused, namely, Amrik Singh, Sukhdev Singh (respondent No.2), Chhinda alias Sukhwinder Singh (respondent No.4), Gagandeep Singh (respondent No.3) and Ranjit Singh carried the grandson of the complainant to their tube-well 'kotha'.

Thereafter, Jagdish Singh (accused No.1) and Mukhtiar Singh came towards their tube-well. Mukhtiar Singh asked them to run away otherwise they would be killed. Jagdish Singh (accused No.1) fired at Richhpal Singh, who on being hit with firearm and getting injured fell down. Thereafter, Jagdish Singh (accused No.1) again fired from his gun which hit on the left arm of his son Satnam Singh (PW-3). Both of them went towards their tube-well. After some time, the complainant with his son - Dalbir Singh went towards the tube-well of the accused to see his grandson - Rajvinder Singh. Again Mukhtiar Singh said that if they came towards their tube-well, they would be murdered. Thereafter, they came back to the tube-well. In the meantime, somebody had informed the police about the incident on telephone. After some time, the police came and on seeing the police vehicles, all the accused ran away towards village Ghogh through the fields. Satnam Singh was taken to General Hospital, Kaithal by Harjinder Singh.

Swaran Singh - complainant (PW-1) was cross-examined at considerable length. He stated that Sukhdev Singh (respondent No.2) had four brothers-in-law, i.e. his wife's brothers, and they were residing at village Tharwa. He did not name Chhinda alias Sukhwinder Singh (respondent No.4) in his statement Ex. PA. He had been told in Court to say so on the day he was deposing in Court, i.e. on 30.11.2013. On the day of incident, the people present there were disclosing the name of Chhinda alias Sukhwinder Singh (respondent No.4). He did not know the names of other three wife's brothers of Sukhdev Singh (respondent No.2). He had not been asked by the police to identify this accused

(Sukhdev Singh) in any test identification parade. It is stated as correct that Amrik Singh was serving in the Police Department and was posted at Ambala. He (PW-1) did not know as to whether Amrik Singh's children were residing at Ambala in police residential house. Mukhtiar Singh, it is stated, was aged about 70 years. It is stated as correct that the custodian land was being sown by him (the complainant) as well as Mukhtiar Singh etc. for the last 40-45 years and they had occupied this one kanal land since then. He (Swaran Singh – PW1) had not filed any suit regarding this one kanal land. He had a licence (i.e. an arms licence) and had a single bore barrel gun.³

Further cross-examination of Swaran Singh (PW-1) was conducted. He was confronted with his statement Ex. PA wherein it is recorded that when they reached near his grandson Rajvinder Singh, then Jagdish (accused No.1) fired a shot from his gun. In the statement (Ex. PA), it was not so recorded specifically. It is stated that he did not state before the police that Jagdish (accused No.1) son of Mukhtiar Singh fired a shot through his double barrel gun from a distance of half acre from their tube-well. He was confronted with his statement (Ex.PA) where it was recorded as such in portion 'A' to 'A'. Other discrepancies were got confronted with. However, it is to be noticed that nothing in the examination-in-chief or in the cross-examination has been brought out as regards any overt act attributed to Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4).

3. At this stage an application was filed under Section 319 CrPC for summoning additional accused, namely, Mukhtiar Singh son of Makhan Singh, Ranjit Singh son of Jagtar Singh and Amrik Singh son of Mukhtiar Singh. The said application was dismissed on 21.01.2014.

