

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

(1)

**MRC No.02 of 2017 (O&M)
Date of Decision: January 22, 2019.**

State of Punjab

.....APPELLANT(s).

VERSUS

Lakhwinder Singh and others

....RESPONDENT(s).

(2)

CRA-D No.155-DB of 2017 (O&M)

Lakhwinder Singh and others

.....APPELLANT(s).

VERSUS

State of Punjab

...RESPONDENT(s).

**CORAM:- HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. H.S. Grewal, Addl. A.G. Punjab

Mr. R.S. Rai, Senior Advocate with
Mr. Deepender Brar, Advocate
for convicts in MRC-2-2017 and
for appellants in CRA-D-155-DB-2017.

SURINDER GUPTA, J.

FIR No. 35 dated 16.03.2015 was registered at Police Station Lopoke, Amritsar on the statement of Manjit Singh son of Sohan Singh, wherein he stated that he along with his family was living in village Lahorimal in fields and his nephew Gurjant Singh (since deceased) was residing in nearby house with his family. Dalwinder Singh son of Amrik

Singh and his brothers Lakhwinder Singh, Karaj Singh and Baldev Singh were also living at a distance of 3 Killas. Gurjant Singh had love affair with Manjit Kaur daughter of Dalwinder Singh, which was not to the liking of her family members. They raised objection and did not agree for their marriage. In the month of January 2014, Gurjant Singh and Manjit Kaur eloped and married at Gurudwara Dukh Niwaran, village Nathu Ki Patti, Basarke and filed a petition in the High Court. Dalwinder Singh father of Manjit Kaur got registered an FIR No. 19 dated 21.01.2014 under Section 366 read with Section 120-B Indian Penal Code (for short-'IPC') at Police Station Gharinda against Gurjant Singh and his family members. For a period of about 4-5 months after marriage, Gurjant Singh and Manjit Kaur lived at an undisclosed place and thereafter they started living at village Lahorimal as husband and wife.

Dalwinder Singh, his brothers and their sons were not comfortable as Gurjant Singh had enticed away Manjit Kaur, started living in their neighbourhood and filed petition against them in the High Court. They felt annoyed and started nursing grudge against both. On 16.03.2015, at about 9:00 a.m., Gurjant Singh and Manjit Kaur went to Amritsar on motorcycle to take medicine and while returning to their village at about 4:30 p.m. from the side of village Padhri, complainant and his nephew Gurwinder Singh were following them on their separate motorcycle. When they reached near motor of Major Singh of village Padhri, a Bolero vehicle of white colour came from opposite side and hit the motorcycle of Gurjant Singh, as a result of which, both Gurjant Singh and Manjit Kaur fell on the ground. Accused-appellants Lakhwinder Singh, Dalwinder Singh sons of

Amrik Singh were armed with 12 bore double barrel guns, Baldev Singh and Karaj Singh sons of Amrik Singh with pistols, while Gurbhej Singh son of Dalwinder Singh and Gurtej Singh son of Lakhwinder Singh were armed with *datar*. They were also accompanied by two unidentified persons armed with *dangs*, who alighted from the vehicle and started beating Gurjant Singh and Manjit Kaur. Lakhwinder Singh, Dalwinder Singh, Karaj Singh and Baldev Singh fired shots with their weapons towards Gurjant Singh and Manjit Kaur with intention to kill them while Gurtej Singh, Gurbhej Singh and two other unidentified persons caused injuries to them with their respective weapons. Complainant and his nephew Gurwinder Singh raised '*raula*' at which all the assailants fled away from the spot along with their respective weapons in Bolero vehicle. Gurjant Singh and Manjit Kaur died at the spot because of the injuries suffered by them. Their family members arrived there and Inspector Harminder Singh SHO Police Station Lopoke also reached the spot and recorded statement (Ex. PA) of complainant, on the basis of which formal FIR (Ex. P16/2) was registered.

On inspection, Inspector Harminder Singh found four empty shells of 32 bore at the spot, which were converted into a parcel, sealed with his seal 'HS' and taken in possession vide recovery memo Ex.PW10/3. Two shells of 12 bore were also recovered from the spot and taken into possession vide recovery memo Ex.PW10/4 and Ex.PW10/5 along with motorcycle of deceased. He prepared rough site plan (Ex.PW16/4) of the place of occurrence, inquest report of deceased Manjit Kaur (Ex.PW16/5), Gurjant Singh (Ex.PW16/6) and handed over their dead bodies to Head Constable Gurmit Singh and PHC Paramjit Singh, who took the same to

mortuary of Civil Hospital, Ajnala.

