

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRA-D-289-DB of 2010(O&M)
Date of Decision : 23.01.2017

Madha Singh and others
..... Appellants

Versus

State of Punjab
..... Respondent

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr.Harchand Singh Batth, Advocate
for the appellants.

Ms. Ritu Punj, Addl.AG. Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants against the judgment of conviction dated 16.12.2008, vide which all the five appellants have been held guilty and convicted for the offences punishable under Sections 148/ 302/ 323 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC') and the order of sentence dated 17.12.2008 passed by the learned Additional Sessions Judge, Amritsar, vide which they were sentenced as under:-

Name of the Convicts	U/S	R.I	Fine	In default
Madha Singh, Bhagwan Singh @ Kahni, Lakha Singh, Satnam Singh @ Bhutto and Dewan Singh @ Dukki	148 IPC	2 years	-	-
Madha Singh, Bhagwan Singh @ Kahni, Lakha Singh, Satnam Singh @ Bhutto and Dewan Singh @ Dukki	302/149 IPC	Life imprisonment	Rs.2500/-	Two months
Satnam Singh @ Bhutto	323IPC	6 months	-	-
Madha Singh, Lakha Singh, Bhagwan Singh @ Kahni and Dewan Singh @ Kukki	323/149 IPC	6 months	-	-

2. The facts giving rise to this prosecution are that on 14.04.2007, SI Sarabjit Singh SHO, Police Station Lopoke (PW-11), the Investigating Officer of the case received a message from PCR, Majitha that Beer Singh, who had received injuries in a fight was admitted in Guru Nanak Dev Hospital, Amritsar. He had succumbed to the injuries. His dead body had been placed in the mortuary of Guru Teg Bahadur Hospital, Amritsar. The Investigating Officer along with other police officials then reached Guru Teg Bahadur Hospital, Amritsar. The complainant-Dilbag Singh (PW-1) met him and his statement (Ex.PA) was recorded. According to the complainant about 2-3 months earlier, his sister-in-law Gurmit Kaur (wife of his deceased brother-Beer Singh) had expired. His mother-Mohinder Kaur and his brother (deceased- Beer Singh) suspected that something wrong had been committed by Viri wife of accused-appellant-Lakha Singh and due to that reason Gurmit Kaur fell ill and died. On account of this, the family of the accused was defamed in the village and they started nursing a grudge against his brother-Beer Singh and his mother-Mohinder Kaur. On 13.04.2007, at about 10.00.a.m., his mother-Mohinder Kaur was going in the street. Then, accused-appellant-Lakha Singh, Bhagwan Singh @ Kahni, Dewan Singh @ Dukki and Madha Singh gave a beating to his mother in front of their house. Sakatar Singh son of Ex. Sarpanch Satnam Singh called them for a meeting at 5.00.p.m on that date in order to mediate in their dispute.

The Complainant-Dilbag Singh, deceased-Beer Singh, his father Gura Singh and nephew-Harjinder Singh started harvesting the wheat crop in the fields of a co-villager Hardev Singh. At about 4.00.p.m, the accused-Satnam Singh @ Bhutto armed with a '*Dang*' (*lathi*), Lakha