Satnam Singh (PW-3), who is the son of the complainant - Swaran Singh, has deposed on the lines of his father Swaran Singh (PW-1). On the date of the incident, i.e. on 24.06.2013 at about 05:45/06:00 a.m., it is stated that he (Satnam Singh) along with his sons Rajvinder Singh and Richhpal Singh went to the fields which were taken on lease by them from Baljeet Singh. Thereafter, his father (Swaran Singh) and his brother Dalbir Singh followed them. His father - Swaran Singh and brother - Dalbir Singh were standing under the mulberry tree. About seven persons were standing in the adjacent fields. They were Mukhtiar Singh son of Makhan Singh, Ranjit Singh son of Jagtar Singh, Jagdish (accused No.1) son of Mukhtiar Singh, Sukhdev Singh (respondent No.2) son of Mukhtiar Singh, Amrik Singh son of Mukhtiar Singh, Gagandeep Singh (respondent No.3) son of respondent No. 2 - Sukhdev Singh and brother-in-law of Sukhdev Singh, namely, Sukhwinder Singh alias Chhinda (respondent No.4). Mukhtiar Singh and Ranjit Singh, it is stated, were carrying 'gandasis' in their hands. Jagdish (accused No.1) had a double barrel gun in his hand. Sukhdev Singh (respondent No.2) was carrying a 'lathi'. Amrik Singh was empty handed. Gagandeep Singh (respondent No.3) was having a 'danda'. Sukhwinder Singh alias Chhinda (respondent No.4) was having a 'lathi' in his hand. All the said persons came towards their tube-well side. Mukhtiar Singh raised a 'lalkara' that Satnam Singh (PW-3) be taught a lesson for getting one kanal land vacated. All the seven persons reached near his son, i.e. Satnam Singh's son, who was present near the paddy crop. Mukhtiar Singh again raised a 'lalkara' that Rajvinder Singh be fired upon. Jagdish (accused No.1) fired a

shot towards Rajvinder Singh which hit Rajvinder Singh on the lower side of arm pit. Due to which, his son - Rajvinder Singh fell down. Sukhdev Singh, Amrik Singh, Ranjit Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda took his son - Rajvinder Singh towards tube-well side. Then Mukhtiar Singh and Jagdish (accused No.1) came towards their tube-well. Mukhtiar Singh again raised a 'lalkara' to fire upon Richhpal Singh. Jagdish (accused No.1) again fired upon his son - Richhpal Singh which hit him on his chest due to which he fell down. Jagdish (accused No.1) then fired towards Satnam Singh (PW-3), which hit him on his left arm. Then Mukhtiar Singh and Jagdish (accused No.1) went towards their tube-well side. His father Swaran Singh (PW-1) and brother - Dalbir Singh went towards the tube-well of Mukhtiar Singh to see his son Rajvinder Singh. Then Mukhtiar Singh again raised a 'lalkara' that if they would come towards their tube-well, they would be fired at. Then somebody informed the police which came at the spot. On seeing the police vehicles, all the above-said seven persons ran away towards village Ghogh. When the police vehicles came near Satnam Singh (PW-3), his cousin Harjinder Singh took him to General Hospital, Kaithal. Due to firearm injuries, both his sons died at the spot. His statement was recorded by the police in this regard. He was cross-examined at considerable length.

It is to be noticed that the actual role of firing on the person of Rajvinder Singh and Richhpal Singh, who died in the occurrence, and also on the person of Satnam Singh (PW-3) is attributed to Jagdish (accused No.1) and not to the other six accused; besides, the accused other than Sukhdev Singh,

Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4), namely, Mukhtiar Singh son of Makhan Singh, Ranjit Singh son of Jagtar Singh and Amrik Singh son of Mukhtiar Singh, who were sought to be summoned as additional accused, were not summoned and the application for summoning them was dismissed vide order dated 21.01.2014 passed by the learned Additional Sessions Judge, Kaithal.