On 17.03.2015, post-mortem on the dead bodies of Manjit Kaur and Gurjant Singh was conducted at Civil Hospital, Ajnala by Dr. Suman Wadhawan PW5, who found following injuries on the person of Gurjant Singh:-

“Rigor mortis was present to some extent. Blood orifices. Clotted blood was present on nose and ear. Neck-no ligature mark. I found the following injuries on the person of dead body:-

- 1) Clotted blood was present on all over the face.
- 2) Lacerated wound of size 6X2.5 cm present on left mandibular portion.
- 3) Incised wound of size 15X3 cm present on left side of posterior aspect of skull and brain tissue was missing.
- 4) Multiple fracture on right posterior lateral aspect of skull was present and brain was outside the skull. Major brain tissue and blood vessels were damaged.
- 5) All brain tissue was missing on left side of skull cavity and base of skull was visible. Clotted blood was present at base of skull.
- 6) There was wound of entry with blackish margin and exit wound of right forearm on lower 1/3rd fracture on right forearm was present. Pellets were present on X-ray examination and removed and handed over to the police.
- 7) Incised wound of size 6X1.5 cm was present on posterior aspect of left side of skull on lower aspect.
- 8) Wound of entry with blackish margin was present

on left lateral aspect of shoulder joint. Clotted blood was present.

- 9) Wound of exit was present on upper aspect of left shoulder joint.”

He gave opinion about the cause of death of Gurjant Singh as follows:-

“The cause of death in this case in my opinion was failure of various function of brain which was due to loss of brain tissue and bleeding from brain due to multiple fractures of skull due to injuries.”

On examination of dead body of Manjit Kaur, he found following injuries:-

“Rigor mortis was present to some extent. Clotted blood was present on side of face. Hole was present in the Sweater on right side of breast. I found the following injuries on the person of dead body:-

1. There was blackish margin of entry wound and exit wound was present on left forearm on lower 1/3rd.
2. Punctured wound on left side of breast just above the clavicular portion.
3. Punctured wound on left side of arm pit.
4. There was circular punctured wound on middle of sternum with blackish margin.
5. There was punctured entry wound with blackish margin in middle 1/3rd of left arm and wound of exit was present on lateral aspect.
6. Irregular wound of size 6X8 cm was present on right side of breast above the right nipple and muscles were seen on upper aspect. Multiple pellets (pellets) and red coloured plastic parts were

present and handed over to the police. Body was subject to X-ray examination.

7. Blood stained menstrual pad was present inside the underwear.
8. 18X10 cm missed portion of skull was present on right and posterior aspect of brain and skull. Brain tissue was damaged and outside the skull. All major blood vessels were damaged. Right log of ear at lower portion was missing which was 8 cm deep.
9. Swelling over the left side of face.
10. Blackish contusion over right side of the face, joining the damage portion right posterior side of the skull. Multiple fracture of skull was present on right side. Meninges and brain tissue were damaged and were present outside the skull cavity.”

The cause of death of Manjit Kaur was given as follows:-

“The cause of death in this case in my opinion was failure of various functions of brain as its major blood vessels were damaged and there was loss of blood due to multiple fractures of skull due to above mentioned injuries.”

On X-ray examination, he found pellets in the dead body of Manjit Kaur, which were extracted and handed over to the police. He prepared post-mortem report Ex.PW5/A of Gurjant Singh and Ex. PW5/B of Manjit Kaur. In the opinion of PW5 Dr. Suman Wadhawan, injuries No. 4, 5, 6, 8 & 9 on the person of Gurjant Singh were caused by firearm, while injury no.2 with blunt weapon and injuries no. 3 & 7 with sharp edged weapon. Injuries no.2, 4, 5, 6, 7, 8 & 9 on the person of Manjit Kaur were

caused by firearm, while injuries no. 1 & 3 were caused by blunt weapon.

