

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

**CRA-D-438-DB-2003
Date of decision:03.03.2017**

Pawan Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. P.C. Chaudhary, Advocate
for the appellant.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

H.S. MADAAN, J.

This appeal has been filed against the judgment dated 13.02.2003 passed by the Court of Sessions Judge, Kurukshetra vide accused-Pawan Kumar was convicted for offences under Sections 302/34 IPC, 307/34 IPC & 449 IPC and order of sentence dated 15.02.2003 vide which he was sentenced to undergo imprisonment for life and to pay fine

of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for six months for offence under Sections 302/34 IPC, and as regards offence under Sections 307/34 IPC, he was sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months and with regard to offence under Section 449 IPC, he was sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for three months.

All the substantive sentences were ordered to run concurrently.

Accused-convict/Pawan Kumar, who is appellant before this Court prays that the appeal filed by him be accepted, the impugned judgment of conviction and order of his sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated facts of the case as per prosecution version are, that complainant-Jiwan Dass, son of Inder Bhan, resident of Ward No.5, near Culvert Majri Mohalla, Shababad, Police Station, Shahabad, aged about 70/72 years, had been engaged in avocation of agriculture. On 09.01.2002 in the evening, he was talking with his wife Shanti Rani in their house when in the meanwhile Pawan Kumar, son of Ram Parkash resident of village Gumthala Rao, related to his wife being her brother's son, accompanied by accused Manoj Kumar alias doctor came there. Smt. Shanti Rani got busy in brewing tea for the guests whereas complainant-

Jiwan Dass brought *NAMKEEN* (Indian snacks) from shop of Charanjit, son of another Jiwan Dass related to complainant as his sister's son running a *KIRYANA* shop in the house of complainant. The complainant, his wife Shanti Rani, accused-Pawan Kumar and Manoj Kumar-accused took tea together. Thereafter, Pawan Kumar-accused started demanding money from the complainant, but complainant refused to give any money to him. Pawan Kumar-accused got infuriated and stated that complainant had given all the money to Sheela Devi and was not giving anything to them; that they would take their share after finishing off complainant and his wife; saying that Pawan Kumar-accused and his co-accused/Manoj Kumar took out knives and both accused gave one blow each to the complainant on neck. When Shanti Rani tried to intervene then both the accused turned towards her and inflicted a knife blow each to Shanti Devi hitting her on the neck. The complainant raised alarm of *BACHAO-BACHAO*, which attracted Charanjit and Tek Chand, son of Jawala Singh-nephew of complainant. Both of them entered the house through the window of the shop. During that time Pawan Kumar-accused inflicted a knife blow to the complainant on his neck. On arrival of Charanjit and Tek Chand, both the assailants ran away from the spot along with their respective weapons. Charanjit and Tek Chand removed complainant and his wife Shanti Rani (both injured) to Civil Hospital, Shahabad in a *RICKSHAW* and got them admitted there. However, Shanti Rani succumbed to the injuries at Civil Hospital, Shahabad after sometime. Intimation from Civil Hospital, Shahabad was sent to Police Station, Shahabad regarding arrival of Jiwan Dass-injured there and Shanti Rani-

injured succumbing to the injuries. Such intimation was received by police party headed by SI/SHO Ram Singh (hereinafter referred to as Investigating Officer/I.O.), which was present in front of Community Health Centre, Shahabad in official jeep No.HR-07-C-4937 in connection with patrolling. On receipt of such information, the police party headed by SI-Ram Singh went to Community Health Centre, Shahabad. He moved a written application Ex.PF enquiring from the attending doctor regarding the fitness of injured-Jiwan Dass to make statement. After getting the opinion in affirmative, SI-Ram Singh recorded statement of Jiwan Dass as Ex.PG, that statement was signed in English by complainant-Jiwan Dass, his signatures were attested by SI-Ram Singh. The Investigating Officer put his endorsement Ex.PG/1 below that statement and sent ruqa to police station through C.Krishan Kumar, on the basis of which formal FIR Ex.PG/2 was recorded at Police Station Shahabad by ASI Maya Chand. Dead body of Shanti Rani was lying in the hospital. The Investigating Officer summoned a photographer and got the photographs of the dead body clicked from him. He carried out inquest proceedings by preparing report Ex.PC. During inquest proceedings, dead body of Shanti Rani was identified by Sh. Prem Kumar and Sh. Ashok Kumar. The Investigating Officer recorded their statements. Then he deputed C. Papinder Singh and C. Ramesh Kumar to get post-mortem examination conducted on dead body of deceased handing over the application Ex.PA in that regard to them. Thereafter, the police party along with photographer went to the place of

