

(1)

*Criminal Appeal No.D-857-DB of 2015
& 2 other connected appeal*

In the High Court of Punjab and Haryana at Chandigarh.

(I)

Criminal Appeal-D No.857-DB of 2015
Date of Decision:- December 21, 2017

Pawan Kumar & another

.....Appellants

Versus

State of Punjab

....Respondent

(II)

Criminal Appeal-D No.943-DB of 2015

Ramveer @ Bittu

.....Appellant

Versus

State of Punjab

....Respondent

(III)

Criminal Appeal-D No.1695-DB of 2015

Suman

.....Appellant

Versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Ankur Mittal, Advocate as amicus curiae with
Mr. Pankaj Mulwani, Advocate,
for the appellants, in all the appeals.

Mr. Gaurav Garg Dhuriwala, Senior Deputy Advocate General,
Punjab.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the above mentioned appeals filed on behalf of four accused namely Pawan Kumar, Deepak Kumar, Ramveer and Suman challenging judgement dated 26.3.2015 passed by learned Additional Sessions Judge, Ludhiana, vide which they have been convicted for various offences including offence punishable under section 302 of Indian Penal Code, 1860 (for short, 'IPC') and have been sentenced as under:

S.No	Name of convict	Convicted u/s	Sentence Imposed	In default of fine
1.	Pawan Kumar	302 of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
		120-B of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
2.	Suman	302 of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
		120-B of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
3.	Deepak Kumar	302 of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
		120-B of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
4.	Ramvir @ Bittu	302 of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
		120-B of IPC	R.I. for life & fine of ₹ 10,000/-.	Further R.I. for 1 year.
		452 of IPC	R.I. for 2 years & fine of ₹ 1000/-	Further R.I. for 2 month
		447 of IPC	R.I. for 1 month & fine of ₹ 500/-.	Further R.I. for 15 days

2. The matter arises out of death of Paramjit Kumar due to burn injuries sustained on 27.09.2010. It is the case of prosecution that on 26.09.2010, S.I. Rajwant Singh, Incharge, Police Post, Tibba Road, upon receipt of information that a

person had been set on fire in Karam Kaur Colony and had been taken to Civil Hospital, Ludhiana, went to the Hospital and after seeking opinion of doctor regarding fitness of injured to make statement, moved an application to Duty Magistrate around 4 PM requesting him to record statement of the injured. The Duty Magistrate reached the Hospital and after ascertaining about fitness of the injured from doctor, proceeded to record his statement. The translated gist of the statement (dying declaration Ex.PA) of Paramjit Kumar reads as under:

“We have a plot measuring 250 sq. yards, situated in Tajpur road. My brother Ashwini and his family, Suman widow of my another brother and my younger brother Pawan Kumar are residing there. This plot is in the name of my mother Asha Rani who has expired. My sister-in-law Suman widow of my brother and my younger brother Pawan Kumar were entering into an agreement for sale of this plot in favour of Kala Hans, who is President of *Valmiki*s and a leader of Akali Dal. Today, Kala Hans, his brother whose name is not known to me and his nephew namely Saurav were placing their household articles in the said plot. I, however objected to the same. The said persons took me to a room and offered money which I refused as I did not intend to sell the plot. Upon my refusal, all the persons poured oil on me and set me ablaze. All this has been done by Kala Hans. I had intimated the police about illegal possession day before yesterday night but the police did not take any action. 15-20 persons were present when they set me ablaze. My younger brother Karamjit brought me to hospital.”

3. Karamjit Kumar, brother of deceased, who had also sustained some injuries

while extinguishing fire was also treated in the hospital. SI Rajwant Singh recorded his statement at about 6 PM. The translated gist of his statement (Ex.PW-5/C) reads as follows:

“We are 7 brothers and sisters. Our parents have expired. My mother Asha Rani owned a plot measuring 250 Sq. Yards on which a house has been constructed. After her death the said plot was inherited by all of us brothers and sisters. My brother Ashok Kumar expired 3 years ago and after his death my other brother Pawan Kumar who was earlier residing in Delhi started residing with Suman widow of Ashok Kumar. On 24.9.2010 we came to know that Pawan Kumar and Suman were entering into an agreement for sale of the said plot measuring 250 Sq. Yards in favour of Kala Hans. I went to inquire about the same from Pawan Kumar who was residing with Kala Hans in a house at a small distance from our house. When I reached there, I saw Kala Hans, my sister-in-law Suman, her son Deepak sitting there. Kala Hans told me that Pawan Kumar had struck a deal for sale of the plot and that we should remove our belongings from the said house. He further said that he was President of Valmiki and leader of Akali Dal and knew how to get the plot vacated. On the day of occurrence, my brother Ashwani Kumar had called me and my other brother Paramjit Kumar at his house where we gathered to inquire from our brother Pawan Kumar and sister-in-law Suman as regards the agreement for sale of the property as the same was joint property. It was about 1 P.M. I was talking to my brother

