

In the High Court of Punjab and Haryana at Chandigarh

Criminal Appeal No.527-DB of 2004

Date of Decision:-August 4, 2017

Hassan Mohd. and others

.....Appellants

Versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Arshvinder Singh, Advocate for the appellants.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. Hassan Mohd., Habil, Harun, Sakir, Sabbir and Imran, have filed the present appeal challenging judgment dated 28.04.2004 passed by the Additional Sessions Judge (Ad-hoc), Faridabad vide which all of them have been convicted for offences under Sections 148, 302/149 and 307/149 of the Indian Penal Code, 1860 (for short 'IPC'). Hassan Mohd. has also been convicted for an offence under Section 27 of Arms Act while Harun and Imran have been convicted for offence under Sections 25 of the Arms Act.
2. FIR No.169 was registered in the present case on 18.05.2002 under Sections 302/307/148/149 of IPC and Sections 25 and 27 of the Arms Act at Police Station Hassanpur (Ex.PO). It was lodged on the basis of statement (Ex.PA) of Nasim Ahmed recorded on 18.05.2002 by Sub Inspector Amar Jit (PW-14).

3. The gist of the statement (Ex.PA) of Nasim Ahmed when translated to English reads as follows:-

“I am a resident of aforesaid address and am running a shop in the village. About 3 months back Sahun my uncle’s son had plied vehicle belonging to Harun for a period of four months and an amount of about ₹3,500/- was due to be paid by Harun to Sahun but despite repeated demands, he did not pay the same. Last night Harun and Habil gave *'lathi'* blow to Liyakat brother of Sahun. Today morning at about 10:00 AM Sakir s/o Hasmali came on the bridge towards our houses where Sakir and Sahun hurled abuses at each other on account of the last night’s incident. Upon hearing the noise Iqbal s/o Bashir Ahmad, Sahbu s/o Sheru, Tooffel s/o Iliyias and Afsari w/o Fateh Mohd. also came there. My brother Salim s/o Yunis Ahmed was looking towards the bridge while standing on the roof of the house of Bashir s/o Mohd. Khan. In the meantime, Sabir s/o Hasmali, Habil s/o Hassan Mohd., Harun s/o Jassu and Imran s/o Kalu, Caste Meo, residents of the same village came there armed with guns and sticks and, in furtherance of their common intention, raised a *'lalkara'* and Hassan fired from his gun towards my brother Salim and the pellets hit Salim on his right eye, neck, head and right side of his chest. Imran and Harun fired from their guns towards Iqbal, Sahbu, Tufeil and Afshari in order to kill them. The pellets hit on their forehead, arm pit and on other parts. Upon hearing the alarm

'bachao-bachao' I and Makmuna s/o Badlu and Jamil s/o Kasam Meo residents of the same village intervened to save them. Upon coming of several residents of the village, the assailants ran away from the spot along with their weapons, while issuing threats of killing them on some other day. I and Jamil took all the injured in a vehicle to the hospital at Hussanpur and got them admitted where Salim succumbed to the bullets injuries. Harun has murdered my brother Salim by firing a shot from his gun. I have got my statement recorded in Hassanpur hospital, which is correct. Action may be taken.”

4. Pursuant to recording of the FIR (Ex.PO) on the basis of aforesaid statement the police conducted the requisite proceedings. The Investigating Officer visited the place of occurrence and prepared the rough site plan. Inquest proceedings were conducted. The dead body was sent for post-mortem examination. Statements of witnesses were recorded in terms of Section 161 Cr.P.C.. Accused Sakir s/o Hasmali was arrested on 19.05.02; Hassan Mohd. s/o Hasmali, Habil s/o Hassan Mohd. and Harun s/o Jassu were arrested on 20.05.02; Sabir s/o Hasmali and Imran s/o Kalu were arrested on 21.05.02. After completion of investigation, challan was presented against all the aforesaid accused in the Court of Judicial Magistrate 1st Class, Faridabad on 06.08.2002 who committed the same to the Court of Sessions vide order dated 09.08.2002. The Additional Sessions Judge, Faridabad, upon finding sufficient grounds to presume that the accused had committed offences punishable under Sections 148 and 302/149 of IPC as well as under Sections 307/149 of IPC,

framed charges against all the accused. Accused Hassan Mohd. was also charged for offences under Sections 25 and 27 of Arms Act. Accused Harun and Imran were charged for offence under Section 25 of Arms Act. All the accused pleaded innocence and claimed trial.

