

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

1. CRA-D-588-DB-2003
Date of decision: 09.05.2017

Balwinder Singh @ Bittu

.....Appellant

Versus

State of Punjab

.....Respondent

2. CRA-D-605-DB-2003

Paramjit Singh @ Bittu & another

.....Appellants

Versus

State of Punjab

.....Respondent

3. CRA-D-627-DB-2003

Mander Singh (real name Sukhwinder Singh)

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. Amaninder Singh Sekhon, Advocate
for the appellant in **CRA-D-588-DB-2003**.

Mr. H.S. Brar, Advocate
for the appellants in **CRA-D-605-DB-2003 &
CRA-D-627-DB-2003**.

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

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of three appeals,
i.e. **CRA-D-588-DB-2003** filed by accused-convict Balwinder Singh @
Bittu, **CRA-D-605-DB-2003** filed by Paramjit Singh @ Bittu & Dalip
Kumar (the latter has since expired & appeal filed by him stands abated)
and **CRA-D-627-DB-2003** filed by Mander Singh (real name Sukhwinder
Singh), all of them were convicted and sentenced by the Court of
Additional Sessions Judge, Muktsar vide impugned judgment and order of
sentence dated 03.06.2003 as follows:-

Name of Convict	Offence	Sentence Awarded
Balwinder Singh @ Bittu	Under Section 302 IPC	Imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years.
	Under Section 323 read with Section 34 IPC	Rigorous imprisonment for six months.

Mander Singh @ Sukhwinder Singh	Under Section 302 IPC Under Section 323 read with Section 34 IPC	Imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years. Rigorous imprisonment for six months.
Paramjit Singh @ Bittu	Under Section 302 read with Section 34 IPC Under Section 323 IPC	Imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years. Rigorous imprisonment for six months.
Dalip Kumar	Under Section 302 read with Section 34 IPC Under Section 323 read with Section 34 IPC	Imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two years. Rigorous imprisonment for six months.

All substantive 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 conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly narrated, the prosecution case as it came out during the trial is that on 15.01.2000 on receipt of a written intimation dated 14.01.2000 from Civil Hospital, Muktsar at Police Station, City, Muktsar SI-Samman Singh, SHO (hereinafter referred to as the Investigating Officer/I.O.) of that police station alongwith other police officials went to Civil Hospital, Muktsar, where dead body of Tejinder Singh @ Rinku was lying. Mandeep Singh and Ranjit Singh @ Jeeta were present near the dead body. Mandeep Singh, aged about 24 years son of Amar Singh resident of Katcha Thandewala Road, Sarangpura Mohalla, Muktsar a tailor by avocation got his statement Ex.PA recorded with the Investigating Officer, wherein he stated that they were three brothers, eldest being Jatinder Singh @ Bobby followed by him (the complainant) and youngest being Tejinder Singh @ Rinku (deceased). On the previous night, he alongwith his brother Tejinder Singh @ Rinku (deceased), and Mohinder Singh son of his maternal uncle Baldev Singh, resident of Gidderbaha, besides, Ranjit Singh @ Jeeta son of Jaswant Singh, resident of Muktsar had gone to see Maghi Mela, which was arranged in the open space in front of Dera Bhai Mastan Singh; that they were returning after seeing 'Jinda Dance', Tejinder Singh @ Rinku was about five *KARAMS* ahead of him being followed by complainant and Ranjit Singh @ Jeeta; When they had reached near the electric pole, time was about 10:30 p.m., then near the tent set up in the Mela compound, Balwinder Singh @ Bittu son of Balbir Singh armed with a *Kappa*, Mander Singh son of Balbir Singh armed with a *Kappa*, Devinder Singh @ Goshi son of Harmail

