

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

**Criminal Appeal D-344-DB of 2003
Decided on : February 14, 2017**

Jaspal Singh and another

....Appellants

Versus

State of Punjab

....Respondent

Criminal Appeal D-329-DB of 2005

Joginder Pal

....Appellant

Versus

State of Punjab

....Respondent

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

Present : Mr. D.S. Pheruman, Advocate
for the appellants in CRA-D-344-DB of 2003.

Mr. Dhruv Dayal, Advocate as amicus curiae
for the appellant in CRA-D -329-DB of 2005.

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

H.S. MADAAN, J.

Vide this judgment we propose to dispose of two appeals
i.e. CRA-D-344-DB of 2003 filed by Jaspal Singh and Narinder Singh
as well as CRA-D-329-DB of 2005 filed by Joginder Pal, accused. All
three of them along with their co-accused Tega Singh, non-appellant,

were convicted and sentenced by Court of Additional Sessions Judge (Adhoc), Amritsar as follows:-

- (i) Convicted under Sections 302/34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- each and in default thereof, to undergo rigorous imprisonment for two months; and
 - (ii) Convicted under Sections 201/34 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default thereof, to undergo rigorous imprisonment for one month.
- Both the sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court pray that the appeals filed by them be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, facts of the case as per prosecution story are that deceased-Baj Singh son of Mohinder Singh-complainant, resident of Chhota Haripura, Amritsar was taken away along with them by accused-Jaspal Singh, Narinder Singh, Tega Singh and Joginder Pal on 26.06.1999 at 10.00 A.M. on the pretext of taking bath in Bohru Wali Canal but Baj Singh did not return home on that day. His family members started searching for him, but in vain. On 28.06.1999, Mohinder Singh-complainant lodged missing report at Police Station, Islamabad by making statement Ex.PA to SHO, Police Station Islamabad, who while heading a police party was present near

Jawala Flour Mills. On that very day, complainant-Mohinder Singh accompanied by his relatives had gone towards the canal in search of Baj Singh. They came across the dead body of Baj Singh lying by side of the canal on northern side. Complainant-Mohinder Singh left Joginder Singh and Jagir Singh there and he, himself proceeded to lodge report at Police Post, Fatahpur. However, on the way, in the area of village Ibban Kalan, he came across police party headed by ASI Kanwaljit Singh (hereinafter referred to as Investigating Officer/I.O.) and got his statement Ex.PA/1 recorded with said Police Officer. The statement was signed by complainant-Mohinder Singh and his signatures were attested by ASI Kanwaljit Singh. ASI Kanwaljit Singh had put his endorsement Ex.PA/2 below such statement and sent *ruqa* to Police Station. Thereafter, the police party accompanied by the complainant, went to the place where dead body of Baj Singh was lying. ASI Kanwaljit Singh summoned a Photographer, who clicked photographs of the dead body at the spot. Since, it was a case of unnatural death, the Investigating Officer carried out inquest proceedings preparing a report Ex.PJ. Dead body was sent to mortuary for postmortem examination through HC Jaspal Singh and Constable Paramjit Kumar.

On 21.07.1999, complainant-Mohinder Singh had gone to Police Station Sadar, where his statement Ex.PA/2 was recorded by SI Sarabjit Singh then the police party accompanied by complainant went to the spot, where SI Sarabjit Singh prepared rough site plan of place

