

CRA-D-1458-DB-2013;
CRA-D-1416-DB-2013;
CRA-D-1457-DB-2013;
CRA-D-1475-DB-2013;
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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

CRA-D-1458-DB of 2013
Date of decision:-25.5.2017

Bhupinder Singh

...Appellant

Versus

State of Punjab

...Respondent

(2)

CRA-D-1416-DB of 2013

Harinder Singh

...Appellant

Versus

State of Punjab

...Respondent

(3)

CRA-D-1457-DB of 2013

Mohinder Singh

...Appellant

Versus

State of Punjab

...Respondent

(4)

CRA-D-1475-DB of 2013

Amarjit Singh Jolly

...Appellant

Versus

State of Punjab

...Respondent

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(5)

CRA-D-1482-DB of 2013

Jaswinder Singh

...Appellant

Versus

State of Punjab and others

...Respondents

(6)

CRA-D-1510-DB of 2013

Manjit Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. K.S. Sidhu, Senior Advocate with
Mr. P.S. Sullar, Advocate
for the appellants in **CRA-D-1458-DB-2013** and
CRA-D-1457-DB-2013.

Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep Singh Sandhu, Advocate
for the appellant in **CRA-D-1475-DB-2013.**

Ms. Aashna Gill, Advocate for
Mr. Aman Pal, Advocate
for the appellant in **CRA-D-1416-DB-2013.**

Mr. Simrandeep Singh Sandhu, Advocate
for the appellant in **CRA-D-1510-DB-2013.**

Dr. Deipa Singh, Addl. A.G., Punjab.

Mr. Vikas Behl, Senior Advocate with
Mr. Manbir Singh Batth, Advocate
for the appellant in **CRA-D-1482-DB-2013.**

Mr. Bhupinder Singh Thind, Advocate
for respondent No.2 in **CRA-D-1482-DB-2013.**

None for respondent Nos.3 to 8
in **CRA-D-1482-DB-2013.**

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H.S. MADAAN, J.

Vide this judgment, we propose to dispose of six appeals i.e. **CRA-D-1458-DB of 2013, CRA-D-1416-DB-2013, CRA-D-1457-DB-2013, CRA-D-1475-DB-2013, CRA-D-1482-DB-2013 and CRA-D-1510-DB of 2013.**

CRA-D-1458-DB of 2013 has been filed by accused Bhupinder Singh, **CRA-D-1416-DB of 2013** has been filed by accused Harinder Singh, **CRA-D-1457-DB of 2013** has been filed by accused Mohinder Singh, **CRA-D-1475-DB of 2013** has been filed by accused Amarjit Singh Jolly and **CRA-D-1510-DB of 2013** has been filed by accused Manjit Singh, who were tried and convicted by the Court of learned Sessions Judge, Rupnagar for the offences under Sections 148, 302, 307 and 324 read with Section 149 IPC vide judgment dated 7.11.2013 and vide order of sentence dated 8.11.2013, they were sentenced as follows:

Offence under Section	Sentence Awarded
148 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.3,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one month.
302/149 IPC	Imprisonment for life and to pay a fine of Rs.10,000/- each and in default thereof, to further undergo rigorous imprisonment for six months.
307/149 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of

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	three months.
324/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.3,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one month.

The substantive sentences were ordered to run concurrently.

Whereas **CRA-D-1482-DB of 2013** has been filed by complainant – Jaswinder Singh, who is aggrieved by the impugned judgment vide which accused Rajesh Kumar, Bikram Singh, Sohan Singh, Gagandeep Singh, Harpreet Singh, Sandeep Singh and Balwant Singh Majitha were acquitted of the charge framed against them.

The appellants – accused – convicts in **CRA-D-1458-DB of 2013, CRA-D-1416-DB-2013, CRA-D-1457-DB-2013, CRA-D-1475-DB-2013** and **CRA-D-1510-DB of 2013** pray that their appeals be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

On the other hand, appellant in **CRA-D-1482-DB of 2013** pray that the acquittal of Rajesh Kumar, Bikram Singh, Sohan Singh, Gagandeep Singh, Harpreet Singh, Sandeep Singh and Balwant Singh Majitha be set aside and they be awarded the maximum punishment.

Briefly stated, the prosecution story is that on 3.12.2007, a written intimation was received from Civil Hospital, Ropar at Police Station City, Ropar that injured Jaswinder Singh son of Hardeep Singh, resident of village Chandpur, Police Station Nalagarh, District Solan (H.P.) was admitted in that hospital. On receipt of that information, a

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police party headed by SI/SHO Balwant Singh Majitha went to the said hospital. He obtained opinion of the attending doctor regarding fitness of injured to make statement and after getting the opinion in affirmative, statement Ex.PMM of injured Jaswinder Singh was recorded, wherein he stated that he has been working as helper in Thermal Plant, Ghanauli, District Ropar for the last 12-13 years; that on 2.12.2007, he along with Teja Singh Daburji, resident of Chamkaur Sahib had gone to attend *bhog* ceremony of Sandeep Kumar at Ghanauli on motorcycle make Bullet bearing No.PB-12-J-7661; that after *bhog* ceremony was over, a person by name of Boni had a talk on phone with Teja Singh Daburji regarding land of Asra Colony, village Kotla Nihang; that thereafter, he and Teja Singh Daburji went to Asra Colony on the motorcycle reaching there at about 7:00 p.m.; that Teja Singh Daburji had kept a sword on motorcycle; that when they reached the gate of colony, Boni alias Harinder Singh was sitting on the chairs along with Manjit Singh; that Teja Singh Daburji while talking to those persons became angry and quarrel broke out; that Manjit Singh and Harinder Singh gave *kirpan* blows to Teja Singh Daburji on head and other parts of the body. According to the complainant, when he went forward to rescue Teja Singh Daburji, then Harinder Singh aimed *kirpan* blow on his legs and head; that he (complainant) raised hands to ward off the blow and the *kirpan* hit on his hand; that Teja Singh fell down at the spot; that the complainant while rolling in the darkness reached near the house of Rattan Singh, but due to his injured condition, he could not go ahead

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and remained lying there; that on the next day in the morning, owner of the house saw him and made him warm by lighting fire near him and then he was brought to Civil Hospital, Ropar and got admitted there, whereas Teja Singh Daburji had died. The complainant stated that besides Manjit Singh and Harinder Singh, 5-6 other persons had arrived at the scene of incident and he could identify them, if brought before him. He further stated that a day earlier, they had gone to meet Boni at 5:00 p.m. but he had given them time of 7:00 p.m.

The statement Ex.PMM was signed and right thumb marked by complainant - Jaswinder Singh since on account of injury on thumb of his left hand and due to dressing, right thumb impression of the complainant was taken below his statement as mentioned in police proceedings by SI/SHO Balwant Singh Majitha below statement of the complainant. SI Balwant Singh Majitha attested the same. He put his endorsement Ex.PW2/C below that statement and sent ruqa to police station through HC Jaswinder Singh, on the basis of which formal FIR No.177 dated 3.12.2007 for offences under Sections 302, 307, 324, 148 and 149 IPC was registered with Police Station City, Rupnagar, copy of FIR being Ex.PNN.

Thereafter, the police party proceeded to the spot, where the Investigating Officer carried out spot inspection and prepared rough site-plan of the place of occurrence as Ex.POO. He also summoned the photographer to the spot and got the photographs of place of occurrence and dead body clicked from him. Blood stained earth was picked up

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from the place of occurrence and placed in a plastic container sealed with seal of the Investigating Officer having impressions 'BS' and taken into possession vide memo Ex.PN. The Investigating Officer carried out inquest proceedings with regard to dead body of Teja Singh and prepared report Ex.PQQ in that regard. The dead body was sent for post-mortem examination. Statements of witnesses under Section 175 Cr.P.C. were recorded. Clothes of deceased were taken into possession vide recovery memo Ex.PRR.

