

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

(1)

**CRA-D-305-DB of 2014
Date of decision:-25.4.2017**

Jora Singh and others

...Appellants

Versus

State of Punjab and others

...Respondents

(2)

CRA-S-64-SB of 2014

Nahar Singh and others

...Appellants

Versus

State of Punjab

...Respondent

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

Present : Mr.A.P.S. Deol, Senior Advocate with
Mr.Vishal Rattan Lamba, Advocate
for the appellants in CRA-D-305-DB of 2014.

Mr.J.S. Bedi, Senior Advocate with
Mr.H.S. Oberoi, Advocate
for the appellants in CRA-S-64-SB of 2014 and
for respondents No.2 to 12 in CRA-D-305-DB of 2014.

Mr.S.S. Dhaliwal, Additional A.G., Punjab.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two appeals
i.e. **CRA-S-64-SB of 2014** filed by accused Nahar Singh and ten others
and **CRA-D-305-DB of 2014** filed by complainant Jora Singh and
others against the judgment and order dated 23.12.2013 passed by

learned Additional Sessions Judge, Patiala.

Vide impugned judgment and order, learned trial Court convicted accused Nahar Singh, Darbara Singh, Gurmail Singh, Malkiat Singh @ Sadhua, Chamkaur Singh, Kuldeep Singh, Balkar Singh, Jagdish Singh, Avtar Singh, Kulwinder Singh @ Kindri and Jagrup Singh and sentenced them as under:

Name of convict	Offence under Section	Sentence
Nahar Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Darbara Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine

		of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Gurmail Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Malkiat Singh @ Sadhua	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default

		thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323 IPC	Rigorous imprisonment for six months.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Chamkaur Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of

		Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Kuldeep Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323 IPC	Rigorous imprisonment for six months.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Balkar Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default

		thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Jagdish Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323 IPC	Rigorous imprisonment for six months.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Avtar Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine

		of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323 IPC	Rigorous imprisonment for six months.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
Kulwinder Singh @ Kindri	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323 IPC	Rigorous imprisonment for six months.
-do-	323/149 IPC	Rigorous imprisonment for

		six months.
Jagrup Singh	452 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	325/149 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo rigorous imprisonment for a period of six months.
-do-	324/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.
-do-	323 IPC	Rigorous imprisonment for six months.
-do-	323/149 IPC	Rigorous imprisonment for six months.
-do-	148 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for a period of one month.

All the substantive sentences were ordered to run concurrently.

The accused have filed **CRA-S-64-SB of 2014** praying therein that their appeal be accepted, impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them. At the same time, complainant Jora Singh, Gurdhian Singh and Gurdip Singh have filed **CRA-D-305-DB of 2014** praying therein that the sentences of imprisonment awarded to the accused be enhanced and they be granted adequate compensation for the

injuries suffered by them.

By filing private criminal complaint, complainant Jora Singh sought initiation of criminal proceedings against accused Nahar Singh, Darbara Singh, Gurmail Singh, Malkiat Singh @ Sadhua, Chamkaur Singh, Kuldeep Singh, Balkar Singh, Jagdish Singh, Avtar Singh, Kulwinder Singh @ Kindri and Jagrup Singh for committing offences punishable under Sections 307, 452, 326, 325, 324, 323, 148 and 149 IPC and Sections 25 and 27 of the Arms Act.

Inter alia, in the complaint, the complainant had alleged that in the previous *panchayat* elections Nahar Singh and Amrik Singh were in contest. Amrik Singh got elected as Sarpanch, which left all the accused nursing a grudge against Amrik Singh and his family members; that in the election of *panches*, Karamjit Kaur, daughter-in-law of complainant got elected; that the Sarpanch was to be elected amongst the *panches*; that on 5.6.2008 at about 9:45 A.M., Jagtar Singh @ Bagga son of the complainant and Amrik Singh, Ex-Sarpanch had brought Halqa Patwari and Kanungo for the purpose of getting the demarcation of the *shamlat* land in front of house of complainant; that both such revenue officials were sitting in room of house of complainant; that complainant along with Mohan Singh, Ex-Sarpanch, Gobind Singh, Ex-Sarpanch, Gurdhian Singh father of Amrik Singh, Gurdeep Singh son of Gurdhian Singh and Hari Singh brother of the complainant were taking tea in the courtyard of the house; that several people had gathered on coming to know about the demarcation proceedings; that then Nahar Singh having *gandasi* and revolver, Gurcharan Singh an iron rod, Chamkaur Singh and Darbara Singh with stick, Gurmail Singh with

