

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

(1)

**CRA-D-453-DB of 2003
Date of decision:-18.5.2017**

Surjit Singh and others

...Appellants

Versus

State of Punjab

...Respondent

(2)

CRR-1389 of 2003

Baljinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present : Mr.Vinod Ghai, Senior Advocate with
Mr.Simrandeep Singh Sandhu, Advocate
for the appellants in **CRA-D-453-DB of 2003.**

Dr.Deipa Singh, Additional A.G., Punjab.

Mr.H.S.Gill, Senior Advocate with
Mr.R.K. Dhiman, Advocate
for the petitioner/complainant in CRR-1389 of 2003.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of **CRA-D-453-DB of 2003** filed by accused Surjit Singh, Jaswant Singh, Baldev Singh, Rajpal Singh and Suba Singh, who were tried and convicted by the Court of learned Sessions Judge, Faridkot for the offences under Sections 302, 302/149 and 148 IPC vide judgment dated 17.4.2003 and vide order of the same date, they were sentenced as follows:

Name of accused	Under Section	Sentence Awarded
Surjit Singh and Jaswant Singh	302 IPC	Rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one year each.
Baldev Singh, Rajpal Singh and Suba Singh	302/149 IPC	Rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one year each.
Surjit Singh, Jaswant Singh, Baldev Singh, Rajpal Singh and Suba Singh.	148 IPC	Rigorous imprisonment for a period of two years each.

All the substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court in **CRA-D-453-DB of 2003** pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Whereas complainant Baljinder Singh has brought **CRR**

1389 of 2003 craving for enhancement of sentence and for payment of amount of fine to the LRs of the deceased as compensation.

Briefly narrated, the prosecution story as it emerged during the trial is that a written intimation was sent from Civil Hospital, Jaitu to Police Station Jaitu regarding bringing of Jaswinder Singh son of Chanan Singh, Jat Sikh, resident of village Rameana in injured condition to the said hospital. On receipt of that intimation, a police party led by SI/SHO Darshan Singh reached Civil Hospital, Jaitu, where it came across complainant Baljinder Singh son of Sukhmander Singh, Jat Sikh, resident of village Rameana, aged about 23 years, who got his statement Ex.PH recorded with Investigating Officer wherein he stated that on that day i.e. 11.6.2001, he along with his sister Jasmail Kaur and Mithu Singh son of Lal Singh, Jat, resident of his village was returning from their fields to their house on a tractor make Farmtrack; that he was driving the tractor and his sister Jasmail Kaur was sitting on the left mudguard whereas Mithu Singh was sitting on the right mudguard of that tractor; that when the said tractor was on southern peripheral metalled road of village Rameana and time was about 7:00 p.m., then Jaswinder Singh son of Chanan Singh, Jat, resident of village Rameana, a real uncle of complainant overtook the tractor on a scooter and he was going about 10 karams ahead of the tractor; that when Jaswinder Singh while driving scooter reached parallel to the house of Harbans Singh son of Pirthi Singh, then all of a sudden he was waylaid by Surjit Singh armed with *gandhali*, Jaswant Singh armed with *gandasa* (axe), Baldev Singh armed with *gandasa* (axe), Rajpal Singh armed with *daang* (club), all sons of Gobind Singh, Jat, resident of village Rameana as well as

Suba Singh armed with *SELA* (a sharp edged weapon). As soon as Jaswinder Singh parked the scooter, Surjit Singh gave a blow with *gandhali* on head of Jaswinder Singh, who fell down; then Jaswant Singh gave a blow of *gandasa* (axe) hitting Jaswinder Singh on head; that the complainant switched off the tractor and they raised noise 'do not kill – do not kill'; that Gurmail Singh other eye-witness was also raising alarm, however, Jaswant Singh, Surjit Singh, Baldev Singh, Rajpal Singh and Suba Singh caused injuries to Jaswinder Singh on head, legs, ankle, chest and abdomen with their respective weapons; that on alarm being raised by complainant and other persons, who had gathered there, the assailants fled from the spot with their respective weapons after causing serious injuries to Jaswinder Singh; that he (complainant) arranged a conveyance and along with other persons of the village brought Jaswinder Singh to Civil Hospital, Jaitu; that when on reaching Civil Hospital, Jaitu, Jaswinder Singh injured was examined by the doctor, seeing his serious condition, he was referred to hospital at Ludhiana; that while being taken to hospital at Ludhiana in ambulance Jaswinder Singh breathed his last. The motive for the incident was stated to be that a *kacha* passage going to fields of complainant from village Rameana. On the way, there was culvert on the water channel near the fields of the accused, which the accused had dismantled about 15 days prior to the incident. As such it had become difficult to go to the fields. A day prior to the date of incident, there had been an altercation between Jaswinder Singh and the accused side on question of dismantling of culvert and they had behaved stubbornly with each other. Out of that grudge, the accused in connivance with each other had committed the

