

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

Crl. Appeal D-69-DB of 2013
Date of Decision : December 22, 2017

1. Pawan Kumar and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

Crl. Appeal D-27-DB of 2013

2. Narender Singh

.....Appellant

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present : Mr. Navkiran Singh, Advocate
for appellant-Pawan Kumar in
Crl. Appeal D-69-DB of 2013.

Mr. Vinod Ghai, Senior Advocate with
Mr. Harmandeep S. Brar, Advocate
for appellant-Tej Pal in Crl. Appeal D-69-DB of 2013
and for Narender Singh-appellant in
Crl. Appeal D-27-DB of 2013.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Pratham Sethi, Advocate
for appellant-Dharambir in Crl. Appeal D-69-DB of 2013.

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

T.P.S. MANN, J.

The appellants, namely, Pawan Kumar, Tej Pal, Dharambir and Narender Singh alongwith Sunil, Virender @ Nitu, Devender, Naveen and Mahipal were tried for committing the offences punishable under Sections 148, 323 read with Section 149 IPC, Section 427 read with Section 149 IPC and Section 302 read with Section 149 IPC. Vide judgment and order dated 22/27.11.2012, learned Sessions Judge, Panipat acquitted the co-accused of the appellants of all the charges against them. The appellants were also acquitted of the charge under Section 427 read with Section 149 IPC. They were, however, convicted under Section 148 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. They were also convicted under Section 323 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for six months each. They were also convicted under Section 302 read with section 149 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for four years. The sentences awarded under all the heads were ordered to run concurrently.

Aggrieved of their conviction and sentence, Pawan

Kumar, Tej Pal and Dharambir filed Crl. Appeal D-69-DB of 2013 whereas Narender Singh has filed Crl. Appeal D-27-DB of 2013. As both the appeals arise out of one and the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, complainant-Shamsher Singh made statement Ex. PA before Sub Inspector Dharambir, Station House Officer, Police Station Israna at the place of occurrence at village Palri on 21.8.2009 at 1.30 a.m. stating therein that he was resident of village Israna and studying in B.A. Ist year in Government Secondary School. A day before, i.e. on 20.8.2009, Gulab Singh @ Bintu and Ravinder, residents of village Butana came to him during day time. Gulab Singh told him that he had a quarrel in village Palri with Tej Pal-accused and his brothers, residents of village Palri with regard to installation of hand pump and causing of slush in the street but the matter was patched up. On the request of Gulab Singh, the complainant came to village Palri at about 6 p.m. with him and Ravinder on their motor cycle for leaving them. All of them sat on the roof of the house of Gulab Singh in which he lived on the portion of the house falling to his mother. Meshi, the maternal aunt of Gulab Singh was also sitting with them on the roof of the house. At about 11.00 p.m. on hearing the voices of some persons, Gulab Singh and Ravinder came in the street. At that time, Tej Pal and

his brothers Raja and Dharambir alongwith 8/10 other persons were standing in the street. He did not know their names and addresses. However, only Tej Pal and his brothers were known to him. Tej Pal was armed with a knife whereas his brothers were having a prop (pawa) of cot, dandas and lathies. The complainant kept on watching from the roof of the house. Tej Pal gave a knife blow to Gulab Singh on the back of his right flank whereas others caused injuries to Gulab Singh and Ravinder with their respective weapons. Gulab Singh succumbed to the injuries at the spot. Ravinder had also suffered injuries but in order to save himself, he ran away by taking his motor cycle. In order to save himself, the complainant kept on hiding on the roof of the house. After inflicting injuries, Tej Pal and others fled away from the spot with their respective weapons.

As the statement made by the complainant revealed commission of cognizable offences, ruqa Ex. PA/1 was prepared by SI Dharambir Singh and sent to the Police Station through Constable Jaidrath. Consequently on its basis, FIR Ex. PA/2 was registered at Police Station Israna by Sub Inspector Sultan Singh on 21.8.2009 at 2.00 a.m. The special report sent through Constable Neeraj Kumar was received by the Ilaqa Magistrate at 5.45 a.m. on 21.8.2009.

