

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

(1)

CRA-D-198-DB of 2010
Date of decision:-11.5.2017

Ramu and others

...Appellants

Versus

The State of Haryana

...Respondent

(2)

CRA-D-1006-DB of 2010

Dharambir and another

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.J.S. Bedi, Senior Advocate with
Mr.Sunil Sihag, Advocate
for the appellants in CRA-D-198-DB of 2010.

Mr.Praveen Bhadu, Assistant A.G., Haryana.

Mr.Sandeep Kotla, Advocate
for the appellants in CRA-D-1006-DB of 2010.

Mr.Keshav Pratap Singh, Advocate
for respondents No.4, 7, 9, 11 to 14 and 17
in CRA-D-1006-DB of 2010.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two appeals i.e. **CRA-D-198-DB of 2010** and **CRA-D-1006-DB of 2010**. CRA-D-198-DB of 2010 has been filed by eight accused namely Ramu, Thawaria, Dhanvir, Ombir, Bhagwana, Vikram, Imrat and Jagmal, who were tried and convicted by the Court of learned Additional Sessions Judge, Fast Track Court, Gurgaon (now Gurugram) for the offences under Sections 302/325/323 read with Section 149 IPC vide judgment dated 22.1.2010 and vide order of sentence dated 28.1.2010, they were sentenced as follows:

Offence under Section	Sentence Awarded
Section 302 read with Section 149 IPC.	Rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of two years.
Section 325 read with Section 149 IPC.	Rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of six months.
Section 323 read with Section 149 IPC.	Rigorous imprisonment for a period of one year each.

The substantive sentences were ordered to run concurrently.

Whereas CRA-D-1006-DB of 2010 has been filed by Dharambir and Phoolwati – complainants (victims), who are aggrieved by the impugned judgment vide which accused Vijay, Devi @ Devinder, Surender, Zile Singh, Lali wife of Thawaria, Rajesh wife of Ramu, Kiran wife of Imrat and Nirmala daughter of Jagmal were acquitted of the charge framed against them.

The appellants – accused – convicts in **CRA-D-198-DB of 2010** crave for their acquittal. On the other hand, appellants in **CRA-D-1006-DB of 2010** pray that the acquittal of Vijay, Devi @ Devinder, Surender, Zile Singh, Lali wife of Thawaria, Rajesh wife of Ramu, Kiran wife of Imrat and Nirmala daughter of Jagmal be set aside and they be awarded life imprisonment for their role in the incident and further the accused be burdened with fine of Rs.20 lacs each payable to the appellants/victims under Section 357 Cr.P.C.

Briefly narrated, the prosecution story as it unfolded during the trial is that on 26.4.2007, a VT message was received at Police Station Farrukh Nagar from Control Room, Gurgaon regarding admission of Baljeet son of Chandgi Ram, resident of Faridpur in Ram Manohar Lohia Hospital, Delhi after suffering injuries in a fight and a request was made to send some Investigating Office there. As such, ASI Kishan Singh, Police Station Farrukh Nagar accompanied by other police officials reached at Ram Manohar Lohia Hospital, Delhi for recording statement of injured Baljeet, but he was declared unfit by the attending doctor, therefore his statement could not be recorded. However, Nemwati wife of Baljeet, who was present there informed ASI Kishan Singh that other injured in this incident had been admitted in Lord Krishna Hospital, Farrukh Nagar.

On 27.4.2007, ASI Kishan Singh along with other police officials went to Lord Krishna Hospital, Farrukh Nagar, where the doctor handed over to him MLRs of injured Baljeet, Phoolwati, Rajender and Dharambir, residents of village Faridpur. After obtaining the opinion of the doctor regarding fitness of the injured, statement of

injured- Dharambir Ex.PAA was recorded wherein he stated that he is a labourer by avocation; that a litigation was pending between them and Bhagwana son of Bobdiya, resident of village Faridpur regarding a dispute in Court at Gurgaon; that on 25.4.2007 when they were returning after attending hearing in the said case, then at Railway Station, Pataudi, a quarrel had occurred between his younger brother Daya Chand and Vikram and Surender sons of Bhagwana, residents of village Faridpur and they had given beatings to his said younger brother and to settle that matter they had tried to convene a Panchayat in the village; that on 26.4.2007 when his sister Sunita daughter of Ram Kumar and Phoolwati wife of Ram Kumar went to the plot for preparing cow dung cakes, then Vikram and Dhan Singh sons of Bhagwana had a scuffle with Sunita and on alarm being raised by her, they (complainant etc.) rushed to rescue her; that at that very time Surender son of Bhagwana armed with an iron rod, Zile Singh @ Zile son of Bhagwana, Kiran wife of Imrat, Rajo wife of Ramu, Jagroshni daughter of Ramu, Vijay son of Thawaria, Ramu son of Kanhaiya, Lal Kaur wife of Thawaria, Imrat son of Bobdiya armed with lathi each, Ombir @ Dhabu son of Santosh, Dhanvir son of Santosh, Jitender son of Jagmal, armed with iron rods, Nirmala wife of Jagmal, Bhagwana son of Bobdiya, both armed with a lathi each and iron rods, Jagmal son of Bobdiya and Thawaria son of Kanhiya Lal armed with lathis and iron rods, after hatching a conspiracy and meeting of their minds gave a *lalkara* (exhortation) that all of them be taught a lesson on that day; that then Jitender gave a *saria* blow on his head whereas Nirmala daughter of Jagmal gave a lathi blow, hitting on his right shoulder and Zile Singh @