of occurrence as Ex.PW/12/B. He recorded statements of witnesses. During the course of investigation, it came out that Ajit Singh had seen Baj Singh along with accused-Jaspal Singh, Narinder Singh, Tega Singh and Joginder Pal going in a rickshaw towards Dhupai on 26.06.1999 at about 10.30 A.M. and Ajit Singh had informed Mohinder Singh-complainant in that regard. During investigation, it also transpired that, on the said day at about 01.00 P.M. Balwant Singh, PW, who had gone to village Ibban Kalan to leave passengers in rickshaw and was returning therefrom, on reaching canal bridge, near Bohru, he had observed accused beating Baj Singh and all of them had removed their clothes at that time. Balwant Singh had asked the accused not to beat-up Baj Singh. However, accused threw Baj Singh in the canal which was having flowing water and all the accused ran away. Balwant Singh went towards his rickshaw, where he came across another rickshaw puller, who created fear in his mind. Therefore, Balwant Singh had not reported the matter to the police. The motive for the incident was that Baj Singh-deceased and Jaspal Singh @ Jassa accused used to do wrestling and a day before incident, they had quarreled with each other and Darshan Singh, PW had observed them doing so. As per prosecution, story, during the course of investigation, Jaspal Singh @ Jassa, Tega Singh and Joginder Singh were arrested by Inspector Jarnail Singh. On 04.08.1999, accused-Jaspal Singh @ Jassa, who was in police custody during the course of his interrogation disclosed that he had kept concealed a pant and shirt

of deceased in the reeds by the side of canal and he could get those recovered. The Investigating Officer recorded his statement Ex.PB, which was attested by Joginder Singh and Jagir Singh. Subsequently, accused-Jaspal Singh, while in police custody got both the clothes recovered from the place specified by him in his statement. Such shirt Ex.P4, pant Ex.P5 were seized vide memo Ex.PB/1.

Then Narinder Singh-accused was interrogated and he suffered a disclosure statement that he had kept concealed a belt, a purse, a photograph and diary of the deceased in a trunk in his house and offered to get those articles recovered. Then the Investigating Officer recorded his statement as Ex.PC, which was thumb marked by such accused. Thereafter, that accused, while in police custody, led the police party to the disclosed place and got belt Ex.P1, purse Ex.P2, photograph Ex. P3, diary Ex.P4 recovered from the specified place, which were taken into possession vide memo Ex.PC/1.

Then came turn of Tega Singh-accused for interrogation. He also during the course of his interrogation revealed that he had kept concealed a pair of shoe of deceased at his house underneath an iron trunk, which he offered to get recovered. His such statement Ex.PD was reduced into writing and thereafter that accused while in police custody got recovered from his house, a pair of shoes Ex.P5, which was seized vide memo Ex.PD/1.

Thereafter, accused-Joginder Pal was interrogated and he suffered a statement that he had kept concealed a wrist watch, make

HMT Kohinor underneath a trunk, lying in his house which he could get recovered. His statement in that regard Ex.PE was recorded and then accused-Joginder Pal, while in police custody, led the police party to the disclosed place and got recovered wrist watch Ex.P6 from the place mentioned by him in the statement, which was seized vide memo Ex.PE/1. The Investigating Officer prepared site plans of places of recoveries. On return to the Police Station, he deposited the case property with MHC and put the accused in lock-up.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Illaqa Magistrate, Amritsar, copies of documents relied upon in the challan were supplied to the accused free of cost as provided under Section 207 Cr.P.C. then finding a prima facie case charge for offence under Sections 302 and 201 read with Section 34 IPC was framed against accused to which they pleaded not guilty and claimed trial and case was fixed for evidence of prosecution.

During the course of evidence of prosecution, prosecution examined in as much as 13 witnesses as per details below:-

PW1-Mohinder Singh-complainant deposed as per prosecution story.

PW2-Darshan Singh, President of Congress Party of Mohalla Haripura, Amritsar stated that he did not know accused-Jassa though he knew Baj Singh-deceased. Baj Singh and Jassa used to do

wrestling. The witness stated that he did not know Jassa by face and had found two wrestlers quarreling with each other in the *Akhara*, one of them was Baj Singh-deceased and another was Jassa. That he and Satpal Comrade and Avtar Singh Comrade separated them and sent them to their respective houses.