On 3.12.2007 at night Sh.Pomi Soni, Municipal Councillor brought accused Harinder Singh and Manjit Singh and produced them before SI Balwant Singh Majitha. Such accused were formally arrested in this case. Necessary documents in that regard were prepared. The photographs were taken into possession vide recovery memo Ex.PD.

On 5.12.2007, accused Manjit Singh and Harinder Singh were interrogated one by one. During interrogation, accused Manjit Singh had suffered a disclosure statement that he had kept concealed *kirpan* near the north wall of Asra colony in the area of village Kotla Nihang near cremation ground about which only he knew and could get the same recovered. His statement Ex.PK was recorded.

Thereafter, accused Harinder Singh was interrogated and he also made a statement under Section 27 of the Evidence that he had kept concealed a *kirpan* in the bushes in the cremation ground in area of village Kotla Nihang about which only he knew and could get the same recovered. His statement Ex.PJ was recorded. Thereafter, accused

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Manjit Singh, while in police custody, led the police party to the disclosed place and got the *kirpan* (Ex.MO/1) recovered from the place specified by him in his disclosure statement. The IO prepared a parcel of the said *kirpan* sealing it with his seal having impressions 'BS' and the said parcel was taken into possession vide recovery memo Ex.PM. Earlier to that sketch Ex.PCC of *kirpan* had been prepared. The IO prepared rough site-plan of place of recovery as Ex.PSS.

Thereafter, accused Harinder Singh, while in police custody, led the police party to the disclosed place and got the *kirpan* (Ex.MO/2) recovered from the place specified by him in his disclosure statement. The IO prepared a rough sketch of the recovered *kirpan* as Ex.PDD and then converted it into a parcel sealing it with his seal having impressions 'BS' and that parcel was taken into possession vide recovery memo Ex.PL. The IO prepared rough site-plan of place of recovery as Ex.PTT.

On 6.12.2007 while the police party led by SI/SHO Balwant Singh Majitha was present at Nangal Chowk, Ropar, there Iqbal Singh, Sarpanch of village Salapur came and produced accused Harpreet Singh and Sandeep Singh before SI/SHO Balwant Singh Majitha. Both of them were formally arrested in this case. On return to the police station, the accused were put in the lock-up.

On 7.12.2007, accused Sandeep Singh and Harpreet Singh were taken out from the lock-up for interrogation. Firstly, accused Harpreet Singh was interrogated, who suffered a disclosure statement

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that he had kept concealed a bamboo stick in Transport Nagar, Ropar in the bushes about which only he knew and could get the same recovered. His statement Ex.PGG was recorded.

Then accused Sandeep Singh was interrogated, who suffered a disclosure statement that he had kept concealed a bamboo stick in Transport Nagar, Ropar in the bushes about which only he knew and could get the same recovered. His statement Ex.PHH was recorded.

Thereafter, accused Harpreet Singh and Sandeep Singh, while in police custody, led the police party to the disclosed places and got recovered one bamboo stick each (Ex.MO/3 and Ex.MO/4) from the places specified by them in their disclosure statements. The IO prepared rough site-plans of place of recoveries as Ex.PUU and Ex.PVV, respectively.

On 10.12.2007, accused Sohan Singh was arrested from old bus-stand, Ropar. Necessary documents in that regard were prepared. During interrogation, he had suffered a disclosure statement Ex.PKK which led to recovery of plastic pipe (Ex.MO/5) and the same was taken into possession vide recovery memo Ex.PKK/1.

On 14.12.2007, accused Gagandeep Singh was arrested and interrogated and he suffered a statement under Section 27 of the Evidence Act Ex.PX which led to recovery of bamboo stick and that was taken into possession vide recovery memo Ex.PX/1.

It may be mentioned here that the complainant was not satisfied with the investigation conducted by SI/SHO Balwant Singh

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Majitha, whom he accused of favoritism and mishandling the investigation to help the accused side. He complained against him to SSP, Ropar, who had marked the inquiry to SP(D) Sh.Ashish Chaudhary. Sh.Ashish Chaudhary, SP(D), Ropar had carried out an inquiry into the matter by visiting the spot and recording statements of witnesses and he came to the conclusion that accused were the assailants. As per his directions challans against accused persons named in FIR No.176 and FIR No.177 were presented in the Court.

On 20.12.2007, Jaswinder Singh, complainant had made another statement before Superintendent of Police (Detective), District Rupnagar regarding the incident in which he stated that on 2.12.2007, he and Teja Singh got together at Ghanauli at about 11:30 a.m.; that till evening 40-50 calls were received on mobile phone of Teja Singh, which were being made by Boni, who was calling Teja Singh to Rupnagar; that then in evening at about 6:00 p.m., he and Teja Singh on his motorcycle reached at village Kotla Nihang, where there were seats around the land; that on the road a Skoda car bearing No.PB-39-C-0110 of white colour was parked and when they stopped their motorcycle near the Skoda car, then Bhupinder Singh came out of the car having a *kirpan* (sword) and he caught hold of Teja Singh from his jacket and asked from him as to what was the *badmashi* giving a blow on his head with unsheathed *kirpan*. According to the complainant, he enquired from the assailants as to what was the matter, however, Amarjit Singh Jolly gave a blow to Teja Singh on head, then Boni (Harinder Singh)

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gave *kirpan* blow to complainant on his right hand, Mohinder Singh gave *kuhari* (axe) blow on the head of complainant and thereafter Teja Singh and complainant fell on the ground; that the assailants started raining blows upon him and took both the injured on the road; that Bhupinder Singh, Amarjit Singh Jolly, Boni (Harinder Singh), Mohinder Singh and 10-12 other boys dragged them to their land; that on going there, they caused more injuries and left them there assuming them to be dead; that Amarjit Singh Jolly said that necks of both the injured should be severed and thrown in the canal; that at that time Bhupinder Singh said that they should stop there and call Majitha Sahib and the chapter of injured should be closed. According to complainant, when he heard that talk, he went towards the side of village Kotla Nihang by rolling along side the wall; that thereafter the assailants took the tractor and started searching for him; that they searched for him throughout the night and were abusing as to where complainant had gone and in case he was spotted, he should be cut, killed and thrown in the canal. According to the complainant, he passed the night by hiding himself in the *kup* (chaff store) and when the police came to the spot, he did not call anybody due to fear. On the next day at about 7:00 a.m., he called out to the people of neighbouring houses, then an old man came out of the house from whom he asked for water; that after drinking water, he told him that he was feeling very cold and he (that person) should ignite the fire near him otherwise he would die due to cold. Then they gave heat to him by igniting fire with *parali* (dry fodder). Thereafter, the police came there

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and removed him to Civil Hospital, Rupnagar, where he was admitted and treated. However, keeping in view his condition, he was referred to PGI, Chandigarh. In Civil Hospital, Rupnagar his statement was recorded by Balwant Singh Majitha, SI/SHO wherein he got recorded names of Bhupinder Singh, Amarjit Singh Jolly, Mohinder Singh, which were not written by him (SI/SHO Balwant Singh Majitha) at that time; that he had come to S.P. (Detective), Rupnagar along with Swaran Singh son of Sultan Singh, resident of Daburji, Jathedar Bhag Singh and S. Simranjit Singh Mann son of Col. Joginder Singh, President, S.A.D. Amritsar and 50-60 other persons because he apprehended danger to his life from accused-assailants, who could kill him at any time. He asked for providing of security also. That statement was signed by Jaswinder Singh.