murder of Jaswinder Singh.

The statement Ex.PH was signed by the complainant in Punjabi. His signatures were attested by SI/SHO Darshan Singh, who appended his endorsement Ex.PH/1 below that statement and observing that offences punishable under Sections 302, 148 and 149 IPC were disclosed, he sent ruqa to the police station through Constable Gurjant Singh, on the basis of which formal FIR Ex.PH/2 was recorded by ASI Sukhdev Singh. SI/SHO Darshan Singh sent LC Gaur Singh and SPO Bhupinder Singh to the place of occurrence at village Rameana for ensuring that the position at the spot was kept intact. He carried out inquest proceedings with regard to dead body of Jaswinder Singh, preparing report Ex.PG. The dead body was identified to him by Baljinder Singh and Jaskaran Singh, whose statements were recorded under Section 175 Cr.P.C. The Investigating Officer sent dead body to G.G.S. Medical College, Faridkot for the purpose of post-mortem examination moving application Ex.PF in that regard. In the meanwhile, Constable Gurjant Singh had returned with a copy of FIR, which was attached with the inquest report. The Investigating Officer recorded statements of witnesses. Constable Gurjant Singh had informed that one of the accused, namely, Baldev Singh was also admitted in Civil Hospital Kotkapura, therefore, the police party proceeded to Civil Hospital, Kotkapura, MLR of Baldev Singh was collected from Police Station City, Kotkapura. The Investigating Officer obtained fitness certificate from the attending doctor and then recorded statement of accused Baldev Singh and that statement was sent to Police Station through Constable Gurjant Singh. The Investigating Officer reached

village Rameana and prepared rough site-plan of the place of occurrence as Ex.PX in the presence of Jasmail Kaur and Gurmail Singh. The Investigating Officer during spot inspection lifted blood stained crusher (bajri), put the same into a container, preparing a parcel thereof, which was sealed with his seal having letters 'DS' and that parcel was taken into possession vide memo Ex.PY. The Investigating Officer lifted the blood stained *PARNA* (a piece of cloth) from the place of occurrence and converted the same into a parcel, sealing it with his seal having impressions 'DS'. He (IO) also lifted a shoe (GURGAABI) of left foot from the place of occurrence and took those articles into possession vide memo Ex.PZ. He also seized scooter bearing registration No.CHS-1939 from the spot vide memo Ex.PAA. Then the police party again went to Civil Hospital, Kotkapura. In the meanwhile, Baldev Singh accused had been discharged by the doctor, therefore, Baldev Singh was arrested. The police party again went to village Rameana along with Baldev Singh accused. Gurdev Singh PW presented before the Investigating Officer two other accused, namely, Surjit Singh and Jaswant Singh and the Investigating Officer arrested them vide memo Ex.PBB and necessary documents regarding arrest and personal search of both the accused were prepared. Then the police party returned to Police Station Jaitu, where ASI Nirmal Singh produced before the Investigating Officer copy of post-mortem report besides belongings of the deceased, which were taken into possession vide memo Ex.PDD. The case property was deposited with MHC and accused were put in lock-up.