During the investigation of the case, SI Dharambir Singh carried out proceedings under Section 174 Cr.P.C. on the

dead body of Gulab Singh. The dead body was, thereafter, sent for post-mortem. Rough site-plan of the place of occurrence was prepared. Blood stains and pair of plastic chappal lying at the spot were taken into possession. Statements of the witnesses were recorded. Thereafter, supplementary statement of the complainant was recorded wherein he clarified that on the day of occurrence, he alongwith Gulab Singh and Ravinder had gone to village Palri in his Jeep and not on a motor cycle. He further stated that he had wrongly given the name of the other eye-witness as Ravinder whereas his real name was Shankar.

On 22.8.2009, Dharambir-accused was arrested and pursuant to the disclosure statement made by him prop (pawa) of the cot used in the commission of murder was recovered from his possession. Pawan Kumar was arrested on 29.8.2009 and in pursuance of his disclosure statement, he got recovered the axe used in the commission of the crime from his possession. On 5.9.2009, Tej Pal-accused was arrested and suffered disclosure statement leading to recovery of a knife used in committing the murder from his possession. On 28.10.2009, Sunil-accused was arrested and his disclosure statement was recorded. The case property was, thereafter, sent to the Forensic Science Laboratory, Madhuban for chemical analysis. Five other accused, namely, Virender @ Nitu, Devender, Naveen, Mahipal and Narender Singh were also arrested. Raja, brother of Tej Pal-accused was,

however, not arrested as he was found innocent during the investigation of the case and his name mentioned in column No.2 of the final report under Section 173 Cr.P.C.

All the accused including the appellants, who were challaned, were charge-sheeted for the offences under Sections 148, 323 read with Section 149, Section 427 read with Section 149 and Section 302 read with Section 149 IPC to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as eighteen witnesses.

PW1 Shamsheer Singh, complainant and the eye-witness gave a detailed account of the occurrence as was mentioned by him in his statement Ex. PA and deposed that Tejpal armed with a knife, Dharambir carrying a prop of cot, Pawan having an axe in his hand, Raja and 8-10 other persons had come to the house of Gulab and had caused injuries to him and Ravinder alias Shankar with their respective weapons. Gulab succumbed to the injuries at the spot. He added that he had seen the occurrence from the terrace of the house of Gulab where maternal aunt (Mausi) of Gulab was also sitting. Accused facing trial were identified by him as the assailants.

The supplementary statement made by him on 21.08.2009 was proved by reiterating the same on oath. He

stated that the name of other injured is Shankar and that he alongwith deceased and Shankar had gone to village Palri in the jeep on which he was employed as driver.

PW2 Shankar son of Ram Karan, who was also an eye-witness of the occurrence and having suffered injuries at the hands of the accused, stated that he was also known by the name of Ravinder. He also deposed about an altercation between deceased Gulab and Tejpal etc. which had taken place during day time on account of slush in the street at the time of installation of hand-pump by Tejpal. The said occurrence was stated to be the motive and cause of grievance of accused Tejpal and others which led to murder of Gulab during the occurrence which took place late in night at around 11.00 P.M. This witness gave detailed narration of both the incidents and identified accused Tejpal, Dharambir, Pawan and Narender, who had caused injuries to Gulab with knife, prop of cot, Dandas, Lathies and axe and stated that on him also, Raja and Narender had inflicted injuries. He further stated that there were 7-8 other persons with the said accused who were not known to him by names, but he was in a position to identify them by face and they were the accused facing trial. He added that to save his life, he fled from the spot on a motorcycle and reached Panipat. In the morning, he went to the hospital where he came to know that Gulab had died due to the injuries caused to him by the accused.

PW3 EHC Jagbir Singh, Draftsman proved scaled site-plan Ex. PC made by him upon instructions of Shamsher Singh-complainant.