On 6.1.2008, accused Bikram Singh @ Vicky was arrested whereas accused Rajesh Kumar was arrested on 9.1.2008. Necessary documents in that regard were prepared.

After completion of investigation and other formalities, challan against accused Harinder Singh, Manjit Singh, Rajesh Kumar, Bikram Singh, Sohan Singh, Gagandeep Singh, Harpreet Singh and Sandeep Singh was prepared and filed in the Court of Chief Judicial Magistrate, Ropar.

On presentation of challan in the Court of Chief Judicial Magistrate, Ropar, she supplied copies of documents relied upon in the challan to the abovementioned eight accused free of costs as provided

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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 Chief Judicial Magistrate, Ropar vide her order dated 13.3.2008 committed the case to the Court of learned Sessions Judge, Rupnagar from where it was entrusted to the Court of learned Additional Sessions Judge, Rupnagar.

When the case was received in the Court of learned Additional Sessions Judge, Rupnagar, observing that charge for the offences under Sections 148, 302 and 307 read with Section 149 IPC (on two counts), and 324 read with Section 149 IPC was disclosed against the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of trial, the prosecution moved an application under Section 319 Cr.P.C. which was accepted vide order dated 13.8.2009 and Bhupinder Singh, Amarjit Singh, Mohinder Singh and Lakhwinder Singh were summoned as additional accused to face trial along with other accused, whereas application qua Balwant Singh Majitha was dismissed. Then amended charge was framed against twelve accused vide order dated 3.2.2010. One of the accused Lakhwinder Singh had filed a revision petition in Hon'ble High Court challenging his summoning order, which was accepted and summoning of such accused was set aside. However, criminal revision filed qua Balwant Singh Majitha resulted in order dated 13.8.2009 passed by the

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trial being set aside and SI/SHO Balwant Singh Majitha was ordered to be summoned to face trial along with other co-accused. Accused SI/SHO Balwant Singh Majitha put in appearance. Then amended charge for the offences under Sections 148, 302, 307 and 324 IPC read with Section 149 IPC was framed against all such accused, twelve in number, 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 eighteen witnesses as per details below:

PW1 HC Dharam Pal, PW2 C Mohinder Singh and PW3 HC Sucha Ram, formal witnesses tendered in evidence their duly sworn affidavits Ex.PA, Ex.PB and Ex.PC, respectively praying that the same be read as a part of their statements.

PW4 Brij Mohan, photographer deposed that on 3.12.2007, he had clicked photographs Ex.P1 to Ex.P3 at village Kotla Nihang and photographs Ex.P4 to Ex.P9 at the time of post-mortem examination and he had handed over such photographs to the Investigating Officer vide memo Ex.PD.

PW6 Dr. Harleen Kaur, who on 3.12.2007 while posted as Medical Officer at Civil Hospital, Ropar had examined patient Jaswinder Singh son of Hardip Singh, 40 years, resident of Chandpura, District Solan (H.P.) at 9:15 a.m. in the Emergency Ward of Civil Hospital, Ropar stated that the patient gave the history of assault all over the body. On examination, the patient was found conscious, oriented,

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vitals were normal. She found following injuries on his person:

- (a) Four inch long horizontal lacerated wound present over left occipital parietal region bone deep. Vertical lacerated wound present 1.5 inch long bone deep over occipital and four inch long lacerated horizontal wound found present on the right occipital parietal region. Bone deep edges of all the three wounds were uniform. Advised X-ray skull. Lacerated wound is to be read as incised wound, it was written by mistake.
- (b) Right palm 6 inches long wound present muscle deep extending from right index finger to wrist joint. Edges were uniform, advised X-ray right hand.
- (c) Left thumb one inch long lacerated wound present, muscle deep. Advised X-ray left hand.
- (d) Right knee joint horizontally two inches long bone deep wound present. Advised X-ray right knee joint.
- (e) Old injury present over right leg. Above ankle joint.
- (f) Left midleg vertical incised wound present 3 inches long 0.5 CMs deep.
- (g) Left thigh swelling present. Advised X-ray.
- (h) Abrasion present over right leg in midleg.

The witness stated that except injuries No.(g) and (h), all the injuries were caused by sharp edged weapon. Injury mark at (h) was simple in nature whereas opinion of the remaining injuries was deferred to be given after the receipt of x-ray report. She gave the probable duration of injuries to be within 12 to 24 hours. She proved copy of MLR as Ex.PE and pictorial diagram showing the seats of injuries as Ex.PF.

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The witness stated that on the same day, she sent intimation to the SHO regarding hospitalization of Jaswinder Singh in an injured state. She proved the said intimation slip as Ex.PG. She further stated that on 13.1.2008, she had received the application from SHO concerned and vide her endorsement Ex.PH had declared that injury (a) could have been dangerous to life. She stated that since the condition of patient had deteriorated, as such she had referred him to PGI, Chandigarh for further treatment.

PW7 Balwinder Kumar, aged 62 years, resident of House No.486, Meeran Bai Chowk, Ropar, Tehsil and District Ropar deposed that on 5.12.2007, while he had gone to Police Station City, Ropar at about 1:00 p.m. for his personal work, then all the accused were taken out of police lock-up for interrogation; that one accused was Harinder Singh @ Gony and other was Manjit Singh; that they told separately that they had kept concealed their *kirpans* near graveyard of village Kotla Nihang in the bushes; that then he accompanied the police party to the disclosed places and got recovered *kirpans* therefrom. This witness proved statement of accused Harinder Singh @ Gony as Ex.PJ and that of Manjit Singh as Ex.PK. He stated that *kirpans* were taken into possession vide separate recovery memos Ex.PL and Ex.PM, respectively. He identified Harinder Singh @ Gony and Manjit Singh accused present in the Court at that time.

PW8 Pomi Soni, resident of House No.2427, Chhota Khera, Ropar deposed that on 3.12.2007, SI/SHO Balwant Singh Majitha took

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into possession blood stained earth in his presence by putting the same in a plastic box at village Kotla Nihang; that one motorcycle make Bullet was also taken into possession in his presence and that accused Manjit Singh and Harinder Singh were arrested in his presence and memos in that regard were prepared.

PW9 HC Surinder Singh, a formal witness tendered in evidence his affidavit Ex.PS.

