

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

(1)

CRA-D-568-DB of 2011

Shyam Singh and another

.... APPELLANTS

Versus

State of Haryana

..... RESPONDENT

(2)

CRA-D-592-DB of 2011

Pardeep Soni @ Mintu and another

.... APPELLANTS

Versus

State of Haryana

..... RESPONDENT

Reserved on : 08.02.2019

Date of decision : 26.02.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE KULDIP SINGH

**Present: Mr. A.P.S. Deol, Senior Advocate, with
Mr. Vishal R. Lamba and Mr. Himmat Singh Deol, Advocates,
for the appellants (in CRA-D-568-DB of 2011).**

**Mr. J.S. Bedi, Senior Advocate, with
Mr. Harsimranjeet Kaur and Mr. Shivansh Mahi, Advocates,
for the appellants (in CRA-D-592-DB of 2011)**

Ms. Shubhra Singh, Addl. A.G., Haryana.

**Mr. J.S. Hooda, Advocate,
for the complainant.**

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these two appeals, CRA-D-568-DB of 2011 and CRA-D-592-DB of 2011, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 07.05.2011 and order dated 14.05.2011, rendered by learned Additional Sessions Judge, Rewari, in Sessions Case No. 20 of 2009/2010, whereby the appellants, who were charged with and tried for the offences punishable under Sections 323, 325, 449, 307, 302 IPC, and Sections 25, 27 of the Arms Act, were convicted and sentenced to undergo rigorous imprisonment for a period of six months with fine of ₹ 250/- each under Section 323 read with Section 34 IPC, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. They were also convicted and sentenced to undergo rigorous imprisonment for a period of ten years with fine of ₹ 5,000/- each under Section 307 read with Section 34 IPC, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. The appellants were also convicted and sentenced to undergo rigorous imprisonment for a period of ten years with fine of ₹ 5,000/- each under Section 449 read with Section 34 IPC, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year. They were also convicted and sentenced to undergo life imprisonment with fine of ₹ 5,000/- each under Section 302 read with Section 34 IPC, and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years. Appellant Shyam Singh was also convicted and sentenced to undergo rigorous imprisonment for a

period of three years with fine of ₹ 500/- under Section 27 of the Arms Act, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Appellant Suresh Kumar was convicted and sentenced to undergo rigorous imprisonment for a period of three years with fine of ₹ 500/- under Section 25 of the Arms Act, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. All the substantive sentences were ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that on 21.11.2008, a telephonic message was received at Police Station Model Town Rewari that Shyam Singh had fired shots in the area of Uttam Nagar and caused injuries to several persons. Amar Singh, Inspector/SHO along with other police officials visited Uttam Nagar. Message was received that Bhagwan Dass and Parkash had succumbed to the injuries. SHO visited General Hospital, Rewari. He obtained MLRs of Ashok Kumar and Rajesh Devi. Ruqa of deceased Bhagwan Dass and Parkash were also obtained from Police Post, General Hospital, Rewari.

4. Complainant Ashok Kumar made his statement Ex.PA stating therein that he was resident of Uttam Nagar, Rewari. He was labourer by profession. On 19.11.2008 at 10.00 AM in the morning, his younger brother Mahesh Kumar was getting his beard shaved at the barber shop in front of the house of Shyam Singh. Shyam Singh asked Mahesh why he did not wish him. An altercation took place. Shyam Singh and his younger brother Suresh alias Kalia and neighbourer Pardeep Soni as well as Kapil Soni gave him beatings. On 21.11.2008, when Kapil Soni was in the vicinity of their house, his father asked why they had beaten up his son. Thereafter, he went

away. He, his father Bhagwan Dass, his friend Parkash and cousin sister Rajesh Devi were sitting in their *Baithak* (drawing room) at about 12.30 PM. Shyam Singh along with his younger brother Suresh, Kapil Soni and Pardeep Soni alias Pintu and another person, whose name he did not know, came there. Shyam Singh was armed with a revolver. Smt. Krishna, mother of Shyam Singh, also came. She asked that they should not pick up quarrel. Shyam Singh, who was armed with a revolver, came to their *Baithak* (drawing room) and immediately fired. One bullet hit his father on his chest. One bullet hit his friend Parkash on his chest. One bullet hit his cousin sister Rajesh Devi on her right hand. Shyam Singh also fired three shots at him and his family members from his licensed revolver. However, they escaped injuries. They raised hue and cry. The assailants left the spot. They had also inflicted injuries in their self defence. They were taken to General Hospital by Basant. On the way, Bhagwan Dass and Parkash breathed their last on account of bullet injuries. They reached General Hospital. His father Bhagwan Dass and Parkash were declared dead. The bodies were sent for post-mortem examination. The post-mortem reports of Bhagwan Dass and Parkash are Ex.PY and Ex.PY/2, respectively. FIR was registered. Investigation was completed and the challan was put up after completing all the codal formalities.

5. The prosecution has examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. In their defence, the accused examined as many as seven witnesses. The appellants were convicted and sentenced, as noticed above. Hence, these appeals.

6. We have heard learned counsel for the parties and gone through

the judgment and record very carefully.

7. PW.1 Ashok Kumar testified that on 19.11.2008 at about 10.00 AM, his younger brother Mahesh Kumar had gone to barber shop. The barber shop was situated near the house of Shyam Singh. When his brother was getting his beard shaved, Shyam Singh came and asked why he did not wish him. An altercation took place between Shyam Singh and Mahesh Kumar. Shyam Singh, Suresh Kumar alias Kalia, Pardeep Soni alias Pintoo and Kapil Soni gave beatings to his brother Mahesh Kumar. He further deposed that on 21.11.2008 at about 11.30 AM, Kapil Soni was standing near their house. His father Bhagwan Dass was also standing outside the house. His father asked Kapil Soni why he along with others had beaten up his son Mahesh Kumar. Thereafter, his father came inside the house. At about 12.00 noon, same day, he, his father, his younger brother Mahesh, his sister Smt. Rajesh Devi and Parkash were sitting in the drawing room. Meanwhile, Shyam Singh, yielding revolver in his right hand, along with his younger brother Suresh @ Kalia, Kapil Soni, Pardeep Soni, Gagan Chauhan @ Guddu followed by Smt. Krishna, mother of Shyam Singh who was saying that they should not quarrel, came inside the drawing room. Immediately on entering the drawing room, Shyam Singh started firing from revolver. Shyam Singh fired one shot on the chest of Bhagwan Dass. Second fire was shot on the chest of Parkash. Shyam Singh fired third shot on the right arm of Smt. Rajesh Devi. Shyam Singh fired three more shots. However, the shots missed the target. They raised alarm. People came on the spot. Members of crowd assaulted Shyam Singh, Smt. Krishna, Pardeep Soni and inflicted injuries to them. He, his father Bhagwan Dass, Parkash, Smt. Rajesh Devi and Mahesh Kumar were taken to General Hospital,

