

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

**CRA-S-1088-SB of 2004
Date of decision:-9.8.2017**

Ajmer Singh and others

....Appellants

Versus

State of Punjab

....Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

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

Ms.Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This appeal has been preferred against the judgment of conviction and order of sentence dated 7.5.2004 passed by the Court of learned Additional Sessions Judge, Bathinda, vide which the accused were convicted and sentenced as follows:

Name of accused	Under Section	Sentence Awarded
Ajmer Singh, Harbans Singh, Dev Singh, Mara Singh, Balbir Singh, Jagtar Singh, Gura Singh, Bhola Singh and Buta Singh	148 IPC	Rigorous imprisonment for a period of one year each.
Balbir Singh	307 IPC	Rigorous imprisonment for five year and to pay a fine of Rs.2,000/- and in default thereof, to further undergo imprisonment for one year.

Ajmer Singh, Harbans Singh, Dev Singh, Mara Singh, Jagtar Singh, Gura Singh, Bhola Singh and Buta Singh	307 read with Section 149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo imprisonment for six months.
Harbans Singh, Dev Singh for causing grievous hurt to Balwinder Singh	325 IPC	Rigorous imprisonment for one year and six months and to pay a fine of Rs.500/- each and in default thereof, to further undergo imprisonment for four months.
Ajmer Singh, Mara Singh, Balbir Singh, Jagtar Singh, Gura Singh, Bhola Singh and Buta Singh	325 read with Section 149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.300/- each and in default thereof, to further undergo imprisonment for three months.
Bhola Singh and Rupa Singh alias Buta Singh for causing grievous hurt to Basant Singh	325 IPC	Rigorous imprisonment for one year and six months and to pay a fine of Rs.500/- each and in default thereof, to further undergo imprisonment for four months.
Ajmer Singh, Harbans Singh, Dev Singh, Mara Singh, Balbir Singh, Jagtar Singh and Gura Singh	325 read with Section 149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.300/- each and in default thereof, to further undergo imprisonment for three months.
Mara Singh for causing injuries to Joginder Singh	325 IPC	Rigorous imprisonment for one year and six months and to pay a fine of Rs.500/- and in default thereof, to further undergo imprisonment for four months.
Ajmer Singh, Harbans Singh, Dev Singh, Balbir Singh, Jagtar Singh, Gura Singh, Bhola Singh and Buta Singh	325 read with Section 149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.300/- each and in default thereof, to further undergo imprisonment for three months.
Ajmer Singh for	324 IPC	Rigorous imprisonment for

causing injuries to Balwinder Singh		one year
Harbans Singh, Dev Singh, Mara Singh, Balbir Singh, Jagtar Singh, Gura Singh, Bhola Singh and Buta Singh	324 read with Section 149 IPC	Rigorous imprisonment for nine months each.
Jagtar Singh for causing injuries to Basant Singh	324 IPC	Rigorous imprisonment for one year
Ajmer Singh, Harbans Singh, Dev Singh, Mara Singh, Balbir Singh, Gura Singh, Bhola Singh and Buta Singh	324 read with Section 149 IPC	Rigorous imprisonment for nine months each.
Ajmer Singh, Harbans Singh, Dev Singh and Balbir Singh for causing injuries to Joginder Singh	323 IPC	Rigorous imprisonment for three months each.
Mara Singh, Jagtar Singh, Gura Singh, Bhola Singh and Buta Singh	323 read with Section 149 IPC	Rigorous imprisonment for three months each.

The substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story is that on 10.5.2000 on receipt of intimation Ex.PE from Incharge, Civil Hospital, Maur regarding admission of Basant Singh son of Sham Singh, Joginder Singh, Sukhvinder Singh and Balwinder Singh sons of Basant Singh, residents of village Kotli Khurd in an injured condition there, ASI Kaur

Singh from Police Station Maur (hereinafter referred to as the Investigating Officer/I.O.) went there and moved applications seeking opinion of the attending doctor regarding fitness of the injured to make statement, however, the doctor gave opinion in negative. The police party headed by ASI Kaur Singh again went to the said hospital on the next day and moved similar applications but on that date also the injured were declared unfit to make statement. It was on 12.5.2000, when the Investigating Officer had gone to that hospital and moved applications seeking medical opinion regarding fitness of the injured to make statement, the doctor had given the opinion in positive. The Investigating Officer recorded statement of Balwinder Singh injured as Ex.PX/1.