Singh armed with a '*Datar*', Bhagwan Singh @ Kahni armed with a '*Datar*', Madha Singh armed with a '*Gandassi*' and Dewan Singh @ Dukki empty handed came running from the side of the village towards them. Accused-appellant Dewan Singh @ Dukki raised a lalkara that "*Biria (Beer Singh) you are spoiling our reputation in the village. Run away wherever you can. We will not spare you.*" At this, his brother-Beer Singh ran towards the *Behak* (Farm House) of Hardev Singh in order to save himself. They also followed him. Beer Singh entered the cow shed. The accused-Madha Singh while following him inflicted a *gandassi* blow on his head. The accused-Lakha Singh and Bhagwan Singh @ Kahni also gave '*Datar*' blows on the head of deceased-Beer Singh. Then, accused-Dewan Singh @ Dukki took the '*Datar*' from accused-Bhagwan Singh @ Kahni and inflicted '*Datar*' blow on the head of Beer Singh. Beer Singh fell down on the ground. The accused-Satnam Singh @ Bhutto also inflicted a '*lathi*' blow just below the left eye of Beer Singh. Accused-Madha Singh gave another '*Gandassi*' blow on the left side of the head of Beer Singh. The complainant came-forward to save Beer Singh. Then, the accused-Satnam Singh @ Bhutto gave a '*dang*' blow, which hit on his left forearm when he tried to save the blow. On their alarm, the assailants fled away from the spot with their respective weapons. After arranging a conveyance, Beer Singh was got admitted in Guru Nanak Dev Hospital, Amritsar, where he succumbed to his injuries on the next morning. The occurrence was witnessed by the complainant, his father-Gura Singh and his nephew-Harjinder Singh. On the basis of the statement Ex.PA made by complainant-Dilbag Singh, formal FIR Ex.PK was registered and the legal machinery was set in motion.

3. PW-11-SI Sarabjit Singh, the Investigating Officer of the case carried out the inquest proceedings and prepared the inquest report Ex.PL. Thereafter, he handed over the dead body of Beer Singh to HC Paramjit Singh and HC Bhupinder Singh for postmortem examination vide application Ex.PM. Then, he accompanied the complainant-Dilbag Singh along with the other police officials to the place of occurrence. After inspecting the place of occurrence, he prepared a rough site plan Ex.PN with correct marginal notes. He also lifted blood stained earth from the spot, which was put in a sealed parcel and was taken in possession vide memo Ex.PO. HC Paramjit Singh produced the belongings of the deceased-Beer Singh before the Investigating Officer after the postmortem examination, which were taken into possession vide memo Ex.PQ. The articles of the case property were deposited with the Moharir Head Constable (for short 'MHC') of the police station.

4. On 16.04.2007, on receiving information, the Investigating Officer arrested Madha Singh and Bhagwan Singh @ Kahni from the bus stand of village Kohali. He recovered the '*gandassi*' from the possession of accused-appellant-Madha Singh. The sketch of the said '*gandassi*' Ex.PR was prepared and the same was taken in possession vide memo Ex.PR/1. The accused-appellant-Bhagwan Singh @ Kahni on interrogation suffered a disclosure statement dated 18.04.2007 (Ex.PT and in pursuance thereof, he got recovered one '*Datar*' from an iron box lying in his house. The sketch of that '*Datar*' Ex.PU was prepared. The same was kept in a sealed parcel and was taken in possession vide memo Ex.PU/1.

5. On 17.05.2007, PW-12 SI Rachhpal Singh, SHO, Police Station Lopoke carried out the further investigations and arrested accused-

Satnam Singh @ Bhutto from the bus stand of village Chiddan. On interrogation, he suffered a disclosure statement Ex.PX and in pursuance thereof, he got recovered the '*lathi*' from his house lying beneath an iron box. The said '*lathi*' (*dang*) was taken in possession vide memo Ex.PY. On 04.06.2007, the Investigating Officer arrested accused-appellant-Lakha Singh. He also suffered a disclosure statement Ex.PD and in pursuance thereof, he got recovered one '*Datar*' from his house lying underneath the heap of bricks. The sketch of the said '*Datar*' Ex.PE was prepared and was taken in possession vide memo Ex.PF. Accused-Dewan Singh @ Dukki was also arrested by the Investigating Officer on the same date i.e. 04.06.2007. The blood stained clothes of the deceased, blood stained earth and *Datars* were sent to the Forensic Science Laboratory, Punjab, Chandigarh (for short 'F.S.L.'). On receipt of the reports Ex.PCC and EX.PFF and on completion of the investigation, the police report under Section 173 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) against all the five accused was presented in the Court.

