

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

**Crl. Appeal No.D-864-DB of 2003
Date of Decision: December 10, 2019**

Gora Singh and another

...Appellants

VERSUS

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.T.S.Sangha, Senior Advocate with
Mr.Dharambir Singh Randhawa, Mr.Narinder Singh, Advocates
for the appellants.

Mr.A.A.Pathak, Addl. Advocate General, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction and order of sentence dated 29.09.2003 passed by learned Addl. Sessions Judge, Patiala, vide which, appellants were held guilty and convicted under Section 302/34 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹2000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months each.

The background facts in nutshell are as follows:-

That complainant Swaran Singh s/o Phagan Singh is resident of Sital Colony, Rajpura and is working as truck driver. On 01.03.2002, complainant along with Piara Singh s/o of Beer Singh was present at Gagan

Chowk, Rajpura, for boarding a bus to Ambala. At 2.55 p.m., his nephew Dalbir Singh s/o Balkar Singh, who is employed as Constable in Delhi Police, had also come to Gagan Chowk to board a bus to Delhi. In the meantime, two persons following him, had swiftly come there and complainant knew them earlier. They were Gora Singh and Gursahib Singh sons of Lal Singh resident of Manga, P.S. Nahiya. Both of them had taken out iron *dah*, which were concealed under their jackets. Gora Singh had raised *lalkara* to catch-hold of Dalbir Singh, who is alone and to kill him. Then, Gora Singh had aimed *dah* blow on the head of Dalbir Singh and to ward off the blow, Dalbir Singh had raised his left arm and the said blow landed on his left wrist. Gora Singh had given two *dah* blows to Dalbir Singh on his head. In the meantime, Gursahib Singh had also attacked Dalbir Singh with the iron *dah*. Two blows landed on the left side of his head and third blow was given on the backside of the head, as result of whereof, Dalbir Singh had fallen on the ground. While Dalbir Singh was on the ground, Gora Singh had also given *dah* blow on the back of Dalbir Singh. While seeing the police officials coming towards them, the assailants had ran away along with their weapons of offence. In the meanwhile, traffic police officials had stopped one passer-by vehicle and shifted Dalbir Singh to hospital but he died, enroute to the hospital. The motive for causing the occurrence is that Dalbir Singh, who is employed in Delhi Police, on the day of Holi last year, was on official duty and his gun fell down on the ground and a shot was fired accidentally, which struck his companion Constable Gurmail Singh, was brother of Gora Singh and Gursahib Singh, who had died and on this account, even a case under

Gurmail Singh while nursing grievance, on this account, had murdered Dalbir Singh.

Proceedings in the present case were initiated, on the basis of statement got recorded by Swaran Singh to ASI William Jeji, upon which, FIR was got registered. SI William Jeji also prepared site plan of the spot of occurrence and lifted blood-stained earth as well as simple earth and converted the same into parcel and same were taken into possession.

Even, ASI Raghbir Singh intercepted the accused and produced both the accused as well as blood-stained weapons before SI William Jeji. Blood-stained jackets of both the accused and blood-stained weapons were converted into separate parcels and taken into possession vide separate memo. Both the accused were arrested on 01.03.2002. Statements of various witnesses were recorded. Even post-mortem examination of the dead body was got conducted. Parcels were sent to the FSL and report was received, in due course.

On completion of the investigation, challan was presented against both the accused.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, prima facie, charge was framed against both the accused under Section 302/34 IPC, to which they pleaded not guilty and claimed trial.