PW3-Raj Kumar, Photographer, proprietor of Mehboob Photographers, Nayian Wala Mor, Amritsar stated that on 28.06.1999, a police party called him from his house and took him to the canal and at the instance of police he took photographs of a dead body Ex.P1 to P4, negatives being Ex.P1/A to P4/A. He stated that he had got the negatives developed into photographs from the market.

PW4-Joginder Singh an uncle of deceased and a brother of complainant-Mohinder Singh stated that on 28.06.1999 he had accompanied his brother Mohinder Singh to search for his son Baj Singh and dead body of Baj Singh was recovered from the canal, in the area of village Sangna; that he and Jagir Singh remained near the dead body to guard it whereas Mohinder Singh was sent to lodge report with the police. The police had come to the spot and dead body of Baj Singh was taken out from canal water. The police had prepared inquest report in his presence.

He further added that one Police Officer had interrogated accused Jassa at Police Station Sadar, Amritsar, who had suffered disclosure statement regarding having concealed a shirt and trouser near rest house, situated near the canal and offered to get those clothes

recovered, disclosure statement of accused Jassa Singh was recorded. Thereafter, accused-Narinder Singh on interrogation disclosed that he had kept concealed a pair of shoes and offered to get the same recovered. Then accused-Tega Singh gave a purse and belt to police in his presence, whereas Joginder Pal gave a wrist watch to the police in his presence. The witness was declared as hostile at the request of learned Additional Public Prosecutor, who was allowed to put questions to the witness in the form of cross-examination.

PW-5 H.C. Jaspal Singh, a formal witness tendered in evidence his affidavit Ex.PG.

PW-6 Constable Ramesh Chander, a formal witness tendered in evidence his affidavit Ex.PH.

PW-7 ASI Kanwaljit Singh stated that on 28.06.1999, while he was posted as Incharge, Police Post, Fatahpur, Police Station, Sadar, Amritsar, on that day he along with other police officials was present in the area of village Ibban Kalan where Mohinder Singh, PW met him and made statement Ex.PA/1 signed by Mohinder Singh, then he put his endorsement Ex.PA/2 and sent it to Police Station Sadar for conducting proceeding under Section 174 Cr.P.C. Thereafter, they reached the canal in area of village Bohru, he called a Photographer and got taken photographs of dead body. He had prepared inquest report Ex.PJ. He had recorded statements of witnesses and then dispatched dead body for postmortem examination through HC Jaspal Singh and Constable Paramjit Kaur along with application Ex.PK.

PW-8 Dr. Didar Singh, Medical Officer, Civil Dispensary, Tripri, Patiala stated that on 29.06.1999, while he was posted as Junior Resident in the Department of Forensic Medicines and Toxicology, Government Medical College, Amritsar, he had conducted postmortem examination on dead body of Baj Singh and had observed as follows:-

“Putrified dead-body of a young male, wearing light brown underwear, white metallic karra in right forearm, black thread with a yellow tawit in its neck, facial features were found blotted. Lips found everted and tongue was caught in between teeth. False rigidity was present in body. Eye balls were bulging from the sockets. Maggots were found crawling in the orifices of the body and all over the body. Greenish discolouration was present on front of abdomen and front of thighs. Weeds were present on the underwear. Putrifactive blisters were present at places. Whole body was discoloured. Skin of the hands found like washerman. Degloving of skin of palm and sole was present. Scalp hair could be pulled out. Nails, teeth could not be pulled out.

Clenching of hands were present with weeds in them. Body was emitting foul smell and flies were

attracted towards body. External genitalia were found distended. Faeces were present in the underwear.