PW10 Jaswinder Singh – complainant deposed in consonance with the prosecution story. Keeping in view the nature of the case, we find it appropriate to reproduce his statement in verbatim, which is as under:

“I am employed as helper in Thermal Plant at Ghanauli for the last 15 years. On 2.12.2007, I along with Teja Singh were present at Ghanauli in a Bhog Ceremony. Teja Singh received telephonic call on his phone from Harinder Singh alias Boni. The first call was received at 11:00 A.M. on the phone of Teja Singh to meet him at Kotla Nihang. Similarly 40/50 calls were received by Teja Singh on his phone from Harinder Singh. Myself and Teja Singh reached at 6.30 PM at Kotla Nihang on a motor cycle on the spot of occurrence. Thereafter, one Skoda vehicle of white colour bearing No.PB-39C-0110 was seen standing there. We stopped our motorcycle near the said Car. Bhupinder Singh came out of Car with naked *kirpan*. He caught hold Teja Singh from his jacket. Then Amarjit Singh alias Jolly came out of car with naked

kirpan in his hand. Then Harinder Singh came out of the car with naked *kirpan* in his hand. Mohinder Singh also came out of the car with *Kulhari* in his hands. Bhupinder Singh gave *kirpan* blow in the head of Teja Singh. Then Amarjit Singh alias Jolly gave *kirpan* blow in the head of Teja Singh. Thereafter, Harinder Singh Boni accused gave *kirpan* blow in the head of Teja Singh. Then Mohinder Singh gave *Kulhari* blow in my hand. Teja Singh fell down on the ground after receipt of injuries. Then all the above accused persons caused injuries on the person of Teja Singh with their respective weapons. Amarjit Singh alias Jolly gave *kirpan* blow towards my head which I warded off with my both hands and *kirpan* hit against my hands and I sustained injuries on my hands. Then I fell down on the ground. I was dragged by accused persons from my hairs from road inside the plot. Then Sohan Singh, Manjit Singh, Sandeep Singh, Gagandeep Singh, Rajesh Monti, Bikram alias Vicky, Harpreet Singh, Lakhwinder Singh also reached on the spot armed with dangerous weapons. Lakhwinder Singh gave Iron rod blow which hit on my back side. All the accused persons caused injuries to me and Teja Singh with intention to kill us. The accused thrown both of us in the plot in the darkness. Amarjit Singh alias Jolly asked to other accused that I and Teja Singh had died and both of us be thrown in the canal after cutting their legs. Mohinder Singh asked to wait by saying that SHO Balwant Singh Majitha is coming and on his

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coming, dead bodies will be thrown in the canal. After hearing this, I by rolling down shifted towards Kotla Nihang side. Then accused started to search for me with the help of torch and tractor. Then SHO Balwant Singh Majitha and other police officials reached on the spot in two gypsy. SHO Balwant Singh Majitha along with other accused started to search for me and he told that I will be finished after search, otherwise, he will be proved as dangerous for them. I concealed myself in Kup of Turi. They remained searching me throughout the night and I remained in Kup of Turi while shivering due to cold weather. Then at about 7 A.M, I asked for water from a old man passing thereby. He gave me glass of water. After taking water, I felt coldness. I requested him that I may be provided warmth and asked him to burn the 'Parali'. In case I had not received that aid from old man, I would have died there and then. In the morning, police and press reporters came on the spot. They took me to Civil Hospital, Ropar. Police obtained my signatures on blank papers. My wounds were stitched in the hospital. Whatever I had dictated to police, the same was not written by the police. My statement was not read over to me. My thumb impression was taken on blank paper. When I was at Ropar, I came to know that Teja Singh had died in the occurrence. My thumb impression was obtained at Point Mark-A on statement dated 3.12.2007. I was referred to PGI Chandigarh. I remained admitted in PGI for about 20/22 days. On

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return from PGI, my statement was recorded before SSP, Ropar.

In the presence of Simranjit Singh Mann, Jathedar Bhag Singh and Swaran Singh, my statement was recorded. The said statement dated 20.12.2007 is Ex.PT. I identify my signatures on my statement. Statement was got recorded on my dictation. However, in the said statement, name of Balwant Singh Majitha was not added. Said statement was also not read over to me. This fact came to my knowledge, when I obtained copy of the said statement and then I moved an application under Section 319 Cr.P.C. for summoning of Balwant Singh Majitha SHO. In consequence of this occurrence, a false case was registered against me under Section 452 IPC and the same was presented in the Court of CJM, Ropar before presentation of this challan. However, I was acquitted in that case. All the accused are present in Court today and identify them.”

PW11 Dr.Barinder Singh, Medical Officer, Civil Hospital, Dera Bassi, District Mohali deposed that on 03.12.2007, he was posted in Civil Hospital, Ropar. On that day, the police moved an application Ex.PU for conducting the post mortem examination on the dead body of Teja Singh son of Sultan Singh, resident of village Daburji, P.S. Sadar Ropar. On this application, the SMO, Shri Gupta, passed the order Ex.PU/1 and constituted the board of doctors consisting of himself, Dr. Surinder Singh and Dr. Neel Kamal. Accordingly, they conducted the post mortem on the dead body of Teja Singh son of Sultan Singh. The

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body was brought by Constable Surinder Singh. It was identified by Piara Singh and Swaran Singh, whose signatures were obtained on the post mortem report itself. The post mortem was conducted on 03.12.2007 at 04:30 p.m. As per police papers, the date of death was 02.12.2007. On examination of the dead body, they observed the followings:-

1. No ligature mark on neck was present.
2. Body was moderately built and well nourished.
3. Post mortem staining was present. Rigor mortis was present.
4. Front of the head is crushed with presence of lacerated wound on anterior aspect of right shoulder.
5. Another lacerated wound was present just of the left eye.
6. Two other lacerated wounds parallel to each other present on the outer aspect of the left leg.
7. Blood was present in both nostrils.

The details of the injuries were as follows:-

1. 10x1 cm lacerated wound was present in coronal plane of frontal region just near the anterior hair line with underlying spicules of bone. (Frontal bone) were present. Underlying brain material of frontal lobes of brain was coming out. Underlying méninges were torn up. Contusion of frontal lobe of brain were present.

2. Lacerated wound 5x0.5 cm was present just above left eye brow. Spicules of underline frontal bone were protruding out along with underline brain material coming out.
3. Bone deep incised wound of 7 cm was present on posterior-lateral aspect of right shoulder. Clotted blood was present. Margins were clear cut. Underline bone were fractured.
4. Two parallel incised wounds of sizes 10x1.5 cm and 8x1.0 CM were present on lateral aspect of left leg just below knee joint. Underlying head of fibula was present. Clotted blood was present.
5. Superficial reddish abrasion of 10x5 cm was present on lateral aspect of left leg at the junction of upper 2/3rd and lower 1/3rd.
6. Skin deep incised wound of 1x0.5 cm was present at outside of anterior superior iliac spine. Clotted blood was present.

Opinion of members of the board of Doctors was that the cause of death in this case was due to head injury (lacerations and contusions of frontal lobes of brain), due to injury No.1 and 2. All the injuries were ante mortem in nature. Injuries No.1 and 2 were sufficient to cause death in ordinary course of nature. Probable time that elapsed

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between injury and death was within two hours and between death and post-mortem was within 24 hours. He also proved on record pictorial diagrams as Ex.PV and Ex.PV/1 and carbon copy of post mortem report as Ex.PV/2.

PW12 HC Raj Kumar, who was associated with investigation of the case, testified regarding what had taken place in his presence.

PW13 Jagdish Singh, Patwari, Halqa Ghanauli, District Ropar stated that on 8.1.2008, he was working as Patwari Halqa, Kotla Nihag and had prepared site-plan Ex.PBB with correct marginal notes.

PW14 HC Sukhjit Singh, who was joined in investigation of this case on 5.12.2007 deposed that on that day, accused Manjit Singh and Harinder Singh were interrogated in his presence and they had suffered disclosure statements regarding their having kept concealed a *kirpan* each at the specified places and thereafter such accused, while in police custody, got the *kirpans* recovered from their possession, which were converted into sealed parcels and taken into possession. He was member of the police party on 6.12.2007 and 10.12.2007 and he deposed regarding what had transpired in his presence on those dates.

PW15 Dr.Harkirat Singh deposed that on 2.12.2007, he was posted at Civil Hospital, Ropar; that on that day, he was on emergency duty and information regarding an assault case and Teja Singh's death during first aid in ambulance to PGI, Chandigarh was sent to Incharge, Police Station City, Ropar, the same being Ex.PLL.