In an endeavour to establish its case, the prosecution examined as many as 13 witnesses, besides adducing documentary evidence.

conducting of the post-mortem on the dead body of Dalbir Singh on 02.03.2002 at Civil Hospital, Rajpura. He had stated about the physical description of the body as well as detail of the clothes worn by the dead body. He also deposed that the clothes had cuts corresponding to external injuries and stained with blood, which were handed over to the police in a sealed packet. He deposed about the detail of the injuries, found on the dead body, which are herein reproduced as under:-

1. *7 cm. x 4 cm. eleptical incised wound present on back of left wrist. Wound was bone deep cutting muscles and blood vessels.*
2. *10 cm x 5 cm. eleptical incised wound present on top of left shoulder. It was obliquely placed cutting muscles and vessels. It was bone deep.*
3. *5 cm. x 2 cm. eleptical incised wound present horizontally at sacral region. Wound was bone deep.*
4. *3 in number incised wounds measuring .5 cm x 2 cm. (eleptical), 4 cm. x 1 cm. (eleptical) and 3 cm. x .5 cm. at nape of neck on left side. They were parallel to each other and along with skin creases. The lower most was present at the level of clavicle. They were 3 cm. apart from each other. Under line muscles and major vessels were cut of neck. Bigger wound was on medial side.*
5. *11 cm. x 4 cm. linear, eleptical incised wound starting from back of left pinna going to occiput. Skull bone was cut. Meninges were cut and brain tissue was visible.*
6. *20 cm. x 3 cm. linear, eleptical incised wound present in parieto occipital area 7 cm. above left pinna. Wound was bone deep.*
7. *15 cm. x 3.5 cm. linear eleptical incised wound was present. It was horizontally placed in occipital area. Bone was cut. Meninges were cut. Brain tissue was visible.*
8. *12 cm. x 2 cm. bone deep eleptical incised wound present on right parieto occipital area 10 cm. behind right ear.*

9. *10 cm. x 1 cm. bone deep incised wound near midline on vertex was present.*

Further, the said witness opined that all the injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. Death in this case was due to shock and haemorrhage because of injuries described. He also deposed about the clothes, worn by the deceased, to have been converted into parcel and handed over to ASI Raghbir Singh. The probable time elapsed between injury and death was immediate and probable time elapsed between death and post-mortem was within 24 hours. He proved the carbon copy of the post-mortem report, which is Ex.PA. He also proved police request Ex.PA/1 and his endorsement upon the same is Ex.PA/2 and he initialed inquest report Ex.PA/3 along with other police papers.

PW-2 Gurbachan Singh, Draftsman, has deposed about preparation of the scaled site plan Ex.PB at the instance of Swaran Singh.

PW-3 MHC Ajaib Singh, **PW-4 Constable Rajinder Singh** and **PW-5 Constable Randhir Singh**, have tendered into evidence, their affidavits Ex.PC, Ex.PD and Ex.PE respectively.

PW-6 Sukhchain Singh has deposed about clicking of the photographs of the scene of crime. Negatives are Ex.P1 to Ex.P4 and photographs are Ex.P5 to Ex.P8 and the same were handed over to the police vide memo Ex.PF, which was duly signed by him.

PW-7 Head Constable Nahar Singh also tendered into evidence, his affidavit Ex.PG. **PW-8 Head Constable Harinder Singh** has duly proved on the basis of the record brought by him, attested photocopy of

Singh Constable No.4356/DAP, 5th Battalion, Delhi and the same is Ex.PH.

PW-9 Swaran Singh, is the complainant, at whose instance, the proceedings were initiated in the present case. He deposed about his presence at Gagan Chowk, Rajpura, for boarding a bus to Ambala along with Sukhwinder Singh, his neighbour Piara Singh on 01.03.2002. He further deposed about Dalbir Singh, his nephew to have come there and he was followed by two persons namely Gora Singh and Gursahib Singh. He also narrated about the detail of the occurrence caused by both the accused and manner of causing of injuries on the person of Dalbir Singh with iron *dah*, which proved fatal. The version, so given by him is in consonance with the version as put forth in the report under Section 173 Cr.P.C. He also proved the motive behind the occurrence was that a year ago, on the festival of Holi, the official gun of Dalbir Singh had fallen down and the fire had struck Gurmail Singh, Constable, brother of accused. Gurmail Singh was employed as Constable at Delhi with Dalbir Singh. He also deposed about recording of his statement, which is Ex.PI.