Injuries:-

1. Reddish brown abrasion 8 x 5 cms was present on right knee.
2. Reddish brown abrasion 6 x 4.5 cms was present on the left knee.
3. Reddish brown abrasion 4 x 3 cms was present on right fore-arm at its antero lateral aspect, 9 cms above wrist.
4. Reddish brown abrasion 6 x 3 cms was present on antero lateral aspect of right upper-arm. 11.8 cms below tip of shoulder.
5. Multiple reddish brown abrasions (three in number) present on antero medial aspect of right upper-arm. Size varying from 4 x 2 cms to 1.2 x .8 cms.
6. Multiple reddish brown abrasions (five in number) present on front and outer aspect of left upper-arm and left fore-arm, size varying from 6 x 4 cms to 1.2 x .4 cm.”

He proved copy of the postmortem report as Ex.PL stating that after receipt of Chemical Examiner’s report Ex.PM and police

application Ex.PM/1, he vide his opinion Ex.PM/2 on 25.10.1999 opined that cause of death in this case was due to asphyxia as a result of drowning, which was sufficient to cause death in the ordinary course of nature. He gave the probable time that elapsed between drowning and death as within a few minutes and between death and postmortem within about two to four days.

PW9-Ajit Singh, uncle of Baj Singh-deceased stated that about 2 years and 4 months earlier (his statement was recorded in the Court on 10.10.2001), he was returning home after selling vegetables, when Baj Singh-deceased along with accused-Jaspal Singh, Narinder Singh, Tega Singh and Joginder Pal met him going on a rickshaw in a street in Haripura, Joginder was paddling the rickshaw. On his inquiry, Baj Singh-deceased informed that he and accused were going to have bath in the canal and that in the evening on the same day Mohinder Singh father of Baj Singh-deceased met him and inquired from him, as to if he had seen Baj Singh, to which he replied that he had seen Baj Singh alongwith all the accused going on a rickshaw for taking bath in the canal. At that time, Mohinder Singh was accompanied by Joginder Singh and 3-4 other persons. Thereafter, he did not see Baj Singh and after 2-3 days, when they had gone to search Baj Singh, his dead body was recovered floating in the canal.

PW-10 Balwant Singh provided eye witness account of the incident supporting the prosecution version.

PW-11 Rishi Ram, Draftsman, District Courts, Amritsar

stated that on 17.10.1999 he had prepared scaled plan Ex.PN at the asking of police and at the pointing out of witness-Balwant Singh by using scale 1" x 30' (one inch = 30 feet).

PW-12 SI Sarabjit Singh, who had carried out investigation in this case partly stated that on 21.07.1999, he was posted as SI at Police Station Sadar, Amritsar. On that day, Mohinder Singh and his wife came to Police Station and he had recorded statement of Mohinder Singh, on the basis of which formal FIR was registered. Then he accompanied Mohinder Singh to place of occurrence and prepared rough site plan Ex.PW/12/B. Statements of witnesses were recorded and houses of accused were raided. However, remaining investigation was conducted by Inspector Jarnail Singh.

PW-13 Inspector Jarnail Singh, who had carried out investigation in this case from 02.08.1999 onwards deposed in that regard proving various documents.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned (supra).

Feeling aggrieved, accused-Jaspal Singh and Narinder Singh have filed CRA-D-344-DB of 2003 whereas Joginder Pal has filed CRA-D-329-DB of 2005. However, Tega Singh-accused had not filed any appeal.

We have heard learned counsel for the appellants-accused-convicts, Shri S.S. Dhaliwal, Addl. A.G., Punjab besides going through the record and we find that the impugned judgment is not sustainable and is bound to be set aside by way of acceptance of appeals. The reasons for it are many. Firstly, there is delay in reporting the matter to the Police, in as much as Baj Singh is reported to have accompanied accused Jaspal Singh @ Jassa, Narinder Singh, Tega Singh and Joginder Pal on 26.06.1999 in presence of his father Mohinder Singh-complainant and the three accused having taken Baj Singh along with them on the pretext of taking bath in the canal. However, Baj Singh had not returned home on that day and a search for him was launched. But then the missing report was lodged on 28.06.1999 i.e. two days after Baj Singh went missing. If, in fact, accused had taken away Baj Singh from his house and Baj Singh had not returned, then the needle of suspicion would have immediately gone towards the accused and complainant would have reported the matter to the police at the earliest, asking for taking action against the accused for disappearance of his son Baj Singh but that was not to be. PW-Mohinder Singh, in the cross-examination stated, that in those days Baj Singh was going on duty as *Sewadar* in customs office but