Zile son of Bhagwana gave a lathi blow on his right hand fingers; that when Phoolwati came to intervene, she was also caused injuries. The complainant further stated that Surender, brother of the complainant, Baljeet son of Chandgi Ram, Rajender son of Ram Kumar, Ram Kumar son of Bheyram, residents of the village had also come to rescue him; that Jagmal gave a *saria* blow on the head of Baljeet; that Imrat gave a lathi blow on the head of Baljeet; that in the meantime, Dhan Singh and Vikram rushed to their house along with iron rods in their hands; that Dhan Singh gave an iron rod blow on the head of Baljeet and above named persons caused injuries to Phoolwati, Sunita, Ram Kumar, Rajender and Surender. It was also stated that the remaining injured would tell about their injuries. The complainant further stated that on hearing alarm, several villagers came at the spot and on seeing them coming, all the assailants went to their homes with their respective weapons. The complainant further stated that Hazari son of Chhotu Ram and Dharmender son of Suraj Bhan, residents of their village brought them to Lord Krishna Hospital, Farrukh Nagar for treatment; that in their absence the assailants also caused injuries to Ram Kala son of Chandgi Ram, who was admitted in Gurgaon Hospital and he would tell about the injuries suffered by him. It is further stated by the complainant that he along with Phoolwati, Sunita, Ram Kumar, Rajender and Surender were admitted in the hospital and since the condition of Baljeet was critical, he was referred to Ram Manohar Hospital, Delhi. He further stated that the accused persons named above have caused them injuries and he sought legal action against them.

The statement Ex.PAA was signed by the complainant in

Hindi. His signatures were attested by ASI Kishan Lal, who appended his endorsement Ex.PAAA below that statement and sent ruqa to the police station through Constable Satish Kumar, on the basis of which formal FIR Ex.PAA/1 was recorded by HC Raghubir Singh.

ASI Kishan Singh moved an application Ex.PX before the doctor for obtaining his opinion regarding the head injury suffered by Baljeet, who had already been referred to Delhi for further treatment and the doctor gave his opinion Ex.PX/1 declaring the said injury to be dangerous to life. ASI Kishan Singh recorded statements of witnesses, who were admitted in the hospital at Farrukh Nagar. Then ASI Kishan Singh along with the complainant went to the place of occurrence and prepared a rough site plan as Ex.PBBB. He also got the spot photographed and lifted blood stained earth/stains from the place of occurrence, converted the same into two separate parcels, sealing those with his seal having impressions 'KS' and thereafter took the same into possession vide memo Ex.PBB. ASI Kishan Singh also recorded the statement of eye-witnesses and then he had gone to Ram Manohar Lohia Hospital, New Delhi, where Dayal Chand handed over to him the clothes of Baljeet i.e. shirt Ex.P14, pant Ex.P15, underwear Ex.P16, piece of red cloth Ex.P17, one white cloth Ex.P18, which were converted into a parcel, sealed with seal having impressions 'KS' and taken into possession vide memo Ex.PXX. On return to the police station, ASI Kishan Singh deposited the case property in the malkhana.

On 28.4.2007, ASI Kishan Singh received information that Baljeet had died at Ram Manohar Lohia Hospital, Delhi. Thereafter, he went to Ram Manohar Lohia Hospital, Delhi, where inquest proceedings

were conducted by ASI Jagdish of Delhi Police and then ASI Kishan Singh returned. Then offence under Section 302 IPC was added vide report No.22 Mark – A. ASI Kishan Singh also recorded the statement of Ram Kumar at Civil Hospital, Gurgaon. He also moved an application Ex.PCCC before the attending doctor for obtaining opinion regarding fitness of injured Ram Kalan for making statement, on which doctor declared him fit to make statement and his statement was recorded by ASI Kishan Singh.

On 29.4.2007, investigation of the present case was taken over by SI Kanwar Singh. On 2.5.2007, he along with other police officials went to village Bandhwari at the house of Dhram Singh son of Kalu in search of the accused, who were his relatives, where Dhram Singh produced 10 accused namely Bhagwana, Surender, Vikram, Zile Singh @ Zile, Thawaria, Vijay, Ramu, Dhanbir, Ombir and Davender before the Investigating Officer and he arrested them and took them to the police station.

On 3.5.2007, accused Bhagwana, Devender, Vikram, Surender, Dhanbir, Ombir and Thawaria, while in police custody on being interrogated, suffered disclosure statements Ex.PH, Ex.PJ, Ex.PK, Ex.PL, Ex.PM, Ex.PE and Ex.PG, respectively to the effect that they had kept concealed a saria each used by them in the incident on 26.4.2007 in their respective houses at village Faridpur, regarding which only they had exclusive knowledge and they could get the same recovered.

Likewise, accused Vijay, Ramu and Zile Singh @ Zile, while in police custody on being interrogated, suffered disclosure

statements Ex.PN, Ex.PO and Ex.PF, respectively to the effect that they had kept concealed a lathi each used by them in the incident on 26.4.2007 in their respective houses at village Faridpur, regarding which only they knew and could get the same recovered.