Singh armed with a *Kirpan* (Sword), Dalip Kumar armed with *Kirtch*, Paramjit Singh @ Bittu Toppiwala armed with a *Dang* were standing there. Balwinder Singh @ Bittu raised a *lalkara* (exhortation) that Rinku, brother of Bobby etc. should be caught hold of and he be not allowed to escape; Hearing that Mander Singh gave a *Kappa* blow to Rinku hitting him on the back, Tejinder Singh @ Rinku raised alarm "*Marditta-Marditta*" (he was being killed). Then Balwinder Singh @ Bittu inflicted 2/3 blows with *Kappa* from sharp side hitting Tejinder Singh @ Rinku on head. Tejinder Singh @ Rinku fell down and while he was lying down, Balwinder Singh @ Bittu, Mander Singh, Devinder Singh and Dalip Kumar showered blows upon him with their respective weapons. Paramjit Singh @ Bittu Topiwala gave a *Dang* blow to Mohinder Singh hitting him on left arm, at that time electric light was on. Complainant and other persons accompanying him raised alarm "*Na Maro-Na Maro*" (do not hit), then all the assailants sped away from the spot with their weapons. Thereafter one gypsy vehicle came there, in which Tejinder Singh @ Rinku was taken to Civil Hospital, Muktsar for treatment. Later on complainant-Mandeep Singh and Ranjit Singh @ Jeeta got Mohinder Singh admitted in Civil Hospital, Muktsar and they observed that Tejinder Singh @ Rinku had died due to injuries suffered by him, as such, the complainant alongwith Jita Singh sat besides the dead body of Tejinder Singh @ Rinku. According to the complainant, the motive for the incident was that in the year 1996 his brother Tejinder Singh @ Rinku in conspiracy with other persons had caused injuries to Balwinder Singh @

Bittu, regarding which an FIR was registered at Police Station, City Muktsar. Due to that grudge and having bad feelings in their heart, the accused-assailants sharing a common intention had caused injuries with sharp edged weapon to Tejinder Singh @ Rinku and had committed his murder. The statement was signed by the complainant in Punjabi, his signatures were attested by SI/SHO Samman Singh. The said Investigating Officer finding that from the statement offences punishable under Sections 302, 323, 148 & 149 IPC were made out put his endorsement Ex.PA/1 below that statement and sent ruqa to police station at 1:15 a.m. through C.Jasvir Singh, on the basis of which formal FIR Ex.PA/2 was recorded by MHC Kabul Singh at Police Station, City Muktsar, original ruqa alongwith endorsement by MHC Kabul Singh regarding registration of FIR was returned to the Investigating Officer. Special reports were sent to Illaqa Magistrate and higher Police Officers.

The Investigating Officer moved an application Ex.PC to find out fitness of injured-Mohinder Singh to make statement and the doctor vide his endorsement Ex.PC/1 gave the opinion in positive. The Investigating Officer then recorded his statement. He carried out inquest proceedings with regard to dead body of Tejinder Singh @ Rinku preparing report Ex.PR in that regard. The dead body was identified to him by Balwant Singh and Harbhajan Singh whose statements were recorded as Ex.PR/1 and Ex.PR/2, respectively. The Investigating Officer sent the dead body for post-mortem examination moving application Ex.PJ through C.Jasvir Singh and SPO Manjit Singh. After post-mortem

examination belongings of the deceased in the form of a sealed parcel were produced before the Investigating Officer by C. Jasvir Singh, which was taken into possession vide memo Ex.PS. The Investigating Officer recorded statements of witnesses. Due to darkness, the police party returned to the police station where the Investigating Officer deposited the case property with the MHC.

On 15.01.2000 the police party headed by SI Samman Singh went to the spot where the Investigating Officer carried out spot inspection. He prepared rough site plan of place of incident as Ex.PT. He lifted blood stained earth and simple earth from the spot placing those in separate small plastic containers preparing parcels thereof and sealed them with seal having impression "SS". Parcels were taken into possession vide memo Ex.PM, seal after use was handed over to ASI Sukhdev Singh. The Investigating Officer recorded statements of witnesses, thereafter since SI Samman Singh was transferred and further investigation in this case was carried out by ASI Sukhdev Singh.