PW4 Constable Neeraj Kumar testified that he had delivered the special report to the Area Magistrate and other police authorities. He further stated that on 8.9.2009, accused Tejpal was interrogated in his presence who suffered disclosure statement Ex.PD, wherein he stated that the knife with which he caused injuries to deceased Gulab was lying concealed in a room of his house under a gas stove and he could get the same recovered. In pursuance of the disclosure statement, accused Tejpal led the police party to his house and got the knife recovered from the disclosed place, which was taken into possession. Identifying his signatures, recovery memo Ex.PD/1 and sketch of knife Ex.PD/2 were proved by him.

PW5 HC Mahavir Singh tendered in evidence his affidavit Ex. PE to the effect that on 31.08.2009, the sealed parcels of the case property i.e. the axe and knife alongwith sample seals were deposited with him and on 5.10.2009, he handed over the said sealed parcels alongwith sealed parcels of blood, clothes, a pair of blood stained Chappals and blood stained 'prop' of cot to Constable Jaidarth vide RC No.343, for being delivered at Forensic Science Laboratory, Madhuban which he delivered with seals intact and on return, handed over the

receipt to him. He further stated that one sealed parcel of 'Danda' was deposited on 22.1.2010 and another sealed parcel of 'Danda' was deposited with him on 3.12.2009 and on 3.2.2010, he handed over the said parcels to EASI Zile Singh for being delivered at Forensic Science Laboratory, Madhuban which he delivered with seals intact and on return, handed over the receipt to him. He also testified that till the case property remained in his custody, he did not allow any tampering with the same.

PW6 Constable Jaidarth tendered in evidence his affidavit Ex. PF to the effect that he had delivered the sealed parcels to Forensic Science Laboratory, Madhuban.

PW7 Dr. Preeti Bhatia, Medical Officer, General Hospital, Panipat tendered in evidence her affidavit Ex. PH stating therein that on 21.8.2009, she alongwith Dr. Sanjeev Gupta conducted post-mortem on the dead body of Gulab Singh and found the following injuries:-

- “1. Lacerated wound 2 x 1 c.m. over upper left ear cartilage.
2. Abrasion 1 x 0.5 c.m. just below the lateral margins of left eye brow.
3. A contusion spindle shape 2 x 1 c.m. over the left shoulder.
4. Contusion 1 x 0.5 c.m. over the left shoulder 4 c.m. away from the lateral margin of left clavicle.

5. Linear abrasion 4 x 0.5 c.m. over the dorsal aspect of upper 1/3rd of left forearm.
6. Spindle shaped incised wound 7 x 3 c.m. (widely gaped) deep into the ribs at right infra scapular region 5 c.m. below the lower end of scapula on cut section external wound communicating through I.C. Space to the lower part of chest and upper abdomen. L.W. over the superior lateral aspect of liver, haemo peritoneum present, right lung collapsed.
7. Diffuse swelling over left hand.
8. I/W Superficial 5 x 1 c.m. over the posterior aspect of middle of left upper arm.
9. Multiple contusions over the left knee varying in size from 2 x 2 x 1 c.m.
10. Linear contusion 10 x 2 c.m. over the lateral aspect of upper 1/3rd of left thigh.
11. Linear contusion 6 x 2 c.m. over the lateral aspect of upper 1/3rd of left thigh.”

In their opinion the cause of death was due to haemorrhage and shock due to injuries to vital organs i.e. right lung and liver, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was variable and between death and post-mortem was within 12 to 36 hours.

PW8 Sheela deposed that she was maternal aunt of Gulab Singh deceased and was projected as an eye-witness of

the occurrence. According to her, the deceased had left the house in the evening after taking meals and no occurrence had taken place in her presence. She deposed that she had only seen the dead body of Gulab Singh lying in the street.

PW9 Constable Ashok Kumar proved the disclosure statement Ex. P1 made by Tej Pal-accused on 5.9.2009 to the effect that the knife used by him during commission of crime was kept concealed in the mountains of Katra near Mata Vaishno Devi and he could get the same recovered.

