

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

(1) CRA-D-991-DB of 2018 (O&M)

Harpreet Singh

.... Appellant

Versus

State of Punjab

..... Respondent

(2) CRA-D-1012-DB of 2018

Gursewak Singh Bhoot

.... Appellant

Versus

State of Punjab

..... Respondent

(3) CRA-D-1083-DB of 2018

Rupinder Singh

.... Appellant

Versus

State of Punjab

..... Respondent

(4) CRA-D-1151-DB of 2018

Kuldeep Singh alias Deep and others

.... Appellants

Versus

State of Punjab

..... Respondent

Reserved on : 16.05.2019

Date of decision : 22.05.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Anmol Rattan Sidhu, Senior Advocate, with
Mr. Pratham Sethi, Advocate,
for the appellant in CRA-D-991-DB of 2018.

Mr. K.K. Thakur, Advocate,
for the appellant in CRA-D-1012-DB of 2018.

Mr. Rakesh Verma, Advocate,
for the appellant in CRA-D-1083-DB of 2018.

Mr. Kamalpreet Bawa, Advocate, for appellant No.1,
Mr. G.S. Sandhu, Advocate, for appellant No.2,
Ms. Divya Sharma, Advocate, for appellants No. 3 and 5,
Mr. J.S. Cooner, Advocate, for appellant No.4,
in CRA-D-1151-DB of 2018.

Mr. S.P.S. Tinna, Addl. A.G., Punjab.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these appeals, i.e. CRA-D-991-DB of 2018, CRA-D-1012-DB of 2018, CRA-D-1083-DB of 2018 and CRA-D-1151-DB of 2018, therefore, these are taken up together and being disposed of by a common judgment.

2. All these appeals are directed against judgment dated 09.10.2018 and order dated 12.10.2018, rendered by learned Additional Sessions Judge, SAS Nagar Mohali. Appellants Harpreet Singh, Gursewak Singh Bhoot, Rupinder Singh, Kuldeep Singh alias Deep, Dalbir Singh alias Daljit Singh alias Dalli, Kamaldeep Singh alias Kamal, Gagandeep Singh alias Ladda and Sukhpreet Singh alias Roda, along with co-accused Gaurav Patial, were charged with and tried for the offences punishable under Sections 148, 302 read with Section 149, 506, 341 IPC and Section 25 of the Arms Act. The appellants were convicted and sentenced as under :-

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Kuldeep Singh alias Deep	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Sukhpreet Singh alias Roda	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Dalbir Singh alias Daljit Singh alias Dalli	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Kamaldeep Singh alias Kamal	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Gagandeep Singh alias Ladda	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Gursewak Singh Bhoot	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month
-do-	25 of Arms Act	R.I for one year and fine of ₹ 2,000/-	One month

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Harpreet Singh	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
Rupinder Singh	302 read with Section 149 IPC	Life imprisonment along with fine of ₹ 20,000/-	----

<i>Name of appellant</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>In default of payment of fine, further R.I.</i>
-do-	341 IPC	R.I for one month along with fine of ₹ 500/-	Two days
-do	506 IPC	R.I for six months and fine of ₹ 1,000/-	One week
-do-	148 IPC	R.I for one year and fine of ₹ 2,000/-	One month

All the sentences were ordered to run concurrently. Co-accused Gaurav Patial was declared proclaimed offender during trial.

3. The case of the prosecution, in a nutshell, is that Major Singh made statement before the police to the effect that he was studying law at Lincoln College, Sirhind. On 07.07.2014, he was sitting at Maula Service Station of his village. Gurjant Singh alias Janta son of Randhir Singh along with his uncle Prem Singh and Kulwant Singh came to the Service Station for getting their vehicle (car) washed. They parked the vehicle. They were talking with each other. Gurjant Singh was sitting on the cot. In the meantime, at about 8.30 PM, two cars, i.e. one Figo of white colour bearing registration No. 8384 and the other make Polo of black colour bearing registration No. PB-65 U-2528, came there. Kuldeep Singh alias Deep, Roda, Dalbir Singh alias Dalli, Kamaldeep Singh alias Kamla, Harpreet Singh Toor, Rupinder Singh and Gaurav Patial along with two unknown persons alighted from the vehicles. They were armed with *kirpan*, *kirch* and *gandasi*. They attacked Gurjant Singh. Rupinder Singh caught hold of arms of Gurjant Singh and gave *kirch* blow on his neck. When Gurjant Singh tried to rescue himself, then one unidentified person caught hold of his