On 13.6.2001 both the accused were produced in the Court

of Illaqa Magistrate and they were remanded to police custody. On 14.6.2001 both the accused Surjit Singh and Jaswant Singh were interrogated. During the course of his interrogation, accused Surjit Singh suffered a disclosure statement Ex.PM that he had kept concealed a *gandhali* under the crop of *Charri* and the *gandhali* was fitted in a *daang* about which the said accused knew and according to him he could get the same recovered on demarcation. Similarly, accused Jaswant Singh on being interrogated had suffered a disclosure statement Ex.PN to the effect that he had kept concealed a *gandasa* (axe) fitted on bamboo stick under the crop of *Charri* and this fact was in his knowledge only and he could get the same recovered. Accused Baldev Singh during the course of interrogation also made a statement under Section 27 of the Evidence Act to the effect that he had kept concealed a *gandasi* under the *peti* (big iron box) in his residential house, which fact is in his knowledge alone and he could get the same recovered.

First of all, accused Surjit Singh got a *gandhali* which was stained with blood recovered. The Investigating Officer prepared its rough sketch as Ex.PQ. It was converted into a parcel sealing with the seal of Investigating Officer having inscription 'DS' and then it was taken into possession vide memo Ex.PR.

Then came turn of accused Jaswant Singh, who while in police custody led the police party to the place of concealment and himself got recovered a *gandasa* which was stained with blood. It was converted into a parcel sealing with the seal of Investigating Officer having inscription 'DS' and then it was taken into possession vide memo Ex.PT.

Thereafter, accused Baldev Singh, who while in police custody led the police party to the place of concealment and got recovered a *gandasi* which was stained with blood. The Investigating Officer prepared its rough sketch as Ex.PU. It was converted into a parcel sealing with the seal of Investigating Officer having inscription 'DS' and then it was taken into possession vide memo Ex.PV.

On 15.6.2001, accused Rajpal Singh and Suba Singh were produced before the Investigating Officer by Darshan Singh. They were formally arrested in this case and were interrogated. During the course of interrogation, accused Rajpal Singh got recovered *SELA* and Suba Singh got recovered a *daang* from their houses, respectively. The blade of *SELA* along with its *daang* (Arm) and *daang* were converted into sealed parcels and then taken into police possession. On return to the police station, the Investigating Officer lodged the accused in police lock-up and deposited the case property with MHC. During the course of investigation, the Investigating Officer got prepared scaled site-plan of the place of incident. He seized RC of the scooter vide memo Ex.PLL. The weapons which had been got recovered by the accused happened to be *gandasa* (axe) (Ex.P3), *gandasi* (Ex.P4), *SELA*(Ex.P5), *gandhali* (Ex.P1), arm of *SELA* (Ex.P6), *daang* (Ex.P7), footwear (Ex.P8), *parna* (Ex.P9), crusher (bajri) (Ex.P10) whereas scooter happened to be on superdari.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Faridkot.

On presentation of challan in the Court of Judicial

Magistrate Ist Class, Faridkot, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Faridkot vide his order dated 13.7.2001 committed the case to the Court of learned Sessions Judge, Faridkot.

On receipt of case, learned Sessions Judge, Faridkot, observing that charge for offence under Section 302 IPC against Surjit Singh and Jaswant Singh, under Section 302 read with Section 149 IPC against accused Baldev Singh, Rajpal Singh and Suba Singh and charge for the offence under Section 148 IPC was disclosed against all the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

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

PW1 Dr.Hukam Chand Garg, Senior Medical Officer, Civil Hospital, Jaitu deposed that on 11.6.2001 at about 8:00 p.m., he had sent ruqa (written intimation) Ex.PA to Police Station Jaitu regarding arrival of injured Jaswinder Singh son of Chanan Singh, aged 45 years, resident of village Rameana at Civil Hospital, Jaitu in a serious condition with medico legal injuries. According to this witness, he had provided first aid to the injured and his serious condition was explained to the relatives of injured, who took him immediately to Ludhiana. He stated that he had made entry in the police register. He proved the prescription slip as Ex.PB.

PW2 Constable Balkar Singh stated that on 20.6.2001, he was posted at Police Station Jaitu. Since he happened to be a formal witness, he tendered in evidence his affidavit as Ex.PD with a request that it be read as a part of his evidence.