The learned trial Court while considering the case of Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4) noticed that the prosecution had alleged that six persons, i.e. the aforesaid three persons, as also Mukhtiar Singh son of Makhan Singh, Ranjit Singh son of Jagtar Singh and Amrik Singh son of Mukhtiar Singh had dragged Rajvinder Singh when he fell down at point 'C' as per site plan (Ex. PUU). It was said that there was no other allegation against these three accused; besides, the prosecution had put the three persons, namely, Mukhtiar Singh son of Makhan Singh, Ranjit Singh son of Jagtar Singh and Amrik Singh son of Mukhtiar Singh in column No.2 of the police report. In other words, the prosecution had found them innocent. Besides, as already noticed, the application for summoning them as additional accused in terms of Section 319 Cr.P.C. was dismissed. The application under Section 319 Cr.P.C. was dismissed on the ground that no blood stains were found from point 'C' to 'B' in the site plan (Ex. PUU). No injury like abrasion was also found on the body of Rajvinder Singh (deceased) due to dragging. The order passed under Section 319 Cr.P.C. was also not assailed. However, the learned Additional Sessions Judge, Kaithal

observed that the Court independent of the fact that the application under Section 319 CrPC had been dismissed, it could find out the role played by these three accused. It was also said that earlier the FIR was registered under Sections 148 and 149 IPC along with other sections of the IPC. However, the police report ('challan') was submitted by deleting Sections 148 and 149 IPC and adding Section 34 IPC instead. It was held by the learned trial Court that for inserting Section 34 IPC, there must be pre-meeting of mind amongst the accused and there must be a pre-arranged mind involved. There was no evidence of any prior meeting of mind between the main accused Jagdish and the other three accused, namely, Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4). It is also to be noticed that out of the other three accused who were not sent up for trial namely Mukhtiar Singh son of Makhan Singh, Ranjit Singh son of Jagtar Singh and Amrik Singh son of Mukhtiar Singh, Amrik Singh was stated to be empty handed while Mukhtiar Singh and Ranjit Singh are stated to be carrying a 'gandasi' each. No 'gandasi' was recovered from them. Besides, Mukhtiar Singh is said to have raised a 'lalkara' exhorting Jagdish to fire. However, they were not sent up for trial and application for summoning them as additional accused was dismissed. The order dismissing the application for summoning them as additional accused attained finality. The role attributed to Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh @ Chhinda (respondents No.2 to 4) is also somewhat similar to that of Mukhtiar Singh, Ranjit Singh and Amrik Singh.

The medical evidence on record as against Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh @ Chhinda (respondents No.2 to 4) may also be noticed.

Swaran Singh, complainant (PW-1) was medically examined by Dr. Navraj Singh, Medical Officer, CHC, Siwan. He tendered in evidence his affidavit Ex.PBB and also carbon copy of the MLR Ex.PDD was tendered in evidence. According to the affidavit Ex.PBB, Swaran Singh, complainant (PW-1) was brought to CHC, Siwan Emergency on 25.06.2013 by Constable Dilawar Singh due to alleged history of physical assault in village Nagal. The patient was conscious, oriented, co-operative, blood pressure and pulse was stable, pupil reacted to light normally. The following injuries were found on his person:-

- "1. Superficial abrasion of 3 cm x 0.2 cm L shaped with scab formation on left hand on dorsal side about 3 cm below index finger. Advised X-ray left hand and orthopedics opinion.
2. Superficial abrasion of 3 cm x 0.2 cm on right forearm with scab formation on lower part on medial and posterior part with swelling on middle and lower right forearm. Advised X-ray right forearm and orthopedics opinion.
3. Superficial abrasion of 1 cm x 0.5 cm on right leg on upper part and lateral side, with swelling around it, scab formation present. Advised X-ray right leg and knee joint and orthopedics opinion.

4. Superficial abrasion of 2 cm x 2 cm on left knee on upper part and medial side with swelling around it. Scab formation present. Advised X-ray left knee and orthopedics opinion.

Type of weapon. Blunt for all injuries.

Nature of Injury. Pending for observation.

Probable duration of injuries. Within 48 hours."

In cross-examination, it is stated that the injuries are divided into three parts, first category is bruise or contusion, second category is abrasion and third category is wound either they may be lacerated, incised and fire arm. It is further stated that he was MBBS and having no speciality in any field of the medical. He joined service on 01.01.2011 at CHC, Siwan. This was his first posting at Siwan. There was no injury statement of Swaran Singh sent by the Investigating Officer along with Swaran Singh nor had any x-ray report been shown to him till the date of his deposition i.e. 26.05.2014. It is stated as wrong to suggest that he simply obliged the complainant party in this case at the instance of the police.