On 21.01.2000 accused Balwinder Singh, Devinder Singh and Paramjit Singh were arrested in this case by ASI Sukhdev Singh. Necessary documents in that regard were prepared. On 23.01.2000 accused Balwinder Singh, while in police custody during course of interrogation had suffered a disclosure statement Ex.PO to the effect that he had kept concealed one *Kappa* in the heap of dung cakes lying on the roof of his residential house and he could get the same recovered. Then such accused while in police custody got recovered *Kappa* from the place

specified by him in his disclosure statement. The *Kappa* Ex.P1 was stained with blood. The Investigating Officer prepared rough sketch Ex.PO/1 of *Kappa* converting it into parcel sealed with seal having impression "SS" and that parcel was taken into possession vide memo Ex.PO/2. ASI Sukhdev Singh prepared rough site plan of place of recovery of *Kappa* Ex.PO/3. The Investigating Officer deposited the parcel of the *Kappa* with MHC Kabul Singh. Soni accused was arrested in this case on 26.04.2000, whereas accused Dalip Kumar on 19.08.2000.

After completion of investigation and other formalities, challan was prepared against the accused Balwinder Singh @ Bittu, Devinder Singh @ Goshi, Paramjit Singh @ Bittu and Dharamvir @ Soni and filed in the Court of Sub-Divisional Judicial Magistrate, Muktsar. Copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C..

Accused Dalip Kumar and Mander Singh were declared proclaimed offender; Subsequently they were arrested and sent up to face trial.

Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the Sub-Divisional Judicial Magistrate, Muktsar committed the case to the Court of Addl. Sessions Judge, Muktsar vide his order dated 31.05.2000.

On receipt of the case, finding a prima facie case, charge for the offences under Sections 148, 302, 323 read with Section 149 IPC was framed against the accused, to which they pleaded not guilty

and claimed trial.

Thereafter Mander Singh was arrested in this case and was sent up to face trial, then amended charge-sheet for that very offences was served upon all the five accused namely Balwinder Singh @ Bittu, Devinder Singh @ Goshi, Paramjit Singh @ Bittu, Dharamvir @ Soni , Mander Singh and Dalip Kumar, to which they pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined as many as fourteen witnesses as per details below:-

PW-1 Mandeep Singh provided the eye-witness account of incident deposing as per prosecution story.

PW-2 Dr. S.K. Jaggar, Medical Officer, Civil Hospital, Muktsar deposed that on 14.01.2000 he had medico legally examined Mohinder Singh son of Baldev Singh, aged 28 years, resident of Gidderbaha and found the following injury on his person:-

“Diffuse swelling 4x4 cm on the medial aspect of elbow joint. Tenderness was kept under observation probable duration of injury was within six hours and caused by a blunt weapon”.

He proved carbon copy of the MLR as Ex.PB and pictorial diagram showing seat of injuries Ex.PB/1. He further stated that on police request Ex.PC he had declared injured fit to make statement vide his endorsement Ex.PC/1 and on police request Ex.PD he had made

endorsement Ex.PD/1 regarding discharge of the patient on his request.

PW-3 Dr. Rakesh Goyal, Medical Officer, Civil Hospital, Muktsar stated that on 15.01.2000 at 12.15 p.m. he conducted post-mortem examination on the body of Tejinder Singh @ Rinku son of Amar Singh, resident of Katcha Thandewala Road, Muktsar and made following observations:-

1. It was a dead body of about 20 years old male moderately built wearing a shirt with lining white and green T-shirt, white sleeveless Baniyan, sky blue jeans, leather belt, coco-cola coloured underwear which was soiled with stools, grey socks black shoes and a steel kara in right hand. All the clothes were soiled with blood and dirt. Suspected areas on clothes marked and sealed. He was having cut scalp hair, beard and moustache. Eyes partially open, mouth was having blood stained froth on angles and area of nose and mouth were stained with blood. Rigor mortis present in all over body. Post-mortem staining were seen on the back. Following injuries were present over the body:-

i. An incised wound 7x1 cm (maximum width spindle shape. Bone deep on the right side of scalp . 15 cm behind right eye brow and 6 cm from right ear. Direction of the wound was downwards and medially. Underlying bone was cleanly cut in the

same area. This wound was going through the covering of the brain extending upto 1-1/2 cm inside the brain. Blood clots were present in the wound.