occurrence. Charanjit Singh and Tek Chand were found to be present there. The Investigating Officer got the spot clicked. The quilt and pillow lying on the bed were blood stained. The Investigating Officer removed blood stained portions of the quilt and pillow and converted those into a parcel sealing that with the seal having inscription 'RS'. He lifted the blood from the room and compound with cotton swab preparing separate parcels thereof with the same seal. All the parcels were taken into possession vide memo Ex.PO. Seal after use was handed over to Charanjit Singh. The Investigating Officer prepared rough site plan of the place of incident Ex.PR. He recorded statements of witnesses.

Thereafter the police launched a search to apprehend the accused and went to village Gumthala Rao, Jathlana etc. in that connection but accused could not be apprehended. While the police party was returning to the police station, the Investigating Officer came across C. Papinder Singh and C. Ramesh Kumar who submitted post-mortem report of deceased along with sealed parcel given by doctor, before the Investigating Officer. The Investigating Officer seized those items vide memo Ex.PL. Thereafter the Investigating Officer deposited those items with MHC. On 13.01.2002, while the police party led by SI-Ram Singh was present at Brara Chowk, Shahabad then Parveen Kumar of Gumthala Rao brought accused Manoj Kumar and produced him before IO-Ram Singh. At that time Charanjit Singh-PW was also present with the police party. Then accused Manoj Kumar was

formally arrested in this case. On 15.01.2002 accused-Manoj Kumar in police custody was being taken for recovery in pursuance of the disclosure statement suffered by him. Tek Chand was joined with the police party on the way at Ladwa turning, Shahabad. Accused-Manoj Kumar made another disclosure statement that he had concealed the knife used in the incident in the ground near road in village Deeg and could get it recovered. His disclosure statement Ex.PS was reduced into writing. It was signed by Manoj Kumar-accused and passer-by. Accordingly, Manoj Kumar-accused took the police party to the disclosed place from there he took out a knife from underneath the ground. Blade of the knife was 4" long whereas its total length was 7 1/2". The Investigating Officer prepared its rough sketch Ex.PS/1 and converted the knife into a parcel sealing it with seal having inscription 'CR' and was taken into possession vide memo Ex.PS/2. The Investigating Officer prepared rough site plan of the place of recovery Ex.PS/3. He recorded statements of witnesses. Thereafter, the police party went to village Gumthala Rao to seize the scooter used by the accused persons. From the house of another Pawan Kumar, Scooter No.HR-05F-9729 was recovered along with its RC which was taken into possession vide memo Ex.PT. On return to the police station, the Investigating Officer deposited the parcel of the knife and scooter with MHC. Accused-Pawan Kumar could not be arrested despite efforts being made. However, on 20.01.2002, when the Investigating Officer was present at bus stand Shahabad, where he came across Ashok

Kumar-PW and while he (SI-Ram Singh) was talking with Ashok Kumar-PW, he received secret information that Pawan Kumar-accused was working as servant at a Dhaba at railway station near Chandigarh. Then they went to the said place, where Ashok Kumar pointed out and identified Pawan Kumar-accused and Pawan Kumar-accused was formally arrested in this case. On 21.01.2002 accused Pawan Kumar-accused on being interrogated disclosed about the knife, but no recovery could be effected in pursuance thereof. On 22.01.2002 Pawan Kumar-accused again made a disclosure statement Ex.PQ that he had concealed knife and clothes in a polythene bag underneath bed in *CHAUBARA* of his house. He offered to get those articles recovered. Such statement was signed by Pawan Kumar-accused and attested by Ashok Kumar and C. Ramesh Kumar. Thereafter accused-Pawan Kumar while in police custody led the police party to the disclosed place and took out from there a polythene bag containing knife and blood stained pant and shirt. The Investigating Officer prepared rough sketch plan of the knife Ex.PQ/2 and prepared separate parcels of the recovered knife and clothes sealing those with his seal having impression 'RS' and the two parcels were taken into possession vide memo Ex.PQ/1. Seal after its use was handed over to Ashok Kumar-PW. The Investigating Officer prepared rough site plan of the place of recovery as Ex.PQ/3. He recorded statements of witnesses. On return to the police station, he deposited case property with the MHC.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Kurukshetra.