PW3 Dr.J.S. Dalal, M.D. Professor and Head of the Forensic Medicines, State Medico Legal Advisor, Government of Punjab, G.G.S. Medical College, Faridkot stated that on 12.6.2001 at 8:30 a.m., he had conducted post-mortem examination on the dead body of Jaswinder Singh son of Chanan Singh, Jat Sikh, aged 45 years male, resident of village Rameana, which was brought by ASI Nirmal Singh and PHG Partap Singh of Police Station Jaitu. The dead body was identified by Baljinder Singh and Jaskaran Singh of village Rameana. The length of the dead body was 6 feet 1 inch. It was dead body of a well built and well nourished male wearing white shirt, white pyjama and white underwear (kachha). All the clothes were blood stained. Rigor mortis was present in the entire body and the post-mortem staining was present on the back. Mouth was slightly open and the eyes were closed. The following injuries were present on the dead body:

1. An incised wound 7.5 cm x 2 cm was present on the left side of the forehead and head starting just above medial end of left eyebrow and going upwards, underlying scalp and brain matter was cut, clotted blood was present in the wound.
2. An incised wound 5 cm x .5 cm, horizontally placed was present on the right side of the head. It was 8 cms. above right ear and 15 cms behind anterior hair

line, the underlying bone was cut and clotted blood was present in the wound.

3. An oblique incised wound 5 cm x .5 cm was present on right side of head starting from midline of the head and going backwards and laterally. It was 5 cms. behind anterior hair line and was bone deep.
4. A transverse incised wound 4 cm x .5 cms was present in the midline of the head, 8 cms. behind anterior hair line, underlying bone and brain matter was cut, clotted blood was present.
5. A stab wound 1 cm x .5 cms was present in middle of left cheek. It was bone deep and was 5 cms. lateral to left nostril, clotted blood was present in the wound.
6. A stab wound 1 cm x .5 cms was present on the front of the left leg, 12 cms. below lower end of left patela. It was bone deep, clotted blood was present in the wound and corresponding hole was present in the pyjama.
7. A horizontal stab wound 1.5 cm x .5 cm was present just above left lateral malleolus, underlying bone was fractured and clotted blood was present in the wound.
8. An incised wound 3 cm x 2.5 cms was present on the lateral part of left leg in its lower part. It was 5 cms. anterior to injury NO.7, clotted blood was present in the wound.
9. An incised wound 3 cms. x .5 cms. was present in the

middle of right leg anteriorly. It was 12 cms. below lower end of the right patela, corresponding hole was present in the pyjama and underlying tibia bone had cut it. Clotted blood was present in the wound.

10.A stab wound 1.5 cms. x 1 cm was present in front of left shoulder, corresponding hole was present in the shirt. It was muscle deep and was 5 cm above anterior axillary apex, clotted blood was present in the wound.

11.Right eye was swollen and the colour of the orbit was blackish.

12.A Reddish contusion 7 cms. x 2.5 cms was present on anterior aspect of the right thigh, 10 cms. above the upper end of right patela.

13.A reddish contusion 12 cm x 8 cms was present on antero-lateral aspect of left shoulder in its middle.

14.A reddish contusion 15 cms. x 3 cm was present on lower part of chest and upper part of the abdomen on the left side. It was 10 cms. below left nipple and was horizontally placed.

15.An oblique reddish contusion 6 cms. x 2 cms. was present on the left side of the chest laterally. It was 7 cms. from the injury No.14.

16.A stab wound 1 cm x .5 cm x muscle deep was present on the left side of inguinal area. It was 8 cms. from left anterior-superior iliac spine. Clotted blood

was present in the wound and corresponding hole
was present in the pyjama and underwear (kachha).

Stomach was empty and healthy. Small intestine was full of chyme and gases and the large intestine was full of faecal matter and gases. Urinary bladder was empty.

He added that in his opinion, the cause of death was due to head injuries and all the injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The witness gave probable time that elapsed between the injuries and death as within few hours and between the death and post-mortem about 12 hours. He proved copy of the post-mortem report as Ex.PE, pictorial diagram showing the seats of injuries as Ex.PE/1 and police request for post-mortem examination as Ex.PF. He stated that the belongings of the deceased in the form of pyjama (Ex.P1), shirt (Ex.P2) and underwear (Ex.P3) which were blood stained and contained corresponding holes were converted into the form of parcel by him which was handed over to the police officials.