Rewari, for medical treatment. Bhagwan Dass and Parkash were declared dead. In his cross-examination, he admitted that he and his family had no grudge against Shyam Singh and others regarding the occurrence dated 19.11.2008

8. PW.2 Mahesh Kumar deposed that he was getting his beard shaved on 19.11.2008 at 10.00 AM. Shyam Singh's house was situated near the barber shop. Shyam Singh asked him why he had not wished him. On this, hot words were exchanged between him and Shyam Singh. Meanwhile, Pardeep alias Pinto, Kapil Soni and Suresh Kumar reached the spot. They gave him beatings. He came home. On 21.11.2008 at about 11.30 AM, Kapil Soni came near their home. He was seen by his father. His father asked Kapil Soni why he and three-four other persons had beaten him. Thereafter, Kapil Soni left. At 12.30 PM, he, his father Bhagwan, his brother Ashok Kumar, his sister Rajesh Devi and his friend Parkash were present in the drawing room (*Baithak*). Shyam Singh, yielding revolver in his hand, along with Pardeep Soni, Kapil Soni, Suresh Kumar and Gagan Chauhan, followed by Smt. Krishna Devi, mother of Shyam Singh, who was requesting not to quarrel, came inside the *Baithak* (drawing room). Shyam Singh started firing from revolver. Shyam Singh fired one shot on the chest of Bhagwan Dass and fired one shot on the chest of Parkash. Shyam Singh fired third shot on the right hand of Smt. Rajesh Devi. Shyam Singh fired three more shots. These missed the target. Shyam Singh, Pardeep Soni, Kapil Soni, Suresh Kumr and Gagan Chauhan started beating him and his family members with kick and fist blows. His brother Ashok Kumar in self defence inflicted *danda* blows on head of Shyam Singh and gave one *danda* blow on head of Pardeep Soni. They raised alarm. People assembled on the

spot. The assailants ran away from the spot. They were taken to hospital. His father Bhagwan Dass and Parkash were declared dead. In his cross-examination, he deposed that on 19.11.2008, he was beaten by the accused. No police report was lodged on 19.11.2008. He remained at home on 20th and 21st November, 2018. He did not know the name of barber, whose shop was situated near the house of Shyam Singh. *Danda* with which Ashok Kumar had given blows on the head of Shyam Singh and Pardeep Soni was brought by the accused, which was snatched from the accused. He could not name the accused, from whom *danda* was snatched by Ashok Kumar. The accused did not cause any injury to him and his family members with *danda* and iron rods. Ashok Kumar had also received injuries. Ashok Kumar had given blows on head of Shyam Singh and Pardeep Soni, after Shyam Singh had exhausted all the bullets. They raised alarm. The assailants ran away. Shyam Singh shot Bhagwan Dass from a distance of 9/10 feet, the moment Bhagwan Dass stood up from *charpai* (cot). Shyam Singh fired shot on Parkash from a distance of 7/8 feet. Smt. Rajesh Devi was fired at from a distance of 2/3 feet. He had not seen accused being beaten up by the people of the locality. He could not name the persons who had lifted Shyam Singh and Smt. Krishna from the street after being beaten up. He did not know whether Smt. Krishna lodged report to the police regarding sustaining of injuries to him and his family. Parkash had come to their house during morning hours on 21.11.2008. Smt. Rajesh Devi had come to their house about 10/15 minutes before coming of Shyam Singh and other accused. He and his family had no grudge against Shyam Singh and others regarding the occurrence dated 19.11.2008. No body had seen the occurrence dated 19.11.2008. No complaint was lodged regarding that incident.

9. PW.3 Smt. Rajesh Devi deposed that on 21.11.2008 at about 11.00/12.00 noon, she was at her home. She heard noise. She came out of home. She saw a lot of people had collected near the house of her uncle Bhagwan Dass. She went there. She saw accused Shyam Singh, Suresh Kumar and Pardeep Soni quarreling with Bhagwan Dass and other family members. She tried to intervene. She went away and stood at some distance. Then she heard noise of bullet. One bullet hit Parkash. One bullet hit Bhagwan Dass and one bullet hit her right forearm. Nobody had tried to hit her intentionally. She was declared hostile and was cross-examined by the learned Public Prosecutor. She denied making statement Ex.PD to the effect that immediately on coming, Shyam Singh started firing, out of which one bullet hit her uncle Bhagwan Dass on his chest, one bullet hit chest of Parkash and one bullet hit her right forearm. (Confronted with portion C to C1 where it is so recorded). She did not state to the police in her statement Ex.PD that when they raised alarm, many people from the neighbourhood gathered at the spot. On seeing them, accused tried to flee from the spot. Her brothers caused injuries to the accused in their self defence. (Confronted with portion D to D1 where it is so recorded). She admitted that she had seen Shyam Singh holding revolver in his hand at the spot. Bhagwan Dass, Parkash and she had sustained injuries from bullets fired from revolver of Shyam Singh.

10. PW.4 Bunti deposed that on 21.11.2008, he had come to the house of his maternal uncle Bhagwan Dass. He had come to attend marriage in neighbourhood of Bhagwan Dass. At about 12.30 PM, he came to know from some neighbourers that Shyam Singh and others had fired shots on his uncle Bhagwan Dass. He rushed to the house of his uncle Bhagwan Dass.

He found Bhagwan Dass lying with gun shot injuries in the street. When he went to the house of his uncle Bhagwan Dass, he found other injured, namely Mahesh, Ashok, Parkash friend of Mahesh and Smt. Rajesh Devi. He took them to the hospital.

11. PW.7 Constable Rajesh Deepak deposed that case property remained in his possession upto 11.12.2008. It remained intact in his custody till it was in his possession.

12. PW.8 Basant Kumar deposed that he had heard firing of gun shots on 21.11.2008. Bunti came to call him. He told that Bhagwan Dass, Parkash and Rajesh Devi were to be taken to the hospital. He took them to hospital in tempo.

13. PW.9 SI Kailash Chand deposed that he inspected the place of occurrence. He collected blood stained soil. Blood stained paint was recovered from the gate of house of the complainant. Broken pieces of glass bangles were recovered from gate of house of the complainant. He further deposed that Suresh Kumar made a disclosure statement Ex.PK, in pursuance of which revolver along with three live cartridges and four empties were recovered. These were taken into possession. In his cross-examination, he deposed that the information regarding firing incident was received by Inspector Amar Singh. He could not tell the time of the receipt thereof. However, they had started from Police Station Model Town, Rewari at 11.50 AM. Within 10/15 minutes, they reached Uttam Nagar.

14. PW.17 Amar Singh testified that he along with other police officials went to Civil Hospital, Rewari. He obtained MLRs of Rajesh and Ashok along with ruqa Mark C and Mark D. He recorded statement of injured Ashok Ex.PA. Bhagwan Dass and Parkash died due to fire arm

injuries. Body of Bhagwan Dass was sent for post-mortem examination. He collected broken pieces of bangles from gate of house of the complainant Ex.P3. He also scratched blood stained paint from the gate of the house of the complainant Ex.P4. One used bullet was lifted from the street in front of house of the complainant Ex.P5. Blood stained earth Ex.P6, blood stained clothes of child Ex.P7 were also recovered. One live cartridge Ex.P8 was also lifted from the street in front of house of Devi Lal. Broken pieces of glass bangles Ex.P9 were also lifted from street in front of house of Devi Lal. Suresh Kumar made disclosure statement Ex.PK, on the basis of which revolver Ex.P14 along with three live cartridges Ex.P15 to Ex.P17 were recovered along with four used cartridges Ex.P18 to Ex.P21. The case property was sent to FSL, Madhuban. In his cross-examination, he deposed that he received information regarding the incident at about 12.50 PM on 21.11.2008. According to him, as per his investigation, Kapil Soni and Krishna Devi were found to be innocent. Krishna Devi had tried to stop the complainant from fighting. The accused had sustained injuries on the road during the occurrence which was at a distance of 300/350 yards from the house of the complainant. Shyam Singh was arrested on 01.12.2008. At that time, one leg of Shyam Singh was plastered. Ashok had told him that he and his brother and others had caused injuries to Krishna and Shyam Singh with *danda*.

15. PW.16 Dr. A.K. Saini had conducted post mortem examination on the body of Bhagwan Dass. He noticed following injuries on the body of Bhagwan Dass :-

- (1) Some what oval shape lacerated wound size
8 mm x 6 mm with fluid blood oozing out of

it (when body is moved). The entry wound was surrounded by abrasion on its superior and medial sides extending up to 2 mm reddish brownish in colour. Edges of the wound were found some what inverted and it is situated near sternal angle 2 cm lateral to midline on right side of upper chest. On dissection – haematoma just under chest wall with ecchymosis of blood in underlying tissue. Large laceration of underlying tissue of lung (parenchyma) seen with massive right side haemothorax. Clotted and fluid blood seen in track which is going down and laterally.

- (2) Exit wound. Some what oval lacerated wound size 10 cm x 8 cm with inverted margin situated on right side of upper part of back. 7 cm (right) lateral to mid line at the level of 5th and 6th ribs. Fluid blood coming out of it, and dried and clotted blood present around it.
- (3) Two circular pieces of skin from around the entry and exit wounds sent to Ballistic expert of Forensic Science Laboratory, Madhuban in formalin. Clothes of deceased were also sent to the Forensic Science Laboratory, Madhuban.

He proved post-mortem report Ex.PY. The cause of death was opined to be shock as a result of haemorrhage and due to injury to vital part i.e. lung. Injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature of life. Duration between injuries and death was variable and duration between death and post-mortem examination was

from 3-6 to 36 hours. He also conducted post-mortem examination on the body of Parkash. He noticed following injuries on the body of Parkash :-

- (1) Wound of entry some what oval lacerated wound size 8 mm x 6 mm with an abraded area of 2 mm around towards left nipple reddish brownish in colour situated 8 cm medial to left nipple close to mid line with dried blood round it. Fluid blood coming out of it when body is moved. Margins are inverted. On further dissection sub cutaneous haemorrhage with ecchymosis of blood seen extending up to inner aspect of anterior chest wall. 1 cm diameter hole seen in sternum with haemorrhage on its under side. Right atrium of art punctured with massive haemothorax containing fluid and clotted blood. Medial part of right lung lacerated with haemorrhage around it and one bullet which is deformed found embedded near posterior thoracic wall just below skin. Bullet retrieved and sealed in a vial and handed over to police. Clothes and skin around entry wound (in formalin) also sealed and handed over to police. Bullet was found embedded at the level of 7th and 8th ribs, 4 cm lateral to mid line on right side.

He proved post-mortem report Ex.PY/2. In his opinion, the cause of death was shock as a result of haemorrhage and due to injury to vital parts i.e. lungs and heart. Injuries were ante-mortem in nature and were sufficient to cause death. Duration between injuries and death was immediate and duration between death and post-mortem examination was from 6 to 36 hours.

16. PW.18 Dr. M.K. Naranga medico legally examined Smt.

Rajesh. He noticed following injuries on her body :-

- (1) 0.5 cm x 0.4 cm lacerated wound on right forearm 10 cm above wrist, ventral surface, ragged margin, inverted margin, fresh bleeding present. No black tattooing. Advised X-ray.
- (2) 1.4 cm x 0.5 cm lacerated wound on right forearm on dorsal surface, 9 cm above wrist, ragging margin, no black tattooing, margin outward, fresh bleeding was present. Advised X-ray.

He also medico legally examined Ashok. No visible injury was found on his body. He proved MLRs of Smt. Rajesh Devi and Ashok Kumar Ex.PAL and Ex.PAM, respectively. He also medico legally examined Shyam Lal. He noticed following injuries on his body:-

- (1) 4 cm long stitched wound on right side of fronto parietal region.
- (2) 3 cm long stitch wound on right eye brow.
- (3) 4 cm long stitch wound parietal region distant to wound no.3.
- (4) 4 cm long stitch wound parietal region.
- (5) 5 cm long stitch wound in inter parietal region.
- (6) 3 cm long stitch wound on left side of occipital region.
- (7) 4 cm x 1 cm lacerated wound on right ring finger, dorsal surface, ragged margin, fresh bleeding present.
- (8) 1 cm x .9 cm lacerated wound on right elbow, ragged margin, fresh bleeding present.

MLR of Sohan Singh is Ex.DF. He also medico legally examined Smt. Krishna wife of Dasrath and found following injuries on her body :-

- (1) Diffuse swelling red colour on right forearm upper half.
- (2) Diffuse swelling red colour on right forearm with .5 x .4 cm lacerated wound on it, fresh clotted blood present, ragged margin, advised X-ray.

MLR of Smt. Krishna is Ex.DG.

17. PW.19 Dr. Rohit Arora tendered his evidence by filing his affidavit Ex.PAR. According to his affidavit, on X-ray examination, Smt. Rajesh Devi was found to have fracture of ulna with metal body inside the forearm.

18. DW.1 Dr. Yodhraj Sarmal deposed that he radiologically examined Shyam Lal referred by Dr. Sushil Khurana. He also conducted CT scan of head of Shyam Lal. The CT film is Ex.D4. In his cross-examination, he admitted that no bone injury was visualized. The repeat CT report was also normal. The fracture of patella right knee, as mentioned in X-ray report Ex.DH, was possible due to fall on a hard surface.

19. DW.3 Dr. Sushil Kumar Khurana had seen the original treatment record relating to Shyam Lal. He remained admitted in the hospital from 21.11.2008 to 01.12.2008.

20. DW.4 Dr. Birender Yadav deposed that Shyam Singh son of Jasrath was brought to his hospital with multiple injuries. He administered emergency treatment to him. He also treated Krishna wife of Jasrath. He found fracture of lower and radius right and fracture of upper third radius left, vide report Ex.DW4/B.

21. DW.5 Dr. Ashok Saini deposed that he had radiologically examined Krishna. He had reported fracture of left and right radius bone in the X-ray of left and right forearm.

22. DW.6 Dr. Vinish Mathur deposed that he was working as Orthopedic Surgeon in Kalyani Hospital, Gurgaon. Patient Shyam Singh was referred by General Hospital, Rewari with the history of head injury. He was having several injuries including fracture of patella. He was operated upon.

23. Learned counsel appearing on behalf of appellant Shyam Singh has vehemently argued that his client was given beatings by the complainant party. The presence of appellant Shyam Singh on the spot is admitted. Learned counsel submits that since appellant Shyam Singh was administered beatings along with his mother Krishna Devi, he opened fire in his private defence, resulting in death of Bhagwan Dass and Parkash.

24. PW.1 Ashok Kumar, PW.2 Mahesh Kumar and PW.3 Rajesh Devi had seen accused Shyam Singh firing at Bhagwan Dass and Parkash. He opened fire with his licensed revolver. He fired on the chest of Bhagwan Dass and Parkash. These proved fatal. They succumbed to their injuries while being taken to hospital. The post-mortem examination of Bhagwan Dass and Parkash are Ex.PY and Ex.PY/2, respectively. PW.16 Dr. A.K. Saini, who conducted post-mortem examination on the body of Bhagwan Dass, noticed some what oval shape lacerated wound size 8 mm x 6 mm with fluid blood oozing out of it. The entry wound was surrounded by abrasion on its superior and medial sides extending up to 2 mm reddish brownish in colour. Edges of the wound were found some what inverted and it was situated near sternal angle 2 cm lateral to midline on right side of

upper chest. The exit wound was also noticed. It was some what oval lacerated wound size 10 cm x 8 cm with inverted margin situated on right side of upper part of back, 7 cm (right) lateral to mid line at the level of 5th and 6th ribs. Similarly, entry wound and exit wound were also noticed in the post-mortem examination of Parkash. The following injuries were noticed on his body :-

- (1) Wound of entry some what oval lacerated wound size 8 mm x 6 mm with an abraded area of 2 mm around towards left nipple reddish brownish in colour situated 8 cm medial to left nipple close to mid line with dried blood round it. Fluid blood coming out of it when body is moved. Margins are inverted. On further dissection of sub cutaneous haemorrhage with ecchymosis of blood seen extending up to inner aspect of anterior chest wall. 1 cm diameter hole seen in sternum with haemorrhage on its under side. Right atrium of art punctured with massive haemothorax containing fluid and clotted blood. Medial part of right lung lacerated with haemorrhage around it and one bullet which is deformed found embedded near posterior thoracic wall just below skin. Bullet retrieved and sealed in a vial and handed over to police. Clothes and skin around entry wound (in formalin) also sealed and handed over to police. Bullet was found embedded at the level of 7th and 8th ribs, 4 cm lateral to mid line on right side.

25. Appellant Shyam Singh, though has tried to make out a case that he was beaten up by the complainant party which led to his opening fire

in self defence, but there is no evidence that he was beaten by the complainant party, thereafter, he opened the fire. Evidence has come on record that many people had gathered on the spot and had given beatings to Shyam Singh and his family members after the incident. The revolver was got recovered from his brother Suresh Kumar. It was sent for FSL examination. According to the FSL report Ex.PZ/1, the firing mechanism of .32” revolver marked W/1 was found in working order. .32” fired cartridge cases marked C/1 to C/4, .32” fired bullet marked BC/1 and BC/2 were fired from .32” revolver marked W/1 and not from any other firearm even of same make and caliber. The holes of kurta and banian contained in parcel No. XI were caused by .32” bullet projectile. The hole on the front side of shirt and banian contained in parcel No. XII were caused by .32” lead bullet projectile. The hole on the skin piece contained in parcel No. XIV was caused by the entry of bullet projectile fired from distance beyond blackening/tattooing range. The hole on the skin pieces contained in parcel No. XV was caused by the entry of bullet projectile fired from distance beyond blackening/tattooing range. The hole/hit on the skin piece contained in parcel No. XVI on inner side was caused by bullet projectile.

26. In **Ram Dahin Singh and others v. State of Bihar**, 1970 (3) Supreme Court Cases 26, their Lordships of the Hon'ble Supreme Court have held that the onus of establishing the plea of right of private defence is on the accused though he is entitled to show that this right is established or can be sustained on the prosecution evidence itself. Their Lordships have held as under :-

“8. *The point on which he laid stress was that the documentary evidence conclusively*

establishes that the actual possession of plot No. 103 was not with Ghurfekan but was with some of the accused persons. Of course, as contended on behalf of the appellants, Ram Dahin Singh had nothing to do with this plot or with the land purchased from the Tarkeshwar Estate in 1962, but it is in evidence that he is a distant agnate of Loku who had as a co-vendee purchased a portion of the land sold on November 20, 1962. We are unable to agree with the appellants' learned counsel that the documentary evidence establishes the possession of the accused persons of the entire plot No. 103 and that Ghurfekan was not in possession of any portion of this plot. The documentary evidence, in our opinion, does not establish anything more than passing of mere proprietary or paper in possession of considerable land including a portion of plot No. 103. The Trial Court and the High Court have both taken the same view and have come to a positive conclusion that Ghurfekan was in possession of portion of plot No. 103 on which he had grown paddy crop and which was harvested by him and the harvested crop was being carried in bundles from the field to the Khalihan on the date of occurrence. This conclusion is based on a consideration of the entire evidence, including oral evidence which is, in our opinion, more important than the documentary evidence on the question of actual physical possession in this case. It may be pointed out that no attempt was made in this Court to show that appreciation of oral and other evidence by the Courts below was in any way infirm exposing it to legitimate

criticism and laid it open to re-assessment by this Court. Once this conclusion is upheld the plea of the right of private defence by the appellants must lose its importance. But even otherwise this plea seems to be misconceived. According to Section 103, I.P.C., the right of private defence of property extends under the restrictions mentioned in Section 99 to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which or the attempting to commit which occasions the exercise of the right, is -

- (i) robbery;*
- (ii) house-breaking by night;*
- (iii) mischief by fire committed on any building or vessel, etc.;*
- (iv) or theft, mischief or house trespass under such circumstances as may reasonably cause apprehension with death or grievous hurt will be the consequence if such right of private defence is not exercised.*

Our attention was not drawn to any material on the record which would bring the appellants' case within this section. In regard to the right of private defence of body according to Section 100, I.P.C., so far as relevant for the present case, it extends under the restrictions mentioned in Section 99 to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be such as assault as may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of such assault. We

are in this case not concerned with the other offences which may give rise to this right. Now, if Ram Dahin Singh's party consisted of 30 or 40 persons, one of them undoubtedly being armed with a gun-and this circumstance cannot be lightly brushed aside-and the party of Ghurfekan being only a few persons carrying their harvested crops, it is difficult to appreciate how the plea of self-defence can reasonably be urged by the appellants with any show of plausibility. Our attention was not invited to any evidence on the record on which this plea can be sustained. On the conclusion of the two courts below arrived at on evaluation of evidence, which is not shown to be erroneous or otherwise unsupportable it is futile to attempt to sustain the plea of private defence. It may in this connection be pointed out that the onus of establishing the plea of the right of private defence is on the accused though as observed in the case of Gottipulla Subbaramanyam's case (supra) he is entitled to show that this right is established or can be sustained on the prosecution evidence itself. In the present case no right of private defence is sustainable on the material on the record.

9. *x x x x x x x x x*

10. *x x x x x x x x x*

11. *The appellant's learned counsel lastly contended that in any event the offence of which Ram Dahin Singh has been charged and convicted does not fall under Section 302, I.P.C., because the gun was fired when there was a grave danger of grievous injury to the persons composing of his group. The counsel emphasised*

that Ram Dahin Singh had no personal concern with the land purchased in 1962 and, therefore, he must be deemed to have acted purely with the object of defending his partymen against aggression at the hands of Ghurfekan and his companions. It is not possible to accept this submission. Once it is held that the party of the accused were the aggressors then merely because the gun is used after some of their partymen had received some injuries at the hands of those who were protecting their paddy crop and resisting the aggression on the part of the accused, can be no ground for taking the case out of Section 302, I.P.C. If otherwise the injuries caused bring the case within the definition of murder. As a matter of fact this argument is only another fact of the plea of self-defence which we have already rejected. While developing this argument Mr. Nuruddin submitted that the appellants should be considered only to have exceeded their right of private defence and, therefore, they cannot be held guilty of murder. This submission is equally unacceptable. Exceptions 2 to 300, I.P.C., on which the submission seems to be founded postulates the exercise of the right of private defence in good faith and also without premeditation and intention to do more harm than is necessary for the purpose of self-defence. The number of members of Ram Dahin Singh's party and the fact that Ram Dahin Singh was armed with a loaded gun negatives absence of premeditation; similarly the number of shots fired by him and the casualties resulting therefrom militates against the suggestion that there was no

intention of doing more harm than necessary for the purposes of self-defence. In this case there seems to be both premeditation and intention to do more harm than was necessary when the gun was fired more than once. The right of private defence, if may be remembered, is purely preventive and not punitive or retributive. No separate arguments were addressed on behalf of the appellants in regard to the other offences. In the result, therefore, this appeal fails and is dismissed.”

27. In **Onkarnath Singh and others v. The State of U.P.**, (1975) 3 Supreme Court Cases 276, their Lordships of the Hon'ble Supreme Court have held that the entire prosecution case cannot be thrown overboard simply because the prosecution witnesses do not explain the injuries on the person of the accused. Their Lordships have held as under :-

“36. Such non-explanation, however, is a factor which is to be taken into account in judging the veracity of the prosecution witnesses, and the Court will scrutinise their evidence with care. Each case presents its own features. In some cases, the failure of the prosecution to account for the injuries of the accused may undermine its evidence to the core and falsify the substratum of its story, while in others it may have little or no adverse effect on the prosecution case. It may also, in a given case, strengthen the plea of private defence set up by the accused. But it cannot be laid down as an invariable proposition of law of universal application that as soon as it is found that the accused had received injuries in the same transaction in which the complainant

party was assaulted, the plea of private defence would stand prima facie established and the burden would shift on to the prosecution to prove that those injuries were caused to the accused in self-defence by the complainant party. For instance where two parties come armed with a determination to measure their strength and to settle a dispute by force of arms and in the ensuing fight both sides receive injuries, no question of private defence arises.

37. The observations of one of us (Beg, J.) in Rishikesh Singh's case (supra) on which Mr. Garg relies should not be torn out of the context to deduce a cast-iron rule of law out of a matter which is essentially one of fact. A reading of the whole opinion of Beg, J. in Rishikesh Singh's case will show that the real question under consideration in that case was whether the evidence present in a case which may support the existence of a right of private defence must be excluded altogether from consideration where the accused fails to establish his defence by a "preponderance of probabilities", or, it must be taken into account to determine whether the prosecution has established its case beyond reasonable doubt. It was held there that evidence as a whole must be considered, whether it comes from the side of the prosecution or the defence, to determine whether the infliction of injuries for which an accused is prosecuted were either proved by a "balance of probabilities" to have been inflicted in the course of exercise of a right of private defence, or, even if the accused fails to do that, it is sufficient to make the prosecution

case doubtful on an ingredient of the offence. It is only in one of these two possible situations that the accused could get an acquittal. If circumstances which seem to support the plea of private defence are satisfactorily explained away by the prosecution on the evidence in the case, so as to be consistent with the prosecution version, the case may still result in a conviction. In every case, the question is really one of appraisal of total evidence and its effect. This was pointed out by Beg, J. in Rishikesh Singh's, case (supra in para 111, p. 85) where two cases Emperor v. U. Damapala, and Thein v. The King were referred to as illustrations of kinds of situations on facts in which the prosecution case would become doubtful on an ingredient of the offence. The meaning of "reasonable doubt" and the manner in which the evidence has to be sifted were also indicated (para 112, p. 85 and paras 128 to 130, pp. 89-90). It was also pointed out that mere removal of the obligatory presumption at the end of Section 105 of the Evidence Act, by showing that some circumstances did exist to support a plea of private defence, may not be enough to secure an acquittal (para 161, pp. 97-98). The view taken there was that the obligatory presumption at the end of Section 105 merely imposes a duty upon the accused of showing that certain circumstances exist which remove this presumption. It was held there that, despite the removal of this special presumption at the end of Section 105, Evidence Act, by showing that some circumstances of the kind mentioned there did exist in the case, the accused may fail to

discharge the burden of proving his plea of private defence by balance of probabilities. Nevertheless, despite the failure of the accused to prove his plea of private defence, the effect of the totality of the evidence may be to throw an ingredient of the offence in the region of doubt. That ingredient, in a case in which private defence is set up so that the commission of the injurious act is admitted even indirectly, is the required "mens rea". This was also pointed out there (paras 143 to 148 at pp. 93-94). In other words, the result or the effect of the total evidence is to be judged by taking the whole evidence into account. No single feature of the evidence will determine the fate of the case."

28. Their Lordships of the Hon'ble Supreme Court in **Yogendra Morarji v. State of Gujarat**, (1980) 2 Supreme Court Cases 218, have held that the right of private defence of body is against a danger imminent, present and real. Their Lordships have held as under :-

"13. The Code excepts from the operation of its penal clauses "large classes of acts done in good faith for the purpose of repelling unlawful aggression but this right has been regulated and circumscribed by several principles and limitations". The most salient of them concerning the defence of body are as under : firstly, there is no right of private defence against an act which is not in itself an offence under the Code; secondly, the right commences as soon as – and not before – a reasonable apprehension of danger to the body arises from an attempt or threat to commit some offence although the

offence may not have been committed and it is coterminous with the duration of such apprehension (Section 102). That is to say, the right avails only against a danger imminent, present and real; thirdly, it is a defensive and not a punitive or retributive right. Consequently, in no case the right extends to the inflicting of more harm than it is necessary to inflict for the purpose of the defence (Section 99). In other words, the injury which is inflicted by the person exercising the right should be commensurate with the injury with which he is threatened. At the same time, it is difficult to expect from a person exercising this right in good faith, to weigh “with golden scales” what maximum amount of force is necessary to keep within the right. Every reasonable allowance should be made for the bona fide defender “if he with the instinct of self-preservation strong upon him, pursues his defence a little further than may be strictly necessary in the circumstances to avert the attack”. It would be wholly unrealistic to expect of a person under assault, to modulate his defence step by step according to the attack; fourthly, the right extends to the killing of the actual or potential assailant when there is a reasonable and imminent apprehension of the atrocious crimes enumerated in the six clauses of Section 100. For our purpose, only the first two clauses of Section 100 are relevant. The combined effect of these two clauses is that taking the life of the assailant would be justified on the plea of private defence; if the assault causes reasonable apprehension of death or grievous

hurt to the person exercising the right. In other words, a person who is in imminent and reasonable danger of losing his life or limb may in the exercise of right of self-defence inflict any harm, even extending to death on his assailant either when the assault is attempted or directly threatened. This principle is also subject to the preceding rule that the harm or death inflicted to avert the danger is not substantially disproportionate to and incommensurate with the quality and character of the perilous act or threat intended to be repelled; fifthly, there must be no safe or reasonable mode of escape by retreat, for the person confronted with an impending peril to life or of grave bodily harm, except by inflicting death on the assailant; sixthly, the right being, in essence, a defensive right, does not accrue and avail where there is "time to have recourse to the protection of the public authorities" (Section 99)

14. Before coming to the facts of the instant case, the principles governing the burden of proof where the accused sets up a plea of private defence, may also be seen. Section 105, Evidence Act enacts an exception to the general rule whereby in a criminal trial the burden of proving everything necessary to establish the charge against the accused beyond reasonable doubt, rests on the prosecution. According to the section, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code; or within any special exception or proviso contained in any other part of the Code or in any other law, shall be on the accused person, and the Court

shall presume the absence of such circumstances. But this section does not neutralise or shift the general burden that lies on the prosecution to prove beyond reasonable doubt all the ingredients of the offence with which the accused stands charged. Therefore, where the charge against the accused is one of culpable homicide, the prosecution must prove beyond all manner of reasonable doubt that the accused caused the death with the requisite knowledge or intention described in Section 299 of the Penal Code. It is only after the prosecution so discharges its initial traditional burden, establishing the complicity of the accused, that the question whether or not the accused had acted in the exercise of his right of private defence, arises.

15. *As pointed out by the Court in Dahyabhai v. State of Gujarat, AIR 1964 SC 1563, under Section 105, read with the definition of “shall presume” in Section 5, Evidence Act, the Court shall regard the absence of circumstances on the basis of which the benefit of an Exception (such as those on which right of private defence is claimed), as proved unless, after considering the matters before it, it believes that the said circumstances existed or their existence was so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that they did exist. The accused has to rebut the presumption envisaged in the last limb of Section 105, by bringing on record evidential material before the Court sufficient for a prudent man to believe that the existence of such circumstances is probable. In other words,*

even under Section 105, the standard of proof required to establish those circumstances is that of a prudent man as laid down in Section 3, Evidence Act. But within that standard there are degrees of probability, and that is why under Section 105, the nature of burden on an accused person claiming the benefit of an Exception, is not as onerous as the general burden of proving the charge beyond reasonable doubt cast on the prosecution. The accused may discharge his burden by establishing a mere balance of probabilities in his favour with regard to the said circumstances.

16. The material before the Court to establish such a preponderance of probability in favour of the defence plea may consist of oral or documentary evidence, admissions appearing in evidence led by the prosecution or elicited from prosecution witnesses in cross-examination, presumptions, and the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, 1973.”

29. Their Lordships of the Hon'ble Supreme Court in **K. Dhananjai v. State of U.P.**, AIR 1994 Supreme Court 551 have held that no right of self-defence could be pleaded by accused as he and his party were aggressors though he received some injuries before indulging in fire. Their Lordships have held as under :-

“4. The acquittal of other 12 accused does not in any manner affect the prosecution case so far as the appellant is concerned. It was he who shot five times and deceased received two shots and died on the spot and P.W.2 also received gun-

shot injuries. The injuries on the appellant were rather superficial except one injury – a scalp deep lacerated wound which was also a simple injury. No doubt, the High Court observed that the appellant must have received the injuries before he resorted to firing but the High Court also has considered all the evidence as well as other circumstances and ultimately held that there was no substance in the argument that the offence committed by the appellant would fall under Section 304, Part I, I.P.C. The High Court observed that the appellant armed with a gun along with some of his associates went to the scene of occurrence and started the trouble and even if he had received some minor injuries before indulging in firing, he could not plead any right of self-defence as he and his party men must be held aggressors. We have no hesitation to say that the High Court has rightly given this finding. The evidence of eye-witnesses would show that the appellant armed with a gun and others variously armed went to the house of P.W.1 and it was there the trouble started. The fact that these people went there and started quarreling would show that the accused were the aggressors. At any rate the appellant by shooting five times cannot be held to have so acted only in exercise of his right of self-defence. For all these reasons we see no grounds to interfere with the concurrent findings of the Courts below. Accordingly the appeal is dismissed.”

30. In **Murali v. State of T.N.**, (2001) 1 Supreme Court Cases 229, their Lordships of the Hon'ble Supreme Court have held that right of private

defence undoubtedly, is a defence available to an accused but the court while dealing with the defence, ought to act with proper circumspection and caution, since the same is an exception rather than a rule. Their Lordships have held as under :-

“7. A perusal of the facts, as appears from the decision, makes clear the circumstances under which the right of private defence is to be made applicable, unfortunately the same is not available on the contextual facts. The accused was found present at the tea stall, being the deceased's place of business and as such can be termed to be an aggressor and as such question of there being any right of private defence does not arise. The definite evidence in the matter is that the accused opened the door with a bloodstained knife. The nature of his injuries are not, however, sufficient by itself to sustain the plea of private defence. As a matter of fact both, learned Sessions Judge and the High Court, have negatived such a plea and we do record our concurrence therewith. The injuries on the accused are rather minor in nature since they were restricted to tender defusion and abrasion. There is no wound, much less any serious injury which may even prompt a person to take the most heinous step of committing the murder. Reliance was also placed on the decision in the case of Vijayan v. State (1999) 4 SCC 36 wherein this Court on the facts of the matter in issue and evidence on record was inclined to give judicial imprimatur to the plea of private defence advanced by the appellant and held him not guilty and granted pardon.

8. *Right of private defence is undoubtedly, a defence available to an accused but the court while dealing with the defence, ought to act with proper circumspection and caution, since the same is an exception rather than a rule.”*

31. In **Sekar alias Raja Sekharan v. State Represented by Inspector of Police, T.N.,** (2002) 8 Supreme Court Cases 354, their Lordships of the Hon'ble Supreme Court have held that the burden is on the accused and it stands discharged by showing preponderance of probabilities in favour of plea raised under Sections 97, 99 and 100 of the Indian Penal Code. Their Lordships have held as under :-

“6. Section 96 IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression “right of private defence”. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person acted in the exercise of the right of private defence, is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case, the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record.

Under Section 105 of the Indian Evidence Act, 1872 (in short “the Evidence Act”) the burden of proof is on the accused, who takes the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling any further reasonable apprehension, from the attacker. The burden of establishing the plea of self-defence is on the accused and the burden stand discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram v. Delhi Admn., AIR 1968 SC 702; State of Gujarat v. Bai Fatima, AIR 1975 SC 1478; State of U.P. v. Mohd. Musheer Khan, AIR 1977 SC 2226 and Mohindra Pal Jolly v. State of Punjab, AIR 1979 SC 577. Sections 100 and 101 define the extent of

the right of private defence of body. If a person has a right of private defence of body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft-quoted observation of the Supreme Court in Salima Zia v. State of U.P., AIR (1979) SC 391; runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."

7. *The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea."*

32. In **Bihari Rai v. State of Bihar**, AIR 2009 Supreme Court 18, their Lordships of the Hon'ble Supreme Court have held that the right of private defence cannot be based on surmises and speculation. The accused must show that there were circumstances for apprehending that either death or grievous hurt would be caused to him.

"13. The number of injuries is not always a safe

criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must, necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilises the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See : Lakshmi Singh v. State of Bihar (AIR 1976 SC 2263)]. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting. Section 97 deals with the subject-matter of right of private defence. The plea of right comprises the body or property (i) of

the person exercising the right; or (ii) of any other person; and the right may be exercised in the case of any offence against the body, and in the case of offences of theft, robbery, mischief or criminal trespass, and attempts at such offences in relation to property. Section 99 lays down the limits of the right of private defence. Sections 96 and 98 give a right of private defence against certain offences and acts. The right given under Sections 96 to 98 and 100 to 106 is controlled by Section 99. To claim a right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him. The burden is on the accused to show that he had a right of private defence which extended to causing of death. Sections 100 and 101, IPC define the limit and extent of right of private defence.”

33. According to the FSL report Ex.PZ/3, blood was detected on blood stained earth, bangle pieces and clothes. The laboratory examination of the exhibits reads as under :-

1. Exhibit-1 (Guaze piece) was stained with blood stains.
2. Blood was detected on exhibit-2 (Blood stained earth).
3. Traces of blood too small for serological analysis were detected on exhibit-3 (Bangle pieces).
4. Traces of blood too small for serological analysis were detected on exhibit-4 (Flakes & blood) & exhibit-6 (Bangle glass piece).

5. Exhibit-7 (T-shirt) was stained with numerous large & small blood stains.
6. Blood was detected on exhibit-8 (Blood stained earth).
7. Exhibit-9 (Guaze piece) was stained with blood stains.
8. Exhibit-10 (Seat cover) was stained with few medium & small blood stains.
9. (i) Exhibit-11a (Kurta) and exhibit-11b (Pyjama) were stained with several large & small blood stains.
(ii) Exhibit-11c (Banian) was stained with blood stains.
10. (i) Exhibit-12a (Shirt) was stained with a few small blood stains.
(ii) Exhibit-12b (Banian) was stained with a few small blood stains.
11. Exhibit-17 (Pipe) was stained with blood stains.

34. It is conclusively proved from the FSL reports that the bullets were fired from the revolver, recovered from brother of Shyam Singh, namely Suresh Kumar, on the basis of his disclosure statement Ex.PK.

35. PW.3 Rajesh Devi also received injuries, as per MLR Ex.PAL. The injuries were received by Krishna Devi as well as Shyam Singh, but there is no evidence that these injuries were caused to them before opening of fire by Shyam Singh. Shyam Singh shoot Bhagwan Dass and Parkash on their chest. The role attributed to Suresh Kumar is that he had accompanied his brother Shyam Singh to the spot and revolver was recovered at his instance on the basis of disclosure statement Ex.PK along with empties. No specific role has been attributed to Suresh Kumar. It was Shyam Singh who

had fired almost point blank at Bhagwan Dass and Parkash and also injured Rajesh Devi. Though it has come in the statement of PW.2 Mahesh Kumar that he was beaten by Shyam Singh, his brother Suresh Kumar and their neighbourers Pardeep Soni and Kapil Soni on 19.11.2008 but no report was lodged by Mahesh Kumar against them. PW.2 Mahesh Kumar has also admitted that nobody had seen the incident dated 19.11.2008. He did not know even the name of barber. Ashok Kumar, while appearing as PW.1, though deposed that he was beaten up, but no injury was found on his body.

36. PW.1 Ashok Kumar, PW.2 Mahesh Kumar and PW.3 Rajesh Devi have also not stated anything about the role played by Suresh Kumar in the incident. Their case simply is that Shyam Singh came on the spot and fired at Bhagwan, Parkash and Rajesh Devi, and thereafter, seeing the gathering, they fled away from the spot. Similarly, no role has been attributed to Pardeep Soni and Kapil Soni, who are brothers. They are neighbourers of Shyam Singh. It was stated by PW.2 Mahesh Kumar that he was beaten up by these persons along with Shyam Singh and Suresh Kumar on 19.11.2008, while he was getting his beard shaved, but we have already noticed that no complaint was lodged regarding this incident. PW.1 Ashok Kumar and PW.2 Mahesh Kumar have deposed that they and their family members had no grudge against Shyam Singh and others regarding the occurrence dated 19.11.2008.

37. It is reiterated that it was Shyam Singh, who had fired at three persons, namely Bhagwan Dass, Parkash and Rajesh Devi. It is not the case of the prosecution that either Suresh Kumar or Pardeep Soni and Kapil Soni were armed with any lethal weapon. All the three are not connected with the crime.

38. The prosecution has proved its case against appellant Shyam Singh beyond reasonable doubt. However, the prosecution has failed to prove its case against appellants Suresh Kumar, Pardeep Soni and Kapil Soni beyond reasonable doubt.

39. Accordingly, CRA-D-568-DB of 2011 qua Shyam Singh is dismissed. His conviction and sentences are upheld. CRA-D-568-DB of 2011 qua Suresh Kumar is allowed. The judgment dated 07.05.2011 and the order dated 14.05.2011 qua appellant Suresh Kumar are set aside. Appellant Suresh Kumar is acquitted of the charges framed against him. He is in custody. He be released forthwith. The Registry is directed to prepare his release warrants.

40. CRA-D-592-DB of 2011 is allowed. The judgment dated 07.05.2011 and the order dated 14.05.2011 qua appellants Pardeep Soni and Kapil Soni are set aside. They are acquitted of the charges framed against them. They are in custody. They be released forthwith.

(RAJIV SHARMA)
JUDGE

February 26, 2019
ndj

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No