Inter alia in the statement he stated that he was resident of village Kotli Khurd and an agriculturist by avocation; that they were four brothers, eldest being Gurjant Singh, residing at village Kot Dharmu, in the house of his in-laws, followed by the complainant and thereafter Joginder Singh and then Sukhminder Singh. According to the complainant, he had been residing separately whereas his other two brothers resided with his parents; that his father had given him 1 acre of land towards his share which he had given to Ajmer Singh son of Jora Singh, resident of Kotli Khurd as share cropper; that after harvesting of *Haari* crop, he was to cultivate his land and his turn of water was a day before the previous day therefore he along with his father Basant Singh, brothers Joginder Singh and Sukhminder Singh had gone to irrigate his fields. While he and his father were irrigating their fields and his brothers Joginder Singh and Sukhminder Singh were near the water

opening at a little distance therefrom, the time was about 7:00 a.m., then Ajmer Singh son of Zora Singh armed with a *gandasa* (axe), Harbans Singh @ Indi armed with a *gandasa* (axe), Dev Singh armed with *dhanghi*, Balbir Singh and Marra Singh armed with *dangs* (clubs) came towards him raising *lalkaras* (exhortations) stating that they would be taught a lesson for irrigating the fields; that at that time Jagtar Singh was armed with a *kulhari* (axe), Bhura Singh son of Dev Singh armed with *dang*(clubs), Bhola Singh son of Mara Singh armed with *ghop*, Roop Singh son of Ajmer Singh was armed with a *gandasa* (axe) and they attacked his father Basant Singh; that Ajmer Singh gave direct *gandasa* blow on the head of Balwinder Singh which found its target on the right eye on the forehead and he fell down and when he had fallen, Harbans Singh gave a *gandasa* blow which hit on his left hand; that then Dev Singh gave *dhanghi* blow hitting him on right arm; that Balbir Singh son of Mara Singh gave *dang* blows which hit on his right leg, tibia area and neck; that he and his father had been raising alarm of *MARTA-MARTA* (killed-killed) and in the meanwhile his brother challenged the assailants and came running towards them; that at that time Ajmer Singh, Harbans Singh, Dev Singh, Balbir Singh and Mara Singh attacked his brother Joginder Singh and started causing injuries to him whereas Sukhminder Singh was attacked by Jagtar Singh, Bhola Singh, Rupa Singh and Bhura Singh; that after causing injuries all the assailants ran away from the spot; that Jangir Kaur, mother of the complainant made arrangement of transport and after calling their relative Sant Singh son of Mukand Singh of village Rajgarh Kube brought them to hospital at Maur, where they were under treatment. The motive for the incident was that Ajmer

Singh son of Jora Singh was cultivating land measuring 1 *killa* belonging to him on share basis and complainant had asked him to leave the land but he stated that first his Rs.4,5000/- be paid and only then he would leave the land. According to the complainant all the persons with common intention had caused injuries.

The Investigating Officer – ASI Kaur Singh had appended his endorsement Ex.PA/9 below such statement and sent ruqa to the police station on the basis of which formal FIR Ex.PA/10 was registered. The Investigating Officer also recorded statement of other injured.

Thereafter, the Investigating Officer reached the place of occurrence and after inspecting the same, prepared rough site-plan of the place of occurrence as Ex.PA/11.

On 14.5.2000, accused were produced before the Investigating Officer by Sadhu Singh. Weapons of offence were recovered from them. Sketch of *gandasa* recovered from Ajmer Singh was prepared as Ex.PA/12 and it was taken into police possession vide recovery memo Ex.PA/13. Sketch of *gandasa* recovered from Harbans Singh was prepared as Ex.PA/14 and the same was taken into possession vide memo Ex.PA/15. Further sketch of *dangi* recovered from accused Dev Singh was prepared as Ex.PA/16 and that weapon was taken into police possession vide recovery memo Ex.PA/17. Sketch of *kulhari* recovered from accused Jagtar Singh was prepared as Ex.PA/18 and the same was taken into possession vide memo Ex.PA/19. Sketch of *Ghop* recovered from accused Bhola Singh was prepared as Ex.PA/20 and it was taken into possession vide recovery memo Ex.PA/21. The *dang*