second arm. In the meantime, accused Kuldeep Singh gave three *kirpan* blows on the head of Gurjant Singh. When they tried to rescue Gurjant Singh, accused Harpreet Singh Toor pointed pistol towards them and restrained them. Accused Sukhpreet Singh alias Roda gave *gandasi* blow on the face of Gurjant Singh, while he was lying on the ground. Dalbir Singh alias Dalli gave *kirpan* blow on the left and right arm of Gurjant Singh. Kamaldeep Singh alias Kamal gave *kirch* blows on the neck and head of Gurjant Singh. Accused Lucky gave *kirpan* blow on the chest and neck of Gurjant Singh. Accused ran away from the spot. Injured Gurjant Singh was shifted to GMCH, Sector 32, Chandigarh for treatment. He was referred to PGI, Chandigarh. The doctors declared him “brought dead”. The motive behind this occurrence was that during Lok Sabha elections, Gurjant Singh gave injuries to the party of Roda. Due to this enmity, all the accused in furtherance of common object committed murder of Gurjant Singh. The FIR was registered. Post mortem of the body was got conducted. The investigation was completed and after completing all the codal formalities, challan was put up against accused Kuldeep Singh, Sukhpreet Singh, Dalbir Singh, Kamaldeep Singh, Gagandeep Singh and Gursewak Singh.

4. Rupinder Singh, Gaurav Patial and Harpreet Singh were summoned by the trial court as additional accused under Section 319 Cr.P.C., vide order dated 06.02.2015.

5. Fresh charge sheet for the offences under Sections 148, 302 read with Section 149, 506, 341 IPC and Section 25 of the Arms Act was served upon all the accused on 04.05.2015.

6. The prosecution examined as many as 18 witnesses in support

of its case. Statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated in the case. They also produced 17 witnesses in support of their defence. The appellants were convicted and sentenced, as noticed here-in-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 against their clients. Learned counsel appearing on behalf of 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.4 Dr. Shalini, Ex Medical Officer, GMCH Sector 32, Chandigarh, conducted medical examination of patient Gurjant Singh on 07.07.2014. According to her, the patient arrived at 21.23 hours and was examined at 21.25 hours.

10. PW.12 Dr. Rajiv Gupta testified that he was on emergency duty on 07.07.2014. Gurjant Singh was brought by his friend, with the alleged history of physical assault on 07.07.2014 at about 8.30 PM. There were multiple open wounds over scalp with active bleeding. Patient was semi conscious, disoriented. Vitals were unstable.

11. PW.3 Dr. Jagdish Singh Gill testified that on 08.07.2014, a Medical Board, consisting of himself, Dr. Jaswant Singh and Dr. Rakesh Kumar, was constituted for conducting post mortem examination on the body of Gurjant Singh. They conducted the post mortem examination. They noticed the following injuries on the body of deceased Gurjant Singh :-

1. 8.5 x 0.5 cm incised wound present vertically on right side of forehead and head, lower end being 2.2 cm above medial end of right eyebrow, margins clean cut, clotted blood was present.
2. 6 x 0.5 cm incised wound present 1 cm right to injury No.1 and merging in injury No.1 at upper end in head. Margins clean cut, clotted blood was present.
3. 6 x 0.5 cm incised wound present 1.5 cm right to injury No.2 and merging with it at upper end in head. Margins clean cut, clotted blood was present.
4. 20 x 1.8 cm incised wound 1.8 cm right to injury No.3 was present on right side of forehead and head, lower end being 1 cm above outer end of right eyebrow and upper end curved in head, margins clean cut, upper end flap raised, clotted blood was present.
5. 3 x 1 cm incised wound was present on right side of head obliquely placed, 2.5 cm above upper border of right ear pinna, margins clean cut, clotted blood was present.

On dissection of injuries No.1 to 5 and head, right parietal bone, right temporal bone and right side of frontal bone showed multiple cut- fractures, infiltration of blood was present, corresponding cuts present in dura matter and brain matter. Sub dural haemorrhage, inter cerebral haemorrhage were present. About 80 cc fluid blood was present at base of brain.

6. 13 x 1.5 cm incised wound was present on right side of face from right lower eyelid, right cheek, upper and lower lips upto left side of chin, margins were clean cut, clotted blood was present. On dissection, corresponding cut fracture present on right maxilla and mandible, teeth dislocated infiltration of blood was present.
7. 14 x 2 cm curved incised wound present on left side of face and lower jaw, flap raised downwards, upto left

angle of mouth, margins clean cut, clotted blood was present. On dissection, mandible on left side was found having cut fracture, teeth cut and dislocated, infiltration of blood was present.