5. The prosecution in order to establish the charges framed against the accused examined as many as 14 witnesses. PW-1 Naseem Ahmad-complainant stated in tune with his statement (Ex.PA) i.e. the '*ruqa*' recorded by the police and narrated the incident of firing by the accused in which his brother Salim lost his life while others were injured. PW-2 Tufeil who is an injured witness also stated in detail regarding the occurrence in corroboration of the statement of the complainant. PW-3 Iqbal who is another injured witness also stated in respect of the occurrence and has specifically deposed that Hassan had fired a shot from his gun hitting Salim. He further stated that Harun and Imran also fired one shot each from their guns towards them and they had sustained injuries.
6. PW-4 Dr. Santosh Jain who had medically examined Liyakat, Sahabuddin, Iqbal, Tufeil and Afshari, proved their MLRs as Ex.PB, PC, PE, PF and PG and stated in respect of the injuries sustained by them. During cross-examination he also proved the MLR in respect of the accused Sakir. PW-5 Dr. S.P. Gupta, Radiologist proved his report Ex.PH in respect of X-ray examination of Tufeil s/o Ilyas. He also stated that he had radiologically examined Iqbal and proved his X-ray examination report as Ex.PJ. He proved his X-ray examination report in respect of Afshari as Ex.PK and in respect of Sahabuddin as Ex.PL.

7. PW-6 Constable Rohtash Kumar is a formal official witness. PW-Sahun (who, by mistake is also referred to as PW-6 in the deposition sheet) is an eye witness who stated that on 17.05.2002 he was working as a driver on a TATA-407 vehicle of Harun and that some wages were due to be paid by Harun and when he demanded the same he abused him. He further stated that on 17.05.2002 abuses were exchanged between him and Harun and on the same day when his brother Liyakat went to the shop of Saffi at about 8-9 PM then accused Hassan, Harun, Habil, Sabir and Imran came there and while Harun and Hassan gave 'lathi' blow to Liyakat, the remaining accused Imran, Sabir and Habil gave slaps and fist blows to him. He further deposed as regards the occurrence of firing on 18.05.2002 in tune with the prosecution version. PW-7 Constable Sunil Kumar is another formal official witness, who tendered his affidavit as Ex.P-N in evidence.
8. PW-8 Dr. Mahender Dheeraj, who had conducted post-mortem examination on the dead body of Salim proved the post-mortem report as Ex.PB and described the injuries found on the dead body as follows:-

- “1. Inverted fire arm injury wound of entry 3/4 cm X 1/2 cm and oval in shape on the right front side of upper chest. It was 2.5 inches from upper end of sternum on the right lateral side with 1.5 X 0.75 surface which was blackish and had marks of smoke.*
- 2. Another wound of entry caused by means of fire arm measuring 3/4 cm X 1/2 cm, the margins were inverted and it was wound of entry placed 1-1/2” above injury no.1.*