The pellets recovered from the dead bodies and their clothes were handed over to Inspector Harminder Singh by the hospital authorities, which he took into possession vide recovery memo Ex. PW12/5 and PW12/6. After conducting part investigation, he handed over the same to SI Tejinder Singh (PW14), who arrested Lakhwinder Singh, Dalwinder Singh and Baldev Singh on 18.03.2015; took double barrel guns of Dalwinder Singh, Lakhwinder Singh and revolver of Baldev Singh in possession vide recovery memos (Ex. PW6/2, Ex.PW6/4 and Ex.PW6/6). Accused-appellant Karaj Singh was arrested on 20.03.2015 and Bolero vehicle used in occurrence bearing registration No. PB-02-Z-3474 was taken into possession vide recovery memo (Ex. PW14/2). After completion of investigation, challan against accused Lakhwinder Singh, Dalwinder Singh, Baldev Singh and Karaj Singh was presented before the Court on 04.06.2015, which was committed to the Court of Sessions by Judicial Magistrate First Class, Ajanla on 12.06.2015. Accused-appellants Gurbhej Singh and Gurtej Singh were found innocent and a supplementary challan was presented by the police, which was also committed to the Court of Sessions by learned Magistrate, vide order dated 29.07.2015.

On 10.08.2015, complainant moved an application under section 193 Code of Criminal Procedure (for short Cr.P.C.) to summon Gurtej Singh and Gurbhej Singh, which was allowed by learned Additional Sessions Judge Amritsar vide order dated 21.09.2015 and they were summoned to face trial for the offences punishable under Sections 302, 427, 148 read with Section 149 IPC and 25/27/29/30 of Arms Act.

On finding a prima facie case, all the accused-appellants were charge sheeted for the offences punishable under Sections 148, 302 read with Section 149 IPC, 27 and 25 of Arms Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW1 Manjit Singh complainant, PW2 Gurwinder Singh, eyewitness, PW3 HC Jang Bahadur Singh, PW4 HC Hira Lal, PW5 Dr. Suman Wadhawan, Medical Officer, Civil Hospital, Ajnala, PW6 ASI Charan Singh, PW7 HC Lakhbir Singh Head Mechanic, PW8 Beant Singh , PW9 Gura Singh Reader to Naib Tehsildar, Amritsar PW10 ASI Hardev Singh, PW11 Roshandeep Singh, Computer Operator, DTO Office, Amritsar, PW12 HC Gurmit Singh, PW13 Iqbal Kaur Senior Radiographer, Civil Hospital Ajnala, PW14 SI Tejinder Singh, PW15 SI Sukhdev Singh, PW16 Inspector Harminder Singh, PW17 Rishi Ram Draftsman, PW18 Sawinder Kaur, Junior Assistant, office of DTO, Amritsar.

On conclusion of prosecution evidence, statements of appellants-accused under Section 313 Cr.P.C were recorded, wherein they denied the allegations against them and pleaded their false implication. Inspector Paramjit Singh, who had conducted enquiry and gave report (Ex. DW1/A), was examined in defence as DW1, Balwant Singh as DW2, Baldev Singh as DW3, HC Ram Singh as DW4 and Avtar Singh as DW5.

Learned Trial Court found the statements of prosecution witnesses as consistent, trustworthy and unshattered and concluded that prosecution has been able to prove that accused-appellants murdered Gurjant Singh and Manjit Kaur as they had married against their wishes.

Para 45 of the judgment of trial Court recording conviction of the appellants, reads as follows:-

“45. So taking into account the entire evidence on the file as discussed above, in my opinion, the prosecution has proved the offences against the accused beyond reasonable doubt that all the accused had formed an unlawful assembly and in prosecution of common object of said unlawful assembly and in prosecution of common object of said unlawful assembly had committed the murdered of Gurjant Singh and Manjit Kaur. So, all the accused are held guilty for committing the offences punishable under Sections 148 and 302 read with Section 149 of IPC. The prosecution has also proved that accused Lakhwinder Singh and Baldev Singh have used their licensed fire arms and accused Dalwinder Singh has also used the fire arm without any license for the purposes of committing the murder of Gurjant Singh and Manjit Kaur. Therefore, accused Lakhwinder Singh and Baldev Singh are also held guilty for committing offence under Section 27 of the Arms Act and accused Dalwinder Singh is also held guilty for committing the offence under Section 25 of the Arms Act. They are convicted accordingly and be taken into custody.”

The offences committed by the appellants-accused were found to be grave, serious, barbaric and outrageous, making out a rarest of rare case for awarding sentence as follows:-

- (i) For offence punishable under section 302 read with section 149 IPC, all the accused-appellants were awarded death sentence.
- (ii) For offence punishable under section 148 IPC, they were awarded rigorous imprisonment for three years and to pay a fine of

₹1000/- each.