PW-10 Sukhwinder Singh, is another eye witness. He has also deposed about himself to be present along with Swaran Singh and Piara Singh on 01.03.2002 at Gagan Chowk for boarding bus for Ambala. He has deposed about manner of arrival of Dalbir Singh at Gagan Chowk and he being followed by both the accused. He further deposed about the manner of causing of the occurrence by both the accused and his testimony is in verbatim with the testimony of the complainant PW-9 Swaran Singh.

PW-11 Constable Swaran Singh has tendered into evidence, his affidavit Ex.PJ, which is formal evidence.

PW-12 ASI Raghbir Singh has deposed that on 01.03.2002,

he was posted as Incharge, Focal Point, Rajpura. He along with other police officials were coming from Kalka road, Rajpura to Gagan Chowk, Rajpura, due to Bharat Band. He further deposed that at about 2.50 p.m, when he reached, a little behind Gagan Chowk, Rajpura, he saw one Sikh and one Hindu gentleman armed with *dahs* stained with blood and their jackets were also stained with blood and 3-4 persons were chasing them. He along with his police party also ran after them. Both the accused had entered into a workshop on the left side of the Kalka road and pulled down the shutter of the workshop. He also deposed that they did not open the shutter for a long time, despite his asking for long time and when he apprised them of using of force to retrieve them, then both the accused had come out of the workshop. He also deposed about both the accused to have disclosed their names as Gora Singh and Gursahib Singh and blood-stained *dahs* were in their hands. He also deposed that he had brought both the accused to Gagan Chowk, Rajpura, where he met SI William Jeji along with the police party. He further deposed that SHO inspected the spot and prepared the site plan. Blood-stained earth and plain earth were lifted form the spot and converted into parcel, which were taken into possession vide memo Ex.PK, which was attested by him. He also deposed that photography of the spot was got conducted. He deposed about the detail of jackets worn by Gora Singh and Gursahib Singh, which were converted into parcel and taken into possession vide memo Ex.PL, which was also attested by him. He also deposed about the detail of length of *dahs* of Gora Singh and Gursahib Singh and the same were taken into possession after converting the same into separate parcels, vide separate memo. He also deposed about conducting of the personal

search of the accused and the detail of the articles, so recovered, which were

taken into possession vide separate memo. He also deposed about recording of his statement at the spot.

PW-13 SHO William Jeji, is the Investigating Officer of the present case. He has deposed about himself to be patrolling from Eagle Motel to Gagan Chowk on 01.03.2002 in connection with Bharat Band. He also deposed that when he reached Gagan Chowk, Rajpura, he recorded statement of Swaran Singh, which is Ex.P.I, on the basis whereof, FIR Ex.P.I/1 was recorded. He further deposed that ASI Raghbir Singh along with police party came to him at the place of occurrence along with Gora Singh and Gursahib Singh accused. He also deposed about production of two *dahs*, which were blood-stained and even, jackets of both the accused were also blood-stained. He inspected the spot of occurrence at the instance of Piara Singh and further deposed about the detail of the proceedings conducted at the spot and various memos prepared relating to the same. He further deposed about the documents relating to the arrest of both the accused having been prepared by him. Even, he deposed about detail of personal search, so conducted and the articles, so recovered, taken into possession vide separate memos. He also deposed about that thereafter, he had gone to the shop of Kalka Road, wherefrom, both the accused were nabbed by ASI Raghbir Singh. Rough site plan relating to the same is Ex.PU. He also deposed about having facilitated conducting post-mortem on the dead body of Dalbir Singh. He prepared inquest report, which is Ex.PA/3. Even the parcel of the clothes of deceased, which was produced by ASI Raghbir Singh, was taken into possession, vide memo Ex.PQ.

Thereafter, the evidence of the prosecution was closed.

On closure of the prosecution evidence, all the incriminating

circumstances appearing in the prosecution evidence were put to the accused in their statement under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence. Both the accused had taken plea that both of them (who are brothers) have been falsely implicated. They were taken into custody in the presence of Chowkidar Dalip Singh and Lambardar Darshan Singh and were falsely involved in the present case.

