

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

(1) CRA-D-1441-DB of 2015

Jatinder Singh alias Jeji and others

.... Appellants

Versus

State of Punjab

..... Respondent

(2) CRA-D-1523-DB of 2015 (O&M)

Gaurav Patyal alias Lucky and another

.... Appellants

Versus

State of Punjab

..... Respondent

**Reserved on : 18.07.2019
Date of decision : 22.07.2019**

**CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.K.S.Sidhu, Sr. Advocate, with
Mr. Dushyant Sarvesh, Advocate,
for the appellants in CRA-D-1441-DB of 2015.

Mr. Deepinder Singh Brar, Advocate,
for appellant No.3-Gursimran Singh @ Shonki
in CRA-D-1441-DB of 2015.

Mr. R.S. Cheema, Senior Advocate, with
Mr. Vijay Kumar Goyal, Advocate,
for appellant No.2-Varinder Singh @ Billu
in CRA-D-1523-DB of 2015.

Mr. A.D.S. Sukhija, Advocate,
for appellant No.1-Gaurav Patyal @ Lucky,
in CRA-D-1523-DB of 2015.

Mr. Suveer Sheokand, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, i.e. CRA-D-1441-DB of 2015 and CRA-D-1523-DB of 2015, therefore, these are taken up together and being disposed of by a common judgment.
2. Both these appeals are instituted against the judgment and order dated 31.08.2015, rendered by learned Additional Sessions Judge, Sahibzada Ajit Singh Nagar (Mohali), in Sessions Case No. RT-4 dated 27.10.2012/06.04.2015, whereby appellants Jatinder Singh alias Jeji, Satnam Singh alias Satta, Gursimran Singh alias Shonki, Randhir Singh, Gaurav Patyal alias Lucky and Varinder Singh alias Billu, along with co-accused Navjot Singh, were charged with and tried for the offences punishable under Sections 148, 302, 341, 427/149 IPC. The appellants were convicted thereunder and sentenced as under :-

<i>Name of appellant</i>	<i>Offence</i>	<i>Sentence imposed</i>	<i>In default of payment of fine</i>
Jatinder Singh alias Jeji	148 IPC	Rigorous imprisonment for three years	--
	302 IPC	Rigorous imprisonment for life and fine of ₹ 20,000/-.	Further rigorous imprisonment for six months.
	341 IPC	Rigorous imprisonment for one month.	--
	427/149 IPC	Rigorous imprisonment for one year.	--

<i>Name of appellant</i>	<i>Offence</i>	<i>Sentence imposed</i>	<i>In default of payment of fine</i>
Satnam Singh alias Satta	148 IPC	Rigorous imprisonment for three years	--
	302 IPC	Rigorous imprisonment for life and fine of ₹ 20,000/-.	Further rigorous imprisonment for six months.
	341 IPC	Rigorous imprisonment for one month.	--
	427/149 IPC	Rigorous imprisonment for one year.	--
Randhir Singh	148 IPC	Rigorous imprisonment for three years	--
	302 IPC	Rigorous imprisonment for life and fine of ₹ 20,000/-.	Further rigorous imprisonment for six months.
	341 IPC	Rigorous imprisonment for one month.	--
	427/149 IPC	Rigorous imprisonment for one year.	--
Gursimran Singh alias Shonki	148 IPC	Rigorous imprisonment for three years	--
	302 IPC	Rigorous imprisonment for life and fine of ₹ 20,000/-.	Further rigorous imprisonment for six months.
	341 IPC	Rigorous imprisonment for one month.	--
	427/149 IPC	Rigorous imprisonment for one year.	--
Varinder Singh alias Billu	148 IPC	Rigorous imprisonment for three years	--
	302/149 IPC	Rigorous imprisonment for life and fine of ₹ 20,000/-.	Further rigorous imprisonment for six months.
	341 IPC	Rigorous imprisonment for one month.	--
	427 IPC	Rigorous imprisonment for one year.	--