On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Kurukshetra, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offences under Sections 302/307 & 449 IPC are exclusively triable by the Court of Sessions, the learned Additional Chief Judicial Magistrate, Kurukshetra vide his order dated 26.02.2002 committed the case to the Court of Sessions.

When the case was received in the Court of learned Sessions Judge, Kurukshetra finding a prima facie case charge for offences under Sections 302, 307 read with Section 34 IPC and Section 449 IPC was framed against both the accused, to which they pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of evidence of prosecution it examined as many as fourteen witnesses as detailed below:-

PW-1 Dr. Shalinder Kumar, Medical Officer, L.N.J.P. Hospital, Kurukshetra deposed that on 10.01.2002 he was posted as such. He along with Dr. Vivek Aggarwal, Medical Officer and Dr. G.N. Aggarwal, Medical Officer of the said hospital conducted post-mortem examination on dead body of Shanti Rani, wife of Jiwan Dass

aged about 70 years, female, resident of Majri Mohalla, Shahabad on police request Ex.PA. He stated that rigor mortis was present in ascending order and post-mortem staining was present in the back of the body and limbs. The mouth and eyes were found to be semi-open. Following injuries were observed on the dead body.:-

- 1. A stitched wound measuring 14 cms in length, having 8 silk stitches, extending from right side of the neck, starting approximately 8 cms from mid-line, to left side of the neck, below the angle of mandible. The wound was muscle deep, lying below the chin, 8 cms and 5 cms on each side of angle of mandible. It was transversely placed. Great vessels on the right side were cut along with nerves. Clotted blood was found present. Trachea was normal in position and there was no corresponding cut on the clothes.*
- 2. An incised wound measuring 4 cms x 2 cms in size, at the root of the neck in the mid-line, placed horizontally with soft tissues cut superficially. Clotted blood was present.*
- 3. A linear abrasion one cm x 0.2 cm in size over the right side of face just below angle of mandible.*

The witness further stated that cause of death was haemorrhagic shock caused by injury No.1 which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. He

gave the probable duration between injuries and death as within a few minutes to two hours and between death and post-mortem was twelve to twenty four hours. He proved copy of post-mortem report as Ex.PB and pictorial diagram showing seats of injuries Ex.PB/1. He stated that (i) the doctors who had performed the post-mortem examination had handed over to the police well stitched dead body alongwith its belongings, including clothes and jewellery (in sealed packet) alongwith sample seal (ii) carbon copy of post mortem report (iii) police papers duly initialled by them. The witness after seeing knives Ex.P1 and Ex.P2 opined that the injuries found on dead body were possible with either of two knives. He proved three clothes i.e. *KAMIZ* Ex.P3, *SALWAR* (Trouser) Ex.P4, *SHAMEEZ* Ex.P5, nose-pin Ex.P6 and ring Ex.P7.

PW-2 Dr. Ravinder Nath, Medical Officer, Community Health Centre, Shahabad, Kurukshetra deposed that on 19.01.2002 at 8:00 p.m., while he was posted as Medical Officer, C.H.C. Shahabad and was on causality duty, he medico legally examined Jiwan Dass aged about 76 years, resident of Majri Mohalla, Shahabad, who had been brought by Charanjit Singh son of Jiwan Dass. The patient was conscious, disoriented and was crying in pain. His vitals were normal, however, following injuries were found on his person:-

1. *There was an incised wound 15 cms x 1 cm muscle deep present on the front of neck, in horizontal direction. Profuse bleeding was present. Margins of the wound*

were cleanly cut. No bruise or crushed skin surface was seen. Hair follicles were not crushed. X-ray of the area was advised.

2. There was an incised wound 4 cms x 0.5 cm, skin deep present on the right side of face, near the jaw line. Fresh bleeding was present.

3. There was an incised wound 5 cms x 0.5 cm, skin deep present on the front of chin. Fresh bleeding was present.

He proved carbon copy of the MLR Ex.PD. He stated that on the same day and time patient-Shanti wife of Jiwan Dass aged about 70 years, female resident of Majri Mohalla, Shahabad was also brought to the casualty in CHC Shahabad; that she was in a critical condition and profusely bleeding from the wound on the neck. The witness stated that he gave her first aid and also applied stitches on her wound, but she expired. So her MLR was not prepared. He further stated that he sent ruqa Ex.PE about both the patients to Police Station, Shahabad.