recovered from Balbir Singh was seized vide memo Ex.PA/22 whereas the *dang* recovered from Mara Singh was taken into possession vide memo Ex.PA/23 and axe from accused Gura Singh was seized vide memo as Ex.PA/24. Weapons of the offence recovered from the accused in this case were exhibited as Ex.P1 to Ex.P8. At the time of arrest of the accused, personal search memo of accused Ajmer Singh, Harbans Singh, Dev Singh, Balbir Singh and Mara Singh was prepared as Ex.PA/25 and of accused Jagtar Singh, Bhola Singh, Gura Singh as Ex.PA/26.

Statement of recovery witness Gurdarshan Singh was recorded. On return to the police station, the Investigating Officer deposited the weapons of offence with the MHC.

On 15.5.2000 supplementary MLR of Basant Singh was received. Then again accused were re-arrested on 25.5.2000 due to adding of offence under Section 308 IPC. For adding of offence an entry in the DDR was entered copy of which being Ex.PA/28.

Accused Buta Singh was arrested on 25.5.2000. On 30.7.2000, statement of Patwari was recorded and record was taken into possession from the Patwari.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Talwandi Sabo.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Talwandi Sabo, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 308 IPC is exclusively triable by Court of Sessions, learned Judicial

Magistrate Ist Class, Talwandi Sabo vide his order dated 26.8.2000 committed the case to the Court of learned Sessions Judge, Bathinda from where it was entrusted to the Court of learned Additional Sessions Judge, Bathinda.

On receipt of case in the Court, learned Additional Sessions Judge, Bathinda, observing that prima facie charge for offences under Sections 148 IPC was made out against all the accused and in addition to that, charge for the offence under Section 308 IPC was disclosed against accused Balbir Singh and charge for the offence under Section 308 read with Section 149 against remaining accused, charge for the offence under Section 325 IPC against accused Harbans Singh and Dev Singh and charge for the offence under Section 325 read with Section 149 against remaining accused and other accused were also charged under Section 325, 324 and 323 IPC individually and with the aid of Section 149 IPC. The accused were charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

It is pertinent to mention here that vide order dated 30.8.2003, the offence under Section 308 IPC was changed to Section 307 IPC and then fresh charge was framed and all the accused were charge-sheeted under Section 148 IPC. Accused Balbir Singh was charge-sheeted under Section 307 IPC and others under Section 307 read with Section 149 IPC; accused Harbans Singh and Dev Singh were charged under Section 325 IPC and others under Section 325 read with Section 149 IPC; accused Bhola Singh and Rupa Singh alias Buta Singh were charge-sheeted under Section 325 IPC and others with Section 325 read with Section 149 IPC; accused Mara Singh was charge-sheeted

under Section 325 IPC and others under Section 325 read with Section 149 IPC; Ajmer Singh was charge-sheeted under Section 324 IPC whereas remaining accused under Section 324 read with Section 149 IPC; accused Jagtar Singh was charge-sheeted under Section 324 IPC and other accused with the aid of Section 149 IPC and all the accused were further charge-sheeted under Section 323 IPC read with Section 149, to which, they pleaded not guilty and claimed trial. Then the case was fixed for prosecution evidence.

During the course of its evidence, the prosecution examined as many as seven witnesses as under:

PW1 Dr. Deepak Rai, Medical Officer, Children Hospital, Bathinda, stated that he had conducted the medico legally examination of Joginder Singh injured on 10.5.2000 and found the following injuries on his person:

1. Lacerated wound measuring about 5 x 1 ½ cm on forehead about 8 cm from root of the nose, lower end is about 6 cm from right medial end of the right eye brow and upper end was about 8 ½ cm from medial and mid 1/3rd of left eye brow. Fresh bleeding was present.
2. Abrasion measuring about 5 x 1 cm on right clavicle medial ½ of clavicle. Pinkish in colour.
3. Diffused swelling on right shoulder joint.
4. Complaining of pain left lower leg gastrocnemius muscle no external injury seen.
5. Diffused swelling on right dorsum of foot, tenderness

over swelling present. Advised x-ray right foot.