Thereafter, the accused were produced in the Court and their police remand was obtained for one day and then confined them in the lock up after getting their medical examination conducted. Thereafter, Om Parkash, Lamberdar produced before the Investigating Officer more accused namely Rajesh wife of Ramu, Lali @ Lal Kaur wife of Thawaria and Kiran wife of Imrat, who were also arrested by him. Accused Rajesh, Lali @ Lal Kaur and Kiran also produced three different lathies said to have been used by them in the incident, which were converted into separate parcels, sealing with seal of Investigating Officer having impressions 'KS' and then taken into possession vide recovery memos Ex.PRR, Ex.PSS and Ex.PTT, respectively, lathies being Ex.P11 to Ex.P13.

On 4.5.2007, ten accused, who were in police custody, were taken to village Faridpur by SI Kanwar Singh accompanied by other police officials. Accused Bhagwana, Vikram, Surender, Dhanbir, Ombir, Devender and Thawaria got recovered one saria each from their respective houses. The same were converted into separate parcels, sealing with the seal of Investigating Officer having impressions 'KS' and then taken into possession vide memos Ex.PEE, Ex.PGG, Ex.PHH, Ex.PKK, Ex.PMM, Ex.PNN and Ex.POO, respectively.

Thereafter, accused Zile Singh @ Zile, Vijay and Ramu, while in police custody, led the police party to the disclosed places and

got recovered one lathi each from their respective houses. The same were converted into separate parcels, sealing with the seal of Investigating Officer having impressions 'KS' and then taken into possession vide memos Ex.PFF, Ex.PJJ and Ex.PLL, respectively.

Then SI Kanwar Singh recorded statements of witnesses under Section 161 Cr.P.C. He prepared rough site-plan of place of recoveries as Ex.PGGG, Ex.PHHH and Ex.PJJJ. The sarias recovered from accused Bhagwana, Vikram, Surender, Dhanbir, Ombir, Devender and Thawaria are Ex.P1, Ex.P3, Ex.P4, Ex.P6, Ex.P8, Ex.P9 and Ex.P10 and the lathies recovered from the possession of accused Zile Singh, Vijay and Ramu are Ex.P2, Ex.P5 and Ex.P7. Thereafter, SI Kanwar Singh returned to the police station and deposited the case property in the malkhana.

On 9.5.2007, a telephone message was received from Railway Hospital, Delhi that one of the injured namely Ram Kumar had died, upon which SI Kanwar Singh had sent ASI Kishan Singh to Delhi handing him over photocopy of the FIR for getting the post-mortem conducted. Then SI Kanwar Singh along with other police officials went to village Dhankot where Om Parkash, Lamberdar, who was relative of the accused, produced accused Jagmal and Imrat before him and he arrested them. They during the course of interrogation suffered disclosure statements Ex.PKKK and Ex.PLLL to the effect that they had kept concealed Saria and lathi used by them in the incident in their respective houses at village Faridpur and except them no one else knew about it and they could get the same recovered. Thereafter, accused Jagmal and Imrat, while in police custody, led the police party to the

disclosed places and got recovered one saria and lathi each from their respective houses. The Investigating Officer prepared parcels of the said articles sealing those with his seal having impressions 'KS' and then took the same into possession vide memos Ex.PMMM and Ex.PNNN. The Investigating Officer prepared rough site-plan of place of recoveries as Ex.POOO. Thereafter, SI Kanwar Singh returned to the police station and deposited the case property in the malkhana.

After completion of investigation and other formalities, initially challan against 15 accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Gurgaon.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Gurgaon, she supplied copies of documents relied upon in the challan to fifteen accused free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 302 and 307 IPC are exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Gurgaon vide her order dated 10.8.2007 committed the case to the Court of learned Sessions Judge, Gurgaon from where it was entrusted to the Court of learned Additional Sessions Judge, Gurgaon.

On receipt of case in the Court of learned Additional Sessions Judge, Gurgaon, observing that charge for offences under Section 148, 323/325/302 read with Section 149 IPC against the fifteen accused was disclosed, they were charge-sheeted accordingly vide order dated 13.9.2007, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

It is pertinent to mention here that on 12.1.2008, accused

Nirmala and Jagroshni were arrested by ASI Jai Singh and while in police custody on being interrogated, they got recovered one lathi each which were taken into possession vide recovery memo Ex.PQQQ and Ex.PRRR, lathies being Ex.P19 and Ex.P20. Thereafter, supplementary challan against both of them was prepared and presented in the Court of learned Judicial Magistrate Ist Class, Gurgaon.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Gurgaon, she supplied copies of documents relied upon in the challan to both the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 302 and 307 IPC are exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Gurgaon vide her order dated 15.3.2008 committed the case to the Court of learned Sessions Judge, Gurgaon from where it was entrusted to the Court of learned Additional Sessions Judge, Gurgaon.

It is also pertinent to mention here that accused Jagroshni was declared as juvenile and her case was sent to Juvenile Justice Board.

Thereafter, charge was amended and observing that charge for offences under Section 148, 323/325/302 read with Section 149 IPC against all the sixteen accused was disclosed, they were charge-sheeted accordingly vide order dated 6.8.2008, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as twenty eight witnesses as per details below:

PW1 Dr.Mahesh Parkash, SMO, General Hospital, Gurgaon deposed that on 26.4.2007, he medico legally examined Ram Kalan son

of Chandgi Ram, 58 years male, resident of village Faridpur, Farrukh Nagar, Gurgaon and found following injuries on his person:

1. Lacerated wound on the left side of the forehead 3.5 x 3.5 cm x 2 mm skin deep. Clotted blood was present.
2. Swelling deformity in the middle of the right arm with contusion in the middle 5 x 4 inches red in colour for which x-ray was advised.
3. Contusion on the left side of back 10 x 4 inches red in colour and x-ray was advised.
4. Contusion on the left elbow 4 x 2 inches red in colour. X-ray was advised.
5. Swelling of the left ankle for which x-ray was advised.