<i>Name of appellant</i>	<i>Offence</i>	<i>Sentence imposed</i>	<i>In default of payment of fine</i>
Gaurav Patyal alias Lucky	148 IPC	Rigorous imprisonment for three years	--
	302/149 IPC	Rigorous imprisonment for life and fine of ₹ 20,000/-.	Further rigorous imprisonment for six months.
	341 IPC	Rigorous imprisonment for one month.	--
	427 IPC	Rigorous imprisonment for one year.	--

All the substantive sentences of imprisonment were ordered to run concurrently.

3. Co-accused Navjot Singh was acquitted of the charges framed against him.

4. The case of the prosecution, in a nutshell, is that on 22.05.2012, Inspector Dharampal SHO along with ASI Jagir Singh and some other police officials was present at the spot. Complainant Rajinder Singh (PW.1) met him. He made statement that he was resident of village Bhua Kheri, Police Station Badali Alla Singh, District Fatehgarh Sahib. In the year 2010, his brother Saudagar Singh along with Maninder Singh and Manpreet Singh had a quarrel with Jatinder Singh and Satnam Singh residents of Landran. In this regard, Gursimran Singh son of Talwinder Singh, resident of Landran, got registered FIR No.203 dated 10.08.2010 under Sections 307, 324, 341, 148, 149 and 120-B IPC at Police Station Kharar, against Saudagar Singh and others. On 22.05.2012, there was hearing of the said case in the court of learned Additional Sessions Judge, Mohali. Complainant along with his

brother Saudagar Singh, Manpreet Singh, Chattar Singh, Maninder Singh and Kulwant Singh came to Mohali to attend hearing of the case. However, his brother Saudagar Singh developed pain in his leg. Saudagar Singh asked his counsel Shri Barinder Singh, Advocate, to file an application for exemption of his personal appearance from the court. The complainant along with Kulwant Singh took Saudagar Singh to IVY Hospital, Sector 71, Mohali, in his Bolero vehicle No. PB-11C-3628. In the meantime, Saudagar Singh received a phone call from his counsel to the effect that he should immediately reach the Court, since the Judge had not accepted the application for exemption of his personal appearance. Saudagar Singh along with complainant and Kulwant Singh was coming to Mohali Court in the Bolero vehicle. When they reached near Gurudwara Sacha Dhan Sahib and turned towards Mohali Court at about 12.45 PM, then a Swift car bearing registration No. PB-65H-2929 suddenly came in front of their vehicle. Randhir Singh alias Kala resident of Landran was driving the car. The car stopped in front of their vehicle. Gursimran Singh son of Talwinder Singh armed with *kulhari* (axe), Jatinder Singh alias Jeji son of Ranbir Singh armed with axe, Satnam Singh alias Satta son of Ranbir Singh armed with *kirpan* (sword) and Randhir Singh alias Kala son of Daljit Singh armed with sword, alighted from the car. They were accompanied by Billu and Lucky residents of Khuda Ali Sher armed with *Binde* (wooden handles of spade). They were already standing there. They raised lalkara exhorting that a lesson be taught to Saudagar Singh and his friends for coming to the Court. Billu and Lucky broke window panes of their Bolero vehicle with their wooden handles of spade. Jatinder Singh and Gursimran Singh opened the

door of their Bolero vehicle. They dragged Saudagar Singh out of the vehicle. Jatinder Singh gave two axe blows, hitting on his left ear and left side of neck below the left ear. Gursimran Singh gave two axe blows hitting on left side of his chest and upper side of chest. Randhir Singh gave sword blow on his left bicep. Satnam Singh gave two sword blows hitting on his right shoulder and right side of chest. In the presence of the complainant and others, Saudagar Singh died at the spot due to causing of injuries with sharp edge weapon. The accused were also accompanied by 6-7 other unidentified persons. The accused ran away from the spot. FIR was registered. Investigation was conducted. Blood soaked soil and broken glass pieces of the vehicle were lifted from the spot. Bolero vehicle of the deceased was also taken into possession. Site plan was prepared. Dead body was got identified. It was sent for post mortem examination. The clothes of the deceased handed over by the doctor were taken into possession and sent to Forensic Science Laboratory. Accused were arrested. Recoveries were effected from them. The investigation was completed and challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were not present at the spot.

6. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

7. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the

learned Court below.

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

9. PW.3 Dr. Parwinder Singh Bhatti along with Dr. H.S. Ghuman had conducted the post mortem examination on the body of Saudagar Singh. They noticed following injuries on the person of the deceased :-

- (1) Incised wound 11 cm x 5 cm x 7.5 cm (deep) present over the left side of neck, 4 cm below the left ear. On exploration, the underlined vessels and nerves were severed. The cervical vertebrae were fractured and level of 4th and 5th cervical vertebrae and the spinal cord and the level of 4th and 5th vertebrae was also severed completely.
- (2) Incised wound 1 cm x 0.5 cm x 0.5 cm present over the left ear lobe.
- (3) Incised wound 11 cm x 4 cm x 4 cm present over the left side of upper chest 6 cm below the axilla.
- (4) Reddish brown colour contusion V shaped 4 cm x 4 cm present over the outer aspect of left shoulder.
- (5) Lacerated wound 1 cm x 0.5 cm x 0.5 cm present over the outer aspect of right shoulder. On exploration NAD. X-ray was also conducted to rule out any foreign body.
- (6) Reddish brown colour contusion 8 cm x 1 cm present over the front of the chest. 5 cm from the right nipple.
- (7) Reddish brown colour contusion 12 cm x 0.5 cm obliquely placed 11 cm below the right nipple.
- (8) Reddish brown colour contusion 14 cm x 0.5 cm present over the inner aspect of right thigh.

The cause of death in the opinion of the Board of Doctors was the combined effect of shock due to haemorrhage and fracture dislocation of cervical

vertebrae and injury to spinal cord. The injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature. Time between injuries and death was immediate and time between death and post mortem examination was about 21 to 22 hours as per police papers. In his cross-examination, he denied the suggestion that the injuries could be caused by road side accident.

10. PW.1 Rajinder Singh deposed that his elder brother was married. In the year 2010, there was a dispute of Saudagar Singh, Maninder Singh and Manpreet Singh on one side with Jatinder Singh and Satnam Singh on the other side. The second party i.e. Jatinder Singh side had got registered an FIR against his brother, Manpreet Singh and Maninder Singh under Section 307 IPC. The case was pending in the court of learned Additional Sessions Judge, Mohali. It was fixed for 22.05.2012. On 22.05.2012, he along with his brother Saudagar Singh, Manpreet Singh, Kulwant Singh, Chattar Singh and Maninder Singh came to appear in the court. They were standing outside the court. His brother Saudagar Singh appeared in the court. His brother Saudagar Singh developed pain in his leg. He instructed his counsel Shri Barinder Singh to move an application for exemption from personal appearance of his brother Saudagar Singh. Saudagar Singh was taken to IVY Hospital. When they reached IVY Hospital, Sector 71, Mohali, his brother Saudagar Singh received telephonic call from his counsel to immediately come to the court. They started from IVY Hospital for the court at SAS Nagar, Mohali. When they turned their vehicle Bolero bearing registration No. PB-11AS-3628 towards Sachadhan Gurdwara Sahib at about 12.30/12.45 PM, then immediately Randhir Singh