Ashwani Kumar in the street while my other brother Paramjit Kumar was inside the house. In the meantime, a white coloured 'Zen' car bearing registration No.PB-08AW-8030 came there which was driven by Ramveer @ Bittu driver of Kala Hans. Pawan Kumar was sitting on the seat adjoining driver's seat. Kala Hans along with his brother whose name is not known to me and Suman were sitting on the rear seat. A Swaraj Mazda was following the said car in which household goods were loaded. Saurav, nephew of Kala Hans and my nephew namely Deepak along with 8-10 persons were present in the said vehicle. Kala Hans, his brother, his nephew Saurav and Pawan Kumar entered into our house without permission. The driver of Kala Hans along with others restrained us from entering into the house. The remaining persons unloaded the goods from Swaraj Mazda and took them inside the house. My sister-in-law was instigating them. In the meantime we heard screams of Paramjit Kumar. After about 5-6 minutes those persons came out of the house and fled away in their vehicles. When we went inside, we saw that my brother Paramjit Kumar had caught fire. I tried to extinguish fire with the help of blankets and during the process I also sustained burn injuries on my face and arms. My brother Paramjit Kumar told me that Pawan Kumar, Kala Hans, brother of Kala Hans and his nephew Saurav were forcing him to enter into an agreement in respect of the plot in question but he did not agree and upon which the said persons poured oil on him and had set him ablaze. I along with my brother Ashwani Kumar arranged for a vehicle and took

him to Civil Hospital. The motive for inflicting injuries to Paramjit Kumar is that my brother Pawan Kumar and sister-in-law Suman were forcibly trying to sell the plot to Kala Hans and wanted to grab the entire sale consideration. Everything had been done in conspiracy with Kala Hans and his accomplices. I have made my statement. Action be taken.”

4. Paramjit Kumar succumbed to his injuries on 30/09/2010. Post-mortem examination was conducted on his dead body. The police conducted inquest proceedings and proceeded to investigate the matter. Upon conclusion of investigation, challan was presented against accused Pawan Kumar, Suman, Deepak and Ramveer in the Court of JMIC Ludhiana on 3.1.2011 who committed the case to the Court of Sessions on 29.1.2011. The case was assigned to the learned Additional Sessions Judge who framed charges against the aforesaid four accused on 8.3.2011 for offences punishable under section 302, 452, 447/120-B of IPC. After some prosecution evidence had been recorded, the prosecution moved an application under section 319 of Cr.P.C. seeking summoning of additional accused namely Kala Hans, Pinky Hans and Saurav which was allowed qua two accused namely Kala Hans and Saurav but was dismissed qua Pinky Hans vide order dated 26.11.2011. However, before presence of accused Kala Hans could be secured, he expired. The presence of other additional accused namely Saurav could not be secured and he was declared a proclaimed offender.
5. The prosecution in order to establish charges framed against accused examined 13 witnesses. While PW-1 Dr. Balwinder Singh, PW-2 Dr. Sumita Sehdev and PW-7 Dr. Surinder Singh have been examined to prove medical

evidence, PW-3 Ashwani Kumar and PW-4 Karamjit Kumar are the eye-witnesses. PW-5 C. Mohinder Raj, PW-6 HC Raj Kumar, PW-9 HC Bhajan Lal, PW-10 SI Rajwant Singh and PW-11 HC Jujbir Singh are all official police witnesses including the investigating officer. PW-8 Nirmal Kapoor, Junior Asst., Office of DTO stated about registration certificate of car in question. PW-12 Kuldeep Singh, surveyor, proved the scaled site-plan of place of occurrence, prepared by him. PW-13 Ajay Mittal, Judicial Magistrate, who had recorded the dying declaration of the deceased stated about the same.