In defence, accused examined **DW-1 Darshan Singh, Lambardar**, who has deposed that on 01.03.2002 at about 8.30-9.00 p.m., while he was present in his house, Chowkidar Dalip Singh accompanied with 5-6 police officials had came to his house and asked him to accompany them to the house of Gora Singh. Thereafter, he accompanied the police party and Dalip Singh to the house of Gora Singh, wherefrom, Gora Singh and Gursahib Singh were taken away by the police party. He also deposed that next day, he along with 5-7 respectables of the village had gone to Police Station Rajpura and in the police station, they were told by the police that Gora Singh and Gursahib Singh were falsely involved in the murder case. He also deposed that they had approached DSP Rajpura and apprised him of Gora Singh and Gursahib Singh to have been falsely involved. Then they met SSP, Patiala and apprised him of the false implication of Gora Singh and Gursahib Singh. They had assured to do justice but nothing was done.

Thereafter, defence evidence was closed.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide judgment

appellants were held guilty and convicted for commission of offence under Section 302/34 IPC and they were sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellants-convicts have filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the record.

At the very outset, learned counsel for the appellants-convicts has refuted the claim of the prosecution, as put forth, tooth and nail. He submitted that when the stringent punishment is provided, then stricter should be the onus of proof. It is submitted that the prosecution has miserably failed to establish the guilt of the accused, as per demanding degree of proof. In fact, only interested or related witness Swaran Singh has been examined. Even witness Sukhwinder Singh, who has been claimed to be an eye witness to the occurrence in question, has been padded later on, only to give strength to the weak case. Also, it is submitted that there is delay in registration of the FIR, which belies the version of the prosecution about prompt FIR having been registered. Even, it is submitted that no independent witness has been examined in the present case, despite the occurrence to have taken place in a thicket. Also, learned counsel for the appellant submitted that recovery of weapons and clothes of the accused, is fabricated. Learned trial Court has not taken into consideration the defence version about the accused to have been taken away from their house by the police and later on involved in the present case. Thus, summing up his

arguments, learned counsel for the appellants submitted that prosecution has miserably failed to establish its case, beyond shadow of reasonable doubt. As such, a prayer has been made on behalf both of the appellants, for their acquittal.

On the contrary, learned State counsel has assiduously submitted that learned trial Court has appraised the evidence coming on record in correct perspective. Both the eye witness, PW-9 Swaran Singh and PW-10 Sukhwinder Singh, were present, at the spot of occurrence and they have narrated about the detail of the manner of occurrence caused by accused persons. The ocular version also finds corroboration from the medical evidence brought on record. Also, it is submitted that additional credence is coming forth from the fact of interception of the accused, soon after taking place of the occurrence and also from the recovery of blood-stained jackets of the accused and recovery of weapons from them. Further also, it is submitted that once the eye witness account, as narrated by the witnesses, inspires confidence, the fact of independent witness, having not been examined, pales into insignificance. Learned State counsel has submitted that learned trial Court has rightly held both the accused guilty and convicted them. Even, the order of sentence is just and reasonable. As such, a prayer has been made for dismissal of the appeal.

So far as, fact of death of Dalbir Singh, is concerned, the same stands amply established from the medical evidence, brought on record. PW-1 Dr.Gurpreet Singh Chhatwal, who had conducted post-mortem examination on the dead body of Dalbir Singh, has categorically detailed about the physical appearance of the deceased and also about the detail of the clothing of the dead body. He has also categorically stated that clothes

had cuts corresponding to external injuries and stained with blood. The said witness also deposed about detail of the injuries found on the dead body, the detail whereof, have already been reproduced in the earlier portion of the judgment. This witness has opined that injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He also stated that death in this case was due to shock and haemorrhage because of injuries described and injuries on skull were being fatal in nature. He proved the post-mortem report Ex.PA. Thus, in the light of testimony of this witness and considering the recitals of the post-mortem report, the fact of death of Dalbir Singh, stands duly established.