He further deposed that all the injuries were caused with a blunt weapon and injury No.5 was kept under observation as its nature was to be declared after radiological opinion whereas remaining were declared as simple in nature. Probable duration of the injuries was within six hours. He proved carbon copy of MLR as Ex.PA and pictorial diagram showing seats of injuries as Ex.PA/1 qua abovesaid Joginder Singh.

This witness stated that he had also examined Sukhminder Singh on 10.5.2000 at 8:45 a.m. and found the following injuries on his person:

1. Abrasion on mid 1/3rd of right thigh anteriorly measuring 5 x 2 cm. Pinkish in colour.
2. Abrasion measuring about 7 x 1 cm on left shoulder joint posteriorly about 6 cm from left acromio clavicular joint.
3. Abrasion measuring about 4 x 2 cm on left shoulder joint, anteriorly about 8 cm from left acromio clavicular joint (on upper 1/3rd of arm anteriorly) complaining of difficulty in moving left upper limb and shoulder joint and advised x-ray.
4. Abrasion measuring about 7 x 2 cm on left half of back over scapular area and is about 9 cm from injury No.2.
5. Abrasion measuring about 15 x 2 ½ cm on lower back crossing midline and on either side about 16 cm

below inferior end of scapula on left side and right end is about 20 cm below inferior end of right scapula.

6. Abrasion measuring about 10x2 cm on left lower back, left end is about 3 cm from left anterior superior illiac spine, right end is about 2 cm from vertebral column.
7. Complaining of pain right parietal area of scalp about 8 cm from right ear pinna anteriorly.
8. Complaining of pain left side of neck slightly posteriorly diffused swelling present.

He further deposed that all the injuries were caused with blunt weapon and injuries No.1, 2, 4 to 8 were simple in nature and injury No.3 was kept under observation. Probable duration of the injuries was within 6 hours. He proved carbon copy of MLRas Ex.PB and pictorial diagram showing the seats of injuries as Ex.PB/1 qua above said Sukhminder Singh.

He had also examined Basant Singh on 10.5.2000 at about 8:50 a.m. and found the following injuries on his person:

1. Incised wound on forehead measuring about 5 x 1 ½ cm. extending over hair line, lower end was about 8 cm from right eyebrow medially. Fresh bleeding present.
2. Lacerated wound on middle finger of left hand measuring about 3 x ½ cm on medial side of the middle finger. Fresh bleeding was present. Advised

x-ray.

3. Abrasion measuring about 3 x 1 cm on left lower back (lower border of rib cage). Pinkish colour.
4. Abrasion 20 x 2 cm on left thigh about 11 cm from medial side of knee joint (lower end of wound) and upper end of wound was about 24 cm from anterior superior illiac spine.
5. Abrasion measuring about 7 x 2 cm on left thigh about 13 cm from upper end of injury No.4 (medially).
6. Lacerated wound on left lower leg measuring about 8 x 1 ½ cm medially upper end of wound was about 9 cm from tibial tuberosity medially (lower end was about 27 cm from ankle joint medially).
7. Contusion measuring about 4 x 2 cm mid 1/3rd of right lower leg medially with diffuse swelling surrounding the contusion. Patient complaining of marked pain at the site and difficulty in walking and putting weight at the side of injury on left leg. Advised x-ray right lower leg.
8. Complaining of pain inter scapular region, tenderness present. Advised x-ray chest.

He further deposed that injury No.1 was caused with sharp weapon and remaining injuries were caused with blunt weapon and injuries No.1, 3, 4 to 6 were declared simple in nature whereas injuries No.2, 7, 8 were kept under radiological observation. Probable duration

of the injuries was opined to be within 6 hours. He proved carbon copy of MLR as Ex.PC and pictorial diagram showing the seats of injuries as Ex.PC/1 qua above said Basant Singh.