3. *Another entry wound of gun shot of the size 3/4 cm X 1/2 cm with inverted margins. It was placed laterally to wound.*
 4. *Lacerated wound with inverted margins on the right eye. The margins were inverted. The wound was caused by fire-arm injury and the size was 3/4 cm X 1/2 cm. On dissection of injuries nos.1, 2 and 3 clotted blood was found in an area of 10 X 7 inches. It was muscles deep.”*
9. He further stated that the cause of death in his opinion was shock and haemorrhage due to injuries No.1 to 4 which were caused by fire arm shots. PW-9 Anoj Kumar stated that he had inspected the spot on 07.06.2002 and had prepared the site plan Ex.PN. PW-10 Constable Suresh Kumar is another formal official witness who deposed regarding delivery of the special reports. PW-11 ASI Dharampal stated that on 21.05.2002 he had gone along with Amarjeet Kataria the then SHO to village Moharuka Nangla accompanied by other employees and that Sabir and Kalu were arrested and interrogated in his presence and one 'lathi' each was recovered from them which were taken into possession vide recovery memo Exs.PQ and PQ/1. PW-12 ASI Jai Kishan stated that on 23.05.2002 Hassan Mohd. who was in police custody was interrogated who made a disclosure statement in his presence that he had kept concealed a licensed double barrel gun along with two empties and two live cartridges in his house at Nangla Moharu. He proved the disclosure statement as Ex.PR. He further deposed that the accused led the police party to his house and got the gun as well as two empties and two live cartridges recovered from his house which were taken into possession by the police vide recovery memos Ex.PR/1 and Ex.P-4. PW-13 Head Constable Yad Ram is another formal

official witness who tendered his affidavit Ex.PY in evidence. PW-14 Sub Inspector Amarjit who is the Investigating Officer in the present case stated in detail regarding the entire investigation conducted in the case right from recording of the statement of complainant on the basis of which FIR was lodged up to the filing of challan against the accused.

10. After conclusion of evidence of prosecution, entire incriminating evidence appearing against the accused was put to them, while recording their statements under Section 313 Cr.P.C., to enable them to explain the same but all the accused have pleaded innocence. Accused Hassan Mohd. has further taken a plea that infact a quarrel had taken place between Salim and Sakir on 17.05.2002, which had been settled but the complainant party, however, nursed a grudge and on 18.05.2002, the complainant party surrounded Sakir, Salim fired a shot towards Sakir causing injuries to him and in the process other PWs also sustained injuries and that he was watching the occurrence from a distance and he fired a shot in the air after Salim had fired and thereafter he fired another shot towards the persons who were chasing Sakir and in which process Salim sustained injuries. He has thus pleaded that it was the complainant party which was the aggressor.
11. Imran and Sabir in their statements recorded under Section 313 Cr.P.C. stated that the complainant party had surrounded Sakir and Salim had fired a shot towards him and in the process other PWs also sustained injuries and that complainant party was the aggressor. They have both further stated that they were not present at the spot and have been falsely implicated.

12. Harun, Sakir and Habil in their statements under Section 313 Cr.P.C. took an identical stand regarding the occurrence. They additionally stated that Hassan Mohd. had fired with his gun towards the members of complainant party who were chasing Sakir. However, while Harun and Habil have stated that they were not present at the spot, Sakir has admitted his presence as well as of Hassan Mohd. in his statement under Section 313 Cr.P.C. and stated that Hassan Mohd. had fired from his gun after Salim had fired a shot and as a result of which Salim had sustained injuries and that it was complainant party which was the aggressor.
13. The accused were afforded opportunity to lead evidence in their defence but none of the accused chose to lead any evidence in their defence. The Trial Court upon appreciation of the evidence on record held that the prosecution had been able to establish the charges framed against all the accused except Kalu and accordingly convicted them. Each of the 6 appellants were sentenced to undergo imprisonment for life as well as pay a fine of ₹10,000/- each for offence under Section 302/149 of IPC. The accused were also awarded lesser sentences in respect of remaining offences vide impugned judgment dated 28.04.2004. Feeling aggrieved by judgement, the appellants have challenged the same by filing the present appeal.
14. The learned counsel for the appellants while opening his arguments has submitted that the genesis of occurrence has been suppressed by the prosecution and that infact the evidence led by the prosecution itself, in the shape of statement of PW-4 Dr. Santosh Jain, shows that one of the accused namely Sakir had also sustained a gun shot injury which has remained

unexplained.