6. Upon conclusion of prosecution evidence, entire incriminating evidence appearing against accused was put to them to enable them to explain the same but the accused while denying the same pleaded false implication. The accused, in their defence, examined DW-1 Simran wife of Kala Hans who stated that on 22.9.2010 Suman, Pawan Kumar and Deepak had come to their house and had complained that Ashwani was harassing them and they had been turned out from their house. She stated that her husband had assured them that he would get the matter patched up with Ashwani and would speak to him. She further stated that on 26.9.2010 she came to know that Ashwani had set the house of Suman on fire. She further stated that since her husband was away, she telephonically informed him about the episode. She further stated that the accused have been falsely implicated by Ashwani Kumar.
7. The learned Trial Court, upon appreciating the evidence, held the accused guilty for committing offences punishable under sections 120-B and 302 of IPC. Accused Ramvir was also convicted for the offences punishable under Sections 452 and 447 of IPC vide impugned judgement dated 26.3.2015. Aggrieved against the same, the accused have preferred the present appeals.

8. The learned Counsel for appellants, while assailing the impugned judgement submitted that infact the complainant had initially been forced to make a false statement implicating the accused and the falsity of the case is evident from the fact that ultimately he spoke the truth when he stepped into the witness box and did not utter a word against the appellants. The learned Counsel for the appellants submitted that even as per dying declaration none of the appellants namely Pawan Kumar, Suman and Deepak has been attributed any role in setting the deceased on fire. The learned counsel further submitted that the very fact that the investigating officer chose not to record FIR on the basis of dying declaration and rather recorded the same on the basis of statement of brother of deceased made subsequently shows that the FIR was lodged after deliberations.
9. The learned Counsel further submitted that appellant Ramveer is an absolute outsider and being merely a driver of Kala Hans would not have any motive for killing Paramjeet Kumar as he was not to be a beneficiary of the alleged property transaction. The learned Counsel thus submitted that in view of the aforesaid infirmities the impugned judgement cannot sustain and prayed for acquittal of the accused.
10. On the other hand the learned counsel representing the State submitted that the impugned judgement has been passed after fully appreciating the evidence on record which clearly establishes involvement of the appellants. It has been submitted that though the complainant apparently had been won over by the accused and had resiled from his earlier statement but the prosecution version stands fully established from the testimony of Ashwani Kumar who was residing in the same house where the occurrence took place. The learned State

counsel thus submitted that there is no infirmity in the impugned judgement and prayed for dismissal of the appeals.

11. We have considered the rival submissions addressed before this Court and with able assistance of learned counsel have also perused record of the case. Before proceeding further to examine the contentions put forth on behalf of the appellants, it is apposite to briefly refer to medical evidence led by prosecution as regards the cause of death of Paramjit Kumar.
12. PW-1 Dr. Balwinder Singh who had medically examined Paramjeet Kumar at the first instance proved the MLR as Ex.PA wherein the following observations have been recorded :

“ 1. Patient oriented, conscious, vitals stable came to emergency with alleged history of burns involving face (with singing of hair present), forehead, nasal tip, left side of face (peeling of skin present), left forearm on extensor aspect with peeling of skin present and back of hand including fingers with peeling of skin present on right forearm extensor aspect superficial burns, smell of kerosene was present and advised surgical specialist opinion regarding nature of injuries.”

13. Paramjeet Kumar was thereafter got admitted in Deepak Hospital, Sarabha Nagar, Ludhiana on 27.9.2010 where he remained admitted till his death on 30.9.2010. PW-7 Dr. Surinder Singh, Medical Officer, Deepak Hospital stated that Paramjeet Kumar was treated at the hospital as a patient of burn injuries to the extent of 85 to 95% from 27.9.2010 to 30.9.2010. He has proved the medical record regarding admission and treatment of the patient as Ex.PW-7/A

and PW-7/B.

14. After Paramjeet Singh succumbed to his injuries on 30.9.2010 his dead body was subjected to post-mortem examination. PW-2 Dr. Sumita Sehdev, while proving the post mortem report as Ex.PH, deposed that on 30.9.2010 she had conducted post mortem examination on the dead body of Paramjit Kumar and upon examination found the the following injuries on the dead body:

“ There was superficial to deep burn of the entire body i.e. 95% sparing the groin area, left foot & soles & legs below knee, right foot below ankle. Hair of scalp, eye brows were singed. Underlying tissues were red with areas of yellow discharge on abdominal burns.