intercepted them with the help of his Swift car bearing registration No. PB-65H-2929. Jatinder Singh alias Jeji armed with axe, Gursimran Singh armed with axe, Satnam Singh armed with *kirpan* and Randhir Singh armed with *kirpan* came down from the car. Lucky and Billu sons of Amar Singh armed with wooden sticks and Navjot Singh armed with wooden *danda* came there. They raised lalkara that Saudagar Singh should not be spared. Billu, Lucky and Navjot started smashing the window panes of their vehicle. Jatinder Singh and Gursimran Singh dragged his brother outside the Bolero jeep. Jatinder Singh gave axe blow on the left ear of his brother Saudagar Singh. Jatinder Singh gave second axe blow on the neck of his brother Saudagar Singh on left side. Gursimran Singh gave axe blows which struck on chest of his brother Saudagar Singh. Randhir Singh gave *kirpan* blow which hit on left shoulder of his brother Saudagar Singh. Satnam Singh gave *kirpan* blows on left shoulder and right side of chest of his brother. They raised alarm. Maninder Singh and Manpreet Singh also witnessed the occurrence. Accused ran away from the spot. Police came at the spot. He identified the dead body of his brother. He was called to the police station. In his cross-examination, he deposed that there was litigation between his brother Saudagar Singh and witnesses on one hand and the accused party. The case was fixed for 22.05.2012. Maninder Singh, Manpreet Singh and Saudagar Singh were accused in the case. Two persons namely Hardeep Singh and Sunny had taken Saudagar Singh to Chawla Nursing Home. He did not accompany Hardeep Singh and Sunny at the time when they had taken Saudagar Singh to Chawla Nursing Home. Saudagar Singh was taken to Chawla Nursing Home after 1.00 noon in Bolero. He was sitting with his

brother in the vehicle, while they had come from IVY hospital to the court on 22.05.2012 at about 12.30/12.45 noon. His brother Saudagar Singh was driving the vehicle. The vehicle, which intercepted their vehicle, was being driven by Randhir Singh. Jatinder Singh was sitting on the front seat of the vehicle. Gursimran Singh and Satnam Singh were sitting on the rear seat of the vehicle. Saudagar Singh was dragged from the vehicle. Then he was administered beatings by the accused. He did not rescue his brother from the clutches of the accused. He was surrounded by Lucky, Navjot and Billu from behind and by unidentified persons from front.

11 PW.2 Manpreet Singh corroborated the statement of PW.1 Rajinder Singh regarding the manner in which the accused had inflicted injuries on the body of Saudagar Singh. He had also attributed specific role to the accused in his examination-in-chief. According to him, Billu, Lucky and Navjot along with 5/7 unidentified persons armed with spade handle were already present on the spot. They raised lalkara. They also smashed window panes of the Bolero vehicle. In his cross-examination, he deposed that accused Billu, Lucky and Navjot were the friends of accused Jatinder Singh alias Jeji. FIR No. 203 was lodged at the instance of Gursimran Singh. On 22.05.2012, he along with Maninder Singh and Saudagar Singh had entered inside the Court Complex and remained there. Saudagar Singh had left the Court Complex at 10.30 AM on 22.05.2012. The case was called at about 12.15 or 12.30 noon. The accused firstly took out Saudagar Singh from Balero and dragged him towards the other side of the road. The police had not got identified accused Gaurav Patyal from him. He had never given description of accused Gaurav Patyal to the police. He never gave the

address and parentage of accused Gaurav Patyal to the police. He had also never given description of the person to the police to whom he named Lucky in his statement. He further deposed that he made statement to the police. He had got recorded name of Billu in that statement. Volunteered, Varinder Singh alias Billu was the same person.