6. The case was committed to the Court of Sessions by the learned Illaqa Magistrate vide order dated 30.07.2007.

7. All the accused-appellants were charge sheeted by the learned trial Court vide order dated 11.12.2007 for the offences punishable under Sections 148, 302, 323 read with Section 149 IPC, to which all the accused-appellants pleaded not guilty and claimed trial.

8. In order to substantiate its case, the prosecution examined as many as 14 witnesses.

9. When examined under Section 313 Cr.P.C, the accused-appellants pleaded their false implication. However, they did not produce

any evidence in their defence.

10. On appreciating the evidence brought on record and the contentions raised by learned counsel for the parties, all the five accused-appellants were held guilty and convicted by the learned trial Court vide impugned judgment dated 16.12.2008 for the offences punishable under Sections 148, 302, 323 read with Section 149 IPC and they were imposed the sentences vide impugned order of sentence dated 17.12.2008 as mentioned above.

11. Aggrieved from the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

12. We have heard learned counsel for the parties and have examined the record of the case.

13. Initiating the arguments for the appellants, Mr. H.S.Bath, Advocate, learned counsel for the appellants contended that the appellants have been falsely implicated. There is an unexplained delay of 18 hours. He contended that Police Station, Lopoke, was situated near the place of occurrence. No explanation has been given by the prosecution for this long delay in reporting the matter to the police. Thus, he contended that the delay in lodging the report creates doubt about the genuineness of the prosecution version.

14. He further contended that the version of the eyewitnesses of the occurrence is totally contradicted by the site plans. Complainant-Dilbag Singh has stated in his cross-examination that they were working at a distance of 10-12 acres from the place of occurrence, which is totally contradictory to the site plans.

15. He further contended that the presence of the prosecution

witnesses is extremely doubtful. As per the testimony of the complainant-Dilbag Singh, they were also having sickles with them. It is not believable that if they were attacked, they would not have used the sickles in order to show the resistance or in their self defence. Complainant-Dilbag Singh has alleged that he suffered the injuries in this occurrence, but there is an unexplained delay in his medico legal examination. That was only a superficial injury and could be self suffered. He contended that had the prosecution witnesses been present at the spot, the delay in reporting the matter to the police and the medico legal examination of complainant-Dilbag Singh would not have been there.

16. He further contended that as per the inquest report, there were six injuries on the person of deceased. However, as per the postmortem report the deceased had only four injuries. The prosecution witnesses have also deposed about six injuries. Thus, their statements are contradictory to the medical evidence, which could not be relied upon.

17. He further contended that the prosecution story is highly improbable. The accused-appellant Madha Singh was 75 years of age at the time of occurrence. It is not believable that he could have chased the deceased, a young man of 45 years of age and could have opened the assault.

18. He further contended that similarly it is not believable that accused-appellant Dukki would have taken a '*Datar*' from co-accused Bhagwan Singh @ Kahni in order to cause injury to the deceased. He contended that these facts have been manipulated to involve all the family members of Madha Singh in this case.

19. He contended that the deceased suffered only four injuries as

per the postmortem report. If, five armed persons would have attacked him, the number of injuries would have been much more. Thus, he contended that the version of the prosecution is highly doubtful and false implication of the appellants is apparent. Therefore, they had been wrongly convicted by the learned trial Court.

20. In response, learned State counsel contended that the delay in lodging the FIR is satisfactorily explained. The family members of the deceased were taking care of the deceased-Beer Singh, who was lying admitted in the hospital in an injured condition. She further contended that the complainant-Dilbag Singh himself is an injured witness. He received injuries in this very occurrence, so his presence at the spot cannot be doubted at all. She further contended that the ocular evidence adduced by the prosecution is fully supported by the medical evidence. There is no material contradiction in the ocular and the medical evidence.