ii. An incised wound 6 cm maximum width 1 cm spindle shaped, bone deep on left side of scalp, 8 cm from the left ear, 20 cm from left eye brow. Direction of the wound was downwards and medially. Underlying bone was cleanly cut in the same area. This wound was going through the covering of the brain. Extending upto 1 cm into the brain blood clots were present in the wound.

iii. An abrasion 7 cm x 0.5 cm on left side of the face 3 cm from lateral angle of left eye. Going horizontally upto left ear.

iv. An incised wound 2.5 cm, maximum width 1 cm (spindle shaped) 1 cm deep in right scapular region .8cm from upper border and 15 cm from lateral border of shoulder. Blood clots were present in the wound.

v. An incised wound 2.5 cm with maximum width 1 cm spindle shaped on the back of chest left side 3.5 cm from lower border of scapula and 5 cm from midline. Liquid blood oozing from this wound. On dissection, this wound was going through muscles

and soft tissues between 8 and 9th rib. Then through pleura, pleural cavity was full of liquid blood with left lung collapsed partially and push to opposite side. Posterior surface of lung was having wound of the size of 1.5x1 /.2 cm. Extending upto 2 cm inside the lungs.

vi. An incised wound 3x1.5 cm, spindle shaped 0.5 cm deep in front thigh .20 cm below inguinal ligament. Blood clots seen in it.

vii. An incised wound 2.5 cm 0.5 cm deep. On lateral side of right thigh at its middle. Blood clots seen in it.

viii. Incised wound 3 cm maximum width 1 cm, 0.5 cm deep 14 cm below injury No.6. Blood clots seen in it.

ix. Incised wound 4 x 1 cm, skin deep, medial side of right thigh, 20 cm below inguinal ligament.

x. An incised wound 2.5 cm x 1 cm x 5 cm. present 8.5 cm below injury No.9.

xi. Incised wound 2 cm x.5 cm .5 cm on the medial side of right left at its middle. Blood clots seen.

xii. Incised wound 3 cm x .75cm, skin deep in front of left thigh, 6 cm above knee, blood clots were present in the wound.

xiii. Incised wound 3.5cm x 1cm x 1cm on lateral side of left thigh .8 cm above knee. Blood clots were present.

There was nothing significant in the internal organs except larynx and trachea were having blood and froth. Viscera was sent for chemical examination at Patiala. On receipt of the report of the Chemical Examiner, it was found that no evidence of any kind of poison was detected in the viscera of the deceased. Cause of death in his opinion was due to cardio respiratory arrest, as a result of injury to the vital organs, i.e. brain and lungs (mentioned in injury No.1, 2 and 5) which was sufficient to cause death in ordinary course of nature. All the injuries mentioned were ante mortem in nature. Probable time between injuries and death was within minutes and between death and post-mortem was between 12 to 24 hours. He also proved copy of post-mortem report as Ex.PE and pictorial diagram Ex.PE/1 showing seats of injuries. The witness stated that he had handed over to the police duly stitched dead body after post-mortem examination, belonging of the deceased in a sealed parcel with 7 seals, a sealed wooden box with 22 seals containing viscera of the deceased in the 5 sealed jars, sample of the seal used and copy of the PMR was also handed over to the police. On the police application Ex.PE, post-mortem was marked to him by Dr. Rupinder Sidhu, SMO In-charge vide her endorsement Ex.PF/1. He further deposed that injuries No.1 and 2 on the person of the deceased could be the result of KAPA Ex.P1.

PW-4 Mohinder Singh injured also provided the ocular version of the incident supporting the prosecution story on material aspects.

PW-5 Dalip Singh, Draughtsman deposed that on 03.03.2000 at the asking of the complainant and on his pointing out he had prepared scaled site plan Ex.PG using scale 1”-10’.

PW-6 ASI Kabal Singh, PW-7 HC Jaswant Singh, PW-8 ASI Harjinder Singh, PW-9 HC Major Singh and PW-10 C. Jasbir Singh, all formal witnesses, tendered in evidence their affidavits Ex.PH, Ex.PI, Ex.PJ, Ex.PK and Ex.PL, respectively.