Dr. Rakesh Mittal, Medical Officer, Indira Gandhi Multi-Speciality Govt. Hospital, Kaithal (PW-11), medico-legally examined Satnam Singh (PW-3) son of Swaran Singh on 24.06.2013 at 7.15 a.m. Satnam Singh (PW-3) had history of assault at about 6.00 a.m. He was conscious and oriented with stable pulse and B.P. He tendered in evidence his affidavit Ex.PLL. According to the said affidavit, the following injuries were found on the person of Satnam Singh (PW-3):-

"1. Rounded deep wound of size about 1 cm in diameter on the left forearm, 3 to 4 finger below the elbow with bleeding and inverted margin.

2. A similar wound as above about 2 cm in diameter on the opposite aspect of forearm with bleeding present with averted margin.

X-ray was advised for the both injuries along with ortho opinion.

Probable duration of all injuries was within six hours."

He tendered his opinion regarding injuries of Satnam Singh on 25.06.2013 vide endorsement Ex.PQQ on the police application Ex.PQQ/1. The endorsement Ex.PQQ of Dr. Rakesh Mittal regarding nature of injuries on the person of Satnam Singh is as follows:-

"The injuries on Satnam Singh were caused by the firearm."

In cross-examination it is inter alia stated that he had not written whether rounded deep wound at serial No.1 in the MLR Ex.PMM was a lacerated wound or a sharp edged wound. Similarly, at serial No.2 while writing the injury, he had not observed so. It is stated as correct that he had not mentioned any kind of weapon by which these injuries could be caused on the person of said Satnam Singh. He had not written in the history at the top of the MLR that injuries were caused by firearm. It is stated as correct that inverted margin and averted margin were written by him at the end of the specific injuries in his MLR Ex.PMM. He did not apply any test

to see that any gun powder was deposited at the seats of the wound. He had not given any base or reasons for the opinion given in Ex.PQQ that the injuries on Satnam Singh were caused by firearm. It is voluntarily stated that since there were inverted margins and averted margins were opposite to each other in the MLR and on the said basis he gave his opinion. No x-ray was shown to him till date i.e. 26.05.2014 in the present case. He could not say whether it was through the flesh of the arm. It is stated as correct that if a person is stabbed with a 'sua' (ice pick) on the arm and it goes through and through then inverted and averted margins would come. It is stated as incorrect to suggest that he manipulated the injury on the person of Satnam Singh at the instance of the complainant party just to help them.

Dr. Aman Sood, Medical Officer, Civil Hospital, Kaithal (PW-10) was part of the Medical Board that was constituted by the RMO for conducting the postmortem examinations on the dead bodies of Richhpal Singh and Rajvinder Singh. The Board comprised of Dr. Aman Sood (PW-10), Dr. Satyapal and Dr. Suman Lata. They performed post mortem on the dead body of Rajvinder. He tendered in evidence affidavit Ex.PFF regarding the post mortem conducted on the dead body of Richhpal Singh and Rajvinder Singh. The following injuries were present on the dead body of Richhpal Singh:-

"1. Circular lacerated wound of size 1.5 x 1.5 cm with abraded collar of width (03 mm) present around the wound. On probing wound is directed medially downward. On deep dissection there was

fracture of underlying manubrium (left side) sterni, medial end of 3rd rib. On further exploration there was laceration of left lung with hemothorax of approx. 300 ml of blood and blood clots. On further probing there was laceration of middle part of mediasternum with laceration and laceration of right lung with hemothorax of right side of approx. 200 ml of blood and blood clots. On probing the metal piece was found embedded in paraspinal area in muscle at level of T4 and T5 with fracture of corresponding vertebrae. Metal piece removed and packed in plastic jar bearing one seal and handed over to police. There was corresponding tear in clothes of deceased."