PW-3 ASI Maya Chand deposed that on 09.01.2002 while he was posted as ASI, Police Station, Shahabad, on receipt of ruqa Ex.PG with endorsement Ex.PG/1 he recorded formal FIR Ex.PG/2.

PW-4 HC Narinder Singh, MHC, Police Station Shahabad, District Kurukshetra, a formal witness tendered in evidence his affidavit Ex.PH.

PW-5 EHC Gian Chand Police Station, Shahabad, another

formal witness tendered in evidence his affidavit Ex.PJ.

PW-6 C. Puran Chand also submitted his affidavit in evidence as Ex.PK.

PW-7 C. Balwant Singh deposed that on 09.01.2002, while he was posted as constable at Police Station, Shahabad, copies of the FIR were given to him by ASI Maya Chand for delivery as special reports to Illaqa Magistrate and Police Officers and he accordingly did so.

PW-8 C. Papinder Singh deposed that on 09.01.2002, he stood posted as Constable in Police Station, Shahabad; on that night SI Ram Singh had given him dead body of Shanti Devi for getting post-mortem examination conducted thereon. He had brought the dead body to LNJP Hospital, Kurukshetra alongwith C. Ramesh Kumar; that they got conducted post-mortem examination on the dead body on 10.01.2002 and after post-mortem examination doctors gave them stitched body and sealed parcel of belongings of the deceased, copy of the post-mortem report and police papers initialled by them. The witness concluded his examination-in-chief stating that they had given the dead body to the family members and remaining things to IO-Ram Singh in the police station. He stated that memo Ex.PL was signed by them.

PW-9 HC Mukesh Kumar, Draughtsman, office of S.P., Kurukshetra, stated that on 08.02.2002, he had inspected the spot as pointed out by Charanjit Singh and Jiwan Dass (PWs) and prepared site

plan Ex.PM.

PW-11 Jiwan Dass-injured (complainant) provided eye-witness account of the incident supporting the prosecution story on material aspects.

PW-12 Charanjit deposed regarding what he had seen at the spot on the day of incident; to the similar effect was the testimony of PW-13/Ashok Kumar.

PW-14 SI Ram Singh/SHO, the Investigating Officer of this case deposed regarding investigation conducted by him proving various documents.

Learned Public Prosecutor tendered in evidence various documents i.e. FSL reports Ex.PN and Ex.PN/1.

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 them was put to them, but they denied all the allegations containing therein by stating that they are innocent and have been falsely involved in this case.

Accused-Pawan Kumar has stated that he has been implicated in this case at the instance of Charanjit Singh (PW) and Tek Chand; that throughout his life he never had any sort of association or friendship with co-accused/Manoj Kumar and he never travelled with him on any occasion.

During their defence evidence, accused examined three

DWs; first being Anang Pal Singh-Head Constable, MHC Police Station Pathari, Haridwar (Uttaranchal), who had brought summoned *ROZNAMCHA* dated 10.01.2002 proving its copy as Ex.DB. He further stated that C. Harbans Singh had gone with police officials of Police Station, Shahabad and he returned on 11.01.2002 at 2 a.m. as per DDR No.36 dated 10.01.2002.

DW-2 Ashok Kumar stated that accused-Manoj Kumar is brother of his wife and lastly he came to them on 10.01.2002 at that time he was being accompanied by his wife. They had come to attend birthday of his son which fell on that day. They celebrated the birthday till 10 pm and they slept at 11 p.m.. Police came there to arrest Manoj Kumar-accused. The police officials were saying that they were from Shahabad. This witness went to Police Station, Pathri and police officials told him that Manoj Kumar had been taken in some case and will return next day and necessary report was recorded in the daily diary.