they had not gone to custom office on 27.06.1999 and 28.06.1999 to inform about Baj Singh being not traceable. Again, such conduct of complainant is unnatural. Another factor to be taken into view is that though the prosecution is relying upon testimony of PW10-Balwant Singh of having seen the incident and he had got a statement recorded as PW10, claiming that he had seen accused persons beating Baj Singh and then pushing him in the canal and running away, giving threats that they would kill him also and under that threat and on being advised by a fellow rickshaw puller he kept mum out of fear. However, his testimony does not seem to be trustworthy. If he had in fact seen the incident, then his normal conduct would have been to inform family of the deceased and the police at the earliest rather than keeping mum for a long time due to alleged threat being given by accused and advised by a rickshaw puller. His conduct is not above suspicion. Therefore, we do not find it safe to rely upon his testimony.

That leaves us with testimony of PW9-Ajit Singh, who claims to have seen accused in company of deceased on the fateful day. But again his conduct has not been above board, since he did not venture out to report the matter to the police. In his cross-examination, he stated that his statement was recorded by police after about 20 days of occurrence. If, in fact, he had seen the deceased in company of accused on the day of incident itself with deceased going missing and this witness claiming that after 2-3 days they had gone to search for Baj Singh and his dead body was recovered floating in

canal water, then his immediate action would have been to inform the police regarding what he had seen but that was not to be. This PW, in his examination-in-chief, itself stated that on the same day, in the evening, Mohinder Singh, father of Baj Singh had met him and enquired from him as to if he had seen Baj Singh and then he had told that he had seen Baj Singh along with all the accused going on a rickshaw for taking bath in the canal. If that was so, then why did Mohinder Singh not inform the police in that respect, seeking taking of action against the accused for disappearance of his son Baj Singh. PW-9 Ajit Singh stands falsified by his own deposition.

Coming to statement of PW-1 Mohinder Singh, from his testimony at the best it can be taken that on 26.08.1999 accused had taken Baj Singh along with them stating that they were going to canal to take bath. Though, this version also seems doubtful since as per prosecution story, a few days prior to the incident, a quarrel had taken place between Baj Singh and Jassa. If such quarrel had in fact taken place, then Baj Singh would not have accompanied Jassa and others for taking bath in the canal. The motive suggested that Jassa had quarreled with Baj Singh as Baj Singh had defeated Jassa 2-3 times in wrestling bouts and as a result Jassa along with his companion has killed Baj Singh comes out to be least convincing. Testimony of PW Mohinder Singh does not inspire confidence. As regards, statement of PW2 – Darshan Singh, who deposed regarding two wrestlers quarreling with each other in the *Akhara* and one out of them was Baj

Singh-deceased whereas other was Jassa but then he had stated that he did not know the accused Jassa by face. It being so, then he could not possibly have stated anything regarding quarrel between Baj Singh and Jassa. In his cross-examination, he denied having made any statement to the police. He stated that Joga Pahalwan is Incharge of that *Akhara* (wrestling arena) and police did not enquire anything regarding this case from Joga Pahalwan. As a matter of fact, Joga Pahalwan would have been the best person to depose regarding any alleged quarrel between deceased and Jassa but for some strange reasons, the police did not join him during investigation.

PW-3 Raj Kumar, Photographer had just proved photographs of dead body as Ex.P1 to P4 and negatives Ex.P1/A to P4/A and his statement is not directly incriminating against the accused.