21. She further contended that the testimony of PW-1-Dilbag Singh and PW-2-Gura Singh, the witnesses of the occurrence are natural. They have faced the lengthy cross-examination. But, even then, nothing material in favour of the appellants could be brought on record. Specific injuries have been attributed to appellant-Madha Singh and Dewan Singh @ Dukki by the prosecution witnesses, which are also corroborated from the medical evidence. The mere fact that the appellant-Madha Singh is an old man, is no ground to doubt the prosecution version. Thus, she contended that there is no legal infirmity in the conviction and sentence of the appellants recorded by the learned trial Court.

22. We have duly considered the aforesaid contentions.

23. The occurrence in this case had taken place on 13.04.2007 at

about 4.00.p.m. The statement of complainant-Dilbag Singh Ex.PA was recorded by the Investigating Officer on 14.04.2007 at 9.05.a.m. and the FIR Ex.PK was registered on 14.04.2007 at 10.05.a.m. Thus, no doubt, there had been a delay of about 17 hours in reporting the matter to the police about the incident that had occurred, but it is a settled principle of law that mere delay in lodging the FIR itself is no ground to discard the prosecution case, if the occurrence is otherwise proved. The Hon'ble Apex Court in **Zahoor and others Vs. State of U.P 1991 (1) R.C.R. (Criminal) 484** has laid down that the delay is of no consequence where the offence was proved beyond doubt. It was further laid down that the delay in lodging the FIR by itself is not sufficient to reject the prosecution case unless there are clear indications of fabrications. The Hon'ble Apex Court in the case, **Ravi Kumar Vs. State of Punjab 2005 (2) R.C.R. (Criminal) 72** has held that when the ocular evidence is cogent, credible and reliable, the delay in lodging the FIR as well as special report to the Magistrate, is no ground to hold that the investigation is tainted and the prosecution had given a coloured version. The same principle of law has been reiterated by the Hon'ble Apex Court in the case, **State of Rajasthan Vs. Maharaj Singh & Anr. AIR 2004 SC 4205**. Again in case, **State of Punjab Vs. Avtar Singh 2009 (1) R.C.R.(Criminal) 247**, the Hon'ble Apex Court laid down that it cannot be laid as a rule of universal application that whenever there is delay in lodging the FIR or there is delay in dispatching the report to the Illaqa Magistrate, the prosecution has to fail. Thus, in view of the aforesaid legal position, the delay itself in lodging the FIR is no ground to discard the prosecution version as mere delay in lodging the FIR is not of any consequence if the incident that had

occurred is otherwise proved. In fact even a prompt lodging of an FIR is not an unmistakable guarantee of the truthfulness of the prosecution version.

24. Moreover, in the instant case, it is established from the evidence on record that Beer Singh-deceased, the brother of the complainant suffered serious injuries. After the occurrence, they had arranged a vehicle and had taken him for treatment to Guru Nanak Dev Hospital, Amritsar, which was at a distance of 16-17 kms from the place of occurrence. Moreover, the utmost concern of the family members of the injured in that situation was to take care of the victim in order to save his life than to indulge in the legal technicalities. Thus, the delay in lodging the FIR in the instant case is well explained and in any case is not of much significance.

25. We do not find any contradiction in the ocular evidence and the site plans prepared by the Investigating Officer as well as by the draftsman. As per the prosecution version, the deceased along with his brother, father and nephew were working in the fields of Hardev Singh son of Kartar Singh. The accused-appellants came there and started raising 'lalkaras'. As a result of which, Beer Singh-deceased fled towards the cattle shed of Hardev Singh. So, the place of occurrence is not the field of Hardev Singh. Rather, it is in front of the cattle room of Hardev Singh. PW-1-complainant-Dilbag Singh in his cross-examination stated that the fields of Hardev Singh where they were reaping the wheat crops was at a distance of 10-12 'killas' (measurement of distance in acres) from the village towards the southern side. So, he nowhere stated that the place of occurrence was at a distance of 10-12 'killas' from the cattle shed of