PW-11 ASI Sukhdev Singh who was associated with the investigation of this case right from the beginning and later on had investigated the case himself deposed in that regard.

PW-12 HC Surjit Singh had brought the original FIR register bearing FIR No.44 dated 29.06.1996 of Police Station, City Muktsar and proved its copy as Ex.PP.

PW-13 Dr. Varinderpal Singh, Medical Officer, Police Line, Faridkot stated that on 14.01.2000 while he was posted at Civil Hospital, Muktsar, dead body of Rinku son of unknown was brought the hospital by a person introducing himself as Duty Magistrate. This witness sent information in this regard as Ex.PQ to the SHO Police Station, City Muktsar.

PW-14 SI Samman Singh (since retired) who had carried out investigation in this case initially testified about the same.

The Public Prosecutor tendered in evidence reports of Deputy Director, Serology and Forensic Science Lab Ex.PU & Ex.PV and closed the prosecution evidence.

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.

Accused-Balwinder Singh @ Bittu took up further plea that deceased Rinku was an eve teaser; that he used to make forcible collections from shopkeepers having shops in Mela Maghi and previous to that Mela also; that he had many known and unknown enemies. Cases were pending against him; that on the day of occurrence he indulged in eve teasing; that some unknown persons in the fair inflicted injuries on his person, so, he was taken to hospital by Mela Duty Magistrate and one police Inspector; that none of the PWs was present with him; that Rinku's brother had caused injuries on his person and case was registered against him under Section 307 IPC and he was convicted alongwith his co-accused.

Accused-Mander Singh took up a further plea that on the day of occurrence, he was present at Faridkot and he also remained at Faridkot on that night as he was residing in Mohalla Sanjay Nagri, Faridkot on the day and night of occurrence; he was there and seen by Binderpal Singh, Pritam Singh, Sukhmander Singh and Niranjana Singh;

his mother had moved an application against his false implication; that investigation was conducted by DSP Gurdev Singh in Police Station City Muktsar where above said persons of Faridkot were present as they had joined the investigation; that he was found innocent by DSP Gurdev Singh and his name was placed in column No.2 of the report under Section 173 Cr.P.C.; that he was named in the FIR only due to personal enmity with brother of the deceased; that he was not known as Mander Singh but his real name is Sukhwinder Singh, at last he took up the plea that he has been falsely implicated in this case on the day/night of occurrence, he was seen at Faridkot by above mentioned persons.

Accused-Paramjit Singh @ Bittu took up a further plea that he had not committed any offence as attributed to him; that about 6 months before, the day of occurrence he had an altercation with Mandeep Singh-complainant and since then he was not on even speaking terms with him and his deceased brother. Due to this grudge complainant named him as accused which is totally false and concocted version.

During their defence evidence, accused examined four DWs as per details below:-

DW-1 Vijay Kumar, Steno, Public Health Department had brought the service record of accused Sukhwinder Singh stating that his photograph is affixed on his service book. The witness stated that Sukhwinder Singh was enrolled as Clerk on 07.02.1990 and he is still in service at Faridkot; that he was residing at Faridkot in a rented house.

The witness had also brought his pay bills and stated that he was getting monthly house rent alongwith his pay. The witness proved photocopy of his service book as Ex.DW1/1-5.

DW-2 Naranjan Singh son of Bahal Singh son of Roor Singh, aged about 55 years, Granthi Bir Bholuwala near Faridkot stated that he is residing in Sanjay Nagar, Faridkot in street No.5 in his own house and Sukhwinder Singh-accused is residing in his house as tenant since the year 1990; that Sukhwinder Singh is employed at Faridkot; that on 14.01.2000 he was present during day and night time and on that day at about 10 p.m. he had taken Sukhwinder Singh to a doctor for treatment but the doctor was not available, then they returned home; that Sukhmander Singh and Pritam Singh met them near their house, then Sukhmander Singh took them to another doctor and was got treated and returned home at 10.30 p.m. and remained at the house during the whole night. The witness concluded his examination-in-chief by stating that after about one month the police came and he narrated all the facts to the police, then he had made statement before the DSP as well.