Injury Nos.2 to 5 were subject to x-ray. All the injuries were caused by blunt weapon and within 24 hours of duration. Patient was conscious and vitals were normal. He proved carbon copy of MLR as Ex.PA and ruqa sent to Police Station City, Gurgaon as Ex.PB.

PW2 Dr.B.B. Aggarwal, SMO, General Hospital, Gurgaon deposed that on 27.4.2007, he conducted x-ray examination of Ram Kalan son of Chandgi Ram, aged 58 years male, resident of Faridpur as per MLR No.MP/81/07 and found fracture right humerous and fracture 8th and 9th ribs of left side chest. There was obliteration of left C.P. Angle and reported as Haemothorax. He proved original x-ray report as Ex.PC and x-ray films as Ex.PC/1 to Ex.PC/5.

PW3 Manoj Kumar, Draughtsman deposed that on

25.7.2007, while posted at DCP Office, Gurgaon, he visited the spot and prepared the scaled map Ex.PD on the demarcation of Dharambir complainant.

PW4 Constable Rajesh Kumar, who on 3.5.2007 was a member of the police party headed by SI Kanwar Singh, deposed regarding what had taken place in his presence on that day.

PW5 Dr.Prem Chand Gupta, Medical Officer, Lord Krishna Hospital, Farrukh Nagar deposed that on 26.4.2007, he medico legally examined Smt.Phoolwati wife of Ram Kumar, 55 years female, resident of village Faridpur and found following injuries on her person:

1. Swelling of lower forearm right side.
2. Lacerated wound right temporo-parietal area size 12 cm x .2 cm x .3 cm. X-ray was done.

He proved her MLR as Ex.PQ. On the same very date, this witness also conducted the x-ray of injured Phoolwati and found fracture of right ulnar shaft lower end right side. He further proved x-ray report in this regard as Ex.PQ/1 and x-ray film as Ex.PQ/2.

On the same day, this witness had also medico-legally examined Ram Kumar son of Bhay Ram, 56 years male, resident of village Faridpur and found the following injuries on his person:

1. Lacerated wound left little finger.
2. Lacerated wound on scalp near right occipital area 6 cm x 0.2 cm x 0.2 cm.
3. Blunt injury right shoulder area.
4. Blunt injury left shoulder area.

Injury Nos.1, 3 and 4 were advised for x-ray examination.

He proved MLR as Ex.PR. On that very day, this witness also conducted x-ray examination and injuries No.1 and 3 had fracture 5th meta carpal bone left hand, fracture left acromion process of scapula. He proved x-ray report as Ex.PR/1 and x-ray films as Ex.PR/2, Ex.PR/2/A and Ex.PR/2/B.

This witness further deposed that on the same day, he had also examined Dharambir son of Kishan Lal, 42 years male, resident of Faridpur and found the following injuries on his person:

1. Swelling of base of right middle finger. Advised x-ray.
2. Blunt trauma on right shoulder.
3. Lacerated wound on left side of occipital area size 7.6 cm x .3 cm x .2 cm.

He proved his MLR as Ex.PS.

Further, this witness had also examined Rajinder son of Ram Kumar, 35 years male, resident of village Faridpur on the same day and found the following injuries on his person:

1. Lacerated wound on right nostril area.
2. Lacerated wound on scalp semi circle in shape size 20 cm x .3 cm x .2 cm.
3. Injury on the parietal area right side size 14 cm x 3 cm x .2 cm.
4. Swelling of left wrist.
5. Swelling of left elbow.

He proved his MLR as Ex.PT. On that very day, this witness also conducted x-ray examination on Rajinder and found

fracture of lower end of left ulna medial process. He proved x-ray report as Ex.PT/1 and x-ray films as Ex.PT/2.

Then, this witness had also medically examined Baljeet son of Chandgi Ram, 40 years male, resident of Faridpur. He was unconscious and his pupils were dilated and his condition was serious. Due to serious injuries, this injured was referred to Ram Manohar Lohia Hospital, New Delhi. He proved his MLR as Ex.PU.

Thereafter, this witness medico-legally examined Sunita daughter of Ram Kumar, 20 years female, resident of village Faridpur and found the following injury on her person:

1. Abrasion on left forearm and lacerated wound extending size 4.5 cm x .2 cm and swelling of root of right thumb.

He proved her MLR as Ex.PV and ruqa Ex.PW.

This witness further deposed that on 27.4.2007, ASI Kishan Singh moved application Ex.PX before him seeking opinion whether the injuries on the head of injured Baljeet were dangerous to life or not. He gave his opinion Ex.PX/1 that injuries were dangerous to life and therefore, he was referred to Ram Manohar Lohia Hospital, New Delhi. He also proved application Ex.PY moved before him by the police seeking opinion regarding fitness of other injured and his endorsement Ex.PY/1 vide which he gave opinion that all the injured were fit for making statement.