PW10 ASI Ramesh Kumar testified that on the night intervening 20/21.8.2009, he reached the place of occurrence and found the dead body of Gulab Singh which was shifted to General Hospital, Panipat. He accompanied the dead body and after post-mortem handed over the sealed parcels containing the clothes of the deceased and copy of the post-mortem report to SI Dharambir Singh.

PW11 EASI Siri Niwas deposed that in his presence Sunil-accused was arrested and on interrogation he suffered disclosure statement Ex. PL pursuant to which he demarcated the place of occurrence.

PW12 Balbir Singh deposed that on the morning of 21.08.2009, on receipt of information regarding the occurrence, he alongwith 10-15 persons had first gone to the Police Station

and then having come to know that the police was present at the place of occurrence, they too had reached the spot and in his presence, the police picked up blood stains with the help of cotton and also took into possession one pair of Chappals from the spot. Both the articles were separately packed in sealed parcels and were taken in possession vide memo Ex.PM, which was signed by him and Om Parkash son of Chand Roop as attesting witnesses. The witness added that on 21.1.2010, in his presence accused Narender son of Prem was arrested by the police and on interrogation, he made disclosure statement Ex.PM/1, but on the next day i.e. 22.1.2010, he disowned that statement and made a fresh statement Ex.PM/2, in pursuance of which he got recovered a 'Danda' used by him in the commission of crime from the Kotha of a tubewell situated in his fields. The sketch of Danda EX.PM/3 and the memo EX.PM/4 vide which it was taken in possession, were proved by him. Demarcation memo EX.PM/4 prepared of the place of occurrence by the accused, was also proved by him.

PW13 Karambir Singh, Photographer proved the photos Ex. P6 to P10 which were taken by him with the help of a digital camera during the night intervening 20/21.8.2009.

PW14 Sub Inspector Dharambir Singh, who stood promoted as Inspector, the Investigating Officer of the case, narrated the proceedings conducted by him and proved first information report Ex.PA/2; endorsement Ex.PA/3 recorded by

Sultan Singh Sub Inspector; proceedings Ex.PH/2 conducted by him under Section 174 of the Code of Criminal Procedure; rough site plan Ex.PN of the place of occurrence; memo Ex.PM vide which blood was lifted from the spot with the help of cotton Ex.P4 and one pair of Chappals Ex.P3 were taken into possession after converting into separate sealed parcels. Memo Ex.PB vide which jeep No.HR-67T-6500 was taken in possession; rough site plan Ex.PN/I of the place of recovery of jeep; memo Ex.PK vide which parcel containing clothes of the deceased was taken into possession; disclosure statements made by Dharambir ExPQ and Ex.PQ/1; sketch of prop of cot recovered from accused Dharambir; memo Ex.PQ/3 vide which the said prop of cot Ex.P11 after being converted into a sealed parcel was taken into possession; rough site plan Ex.PQ/4 of the place of recovery of prop of cot.; disclosure statements Ex.PR and Ex.PR/1 made by accused Pawan; sketch Ex.PR/2 of the axe got recovered by accused Pawan: memo Ex.PR/3 vide which the axe Ex.P12 after being converted into a sealed parcel was taken in possession; rough site plan Ex.PR/4 of the place of recovery of axe; disclosure statements Ex.PI and Ex.PD made by accused Tejpal.; sketch EX.PD/2 of the knife got recovered by accused Tejpal; memo Ex.PO/I vide which the knife Ex.PI3 after being converted into a sealed parcel was taken in possession; disclosure statement made by accused Sunil Ex.PL; memo regarding