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PW16 SI Nirmal Singh deposed regarding the investigation carried out on 2.12.2007 by the police party headed by SI/SHO Balwant Singh Majitha in his presence and further the investigation of this case on 3.12.2007, 5.12.2007, 6.12.2007, 10.12.2007, 14.12.2007 and 6.1.2008 etc. proving various documents.

PW17 Piara Singh, aged 52 years, resident of village Daburji, Tehsil Lodhi Majra, District Ropar stated that on 3.12.2007, he had identified the dead body of Teja Singh and had signed the inquest report Ex.PQQ.

PW18 Dr.Himanshu Paul, Senior Resident, Department of Plastic Surgery, PGI, Chandigarh had brought the summoned record i.e. medico legal file record of patient Jaswinder Singh CR No.464057. As per the record, the abovesaid patient was admitted in Emergency Department of PGI, Chandigarh on 3.12.2007 with alleged history of assault at village Kotla Nihang, District Ropar on 2.12.2007 at 8:30 p.m. by about 15/20 unknown people. The patient had history of vomiting and nasal bleed for which a neuro surgery consultation was taken and CT Scan head done which was normal. X-ray of left wrist was done which shows fracture of radius for which above elbow cast was given. Patient had sutured laceration of right side palm of hand. The sutures were opened and wound explored. There was injury to the tendon and fracture of the metacarpal. Tendon repair was done and splintage was given. Going further, this witness stated that the patient was discharged in healthy condition on 6.12.2007. He proved medico legal case

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summary as Ex.PCCC.

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 such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

In addition to pleading false implication, accused Harinder Singh took up a plea that he never suffered any disclosure statement and no recovery was effected from him; that false recovery has been planted upon him.

Similar plea as taken by accused Harinder Singh had been adopted by accused Manjit Singh, Rajesh Kumar, Bikram Singh, Sohan Singh, Gagandeep Singh, Harpreet Singh and Sandeep Singh.

Further, accused Bhupinder Singh and Mohinder Singh took up a plea that they have not committed any offence and have been falsely involved in this case due to enmity with Bhag Singh and their names have been wrongly dragged.

Further, accused Balwant Singh Majitha took up a specific stand that he has submitted his written reply under Section 313 Cr.P.C. which be taken on record and be read as part and parcel of his defence.

During their defence, accused examined five witnesses.

DW1 Pritam Singh, aged about 63 years, resident of House No.271, Giani Zail Singh Nagar, Ropar deposed that on 2.12.2007, he

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was posted as DSP, Sub Division, Ropar and was supervising officer of Police Station City and Police Station Sadar, Ropar; that on 2.12.2007, he received intimation from Balwant Singh Majitha, SHO, Police Station City, Ropar through wireless message regarding the fight that had taken place in the colony of Kotla Nihang; that then he along with his gunman reached the place of occurrence at Kotla Nihang at about 10:00 p.m.; that at the same time, Balwant Singh Majitha, SI/SHO reached by another police gypsy along with police force; that they had inspected the spot and looked around the site but they did not meet any person from any of the side; that they remained at the spot for about one hour and then they had returned back from the spot along with Balwant Singh Majitha, SHO and that he had instructed SHO Balwant Singh Majitha to take necessary action and lodge the FIR.

On 3.12.2007, he came to know through SI/SHO Balwant Singh Majitha that they had taken one injured person to the hospital; that he came to know this fact at about 9:40 a.m.; that he also reached Civil Hospital, Ropar after about 10 minutes; that when he reached the hospital, there SP Headquarter namely Paramjit Singh Sandhu also reached the Civil Hospital, Ropar; that SI Balwant Singh Majitha, ASI Nirmal Singh and other police officials were also present there; that injured Jaswinder Singh was admitted in the hospital; that he enquired from Jaswinder Singh regarding the fight, then he (this witness) instructed Balwant Singh Majitha to register FIR as per the statement made by Jaswinder Singh; that Jaswinder Singh made his statement in

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his presence and in presence of SP Headquarter namely Paramjit Singh Sandhu and Dr.Harleen Kaur and in presence of other medical staff. Going further, this witness stated that the statement of Jaswinder Singh was recorded as per saying of Jaswinder Singh and nothing was added or deleted from his statement; that Jaswinder Singh put his right thumb impression on the statement because the left thumb was bandaged because of injuries, police zimni No.1-A was recorded in that regard; that he personally supervised the investigation correctly as per the occurrence; that statements of witnesses were also recorded correctly; that the investigation made by Balwant Singh Majitha, SHO was also done under supervision of higher police officers i.e. SP Paramjit Singh Sandhu, who was working as acting SSP at that time; that he also questioned the accused namely Harinder Singh Boni and Manjit Singh and that Balwant Singh Majitha, SHO presented the challan against the accused on the basis of investigation under the instructions of higher police officers.

DW2 SSP Ashish Chaudhary deposed that while he was posted as SP(D) at Ropar in the year 2008, inquiry was marked to him; that he conducted the inquiry openly and secretly; that he recorded statements of witnesses. He proved copy of inquiry report as Ex.DW2/A. He stated that inquiry report was approved by the Senior Superintendent of Police namely Sh.P.K. Sinha. He proved copy of approval by the SSP as Ex.DW2/B.

DW3 HC Bhupinder Singh from Police Station City, Ropar

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had brought the original FIR register containing FIR No.176 dated 2.12.2007 under Sections 452, 506, 148 and 149 IPC, Police Station City, Ropar, attested copy of which being Ex.DW3/A.

DW4 HC Parminder Singh posted as MHC at Police Station Sadar, Ropar brought the summoned record which was register No.9-II and 9-III containing record of different FIRs pertaining to village Daburji. He deposed that Teja Singh son of Sultan Singh belonged to village Daburji and FIR No.81 dated 10.8.1995, Police Station Ropar, under Sections 451 and 380 IPC was registered against Teja Singh and others for which entry at Serial No.1 in that register was there. At serial No.2 of year 1995-96, FIR No.41 dated 17.4.1997, Police Station Ropar under Sections 363, 506, 511, 34 IPC at Police Station Ropar was registered against said Teja Singh. At Sr.No.3 of year 1995, FIR No.35 dated 25.3.1997, Police Station Ropar under Section 379 was also registered against Teja Singh. At Sr.No.6 FIR No.5 dated 7.1.1998, Police Station Mohali, under Sections 380, 457 IPC, Police Station Mohali was also registered against Teja Singh. At Sr. No.8, FIR No.132 dated 1.8.1999, Police Station Ropar under Sections 392, 302 IPC was registered against Teja Singh abovesaid. At Sr. No.3 of the year 2000, FIR No.21 dated 4.3.2001, under Sections 452, 342, 325, 323, 148, 149 IPC, Police Station Kurali was registered against Teja Singh. At Sr.No.5 of this year, FIR No.14 dated 20.1.2013 under Sections 379, 411, 468, 471, 472 IPC, Police Station Ropar was also registered against Teja Singh. At Sr.No.6, FIR No.139 dated 2.9.2002 under Sections 307/34

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IPC 25 Arms Act, P.S. Sohana was also registered against Teja Singh. At Sr.No.9, FIR No.7 dated 21.1.2003, under Section 25, 54 Arms Act, P.S. Chamkaur Sahib was also recorded against Teja Singh, FIR No.102 dated 9.5.2006 under Sections 25, 54 Arms Act, P.S. Sadar Ropar was also recorded against Teja Singh. FIR No.205 dated 17.8.2006, under Sections 451, 427, 506, 148, 149 IPC, Police Station Ropar was recorded against Teja Singh. FIR No.15 dated 5.2.2007 under Sections 323, 324, 452/34 IPC, Police Station Ropar was also recorded against Teja Singh and others. FIR No.58 dated 15.5.2007, under Sections 392, 342, 397 IPC, Police Station Machiwara was also registered against Teja Singh. FIR no.177 dated 3.12.2007 under Sections 302, 307, 324, 148/149 IPC, Police Station City Ropar was also registered against Teja Singh. This record was maintained at Police Station Sadar, Ropar. Information from a specific police station where FIR is recorded was sent to P.S. Sadar Ropar and on the basis of said information, the record was maintained at P.S. Sadar, Ropar.