Now, to establish the causing of the occurrence by the accused persons, prosecution has mainly relied upon the testimony of PW-9 Swaran Singh, at whose instance, the prosecution proceedings were initiated. Even, another eye witness, so examined by the prosecution is PW-10 Sukhwinder Singh. Before advertng to the detail of the version, so put forth by these witnesses, it is pertinent to mention that throughout the arguments, it has been pointed out by learned counsel for the appellants that the said eye witnesses have been padded later on and otherwise also, their testimonies, as such, cannot be taken into consideration, as they are interested witnesses being relatives of the deceased. Undisputedly, it is the version of the prosecution that deceased Dalbir Singh was nephew of Swaran Singh, complainant. He had also so stated in his statement Ex.PI. Even, in view of the cross-examination conducted by learned defence counsel of PW-10 Sukhwinder Singh, it is evident that he was distantly related to the deceased Dalbir Singh. However, such being so, the version so given by the aforesaid

witnesses, cannot be disbelieved, only on the ground of relationship. Law is

well settled that testimony of related witness cannot be disbelieved on account of existence of relationship with the victim. The only requirement is to examine their testimony with caution. However, it is not the correct law to discard the testimonies of an eye witness, solely on account of his/her being relative of the victim, either injured or deceased. No hard and fast rule can be laid down for the mechanical rejection of such evidence on the sole ground that a witness is related to the victim or otherwise also, interested in the prosecution version. Judicial approach has to be cautious in dealing with such evidence, but the plea that evidence should be rejected in entirety is not acceptable. It only cautions the Court to scrutinize the statements of related/interested witnesses, more carefully.

In view of the aforesaid, now adverting to the testimony of **PW-9** Swaran Singh. Besides deposing about his presence at Gagan Chowk on 01.03.2002, the said witness has also categorically deposed about Dalbir Singh, his nephew to have also come there to board a bus to Delhi and he was followed by Gora Singh and Gursahib Singh accused. He has also categorically stated about the manner in which, Gora Singh and Gursahib Singh had taken out iron *dah* from their jackets and the manner, in which Gora Singh raised *lalkara* and inflicted *dah* blows to Dalbir Singh and further, he has deposed about the manner in which Dalbir Singh had raised his left hand, to ward off the blow and he received injury on his left wrist. He also deposed about two blows thereafter, given on the head of Dalbir Singh with iron *dah*. Gursahib Singh had also given the *dah* blow, below left ear of Dalbir Singh and another blow was given on the back of his head. Even, another other blow was given by Gursahib Singh near the left ear of

the ground with his face towards the ground. He also deposed that Gora Singh had given three blows with iron *dah*, on the person of Dalbir Singh, as a result whereof, he received injuries on his left shoulder, back and left side neck. He has also categorically deposed about recording of his statement Ex.PI.

Besides the complainant, another material witness examined by the prosecution is **PW-10** Sukhwinder Singh, who has also deposed about himself to be present at Gagan Chowk, at the relevant date and time. He also deposed that Swaran Singh and Piara Singh were standing there. Further, the said witness has also narrated about the sequence of the incident, so caused by the instance of Gora Singh and Gursahib Singh, which resulted into death of Dalbir Singh. Though, now it is submitted that the said witnesses have been padded later on but however, it is pertinent to mention that soon after the taking place of the occurrence, PW-9 Swaran Singh had got recorded his statement, giving the sequence of the occurrence caused by both the accused. His statement is Ex.PI. Perusal of the endorsement made underneath the said statement, reveals that it was recorded at 4.20 p.m. Therefore, not much time had elapsed between taking place of the occurrence and the action initiated at the instance of Swaran Singh. He has given a very vivid eye witness account of the occurrence. Despite having been subjected to lengthy cross-examination, nothing material elicited out to dislodge the version, so put forth by him. Though, it is stated that the said witness has narrated about the injuries found on the person of Dalbir Singh, on the front portion of his body, as it is stated that they had seen the dead body of the deceased at a later stage only but

statement Ex.PI, said witness has categorically stated about the manner of injuries caused by accused and the attempt made by the deceased to ward off the blow aimed at his hand at first instance and as a result whereof, the blow landed on his left wrist. Furthermore, he had also stated about the detail of the blows, which were inflicted on the head as well as near the ears and back portion. In the light of the same, it cannot be said that he has not narrated about the injuries existing on the backside of the dead body.