The scalp, meninges and brain were congested. Ribs congested. Pleural cavities congested and contained about 100cc clear fluid. Lungs & heart congested. Stomach was empty. Small & large intestines, liver, spleen & kidneys were congested. Bladder was empty and external genitalia healthy.

The cause of death in this case in my opinion was due to shock (Hypovolumic) alongwith septicemia following extensive burns which was sufficient to cause death in the ordinary course of nature. Burns were ante mortem in nature. Time between burn & death was about four days and between death & postmortem was between 12 hours.”

15. The learned counsel for the appellants, however, attempted to assail the medical evidence on the ground that on the one hand PW-2 stated that the injured Paramjit Kumar had sustained burn injuries to the extent of 95% but during cross-examination she also stated that a patient with 95% burn injuries can make statement. The learned counsel further submitted that while PW-1

Dr. Balwinder Singh stated that there was smell of kerosene oil when he examined burn injuries of Karamjit Kumar but as per recovery memo Ex.PW-4/B, a plastic bottle recovered from the spot contained petrol. The learned counsel has submitted that such like inconsistencies only go to show that a false case has been cooked up against the accused.

16. We have considered aforesaid submissions. There is no such dictum in medical research or study that a person having 95% burns becomes incapable of making a statement in each and every case. In case, the doctor, upon observing and interacting with the patient opines that the patient was capable of understanding and responding intelligently despite the discomfort and pain, a doctor's opinion cannot be doubted merely on the score that extent of burn injuries was 95%. Similarly, minor inconsistency in description of contents of the recovered bottle being petrol or kerosene would not be of much significance as the material fact is existence of burn injuries on person of deceased and cause of death. The fact that inflammable liquid with which the deceased had been set on fire was kerosene oil or petrol would take a backseat as it is the factum of homicidal death which needs to be ascertained. The testimony of PW-2 not having been shattered despite cross-examination on the said material aspect leaves no room to doubt that it is a case of death due to burn injuries. As such, the factum of the death being homicidal stands affirmed.

17. In the present case, PW-13 Sh. Ajay Mittal, Judicial Magistrate Ist Class, Ludhiana had recorded the dying declaration of Paramjit Kumar. PW-13 while in the witness box stated that the application Ex.PW-13/A, moved before him by Incharge, Police Post, Tibba Road, Police Station Jodhewal, Ludhiana

requesting him to record the statement of the injured, was received at 4 PM and that upon reaching the hospital he sought opinion of the doctor regarding fitness of Paramjit Kumar. A perusal of endorsement Ex.PG shows that Dr. Balwinder Singh (PW-1) had declared Paramjit Kumar fit to make statement. The Magistrate thereafter introduced himself to the patient and asked him as to whether he wanted to make a statement and upon ascertaining the willingness of the patient proceeded to record his statement.

18. PW-1 Dr. Balwinder Singh, vide certificate Ex.PD certified that the patient remained fit during the course of making his statement. Though, during cross-examination he stated that he was asked to go away from the place where the statement was recorded by the Magistrate but the said fact cannot be interpreted to mean that the patient did not remain fit during the course of recording of his statement. The Magistrate having himself also recorded that the patient was fit during the course of recording of his statement, would leave no room for doubting the fitness of the patient or the voluntary nature of the statement. As such, we have no hesitation in accepting the dying declaration to be a valid and voluntary dying declaration of Paramjit Kumar.
19. A '*dying declaration*' is the last statement made by a person at a stage when he in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Once such statement is found to have been made voluntarily and is not an attempt by the deceased to falsely implicate a person, then such dying declaration can safely be relied upon. The Hon'ble Apex Court in a case reported as (2010)8 SCC 514, Lakhan vs. State of M.P. while explaining the sanctity of 'dying declaration held as follows:

"9. The doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means "a man will not meet his Maker with a lie in his mouth". The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases."