demarcation of the place of occurrence made by accused Sunil Ex.PL/I; disclosure statement made by accused Virender Ex.PS; memo regarding demarcation of the place of occurrence made by accused Virender Ex.PS/I; disclosure statement made by accused Devender Ex.PT; memo regarding demarcation of the place of occurrence made by accused Devender Ex.PT/I; disclosure statement made by accused Naveen Ex.PU; sketch Ex.PU/1 of the Danda got recovered by accused Naveen; memo Ex.PU/2 vide which Danda Ex.P14 got recovered by accused Naveen was taken into possession after converting it into a sealed parcel; sketch Ex.PU/3 of the place of recovery of Danda; memo regarding demarcation of the place of occurrence made by accused Naveen Ex.PU/4; disclosure statement made by accused Mahipal Ex.PV; memo regarding demarcation of the place of occurrence made by accused Mahipal Ex.PV/I; disclosure statements made by accused Narender Ex.PM/1 and Ex.PM/2; sketch Ex.PM/3 of the Danda got recovered by accused Narender; memo Ex.PM/4 vide which the said Danda Ex.P5 after being converted into a sealed parcel was taken into possession; memo regarding demarcation of the place of occurrence made by accused Narender Ex.PM/5 and site plan EX.PM/6 regarding the place or occurrence.

PW15 Sub Inspector Sultan Singh testified that on receipt of statement Ex. PA of Shamsheer Singh, he recorded

formal FIR Ex. PA/2. Thereafter, he sent the special report to the higher officers through Constable Neeraj Kumar. He further stated that on 22.8.2009, accused Dharambir was arrested in his presence and on interrogation made disclosure statement Ex.PQ/I stating that had concealed the prop of cot used in the commission of crime near 'Har Ki Podi' at Haridwar. Thereafter, on 29.8.2009, in his presence, in pursuance of the secret information received by the investigation officer, accused Pawan was arrested from the canal bridge on Gohana-Panipat Road and on interrogation, he made disclosure statement Ex.PR, wherein he stated that the axe used by him during the commission of offence had been concealed in Shantakunj Ashram, Haridwar. On 31.8.2009, accused Pawan retracted from his earlier statement and made fresh disclosure statement Ex.PR/I that the axe used by him during the occurrence was lying concealed on the roof of Kotha/room of the tubewell in his fields. In pursuance of the disclosure statement, he got the axe Ex.PI2 recovered from the disclosed place. Sketch of the axe Ex.PR/2 and memo vide which it was taken into possession after being converted into a sealed parcel Ex.PR/3 were proved by him. Initial disclosure statement Ex.PI made by accused Tejpal on 5.9.2009 and the subsequent disclosure statement Ex.PD made by him on 8.9.2009, in pursuance of which he got recovered a knife from his house, were also proved by this witness. The knife Ex.P13, sketch of the knife

Ex.PD/2, recovery memo Ex.PD/1 vide which the knife was taken in possession and site plan of the spot of recovery Ex.PD/3, which all bear his signatures, were proved by him.

PW16 HC Ramesh deposed that he remained associated with Dharambir Singh, Station House Officer in the investigation of the case. He proved disclosure statements Ex.PQ and Ex.PQ/I made by accused Dharambir; sketch Ex.PQ/2 of the prop of cot Ex. P11 got recovered by him; memo Ex.PQ/3 vide which the said prop of cot was taken into possession after being converted into a sealed parcel; disclosure statements Ex.PR and Ex.PR/I made by accused Pawan; sketch of the axe got recovered by the said accused Ex.PR/2 and memo Ex.PR/3 vide which the axe Ex.P12 was taken into possession after being converted into a sealed parcel.

PW17 Dharam Pal testified that Gulab Singh-deceased was his nephew. On 19.08.2009, on the asking of Gulab, he had come to village Palri and had reached at the house of Gulab at about 10/11 P.M. He further stated that when he reached, he saw 10-15 persons present in front of the house of Gulab among whom were Pawan armed with an axe; Tej Pal armed with a knife, Dharambir armed with a prop of cot ('Pawa') and others were armed with Lathies and Dandas. Apart from the said 3 persons, he identified the other persons facing trial who, he stated, were at the spot and added that Gulab with several

injuries, from which he was badly bleeding, was lying on the ground. Treating him as dead, he and his companion fled away from the spot because of the horror and reached back their village. He informed his family members about the occurrence and taking them along he went to Police Station Israna and gave information to the Police.