PW4 HC Jagtar Singh, who was posted at Police Station Jaitu from 12.6.2001 to 23.6.2001, a formal witness tendered in evidence his affidavit as Ex.PJ.

PW5 HC Nirmal Singh, who on 11.6.2001 was posted at Police Station Jaitu and to whom ASI Sukhdev Singh handed over the special report of this case at 12:40 a.m.(night) for taking those to JMIC/Illaq Magistrate, Faridkot stated that he did so on 12.6.2001 at about 2:00 a.m., whereas special reports were handed over to other police officers by him later on.

PW6 Bhupinder Singh, Patwari stated that on 20.6.2000 while posted as such, he had visited the spot and prepared scaled site-plan as Ex.PK at the instance of Gurmail Singh and Jasmail Kaur PWs using scale 1 inch = 10 karams.

PW7 ASI Basant Singh, who had conducted investigation in this case partly deposed in that regard.

PW8 Baljinder Singh – complainant and PW9 Mithu Singh provided the eye-witness account supporting the prosecution story on material aspects.

PW10 ASI Nirmal Singh, a formal witness tendered in evidence his affidavit as Ex.PL praying that the same be read as a part of his statement.

PW11 Sh.Gurdev Singh son of Gajjan Singh, aged 60 years, agriculturist, resident of village Rameana stated that he is Ex-Member Pancyayat of village Rameana, besides being President of Local Gurdwara Parbhandak Committee; that about 1 ¼ years back(his statement was recorded on 9.9.2002) Surjit Singh and Jaswant Singh accused came to him; that first of all Surjit Singh accused disclosed that he along with Jaswant Singh, Baldev Singh, Rajpal Singh and Suba Singh had committed murder of Jaswinder Singh and police was searching for them and that he be produced before the police; that similarly Jaswant Singh accused also confessed before him that he along with Surjit Singh, Baldev Singh, Rajpal Singh and Suba Singh had committed murder of Jaswinder Singh, Ex-Sarpanch and he be also produced before the police. According to this witness, he told such accused Surjit Singh and Jaswant Singh that he would inquire about the

matter from the police and the accused remained present in his house, then he (this witness) inquired from the police and then produced the accused before SI Darshan Singh, who had come to his house. This witness further deposed regarding accused Surjit Singh, Jaswant Singh and Baldev Singh being interrogated in his presence and suffering their disclosure statements and then getting recovered *gandhali*, *gandasa*, again *gandasa* at their instance respectively, which had been taken into possession.

PW12 SI Darshan Singh, who had carried out the investigation in this case to a major extent deposed in that regard proving various documents.

Then learned Additional Public Prosecutor had tendered in evidence FSL reports as Ex.PMM and Ex.PNN and closed the prosecution evidence.

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

Further, in addition to pleading false implication, accused Surjit Singh took up a plea that he and his brother Baldev Singh were tethering the cattle in their outer house which is in between the house of Harbans Singh and Gurmail Singh; that his brother Baldev Singh had slapped deceased Jaswinder Singh one day earlier, when a quarrel about the culvert had taken place between both of them; that Jaswinder Singh feeling aggrieved came and attacked Baldev Singh and caused him

injuries; that then they both in the right of private defence of Baldev Singh caused him blows and that from the fields of Jaswinder Singh, if one is to go to his house then their outer house does not fall on the way.

Accused Baldev Singh adopted the plea as taken by accused Surjit Singh.

Further, accused Jaswant Singh took up a plea that he has been falsely implicated in this case so that he may not pursue the case of right of private defence of his brothers Surjit Singh and Baldev Singh as there is no other male member in their family to do so.

Accused Rajpal Singh and Suba Singh also adopted the plea as taken by accused Jaswant Singh.

During their defence, accused examined four witnesses.