Coming to testimony of PW4 Joginder Singh, brother of complainant-Mohinder Singh, he deposed regarding the recovery of dead body of Baj Singh from canal on 28.06.1999 in the area of village Sangna and having identified the dead body of Baj Singh during inquest proceedings. To that extent, his testimony is of formal nature. He further deposed regarding accused Jassa suffering a disclosure statement in his presence on being interrogated by Police Officer and then in pursuance thereof getting recovered shirt and trouser from near the rest house situated near canal. Similarly, Narinder Singh during interrogation disclosed that he had kept

concealed pair of shoes offering to get the same recovered stating that the police had not recorded the statement of accused Narinder Singh whereas Tega Singh had given one purse and a belt to police in his presence. Accused Joginder Pal gave wrist watch to police in his presence. He was declared as hostile witness at the instance of Additional Public Prosecutor, who was given opportunity to cross-examine the witness. Nevertheless, the trial Court has disbelieved the recoveries got effected by the accused and we do not see any reason to disagree with the trial Court in that regard.

PW5 – HC Jaspal Singh, PW6 – Constable Ramesh Chander happened to be formal witnesses, where as PW7 – ASI Kanwaljit Singh had deposed regarding complainant-Mohinder Singh approaching him on 28.06.1999 and getting his statement Ex.PA/1 recorded, his having appended endorsement Ex.PA/2 sending it to Police Station for conducting proceedings under Section 174 Cr.P.C., thereafter, reaching the canal, calling a Photographer and getting clicked photographs of the dead body. He further deposed regarding his conducting inquest proceedings preparing report Ex.PJ in that regard and thereafter getting the postmortem examination conducted on the dead body. His testimony is more or less corroborative in nature.

Coming to statement of PW-8 Dr. Didar Singh, Medical Officer, who had carried out postmortem examination on dead body of the deceased on 29.06.1999, observing in as much as six injuries on

his person, all of them being in the form of abrasions. In the cross-examination, he stated that the possibility for injuries found on the dead body of Baj Singh having been suffered by rubbing against canal bricks, when the deceased might have been trying to save himself from drowning cannot be ruled out. He stated, that he could not say as to whether death in case of Baj Singh was accidental drowning or drowning otherwise. Therefore, statement of this witness which at best is of supportive nature, does not help the prosecution in advancing its case against the accused.

Depositions of PW9-Ajit Singh and PW10 – Balwant Singh have already been discussed (supra) and not found to be fit for reliance. PW11 – Rishi Ram, Draftsman, District Courts, Amritsar did not say anything incriminating against the accused. He had just prepared a scaled site plan of place of incident. PW12 – SI Sarabjit Singh happened to be Investigating Officer who himself had no personal knowledge regarding the incident. Although he had deposed regarding the accused suffering disclosure statements and getting recoveries effected from their possession, but that aspect has been dealt with by the trial Court which has disbelieved such claim of the prosecution.

The prosecution had failed in its endeavour to prove its charge against the accused beyond a shadow of reasonable doubt but the trial Court by misappraisal of evidence and wrong interpretation of law came to the conclusion that charge against accused that on

26.06.1999 at about 10.00 A.M. in the area of Chhotta Haripura they in furtherance of their common intention for committing the murder of Baj Singh had murdered Baj Singh and the evidence of said offence to disappear to screen themselves for punishment to the crime, stood proved. The impugned judgment cannot stand judicial scrutiny and is liable to be set aside qua the appellants-convicts Jaspal Singh, Narinder Singh and Joginder Pal and so also against Tega Singh-convict. It needs to be mentioned here that Tega Singh has not filed any appeal against judgment of his conviction and sentence but the criminal acts attributed to him and evidence led by prosecution during the trial, against all the four accused are identical. Since, charge against Jaspal Singh, Narinder Singh, Joginder Pal is not shown to have been proved by the prosecution conclusively and affirmatively, similar is the position as regards Tega Singh.