Hardev Singh. He further deposed that they had reaped about 5-6 Killas of wheat crops in the fields when the occurrence started. He further clarified that the gate of Dera of Hardev Singh is opposite to the fields, where they were reaping the crop. He further deposed that the occurrence took place in the '*Verandah*' adjoining the house of Hardev Singh. The accused were following his brother Beer Singh and they were following the accused to save Beer Singh. He further deposed that Beer Singh received the first blow from the hands of Madha Singh just outside the '*Verandah*' and later on he entered in the '*Verandah*'. So, as per the statement of the complainant-Dilbag Singh, the place of occurrence is not the fields of Hardev Singh, rather the occurrence had taken place in the Dera of Hardev Singh. Thus, there is no contradiction in the ocular evidence and the site plans.

26. Learned counsel for the appellants has also pointed out that in the inquest report Ex.PL, the Investigating Officer has shown six injuries. But, in the postmortem report, the doctor has shown only four injuries. The prosecution witnesses have also deposed about six injuries. Much significance cannot be attached to the difference in observing the injuries by the police officer, who is not a medical expert and the doctor who are trained for conducting the autopsies. Sometime of the injuries may overlap and due to that reason there may occur some minor variations in the number of injuries mentioned in the inquest report and the postmortem report. That cannot be made a ground to discredit the prosecution version. A reference in this regard can be made to case, **Jasbeer Singh @ Beera and others Vs. State of Punjab 2010 (3) R.C.R. (Criminal) 351 (DB)**.

27. The complainant-Dilbag Singh (PW-1) is himself an injured

witness. As per the statement of PW-7-Dr. Jatinder Singh, Medical Officer, C.H.C, Lopoke, the complainant-Dilbag Singh suffered the following injury:-

1. Contusion 12 cms long x 1 cm breadth present on the medial side of the left forearm. 5 cms from the wrist joint.

So, complainant-Dilbag Singh also received an injury in this very occurrence. The mere fact that some delay had occurred in his medico legal examination, would be no ground to disbelieve his statement with respect to the injury caused to him by accused-Satnam Singh @ Bhutto. As already mentioned, Beer Singh, the brother of complainant had received fatal injuries in this occurrence. He had to be taken to the best medical institute available in the area in order to save his life. It is possible that the complainant being the brother of the victim might be busy in taking care of the deceased while he was admitted in the hospital and only after his death, he might have thought of getting his medico legal examination done. In these circumstances, the delay in his medico legal examination cannot be a ground to render the presence of PW-1-Dilbag Singh at the time of the incident to be doubtful.

28. Moreover, PW-1-Dilbag Singh is himself an injured witness. He received an injury in this very occurrence at the hands of accused-appellant-Satnam Singh @ Bhutto when he was trying to save his brother Beer Singh. The testimony of an injured witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends support to his testimony in order to show that he was present during the occurrence. The injured witness is a stamped witness having a special status in law. Reference can be made to cases, **Jarnail**

Singh and Ors. Vs. State of Punjab 2009 (4) R.C.R. (Criminal) 253 and State of U.P. Vs. Naresh and others 2011 (2) R.C.R. (Criminal) 364.

Thus, there is nothing to doubt the presence of complainant-Dilbag Singh at the time and place of occurrence. His statement is also corroborated by PW-2-Gura Singh, the father of deceased, who was also an eye witness to the occurrence.

29. As per medical evidence i.e. postmortem report Ex.PB, deceased-Beer Singh suffered the following injuries:-

- “1. Incised wound 4.2 x 1.2 cms on top of skull area, underline muscle were cut. Clotted blood was present.
2. Incised wound 5.3 x 1.3 cms on left temporal area of skull, muscles were visible, were cut, clotted blood was present.
3. Incised wound 2.2 x 1 cms on left side of face, 2.2 cms lateral to lower eye lid, clotted blood was present, was skin deep.
4. 4 x 4 cms diffused swelling on occipital area.”