The witness stated that he also examined Balwinder Singh on 10.5.2000 at about 8:55 a.m. and found the following injuries on his person:

1. Incised wound on forehead measuring about 4 x 1 cm, slightly on right side, about 6 cm from medial end of right eyebrow. Fresh bleeding was present.
2. Lacerated wound between thumb and index finger of left hand measuring about 3 x ½ cm fresh bleeding present. Advised x-ray left hand with wrist joint.
3. Lacerated wound on right lower leg 1 ½ x 1 ½ cm about 9 cm from right knee joint anteriorly, fresh bleeding present.
4. Lacerated wound measuring about 2 x ½ cm about 5 cm from injury No.3, anteriorly on right lower leg fresh bleeding present.
5. Lacerated wound measuring about 3 x ½ cm about 8 cm from injury No.4 anteriorly on right lower leg, fresh bleeding present.
6. Lacerated wound measuring about 3 x 1 cm about 8 cm from injury No.5 anteriorly on right lower leg, fresh bleeding present.
7. Lacerated wound measuring about 8 x 2 cm about 7 cm from injury No.4 laterally on right lower leg fresh

bleeding present. Advised x-ray right lower leg with ankle joint.

8. Diffuse swelling on right forearm, complaining of marked pain at the site of swelling, tenderness present. Advised x-ray right forearm with wrist joint.

In continuation reference to MLC No.DR/43/2000 dated 10.5.2000, one injury had been unintentionally and inadvertently missed which was as below:

9. Complaining of difficulty in respiration and complaining pain on left half of chest on the back side. On examination surgical emphysema was present at the time of admission. Advised x-ray chest.

This witness further deposed that injury No.1 was caused with a sharp weapon, injuries No.2 to 9 were caused with a blunt weapon and injury No.1 was declared as simple in nature and injuries No.2 to 9 were kept under radiological observation. The probable duration was within six hours. He proved carbon copy of MLR as Ex.PD and pictorial diagram showing the seats of injuries as Ex.PD/1 and Ex.PD/3 qua abovesaid Balwinder Singh. He also proved supplementary MLR of Balwinder Singh as Ex.PD/2 and stating that injury No.9 could not be mentioned in MLR Ex.PD, ruqa sent to the police station as Ex.PE, applications dated 10.5.2000 as Ex.PF/1 to Ex.PF/4 and his endorsements vide which the injured were declared unfit to make statement as Ex.PF/5 to Ex.PF/8. Supplementary MLR was sent to the police vide ruqa Ex.PH and opinion Ex.PJ. He declared injuries No.7 and 8 on the person of Basant Singh to be grievous in nature vide

endorsement Ex.PJ/1 and vide opinion Ex.PJ/2, he declared injuries No.2 to 8 on the person of Balwinder Singh as grievous and injury No.5 on the person of Joginder Singh was declared as grievous vide opinion Ex.PJ/3. He proved original bed head tickets as Ex.PK to Ex.PN. This witness also gave opinion about nature of injuries vide endorsement Ex.PO/1 on application Ex.PO and Ex.PQ on police application Ex.PQ/1 and made report regarding kind of weapon used vide his endorsement Ex.PR/1 on application Ex.PR.

After cross-examination of this witness on the nature of injury alleged to be suffered by the injured in the statement of this very witness, the defence got proved on record MLR relating to Buta Singh son of Ajmer Singh Ex.DA vide which the doctor found the following injuries on his person:

1. Incised wound on scalp measuring about 2 ½ x 1 cm on parietal area, more on right side just medial to middle.
2. Abrasion on right forearm just below the cubital fossa about 4 cm from cubital area laterally, complaining of difficulty in moving right arm at the elbow joint.
3. Complaining of pain below inferior border of left scapula.

This witness declared injuries No.1 and 3 as simple and kept injury No.2 under observation and testified that injury No.1 was caused by a sharp edged weapon whereas remaining with blunt weapon and that the duration of injuries was within six hours.

PW2 Dr.Satpal Bansal stated that he had radiologically examined Balwinder Singh on 20.5.2000 and observed as under:

X-ray chest left side for ribs:

Skiagram showed fracture of 6th and 7th ribs. Surgical emphysema of left side seen. No callus formation was seen.

He proved his report as Ex.PB and skiagram as Ex.P1.

PW3 Dr.Manmohan Kumar Bansal, who had conducted x-ray examination of Balwinder Singh on 11.5.2000 at Civil Hospital, Maur proved his report as Ex.PS and deposed as under:

X-ray left hand	Fracture of lower end of condyler process of left radius bone. No callus formation seen.
X-ray right left with ankle	Multiple fracture of both bones of right leg in lower half.
X-ray right forearm with wrist	Fracture of both bones of right arm in the middle. No callus formation seen.