15. The learned counsel has submitted that infact it is a case where the complainant party was the aggressor and Salim (deceased) had initially fired from his gun hitting Sakir and that Hassan Mohd. who was standing nearby had fired first shot in the air and had then fired at the complainant party in self defence in order to save Sakir. The learned counsel for the appellants has further submitted that all the accused are related to each other and the entire family of accused has been implicated in this case falsely. The learned counsel for the appellants has further submitted that the very fact that the guns allegedly used by Imran and Sabir were never recovered goes a long way to show their false implication. The learned counsel has further submitted that though as per case of prosecution Sakir, Habil and Sabir were armed with '*lathies*' but neither any injuries are attributed to them nor is there any medical evidence to suggest any injury by a blunt weapon, which demolishes the case of prosecution. It has further been submitted that the said accused have merely been attributed '*lalkaras*' to implicate them. The learned counsel has thus submitted that the impugned judgment cannot sustain and has prayed for acceptance of the appeal and for setting aside the impugned judgment.
16. On the other hand, the learned counsel for the State while referring to medical evidence as well as to the testimonies of eye witnesses i.e. PW-1 Naseem Ahmad, PW-2 Tufeil, PW-3 Iqbal and PW-6 Sahun, has submitted that the present case is infact a case where the witnesses are stamped witnesses having sustained fire arm injuries in the occurrence in question and there is no reason to discredit their statements. He has further submitted that the plea of self

defence raised in the statements of accused under Section 313 Cr.P.C. is not borne out from record and that as such there is no ground to interfere with the impugned judgment which is a well reasoned judgment passed after duly appreciating the evidence on record.

17. We have considered the rival submissions addressed before this Court and have also perused the relevant referred records of the case.
18. As far as the factum of death of Salim due to gun shot injuries is concerned, the prosecution has examined PW-8 Dr. Mahender Dheeraj who had conducted post-mortem examination on the dead body of Salim. He proved the post-mortem report as Ex.PB. PW-8 described the injuries found on the dead body as follows:-

- “1. Inverted fire arm injury wound of entry 3/4 cm X 1/2 cm and oval in shape on the right front side of upper chest. It was 2.5 inches from upper end of sternum on the right lateral side with 1.5 X 0.75 surface which was blackish and had marks of smoke.*
- 2. Another wound of entry caused by means of fire arm measuring 3/4 cm X 1/2 cm, the margins were inverted and it was wound of entry placed 1-1/2” above injury no.1.*
- 3. Another entry wound of gun shot of the size 3/4 cm X 1/2 cm with inverted margins. It was placed laterally to wound.*
- 4. Lacerated wound with inverted margins on the right eye. The margins were inverted. The wound was caused by fire-arm injury and the size was 3/4 cm X 1/2 cm. On dissection of injuries nos.1, 2 and 3 clotted blood was found in an area of 10 x 7 inches. It was muscles deep.”*

19. PW-8 further opined that upon probing injury No.1, it was found that a foreign body had entered into the chest. He further stated that one metallic foreign body was removed during the post-mortem examination. He opined that the cause of death was shock and haemorrhage as a result of the injuries which had been caused with fire arm shots and were sufficient to cause death in the ordinary course of nature.
20. As per the FIR, it was Hassan Mohd. who had fired from his gun towards Salim. The complainant Naseem Ahmad while in the witness box as PW-1 specifically stated that on 18.05.2002 at about 10:00 AM Hassan Mohd., Harun and Imran armed with guns and Habil, Kalu, Sabir and Sakir armed with '*lathies*' came near the bridge on canal and Hassan Mohd. fired from his gun towards Salim who was standing on the roof. PW-2 Tufeil, PW-3 Iqbal and PW-6 Sahun have corroborated the aforesaid version and have specifically stated that it was Hassan Mohd. who fired from his gun towards Salim. The police during the course of investigation interrogated the accused Hassan Mohd. who suffered a disclosure statement Ex.PR to the effect that he had kept concealed the gun used in the occurrence in a box kept in a room of his house and could get the same recovered. The accused then led the police party and got the gun recovered which was taken into possession vide recovery memo Ex.PR/1. Two empty cartridges and two live cartridges were also got recovered which were also taken into possession and the same were sent to Forensic Science Laboratory. As per the report of the FSL (Ex.PZ) the recovered two cartridges cases had been fired from the left and right barrel of the recovered 12-bore double barrel gun. We further find that infact the