Thus, he suffered as many as four injuries on his person. Three injuries were incised wounds and the 4th injury is a diffused swelling on the occipital area. The prosecution has booked five appellants for the commission of the offence. It is pertinent to mention that all the five accused are the family members. Accused-appellant-Madha Singh is the head of the family being father of the remaining appellants. Appellant-Bhagwan Singh @ Kahni, Lakha Singh, Satnam Singh @ Bhutto and Dewan Singh @ Dukki are the real brothers and are the sons of accused-appellant-Madha Singh. Thus, five family members have been implicated for four injuries suffered by the deceased and every accused person has been attributed an injury to the deceased. The Hon'ble Apex Court in case, **Bijoy Singh Vs. State of Bihar 2002 (2) R.C.R. (Criminal) 544** has laid down as under:-

“Though sad, yet it is a fact that people do not hesitate in resorting to vengeance even on the unfortunate deaths of their nears and dears. There is a tendency to rope in as many people as possible for facing the trial relating to the death or injuries to the unfortunate victims. Sometimes it is over-enthusiasm and many a times designed effort to harass the relations and friends of the real culprits. It has been found that on occasions innocent persons including aged, infirm, ladies and children are booked for standing at the dock and remain confined in jails till the pendency of the cases. Some are acquitted by the trial court and many by the appellate courts but only after their languishing in confinements for years. Such efforts of unscrupulous survivors of the crime or the relations of the victims invariably but unfortunately helps the real culprits as it becomes difficult for the court to sift the grain out of the chaff. Under such circumstances and in view of the prevalent criminal jurisprudential system in the country, the doctrine of presumption of innocence in favour of the accused makes the justice itself a victim which ultimately weakens the criminal justice dispensation system. Be that as it may, an onerous duty is cast upon the criminal courts in the country to ensure that no innocent is convicted and deprived of his fundamental liberties.”

30. In the instant case also, it appears that due to vengeance and over-enthusiasm, the prosecution witnesses had made an effort to involve the adult male members of Madha Singh including him in this case. This fact is not disputed that accused-appellant-Madha Singh was 75 years of age at the time of occurrence. As per the prosecution version, he has been shown to be the leader of the gang. As per the postmortem report, the age of the deceased-Beer Singh was 45 years. There was age difference of 30 years between accused-appellant-Madha Singh and deceased-Beer Singh. Accused-appellant-Madha Singh was quite an old man being 75 years of age. It is highly improbable that at such an advanced stage of his age, he (accused-appellant-Madha Singh) would be able to chase and catch hold of the deceased-Beer Singh in order to open the assault. It appears that he has been implicated only being the father of Lakha Singh who is the

husband of Viri against whom the complainant side had a doubt for the demise of Gurmit Kaur, the wife of deceased-Beer Singh. Three incised wounds on the head of the deceased could be the result of '*Datar*' blows given by accused-Bhagwan Singh @ Kahni and Lakha Singh which were found stained with human blood as per the reports of FSL Ex.PCC and EX.PFF. It is alleged that Madha Singh gave two '*Gandassi*' blows on the head of the deceased. But, the '*Gandassi*' allegedly recovered from Madha Singh was neither kept in a sealed parcel nor sent to the FSL to prove that it was stained with human blood. Thus, that '*Gandassi*' is also not proved to be the weapon of offence. So, the participation of Madha Singh in the occurrence is not established beyond shadow of reasonable doubt.

31. Similarly, it is alleged that the accused-Dewan Singh @ Dukki was empty handed. During the occurrence, he took the '*Datar*' from accused-Bhagwan Singh @ Kahni and then he inflicted a '*Datar*' blow on the head of the deceased. This version also does not inspire any confidence as Bhagwan Singh @ Kahni, who was holding the '*Datar*' had already inflicted '*Datar*' blows on the head of Beer Singh. Then, what was the need for Dewan Singh @ Dukki to take the weapon from him in order to inflict a '*Datar*' blow. This version also seems to be an effort to implicate Dewan Singh @ Dukki, who happens to be another family member of Madha Singh. Thus, his involvement is also not established beyond shadow of reasonable doubt. However, from the statements of the PW-1-Dilbag Singh and PW-2-Gura Singh, it is established beyond shadow of reasonable doubt that the accused-Bhagwan Singh @ Kahni, Lakha Singh and Satnam Singh @ Bhutto had caused fatal injuries to Beer Singh and also a simple injury to the complainant-Dilbag Singh in