This witness further deposed that on 26.4.2007, police moved an application Ex.PZ before him seeking opinion whether injured Baljeet was fit for making statement, on which he made his endorsement

as Ex.PZ/1 and gave opinion that he was unfit for making statement.

PW6 EHC Jagbir Singh deposed that on 25.7.2007, while he was posted as EHC at Police Station Farrukh Nagar, MHC Pawan Kumar handed over to him two sealed parcels, one containing clothes and other containing blood stained earth for depositing the same with FSL, Madhuban vide RC No.128. He had done so and handed over the receipt to MHC.

PW7 Dharambir complainant – injured provided the eye-witness account of the incident deposing in consonance with the prosecution story.

PW8 HC Raghubir Singh, a formal witness deposed that on 26.4.2007 while posted at Police Station Farrukh Nagar, on receipt of ruqa Ex.PAA, he registered formal FIR Ex.PAA/1 and also made his endorsement on ruqa as Ex.PAA/2.

PW9 Dr.Rajeev Sharma, House Surgeon, Department of Obstetrics, St.Stephens Hospital, New Delhi tendered in evidence his affidavit Ex.PW9/A along with post-mortem report of Baljeet as Ex.PCC, inquest report as Ex.PCC/1, post-mortem report of Ram Kumar as Ex.PDD and inquest report as Ex.PDD/1 praying that the same be read as part of his evidence.

PW10 Jagdish Parshad, Sub-Inspector (Retd.) deposed that on 26.4.2007 while posted at Police Post, Ram Manohar Lohia Hospital, Delhi, he prepared inquest report as Ex.PCC/1.

PW11 Vijay Singh, Head Constable, who on 3.5.2007 was a member of the police party headed by SI Kanwar Singh, deposed regarding what had transpired in his presence.

PW12 Head Constable Pawan Kumar tendered in evidence his affidavit Ex.PQQ.

PW13 Sunita - injured provided the eye-witness account, toeing line of the prosecution.

PW14 Constable Sawinder Singh, who was member of the investigating team on 3.5.2007 deposed as to what had taken place in his presence.

PW15 Dharmender deposed that on 26.4.2007 at about 7:30 a.m., he was going from his house in the village towards bus stand and when he reached the fields, he found people quarrelling. He further deposed that he got admitted injured Ram Kumar, Baljeet, Dharambir, Rajinder, Sunita, Surender and Phoolwati in Lord Krishna Hospital, Farrukh Nagar. At the request of learned Public Prosecutor that the witness was suppressing the truth, he was declared a hostile witness and Public Prosecutor was allowed to cross-examine him. In his cross-examination, this witness was confronted with his earlier statement Ex.PUU made before the police.

PW16 Ram Kala deposed that Bhagwana and Kishan Lal etc. had a quarrel about four years ago at the time of Goverdhan Puja; that on 25.4.2007, Dharambir, Daya Chand, Surender, Rajinder, Kishan Lal had come to Gurgaon Court in connection with hearing of the case; that while returning to the village, accused Surender and Vikram had caused injuries to Daya Chand at Haily Mandi, Pataudi road; that a panchayat was convened in the village in this regard; that on 26.4.2007, he had gone to Haily Mandi at about 6:00 a.m. on his bicycle and returned to the village at about 11/11:30 a.m.; that when he reached near

Primary School of their village, Ombir, Dhan Singh, Vikram, Surender, Devinder, Zile, Vijay armed with 'sarias' and 'lathis' came running towards him. This witness further deposed that accused Dhan Singh gave a saria blow on his left ankle, Ombir gave a saria blow on his right arm, Devinder gave a saria blow on his forehead, Vikram gave a saria blow on his back, Surender gave a saria blow on his back, Zile gave a lathi blow on his back, Vijay gave a lathi blow on his back; that on this, Kishan Lal, Bhoop Singh and Rambir came to his rescue and they took him to General Hospital, Gurgaon for treatment. He further deposed that no injuries were caused to other persons in his presence as quarrel had taken place in the morning, however, he came to know in the hospital that accused had caused injuries to Baljeet, Ram Kumar, Phoolwati, Dharambir, Surender, Rajinder and Sunita, but he does not know which of the accused caused injuries to whom. Upon this, at the request of learned Public Prosecutor that the witness was suppressing the truth, he was allowed to cross-examine him. In his cross-examination, this witness was confronted with his earlier statement Ex.PVV made before the police.

PW17 Daya Chand deposed that on 25.4.2007, he had gone to Gurgaon Court in connection with hearing of a case pending between them and Bhagwana etc.; that while returning to the village, accused Surender and Vikram caused injuries to him at Pataudi Railway Station regarding which a panchayat was convened in the village but panchayat could not be held. He further deposed that on 26.4.2007, he had gone to Ram Manohar Lohia Hospital, Delhi, where Baljeet son of Chandgi Ram was admitted; that on 27.4.2007, he handed over the blood stained

clothes of Baljeet i.e. one shirt with torn sleeve, one grey colour pant, one underwear, one printed red colour cloth and one white cloth and the same were taken into possession vide recovery memo Ex.PXX.

PW18 Phoolwati injured-cum-eye witness provided the eye witness account.

PW19 Dinesh, Photographer deposed that on 27.4.2007 on police request, he had gone to village Faridpur at the place of occurrence and clicked photographs thereof. He proved those photographs as Ex.P19 to Ex.P22 and negatives as Ex.P23 to Ex.P26.