12. PW.6 Maninder Singh testified that on 22.05.2012, accused Jatinder Singh opened the door of Bolero from driver side, caught hold of Saudagar Singh and dragged him to the other side of the road. Accused Randhir Singh and Satnam Singh also reached on the other side of the road. Accused Jatinder Singh gave axe blow on the left ear of Saudagar Singh. Accused Jatinder Singh gave second axe blow little below left side of neck. Thereafter, accused Gursimran Singh gave axe blow on the left side of the abdomen of Saudagar Singh. Accused Gursimran Singh gave second axe blow which hit Saudagar Singh on his left side of chest. Randhir Singh accused gave *kirpan* blow on left bicep of Saudagar Singh. Accused Satnam Singh gave *kirpan* blow on right shoulder of Saudagar Singh. One *kirpan* blow was given by accused Satnam Singh on the right side of chest of Saudagar Singh. In his cross-examination, he admitted that he was witness in the FIR registered under Section 307 IPC. They did not get any opportunity to rescue Saudagar Singh when he was being dragged. The occurrence happened in fraction of few moments. Saudagar Singh was taken to Chawla Hospital by Manpreet Singh, Kulwant Singh alias Sunny and Chattar Singh. The police had not got identified accused Gaurav Patyal from him. He had not given description of accused Gaurav Patyal to the police. He did not supply the address and parentage of accused Gaurav Patyal. He

never gave description of the person to the police to whom he named as Lucky in his statement.

13. PW.10 HC Sarwan Singh deposed that he was posted as Investigating Officer in Police Station Mataur on 22.05.2012. Inspector Dharampal handed over to him the inquest papers of deceased Saudagar Singh. He reached Civil Hospital. He got the post mortem conducted. He handed over parcels containing blood stained clothes of the deceased to the Investigating Officer. In his cross-examination, he deposed that the distance between the place of occurrence and police station was half kilometer. He reached the spot at about 1.45 PM.

14. PW.11 Jasmit Singh prepared site plan Ex.P5.

15. PW.13 Inspector Dharampal is the material witness. He recorded statement Rajinder Singh vide Ex.PW.1/A. FIR was registered. He examined the spot and lifted blood stained earth as well as broken pieces of window panes. He prepared inquest papers. The post mortem was got conducted. Accused were arrested. Accused Jatinder Singh made disclosure statement and got recovered blue T-shirt, pant jeans stained with blood and *kulhari* (axe) also stained with blood. He prepared sketch of the axe. Accused Satnam Singh also got recovered *kirpan* stained with blood. He recorded statements of various witnesses under Section 161 Cr.P.C. He could not prepare inquest report at the spot since 200-300 persons had assembled on the spot.

16. PW.15 ASI Jagir Singh testified that accused Jatinder Singh made disclosure statement Ex.P26. He got the axe recovered. Similarly, accused Satnam Singh also made disclosure statement Ex.P27 qua the sword

used by him in the commission of the offence. It was got recovered.

17. PW.17 SI Narinder Singh deposed that accused Varinder Singh alias Billu made disclosure statement before him under Section 27 of the Evidence Act to the effect that he in connivance with Jatinder Singh alias Jeji in front of the Court Complex had committed murder of Saudagar Singh. He had broken the front window pane of vehicle of Saudagar Singh with *danda*. When they ran away, he had concealed the *danda* under the grass near barbed wire of Chandigarh boundary. He recorded the statement vide Ex.P9. The *danda* was got recovered from the disclosed place. *Danda* is Ex.P42. In his cross-examination, he admitted that *danda* Ex.P42 was not in sealed cover.

18. DW.1 Harminder Singh deposed that he was running shop under the name and style of Mavi Properties at Bay Shop No1, Opposite Chawla Nursing Home, Phase VII, Mohali. On 22.05.2012 at about 12.45 PM, he had come to Kothi, which was adjoining the court premises. He was present in front of the court premises. At that time, he saw gathering of many people. A quarrel had taken place. He came to know that Saudagar Singh had died in the quarrel. Randhir Singh and Gursimran Singh were not present there. He did not see them. He admitted in his cross-examination that on that day, Randhir Singh and Gursimran Singh along with others had come to the court to appear as witnesses.

19. DW.2 Brij Mohan deposed that on 22.05.2012, at about 12.45 PM, when he came out of the court premises, he saw that unidentified persons were present outside the court complex and there was hue and cry with regard to murder of some person. Accused Gursimran Singh and

Randhir Singh were not present there. In the cross-examination, he deposed that he had not seen the commission of murder.