accused Hassan Mohd. in his statement recorded under Section 313 Cr.P.C. has himself taken a stand that he had fired from his gun towards the complainant party and that Salim sustained injuries in the process, though he has taken a stand that he had fired in self-defence.

21. In view of the aforesaid evidence there can hardly be any doubt that it was Hassan Mohd. who had fired from his gun towards Salim who sustained fire arm injuries and succumbed to those injuries. The question as to whether the said shot had been fired by Hassan Mohd. in self defence or not shall be discussed in the later part of the judgment.
22. As regards the role of accused Imran and Harun is concerned, it is the case of prosecution that both the said accused were also armed with guns and had fired at the members of the complainant party who were standing on the bridge on the canal on the day of occurrence and as a result of which several members of the complainant party sustained gun shot injuries.
23. The prosecution in order to prove the existence of fire arm injuries on the person of Sahabuddin, Iqbal, Tufeil and Smt. Afshari has examined PW-4 Dr. Santosh Jain who had medico-legally examined the aforesaid injured members of the complainant party on 18.05.2002, while he was posted as Medical Officer in P.H.C., Hassanpur. PW-4 described the injuries as follows:-

Injuries on the person of Sahabuddin:-

“1. Oval shape reddish abrasion with swelling of the size 1 cm 1/2 cm, on the front of the neck. X-ray examination was advised.

2. *Oval shape reddish abrasion on the fore-head on the left side of forehead. Swelling was present of the size 0.5 cm X 0.5 cm. There was fresh bleeding and X-ray was advised.*
3. *Oval shape reddish abrasion on the left side of the fore-head and 5 cm above the left eye brow accompanied by swelling. X-ray examination was advised.”*

PW-4 proved the MLR as Ex.PC and has specifically deposed that the injuries were as a result of gun shots.

Injuries on the person of Iqbal:-

- “1. *Oval shape reddish abrasion, on the right side of fore-head, 4 cm above the right eye brow. Fresh bleeding was present and there was swelling around the wound.*
2. *Reddish abrasion over the right eye bow. It was on the medial angle of the eye brow and near middle of nose.”*

PW-4 proved the MLR as Ex.PE and has specifically deposed that the injuries were as a result of gun shots.

Injury on the person of Tufeil:-

- “1. *Reddish oval shape abrasion at the left lateral angle of eye brow, with fresh bleeding. X-ray examination was advised. The injury was fresh and could be result of a gun shot.”*

PW-4 proved the MLR as Ex.PF and has specifically deposed that the injured was spelled dufer, by mistake.

Injury on the person of Smt. Afshari:-

- “1. *Reddish abrasion of the size 0.5 X 0.5 cm on the left lateral aspect of chest on the last rib. Swelling was*

present and X-ray examination was advised. She was referred to B.K. Hospital, Faridabad.”

PW-4 proved the MLR as Ex.PG and has specifically deposed that the injuries could be caused with a gun shot. PW-4 was cross examined at length but nothing substantial could be elicited during the course of his cross examination, so as to doubt his opinion or credibility. The existence of injuries on the person of Sahabuddin, Iqbal, Tufeil and Afshari thus stand duly established.