PW20 ASI Mool Chand deposed that on 8.5.2007 while posted as such at Police Station Paharganj, Delhi, he received an information regarding admission of injured Ram Kumar son of Bhai Ram, resident of village Faridur, who had died during treatment from Northern Railway Hospital, Delhi. He prepared the inquest report as Ex.PDD/1. He further deposed that after getting post-mortem examination conducted, he handed over the dead body of Ram Kumar to his relations vide receipt Ex.PYY.

PW21 Dr.S.S. Chandana, Assistant Director Serology, FSL, Madhuban proved his report Ex.PZZ.

PW22 ASI Kishan Singh, who had investigated this case partly, testified regarding what he had done in this case during the period the investigation remained with him.

PW23 Dr.L.N. Gupta, Head of Neuro Surgery, Ram Manohar Lohia Hospital, New Delhi deposed that on 26.4.2007, he was posted as Sr. Neuro Surgeon and Head of Unit when patient namely Baljeet, aged 40 years, male was admitted in their hospital at about 2:00

p.m. vide CR No.014925, Ward No.19 in Unit S-1, who was referred from Paras Hospital, Gurgaon. He further deposed that the patient was admitted in their hospital for head injury management and at the time of admission, patient was deeply comatose GCS (Glassgo Coma Scale) was E-1 V.T. M-1 (Eye opening nil, verbal response nil, motor response nil). Both pupils were dilated and intubated and he was operated upon for acute subdural haematoma on the same day but did not survive and expired on 28.4.2007 at 9:30 a.m. He proved death summary as Ex.PDDD prepared by Dr.Ridip, Sr. Resident.

PW24 Dr.Anand Barle, Sr. Divisional Medical Officer, Northern Railway Central Hospital, P.K. Road, New Delhi deposed that on 7.5.2007, he was posted as such in the aforesaid hospital; that on that day, patient Ram Kumar was admitted in the hospital and he was referred from Lord Krishna Hospital, New Anaj Mandi Wazirpur Road, Farrukh Nagar, Gurgaon, where he had been admitted on 7.5.2007 with alleged history of assault 11 days back with fracture left 5th metacarpal bone along with fracture left acromian with scalp injuries with haematoma, where he was given anti biotic and supportive treatment. He developed fever with breathlessness for one day, so he was brought to their hospital by the relatives. The injured complained of fever with breathlessness weakness with blood stained sputum and pain chest. He was a known case of coronary artery disease with anterior wall myocardial infarction with angioplasty done in 2002. He was also a smoker with chronic obstructive pulmonary disease. However, despite treatment, he expired at 9:45 p.m. on 7.5.2007. Cause of death was due to septicemia. He proved death summary of Ram Kumar as Ex.PEEE

and certificate regarding the cause of death as Ex.PFFF.

PW25 SI Kanwar Singh, who had carried out the investigation in this case to a major extent deposed in that regard proving various documents.

PW26 ASI Jai Singh, who had partly investigated the case, testified regarding his part.

PW27 SI Sanjay Kumar, who on 25.6.2007 was posted as SI/SHO at Police Station Farrukh Nagar, Gurgaon deposed that on that day, he received photographs from Dinesh son of Gajraj, resident of Karola, of the place of occurrence and he recorded his statement. This witness further deposed that on 28.6.2007, he got the scaled site plan prepared from Manoj Kumar, Draughtsman. On 25.7.2007, he recorded statements of MHC Pawan Kumar and EHC Jagbir. He further deposed that on 26.7.2007 after completion of investigation, he prepared challan against 15 accused.

PW28 SI Sunil Kumar deposed that on 27.2.2008, while posted as SI/SHO at Police Station Farrukh Nagar, he prepared supplementary report under Section 173 Cr.P.C. against accused Jagroshni and Nirmala.

Then learned Public Prosecutor had closed the prosecution evidence.

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

Further, in addition to that accused Vijay, Dhanvir, Ombir, Devi @ Devinder, Surender, Vikram, Zile Singh, Lali, Rajesh, Kiran and Nirmala took up a plea that they were not present at the spot and one of the accused namely Dhan Singh is serving in Indian Army and was present in his unit at Ganga Nagar (Rajasthan) at the time of occurrence and he too was falsely implicated and this fact was found correct by the police party during investigation.

Whereas, accused Imrat, Jagmal, Bhagwana, Ramu and Thawaria took up a plea that on the day of occurrence Imrat and Jagmal were going to the residence of Bhagwana and on the way, Ram Kumar, Krishan Lal, Surender, Rajender, Baljeet, Daya Nand, Dharambir, Bhoop Singh, Jai Bhagwan, Abhey, Rambir etc. started causing injuries to them with lathis and sarias etc. on account of previous enmity and to take revenge. On hearing the noise, Ramu, Thawaria, Bimla, Bhagwana and his wife Bhagwani reached at the spot but they were also given injuries by the above named persons and in their self defence, they caused injuries to the opposite party. It was further stated by them that on the same day, Bhagwana reported the matter to the police and DDR No.28 was registered in that regard, however, no action was taken by the police. It is also stated by them that after more than 24 hours of the occurrence, a tutored version has been set up in the FIR by the complainant party implicating the entire family including the family members, who were not present at the spot. One of the alleged accused namely Dhan Singh is serving in Indian Army and was not present at the time of occurrence and has been falsely implicated.