On the dead body of Rajvinder Singh, the following injuries were noticed:-

"(1) An oval shaped wound 3 x 2.5 cm with blackened margin on lateral aspect of left arm in its upper 1/3rd margin of the wound is somewhat inverted inward. On deep dissection the wound is slightly directed downward and medially with hemorrhage in muscle of left arm. A piece of black coloured plastic material was found at the opening of wound which is removed and taken in a plastic jar. The wound is directed into chest cavity with contusion of left axilla. On deep dissection there is laceration of muscle and auxiliary artery seen in

left axilla. On further exploration of chest cavity there is laceration of both the lung, upper part of mediastinum with hemothorax of apparently 300 ml of blood and blood clots on both sides. During dissection another piece of black colour plastic material was found in left chest wall in 2nd intercostals space ass. with fracture of 3rd rib and left scapula. On further exploration an exit wound with averted margin of size 2 x 1.5 cm oval shaped present on right scapular region with fracture of right scapula and clotted blood present. There are corresponding tear in clothes.”

The cause of death in both the cases in the opinion of the Board, it was mentioned was, shock and hemorrhage due to injury to vital organ. All the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The post-mortem report of Rajvinder Singh is Ex.PJJ and that of Richhpal Singh is Ex.PKK.

Dr. Aman Sood (PW-10) was cross-examined. It is stated as correct that injury on the upper left arm is an entry wound because the margins of the wound were inverted. It is also stated as corrected that the shot while going into the chest of Rajvinder Singh made an exit wound with averted margin on the right scapular region. It is stated as correct that since there was blacken margin near the entry wound and also pieces of plastic material/wads were taken out from the wound itself it thereby meant that the shot must had been fired from a close/blank range

of one to two meters. He could only say the possibility but not the exact range. When a man is very healthy, it is stated, then it contains 5 to 7 litres of blood. It is stated as correct that since the injury on the person of Rajvinder (deceased), the chest organs were involved. Therefore, from the entry wound and from the exit wound there must have been profuse bleeding. It is also stated as correct that in the case of Rajvinder Singh since the chest organs were involved, then the death must have been instant i.e. within minutes. The organs of Rajvinder Singh were found pale during postmortem examination, which also corroborated that there must have been profuse bleeding.

It is further stated as correct that on probing the wound of Richhpal Singh, the wound was directed from medial to downwards. The possibility could not be ruled out in this case that the fire came from the higher side. In this case also, the injury was also on the chest involving chest organs, therefore, the bleeding must have been profuse. Since he was not a forensic or a ballistic expert, therefore, he could not tell that a pellet after striking with some bone may change its shape. It is stated as correct that in the case of Richhpal Singh (deceased), there was no blackening of margins of the entry wound. It is stated as correct that in both the cases stated above, he did not remember whether the clothes worn by both the deceased were sealed or not by them. It is also stated as correct that in both the postmortem reports, there was no mention of taking the clothes of the deceased in their possession and that these were given to the police in any manner, sealed or unsealed. It is stated as correct that when 'lathi' blows are given to

a person then the resulted injuries would be bruise/contusion or lacerated wound. It is stated as incorrect to suggest that they prepared the post mortem reports as per directions of the police that suited them.

The medical evidence that has been referred to above from the deposition of Dr. Navraj Singh, Medical Officer, CHC Siwan (PW-8) who had examined injured Swaran Singh (PW-1), Dr. Rakesh Mittal, Medical Officer, Indira Gandhi Multi-Speciality Govt. Hospital, Kaithal (PW-11) who examined injured Satnam Singh (PW-3) as also that of Dr. Aman Sood, Medical Officer, Civil Hospital, Kaithal (PW-10) who along with the Board of Doctors conducted the post-mortem examinations on the dead bodies of Rajvinder Singh and Rachhpal Singh primarily shows that the injuries on the persons of the injured and the deceased were firearm injuries. The accused Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4) are not alleged to be carrying any firearms. According to the prosecution, a 'lathi' (Ex.MO/12) was recovered from Sukhdev Singh (respondent No.2) on the basis of his disclosure statement (Ex.PZZ). Besides, a 'danda' (Ex.MO/13) was recovered from Gagandeep Singh (respondent No.3) on the basis of his disclosure statement (Ex.PK) and a 'lathi' (Ex.MO/14) was recovered from Sukhwinder Singh alias Chhinda (respondent No.4) on the basis of his disclosure statement (Ex.PO). However, it not shown by the prosecution as to whether there were any injuries with the 'lathis' and a 'danda' that are said to have been recovered from the said accused. At the most it can be said that there was some blunt