24. In the present case only one gun had been recovered i.e. the licensed gun of Hassan Mohd. As per the report of FSL (Ex.PZ) the two recovered empties had been fired from the recovered gun. Hassan Mohd. in his statement recorded under Section 313 Cr.P.C. admitted that he had fired one shot in the air and another towards the complainant party hitting Salim. It is not the case of prosecution that Hassan Mohd. had fired at remaining members of the complainant party who were standing on the bridge on the canal and the specific case of the prosecution is that Hassan Mohd. had fired at Salim only who was standing on the roof. Thus, the existence of the aforesaid fire arm injuries on as many as 4 members of the complainant party clearly shows that other accused were also carrying guns and had used the same in causing injuries to remaining members of the complainant party. It is the consistent case of the prosecution as per the FIR and as per the depositions of eye-witnesses that Imran and Harun were also carrying guns and had fired at the members of the complainant party who were standing on the bridge. PW-1 Naseem Ahmad while in the witness box specifically stated that Imran and

Haroon fired shots towards the bridge from their guns and that Tufeil, Iqbal, Shahbuddin and Afsari received gun shot injuries at the hands of the accused. PW-2 has also specifically stated that Harun and Imran fired one shot each from their respective guns and that he himself had sustained a gun shot injury on the left side of his forehead. PW-3 Iqbal also stated in corroboration of the prosecution version and has specifically deposed that Haroon and Imran fired one shot each from their respective guns and he himself had sustained injuries on his forehead and that Tufeil, Shahbuddin and Afsari also sustained injuries. Statement of PW-6 Sahun is also to similar effect and corroborates the case of prosecution. All the aforesaid witnesses were cross examined elaborately on behalf of the accused but the witnesses could not be dislodged from their stand. PW-2 Tufeil and PW-3 Iqbal are both stamped witnesses and as such in the absence of any strong evidence to discredit them, their testimonies cannot be doubted. In this context, reference may be made to a judgment of Hon'ble the Supreme Court in Balwan and others versus State of Haryana (2014)13 SCC 560, wherein it has been held as follows:-

“It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.

25. No doubt in the present case the guns used by Harun and Imran were not got recovered but the said omission would be insignificant in wake of the fact that it is a case where the witnesses are stamped witnesses and the medical

evidence is absolutely in tune with the ocular version. As such we fully concur with the findings of the trial Court to the effect that Harun and Imran had fired from their respective guns towards the complainant party injuring 4 members of the complainant party namely Tufeil, Iqbal, Shahbuddin and Smt. Afsari.

26. As regards the presence of the remaining accused at the spot i.e. of Habil, Sakir and Sabir, it is the case of prosecution as per FIR, that the said three accused were also accompanying the remaining accused and they were armed with '*lathis*' (sticks). It is, however, pertinent to notice that none of the accused is alleged to have inflicted any injury on the complainant party with their sticks. The only attribution to them is that they had exhorted their companions to fire at the complainant party. PW-1 Naseem Ahmed stated specifically to this effect. PW-2 Tufeil is, however, silent as regards this aspect. PW-3 Iqbal stated that the accused who were armed with '*lathis*' exhorted their companions to fire from the guns. PW-6 has stated that it was Kalu and Imran who exhorted Hassan Mohd. to fire a shot at Salim. The aforesaid depositions show that the same are not very consistent as regards raising of '*lalkara*' by the three accused. While PW-2 is absolutely silent regarding raising of any '*lalkaras*' by the three accused, PW-7 has attributed '*lalkara*' to Raju (already acquitted) and Imran who was carrying a gun. It also needs to be borne in mind that all the accused are related to each other. In these circumstances the Court has to proceed very carefully and to sift the grain out of chaff. Bearing the above-stated facts in mind, false implication of some accused cannot be ruled out especially when there is no other evidence to connect them with the incident of firing. Allegation of raising a '*lalkara*',

which too is not fully substantiated with the oral evidence, cannot be said to be evidence credible enough to hold that they were also present at the spot along with the remaining accused. The case of Sakir, though attributed a '*lalkara*' only, would be on a different footing inasmuch as he himself has admitted his presence at the spot in his statement under Section 313 Cr.P.C. However, the presence of Habil and Sabir at the spot is not fully established at the spot.