(iii) For offence punishable under section 25/27 Arms Act, sentence was awarded to appellants Lakhwinder Singh, Dalwinder Singh and Baldev Singh as follows:-

Sr.No.	Name of the convict	Under Section	Sentence
1.	Lakhwinder Singh	27 of Arms Act	To undergo rigorous imprisonment for a period of three years and to pay fine of Rs.5000/- and in default of payment of fine, to undergo rigorous imprisonment for further period of six months.
2.	Baldev Singh	27 of Arms Act	To undergo rigorous imprisonment for a period of three years and to pay fine of Rs.5000/- and in default of payment of fine, to undergo rigorous imprisonment for further period of six months.
3.	Dalwinder Singh	25 of Arms Act	To undergo rigorous imprisonment for a period of three years and to pay fine of Rs.5000/- and in default of payment of fine, to undergo rigorous imprisonment for further period of six months.

For confirmation of death sentence awarded to the accused, reference (MRC No. 02 of 2017) was made by the trial Court, while the appellants filed appeal (CRA-D-155-DB-2017) against their conviction and sentence.

We have heard learned counsel for the appellants, learned Additional Advocate General, Punjab and perused the trial Court's record with their assistance.

Learned Counsel for the appellants has argued that it is a case where all the male members have been involved for the murder of Manjit Kaur and Gurjant Singh. Both have married against the wishes of their parents in January 2014. After remaining away from the village for about

4/5 months, they started living near the house of their parents. Anger whatever was there in the mind of parents of Manjit Kaur had subsided and there was no occasion for the appellants to kill Manjit Kaur and her husband on 16.03.2015. As per the defence version, Gurjant Singh was in relations with many girls and having many enemies. There was every possibility of Gurjant Singh and his wife being killed for that reason. Dalwinder Singh, Lakhwinder Singh, Baldev Singh and Karaj Singh are real brothers while appellant Gurtej Singh is son of Dalwinder Singh and Gurbhej Singh is son of Lakhwinder Singh. All have been named and attributed role in the occurrence with a view that family of appellants remain with no male member to look after. As per statement of PW14 SI Tejinder Singh, Lakhwinder Singh, Dalwinder Singh and Baldev Singh were produced before him by Avtar Singh Sarpanch on 18.03.2015. From the possession of Dalwinder Singh and Lakhwinder Singh double barrel guns of 12 bore were recovered, while Baldev Singh produced revolver of 32 bore on the same day, which were taken into possession. These weapons were sent to Forensic Science Laboratory on 22.04.2015, while the empties allegedly recovered at the spot, were sent on 08.05.2015 i.e. with delay of about 1 month and 20 days. This creates doubt about the truthfulness of the prosecution version that the empties were recovered at the spot. It is quite probable that weapons recovered from the appellants-accused were used later on to create the empties. The prosecution witnesses PW1 Manjit Singh uncle of deceased Gurjant Singh and PW2 Gurwinder Singh, cousin of Gurjant Singh being close relatives are interested witnesses, whose testimony requires to be scrutinised with great care. The police during

investigation had found both Gurtej Singh and Gurbhej Singh as innocent. No weapon of offence was recovered from their possession. As per report of Forensic Science Laboratory, the empties recovered from the spot were fired from double barrel gun of Lakhwinder Singh and revolver of Baldev Singh. No weapon was recovered from appellant Karaj Singh, Gurtej Singh and Gurbhej Singh, who have been falsely implicated in this case. Close scrutiny of the testimony of Manjit Singh PW1 and Gurwinder Singh PW2 shows that they have not come up with truthful version of the occurrence and have tried to take the revenge of murder of Gurjant Singh and Manjit Kaur by falsely implicating four real brothers and their sons in the occurrence. Testimony of PW1 Manjit Singh and PW2 Gurwinder Singh is not believable as they did not inform the police immediately after the occurrence. They were having mobile phones but tried to cover up by saying that they had left mobiles at their home. Complainant Manjit Singh had not even gone to the hospital with the dead bodies or even on the next day. This shows that both PW1 and PW2 are procured witnesses.

Learned Additional Advocate General, Punjab has argued that it is case where the accused were nursing grudge against Gurjant Singh and Manjit Kaur as they had eloped and married against wishes of their families. They had also filed petition before this Court seeking protection of their life and liberty and had to remain out of village for a period of about 5-6 months. Dalwinder Singh, father of Manjit Kaur had lodged an FIR against Gurjant Singh. He had also filed a petition in this Court, which was later on withdrawn with liberty to file representation before the police. All this shows that their sentiments have not settled down and they were out to

finish Gurjant Singh and Manjit Kaur and ultimately indulged in honour killing of both. Manjit Singh PW1 and Gurwinder Singh PW2 are the eyewitnesses of the occurrence. There is no delay in reporting the matter to the Police. Deceased had not only suffered bullet injuries but have suffered injuries with sharp edged weapon on their persons, which were caused by Gurtej Singh and Gurbhej Singh. The testimony of eyewitnesses is reliable and supported by medical and forensic department. Learned trial Court has rightly relied on the same while recording conviction and sentence of appellants-accused.