DW1 Dr.Major Singh Jawada deposed that on 11.6.2001, he was on Emergency Duty in Civil Hospital, Kotkapura; that on that day, he medico-legally examined Baldev Singh son of Gobind Singh, resident of village Rameana at 10:15 p.m. and recorded following injuries on his person:

1. Lacerated wound scalp 3.5 cm x .5 cm present 12 cms. from hairline posteriorly midline and 7 cms from left ear. Fresh bleeding was present. X-ray of scalp was advised.
2. Swelling 5 cms. x 3 cms was present on dorsum of right hand on ulnar side over the 5th metacarpal bone. Advised x-ray of right hand.
3. Swelling 5 cms. x 4 cms was present on lateral aspect of right leg, 4 cms. above lateral malleolus. Advised

x-ray.

Injuries No.1 to 3 were kept under observation and the weapon used was declared as blunt for all the injuries. The injured had arrived in the hospital at 10:10 p.m. and was brought by his brother Rajpal Singh son of Gobind Singh. The probable duration of the injuries was within six hours.

Going further, this witness deposed that he got x-ray examination of injuries conducted from the Radiologist and after receipt of the report, he declared injuries No.1 and 2 as simple and injury No.3 as grievous in nature. He had sent the x-ray report along with four x-ray films to the SHO concerned. He proved x-ray films as Ex.D1 to D4, x-ray report as Ex.DB, MLR of injured as Ex.DA and pictorial diagram showing the seats of injuries as Ex.DA/1.

DW2 Dalip Singh Sachdeva, Draughtsman deposed that he had visited village Rameana and prepared scaled site-plan Ex.DC on pointing out of Kulwant Kaur using the scale of 1 inch = 15 karams.

DW3 Jagsir Singh, Inspector Grade – I, Office of the Food and Supplies, Jaitu had brought the summoned record pertaining to village Rameana along with original forms for issuance of ration cards and stated that ration card of Surjit Singh son of Gobind Singh is entered in register against entry No.513, ration card of Suba Singh son of Rajpal Singh entered at entry No.1120 and that of Rajpal Singh son of Gobind Singh is entered at No.1121, Jaswant Singh son of Gobind Singh entered at serial NO.918. He proved the photocopies of the forms as Ex.D1 to Ex.D4 and photocopies of the original ration cards issued by their office as Ex.D5 to Ex.D9.

DW4 Jagdish Parshad, Inspector, Cooperative Department, Focal Point, Rameana, Tehsil Jaitu who had brought the summoned record deposed that name of Rajpal Singh was entered at Serial No.114 i.e. account number, whereas account number of Surjit Singh was 334, Gurdev Singh was 349 and that of Jaswant Singh was 325. He stated that he had brought the original register bearing pages Ex.D10 to Ex.D13 and proved the passbooks as Ex.D14 to Ex.D17.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants-accused-convicts, learned counsel for the complainants – appellants, learned Additional Advocate General for the State of Punjab as well as learned counsel representing the petitioner/complainant besides going through the record.

As far as involvement of accused Surjit Singh, Jaswant Singh, Baldev Singh and Rajpal Singh in the incident is concerned, we find that there is absolutely no doubt about the same inasmuch as the prosecution has led cogent and convincing evidence in that regard in the form of examining PW8 Baljinder Singh and PW9 Mithu Singh. Their presence at the spot comes out to be natural and probable and account given by them qua such appellants – accused to be worthy of reliance. We do not find any merit in the arguments raised by learned counsel for the appellants that they were chance witnesses, related to the deceased and their presence at the spot is doubtful for the reason that they had not

tried to intervene in the fight and no blood stained clothes were produced by them before the police. We find little force in these contentions. Baljinder Singh (PW8) and Mithu Singh (PW9) belong to village Rameana, where the incident had taken place. Both of them happened to be cultivators. Their coming on tractor along with Jasmail Kaur, sister of complainant Baljinder Singh from their fields on 11.6.2001 at about 7:00 p.m. cannot be said to be unusual. The depositions of both the eye-witnesses cannot be ignored by labeling them as chance witnesses. As regards their not intervening in the fight when so many persons with dangerous weapons assaulting Jaswinder Singh, the complainant who was being accompanied by his sister Jasmail Kaur might have felt meek and threatened on that count. Thus, Baljinder Singh, Jasmail Kaur and Mithu Singh with their instinct of self preservation dominating might not have taken the risk of intervening in the quarrel running the risk of being hit by the armed assailants when there is nothing on record to show that they themselves were carrying any weapons.