bahi of cot, Malkiat Singh with *bahi*, Chamkaur Singh with stick and revolver, Kuldeep Singh, Balkar Singh, Jagdish Singh, Avtar Singh and Kulwinder Singh having a stick each forcibly entered in the courtyard of house of complainant; that Nahar Singh raised a *lalkara* (exhortation) that a lesson be taught to complainant party for getting the demarcation done; that saying so Nahar Singh opened the attack giving *gandasi* (axe) blow on the back of head of Gurdeep Singh with an intention to kill him whereas accused Darbara Singh aimed a *soti* (stick) blow at Gurdhian Singh with in intention to kill him; that Gurdhian Singh raised his hand to ward off the blow and it landed on his right hand; that accused Chamkaur Singh gave *soti* blow on the right biceps of Gurdhian Singh, Gurcharan Singh gave iron rod blow hitting Gurdhian Singh on right shoulder, Gurmail Singh gave *bahi* blow to Gurdeep Singh with an intention to kill him and the blow found its target on nose of the victim; that Malkiat Singh and Kuldeep Singh also inflicted injuries to Gurdeep Singh with their respective weapons; that when the complainant intervened to rescue the victims, the assailants followed him; that Balkar Singh gave *soti* blow to complainant with an intention to kill him hitting him on back. Jagdish Singh, Avtar Singh @ Tari and Kulwinder Singh @ Kindri inflicted injuries to complainant; that all the three injured fell down on the ground and then Jagrup Singh caused injuries to complainant; that on hearing alarm, Jagtar Singh came to the courtyard; accused Nahar Singh and Chamkaur Singh took out their revolvers and started firing while going out of the house of complainant and on that account Gurcharan Singh and his son Chamkaur Singh sustained injuries; that observing the firing by such accused people, who had

gathered there started slipping away; that accused with their respective weapons also fled from the spot and that the injured were removed to Civil Hospital, Nabha. However, accused manipulated false injuries on the person of Gurcharan Singh, Chamkaur Singh and others and a false case was registered against the complainant and his family members. On 6.6.2008, the police came to hospital for recording statement of complainant but did not record the statement of complainant as narrated by him and his signatures were obtained on papers without reading the contents of the statement. The complainant, his son Jagtar Singh, Amrik Singh, Ex-Sarpanch, Gurdeep Singh and Gurdhian Singh were arrested in the said false case. After his release on bail the complainant kept on going to Police Station Bhadson but no action was taken and as such he had to file private complaint against the accused in Court.

After preliminary evidence, the Ilaqa Magistrate summoned accused to face trial for offences under Sections 452, 324, 325, 323, 148 and 149 IPC. The accused accordingly put in appearance, copies of documents relied upon in the complaint were supplied to the accused as required by law.

Since the complaint case related to counter version of the incident regarding which challan had been filed and both the cases were outcome of the same occurrence, therefore, the Ilaqa Magistrate committed the case to the Court of learned Sessions Judge, Patiala and both the cases were directed to be tried jointly.

On appearance of accused in the Court, charge for offences under Sections 325, 324, 323, 452, 148, 149 IPC and 27 of the Arms Act was framed against them, to which, they pleaded not guilty and claimed

trial. The case was then fixed for after charge evidence.

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

PW1 Gurdhian Singh provided the ocular account of the counter version.

PW2 Jora Singh – complainant also provided the eye-witness account of the counter version.

PW3 HC Harbhajan Singh from Police Station Bhadson had brought the original DDR No.31 dated 6.6.2008 recorded by Inspector/SHO Hardip Singh, certified copy of which being Ex.PA. He stated that this report contains recitals of the statement of Jora Singh son of Gurdial Singh, resident of village Kishangarh and the action taken in the matter.