Manjit Singh PW1 is the star witness of the prosecution. Deceased Gurjant Singh was his nephew, who was living in his farmhouse, which was near farmhouse of Manjit Singh. In the nearby vicinity, there are farmhouse(s) of Dalwinder Singh, Lakhwinder Singh, Karaj Singh and Baldev Singh. As per case of prosecution, Gurjant Singh developed affinity with Manjit Kaur daughter of Dalwinder Singh in the year 2013. Family of Manjit Kaur was not ready for their marriage, as such, they eloped in January, 2014 and solemnised their marriage in Gurudwara Dukh Niwaran at village Nathu Ki Patti. Thereafter they moved a petition before this Court seeking protection of their life and liberty. In the meanwhile, an FIR was got registered by Dalwinder Singh against Gurjant Singh at Police Station Gharinda for kidnapping of Manjit Kaur. Both Gurjant Singh and Manjit Kaur remained underground for 4-5 months before returning to their house, started living there. The incident took place on 16.03.2015. As per Manjit Singh PW1, he along with his nephew Gurwinder Singh was coming to the village behind Manjit Kaur and Gurjant Singh, who were on their

separate motorcycle, which was hit by Bolero vehicle, as a result of which both fell down. Eight persons came out of Bolero, out of whom two unidentified persons were armed with *lathies*, while Lakhwinder Singh and Dalwinder Singh were armed with 12 bore double barrel gun, Karaj Singh and Baldev Singh with pistols, Gurtej Singh and Gurbhej Singh with *datar*. Manjit Singh PW1 has stated that Lakhwinder Singh, Dalwinder Singh, Baldev Singh and Karaj Singh fired at Gurjant Singh and Manjit Kaur and the bullets hit different parts of their bodies. Gurtej Singh and Gurbhej Singh caused injuries with *datar* while unidentified persons caused injuries with *dang*. He and Gurwinder raised hue and cry at which all the accused fled away from the spot in their Bolero vehicle.

On receiving information, police reached the spot and recorded the statement of complainant (Ex. PA), without any delay. On spot inspection, Inspector Harminder Singh found two empty shells of 12 bore and four empty shells of 32 bore, which were taken into possession vide recovery memo Ex.PW10/3 and PW10/4, prepared at the spot. These empties were sent to Forensic Science Laboratory with the weapons i.e. double barrel gun bearing No.29341-2010 recovered from Dalwinder Singh; 25715-11 recovered from Lakhwinder Singh and revolver bearing No.FG-64954 recovered from Baldev Singh. On the basis of scientific examination, Forensic Science Laboratory gave the report of as follows:-

- “1. 12 Bore DBBL gun bearing No.25717-11 marked W/1, 12 bore DBBL gun bearing No.29341-2010 marked W/2 and 0.32 inch IOF Revolver bearing No. FG-64954 marked W/3 respectively contained in parcels 'C' and 'D' and 'E' under reference are in working condition.
2. One 12 bore 'KF' cartridge case marked C/1 contained in

parcel 'A' had been fired from left barrel of 12 bore DBBL gun bearing No.25715-11 marked W/1 contained in parcel 'C' under reference.

3. One 12 bore 'KF' cartridge case marked C/2 contained in parcel 'A' had been fired from right barrel of 12 bore DBBL gun bearing No.25715-11 marked W/1 contained in parcel 'C' under reference.
4. Three 0.32 inch 'KF S&WL' cartridge cases marked C/4, C/5 and C/6 contained in parcel 'B' had been fired from 0.32 inch IOF Revolver bearing No. FG-64954 marked W/3 contained in parcel 'E' under reference.”