20. DW.4 SI Navinpal Singh Lehal testified that on 25.08.2013, he was posted as SHO, Police Station Mataur. He did not conduct any enquiry against accused Gursimran Singh. In his cross-examination, he admitted that he had not sent any notice to the complainant party as well as eye witnesses of this case during the enquiry proceedings.

21. DW.5 Ujjal Singh deposed that he had clicked the photographs on 22.05.2012 during noon time at Chawla Nursing Home. In his cross-examination, he admitted that he was not present at the time of commission of murder. He clicked the photograph when the vehicle carrying dead body was standing at Chawla Nursing Home.

22. DW.6 Gurpreet Singh Niamian deposed that on 22.05.2012, he along with Ujjal Singh reached the spot. When they reached outside the Court Complex at 12.00/1.00 noon, there was no dead body and blood was lying there. The police was examining the spot.

23. According to the FSL report Ex.P37, human blood was found on the exhibits, contained in parcels A, B and C, i.e. T-shirt, Jeans, *kirpan* (sword) and *kulhari* (axe). Similarly, as per the FSL report Ex.P38, blood was found on the exhibits contained in parcels A and B, i.e. soil, vest, T-shirt, Jeans and underwear.

24. The cause of death, as per the statement of PW.3 Dr. Parwinder Singh Bhatti, was the combined effect of shock due to haemorrhage and fracture dislocation of cervical vertebrae and injury to spinal cord. Time between injuries and death was immediate and time between between death

and post mortem examination was about 21 to 22 hours. The Board of Doctors, consisting of PW.3 Dr. Parwinder Singh Bhatti and Dr. H.S. Ghuman, had noticed eight injuries on the person of the deceased. Three injuries, i.e. injuries No.1 to 3, were incised wounds.

25. Appellants Jatinder Singh alias Jeji and Satnam Singh alias Satta had got recovered the weapons of offence, i.e. axe and sword, on the basis of their respective disclosure statements. PW.1 Rajinder Singh, PW.2 Manpreet Singh and PW.6 Maninder Singh had seen the appellants inflicting injuries on the person of Saudagar Singh with axe and sword. Saudagar Singh had come to attend the court proceedings. Before appearing in the court, he had to go to IVY Hospital on account of pain in his leg. He was informed to reach to the court. When he was coming to the court in Bolero vehicle, his vehicle was intercepted by the accused. He was dragged out and administered beatings.

26. The statements of PW.1 Rajinder Singh, PW.2 Manpreet Singh and PW.6 Maninder Singh are natural. These inspire confidence. They were present on the spot and had seen the incident unfolding in their presence. According to these witnesses, first of all, appellant Jatinder Singh alias Jeji gave axe blow on the left ear of Saudagar Singh. He also gave second axe blow on the neck below left ear of Saudagar Singh. Thereafter, appellant Gursimran Singh alias Shonki gave two axe blows on the chest of Saudagar Singh. Appellant Randhir Singh gave *kirpan* blow on the left bicep of Saudagar Singh. Appellant Satnam Singh alias Satta gave *kirpan* blows on the right shoulder and right side of chest of Saudagar Singh. These injuries proved fatal.

27. Learned counsel appearing on behalf of appellants Gursimran Singh alias Shonki and Randhir Singh have vehemently argued that their clients were not present on the spot. However, no cogent evidence has been led to this effect. If they had taken the plea of alibi, they were required to prove it.