As regards the witnesses not producing blood stained clothes before the Investigating Officer, since there is nothing to show that the clothes of the witnesses had got blood stained, there was no occasion for them to take those off and produce such clothes before the Investigating Officer. Furthermore, they being relatives of the deceased, it would have been their earnest endeavour to ensure that the persons responsible for death of their near and dear one were brought to book and punished suitably rather than attempting to shield the actual culprits and involve some innocent persons in their place without any rhyme or

reason. Therefore, there is no question-mark over the credibility of these witnesses and their depositions are to be given due weightage.

One more argument advanced by learned counsel for the appellants was that the complainant party was aggressor. The motive for the incident was more with the complainant party inasmuch as a day earlier there had been an altercation between deceased and accused and motive was not with the accused to attack Jaswinder Singh. Again, we do not find this argument to be having any force. The motive is something which lies hidden in the mind of a criminal and it is very difficult to dig it out. Sometimes very heinous crimes are committed without any apparent or ostensible motive. Here in the instant case as alleged and proved by the prosecution, the motive was with the accused party to attack Jaswinder Singh for raising objection with them over dismantling of the culvert thereby obstructing the passage of the deceased to his fields and there was no motive for the deceased to pick up quarrel with the accused. Even otherwise, when there is direct evidence of incident available, the motive pales into insignificance, therefore, this argument of learned counsel for the appellants does not cut any ice.

The accused had come up with a plea of self-defence also setting up a counter version stating that Baldev Singh and Surjit Singh were tethering cattle in their outer house, which is in between the house of Harbans Singh and Gurmail Singh, Baldev Singh had slapped deceased Jaswinder Singh a day earlier, when a quarrel took place between both of them. Jaswinder Singh felt aggrieved, came and attacked Baldev Singh causing him injuries, then both of them in right of

private defence of Baldev Singh caused him blows and if one goes from the fields of Jaswinder Singh to his house then their outer house does not fall on the way. The counter version of the accused is not found to be probable and plausible. In this version the accused have not stated anything as regards Baldev Singh being armed with any weapon. If Baldev Singh was to fight the accused party, then he would not have gone there alone and that too unarmed. From the spot, no weapon belonging to Baldev Singh was found to be there by the Investigating Officer. Therefore, there is no question of the same being taken into possession.

As regards injuries found on the person of Baldev Singh, those are superficial in nature. Although as deposed by DW1 Dr. Major Singh Jawanda, after receipt of x-ray report, he had declared injuries No.1 and 2 as simple and injury No.3 as grievous, such injury being on right leg, which is not vital part of the body. In his cross-examination, the witness stated that injury No.1 could be result of fall on a hard surface and injuries No.2 and 3 are on non-vital parts of the body. He stated that no mark of violence was visible on injuries No.2 and 3 and possibility could not be ruled out that injuries No.2 and 3 on the person of Baldev Singh could be self-suffered. Therefore, it cannot be said that Baldev Singh had suffered the injuries at hands of the deceased. But by taking the plea of self-defence, Surjit Singh and Baldev Singh admit the incident and their participation therein. As discussed above, they have failed to make out a case for exercise of right of self-defence, that too, going to the extent of causing death of the deceased. As it comes out that the incident had taken place in the manner as suggested by the

prosecution and there does not appear to be any attempt to suppress the origin and genesis of the incident. The accused while failing to show that the deceased was aggressor or that any right of private defence was available to them, have been unable to establish their counter version. During the course of investigation, accused Surjit Singh, Jaswant Singh, Baldev Singh and Rajpal Singh are proved to have suffered disclosure statements leading to recovery of *gandali*, *gandasa* and *daang* at their instance. The prosecution has examined PW11 Gurdev Singh and PW12 SI Darshan Singh in that regard. Those weapons were found to be stained with human blood as per report from FSL Ex.PMM and Ex.PNN, which goes to show that they had been used in the incident. Then another piece of incriminating evidence against the accused is in the form of statement of PW11 Gurdev Singh, Ex-Member Panchayat and President of Local Gurdwara Parbhandak Committee village Rameana to which the accused belonged. He gave his age as 60 years, that means he is elderly and respectable person of the village in whom the accused could reposed confidence so as to save themselves from the police harassment. According to him Surjit Singh and Jaswant Singh had come to him and had confessed having committed murder of Jaswinder Singh. We do not see any reason to disbelieve him in that regard. Thus, extra-judicial confession of Surjit Singh and Jaswant Singh further fortify the case of prosecution.