The above report proves that the weapons recovered from Lakhwinder Singh and Baldev Singh were used in the occurrence. This argument of learned counsel for the appellants that the empties were sent to Forensic Science Laboratory with delay on 08.05.2015 makes out no reason to draw the inference that evidence was falsely created. Inspector Harinder Singh PW16 has specifically stated that he recovered the empties at the spot and no suggestion was given to him that he had antedated the recovery memos Ex.PW10/3 and PW10/4. In the entire cross examination of this witnesses, no question was put to him to raise any suspicion on investigation conducted by him at the spot and it is so evident from the tone and tenor of his cross examination, which is reproduced as follows:-

“Ajnala is situated at a distance of 35 kilometres from the place of occurrence. Somebody from village Padhari had informed me regarding this occurrence on telephone. At that time, I was present at Adda Chogawan. When I reached the spot, 10/15 persons were already present there. I did (not) note any information which was given to me on telephone. Dead bodies were dispatched from the place of occurrence at about 8 p.m. Inquest papers

were not given by me to the police officials accompanying the dead bodies. Inquest report was prepared on the same day and it was handed over to doctor on the next day. Special report in this case was sent by SI Tejinder Singh. I identify the signatures of SI Tejinder Singh on special report Ex.DX. As per noting on the special report. It was received by JMIC on 17.03.15 at about 12 noon. It is wrong to suggest that FIR was recorded on the next day and as such, special report and inquest report reached the Ilaqa Magistrate and doctor (laid down) on the next day. I do not know if the inquest report was received by doctor at 2 p.m. on next day. I do not know if Gurtej Singh and Gurbhej Singh were found innocent in this case as I was transferred from the Police Station. I do not know if the call details which was gathered by IO Manjit Singh PW was not found present at the place of occurrence. It is wrong to suggest that I created a false evidence against the accused and made false eye witnesses. I had not verified whether deceased had gone to the Amritsar on the day of occurrence or not. I had applied for obtaining call detail and application regarding it is Ex.DY which was not received by me during my posting there. It is wrong to suggest that I have deposed falsely.”

Learned counsel for the appellants has mainly stressed on the issue that testimony of eyewitnesses Manjit Singh and Gurwinder Singh be discarded as they are relatives of the deceased.

The question, which arises for consideration is, as to whether the testimony of relative witness should be discarded? We are of the considered opinion that though the court has to be cautious while scrutinising the testimony of relative witness but this in itself is not a reason

to discard their testimony. Our opinion finds support from the observations of Hon'ble Apex Court in case of ***Israr Vs. State of U.P. 2005 AIR (SC) 249***, which are reproduced as follows:-

“15. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed :

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - 'Rameshwar v. State of Rajasthan', AIR 1952 SC 54. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

16. Again in ***Masalti and Ors. v. State of U.P., AIR 1965 Supreme Court 202***, this Court observed : (p. 209-210 para 14) :

"But it would, we think, be unreasonable to contended that evidence given by witnesses should be discarded only on the ground that it is evidence

of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

17. To the same effect is the decision in *State of Punjab v. Jagir Singh*, AIR 1973 Supreme Court 2407 and *Lehna v. State of Haryana*, 2002 (3) SCC 76. Stress was laid by the accused-appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "*falsus in uno falsus in omnibus*" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liar. The maxim "*falsus in uno falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of rule of

law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See *Nisar Ali v. The State of Uttar Pradesh, AIR 1957 Supreme Court 366*).”

In this case, both Manjit Singh PW1 and Gurwinder Singh PW2 have stated that they witnessed the occurrence and their statements could not be shattered in the cross-examination. There may be exaggeration about the manner of occurrence as narrated by them but their statements cannot be discarded in entirety as it finds corroboration from the medical and scientific evidence.

In case of *Rama Shish Rai Vs. Jagdish Singh 2005 AIR (SC) 335*, Hon'ble Apex Court has observed that a duty is cast upon the Court to examine the testimony of inimical witnesses with due caution and diligence. In the present case, though Manjit Singh and Gurwinder Singh are related to the deceased but nothing has been suggested to them that they were inimical witnesses. Even otherwise, requirement of law is that the testimony of inimical witnesses cannot be discarded as a whole but has to be dealt with caution after careful scrutiny.

In case of *State of U.P. Vs. Sikandar Ali, 1998 AIR (SC) 1862*, the accused had fired shot at the deceased, who were leaving the Court premises. The incident was witnessed by brother and father of the deceased. Relying on their statements, accused were convicted and awarded the sentence of death while High Court discarded the statement of brother and

father of the deceased on the ground that they are relatives and their presence at the spot were doubted. Hon'ble Apex Court relied on the testimony of brother and father of the deceased, while setting aside the judgment of acquittal.