This witness also proved his report as Ex.PT vide which x-ray of Basant Singh was conducted and deposed that x-ray chest showed fracture of 6th and 7th rib on right side. No callus formation was seen: X-ray right leg with knee showed multiple fracture of both bones right leg in the middle 1/3rd and no callus formation was seen and no bone injury was found on the left hand.

He further deposed that on the same day, x-ray of right foot of Joginder Singh was also conducted and there was fracture of first metarsal bone in the middle. No callus formation was seen and report in that regard being Ex.PU. No bone injury was found on the x-ray of left shoulder of Sukhminder Singh and he proved report in that regard as

Ex.PV. X-ray films of the abovesaid injured have been proved as Exs.P1 to Ex.P8.

PW4 Balwinder Singh complainant – injured provided the eye-witness account of the incident deposing in consonance with the prosecution story.

PW5 Basant Singh and PW6 Joginder Singh injured gave ocular version of the incident, toeing line of the prosecution.

PW7 ASI Kaur Singh, who had carried out the investigation in this case deposed in that regard proving various documents.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Further, accused Ajmer Singh took up the plea that on 22.5.1995 Balwinder Singh borrowed Rs.45,000/- from him in lieu of which he executed pronote in his favour and also mortgaged 8 kanals of land. Balwinder Singh made lame excuses to him by which he managed to escape the period of pronote and he forcefully tried to took possession of 8 Kanals of mortgaged land and in defence they caused injuries to them.

Other accused have also adopted the plea of accused Ajmer Singh and opted to lead evidence in defence.

In defence evidence, the accused examined DW1 Anil Kumar Gupta, Handwriting and Finger Prints Expert, Fazilka, who examined the disputed thumb impressions of Balwinder Singh marked

Q1 to Q4 on the pronote dated 22.5.1995 at Mark Q5 and Q6 on the receipt with the standard thumb impressions of Balwinder Singh appearing at Mark S1 on the statement dated 17.12.2002 and Mark S2 on statement Ex.PX/1 and prepared a detailed report Ex.DW1/A. This witness also took photographs of the above noted thumb impressions and proved the negatives as Exs.DW1/A1 to DW1/A8 and photographs Exs.DW1/A9 to DW1/A16. In the opinion of this witness, the disputed thumb impressions Mark Q1 to Q6 and standard thumb impressions of Balwinder Singh Mark S1 and S2 are identical with each other and have been affixed by one and the same person.

With that defence evidence of accused was closed.

After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left them aggrieved and they have filed the present appeal.

It is pertinent to mention here that during the pendency of the present appeal, accused – appellant No.4 namely Mara Singh @ Sher Singh Singh @ Shamsheer Singh has died and appeal qua him stands abated vide order dated 1.3.2016.

I have heard learned counsel for the appellants – accused - convicts, learned Assistant Advocate General for the State of Punjab besides going through the record and I find that there is no merit in the present appeal.

PW4 Balwinder Singh, PW5 Basant Singh and PW6 Joginder Singh provided the eye-witnesses account of the present occurrence. All three of them were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding

material details of the episode. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. They having suffered injuries are stamped witnesses and their presence at the spot at the relevant time cannot be doubted. They would have been the last person to try to screen the actual culprits and involve the accused in this case falsely since it is always the earnest endeavour of such victims to ensure that the persons responsible for causing injuries to them are brought to book and are punished suitably rather than attempting to shield the actual culprits and involve some innocent persons in their place without any rhyme or reason. The PWs are not shown to have any previous enmity with the accused so as to involve them in this case wrongly or to depose against them falsely. Furthermore, the accused having taken plea of self defence, that means they admit the evidence. The onus was heavily upon the accused to bring their case within general exception contained in Chapter IV of the Indian Penal Code to be more precise within Section 97 of the IPC. But they have failed to do so. Rather their case falls within Section 99 which provides that there is no right of private defence in cases where there is time to have recourse to the protection of the public authorities.