PW4 Dr.Sham Singh deposed that on 6.6.2008 while he was posted as Medical Officer at Civil Hospital, Nabha, he radiologically examined Gurdeep Singh son of Gurdhian Singh, resident of village Kishangarh, Tehsil Nabha qua his skull, nasal bone, foot, cervical spine and chest and found no bony injury. He proved his report in that regard as Ex.PW4/A and skiagrams as Ex.PW4/A1 to Ex.PW4/A9.

On that day, he had also radiologically examined Jora Singh son of Gurdial Singh, resident of village Kishangarh and made following observations:

1. X-ray skull/AP and B/L. No bony injury seen.
2. X-ray nasal bone B/L. Fracture nasal bone present.
3. X-ray left arm A/P and lateral view. No bony injury

seen.

He proved copy of x-ray report as Ex.PW4/B and skiagrams as Ex.PW4/B1 to Ex.PW4/B5.

On that very day, he had also radiologically examined Gurdhian Singh son of Gurdial Singh, resident of village Kishangarh regarding x-ray of right thumb, right arm and right scapula. However, there was no bony injury found on x-ray examination. He proved his report as Ex.PW4/C in that regard and skiagrams as Ex.PW4/C1 to Ex.PW4/C3.

PW5 Dr.Taranjit Singh tendered in evidence his affidavit Ex.PW5/A in which he has stated that on 5.6.2008, he was posted as Medical Officer at Civil Hospital, Nabha and on that day he had medico-legally examined Gurdhian Singh son of Gurdial Singh, aged 62 years and found following injuries on his person:

1. Contusion 3 cm x 2 and half c.m. on the ventral surface of the right thumb on its distal phalangeal part. Tenderness present on examination. Movements at the distal inter-phalangeal joint were painful and restricted. Advised x-ray.
2. A contusion 12 cm x 2 and half c.m. on the right arm on its posterior surface. Running obliquely about 7 c.m. above the right elbow joint. Tenderness present on examination Advised X-ray.
3. That complaint of pain in the right upper scapular region tenderness present on examination and movements at the right shoulder joint were painful.

Advised x-ray.

Nature of injuries No.1 to 3 kept for x-ray examination and caused with blunt weapon. Duration of the injuries was within six hours.

On the same day, he also medically examined Gurdeep Singh son of Gurdhian Singh, aged about 38 years, resident of village Kishangarh, Tehsil Nabha and he found following injuries on his person:

1. An incised wound 5 cm x .3 cm into bone deep on the right upper scalp running in the antero, posterior, direction, spindle shape about 11 cm above the right ear pinna, about 18.5 c.m. above the lateral end of the right eyebrow. Fresh bleeding present on examination. Advised x-ray and kept under observation.
2. Abrasion .2 cm diameter over nose, 3.5 cm above the tip of the nose. Fresh bleeding present from the right nostril, advised x-ray and ENT Surgeon opinion.
3. Abrasion 1.3 cm diameter over the tip of the left great toe just below the medial half of the nail. Fresh bleeding present on examination. Advised x-ray.
4. Complaint of pain in its middle, in its upper half tenderness present on examination. Advised x-ray.

Injury No.1 for x-ray and injury No.2 under observation and kept for x-ray ENT Surgeon opinion whereas injuries No.3 and 4 were kept for x-rays only.

The kind of weapon used for causing injury No.1 was sharp

and for injuries No.2 to 4 was blunt.

On the same day, he had also medically examined Jora Singh son of Gurdial Singh, 62 years, resident of village Kishangarh, Tehsil Nabha and found following injuries on his person:

1. Lacerated wound 1.6 cm x 1 cm in size running vertically on the forehead in its middle extending upto the upper 1/3 of the nasal bridge. Fresh bleeding present. Advised x-ray and ENT Surgeon opinion.
2. Lacerated wound 0.5 cm x 01 cm in size on the nasal bridge about 1 cm below the injury No.1, advised x-ray and ENT Surgeon opinion.
3. Lacerated wound 1 cm x .1 cm running horizontally just lateral to the little end of the left eyebrow. Fresh bleeding present on examination. Advised x-ray.
4. Abrasion 1.6 cm x .6 cm on the lateral aspect of the left arm about 15 cm above the olecranon process of under fresh bleeding present, tenderness present around it, advised x-ray.
5. Lacerated wound 4 cm x .3 cm into bone deep on the left side of the scalp. Running antero posteriorly about 12.5 cm above the left ear pinna and about 16.5 cm above the left eyebrow. Fresh bleeding present on examination, advised x-ray.