28. Now, we advert to the role attributed to appellants Gaurav Patyal alias Lucky and Varinder Singh alias Billu and co-accused Navjot Singh. According to PW.1 Rajinder Singh, he had got recorded in his statement that Lucky gave lalkara that Saudagar Singh be not left un-killed. His attention was drawn to his statement Ex.PA, where this fact was not recorded. He had no conversation with Billu earlier. His brother had also no conversation with Billu. PW.2 Manpreet Singh, in his cross-examination, admitted that he had never given description of accused Gaurav Patyal to the police. He had not supplied address and parentage of Gaurav Patyal to the police. He never gave description of Lucky to the police. PW.6 Maninder Singh also admitted in his cross-examination that accused Gaurav Patyal was not got identified by the police from him. He never gave description of accused Gaurav Patyal to the police. He never supplied the address and parentage of accused Gaurav Patyal to the police. He had also not given description of Lucky to the police. Though PW.17 SI Narinder Singh deposed that accused Varinder Singh alias Billu had got recovered *danda* but in his cross-examination, he deposed that the *danda* was not in sealed cover, when produced before the court. He also deposed that no stains were found on the *danda* at the time of recovery. Thus, the presence of appellants Gaurav Patyal alias Lucky and Varinder Singh alias Billu at

the spot has not been proved by the prosecution. Thus, they are liable to be acquitted of the charges framed against them.

29. The fact of the matter is that appellants Jatinder Singh alias Jeji, Satnam Singh alias Satta, Gursimran Singh alias Shonki and Randhir Singh were present on the spot. They inflicted injuries on the person of Saudagar Singh. Thus, the prosecution has proved its case against them for the offences punishable under Sections 148, 302, 341 and 427 IPC. Since the number of accused has reduced from five to four, therefore, they cannot be convicted and sentenced with the aid of Section 149 IPC.

30. Their Lordships of the Supreme Court in **Subran alias Subramanian Vs. State of Kerala, (1993) 3 Supreme Court Cases 32**, have held that assembly of less than five members is not an unlawful assembly within the meaning of Section 141 IPC and cannot, therefore, form the basis of the offence with the aid of Section 149 IPC. Their Lordships have held as under :-

“10. A combined reading of Section 141 and Section 149 IPC (supra) show that an assembly of less than five members is not an unlawful assembly within the meaning of Section 141 and cannot, therefore, form the basis for conviction for an offence with the aid of Section 149 IPC. The effect of the acquittal of the two accused persons by the High Court and without the High Court finding that some other known or unknown persons were also involved in the assault, would be that for all intent and purposes the two acquitted accused persons were not members of the unlawful assembly. Thus, only four accused

could be said to have been the members of the assembly but such an assembly which comprises of less than five members is not an unlawful assembly within the meaning of Section 141 IPC. The existence of an unlawful assembly is a necessary postulate for invoking Section 149 IPC. Where the existence of such an unlawful assembly is not proved, the conviction with the aid of Section 149 IPC cannot be recorded or sustained. The failure of the prosecution to show that the assembly was unlawful must necessarily result in the failure of the charge under Section 149 IPC. Consequently, the conviction of appellants 2 to 4 for an offence under Section 326/149 IPC cannot be sustained and the same would be the position with regard to the conviction of all the appellants for other offences with the aid of Section 149 IPC also.”

31. Accordingly, CRA-D-1441-DB of 2015, filed by Jatinder Singh alias Jeji, Satnam Singh alias Satta, Gursimran Singh alias Shonki and Randhir Singh, is partly allowed. Their conviction and sentence with the aid of Section 149 IPC are set aside. However, their conviction and sentence, as recorded by the trial court, for offences under Sections 148, 302, 341 and 427 IPC are upheld. Appellants Satnam Singh alias Satta and Randhir Singh are on bail. Their bail bonds and surety bonds are cancelled. The police is directed to take them in custody forthwith to undergo remaining part of their sentence.

32. CRA-D-1523-DB of 2015, filed by Gaurav Patyal alias Lucky and Varinder Singh alias Billu, is allowed. The judgment and order dated

31.08.2015 qua them are set aside. Both of them are in custody. Their release warrants be prepared forthwith.

(**RAJIV SHARMA**)
JUDGE

July 22, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

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