Learned counsel for the appellants has also submitted that Sukhwinder Singh has been introduced as a witness later on and his presence at the spot, at the relevant time, is also not established. However, this submission is not tenable. Very true, as so pointed out by learned counsel for the appellants that in the statement Ex.PI, Swaran Singh had only named Piara Singh to be present but he has not named Sukhwinder Singh to be present there but solely on this account, the version so put forth by the eye witness, as such, cannot be rejected. At the time, when such an occurrence takes place, a person feels aghast and he does not remain in proper state of mind. Being perplexed, while making statement, it is not expected from a normal man, to understand the intricacies of law and to give finer details of the occurrence. It should be noted that even though, the complainant had not named Sukhwinder Singh but however, Sukhwinder Singh, when stepped into the witness box as PW-10, has narrated about the sequence of events and despite being subjected to lengthy cross-examination, nothing as such, has come forth to dislodge the version, so put forth by him and precisely on this account, his presence cannot be doubted, at the spot at the relevant time. Otherwise also, it is settled law that

witness and as already stated aforesaid, Swaran Singh, complainant has categorically narrated about the manner of occurrence, so taken place and therefore, taking into consideration the testimonies of both PW-9 Swaran Singh and PW-10 Sukhwinder Singh, the of manner of causing of the occurrence by both the accused, stands established.

Furthermore, the ocular version, so coming forth, stands corroborated from the medical evidence adduced. PW-1 Dr.Gurpreet Singh Chhatwal, who had conducted the post-mortem examination on the dead body, has categorically deposed about the detail of the injuries, which have already been reproduced in the earlier portion of the judgment and also he has categorically deposed about seats of the injuries, found on the dead body and same corroborates the version of the eye witnesses.

Further credence is lent to the prosecution version, from the fact of the recovery of the weapons of offence, which were blood-stained as well as the jackets of accused and clothes of deceased having corresponding cuts. As per the report of the FSL, human blood was found on the jackets as well as weapons of offence. Soon after the taking place of the occurrence, accused Gora Singh and Gursahib Singh, were chased by ASI Raghbir Singh, while when they were running with the weapons of offence in their hand. As deposed by PW-12 ASI Raghbir Singh, they had entered into a workshop and had shut the shutter. They had resisted their interception by ASI Raghbir Singh, however, it was after much efforts that ASI Raghbir Singh was successful in intercepting both the accused. Weapons of offence were taking into possession and even the jackets worn by the accused at the relevant time, having blood-stains were recovered. The very apprehension

offence and their blood-stained jackets, as such, also lends credence to the prosecution version. Not only this, even the conduct of the accused, in making an attempt to flee away along with weapons of offence and warding off the interception at the instance of ASI Raghbir Singh also speaks volume about their incriminating role.

Learned counsel for the appellants has submitted that the prosecution is falsely setting up the version of recording of the statement of the complainant and dispatch of the FIR, soon thereafter, to the Illaqa Magistrate. It is pointed out that Special Report had reached to Illaqa Magistrate at 11.00 p.m. Therefore, during the interregnum period, due deliberations have been made to falsely implicate the accused. However, the submission is not tenable. The occurrence in question had taken place at 2.55 p.m. and the FIR was recorded at 4.20 p.m. as it is evident from the documentary evidence. As such, there was no delay in registration of the FIR. However, the Special Report reached the Magistrate at 11.00 p.m. on the same day. PW-5 Constable Randhir Singh, who was dispatched to deliver the Special Report, deposed about having reached the Illaqa Magistrate at 5.45 p.m. No doubt, there is such discrepancy coming forth, but however, on this account, the prosecution version, as such, is not rendered doubtful. It is to be kept in mind that police is not expected to work in a mechanical manner and meticulous account of the timing, as such, may not come forth, at the instance of Constable, who had gone to deliver the Special Report. Even if, there was any such delay in sending the Special Report to the Magistrate, that is lapse or deficiency at the instance of investigating agency but this does not *ipso facto* lead to discard the prosecution version, when there is clear and specific evidence relating to the

occurrence caused by the accused and their incriminating role coming forth. Thus, on this count also, submission so made is not tenable.