20. Though, as per FIR, seven persons have been arrayed as accused, the deceased in his dying declaration named only three persons to have set him on fire. A perusal of dying declaration (Ex.PA) shows that the declarant categorically and specifically named Kala Hans, brother of Kala Hans and nephew of Kala Hans namely Saurav to be the persons who set him ablaze. He is, however, conspicuously silent as regards involvement of Pawan, Suman and Deepak in setting him on fire.
21. Since Karamjit Kumar complainant (PW-4), on whose statement, the FIR was lodged, resiled from his statement, therefore, the prosecution mainly relies upon the dying declaration and testimony of the other eye-witness i.e. Ashwani Kumar (PW-3) who is another brother of the deceased. The motive in the present case is that Pawan Kumar who is one of the brothers of the deceased along with Suman widow of another brother namely Ashok was trying to sell off the joint property i.e. a house measuring 250 Sq. Yards to one Kala Hans which was objected to by the deceased. For the sake of convenience the

persons named as accused in the FIR may be classified in 2 groups as follows :

Accused who are related to deceased	Accused who are related to Kala Hans
1. Pawan (brother of deceased) 2. Suman (sister-in-law of deceased) 3. Deepak (nephew of deceased)	1. Kala Hans (Expired) 2. Saurav (P.O) (nephew of Kala Hans) 3. Pinki (Not summoned) (brother of Kala Hans) (Application u/s 319 Cr.P.C was dismissed qua Pinki, brother of Kala Hans)
	4. Ramveer (driver of Kala Hans)

22. PW-3 Ashwani Kumar brother of deceased, while in the witness box deposed that he has 4 brothers and 2 sisters and that his parents have expired. He deposed that his brother Ashok Kumar died in the year 2008 and thereafter his other brother Pawan Kumar started residing with Suman Bala widow of Ashok Kumar in the said house. Pawan Kumar and Suman Bala entered into an agreement to sell the said house to Kala Hans and when he and his brother came to know about the said fact, then on 24.9.2010 he and his younger brother Karamjit Kumar went to house of Kala Hans to inquire about the same who told them to vacate the house.

23. PW-3 further deposed that on 26.9.2010 at about 12/12.30 PM when he along with his brother Karamjit Kumar was standing in the street outside the house while his brother Paramjit Kumar was inside, a white coloured 'Zen' car bearing registration No.PB-08-8030 driven by Rajbir driver of Kala Hans came there. His brother Pawan Kumar, brother of Kala Hans and Suman were also

in the car. A 'Swaraj Mazda' truck loaded with household articles came there in which his nephew Deepak Kumar, Saurav nephew of Kala Hans and another 10/12 persons were there. Kala Hans was having a bottle containing kerosene like liquid in it. Kala Hans, brother of Kala Hans, Pawan Kumar and Suman Bala forcibly entered into the house while they were forced to remain outside by other persons accompanying them. The said persons unloaded the articles from truck and forcibly placed them inside the house. He further stated that his brother Paramjit objected to the same as he had not sold the house to them and upon his refusal he was set on fire. He stated that they heard screams of his brother Paramjit Kumar and after freeing themselves from those persons, they went inside the house and noticed that his brother Paramjit Kumar had been set on fire. He further stated that all the accused ran away from the spot in their vehicles. He stated that he put blankets on his brother Paramjit in order to put off the fire and save him and in this process, arms and hair of his brother Karamjit also got burnt and thereafter they took his brother to Civil Hospital, Ludhiana.

24. The aforesaid statement is fairly in tune with the allegations leveled in the FIR as far as names of all the accused and their participation is concerned. However, a perusal of the dying declaration shows that the deceased did not name any member of his family and has specifically stated that it was Kala Hans, his brother and his nephew namely Saurav who set him on fire. Though, he has stated that his younger brother Pawan Kumar as well as his sister Suman were entering into an agreement for sale of the plot in favour of Kala Hans but he is conspicuously silent as regards their role in setting him on fire.

25. Ashwani Kumar as well as the complainant Karamjit Kumar had admittedly

not entered the house at the time when the deceased had been set on fire and thus he would not be in a position to state specifically as to who had set the deceased on fire. Further, while as per FIR, Suman remained outside and was instigating other persons when they were placing household goods inside the house, PW-3 Ashwani Kumar stated that Suman had gone inside.

26 Though, it can be said that Pawan Kumar and Suman may have intention to sell the house and usurp the entire sale consideration but in the absence of any cogent and convincing evidence that they had conspired with Kala Hans to eliminate Paramjit Kumar it cannot be presumed that they had joined hands with the proposed purchasers i.e. Kala Hans and others to kill Paramjit Kumar. In any case, once this Court has found the dying declaration to be reliable wherein the aforesaid accused namely Pawan Kumar, Suman and Deepak have not been attributed any role as regards setting the deceased on fire, the statement of Ashwani Kumar insofar as the same pertains to attribution of role to them is apparently an improvement and can not be relied upon.