As regards the contention raised by learned counsel for the appellants that no offence under Section 307 IPC is made out since the injury No.9 on the person of Balwinder Singh in that regard is manipulated one because it is not so mentioned in the original MLR and rather incorporated in the supplementary MLR, however, It does not

seem to be any merit in this contention since the attending doctor vide intimation Ex.PH dated 11.5.2000 addressed to SHO had informed that x-ray examination of the injury noted in the supplementary MLR was there which was so done before injured Balwinder Singh was declared fit to make statement on 12.5.2000. The trial Court has dealt with this aspect in detailed manner observing that it is quite possible that during medico-legal examination of such injured, doctor had noted down the injury which were visible and there being no visible injury mark regarding the injury noted in supplementary MLR that might have skipped notice of such doctor and when fracture was found on the ribs which being vital part of the body that was taken into consideration and there could be little possibility of such injury being manipulated and it was that injury which was declared dangerous to life by the doctor,. Furthermore, in the eye-witness account it has come that assault was made by accused with intention to kill. In that way I find such reasoning given by the trial Court to be quite convincing and reliable, therefore, such argument advanced by learned counsel for the appellants does not cut any ice.

Another argument advanced by learned counsel for the appellants was that Buta Singh accused had also suffered injuries which have not been explained. Learned State counsel submitted that in MLR of Buta Singh Ex.DA, the concerned doctor had observed three injuries one of which being incised wound on scalp measuring about 2 ½ x 1 cm on parietal area, second abrasion on right forearm just below the cubital fossa and third complaining of pain below inferior border of left scapula. Injuries No.1 and 3 were declared as simple whereas injury No.2 was

kept under observation.

Admittedly, no grievous injury on the vital part was observed to be there. According to State counsel these injuries might have been suffered by this accused in a scuffle or in melee and the prosecution is not required to explain each and every injury of such type. This rather goes to show the participation of Buta Singh and other accused also in the incident.

After hearing the rival contentions, I find that keeping in view the nature of injuries observed on the person of Buta Singh, the prosecution was not duty bound to explain such injuries since possibility of such injuries having been suffered by such accused during the course of fight and the melee when accused were assaulting the victims could be there and no question mark can be raised over truthfulness of the prosecution version.

Learned counsel for the appellants – accused has further raised plea that right of private defence was available to the accused party and at best it can be taken to be accused exceeding right of private defence. According to learned counsel for the appellants, the right of private defence available to the accused was to protect landed property where the complainant party had trespassed. However, this contention does not cut much ice. There is nothing on file to show that the accused had been in possession of land of complainant on payment of rent/share in the crop. Learned trial Court has discussed that aspect in detail and has also referred to the case law coming to the conclusion that a right of self-defence was not available to the accused party. The complainant party cannot be said to have trespassed in the land in question. They are

not alleged to have done any hostile or aggressive act which would have invite wrath of the accused. At the most, it can be said that water was being diverted towards the fields for the purpose of irrigation. There was little justification for the accused persons numbering nine having deadly weapons going to the fields and injuring four persons inasmuch as Joginder Singh had suffered five injuries, Balwinder Singh nine injuries, Sukhminder Singh eight injuries and Basant Singh, an old man of 70 years eight injuries, that rather goes to show that all the accused had formed an unlawful assembly having common object to cause injuries to such persons while being armed with deadly weapons, in the process the complainant and his father and two brothers got injured. It is certainly not a case of sudden fight rather a fight in which the accused had attacked complainant and his father and two brothers after planning arriving at the spot having deadly weapons.

Learned counsel for the appellants further argued that while exercising right of self-defence, the accused could not be expected to weigh the injuries in golden scales. They used the force which was necessary to protect the property. However, since it has come out that right of self-defence was not available, therefore, this contention of learned counsel for the appellants is not sustainable.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction.

The prosecution had successfully proved the charge against

the accused beyond shadow of reasonable doubt. The judgment of conviction and order of sentence passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and order of sentence are upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

It is stated that appellants – accused namely Ajmer Singh, Harbans Singh, Dev Singh, Balbir Singh, Jagtar Singh, Gura Singh, Bhola Singh and Buta Singh are on bail in terms of the orders passed by this Court. The bail orders are cancelled. They are ordered to be taken into custody and made to undergo the remaining sentence. Necessary direction in that regard be issued to Chief Judicial Magistrate, Bathinda.

9.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No