One more thing to be seen is that during the post-mortem examination as many as 16 injuries were observed on the body of the deceased as per the statement of PW3 Dr.J.S. Dalal. Such number of injuries including incised wounds, stab wounds, contusions point out that

sharp edged and blunt weapons were used in the assault and number of assailants was quite substantial. The investigation in this case appeared to have been carried out in a fair and impartial manner. There are no allegations that the Investigating Officer was favourably inclined towards the complainant party and against the accused. The place of incident is also fixed since from the blood stained crusher (bajri) collected by the Investigating Officer from the spot which was sent to the FSL and as per reports mentioned supra crusher (bajri) was found to be stained with human blood. Therefore, there is no reason to doubt that the incident had taken place at the spot as per case of prosecution and not at any other place. The FIR in this case has been lodged quite promptly.

In that way, we find that case of the prosecution against accused Surjit Singh, Jaswant Singh, Baldev Singh and Rajpal Singh is proved conclusively and affirmatively, whereas it is not so as regards involvement of accused Suba Singh in the incident, which we find to be not established fully on record. A perusal of the FIR and statements of the eye-witnesses go to show that no specific injury has been attributed to him. As per the prosecution story in the FIR Suba Singh was armed with *SELA* whereas the recovery shown from him is that to be of *daang*. *SELA* and *daang* are articles of entirely different type. Suba Singh is not shown to have suffered any statement under Section 27 of the Evidence Act and then getting the weapon recovered from his possession. As a matter of fact, the *daang* was not even recovered from the possession of Suba Singh and as per the recovery memo Ex.PHH, it had been produced before the police by Rajpal Singh, father of Suba Singh and

not by Suba Singh. The *SELA* is also shown to have been recovered from the possession of Rajpal Singh and not Suba Singh. Therefore, non-recovery of any weapon from Suba Singh also creates a doubt in the mind regarding his participation in the incident. We are of the considered view that prosecution has been unable to establish its charge against Suba Singh beyond a shadow of reasonable doubt and his conviction and sentence cannot be sustained. The judgment of the trial Court to that extent is not sustainable.

Therefore, in view of the detailed discussion above, we upheld the conviction and sentence of accused Surjit Singh and Jaswant Singh for offence under Section 302 IPC, whereas conviction and sentence of all the accused – convicts for offence under Section 148 IPC, is set aside that of accused Baldev Singh and Rajpal Singh under Section 302 read with Section 149 IPC is set aside, rather they are convicted for offence under Section 302 read with Section 34 IPC since their common intention with Surjit Singh and Jaswant Singh to commit murder of Jaswinder Singh is clearly established on the record. The sentence of accused Baldev Singh and Rajpal Singh under Section 302 read with Section 34 IPC would be the same as was for under Section 302 read with Section 149 IPC i.e. to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo further rigorous imprisonment for year. The conviction and sentence of Suba Singh for all the offences is set aside and he is acquitted of the charge framed against him.

In that way appeal filed by appellant – accused – convict Suba Singh is allowed whereas that of appellants – accused – convicts

Surjit Singh, Jaswant Singh, Baldev Singh and Rajpal Singh is dismissed with modification pointed out above.

Appellant – accused – convict Suba Singh is on bail. Bonds and sureties furnished by him are discharged.

Appellants – accused – convicts Surjit Singh, Jaswant Singh, Baldev Singh and Rajpal Singh are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Faridkot is directed to issue arrest warrants to get them arrested so as to make them undergo the remaining sentence.

As far as CRR No.1389 of 2003 filed by the complainant, considering all the facts and circumstances and evidence on file, we do not find any reason to enhance the sentence of imprisonment or to issue any direction to pay amount of fine to LRs of the deceased as compensation. The revision petition is dismissed accordingly.

18.5.2017	(T.P.S. MANN)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

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