During their defence, accused examined seven witnesses.

DW1 Subedar Acharya Parveen Kumar, Laboratory Technician, Base Hospital, Delhi Cantt. brought the admission and discharge book as per which Imrat Hawaldar No.7773537 employed in 22 Div. Pro Unit was admitted in Base Hospital Delhi Cantt. on 26.4.2007 at about 6:25 p.m. and discharged on 28.4.2007. He was suffering from fracture ulna right and middle phalanx left as per entry made in the register. This witness further deposed that likewise, Hawaldar Jagmal No.1472221 BEG Roorki was also admitted in Base Hospital on the same day at 6:36 p.m. and discharged on 5.5.2007, who was suffering from fracture shaft tibia right and fracture middle phalanx. Both the patients had come with the history of fresh injuries as mentioned in column No.4 of the register. He proved photocopy of the original register as Ex.DC.

DW2 Dr.Dharampal tendered in evidence his affidavits Ex.DW2/A and Ex.DW2/B praying that the same be read as a part of his evidence. He also tendered the MLRs of patients Thawaria and Ramu as Ex.DE and Ex.DF.

DW3 EHC Inderjeet, Police Station Farrukh Nagar, Gurgaon brought daily diary register containing DDR No.28 dated 26.4.2007, which was signed by accused Ramu and Thawaria. He proved photocopy of original DDR as Ex.DG.

DW4 ASI Virender Kumar deposed that on 29.5.2009, while posted as ASI at Police Station Farrukh Nagar, on an application under Section 438 Cr.P.C. filed by Dhan Singh son of Bhagwana resident of village Faridpur, District Gurgaon, he submitted a report Ex.DH in the Court. He further deposed that as per the investigation, on

the basis of a letter issued by Major Anshuman Vivek, it was found that aforesaid Dhan Singh was present on his duty at Ganga Nagar, Rajasthan at the time of the alleged occurrence and was therefore found innocent.

DW5 Captain Roop Singh Parmar deposed that on 26.4.2007, Imrat Hawaldar was admitted in the Base Hospital, Delhi Cantt. New Delhi and he was discharged on 28.4.2007; that he was found to have fracture shaft ulna left and fracture middle phalanx left index finger. He proved photocopy of discharge slip as Ex.DI. Going further, this witness has stated that on the same day Hawaldar Jagmal was admitted in Base Hospital and was discharged on 5.5.2007 and he was found to have fracture of middle phalanx, first finger left hand and fracture shaft fibula in right leg. He proved photocopy of discharge summary as Ex.DJ.

DW6 Major Anshuman Vivek deposed that on 1.12.2007, he assumed command of A-company; that Dhan Singh was serving under his command; that on the intervening night of 25/26.4.2007, Dhan Singh was present in the unit at Lalgarh Jatta, Rajasthan. This witness further stated that he issued certificate Ex.DK regarding presence of Dhan Singh in the unit on the basis of Daily Parade State of the Battalion as on morning 0600 hours on 26.4.2007, copy of the relevant page of the daily parade state register being Ex.DL. Going further, this witness stated that on 20.5.2009, the police of Police Station Farrukh Nagar, District Gurgaon had approached the unit and enquired about the presence of Dhan Singh in the unit in the morning of 26.4.2007 and he narrated the facts as stated above and provided an attested copy of

Ex.DL to the police in this regard.

DW7 Dr.Sushila Yadav, Medical Officer, Government Hospital, Gurgaon tendered in evidence her affidavit Ex.DW7/A and proved copy of MLR of Bimla Devi as Ex.DM.

With that the defence evidence got concluded.

It is pertinent to mention here that when the case was at the stage of defence evidence, then an application under Section 319 Cr.P.C. for summoning Dhan Singh as an additional accused was moved, which was allowed vide order 9.12.2009 and his non-bailable warrants were issued against him. However, Dhan Singh filed a revision petition in the Hon'ble High Court, which was allowed and his summoning order was set aside.

After hearing arguments, learned trial Court convicted and sentenced the accused Ramu, Thawaria, Dhanvir, Ombir, Bhagwana, Vikram, Imrat and Jagmal as mentioned supra, which left them aggrieved and they have filed CRA-D-198-DB of 2010, whereas accused Vijay, Devi @ Devinder, Surender, Zile Singh, Lali wife of Thawaria, Rajesh wife of Ramu, Kiran wife of Imrat and Nirmala daughter of Jagmal were acquitted of the charge framed against them.

We have heard learned counsel for the appellants-accused-convicts, learned counsel for the complainants – appellants, learned Assistant Advocate General for the State of Haryana as well as learned counsel representing the accused, who have been acquitted by the trial Court besides going through the record.