DW-3 C. Haribans Singh stated that on 10.01.2002 he was posted as Constable in Police Station, Pathri, District Haridwar (Uttaranchal). On that day police party of Haryana came there at night at about 9:00 p.m. or little thereafter. The said police wanted to go to village Dinarpur and Dandi and sought help of their police officials from Inspector for locating those villages; that the police party conducted raid in village Dandi to apprehend accused-Manoj and accused-Manoj was found in village Dandi.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced accused-Manoj Kumar and accused-Pawan Kumar, the sentence of both the accused-convicts is for similar provisions and to the same extent. Both of them filed separate appeal challenging their judgment of conviction and order of sentence. However, accused-Manoj Kumar had expired during the pendency of appeal in this Court, as such, his appeal stands disposed of as having abated.

We have heard learned counsel for the appellant-convict and learned Additional Advocate General for the State besides going through the record and we find that there is no merit in the appeal.

The eye-witness account of the incident in this case was provided by PW-11/Jiwan Dass (complainant-injured), who supported the prosecution story on material aspects. He was cross-examined at length on behalf of the accused but without any fruitful result. He having suffered injuries in the incident is a stamped witness and his presence at the spot cannot be doubted. He deposed in a natural and convincing manner and account given by him inspires confidence. There was no reason for him to depose falsely against the accused. Normally, it is earnest endeavour of a person suffering injuries and having lost a very near relative due to the injuries, to ensure that the person(s) responsible for doing so is/are brought to book and punished suitably rather than trying to screen the actual culprits and involve innocent persons in their place without any rhyme or reason. Here

Jiwan Das-complainant, who had set machinery of law in motion by reporting the matter to the police, his statement was recorded at Civil Hospital, Shahabad, the same was completed and the Investigating Officer had appended his endorsement sending ruqa to police station at 9:15 p.m. whereas the incident as per prosecution story had taken place at 7:30 pm, in that way the ruqa was sent within two hours of the incident. Keeping in view the fact that sometime must have been consumed while moving the injured to Civil Hospital, Shahabad; the police being informed by the Hospital regarding the injured there; then recording of statement of injured-complainant/Jiwan Dass completed, putting police proceedings on it and then sending ruqa to the police station. In that way, there is no delay in reporting the matter to the police. Rather the FIR was lodged with remarkable promptitude ruling out the possibility of any false implication after due deliberation and consultation.

The FIR contains detailed version of the incident. The names of other witnesses i.e. Charanjit Singh and Tek Chand having seen the incident are also given. It may be mentioned here that Charanjit Singh had appeared in the Court as PW-12. He supported the prosecution story on vital points stating that Jiwan Dass PW-11 is his maternal uncle whose wife Shanti Rani (deceased) was his maternal aunt; that the couple was issueless so they had adopted Sheela Rani, who is daughter of sister of Shanti Rani. Sheela Rani was married with Jiwan Dass in the year 1985 and he runs a *KIRYANA* shop situated in

the house of Jiwan Dass and also looked after the old couple. He stated that he stayed in the shop from morning till 9:00 p.m. and there was window in the shop opening in the house of Jiwan Dass. As such he could go to the house through it to look after them. He deposed regarding accused-Pawan Kumar and accused-Manoj Kumar entering the house on 09.01.2002 at about 7:15 p.m. and his observing them doing so, thereafter Jiwan Dass taking packet of *NAMKEEN* from him through the window and at about ten minutes thereafter, he heard cries of Jiwan Dass and his wife saying *BACHAO-BACHAO*. Then he and Tek Chand going inside the house from the window and in the electric light observing that accused were inflicting blows to Shanti Rani with knives, whereas Jiwan Dass was trying to rescue her. He stated that on seeing them both the accused started fleeing away and in that process inflicted knife blow on the neck of Jiwan Dass. Thereafter, both the accused ran away from the spot with their knives. He stated that they had taken injured Jiwan Dass and Shanti Rani to Civil Hospital, Shahabad and after 10 to 15 minutes though during treatment, Shanti Rani expired. This witness was also subjected to lengthy cross-examination, but defence failed to extract any reply favourable to it from his mouth. He stood his ground well. We find his presence at the spot to be natural and his testimony to be credit-worthy.