8. Five incised wounds present on front of left shoulder almost parallel to each other, the medial most being 16 x 0.5 cm, lateral to it 8 x 0.5 cm, 14 x 0.5 cm, 9 x 2 cm and lateral most 15 x 0.5 cm, 2 cm from each other. Tailing present downwards, margins clean cut, clotted blood was present. On dissection, left clavicle shows cut fracture. Infiltration of blood was present.
9. 14 x 0.3 cm superficial incised wound was present on front of right side of chest, vertically placed, 6 cm medial to right nipple, margins clean cut, clotted blood was present.
10. 9 x 1 cm incised wound was present on front of right shoulder tailing present downwards, obliquely placed 4 cm right to base of neck, margins clean cut, clotted blood was present. On dissection, right clavicle shows cut fracture. Infiltration of blood was present.
11. 8 x 0.3 cm superficial incised wound was present parallel and 1.5 cm medial to injury No.1 on front of right shoulder, tailing present downwards, margins clean cut, clotted blood was present.
12. 11 x 1 cm incised wound was present obliquely on outer aspect of right upper arm, 10 cm below top of right shoulder, margins clean cut, clotted blood was present. O/D soft tissue injuries.
13. 15 x 6 cm incised wound present obliquely on back of right forearm extending on medial and lateral aspect, the distal part hanging with soft tissue, margins clean cut, clotted blood was present. Both ulna and radius found having corresponding cut fracture. Infiltration of blood

was present.

14. 9 x 3 cm incised wound present on right hand in the web of index and middle finger, cutting through and through on palmer and dorsal aspect, upto thenar region, margins clean cut, clotted blood was present. On dissection, corresponding cut present on tendon, cartilage and metacarpal bone. Infiltration of blood was present.
15. 10 x 3 cm incised wound present on medial aspect of left forearm extending on front and back 6 cm above left wrist obliquely placed, margins clean cut, clotted blood was present. On dissection, ulna found cut and radius shows cut fracture. Infiltration of blood was present.
16. 7 x 2 cm curved incised wound was present on palmer aspect of left hand in thenar region, flap raised laterally, margins clean cut, clotted blood was present. On dissection, soft tissue injury was present.
17. 6 x 1 cm incised wound was present on medial side of left hand extending on palmer aspect, margins clean cut, clotted blood was present. On dissection, 4th and 5th metacarpal bone shows corresponding, cut fracture. Infiltration of blood was present.
18. 2.2 x 1 cm lacerated wound present on front of right knee in lower outer quadrant, margins irregular, clotted blood was present. Skin deep.
19. 20 x 0.8 cm incised wound present obliquely on back extending on right and left side across midline, 20 cm above upper border of sacrum, margins clean cut, clotted blood was present. Skin deep.
20. 3 x 1 cm horizontally placed, surgical incised wound was present on medial aspect of left leg, 5 cm above medial side of ankle (left), one stitch intact was present. No infiltration or clotting of blood was present.
21. 2.2 x 1 cm vertically placed surgical incised wound was

present on front of neck in its middle along mid line. No infiltration or clotting of blood was present.

On dissection of thorax, pleural cavities and lungs were pale, heart was empty. On dissection of abdomen-Peritoneum, stomach, small intestine, large intestine, liver spleen and kidneys were pale. Stomach contained about 110 cc of dark coloured fluid, small intestine contained chyme and large intestine contained gases and fecal matter and bladder was empty. Organs of generation-(penis and scrotum)-NAD.

Injuries No.1 to 19 were ante-mortem in nature and injuries No.20 and 21 were post mortem in nature. The cause of death was haemorrhage and shock due to cumulative effect of multiple injuries causing multiple fractures and injury to brain (vital organ) which was sufficient to cause death in the ordinary course of nature. The probable duration between injuries and death was about 30 to 40 minutes and between death and post mortem examination was about 18 hours.

12. PW.1 Major Singh testified that on 07.07.2014, he was present at Maula Service Station of his village Kambali. Gurjant Singh alias Janta along with his uncle Prem Singh and Kulwant Singh came to the Service Station. They were talking with him. Gurjant Singh was sitting on the cot. At about 8.30 PM, two cars, out of which one was Figgo of white colour bearing registration No. 8384 and the other was make Polo of black colour bearing registration No. PB-65 U-2828, came to the Service Station. Kuldeep Singh alias Deep, Sukhpreet Singh alias Roda, Dalbir Singh alias Dalli, Kamaldeep Singh alias Kamla, Harpreet Singh Toor, Rupinder Singh, Gaurav Patial alias Lucky, Gagandeep Singh alias Ladda and Gursewak Singh alias Bhoot came down from the said vehicles. They were armed with