DW5 HC Harvinder Kumar had brought the summoned record and he stated that FIR No.134/5 dated 11.6.2005 under Sections 341, 323, 506/34 IPC and 326 and 324 IPC, Police Station Nalagarh was registered against Jaswinder Singh son of Hardeep Singh, Harvinder Singh son of Hardeep Singh, Gurnam Singh son of Jawala Singh, Ravinder Singh son of Gurnam Singh. He proved copy of FIR as Ex.DW5/A. Going further this witness stated that FIR No.8 dated 6.1.2009, under Section 25 of Arms Act was registered against Mohan

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Singh alias Mohna, Jaswinder Singh son of Hardeep Singh, Gurcharan Singh son of Rattan Singh, Razak Mohammad. He proved copy of this FIR as Ex.DW5/B. He further stated that FIR No.196 dated 24.12.2010, under Sections 307/114/34 IPC and 25 of Arms Act registered at P.S. Nalagarh against Mohan Singh alias Mohna, Shokin Singh son of Waryam Singh, Jaswinder Singh son of Hardeep Singh. He proved copy of this FIR as Ex.DW5/C.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court acquitted accused Rajesh Kumar, Bikram Singh, Sohan Singh, Gagandeep Singh, Harpreet Singh, Sandeep Singh and Balwant Singh Majitha of the charge framed against them whereas convicted and sentenced accused Harinder Singh alias Boni, Manjit Singh, Bhupinder Singh, Amarjit Singh Jolly and Mohinder Singh as mentioned supra, which left them aggrieved and they have filed **CRA-D-1458-DB of 2013, CRA-D-1416-DB-2013, CRA-D-1457-DB-2013, CRA-D-1475-DB-2013 and CRA-D-1510-DB of 2013** praying that the same be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

We have heard learned counsel for the appellants-accused-convicts, learned Additional Advocate General for the State of Punjab as well as learned counsel for the complainant besides going through the record.

As far as happening of the incident on 2.12.2007 at about

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7:00 p.m. in the area of Asra Colony, Kotla Nihang in which Teja Singh had suffered injuries to which he had succumbed whereas Jaswinder Singh had also suffered injuries including one which was found to be dangerous to life, the same stands established. Teja Singh had suffered homicidal injuries on his person, in that way Jaswinder Singh having suffered injuries in this incident is a stamped witness and his presence at the spot cannot be doubted. Jaswinder Singh has been changing his version with regard to the assailants from time to time. The first version of the incident came in the form of statement of Jaswinder Singh recorded by SI Balwant Singh Majitha on 3.12.2007 at about 12:15 p.m., whereas the incident as per prosecution story had taken place on 2.12.2007 at about 7:00 p.m. at village Kotla Nihang about 3 kms. from Police Station City, Ropar. In the first version of the incident given by him (Jaswinder Singh) by making statement before SI Balwant Singh Majitha at Civil Hospital, Ropar, he stated that on 2.12.2007, he along with Teja Daburji, resident of Chamkaur Sahib had gone to attend *bhog* ceremony of Sandeep Kumar at Ghanauli on motorcycle make Bullet bearing No.PB-12-J-7661 and after the *bhog* ceremony was over, a person by name of Boni had a talk on phone with Teja Daburji regarding land of Asra Colony, village Kotla Nihang. Then both of them went to Asra Colony in the evening at about 7:00 p.m. riding motorcycle. A sword was kept on the motorcycle by Teja Singh and when they reached on the gate of colony, Boni alias Harinder Singh was sitting on the chairs along with Manjit. Teja Singh while talking with abovesaid

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persons became angry and they started quarrelling with each other. Manjit Singh and Harinder Singh gave *kirpan* blows to Teja Singh on head and other parts of the body. When he (Jaswinder Singh) went forward to rescue Teja Singh, then Harinder Singh aimed *kirpan* blow on his legs and head. Teja Singh fell down on the ground. Then Jaswinder Singh while rolling in the darkness reached near the house of Rattan Singh but due to his injured condition, he could not go ahead and he remained lying there. It was on the next morning when he was given provided warmth by igniting fire and then brought to Civil Hospital, Ropar. In his statement, he had got it mentioned that Teja Singh had died and besides Manjit Singh and Harinder Singh, 5-6 other persons had arrived at the scene of incident and he could identify them, if brought before him. In that way complainant had alleged that Manjit Singh and Harinder Singh had given *kirpan* blows in the head and other parts of the body of Teja Singh whereas Harinder Singh had given *kirpan* blows on his (complainant's) head and both legs. No other person has been named or mentioned that such persons were carrying any weapons, if so the type thereof. There are no allegations of such persons taking part in the incident or giving any blow to deceased or the complainant. The statement Ex.PMM bears right thumb impression of Jaswinder Singh as well as his signatures. It was for the reason that Jaswinder Singh was found to be hurt on left hand which he could not use for fixing his thumb impression.

Before recording statement of complainant, the

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Investigating Officer had obtained written opinion from the attending doctor regarding fitness of injured to make statement. Such opinion was given in affirmative. Thus, there is nothing to show that complainant was not in a fit state of mind to give complete narration of the incident or his statement was not recorded by SI/SHO Balwant Singh Majitha.

Although the allegations against SI/SHO Balwant Singh Majitha appeared to be that he had not recorded statement of complainant properly and had left several names but then as already observed statement of complainant had been recorded by SI/SHO Balwant Singh Majitha after getting opinion from the doctor that witness was in fit state of mind to make statement. The statement bears right thumb impression and signatures of Jaswinder Singh. This is highly unlikely that the witness would have appended his signatures and thumb impression on the statement if it did not contain the correct narration of the facts.

It may be mentioned here that Harinder Singh accused had provided a counter version of the incident on 2.12.2007 itself by making statement to the police, on the basis of which formal FIR No.176 dated 2.12.2007 under Sections 452, 506, 148 and 149 IPC, Police Station City, Ropar was registered. It was recorded on the basis of statement of Harinder Singh son of Dharam Singh, resident of VPO Chamkaur Sahib, District Ropar in which he stated that he is resident of the abovesaid address and do the work of filling earth by tractor trolley; that on that day Manjit Singh son of Kaka Singh, Caste Ramdasia, resident of

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Fatehpur, P.S. Chamkaur Sahib, who is employed as Chowkidar in Asra City, Kotla Nihang and who is residing there day and night, had called him for doing job; that on that day at 10:00 a.m., he came to Asra City, Rupnagar where Manjit Singh had finalized the matter regarding his job and that due to spreading of darkness, Manjit had kept him there; that at about 7:00 p.m., he and Manjit Singh were sitting by closing the gate, then one young man came on bullet motorcycle, who had kept the *kirpan* on the motorcycle, who opened the gate by striking the motorcycle with the gate and came inside and gave *lalkara* (exhortation) that he is *badmash* Teja Singh Daburji and he had taken possession at many places and he had been sent by Lal Singh and would go after killing them and the motorcycle was bearing No.PB-12-J-7661 and he went inside near the motor and 5-6 other persons were following him while raising *lalkaras*; that Teja Singh by throwing the motorcycle and taking *kirpan* tried to give blow on his head, then he immediately stepped back and Teja Singh fell on the ground under the influence of liquor along with *kirpan*; that he snatched the *kirpan* from Teja Singh and gave blow on his head and then gave another blow on his right leg; that blood started oozing from Teja Singh and he tried to stand up, then Manjit Singh picked up the stick lying there and gave blow to Teja Singh; that when Teja Singh tried to run away, then he and Manjit Singh lifted him and put in the tractor trolley and got him admitted in Civil Hospital, Rupnagar for treatment and by leaving Teja Singh there for his safety and treatment, he had gone to police station for lodging the report.