Then the medical evidence in this case duly corroborates the ocular evidence inasmuch as PW-1 Dr. Shalinder Kumar, who had performed post-mortem examination on dead body of Shanti Rani had

observed three injuries on the dead body. Injury No.1 was stitched wound measuring 14 cms in length, having 8 silk stitches, extending from right side of the neck, starting approximately 8 cms from mid-line, to left side of the neck, below the angle of mandible. Injury No.2 was an incised wound measuring 4 cm x 2 cm in size at the root of the neck in the mid-line, placed horizontally with soft tissues cut superficially. It has to be kept in view that Shanti Rani was firstly examined and treated. She succumbed to the injuries, for the said reason injury No.1 had been observed to be stitched wound. As per opinion given by this Doctor cause of death was haemorrhagic shock caused by injury No.1, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. The probable duration between injuries and death is few minutes to two hours and between death and post-mortem twelve to twenty four hours is also in consonance with the factual position as given and put forward by the prosecution. This witness after seeing the knives recovered from the accused Ex.P1 and Ex.P2 had stated that injuries found on the dead body were possible with either of two knives.

Then there is testimony of PW-2 Dr.Ravinder Nath, who had medico legally examined injured-Jiwan Dass finding that there was an incised wound 15 cms x 1 cm muscle deep present on the front of neck, which was profusely bleeding and margins of the wound were cleanly cut. As regards injury No.2 that was stated to be in the form of incised wound 4 cms x 0.5 cm, skin deep present on the right side of

face, near the jaw line and injury No.3 to be an incised wound 5 cms x 0.5 cm, skin deep present on the front of chin. He had opined that all the three injuries were caused by a sharp edged weapon with probable duration of six hours. He had also examined injured Shanti Rani stating that she was in critical condition and bleeding profusely from wound on the neck. He had given first aid, but she expired, therefore, her MLR was not prepared. In that way the medical evidence fully corroborates the ocular evidence.

The investigation in this case has been carried out in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly and to challan them falsely. From statements of PW-14 it comes out that accused Manoj Kumar had suffered a disclosure statement and in pursuance thereof had got recovered knife Ex.P1 from his possession on 15.01.2002. It further comes out that on 22.01.2002 accused-Pawan Kumar while in police custody had suffered disclosure statement and got recovered knife Ex.P2 from his possession and that the Investigating Officer had prepared sealed parcels of those knives and taken into possession the same. PW-13/Ashok Kumar had corroborated this version. Both the recovered knives had been sent to Forensic Science Laboratory, Madhuban (Karnal). As per report Ex.PN, the knives were found to be stained with the human blood, which also fortifies the prosecution case.

Both the accused having gone to house of complainant armed with knives and then there assaulting complainant and his wife

causing them injuries on neck which is most vital part of the body with knives giving more than one blow clearly go to show their intention was to commit murder of Jiwan Dass and his wife Shanti Rani. Shanti Rani unfortunately succumbed to the injuries suffered by her. However, Jiwan Dass was lucky enough to survive. It is certainly not a case of culpable homicide not amounting to a murder since intention of the accused to commit murder, quite clear from their conduct, the type of weapons used by them in the incident and the seats of injuries on person of both the injured.

The trial Court was justified in convicting both the accused for offences under Sections 302/307 read with Section 34 of the Indian Penal Code as well as Section 449 of the Indian Penal Code since prosecution has been successful in establishing its case beyond a reasonable doubt that on 09.1.2002 at about 7:30 p.m. in the area of Majri Mohalla, Shahabad, accused-Manoj Kumar and accused-Pawan Kumar had a common intention to commit murder of Shanti Rani and Jiwan Dass and they committed house trespass by entering into residential house of Jiwan Dass and his wife Shanti Rani where they actually committed murder of Shanti Rani and caused injuries to Jiwan Dass with knives with intention to commit his murder. The judgment passed by the trial Court is well reasoned one based on proper appraisal and appreciation of evidence and correct interpretation of the law. There is no illegality or infirmity with the impugned judgment of conviction and order of sentence. Keeping in view the brutal manner in

which murder of Shanti Rani was committed injuries were caused to Jiwan Dass, no ground is made out to reduce the sentence as regards offence under Section 307 read with Section 34 IPC and Section 449 IPC. In any case for offence under Section 302 read with Section 34 IPC the appellant-Pawan Kumar has been awarded minimum sentence i.e. life imprisonment instead of capital punishment. Thus appeal being devoid of merit stands dismissed.

Pawan Kumar appellant-accused is stated to be on bail granted to him vide order dated 23.04.2007 while suspending his sentence. His bail bonds are cancelled. Chief Judicial Magistrate, Kurukshetra is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

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

03.03.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | No |
| 2. | Whether reasoned / speaking? | Yes |