PW18 Dr. Pawan Goyal, Medical Officer, General Hospital, Panipat tendered in evidence his affidavit Ex. PX wherein he had stated that on 21.8.2009 at 12.10 p.m., he had conducted medicolegal examination of Shankar and found the following injuries on his person:-

1. Two parallel oblique redish Contusions of size 8x5 cm over posterior aspect of left upper arm. Advise X-Ray left upper arm AP, lateral and ortho opinion.
2. Two parallel reddish contusions Over posterior aspect of left middle 1/3 Arm. Advised X-Ray left arm and ortho opinion.
3. An oval abraded contusion 4x4 cm. over post. aspect of left elbow with decreased movements advised x-Ray elbow AP lateral and ortho opinion.
4. An abraded ovel 3x2 cm. contusion over post. Aspect of left upper forearm.
5. A contusion 5x3 cm on lower and lateral side of left eye. Advised eye surgeon opinion.
6. 11x2 cm contusion over left side of middle of

back. Below left scapula.

Injuries No. 4 and 6 were declared simple whereas injuries No. 1, 2 and 3 subject to Ortho opinion and X-ray report while injury No. 5 subject to Eye Surgeon report. Weapon used was blunt and duration less than 24 hours.

Reports of Forensic Science Laboratory, Madhuban Ex. PG and Ex.PG/I were tendered in evidence and PWs Constable Naresh, Pawan, Om Parkash and Suresh Kumar were given up as unnecessary by learned Public Prosecutor for the State.

When examined under Section 313 Cr.P.C., all the incriminating facts were put to the accused, who stated that they were innocent and falsely implicated. Tej Pal and Dharambir-accused stated that Gulab Singh used to indulge in criminal acts and nefarious activities and had many enemies and some unknown persons had committed his murder. They also stated that PW1 Shamsheer and PW2 Shankar had been projected as false witnesses as they were friends of the deceased.

In their defence, none of the accused produced any evidence.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court convicted and sentenced the appellants, as mentioned above

whereas their co-accused were acquitted of the charges against them.

Having heard learned counsel for the parties and on going through the record, this Court finds that the occurrence in question had taken place on 20.8.2009 at about 11.00 p.m. wherein Tej Pal and his brothers Dharambir and Raja alongwith 8/10 other persons opened an attack upon the complainant party. At that time, Tej Pal was armed with a knife whereas his brothers Dharambir and Raja were holding a pawa (prop of a cot), dandas and lathis in their hands. Tej Pal gave a knife blow hitting on the right flank of Gulab Singh whereas the other accused also caused injuries to Gulab Singh and Shankar with their respective weapons. Gulab Singh succumbed to the injuries at the spot. Though Shankar had suffered injuries, but in order to save himself, he ran away on his motor cycle. Subsequently, on arrival of the police at the place of occurrence itself, statement Ex. PA of complainant Shamsheer Singh was recorded by SI Dharambir and on its basis FIR No. 174 dated 21.8.2009 under Sections 148/149/302/323 IPC was registered at Police Station Israna. Complainant-Shamsheer Singh then got recorded supplementary statement before the Investigating Officer on 21.8.2009 wherein he clarified that he had wrongly named the other eye-witness/injured as Ravinder whereas his actual name was Shankar. Further, he alongwith Gulab Singh and Shankar had

gone to village Palri in his jeep and not on a motor cycle. However, no relief could be extended to the accused on account of the aforementioned discrepancy as the jeep on which the complainant was employed as a driver was recovered by the police from village Palri with broken windowpanes. The recovery memo. Ex. PB prepared in this regard was attested by PW1 Shamsheer Singh. Further, PW18 Dr. Pawan Goyal, Medical Officer, General Hospital, Panipat deposed that he had conducted medico-legal examination of Shankar on 21.8.2009 at 12.10 p.m. and the duration of the injuries was less than 24 hours. At the trial of the case, PW1 Shamsheer Singh described in detail about the occurrence and causing of injuries by the accused. He also deposed that the other injured was Shankar and he himself alongwith the deceased and Shankar had gone to village Palri in the jeep.