All the injuries were caused with blunt weapon. Duration of injuries was within six hours. Injury No.1 was kept for x-ray and ENT Surgeon opinion whereas injuries No.3, 4 and 5 were kept for x-rays.

After receiving the x-ray report, he declared injury No.2 as grievous in nature.

He proved the carbon copy of MLRs of Gurdhian Singh, Gurdeep Singh and Jora Singh as Ex.PW5/A1 to Ex.PW5/A3. He stated that he had sent information to the police original of which being Ex.PW5/A4.

Then learned Additional Public Prosecutor closed the prosecution evidence.

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

Further, accused Gurmail Singh took up a plea that Gurcharan Singh was son of his uncle and he contested as panch of village panchayat and was elected. The house of Gurcharan Singh is situated at the *phirni* of the village. The house of Jagtar Singh @ Bagga is situated in front of the house of Gurcharan Singh. Karamjit Kaur wife of Jagtar Singh was also elected as member panchayat. Gurcharan Singh and Baljit Kaur, panches were supporters of Nahar Singh, Ex-Sarpanch. The other two members Karamjit Kaur and Amrik Singh were separate. Karamjit Kaur was the supporter of Ex-Sarpanch Amrik Singh. Amrik Singh wanted to be elected as Sarpanch again and was in need of one more member panchayat. He wanted to seek the support of Gurcharan Singh, panch by using any means. Gurcharan Singh refused to support him. Then Amrik Singh hatched a conspiracy with Jagtar Singh. On

5.6.2008 at about 10:00 A.M., they wanted to demarcate the site of the house of Gurcharan Singh from the revenue department. Gurcharan Singh resides in that house from the time of his ancestors. Then Jagtar Singh, Amrik Singh, Jora Singh, Tarlochan Singh, Judge Singh, Harpal Singh, Gurnam Singh, Balwinder Singh, Gurdhian Singh, Harkesh Singh, Gurdeep Singh, Gobind Singh, Ranjit Singh, Bachan Singh, Jarnail Singh, Avtar Singh, Mohan Singh, Harbans Singh, Dalbara Singh, Karamjit Singh @ Kala came in front of the house of Gurcharan Singh. Then Amrik Singh along with others raised *lalkara* and told Gurcharan Singh, Balkar Singh and Chamkaur Singh to come out as their house would be demarcated by the revenue officials and would be demolished. He was also sitting along with Gurcharan Singh, Balkar Singh and Chamkaur Singh. When they came in the courtyard of the house, Jagtar Singh raised a *lalkara* and exhorted that Sarpanch Amrik Singh with their help would demolish their house by demarcating the land and the land would be included in panchayat land. They all objected to this, then they all started abusing them and threatened to kill them. At that time, Nahar Singh, Ex-Sarpanch and Kuldeep Singh were also standing there. They started objecting it, then all the aforesaid persons gave threats to kill them and abused them. Then Jagtar Singh @ Bagga asked his wife Karamjit Kaur to bring his pistol. Karamjit Kaur brought the pistol and gave it to Jagtar Singh. Then Amrik Singh raised *lalkara* and asked Jagtar Singh @ Bagga to finish off the deceased. Harkesh Singh also raised *lalkara*. Then Jagtar Singh fired shots from his pistol with an intention to kill Gurcharan Singh which hit Gurcharan Singh in the chest. When Gurcharan Singh turned back to ran away from