A Division Bench of Punjab High Court in Ram Singh Vs. The Crown, AIR 1951 Simla 204, while facing an identical situation, found it fit to exercise revisional jurisdiction so as to acquit a convict, who had not filed any appeal against his conviction and sentence. After holding that the participation of Ram Singh and Piara Singh, appellants therein, in the crime was doubtful and while acquitting them also set aside the conviction and sentence of Bachan Singh convict, who had not filed any appeal. While coming to such a conclusion, the Division Bench relied upon the judgment in the case of Mangal Singh Vs. Emperor, AIR 1934 Lahore 346, wherein the

Court had also acquitted Dial Singh and Tara Singh, the non-appealing convicts. Those two convicts stood convicted under Section 460 IPC and so was their co-convict Kapur Singh, who had filed the appeal. On finding that the participation of Kapur Singh convict in the burglary had not been established beyond reasonable doubt, the Court while acquitting him of the charge under Section 460 IPC, also extended the similar benefit to Dial Singh and Tara Singh, non appealing convicts. While doing so, Abdul Rashid, J, who wrote the main judgment with which Sir Shadi Lal, CJ, concurred said as follows :-

“The convicts Dial Singh and Tara Singh have not preferred any appeal to this Court. It was, however, held in the case of Crown Vs. Sadda, 11 Cr. LJ 99 : (4 IC 980 Lah), that the High Courts when dealing with cases in appeal or revision are competent to acquit an innocent person although he had failed to exercise the right of appeal. It has been laid down in the case of T.R.S. Chari Vs. Emperor, 12 Cr. LJ 250 : (10 IC 792 LB) that in exercise of its revisional jurisdiction, the High Court can, on the appeal of one accused, deal with the sentences passed on the other co-accused who have not appealed. In that case, in the exercise of its revisional powers, the convictions and sentences of six accused persons, who had not appealed, were set aside by the Lower Burma Chief Court. In the case of Broja Rakhal Vs. Empress, 5 CWN 330, a Division Bench of the

Calcutta High Court held that the High Court had power under Section 439, Criminal Procedure Code, in a proper case, to deal with the cases of accused persons not appealing against their convictions, while considering and trying the appeal preferred by some other persons; and clause (5) of the Section does not in any way affect the jurisdiction vested in the High Court to deal with their cases.

After a careful examination of the evidence, I have arrived at the conclusion that the testimony of the approver has not been corroborated in any material particulars by any reliable evidence so far as Dial Singh Tara Singh convicts are concerned. In exercise of the revisional powers of this Court, I would, set aside their convictions and sentences; and order their immediate release”

The Hon'ble Supreme Court in Md. Sajjad @ Raju @ Salim Vs. State of West Bengal, 2017 (1) RCR (Criminal) 748, Rajoo and others Vs. State of MP, AIR 2009 SC 858, Mohinder Singh and another Vs. State of Punjab and others, AIR 2003 SC 4399 and Dandu Lakshmi Reddy Vs. State of A.P., AIR 1999 SC 3255 and a Division Bench of this Court in Parampal Singh Vs. State of Punjab Criminal Appeal No.D-243-DB of 2001 decided on 3.10.2008 granted the benefit of acquittal to the non-appealing convict after holding that when no conviction of any accused was possible, the benefit of that decision must be extended to the similarly situated co-accused even

though he had not challenged the order by way of appeal.

In view of the above, the impugned judgment of conviction and sentence passed against the appellants, namely, Jaspal Singh, Narinder Singh and Joginder Pal as well as Tega Singh, convict/non-appellant is set aside and they are acquitted of the charge framed against them. The appellants, namely, Jaspal Singh, Narinder Singh and Joginder Pal are on bail. Their bail bonds and sureties are hereby discharged. Tega Singh convict/non-appellant, who is in custody, be released forthwith, if not required in any others case.

(T.P.S. MANN)
JUDGE

(H.S. MADAAN)
JUDGE

February 14, 2017
Rajneesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No