In present case, matter was reported to the police without any delay and police on coming to the spot, recovered empties of cartridges fired from the double barrel gun and 32 bore revolver. Here, this fact is to be kept in mind that empties of double barrel gun and revolver were recovered and taken into possession vide recovery memos Ex.PW10/4 and Ex.PW10/5 by Inspector Harminder Singh, who conducted initial investigation of the case on the day of incident. On his transfer, further investigation was conducted by SI Tejinder Singh, who arrested Dalwinder Singh, Lakhwinder Singh and Baldev Singh on 18.03.2015. Further investigation was conducted by him. This rule out the fabrication of evidence and creation of false empties later on as argued by learned counsel for the appellants-accused. Inspector Harminder was not associated with investigation of this case after 18.03.2015, as such, there could not be any reason to fabricate recovery memo Ex.PW10/4 and Ex.PW10/5 dated 16.03.2015 at later stage. Though none of the empties recovered from the spot were reported to have been fired from double barrel gun recovered from Dalwinder Singh but this is to be kept in mind that he is father of Manjit Kaur and without his consent and connivance, his brothers Lakhwinder Singh and Baldev Singh had no reason to attack and murder Gurjant Singh and Manjit Kaur. As per eyewitness account, he was also armed with double barrel gun and fired shorts to kill Manjit Kaur and Gurjant Singh. Double barrel gun was also

recovered from his possession. Deceased Gurjant Singh and Manjit Kaur had received numerous bullet injuries. Testimony of eyewitnesses proves that Dalwinder Singh had also fired shots and is equally guilty with his brothers Lakhwinder Singh and Baldev Singh.

On medical examination of the dead body of Gurjant Singh, injuries No.4, 5, 6, 8 and 9 were found to be firearm injuries. Injury No.4 was 'multiple fractures of right posterior lateral aspect of skull, brain was out side the skull and major brain tissue and blood vessels were damaged'. Injury No.5 as described in the post-mortem report was that "all brain tissue were missing on left side of skull cavity and base of skull was visible". Clotted blood was present at base of skull. Injuries No.6 was entry and exit wound of bullet injury. Injury No.8 and 9 were entry and exist wound on the shoulder joint of Gurjant Singh. This shows that he had suffered many bullet injuries. On medical examination of the dead body of Manjit Kaur, bullet hole was present on the sweater on the right side of her breast. Injuries No.2, 4, 5, 6, 7, 8 & 9 were found to have been caused by firearm. Portion of her skull was found missing. Both had suffered many bullet injuries and testimony of Manjit Singh and Gurwinder Singh that these were caused by Dalwinder Singh, Lakhwinder Singh and Baldev Singh are believable and found support from report of Forensic Science Laboratory.

We are conscious of the fact that after such type of incident, temper run high and attempt is made to implicate all the family members of the accused. In this case, four real brothers i.e. Dalwinder Singh, Lakhwinder Singh, Baldev Singh and Karaj Singh along with two sons namely Gurbhej Singh son of Dalwinder Singh and Gurtej Singh son of

Lakhwinder Singh have been named as accused. Karaj Singh was arrested by the police on 20.03.2015, however, from his possession, no weapon/firearm alleged to have been used in the occurrence, was recovered. Police had recovered Bolero vehicle from his possession, which was registered in the name of Hardeep Singh, Kuldeep Singh sons of Tarlok Singh of village Preet Nagar, Ajnala. Prosecution has not produced any evidence to prove that Bolero vehicle used in occurrence was owned by Karaj Singh. From the possession of Gurtej Singh and Gurbhej Singh, *datar* alleged to have been used in the occurrence were not recovered. They were, rather, found innocent by the police and not challaned. The trial Court had summoned them on the application of complainant under Section 193 Cr.P.C. The allegations in the FIR formed the basis for summoning of these accused to face trial with the other accused. We find that there were two injuries on the person of Gurjant Singh, which in the opinion of doctor were caused by sharp edged weapon. As per the allegations in the FIR and statement of complainant (PW1) and Gurwinder Singh (PW2), Gurtej Singh and Gurbhej Singh were armed with *datar*. The fact that no weapon alleged to have been used, was recovered from these two accused and also from Karaj Singh, creates suspicion about the involvement of these three accused in the occurrence. Two unidentified persons allegedly armed with *dang* were also present at the spot. Both Manjit Singh and Gurwinder Singh had seen the occurrence from some distance, as such, there is every possibility that *dangs* stated to be in possession of both unidentified persons were fitted with some sharp edged weapons. We cannot ignore the fact that in such type of incidents, attempt is made to involve all the family members,