furtherance of their common intention. The Hon'ble Apex Court in case **Chittarmal Vs. State of Rajasthan 2003 (1) R.C.R. (Criminal) 442** has laid down that if the benefit of doubt has been given to the co-accused, still the conviction of the remaining accused against whom the case is established can still be recorded on the basis of the statements of the same witnesses.

32. Accused-appellants except Madha Singh and Dewan Singh @ Dukki have been held guilty and convicted by the learned trial Court for the offences punishable under Sections 148, 302, 323 read with Section 149 IPC. However, in view of our aforesaid discussion, the participation of accused-appellant-Madha Singh and Dewan Singh @ Dukki is not established. So, the provisions of Section 148 and 149 IPC would not be applicable as the accused are proved to be involved in the occurrence are less than five. However, it is established from the evidence on record that all the three accused-appellants namely Bhagwan Singh @ Kahni, Lakha Singh and Satnam Singh @ Bhutto (appellants no. 2 to 4) acted in furtherance of their common intention to cause fatal injuries to the deceased-Beer Singh and injury to complainant-Dilbag Singh. As per the law laid down by the Hon'ble Apex Court in **Chittarmal's** case (supra), in case of non applicability of Section 149 IPC, there is no bar for convicting the accused with the aid of Section 34 IPC, if the evidence discloses the commission of an offence in furtherance of their common intention.

33. Thus, keeping in view our aforesaid discussion, the present appeal is hereby partly allowed. The judgment of conviction dated 16.12.2008 and order of sentence dated 17.12.2008 passed by the learned Additional Sessions Judge, Amritsar are set aside insofar as Madha Singh

(appellant no.1) and Dewan Singh @ Dukki (appellant no.5) are concerned. They stand acquitted of the charges attributed to them. However, the conviction of appellants Bhagwan Singh @ Kahni, Lakha Singh and Satnam Singh @ Bhutto (appellants no.2 to 4) is modified. Now, they stand held guilty and convicted for the offence punishable under Section 302 read with Section 34 IPC. Accused-appellant-Bhagwan Singh @ Kahni and Lakha Singh also stand held guilty and convicted for the offence punishable under Section 323 read with Section 34 IPC for causing injury to PW-1-Dilbag Singh (complainant). Conviction of appellant-Satnam Singh @ Bhutto for the offence punishable under Section 323 IPC shall remain intact as such.

34. The sentence awarded to accused-appellants Bhagwan Singh @ Kahni, Lakha Singh and Satnam Singh @ Bhutto (appellants no. 2 to 4) for the offence punishable under Section 302 read with Section 34 shall be the same as awarded for the offence punishable under Section 302/149 IPC by the learned trial Court. Similarly, the sentence awarded to appellant-Bhagwan Singh and Lakha Singh for the offence punishable under Section 323/34 IPC shall be the same as awarded to them by the learned trial Court for the offence punishable under Section 323/149 IPC. The sentence awarded to appellant-Satnam Singh @ Bhutto for the offence punishable under Section 323 IPC shall also remained intact. All these sentences shall run concurrently.

35. Thus, with this modification in the conviction, the appeal filed by appellants Bhagwan Singh @ Kahni, Lakha Singh and Satnam Singh @ Bhutto (appellants no. 2 to 4) has no merits and the same is hereby dismissed. The accused-appellant-Dewan Singh @ Dukki

(appellant no.5), who is in custody, be set at liberty forthwith, if not wanted in any other case.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

January 23, 2017
s.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No