27. It will not be out of place to mention that all was not well amongst the four brothers and their relations *inter-se* were far from cordial. In fact there is a brief reference in statement of PW-4 Karamjit Kumar that Ashwani Kumar had killed his brother Ashok and after death of Ashok, their brother Pawan had been residing with widow of Ashok. It is borne out from evidence that Pawan and Suman were trying to sell off the joint property without taking into confidence other brothers and usurp the entire sale consideration. Ashwani, who was residing in the said house would certainly have turned inimical towards Pawan and Suman in such a scenerio and can be said to have a motive to falsely implicate his brother Pawan Kumar in order to keep him away from

the house in question. Consequently, it will not be safe to rely upon his statement wherein he has levelled allegations against his brother Pawan Kumar, sister-in-law Suman and nephew Deepak. In these circumstances no liability, either substantive or vicarious as regards the death of Paramjit Kumar can be fastened upon Pawan Kumar, Suman and Deepak, who as per the dying declaration have not been attributed any role pertaining to setting the deceased on fire. They are, thus, entitled to acquittal.

28. Coming to the role of Kala Hans, brother of Kala Hans and Saurav, we find that all three of them are specifically named in the dying declaration as well as in the FIR. PW-3 Ashwani Kumar also specifically deposed to the effect that Kala Hans and his brother had entered into the house of the deceased Paramjit Kumar on the day of occurrence. However, while Kala Hans has expired, his brother and nephew Saurav still have not been put to trial.
29. As regards Ramvir @ Bittu, driver of Kala Hans, he is not named in the dying declaration. As per FIR, a specific role was attributed to him to the effect that he along with others had restrained the complainant and others from entering inside the house when the other accused namely Kala Hans and others had gone inside the house forcibly. However, PW-3 Ashwani Kumar while stating that other persons had restrained him from going inside the house has not specifically named Ramvir to be one of those persons. Though, being a driver of Kala Hans, he can be said to have some loyalty to his employer Kala Hans but such loyalty is not expected to extend to the extent of killing a person. As such, in the absence of a categorical statement regarding his role in the deposition of PW-3 Ashwani Kumar it will not be safe to hold him guilty or to hold that he had conspired with Kala Hans and others and for committing the

offence in question. Thus, he is also entitled to be acquitted of the charges framed against him.

30. In view of our discussions made above, the impugned judgment holding the appellants Pawan, Suman, Deepak and Ramvir @ Bittu guilty for committing offences punishable under Sections 302, 120-B, 452 and 447 of IPC cannot sustain and is liable to be set aside. Accordingly, all the appeals on their behalf are accepted and all four of them are acquitted of all the charges framed against them.
31. We are compelled to record that upon perusal of the record, involvement of brother of Kala Hans (Pinki) in the occurrence is *prima facie* evident. The FIR and also the dying declaration are absolutely consistent as regards his complicity in the occurrence. In the dying declaration, the deceased had, in unambiguous terms, stated that he was set on fire by Kala Hans, his brother and his nephew namely Saurav. In these circumstances while deprecating the role of the police in initially keeping them in column No.2 despite there being direct evidence against them in the shape of dying declaration and not filing charge-sheet against them, we also find it difficult to concur with order dated 26.11.2011 of trial Court passed on an application u/s 319 Cr.P.C. insofar as the same pertains to dismissing application qua Pinki (brother of Kala Hans). While the trial Court chose to summon Kala Hans and Saurav but declined the application qua Pinki. Kala Hans subsequently expired before his presence would be secured.
32. Saurav was declared a proclaimed offender and is still absconding and thus yet to face trial. The police is directed to take effective steps to secure his presence

so that he is put to trial at the earliest.

33. Having perused the entire record, we deem it appropriate to issue notice to Pinki (brother of Kala Hans) to show cause as to why order dated 26.11.2011 passed by trial Court to the extent it pertains to declining the application qua summoning of Pinki in terms of Section 319 Cr.P.C. be not set aside and he be not summoned in terms of Section 319 Cr.P.C. to face trial for offences punishable under Sections 302, 452, 447, and 511 of IPC alongwith Saurav (nephew of Kala Hans) or even by segregating his case as Saurav is still a Proclaimed offender.
34. The matter be listed for the said purpose on February 15, 2018, as per roster.
35. Before parting with the judgment, we place on record our appreciation about the able assistance provided to the Court by Shri Ankur Mittal, Advocate who was appointed amicus curiae to assist the Court.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

December 21, 2017
mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No