kirpan, *kirch*, *gandasi* and pistol. They attacked Gurjant Singh alias Janta. Accused Rupinder Singh caught hold of arm of Gurjant Singh and gave *kirch* blow on his neck. When Gurjant Singh tried to rescue from him, then unidentified person, who later on came to be known as Gagandeep Singh, gave *kirch* blow on the left side of abdomen and on his neck. Accused Kuldeep Singh gave three *kirpan* blows on the head of Gurjant Singh. When they tried to rescue Gurjant Singh, then accused Harpreet Singh Toor pointed pistol towards them and restrained them. Accused Sukhpreet Singh alias Roda gave two-three *gandasi* blows on the face and hands of Gurjant Singh. Accused Dalbir Singh alias Dalli gave *kirpan* blow on the left and right arm of Gurjant Singh. Accused Kamaljit Singh alias Kamla gave *kirch* blow on the neck and head of Gurjant Singh. Accused Gaurav Patial alias Lucky gave *kirpan* blow on the chest and neck of Gurjant Singh. Accused Gursewak Singh alias Bhoot was carrying pistol at that time. Accused ran away from the spot. They took Gurjant Singh to GMCH, Sector 32, Chandigarh, from where he was referred to PGI, Chandigarh. He died on the way. The motive behind this occurrence was that a quarrel had taken place between deceased and accused Sukhpreet Singh alias Roda during elections. He got his statement recorded to the police vide Ex.PW.1/A. The post mortem examination on the body of Gurjant Singh alias Janta was got conducted. He identified the body. In his cross-examination, he deposed that his village was situated at a distance of 400-500 yards from the place of occurrence. He did not know the names of workers working at the Service Station. The said Service Station belonged to his friend. He used to visit it frequently. When the accused came down, they were carrying weapons.

Gurjant Singh was sitting alone on the cot. They tried to resist, but the accused had already started the fight. They were armed with deadly weapons. Near the cot of Gurjant Singh, an electric bulb was on, which was installed on the shed by pucca fitting. Gagandeep Singh alias Ladda opened attack at second place, while Harpreet Singh Toor did not inflict any injury. Voluntarily stated, he only pointed pistol towards them. In the last, Gaurav Patial inflicted injuries on the person of Gurjant Singh. All the injuries were inflicted with sharp edged weapons only. He knew a Kabaddi player Saudagar Singh, who had since died. He denied the suggestion that deceased Saudagar Singh was known to him and he was having friendly relations with him. He admitted that he did not mention the name of Gursewak Singh in his first statement.

13. PW.2 Kulwant Singh corroborated the statement of PW.1 Major Singh regarding the manner in which the injuries were inflicted on the body of Gurjant Singh alias Janta by the appellants. In his cross-examination, he deposed that he had not given description of unidentified persons. The police had not shown any photograph to him. He had pointed out the bulb to the police, which was installed near the temporary shed. Three assailants, i.e. Rupinder, Gagandeep and Kuldeep inflicted injuries, when Gurjant Singh was standing. Rupinder Singh, Gagandeep, Kamaldeep and Gaurav Patial inflicted injuries near neck. When he fell down, then all of them started giving injuries to him.

14. PW.5 Inder Verma had taken the photographs of deceased Gurjant Singh having multiple injuries from different angles.

15. PW.6 Baljinder Singh prepared scaled site plan Ex.PW.6/A.

16. PW.7 Inspector Ajaib Singh deposed that accused Gursewak Singh alias Bhoot made a disclosure statement Ex.PW.7/C. He disclosed that he had concealed a pistol in the area of village Mauli Baidwan. He got the pistol recovered. It was taken into possession vide memo Ex.PW.7/D In his cross-examination, he deposed that he tried to join independent person but no body agreed.

17. PW.15 Satwant Singh testified that on 08.07.2014, he was posted as SHO, Police Station Sohana. Information was received from PGI, Chandigarh with regard to patient Gurjant Singh. He reached the mortuary of PGI. Major Singh met him. He made statement Ex.PW.1/A. He examined the dead body of Gurjant Singh alias Janta. The body was sent for post mortem examination. Major Singh made another supplementary statement on 10.07.2014. He apprehended accused Kuldeep Singh alias Deep and Sukhpreet Singh alias Roda on 13.07.2014. Accused Kuldeep Singh alias Deep made disclosure statement vide Ex.PW.15/Y. Accused Sukhpreet Singh alias Roda also made disclosure statement Ex.PW.15/Z. Accused Kuldeep Singh alias Deep got recovered *kirpan* and produced the same before him. Accused Sukhpreet Singh alias Roda got recovered *gandasi* and produced the same before him. These were taken into possession. On 15.07.2014, he arrested accused Daljit Singh alias Dalli, Kamaldeep Singh alias Kamal and Gagandeep Singh alias Ladda. Accused Daljit Singh alias Dalli made disclosure statement Ex.PW.15/EE. Gagandeep Singh alias Ladda made disclosure statement Ex.PW.15/FF. Accused Kamaldeep Singh alias Kamal also made a disclosure statement vide Ex.PW.15/GG. Accused Daljit Singh got recovered *kirpan*. It was taken into possession vide memo