DW-3 Sukhmander Singh son of Gurdas Singh son of Gokal Chand aged about 52 years, tailor, resident of Sanjay Nagar, Gali No.5, Faridkot deposed on almost the same lines as DW-2 Naranjan Singh did.

DW-4 Gurdev Singh DSP (HQ) Nawanshahr stated that in April, 2000, he was posted as DSP, Muktsar, when he had received an

application through SSP, Muktsar from mother of Mander Singh-accused regarding his innocence; that he had examined many persons of Muktsar City in connection with that application and thereafter, he went to Sanjay Colony, Street No.5 and examined Naranjan Singh, Binder Pal, Pritam Singh, Sukhmander Singh and Mander Singh also and came to the conclusion that Mander Singh son of Balbir Singh resident of Jodhu Colony, Muktsar was innocent. He (Mander Singh) was found to be present at Faridkot at the time of occurrence.

With that the defence evidence got concluded.

After hearing the arguments, learned trial Court acquitted all the accused of the charge framed against them under Section 148 IPC, whereas accused Balwinder Singh @ Bittu, Mander Singh @ Sukhwinder Singh were convicted for offence under Section 302 IPC, whereas accused Paramjit Singh @ Bittu and Dalip Kumar were convicted under Section 302 read with Section 34 IPC. In addition to that accused-Paramjit Singh @ Bittu was convicted for offence under Section 323 IPC, whereas accused-Balwinder Singh @ Bittu, Mander Singh @ Sukhwinder Singh and Dalip Kumar were convicted for offence under Section 323 read with Section 34 IPC as mentioned above, which left them aggrieved and they have filed the present appeals.

We have heard learned counsel for the appellants and learned Additional Advocate General, Punjab, besides, going through the record and we find that as far as involvement of accused-Balwinder

Singh @ Bittu, Paramjit Singh @ Bittu appellants-convicts is concerned the same stands established on the record from the cogent and convincing eye-witness account provided by both the eye-witnesses of the incident, namely, PW-1 Mandeep Singh and PW-4 Mohinder Singh. The presence at the spot of both eye-witnesses at relevant time comes out to be natural and probable inasmuch as PW-Mohinder Singh had suffered injury in the incident, as such, he is a stamped witness and his presence at the place of occurrence at the relevant time cannot be doubted. Similarly it was Mandeep Singh-PW who had set the machinery of law in motion by reporting the matter to the police soon after the incident. The FIR in this case has been registered promptly inasmuch as the incident as per prosecution story has taken place on 14.01.2000 at 10:30 p.m., Tejinder Singh @ Rinku who had suffered injuries, had been removed to hospital in a gypsy vehicle by two persons stated to be Duty Magistrate and a Police Inspector. On intimation being sent from Hospital to Police Station, City, Muktsar a police party had gone to Civil Hospital, Muktsar where Mandeep Singh was sitting near the dead body of Tejinder Singh @ Rinku, therefore, statement of Mandeep Singh Ex.PA was recorded. The statement is quite detailed one giving necessary particulars of the incident, names of assailants and roles played by them have been detailed in such statement. It is shown to have been completed and then endorsement appended on such statement and ruqa sent at 1:15 a.m. from Civil Hospital, Muktsar i.e. within less than three hours of the incident. Such

lengthy statement of the complainant would have been taken more than one hour in being scribed, therefore, no delay in reporting the matter to the police is there. In this statement complainant has mentioned that Mohinder Singh was also present at the spot who had seen the incident and rather he had also suffered injuries in the occurrence. If Mandeep Singh was not present at the spot at the time of incident and had not seen the incident then he could not possibly have been called from home and introduced as a witness within such a short time. Both the PWs were subjected to lengthy cross-examination, however, they stuck to their guns as regards the main aspects of the case. As regards accused-convict/Balwinder Singh @ Bittu, who at the time of incident is shown to be armed with a *Kappa* and inflicted injuries upon Tejinder Singh @ Rinku therewith, he is shown to have suffered disclosure statement Ex.PO during the course of his interrogation by ASI Sukhdev Singh which led to recovery of *Kappa* from the disclosed placed at his instance which has been taken into police possession, that *Kappa was* sent to Forensic Science Laboratory, Punjab, Chandigarh and as per Ex.PV received from there it was found to be stained with human blood. That clearly goes to show that it was used in the incident by Balwinder Singh @ Bittu for causing injuries to Tejinder Singh @ Rinku. The medical evidence corroborates the ocular evidence as regards accused-convicts Balwinder Singh @ Bittu and Paramjit Singh @ Bittu and investigation qua them is shown to have been carried out properly with no motive for the Investigating Officer to involve them in