the place of occurrence, then Jagtar Singh fired a shot from his pistol which hit on the back of Gurcharan Singh. On the asking of Harkesh Singh, Jagtar Singh fired another shot with intention to kill Chamkaur Singh which hit him on chest. Amrik Singh and Gurdhian Singh also raised lalkara to finish off the deceased. Jagtar Singh with an intention to kill Balkar Singh fired a shot from his pistol which hit him in his abdomen. When they came forward to rescue the deceased, then Jagtar Singh with an intention to kill him, fired a shot from his pistol which hit him on his right thigh. Then accused Gurdhian Singh, Harkesh Singh, Amrik Singh, Gurdeep Singh, Jora Singh, Tarlochan Singh, Karam Singh, Harbans Singh, Bachan Singh, Jarnail Singh caused injuries to Malkiat Singh and Jagrup Singh. The present occurrence was witnessed by him, Nahar Singh and Kuldeep Singh. People gathered there and then all the accused ran away along with their respective weapons. Nahar Singh, Sarpanch took all the injured in his vehicle to Rajindra Hospital, Patiala. Gurcharan Singh and Chamkaur Singh died due to the injuries suffered by them. He got his statement Ex.DX recorded with the police. Nahar Singh also appended his signatures as a witness. The complainant party was aggressor and they were forming unlawful assembly after arming themselves with deadly weapons, committed the murder of Gurcharan Singh and Chamkaur Singh and caused injuries to other witnesses. A false version has been concocted by the complainant party as a counter-blast to the said version much later after consultation and due deliberations. No such occurrence as alleged by the complainant has taken place in the manner deposed by them and their injuries were fabricated later on in order to introduce them as false witnesses in this

case. He is complainant in the aforesaid double murder case and has appeared as PW1. Similarly, Balkar Singh and Kuldeep Singh appeared as PW2 and PW3 respectively. Nahar Singh is also witness in the cross case.

Accused Nahar Singh, Malkiat Singh, Kuldeep Singh, Balkar Singh and Jagrup Singh adopted the plea as taken by accused Gurmail Singh.

Accused Kulwinder Singh, Avtar Singh, Jagdish Singh and Darbara Singh took up the plea that they were not present at the time of occurrence and had been falsely implicated on account of enmity and party factionalism.

The defence evidence adduced by the accused comprised statement of DW1 Sandeep Sharma son of Prem Chand Sharma, aged 36 years, Partner, M/s Prem Arms Company, Lahori Gate, Patiala, who had brought register for custody of weapons and stated that Nahar Singh son of Mahinder Singh of village Kishangarh, Tehsil Nabha, District Patiala had deposited his 12 bore DBBL gun No.89448 make IOF and one .32 bore revolver No.6852-H make IOF covered under his licence No.744/DM/P/G/84(57/SDN/P.S. Bhadson) which was valid up to 29.1.2011. These weapons were deposited by Nahar Singh on 23.5.2008 at 18.10 hours. This witness further deposed that on 7.6.2008 Nahar Singh came to them and asked for return of .32 bore revolver which was then given to him on that very day at 11.50 hours and his signatures were obtained against relevant entry. On 12.6.2008, Nahar Singh took his 12 bore DBBL gun against entry in the register.

Accused tendered in evidence documents i.e. certified copy

of statement of Dr.Rakesh Kumar Chopra as Ex.DB, certified copy of statement of Dr.Ajay Kumar as Ex.DC, certified copy of statement of Dr.S.S. Oberoi as Ex.DD, certified copy of statement of Dr.Gian Singh as Ex.DE, certified copy of statement of Dr.Vivek Kumar as Ex.DF, certified copy of statement of Dr.Pushpinder Singh as Ex.DG, certified copy of statement of Inspector Hardip Singh as Ex.DH, certified copy of statement of Dr.K.M. Mahindra as Ex.DI, certified copy of statement of Dr.Shalu Jindal as Ex.DJ, certified copy of charge-sheet in case FIR No.56 dated 5.6.2008 titled as *The State Versus Amrik Singh and others* under Sections 302, 307, 148 IPC etc. as Ex.DK, certified copy of FIR No.56 dated 5.6.2008, P.S. Bhadson, under Sections 302, 307, 452, 323, 506, 148, 149 IPC as Ex.DL and certified copy of statement of Parkash Chand SI as Ex.DM.