particularly in such type of heinous crime, where a young couple was murdered by the family of the wife. Learned trial Court, while recording conviction of Karaj Singh, Gurtej Singh and Gurbhej Singh, had not tried to look into the fact that no weapon of offence allegedly used in the occurrence, was recovered from possession of these accused-appellants, all the four real brothers and their two sons have been named as accused; Gurtej Singh and Gurbhej Singh were found innocent; there is no expert opinion that the empty cartridges recovered from the spot were fired from any other weapon than the double barrel gun and revolver, which were recovered from possession of Lakhwinder Singh and Baldev Singh; in such type of incident, there is every possibility of naming all the family members particularly all the male family members; that the reason for naming all the family members was there as due to leaving of house by Manjit Kaur against the wishes of her family members and her marrying Gurjant Singh, there was hostility, enmity and anger between the two families. Taking note of all these facts and circumstances, we are of the considered opinion that the prosecution has proved its case for the offence punishable under Section 302 read with Section 149 IPC, 25/27 Arms Act against accused-appellants Dalwinder Singh, Lakhwinder Singh and Baldev Singh. However, the guilt of accused-appellant Karaj Singh, Gurbhej Singh and Gurtej Singh is not proved beyond shadow of doubt.

Learned counsel for the appellants has argued that learned trial Court has awarded the capital punishment with the observation that it is a rarest of the rare case. Though the offence is quite serious in nature but it does not fall in the gravest case of extreme culpability calling for no other

sentence except death sentence to the appellants.

Learned Additional Advocate General has argued that keeping in view nature of offence committed by the appellants, who eliminated a young couple and ultimately indulged in honour killing of both, the trial Court has rightly arrived at the conclusion that it is the rarest of rare case for awarding death sentence.

It is a case where a young couple has been killed by the appellants. The crime committed by the appellants is indeed brutal and cruel. The question, which arises for consideration before us is as to whether the offence of double murder and the manner of commission of crime should be sufficient to justify the imposition of death penalty.

Hon'ble Apex Court in case of **Shyam Singh @ Bhima vs. State of Madhya Pradesh, (2017) 11 SCC 265** while dealing with the question of awarding death penalty for triple murder case including the murder of parents, has observed that following facts should be looked into while justifying the award of death penalty to the accused:-

- “(1) the age of the accused;
- (2) the possibility of reform;
- (3) the socio-economic background of the accused
- (4) the circumstances in which the crime has been committed;
- (5) the quality of the evidence which had prevailed with the Court in upholding the conviction;
- (6) lack of criminal antecedents.”

In the present case, there is nothing on file that the appellants have any criminal history. The motive for crime as attributed to them is honour killing.

In case of **Rajkumar vs. State of M.P., (2014) 55 SCC 353**,

Hon'ble Apex Court has observed as follows:-

“The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration alongwith the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception. The penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of the crime. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before option is exercised.”

In the present case, we are of the opinion that despite the crime committed by the appellants Dalwinder Singh, Lakhwinder Singh and Baldev Singh, being serious and heinous, it is not a case, which falls within the category of rarest of rare cases, hence we are of the view that the death sentence awarded to appellants Lakhwinder Singh, Dalwinder Singh and Baldev Singh for offence punishable under Section 302 read with Section 149 IPC should be converted into imprisonment for life.

As a sequel of our above discussion, **MRC No. 02 of 2017** is answered and **CRA-D-155-DB-2017** is disposed of as follows:-

- (i) Conviction of appellants-convicts Lakhwinder Singh, Dalwinder Singh and Baldev Singh for the offences punishable under

Section 302 read with Section 149 IPC and 25/27 Arms Act is upheld.

(ii) Appellants-convicts Lakhwinder Singh, Dalwinder Singh and Baldev Singh are acquitted of the charge framed against them for the offence punishable under Section 148 IPC.

(iii) Giving benefit of doubt, appellants Karaj Singh, Gurtej Singh and Gurbhej Singh are acquitted of the charge framed against them. They be released forthwith, if not required in any other crime.

(iv) The sentence awarded to appellants-convicts Lakhwinder Singh, Dalwinder Singh and Baldev Singh for the offence punishable under Section 302 read with Section 149 IPC is modified from death sentence to imprisonment for life. The sentence of fine as awarded by the trial Court to these appellants-convicts is, however, maintained.

(v) The amount of fine imposed on appellants Karaj Singh, Gurtej Singh and Gurbhej Singh, if already deposited, be refunded to them as per rules.

Copy of this judgment be conveyed to Superintendent of concerned jail for compliance.

(A.B. CHAUDHARI)
JUDGE

(SURINDER GUPTA)
JUDGE

January 22, 2019.

Sachin M.

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No