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His statement was recorded by SI Balwant Singh Majitha.

In this statement, deceased Teja Singh is alleged to be an aggressor. It is undisputed that though challan with respect to this FIR had been filed but the trial had ended in acquittal of Jaswinder Singh. However, in this FIR lodged at the instance of Harinder Singh it is also mentioned that Manjit Singh had participated in the incident. According to Harinder Singh, he had snatched a *kirpan* from Teja Singh and gave blow to him in his head etc. Therefore, involvement of Harinder Singh and Manjit Singh in the incident stands established.

Though while being examined under Section 313 Cr.P.C., accused Harinder Singh and Manjit Singh have not said anything as regards the deceased being aggressor trespassing in their property while armed with a sword and they causing injuries to him and Manjit Singh in exercise of right of self-defence after Harinder Singh had snatched sword from Teja Singh. They are silent as regards registration of FIR No.176 dated 2.12.2007 at the instance of Harinder Singh. Such accused have not taken up plea of self-defence, it being so they cannot justify causing injuries to Teja Singh and Jaswinder Singh, Teja Singh having succumbed to those injuries and injuries on the person of Jaswinder Singh having been found to be dangerous to life. If right of self-defence was not available to Harinder Singh and Manjit Singh, then there is no question of their exceeding the same. Though in the initial statement made by Jaswinder Singh to the police, he has named only Harinder Singh and Manjit Singh attributing injuries on his person and that of

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Teja Singh to both of them being armed with swords, which are sharp edged weapons. However, he had stated in that statement that 5-6 persons had come there at the time of fight and he could identify them, if brought before him. Though he has not specifically attributed any injury to them or shown any particular weapon(s) in their hands but keeping in view the number of injuries on the person of deceased and complainant i.e. seven injuries on the person of deceased in the form of lacerated wounds and incised wounds besides an abrasion, it comes out that sharp edged as well as blunt weapons were used for causing such injuries. PW11 Dr.Barinder Singh, who had performed the post-mortem examination on the dead body of Teja Singh on 3.12.2007, had stated in his cross-examination that both the injuries on the head and one above left eye-brow were lacerated wounds which were caused by blunt weapons only. Then as a result of medico-legal examination of Jaswinder Singh injured, eight injuries were found on his person having nature of incised and lacerated wounds as well as swelling and abrasion suggesting use of sharp edged as well as blunt weapons. It also makes out that the number of assailants was more than two since such number of injuries could not possibly have been caused by two persons with sharp edged weapons like swords during short duration of the fight. The complainant – injured Jaswinder Singh in his statement dated 20.12.2007 recorded with SP(D), District Rupnagar had alleged that Bhupinder Singh armed with a sword had inflicted a sword blow on head of Teja Singh, Amarjit Singh Jolly had given a sword blow to Teja

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Singh, Boni gave a sword blow on his right hand (that of complainant), Mohinder Singh gave *kuhari* (axe) on head of complainant. Thereafter, when they fell down, then Bhupinder Singh, Amarjit Singh Jolly, Boni, Mohinder Singh and 10-12 other persons dragged them in their land and gave more beatings to them including sword blows. In that way, in the second statement, the complainant Jaswinder Singh had specifically named Bhupinder Singh, Amarjit Singh Jolly, Boni, Mohinder Singh as assailants besides Harinder Singh already named by him in the earlier statement whereas omitting name of Manjit Singh saying that they were accompanied by 10-12 other unknown persons.

It is the case of the complainant that the first statement made by him before SI/SHO Balwant Singh Majitha was not recorded properly; that from Civil Hospital, Ropar, he had been referred to PGI, Chandigarh keeping in view his serious condition, where he remained admitted for 20-22 days. On return from PGI, Chandigarh, his statement was recorded before SSP, Ropar in presence of S. Simranjit Singh Mann, Jathedar Bhag Singh and other persons on 20.12.2007 as Ex.PT wherein name of Balwant Singh Majitha was not added. As it had not been read over to him and on coming to know about the same when he got copy of said statement, he moved an application under Section 319 Cr.P.C. for summoning of Balwant Singh Majitha. In consequence of this occurrence, a false case has been registered against him under Section 452 IPC and he was sent up to face trial in Court of Chief Judicial Magistrate, Ropar, however, he was acquitted in that case. As

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such he had lodged complaint with the higher police officers and then his statement was recorded again in the office of SSP, Ropar. Even otherwise, FIR is not a substantive piece of evidence and its only purpose is to set machinery of law in motion. The allegations in the FIR do not get proved *ipso facto* and are rather required to be established by leading evidence. In that way, in investigation of a criminal case, registration of FIR is the starting point and due importance is to be given to the said document but then a criminal case cannot be discarded merely because of the fact that FIR does not contain the minute and complete details of the incident.

Furthermore, it has to be kept in mind that there were multiple injuries of severe and grievous type even endangering life of the complainant, when his statement was recorded at Civil Hospital, Ropar. The incident had taken place on 2.12.2007 at about 7:00 p.m., whereas statement of complainant was recorded at Civil Hospital, Ropar on the next day at 12:15 p.m. while complainant was admitted in said hospital in injured condition. It requires some time to come out of shock of suffering such type of injuries on ones body in a merciless assault which also resulted in multiple injuries to person whom the complainant was accompanying and who had succumbed to the injuries.

One more thing to be taken note of is that incident had taken place in the month of December when it is quite cold. The time of incident is 7:00 p.m., when it is relatively dark, since sun sets early and somewhat foggy conditions are there. When several assailants armed

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with deadly weapons raining blows upon Teja Singh and complainant Jaswinder Singh, it could have been somewhat difficult for the complainant to notice and note down the particular injury caused by a particular accused. It is quite possible that some injuries were caused from reverse side of *gandasi* which then acts as a blunt weapon resulting in causing lacerated wounds. The majority of the injuries on the person of deceased and complainant are incised wounds, which seem all the more probable keeping in view the fact that the assailants are said to be armed with sharp edged weapons like swords and *gandasi*. The prosecution story is further corroborated from the fact that the accused – convicts had suffered disclosure statements and got weapons i.e. swords and *gandasi* recovered from their possession which were seized by the Investigating Officer. Though only two of the swords had been sent to FSL, Punjab, Chandigarh and as per report received therefrom Ex.PEEEE, the *kirpans* were found to be stained with human blood, the other weapons had not been sent to such lab for analysis and report, that could be taken as a lapse in the investigation but then the accused cannot take any advantage of the same by default.

As regards complainant Jaswinder Singh changing his version successively as regards the incident, it has to be kept in mind that he had suffered injuries in the incident, therefore, his presence at the spot at the relevant time cannot be doubted. He having suffered injuries of such magnitude and severity and the person whom he was accompanying namely Teja Singh also having multiple injuries on his

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person, a few of them on vital parts to which he had succumbed, it would have been his earnest endeavour to ensure that the persons responsible for death of his near and dear one were 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.