Accused also tendered in evidence certified copy of FSL report dated 21.8.2008 as Ex.DN and certified copy of FSL report dated 16.7.2008 as Ex.DO.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals 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 and learned Additional Advocate General for the State of Punjab besides going through the record and we are of the considered view that the impugned judgment of conviction and sentence passed

against the appellants – accused -convicts is not sustainable and is bound to be set aside by way of acceptance of appeal. The reasons for our saying so are as follows:

Firstly, there is gross delay in filing of the complaint inasmuch as it was filed on 18.3.2009 whereas the incident is alleged to have taken place on 5.6.2008 at 10:00 A.M. No satisfactory explanation for delay in filing the complaint is coming forth. According to the complainant since he was in custody as such when he was released on bail then he filed the complaint. This reasoning is least convincing. The complainant while in judicial custody could very well have got the complaint drafted and filed it in the Court of law without waiting for his being released on bail. For that matter, complaint could be filed by any other person present who was aggrieved or had suffered injuries in the incident. The law is well settled that delay in such type of matters is fatal unless properly explained since delay leaves a wide room open where mischief of false implication after due deliberations and consultations can easily creep in. With passage of time the element of truth in the version gets diluted. Therefore, on account of gross delay in filing the complaint, the counter version becomes highly doubtful.

Another plea raised in the complaint is that correct version of the counter case as given by Jora Singh was not recorded by the police. When Jora Singh appeared in the Court and got his statement recorded as PW2, he was duly confronted with the statement made by him with ASI Parkash Chand on 6.6.2008 Ex.DA where he stood exposed and came out that he had made material improvements in his version as regards the accused and weapons being carried by them.

Similar is the situation as regards other prosecution witness examined i.e. PW1 Gurdhian Singh, who was also duly confronted with statement made by him to ASI Ranjit Singh on 6.6.2008. Therefore, much reliance cannot be placed upon such type of witnesses since they had every motive to come up with a false version to save their skin in the trial for offences in the trial for offences under Sections 302, 307, 148, 149 IPC registered vide FIR No.56 dated 5.6.2008. The hollowness of the stand of complainant stood exposed when Jora Singh admitted in his cross-examination that he had not submitted any application or raised any objection that correct version had not been recorded by the police. There is nothing on record to show that local police was favourably inclined towards the opposite party. Hence there was no occasion for the police to record a wrong version of the incident as provided by Jora Singh. It is apparent that the police did not find any merit in the version put forward by the accused side and for that reason, no action was taken in the matter. The contentions put forward in the complaint case that some of the accused were carrying two weapons and stick blows were given with an intention to kill are not believable. The whole story put forward is least convincing and comes out to be nothing but concoction. It may be mentioned here that the police had not found such version of the incident put forward to be believable. No weapon etc. was recovered from the accused in the cross case. As it comes out that the incident had taken place all of sudden and there was wide commotion in which injured in the complaint case might have suffered injuries but it is not established that it were accused in the complaint case who had inflicted injuries upon them or were guilty of other criminal acts as alleged in the

complaint. The eye-witnesses, who had got their statements recorded do not come out to be truthful. Their depositions are quite shaky, suspicious and doubtful and do not inspire confidence. The trial Court has dealt with all these aspects but then suddenly jumped to the conclusion that charge against the accused stood established forgetting the yardstick used for determining the criminal liability i.e. of charge having been proved beyond a shadow of reasonable doubt. Here from the allegations in the complaint and evidence brought on file by the complainant, charge against accused did not get proved much less beyond the shadow of reasonable doubt. As per law benefit of doubt should have been given to the accused which was wrongly denied to them. From the statement of DW1 Sandeep Singh, it comes out that Nahar Singh had deposited his 12 bore DBBL gun and .32 bore revolver with M/s Prem Arms Company, Lahori Gate, Patiala on 23.5.2008 and he had taken back his .32 bore revolver on 7.6.2008 and 12 bore DDL gun on 12.6.2008. The incident had taken place on 5.6.2008. As per the case of complainant, accused Nahar Singh had fired shots from his revolver. When licences revolver of Nahar Singh was deposited with M/s Prem Arms Company, Lahori Gate, Patiala on 23.5.2008 much before the incident and was taken back by him later on, on 7.6.2008, after the incident, he could not have possibly used it in the occurrence and story stands falsified on that account. Such part of impugned judgment is based upon misappraisal of evidence and wrong interpretation of law and cannot be sustained.

Therefore, the appeal filed by the appellants – accused – convicts in the complaint case containing counter version of the incident is accepted and judgment of conviction and sentence passed against

them is set aside, with the result they are ordered to be acquitted of the charge framed against them. They are on bail. Bonds and sureties furnished by them are discharged.

	(T.P.S. MANN)	(H.S.MADAAN)
	JUDGE	JUDGE
25.4.2017		
Brij		

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