As far as the happening of the incident in which Baljeet and Ram Kumar had suffered injuries to which they had succumbed and

participation of accused – convicts therein, the same stands established on record from the cogent and convincing evidence adduced by the prosecution in the form of examining PW7 – Dharambir, PW13 – Sunita, PW16 Ram Kala (this witness had supported the prosecution story on some aspects and not fully) and PW18 Phoolwati. We find presence at the spot of these witnesses to be natural and probable and account given by them to be worthy of reliance. Though, initially as per prosecution story, there were 18 assailants, however, challan had been filed originally against 15 accused only. Thereafter, supplementary challan against Nirmala and Jagroshni was filed. Jagroshni was found to be a juvenile and separate proceedings against her were initiated before Juvenile Justice Board, Gurgaon. One Dhan Singh accused has been found innocent by the police, however, he was summoned on an application under Section 319 Cr.P.C., which was at a quite late stage when case was fixed for defence evidence and arguments. Therefore, trial against him was separated. However, on a revision petition having been filed by him it was accepted by Hon'ble High Court and his summoning order was set aside. Thus out of 16 accused which had faced trial, learned Additional Sessions Judge, Gurgaon observed in para No.23 that in view of the very statements of accused under Section 313 Cr.P.C. coupled with the statement of Sunita at least Ramu, Thawaria, Ombir, Dhanvir, Bhagwana, Vikram, Imrat and Jagmal had constituted the unlawful assembly apart from Dhan Singh, who was not arrested at that time. Whereas remaining accused namely Vijay, Devi @ Devinder, Surender, Zile Singh, Lali, Rajesh, Kiran and Nirmala were acquitted of the charge framed against them. We find that the trial Court has

correctly arrived at the inference as regards accused Ramu, Thawaria, Ombir, Dhanvir, Bhagwana, Vikram, Imrat and Jagmal constituting an unlawful assembly having a common object. But the crucial question which is to be adjudicated upon is as to whether common object of unlawful assembly of such accused was to commit murder of Baljeet and Ram Kumar, in our considered view it is not so. From the facts and circumstances of the case, we find that the offence which is disclosed against such accused is one of culpable homicide not amounting to murder. It comes out to be a case of sudden fight with no premeditation or planning done by the accused. The weapons being carried by them were in the form of lathis and iron rods i.e. sarias. Those are not considered to be traditional weapons of attack used for causing injuries, rather the lathis are normally kept by the villagers for any number of purposes like scaring away stray animals, driving the cattle etc. Similarly, sarias are something which material is used for construction purposes and some pieces thereof are normally available as leftovers. It is not the case of the prosecution that any of the assailants was armed with any sharp edged weapon or firearm. Rather, it comes out that due to the sudden fight taking place, there was a melee in which persons from both sides had suffered injuries, though two persons from the complainant side had suffered serious injuries on vital parts to which they had succumbed but number of injuries on their person is not suggestive of any planned assault. Then a counter version of the incident is also there, which was rather reported to the police earlier in time though police had not taken any action as regards the counter version and no private complaint was filed by the affected persons. But the fact

remains that another version of the incident did exist. Some of the injuries on the persons of accused side were grievous in nature. Those injuries have not been explained by the prosecution. Similarly, in the defence version got recorded, injuries on the persons belonging to opposite faction have not been explained. Though as per ocular evidence adduced by the prosecution, the number of injuries attributed to the assailants are much more than actually found to be there. But then it has to be kept in mind that when such a situation exists of a group clash, it is difficult to note the exact number of injuries and the assailant who had actually caused the particular injury. We find that intention to commit murder is not proved to be there on the part of the assailants.

Learned counsel for the appellants – accused – convicts in CRA-D-198-DB of 2010 has referred to citation **Surinder Kumar Versus Union Territory, Chandigarh, AIR 1989 Supreme Court 1094**, wherein Hon'ble Apex Court has observed as under:

To invoke Exception 4 to Section 300 four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be

entitled to the benefit of this exception provided he has not acted cruelly. Thus where in case of quarrel between the deceased and the accused regarding possession of premises, it was reasonable to infer from the facts that the deceased must have intervened on the side of his brother and in the course of the scuffle he received injuries, one of which proved fatal, the accused would be entitled to the benefit of the Exception 4 to Section 300. Merely, because three injuries were caused to the deceased during the scuffle it could not be said that he had acted in a cruel and unusual manner. Under such circumstances, the accused could be convicted under Section 304, Part I IPC.

We find that facts of the present case are almost similar to the facts of the authority inasmuch as all the ingredients for invoking Exception 4 to Section 300 IPC are found to be fulfilled.

In our considered view, the trial Court fell in error in coming to the conclusion that the object of the unlawful assembly was to commit murder of Baljeet and Ram Kumar as common object of the unlawful assembly comprising the accused – convicts comes out to be culpable homicide not amounting to murder covered by Section 304 Part I IPC. At the same time, we do not find any illegality as regards conviction of such accused under Section 325 read with Section 149 IPC and Section 323 read with Section 149 IPC.

As regards the appeal (CRA-D-1006-DB of 2010) filed by the victims challenging the acquittal of eight accused by the trial Court, we are of the view that their (acquitted accused) involvement in the incident was not established conclusively and affirmatively and the trial Court has rightly reached such inference directing their acquittal. The

judgment of the trial Court does not suffer from any illegality or infirmity in that regard. We do not find any ground to set aside the acquittal of such accused and to order their conviction and sentence them along with accused – convicts in CRA-D-198-DB of 2010.

Accordingly, CRA-D-198-DB of 2010 is allowed partly. Conviction and sentence of such accused (appellants in CRA-198-DB of 2010) under Section 302 read with Section 149 IPC is set aside, rather they are convicted under Section 304 Part I IPC read with Section 149 IPC and are awarded rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years more in each case. Their conviction and sentence under Section 325 read with Section 149 IPC and 323 read with Section 149 IPC is maintained. Substantive sentences of imprisonment shall run concurrently.

Whereas CRA-D-1006-DB of 2010 is found to be without any merit and is dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

11.5.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

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