Learned counsel for the appellants has also submitted that accused have been falsely implicated in the present case due to enmity. To so establish, the accused in their respective statements under Section 313 Cr.P.C. have taken a plea that they were taken in custody by Rajpura police in the presence of chowkidar Dalip Singh and Lambardar Darshan Singh and were falsely involved in the present case. To so substantiate the claim, they have also examined DW-1 Darshan Singh, who is Lambardar of the village. He has deposed about police accompanied by Dalip Singh, chowkidar, to have come to his house and thereafter, he had taken them to the house of Gora Singh and Gursahib singh, and they had then taken away both the accused along with them and later on, false case was fastened upon them. But however, it is pertinent to mention that but for the statement of Darshan Singh, no other step had been taken by the accused, to establish their false implication. If it had been true, as version put forth by DW-1, then definitely, DW-1 along with other respectables of the village, would have raised hue and cry. Though, the said witness has deposed about having met DSP and SSP but, what step was initiated thereupon and as to when they had gone to the police authorities, nothing as such, has been disclosed by the said witness. Even Dalip Singh, chowkidar, who was material link to establish the defence, as such, has also been given up as unnecessary by the defence counsel. In view of the same, the defence plea, so taken, does not inspire confidence. Otherwise also, it is pertinent to mention that Swaran Singh, complainant, in his statement Ex.PI, has categorically stated about motive of causing of the occurrence by both the

accused as they were nursing grievance on the account of death of their brother Gurmail Singh by accidental fire caused by the official weapon of Dalbir Singh, who was posted as Constable in Delhi Police. Even, PW-8 Head Constable Harinder Singh, on the basis of the record brought by him, has proved the attested photocopy of the FIR No.113 dated 10.03.2001 under Section 304-A IPC, registered against Dalbir Singh Constable, which is Ex.PH. Thus, from the contents of the same, it is evident that there was case registered against the deceased, qua death of Gurmail Singh, brother of the accused. Motive is double-edged weapon. If taking place of occurrence, one year earlier could be the motive, for causing of the false implication, as claimed by the accused, but at the same time, it could also be motive for causing of the occurrence. In view of the same, the said motive aspect, does not carry much weight, more particularly, when there is direct evidence, as such, coming forth. Taking into account the same, the plea of false implication, as now raised by the accused, does not stand established.

Even, it is claimed that no independent witness has been examined in the present case. However, on this count, the prosecution version is not rendered doubtful. No doubt, the occurrence had taken place at a busy place i.e. Gagan Chowk of Rajpura, where there is extensive presence of the people but however, it is a matter of common knowledge that as and when such incident takes place, the people in the vicinity feel shy to come forward to assist the investigation. There is nothing, as such, coming on record about the detail of any person from the public, who had witnessed the occurrence. Otherwise also, it was required on the part of Investigating Officer, to have examined any witness from the public, at the

spot. Even if, it had not been so done, at the most, it is deficiency, on the

part of the investigating agency and solely on this account, the prosecution version, as such, cannot be discarded.

In the light of the cumulative discussion, so coming forth, the prosecution has successfully established incriminating role of both accused Gora Singh and Gursahib Singh, while causing *dah* injuries on the person of Dalbir Singh, which proved fatal and thus committed murder of Dalbir Singh. Learned trial Court has evaluated the evidence in correct perspective. Even sentence imposed is just and reasonable. Thus, the impugned judgment merits no interference.

As such, appeal sans merit and the same is hereby dismissed.

As accused-appellants namely Gora Singh and Gursahib Singh, are on bail, their bail bonds stand cancelled and they are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

December 10, 2019
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No