PW2 Shankar testified that he was also known as Ravinder. He had witnessed the altercation between deceased Gulab Singh and accused Tej Pal and others which had taken place during day time on account of slush in the street where Tej Pal had installed a hand pump. He also deposed about being present at the time of the occurrence and inflicting of injuries by the accused to him as well as to Gulab Singh-deceased. He also identified Tej Pal, Dharambir, Pawan and Narender Singh accused who had caused injuries to Gulab Singh and him. He

further stated that Raja and Narender Singh had also caused injuries to him. Besides, there were 7/8 other persons who were not known to him by names but he was in a position to identify them.

According to the prosecution, one Meshi, who was maternal aunt of Gulab Singh, had also witnessed the occurrence. At the trial of the case, the lady who was known as Meshi stepped into the witness box as PW8 where she, however, disclosed her name as Sheela. She, however, resiled from her previous statement recorded during investigation and did not support the prosecution case. However, that itself is no ground to upset the conviction and sentence of the appellants, more-so, when PW1 Shamsheer Singh and PW2 Shankar have unequivocally testified about the manner in which the occurrence had taken place.

The presence of PW2 Shankar at the time of the occurrence stands duly established because of the injuries received by him at the hands of the accused and such injuries being noticed by PW18 Dr. Pawan Goyal, Medical Officer. In all, six injuries were noticed on his person. All of them were either contusions or abrasions. The duration of those injuries was less than 24 hours. There is no material on the record from which it can be said that those injuries were either self suffered by Shankar or suffered from a friendly hand. It was, however, stated

by PW18 Dr. Pawan Goyal that as the injuries were on the left side of the body of the injured, there was possibility of those injuries being caused in an accidental fall on left side from a vehicle or from significant height. However, that by itself is no ground to reject the prosecution case.

In the initial statement Ex. PA made by complainant-Shamsher Singh on the basis of which FIR was registered, only three persons were named as accused i.e. Tej Pal and his brothers Raja and Dharambir. The remaining 8/10 persons were neither named nor their addresses disclosed. Even in his supplementary statement, complainant-Shamsher Singh did not name those 8/10 persons, who were accompanying Tej Pal and others. Raja was, however, found innocent during the investigation of the case and was not challaned. PW2 Shankar did testify that apart from Tej Pal, Dharambir and Raja, there were two more accused who were Pawan and Narender and they had inflicted injuries. Further, in his cross-examination, he testified that he was seeing the accused persons for the first time after the occurrence in the Court on that day.

From the conjoint reading of the statements of PW1 Shamsher Singh and PW2 Shankar, it is apparent that Pawan and Narender-appellants were not initially named as accused when the statement Ex. PA on the basis of which the FIR was registered, was recorded. Even at the stage of making

supplementary statement, Shamsheer Singh did not name these two appellants. It was only PW2 Shankar, who for the first time, named Pawan and Narender-appellants also as accused. Merely because, he named them and also identified them at the trial will not be sufficient to uphold their conviction and sentence. At the same time, no case is made out for any interference in the conviction and sentence of Tej Pal and Dharambir-appellants.

Resultantly, the conviction of Pawan Kumar and Narender Singh-appellants under Section 148, Section 323 read with Section 149 IPC and Section 302 read with Section 149 IPC is set-aside and they are acquitted of the charges against them. The conviction and sentence of Tej Pal and Dharambir-appellants under Section 148, Section 323 read with Section 149 IPC and Section 302 read with Section 149 IPC is upheld.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

December 22, 2017
ajay-1

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No