injuries on the person of Swaran Singh (PW-3) as deposed by Dr. Navraj Singh, Medical Officer, CHC Siwan (PW-8) in his affidavit Ex.PBB. However, a perusal of the said affidavit would show that Swaran Singh was brought to CHC Siwan in the emergency on 25.06.2013 by Constable Dilawar Singh while the incident in the case had occurred on 24.06.2013 at 6.00 a.m. in the morning. There is no explanation as to why he (Swaran Singh) went for medical examination on a day after the incident. Even otherwise, all the four injuries are superficial abrasions. X-ray and orthopedic opinion was advised for all the injuries. However, no X-ray is shown to have been got neither conducted nor any orthopedic opinion shown to have been obtained. In fact Dr. Navraj Singh (PW-8) in his cross-examination has stated that X-ray report was not shown to him till the date of his deposition i.e. 26.05.2014. As regards the nature of injuries, it is mentioned in the affidavit Ex.PBB; "pending for observation". This would mean that the nature of injuries has not at all been opined. Therefore, the possibility of such injuries, being superficial abrasions, may have been self-suffered even to rope in more accused.

In the circumstances, it is indeed to be noticed that the learned trial Court has taken a possible and a reasonable view insofar as accused, namely, Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4) are concerned. There is nothing to show or any evidence brought on record that there was prior meeting of mind between the accused for committing the murder of Rajvinder Singh and Richhpal Singh and causing injuries to Satnam Singh (PW-3). The other discussion

of the learned trial Court primarily relate to the role attributed to Jagdish (accused No.1), who has been convicted and sentenced, as already noticed above. His role is not to be considered in the present application seeking leave to appeal against the acquittal of Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda (respondents No.2 to 4). In fact, even Jagdish (accused No.1) is not a party in the present case. Therefore, his role is to be considered in the appeal, if any, filed by him against his conviction and sentence.

In the circumstances, the question whether the first incident that had occurred on 23.06.2014 has not been accepted is inconsequential, as in that respect the role of causing injuries on the person of Swaran Singh - complainant (PW-1) out of the accused is attributed to Jagdish (accused No.1), who is not a party in the case, and Gagandeep Singh (respondent No.3). Even otherwise, the nature of injuries on the person of Swaran Singh (PW-1) have been adverted to on the basis of the deposition of Dr. Navraj Singh (PW-8) and the affidavit Ex.PBB deposed by him, which are to the effect that these were four superficial abrasions only. The reasons recorded by the learned trial Court insofar as Gagandeep Singh (respondent No.3) as regards the first incident is concerned, the same are a possible view and is not being commented upon any further lest it may prejudice the case of Jagdish (accused No.1).

For the foregoing reasons, there is no merit in the application seeking leave to appeal insofar as accused Sukhdev Singh, Gagandeep Singh and Sukhwinder Singh alias Chhinda

(respondents No.2 to 4) are concerned. The application seeking leave to appeal qua them is accordingly dismissed. It is, however, made clear that nothing stated or observed herein shall be construed as an expression of opinion one way or the other insofar as the appeal, if any, filed by Jagdish (accused No.1) against his conviction and sentence is concerned.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

25.07.2016
A.Kaundal

1. Whether the order is speaking/reasoned : Yes.
2. Whether the order is reportable : No.