Even otherwise, if there are certain improvements in the form of addition of accused in the versions given on various occasions, the Court is to separate truth from the falsehood, to say, grain from the chaff and entire deposition of this witness cannot be discarded outrightly since the maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India. Merely because a witness has deposed wrongly regarding certain aspects of the case does not mean that his statement is to be disbelieved totally, if his deposition comes out to be convincing and inspiring confidence regarding other aspects. The trial Court has properly analyzed the facts and circumstances of the case, appreciated the evidence adduced by the prosecution and the witnesses examined in defence and correctly interpreted the law while finding involvement of accused – convicts in the incident, whereas acquitting seven accused finding their involvement in the incident to be doubtful and not established on the record.

SI Balwant Singh Majitha, who had recorded statement of complainant – injured at Civil Hospital, Ropar on the next day of the incident and had carried out the investigation in the case was also

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arrayed as an accused in the case and he faced trial along with other accused but then it has to be kept in mind that it is neither alleged in the statement by the complainant before the police nor proved that he was present at the spot at the relevant time or had taken part in the incident causing injuries to Teja Singh deceased or Jaswinder Singh – complainant. For that matter, it is not case of the prosecution that he was present at the spot at the relevant time at the place of occurrence. Though later on complainant started alleging that SI Balwant Singh Majitha along with other police officials had reached at the spot in two gypsy vehicles and started searching for PW Jaswinder Singh telling that Jaswinder Singh would be finished after search, otherwise he would prove as dangerous for the accused but then such accused had obtained signatures/thumb impression of Jaswinder Singh on blank papers where he manipulated statement of complainant as it suited him but these allegations were not proved during the trial as it comes out that the statement by complainant does not appear to be result of any manipulation or fabrication by SI Balwant Singh Majitha as it has come out from the record that he was working under supervision of higher police officers and he could not have acted in an arbitrary or illegal manner in such a way. The complainant had lodged complaint against him to the higher police officers but then nothing substantial in those complaints was found to be there. Therefore, he was rightly acquitted of the charge framed against him.

After hearing counsel for the appellants – accused –

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convicts, learned Additional Advocate General for the State of Punjab as well as learned counsel for the complainant, in our considered view the offence which is disclosed against the accused is one under Section 304 Part I read with Section 149 IPC i.e. of culpable homicide and not that of murder. While reaching this conclusion, we have considered various factors. Firstly, though as per the prosecution story, there were five assailants, Bhupinder Singh having a *kirpan*, Amarjit Singh Jolly having a *kirpan*, Harinder Singh having a *kirpan*, Mohinder Singh having *kuhari* (axe) and Manjit Singh having a *kirpan* as such forming an unlawful assembly. But then PW11 Dr.Barinder Singh, who had performed the post-mortem examination on the dead body of Teja Singh had found 10 x 1 cm lacerated wound in coronal plane of frontal region just near the anterior hair line and a lacerated wound of 5 x 0.5 cm just above left eye-brow, both the injuries having been caused with a blunt weapon. If the assailants actually intended to murder Teja Singh, then they would have attacked him with sharp edged weapons ensuring that he did not survive rather than causing injuries on the vital parts with a blunt weapon. The number of injuries on the vital parts i.e. two, also point towards culpable homicide and not murder. Furthermore, this injured had been taken to hospital by accused Harinder Singh and Manjit Singh as is evident from information sent from Civil Hospital, Ropar to Incharge, Police Station City, Ropar Ex.PCC as per timings given below signatures of doctor is 8:10 p.m. In this written intimation, it is mentioned that information was regarding assault case, died during

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first aid (in ambulance to PGI, Chandigarh). It is also mentioned that body was shifted to mortuary. The incident had taken place on 2.12.2007 at 7:00 p.m. The injured was brought to hospital by Harinder Singh and Manjit Singh accused where he was given first aid and while put in ambulance for the purpose of taking to PGI, Chandigarh had expired, as such his dead body was directed to be shifted to mortuary of the hospital, that was within one hour and ten minutes of the incident. If the assailants actually wanted to commit murder of Teja Singh then they would have ensured his death at the spot and would not have bothered to take him to hospital in an injured condition so as to get medical aid for him to save his life going to the extent of even taking him to PGI, Chandigarh in an ambulance.

Another factor to be considered is that Harinder Singh had given counter version of the incident on 2.12.2007 itself at night, alleging Teja Singh deceased to be aggressor being accompanied by several persons. Though the accused did not own that account during the trial but the fact remains that such counter version was there.

It is pertinent to note here that no plausible motive for the incident has been given by the prosecution. No previous enmity between the accused – convicts on one side and complainant and deceased on the other side has been alleged or proved. Though in a case of direct evidence, motive does not have much importance but then there are very little chances of a person going to the extent of causing death of one and serious injuries to the other endangering his life without any reason. If

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there was no motive then there could not be any question of prior planning for the crime. It appears to be a sudden fight and a chance incident. Furthermore, Jaswinder Singh – injured has given different versions on various occasions i.e. in his initial statement got recorded before SI/SHO Balwant Singh Majitha, in the subsequent statement got recorded in the office of SSP, Ropar, in criminal complaint filed by him, copy Ex.DA and while appearing as a prosecution witness during the trial by Court of Sessions at Ropar.

It needs to be mentioned here that the investigation in this case has not been conducted in a very scientific and professional manner. Only two swords recovered from Harinder Singh and Manjit Singh had been sent to FSL, Punjab, Chandigarh for analysis whereas it was not so as regards the weapons recovered from remaining accused – convicts. The mobile phones of the deceased or of accused Boni were not taken into possession and their call details were also not obtained. Although in the challan, the Investigating Officer has been arrayed as an accused but as already observed, he could at best be held to be guilty of dereliction of duty but cannot be termed as an accused in such a way.

One thing more to be taken into consideration is that deceased Teja Singh was involved in numerous criminal cases as such was having a shady past. Though that does not justify his being killed at the hands of accused – convicts but that is a factor which needs to be taken into consideration while visualizing origin, genesis and manner of the incident.

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We find that except for the fact that offence which is disclosed against accused – convicts is one under Section 304 Part I read with Section 149 IPC instead of Section 302/149 IPC, the conviction and sentence of accused – convicts for offences under Sections 148, 307/149, 324/149 IPC does not call for any interference. Therefore, **CRA-D-1458-DB of 2013, CRA-D-1416-DB-2013, CRA-D-1457-DB-2013, CRA-D-1475-DB-2013 and CRA-D-1510-DB of 2013** filed by appellants – accused – convicts Bhupinder Singh, Harinder Singh, Mohinder Singh, Amarjit Singh Jolly and Manjit Singh are accepted partly to that extent. Their conviction under Section 302/149 IPC is set aside. Rather they are convicted under Section 304 Part I/149 IPC and are sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.10,000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months. All the substantive sentences of imprisonment shall run concurrently.

Whereas in view of detailed discussion above, we find little merit in **CRA-D-1482-DB of 2013** filed by complainant Jaswinder Singh challenging acquittal of accused Rajesh Kumar, Bikram Singh, Sohan Singh, Gagandeep Singh, Harpreet Singh, Sandeep Singh and Balwant Singh Majith. We find that the impugned judgment to that extent is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment to that extent is upheld whereas appeal filed by Jaswinder Singh complainant is found to be without any

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merit and the same is dismissed accordingly.

	(T.P.S. MANN)	(H.S.MADAAN)
	JUDGE	JUDGE
25.5.2017		
Brij		

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