this case wrongly or challan them falsely. Similarly, involvement of Paramjit Singh @ Bittu is also established on the record and judgment of their conviction and order of sentence does not suffer from any infirmity or illegality, therefore, the same does not call for any interference as far as accused/convict-appellants Balwinder Singh @ Bittu and Paramjit Singh @ Bittu are concerned.

However, it is not so as regards Mander Singh-accused. There are several reasons for doubting his participation in the crime; firstly the *Kappa* used by him in the incident had not been recovered during the investigation of the case; secondly as per prosecution story he using the *Kappa* had inflicted an injury on back of chest on left side of deceased Tejinder Singh @ Rinku, however, PW-3 Dr. Rakesh Goyal who had conducted post-mortem examination on dead body of Tejinder Singh @ Rinku in his cross-examination stated that injury No.5 is penetrating injury, a perusal of this injury goes to show that this wound was going through muscles and soft tissues between 8th and 9th rib, then through pleura, there is nothing on record to show that such injury could be caused with a *Kappa*. In his examination-in-chief, the doctor had merely stated that injuries No.1 or 2 of the deceased could be result of *Kappa* Ex.P1, whereas no such opinion of the doctor regarding remaining injuries was sought or given. The doctor stating in his cross-examination that injury No.5 was a penetrating injury suggest that it was caused by some pointed weapon and could not possibly have been inflicted with *Kappa* which is a curved sharp edged weapon use of

which could result in causing of incised wound, therefore, medical evidence does not support the ocular evidence, as far as accused-Mander Singh is concerned. Shortly after registration of the FIR the case was investigated, however, involvement of Mander Singh in the incident was not found to be there, resultantly, he was not sent up to face trial, rather his name was kept in column No.2, it was only during the trial when an application under Section 319 Cr.P.C. was filed then he was summoned by Court to face trial alongwith his co-accused. Accused has taken up a specific plea in that regard, he has led evidence in defence in support of his plea of alibi to show that he was not present at the spot at the relevant time. Such evidence in the form of statement of DW-1, Vijay Kumar, DW-2, Naranjan Singh and DW-3 Sukhmander Singh does create a doubt about involvement of this accused in the incident. DW-4 DSP Gurdev Singh who while posted as DSP Muktsar on an application filed by mother of Mander Singh-accused marked to him by S.S.P., Muktsar had carried out an inquiry stated that he had found Mander Singh to be innocent and he was found to be present at Faridkot at the time of occurrence.

Therefore, in view of detailed discussion supra, **CRA-D-588-DB-2003** filed by appellant-**Balwinder Singh @ Bittu** stands dismissed; **CRA-D-605-DB-2003** filed by appellant Paramjit Singh @ Bittu stands dismissed, whereas with regard to Dalip Kumar-appellant (since dead) the same is disposed of having abated and as regards **CRA-627-DB-2003** filed by **Mander Singh @ Sukhwinder Singh**, the same

is accepted, resultantly the impugned judgment of his conviction and order of sentence is set aside and he is acquitted of the charge framed against him.

Balwinder Singh @ Bittu /appellant-accused is stated to be on bail vide order dated 11.09.2007 granted by this Court while suspending his sentence and Paramjit Singh @ Bittu/appellant-accused is also stated to be on bail vide order dated 21.09.2004 granted by this Court while suspending his sentence. Their bails are cancelled. Chief Judicial Magistrate, Muktsar is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

Necessary directions in that regard be issued to the quarter concerned.

09.05.2017
Gaurav Sorot

**(T.P.S.MANN)
JUDGE**

**(H.S. MADAAN)
JUDGE**

- | | | |
|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |