

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-1585-DB-2013

Jagpreet Singh @ Preet

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-118-DB-2014

Jaswinder Singh @ Prince

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-D-331-DB-2014

Sandeep Choudhary and others

... Appellants

Versus

State of Haryana

... Respondent

Reserved on : 18.03.2019
Date of decision : 27.03.2019

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Bijender Dhankhar, Advocate for appellant No.1-
Sandeep Chaudhary in CRA-D-331-DB-2014 and
for appellant-Jagpreet Singh in CRA-D-1585-DB-2013.

Mr. Munish Behl, Advocate
for appellant No.2-Mohit Kumar in CRA-D-331-DB-2014.

Mr.Atul Lakhanpal, Senior Advocate with
Mr. Arvind Pal Singh, Advocate for appellant no.3-
Rahul Sharma in CRA-D-331-DB-2014 and
for appellant Jaswinder Singh @ Prince
in CRA-D-118-DB-2014.

Ms.Kiran Verma, Legal Aid Counsel,
for appellant No.4- Tejinder Singh in CRA-D-331-DB-2014.

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

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid appeals, therefore these are taken up together and disposed of by a
common judgment.

2. These three appeals are instituted against the judgment and
order dated 16.11.2013 rendered by the Additional Sessions Judge, Ambala
in Sessions Case no.13 of 2011 whereby the appellants, who were charged
with and tried for offences punishable under Sections 148, 302 read with
Section 149 of the Indian Penal Code (in short 'IPC'), have been convicted
and sentenced as under:-

Under Section 302/149 IPC	To undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo simple imprisonment for six months.
Section 148 IPC	To undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- each and in default of payment of fine, to further undergo simple imprisonment for two months.

3. The case of the prosecution in a nutshell is that on 09.02.2011,
Pardeep Kumar moved a complaint before the SHO, Police Station Mahesh
Nagar, Ambala to the effect that he was resident of village Babyal. His son
namely Surya Partap @ Kala along with his friend were going towards their
house by passing through Government Girls High School, Babyal. In the

meanwhile, Jagpreet Singh @ Preet, Jaswinder, Sandeep Chauhan, Pardeep and others attacked Surya Partap with *lathis*, *gandasi* and rods with intention to kill him. Surya Partap became unconscious. He was shifted to PGI, Chandigarh. Surya Parkash died in the PGI. Post-mortem was conducted. Investigation was completed. Challan was put up after completing all the codal formalities.

3. Prosecution examined a number of witnesses. Statements of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. The appellants were convicted and sentenced as noticed hereinabove. Hence these appeals.

4. Learned counsel appearing for the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the judgment dated 16.11.2013.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-6 Dr.Parijat along with Dr.K.S.Bal and Dr. Ashok Kumar had conducted the post-mortem examination on the dead body of Surya Partap and noticed the following injuries:-

“1. Stitched wound on right side of abdomen lateral to umbilicus 13 cm with ten stitches. On opening the wound piece of skull found in sub-cutaneous space.

2. Small abrasion on both knees.

3. Bluish reddish contusion over left thigh laterally.

4. Bluish reddish contusion over left arm.

5. *Sutured wound over left parietal region with three stitches.*
6. *Sutured wound over left occipito parietal region with five stitches.*
7. *Stapled wound was present over mid line and right side of scalp extending from mid frontal region going backwards upto occipital region then forward upto pre-auricular region (C-shaped)."*

The cause of death was due to shock and haemorrhage as a result of head injury which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. Time elapsed between injuries and death was within 80 hours and between death and post-mortem examination was within 24 hours.

8. PW-11 Dr.Sameer Futane deposed that on 09.02.2011 he was posted as Senior Resident, Department of Neuro Surgery, PGIMER, Chandigarh. On that day, Surya Partap was admitted in the emergency Surgical OPD with the alleged history of assault at 08.00 P.M. Patient was unconscious. A sutured lacerated wound was present over the left parietal region and left frontal region. The C.T. Scan of head revealed right fronto temporo parietal acute sub-dural haematoma with midline shift. The patient expired at 11.00 P.M. on 12.02.2011. In his cross-examination, he deposed that the patient was brought to PGI, Chandigarh by one Mr.Rahul brother of the patient.

9. PW-13 Dr.M.K.Tewari deposed that the patient Surya Pratap was brought by Rahul, his brother, to emergency on 09.02.2011 at 11.04 P.M. with history of assault on 09.02.2011 at 08.00 P.M. The patient was unconscious. C.T. Scan was done. It was decided to operate the patient. The operation was undertaken by Dr. Alok C. Sarda on 10.02.2011. He

performed right fronto-temporo-parietal craniotomy and evacuation of acute sub-dural haematoma with loose duroplasty and the bone flap was kept in abdomen. A tracheostomy was performed on the same day. The patient died on 12.02.2011. He admitted in his cross-examination that at Point A in Ex.D1, initially the history was recorded as 'RSA' (roadside accident), thereafter it was cut and replaced with word 'assault'.

10. PW-7 Sham Singh deposed that he was working as Salesman in Co-operative Society Babyal. Deceased Surya Partap was his brother's son . On 09.02.2011 at about 09.30 P.M. he came to know through telephone that Surya Partap @ Kala had suffered injuries at the hands of 6-7 boys. Surya Partap @ Kala was taken to the Government Hospital, Ambala Cantt. He reached the Government Hospital. He came to know that Surya Partap @ Kala was referred to the PGI, Chandigarh.

11. PW-8 Pardeep Kumar is the father of the deceased. He deposed that accused Jaswinder Singh gave a *gandasi* blow on the head of his son Surya Partap. Accused Pardeep Kumar gave iron rod blow on the head of his son. Accused Mohit gave iron blow on the head of his son. Sandeep Chaudhary gave iron rod blow in the abdomen of his son. Accused Jagpreet Singh @ Preet gave a *danda* (base ball stick) blow on the knee of his son. Accused Tejinder Singh @ Rano gave a *danda* blow on the thigh of his son. Rahul Sharma gave a *danda* blow on the arm of his son. Accused Satwinder @ Lucky gave a *danda* blow on the back of his son. After taking meals, he had gone for strolling. When he reached near the chowk, he saw all the aforesaid persons causing injuries to his son Surya Partap. On seeing him, they ran away. He identified the accused in the Court. He shifted his son Surya Partap to the Civil Hospital, Ambala Cantonment. Thereafter his son

was referred to PGI, Chandigarh. He moved application Ex.P3 before the police. He came back to his home and went to Chandigarh. Surya Partap died on the intervening night of 12/13.02.2011. He again met the police on 14.02.2011. He handed over to the police one jeans having blood stains worn by his son Surya Partap and a cotton *khes* having blood stains. He identified the jeans in the Court. In his cross-examination, he deposed that in year 2007 his son and accused were studying together in C.R. Dass School, Babyal. During that period they had some altercations which created the enmity and same was the cause for occurrence. After the occurrence he did not accompany his son to the hospital as he had gone to his house to arrange money. Before he reached the hospital, his son was taken to PGI Chandigarh. He knew the accused as they were residents of the same village and colony. Police had reached the spot but nobody came forward to be cited as witness. His house was situated at a distance of 400 meters from the place of occurrence.

12. PW-9 Gaurav Rana deposed that on 09.02.2011 at about 09.00 P.M. he along with Surya Partap was going from market of Babyal towards their houses. In the meantime some boys had attacked upon them from back side. He ran away. When he looked back, he saw that those boys were giving beatings to Surya Partap. He raised hue and cry. Father of Surya Partap and Sanjay Partap came to the spot. He saw that accused Pardeep who was holding a rod, gave its blow on the head of Surya Partap on left side. Accused Allu, who was holding rod in his hand, inflicted its blow on the back side of Surya Partap. Accused Jaswinder who was holding *gandasi* in his hand, gave its blow on the head of Surya Partap. Accused Jagpreet Singh, who was holding bat of baseball, inflicted its blow on the knees of

Surya Partap. Accused Sandeep, who was holding rod in his hand, gave its blow on the abdomen of Surya Partap. Accused Rano, who was holding a *danda*, gave its blow on left thigh of Surya Partap. Accused Rahul, who was holding a *danda* in his hand, gave its blow on the upper part of left arm of Surya Partap. Accused Lucky, who was holding a *danda*, inflicted its blow on the back of Surya Partap. Accused Rano is also known as Tejinder Singh. On seeing Pardeep and Sanjay Partap, the accused ran away from the spot. Thereafter Surya Partap was shifted to the Civil Hospital, Ambala Cantonment in an auto rickshaw belonging to Mam Chand. Thereafter Surya Partap was referred to the PGI, Chandigarh. Surya Partap died in the intervening night of 13/14.02.2011. In his cross-examination he deposed that they were coming back from the market to their houses. His house was situated in different mohalla other than the mohalla of Surya Partap deceased. The assailants had attacked them with *gandasi*, rods, *dandas* and baseball bats. They attacked them from behind. He did not receive any blow with *gandasi*, rods, *dandas*, or baseball bats. Volunteered the attack was made only on Surya Partap. The accused had also tried to catch him. All the accused chased him upto two paces. He ran upto 10-12 feet. He stopped and saw behind. He made noise. Accused were giving beatings to Surya Partap. Volunteered accused attacked Surya Partap only for one minute. He admitted that in the month of February, the sun sets at around 06.30 P.M. Sanjay Partap came at the spot after hearing his hue and cry. He witnessed the occurrence. Sanjay Partap reached the spot within one minute of the occurrence. Surya Partap was taken to the hospital by him, his uncle whose name he did not know and one auto rickshaw driver namely Mam Chand. He, his uncle, Sanjay Partap and Mam Chand had lifted Surya Partap from

the spot and put in the auto rickshaw. At that time blood was oozing out profusely from the body of Surya Partap. Immediately on reaching the hospital, treatment of Surya Partap was started by the doctor. After giving first aid and after 10-12 minutes the doctor referred Surya Partap to PGI Chandigarh. He along with uncle of Surya Partap took Surya Partap to PGI Chandigarh immediately in an ambulance. He also admitted that he and Sanjay Partap were facing trial in case under Section 302 of the Indian Penal Code. In his cross-examination by learned counsel appearing on behalf of accused Mohit, he deposed that Surya Partap was got admitted in PGI before 12.00 night on that date. He did not narrate the history of the case to the doctor concerned at the time of admission of Surya Partap. He remained in PGI Chandigarh till father of Surya Partap had not arrived. In his cross-examination by learned counsel appearing on behalf of accused Rahul, he deposed that on the fateful day, he came out from his house at around 06.00 P.M. He could not tell the exact time when Surya Partap had met him on that date. On the day of occurrence, they were coming from Mahesh Nagar side and proceeding towards their house. He and Surya Partap were going side by side. In his cross-examination by learned counsel on behalf of accused Tejinder Singh, Sandeep and Jagpreet Singh, he deposed that he was facing trial in case under Section 302 of the IPC.

13. PW-10 Sanjay Partap deposed that he was sitting at the chaff cutting machine situated in the main street of Babyal on 09.02.2011. He heard the voice of Gaurav Rana. He went there. He had seen in the electricity light that Preet son of Gurpal, Allu son of Pappal, Gollu alias Pardeep son of Om Parkash, Sandeep Chaudhary son of Rajinder, Jaswinder alias Lucky son of Rajesh alias Lambu, Rahul Sharma, Tejinder

Singh alia Rano were giving beatings with *gandasi*, rod and *dandas* to his brother Surya Partap. Jaswinder gave a *gandasi* blow to his brother Surya Partap on his head. Pardeep alias Gollu gave a rod blow to his brother Surya Partap on left side of his head. Allu gave a rod blow to his brother Surya Partap on the back side of his head. Jagpreet Singh alias Preet gave baseball *danda* blow to his brother Surya Partap on his knee. Sandeep Chaudhary gave rod blow to Surya Partap in his abdomen. Tejinder Singh alias Rano gave a *danda* blow to Surya Partap on his left thigh. Rahul Sharma gave a *danda* blow to Surya Partap on the left upper arm. Lucky gave a *danda* blow to Surya Partap on his back. In the meantime his father Pardeep Kumar reached at the spot. On seeing him, accused ran away from the spot. In his cross-examination, he deposed that they were 2/3 persons sitting at the chaff cutting machine on the date of occurrence. They were Bharpur Singh Rana, the owner of chaff cutting machine and one Bodda and third was himself. No other person except them was there. He did not know whether Bharpur Singh Rana and Bodda had heard the voice of Gaurav Rana or not. Volunteered Bharpur Singh Rana and Budda were busy in their work at that time and doing their account work. When his father had reached the spot, the assailants ran away. He did not try to save his brother from the assailants. The occurrence lasted for 1½ minutes. Gaurav Rana was with Surya Partap at the time of occurrence. The assailants did not cause any injury to Gaurav Rana. Gaurav Rana also did not try to save his brother. After the assailants ran away from the spot, he picked up his brother Surya Partap. The assailants had given injuries to his brother Surya Partap in his presence. When he reached the spot, the assailants were giving beatings to his brother Surya Partap. The *gandasi* blow was given from the sharp side

on the head of his brother Surya Partap. He and Gaurav Rana picked up Surya Partap. In his cross-examination by learned counsel on behalf of accused Jaswinder Singh, he admitted that there was enmity going on in between Gaurav Rana and the accused persons. There were three criminal cases pending against him. One shopkeeper by the name of Jai, who was running kiriyana shop, Survesh of Shiv Shakti Communications and one more adjoining shopkeeper namely Ram were present at the time of occurrence. None of them tried to save his brother. The auto rickshaw reached at the spot within 2-3 minutes after the incident. In his cross-examination by learned counsel on behalf of accused Rahul and Mohit, he deposed that there was only one school near the place of occurrence known as Kanya Senior Secondary School. About 30/40 persons had gathered at the spot. It was a busy place. Surya Partap was taken to Civil Hospital, Ambala Cantonment via Mahesh Nagar side. In his cross-examination by learned counsel on behalf of accused Jagpreet Singh, he deposed that accused Jagpreet Singh was not present on the spot at the time of occurrence. Some other person known as Preet was present and involved in the occurrence. He was further examined by the learned Public Prosecutor. He testified that he could not tell exactly as to whether accused Jagpreet Singh alias Preet had caused injuries to his brother Surya Partap on that date or not. Accused Jagpreet Singh alias Preet resembles the person who was involved in the occurrence but he could not say for certainty that accused Jagpreet Singh alias Preet present in the Court was that person who had caused injuries to his brother. He was declared hostile to this extent. In his cross-examination by the learned Public Prosecutor he deposed that he had given the statement before the Court on 18.12.2012 in which he had stated

that Jagpreet Singh alias Preet had given baseball *danda* blow to his brother Surya Partap on his knee. On 18.12.2012 he did not identify accused Jagpreet Singh alias Preet present in Court. Volunteered accused Jagpreet Singh alias Preet present in Court was not the same person who had inflicted injuries to his brother Surya Partap on the day of occurrence. He admitted that on 10.02.2011 he had made statement Ex.P16 before the police. He admitted that he got recorded in his statement Ex.P16 that Jagpreet Singh alias Preet had given baseball *danda* on the knee of his brother Surya Partap. In his cross-examination by the learned counsel on behalf of Jaswinder Singh alias Prince, Sandeep and Tejinder Singh, he deposed that Ex.P16 was not the statement which he had made to the police. In his cross-examination by learned counsel on behalf of accused Rahul and Mohit, he deposed that he and Gaurav Rana were in custody in a murder case.

14. PW-12 Mam Chand deposed that on 02.09.2011 he started from Mahesh Nagar to Babyal after boarding passengers in his auto rickshaw. He heard the noise of a quarrel. He took Sant Ram in auto and proceeded towards his house. The quarrel took place near girls college. He saw that a boy was being pushed down. Before him, Pardeep and Sanjay had reached the spot. After seeing them, all the boys started fleeing on the spot. He identified some boys. They were Jaswinder, Mohit, Pardeep, Sandeep, Jatinder, Rahul and Satwinder. Jaswinder was having a *gandasi* in his hand. Mohit was having rod in his hand. Rahul was having *danda* in his hand. Tejinder Singh was having *danda* in his hand. Satwinder alias Lucky was having *danda* in his hand. All those accused were giving threat to them and went away by stating that today they have been saved and would not be left

in future. They took Surya Partap to Civil Hospital, Ambala Cantt. Surya Partap had suffered severe injuries. He was referred to PGI, Chandigarh. He identified accused Mohit, Sandeep Chaudhary, Tejinder Singh, Jaswinder and Rahul in the Court. Since he failed to identify Jagpreet Singh alias Preet in the Court, he was cross-examined by the learned Public Prosecutor. In his cross-examination he deposed that he did not state in the statement that Jagpreet Singh alias Preet on that day along with accused was beating Surya Partap. He was confronted with statement Ex.P17, portion A to A where it is so recorded. He did not get it recorded before the police that at that time accused Jagpreet Singh alias Preet was having *danda* of base ball in his hand. He was confronted with statement Ex.P17 portion B to B where it is so recorded. He was cross-examined by learned counsel on behalf of accused Tejinder Singh and Sandeep. He deposed that he belonged to Rajput community. Surya Partap also belonged to Rajput community. Surya Partap was not related to him. The place where they heard the noise was a straight road. In his further cross-examination, he deposed that he did not know as to how many injuries were received by Surya Partap on that day. In his cross-examination by learned counsel on behalf of accused Jaswinder, he deposed that he had proceeded from Mahesh Nagar to Babyal at 08.30 in the night. The distance from there to Babyal was 2/2.25 kilometers. He had reached Babyal at about 09.00 in the night. Gaurav Rana accompanied them in the auto for taking Surya Partap in the hospital. He further deposed that out of 40-50 persons who were present at the spot, nobody tried to intervene. Volunteered they kept standing on a side. Police never brought him to the spot. He was not called at the spot. He further deposed that they reached hospital within 20-25 minutes.

15. PW-14 ASI Balkar Singh deposed that he reached the spot of occurrence. FIR Ex.P4 was registered. He inspected the spot. He reached the PGI Chandigarh for recording of statement of injured on 12.02.2011. On 13.02.2011 an information was received from PGI that the injured had died. He went to the PGI Chandigarh again. Police arrested the accused. Firstly, accused Pardeep was interrogated. Accused Jaswinder was interrogated. Accused Jaswinder made disclosure statement. Accused Mohit, Jagpreet Singh, Tejinder Singh @ Rano, Rahul Sharma and Sandeep Chaudhary were interrogated separately. They made disclosure statements vide Ex.P27 to Ex.P31. They got the area demarcated. I.O. prepared demarcation report. Accused got the weapon of offences recovered. These were taken into possession.

16. PW-15 S.I.Lakhmi Chand deposed that he along with ASI Balkar Singh, ESI Baljinder Singh reached the PGI, Chandigarh. He collect death summary alongwith ruqa Ex.P19.

17. PW-16 DSP Vijender Singh deposed that on 13.02.2011 he along with SI Lakhmi Chand, ASI Balkar Singh, ASI Dharam Pal and other staff had gone to search for the accused persons. They raided in the area of Tangri Bandh. They arrested the accused Jaswinder, Jagpreet Singh, Mohit @ Allu, Pardeep Kumar (juvenile). Thereafter they reached Chand Pura Ghat, Babyal. He arrested Rahul, Sandeep Chaudhary and Tejinder Singh @ Rano. He identified the accused in the Court. They suffered disclosure statements. The weapons of offence were got recovered by them.

18. The FSL report is Ex.P7. Exhibit-1a (*khes*) was stained with blood stains. Blood was detected in Exhibit-1b (*jeans*). Traces of blood were too small for serological analysis on Exhibit-2 (*gandasi*).

19. The precise case of the prosecution is that PW-9 Gaurav Rana and deceased Surya Partap were coming back to their house. They were attacked by the assailants with *gandasi*, rod, baseball bat. Surya Partap received serious injuries. He was taken to the Civil Hospital. Thereafter he was referred to the PGI, Chandigarh. He had died. Accused were arrested. They made disclosure statements on the basis of which weapons of offence were recovered from them.

20. According to PW-6 Dr.Parijat, the cause of death was due to shock and hemorrhage as a result of head injury which was sufficient to cause death in ordinary course of nature. All the injuries were ante-mortem in nature. Time elapsed between injuries and death was within 80 hours and between death and post-mortem examination was within 24 hours. He admitted in his cross-examination that except injuries No.5,6, and 7 which were on head, all other injuries were on the non vital parts of the body. PW-11 Dr.Sameer Futane has also deposed that the deceased was unconscious. C.T. Scan was carried out. Patient was brought to the PGI by one Rahul, brother of the patient. PW-13 Dr.M.K.Tewari has deposed that the patient was unconscious when he was brought to Emergency on 09.02.2011 at 11.04 P.M. with the alleged history of assault. Operation was conducted. Patient was treated with medications and ventilation. The patient died on 12.02.2011. He has categorically deposed that it is very unlikely that roadside accident will alone have acute sub-dural haematoma. It is usually associated with injuries on other parts of the body. He has admitted that in Ex.D1 initially the history was recorded as roadside accident. The medical evidence is duly corroborated by PW-8 Pardeep Kumar, PW-9 Gaurav Rana, PW-10 Sanjay Partap and PW-12 Mam Chand. They had seen the

appellants inflicting injuries on Surya Partap. The injured was taken to hospital. He was referred to the PGI, Chandigarh where he died. Eye witnesses PW-8 Pardeep Kumar, PW-9 Gaurav Rana and PW-10 Sanjay Partap and PW-12 Mam Chand had seen the appellants giving beatings to the deceased with their weapons. The appellants have suffered disclosure statements. Weapons of offence were got recovered by them. The blood was found on jeans and *khes* (blanket). Though blood was not detected on the *gandasi*, but it has come in the statements of witnesses that it was used as weapon of offence. It has come on the record except at one place that it was a case of assault and not a roadside accident. Injuries were received by the deceased with weapons used by the appellants.

21. Learned counsel for the appellants have vehemently argued that it is a case of false implication. The fact of matter is that incident has been seen by four witnesses namely Pardeep Kumar PW-8, Gaurav Rana PW-9, Sanjay Partap PW-10 and Mam Chand PW-12. Even if the names of persons are not mentioned in FIR but it revealed during the course of investigation, still they can be tried. It is difficult for the person to remember so many names when the incident had happened suddenly. The endeavor of person is to save the life of the person.

22. Their Lordships of the Hon'ble Supreme Court in ***Mukesh and another vs. State for NCT of Delhi and others, 2017 CrL.L.J. 4365*** have held that absence of names of accused persons in FIR cannot be a ground to raise doubts about prosecution case. Their Lordships of the Hon'ble Supreme Court have held as under:-

“55. As far as the argument that the FIR does not contain the names of all the accused persons is concerned, it has to be kept in mind that it is settled law

that FIR is not an encyclopedia of facts and it is not expected from a victim to give details of the incident either in the FIR or in the brief history given to the doctors. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case; it may be sufficient if the broad facts of the prosecution case alone appear. If any overt act is attributed to a particular accused among the assailants, it must be given greater assurance. In this context, reference to certain authorities would be fruitful.

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59. While dealing with a similar issue in ***Animireddy Venkata Ramana v. Public Prosecutor***¹⁰, the Court held as under:

“13. ... While considering the effect of some omissions in the first information report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well-known principles of caution.””

Thus, apart from other aspects what is required to be scrutinized is that there is no attempt for false implication, application of principle of caution and evaluation of the testimonies of the witnesses as regards their trustworthiness.

60. In view of the aforesaid settled position of law, we are not disposed to accept the contention that omission in the first statement of the informant is fatal to the case. We are disposed to think so, for the omission has to be considered in the backdrop of the entire factual

scenario, the materials brought on record and objective weighing of the circumstances. The impact of the omission, as is discernible from the authorities, has to be adjudged in the totality of the circumstances and the veracity of the evidence. The involvement of the accused persons cannot be determined solely on the basis of what has been mentioned in the FIR.

61. In his statement recorded in the early hours of 17.12.2012, PW-1 stated about going to the Select City Walk Mall, Saket alongwith the prosecutrix and boarding the bus. He has also stated about the presence of four persons sitting in the cabin of the bus and two boys sitting behind the cabin and clearly stated about the overt act. He has broadly made reference to the accused persons and also to the overt acts. There are no indications of fabrication in Ex.PW-1/A.

62. The victim and PW-1 were thrown out of the bus and after some time they were admitted to the hospital. Both the injuries on PW-1's person and the gruesome acts against the victim must have put him in a traumatic condition and it would not have been possible for him to recall and narrate the entire incident to the police at one instance. It cannot be said that merely because the names of the accused persons are not mentioned in the FIR, it raises serious doubts about the prosecution case."

23. It is a fact that the Pardeep Kumar had not gone to the hospital but it will not make any difference in the case of the prosecution. The fact of the matter is that the deceased was taken to the PGI, Chandigarh where he succumbed to his injuries. The cause of death was ante-mortem injuries particularly on the head. This act was premeditated act. The accused had come fully prepared to give beatings to the deceased. They were armed with weapons. They were present on the spot with common object to give

injuries to the deceased by forming unlawful assembly. Now as far as the identification of the accused is concerned, they were known to the witnesses. Statements of interested witnesses can be relied upon if these inspire confidence. FIR is not encyclopedia. It only set the law in motion.

24. Accordingly there is not merit in the appeals and same are dismissed.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

March 27, 2019.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No