27. Adverting back to the plea of the accused that Hassan Mohd. had fired a shot towards the complainant party in self defence as it was Salim (deceased) who had initially fired a shot towards Sakir causing injuries to him, we do find that during medico-legal examination of Sakir, he was found to have sustained one injury which has been described by PW-4 Dr. Santosh Jain as follows:-

“1. Oval shape wound with swelling on the left thigh on its lateral aspect of the thigh and the middle. Fresh bleeding was present. The X-ray examination was advised. It could be result of gun shot and the wound was fresh.”

28. PW-4 further opined that injury could be caused with a gun shot. No doubt this injury has remained unexplained but there is no evidence on record to suggest that any member of the complainant party was armed with any fire arm so as to have caused any injury to Sakir. In case any of the member from the complainant party had actually been armed with 12-bore gun, and had used the same, then it would not have been a case of a single injury and that too just on one of the accused and there would have been more injuries on the accused side. On the other hand, there could be a possibility that some stray pellet from

the shots fired by other accused might have hit Sakir. In any case, in the absence of any credible evidence, it cannot be said that the complainant party had caused injury to Sakir by using a fire arm. Rather, the presence of large number of injuries on as many as four members of the complainant party and the factum of death of Salim clearly shows that it was the accused who were the aggressors and were armed with fire arms. As such the plea of self defence raised on behalf of the accused is not substantiated and is thus not available to the accused.

29. Having held that four of the appellants namely Hassan Mohd., Harun, Sakir and Imran had participated in the occurrence, while participation of Habil and Sabir is not established, it consequently follows that the said four appellants cannot be said to have constituted an unlawful assembly as they were less than 5 in number.
30. The next question before this Court is as to whether the accused are to be held individually liable for their individual acts or as to whether they shared a common intention to commit the offences in question so as to be held vicariously liable for all the acts. All the four appellants had gone together and three of them namely Hassan Mohd., Imran and Harun were armed with guns while Sakir was armed with a '*lathi*'. Hassan Mohd. had fired at Salim resulting in his death. Harun and Imran had fired at the complainant party with their respective guns injuring Tufeil, Iqbal, Shahbuddin and Smt. Afsari. The injuries were found on vital parts i.e. on the neck and forehead of Shahbuddin; on the forehead of Iqbal; on the eye brow of Tufeil and on the chest of Smt.

Afsari. Sakir who was armed with a '*lathi*' and whose presence has been admitted by the accused himself and was fully aware that his companions were carrying guns had raised '*lalkara*' exhorting the other accused to fire shots. The said facts clearly show that he shared a common intention with the remaining appellants who were armed with guns to kill Salim as well as to make an attempt to kill other members of the complainant party. The fact that it was a shot fired by Hassan Mohd. which proved fatal would not absolve the remaining appellants namely Imran, Harun and Sakir of their vicarious liability for having committed the murder of Salim. Similarly all the accused are liable for having committed an offence punishable under Section 307/34 of IPC for having caused injuries to Tufeil, Iqbal, Shahbuddin and Smt. Afsari. in an attempt to murder them.

31. In view of our aforesaid discussion, the conviction of two of the appellants namely Habil and Sabir is set aside in respect of all the offences. The conviction of all the accused in respect of offence under Section 148 of IPC is also set aside. The conviction of appellants namely Hassan Mohd., Harun, Sakir and Imran is maintained under Section 302 of IPC with the aid of Section 34 of IPC. The conviction of aforesaid four appellants namely Hassan Mohd., Harun, Sakir and Imran is also maintained under Section 307 of IPC with the aid of Section 34 of IPC. The conviction of appellant Hassan Mohd. under Section 27 of Arms Act and of Harun and Imran under Section 25 of Arms Act is also affirmed. Consequently the appeal stands accepted qua Habil and Sabir and they are acquitted of all the charges framed against them but is dismissed qua the remaining

(Rajesh Bindal)
Judge

pankaj

Yes/No

Yes/No