Ex.PW.15/HH. Accused Kamaldeep Singh alias Kamal got recovered *kirch*. It was taken into possession vide memo Ex.PW.15/KK. Accused Gagandeep alias Ladda got recovered *kirch* from the disclosed place. It was taken into possession vide memo Ex.PW.15/MM. Accused Gursewak Singh alias Bhoot was arrested on 16.09.2014. He made a disclosure statement Ex.PW.7/C. On the basis of his disclosure statement, he got recovered pistol from the disclosed place. It was taken into possession vide memo Ex.PW.15/OO. He deposited the case property with MHC. He identified the case property in the court. He proved *kirpan* got recovered by Kuldeep Singh alias Roda Ex.MO-6, *gandasi* Ex.MO-7 got recovered by accused Sukhpreet Singh alias Roda, *kirch* Ex.MO-8 got recovered by accused Kamaldeep Singh alias Kamal, *kirch* Ex.MO-9 got recovered by accused Gagandeep Singh alias Ladda, pistol Ex.MO-10 got recovered by accused Gursewak Singh alias Bhoot, *kirpan* Ex.MO-11 got recovered by accused Daljit Singh alias Dalli. In his cross-examination, he deposed that the witnesses did not mention the specific role played by any of the unidentified assailants. Accused were not subjected to any test identification parade. No independent witness was joined at the time of recording disclosure statements and effecting recovery. Statements of Kulwant Singh and Prem Singh were also recorded at PGI. The place of recovery from where Kuldeep Singh got recovered *kirpan* was an open field, accessible to all. The places of recovery pointed out by Sukhpreet Singh, Daljit Singh alias Dalli, Kamaldeep alias Kamal and Gagandeep alias Ladda were also open and accessible to all. He also admitted that SIT was constituted on an application moved by accused Harpreet Singh and Rupinder Singh. He did

not know the outcome of the SIT proceedings.

18. PW.16 ASI Jagir Singh also deposed the manner in which the accused made disclosure statements and recoveries were effected at their instance. He also identified the accused as well as the case property, including the *kirpan*, *kirhc* and *gandasi*. In his cross-examination, he also deposed that the places of recovery were open places and accessible to all. He deposed that the *gandasi* was got recovered from accused Sukhpreet Singh from kacha path. He was deputed to go to Goa to enquire about the facts contained in the application moved by accused Harpreet Singh. As per record collected from hotels Ancora and Ticlo situated on a beach, it transpired that accused Harpreet Singh along with two other persons namely Gagandeep Singh and Gurjant Singh had stayed there from 04.07.2014 to 10.07.2014 at hotel Ancora and thereafter at Ticlo hotel from 10.07.2014 to 16.07.2014. He obtained CCTV footage from hotel Ancora in a CD, which was placed on the enquiry file. However, this CD was not examined or played in the court.

19. PW.17 Balbir Singh deposed that he went to the hospital along with SHO. Kulwant Singh eye witness produced the clothes worn by him at the time of occurrence, i.e. T-shirt, nicker, stained with blood of deceased Gurjant Singh. These were converted into parcel. Major Singh complainant also produced the clothes worn by him, including T-shirt and nicker, stained with blood of Gurjant Singh. These were converted into a parcel. Thereafter, they took the dead body of Gurjant Singh to Civil Hospital, Phase 6, Mohali. SI Satwant Singh collected the blood lying on the spot. Gurjant Singh's clothes were also taken into possession.

20. DW.1 Harcharan Singh deposed that he had retired from Rural Development department. He was residing in village Landran. His grand-son Paramvir Singh was taking tuition at Sector 23, Chandigarh. Accused Rupinder Singh used to bring him in the evening. His tuition used to be over at about 5.00 PM at Chandigarh. After bringing him from Chandigarh, Rupinder Singh used to take him back at about 6.00 PM to his house. On 07.07.2014, accused Rupinder Singh brought grand-son of this witness to his house at about 6.00 PM. Rupinder Singh was working as gate keeper in Sector 23 Senior Model School, Chandigarh. At about 7.30 PM, accused met him in village Landran. They were together till 8.30 PM.

21. DW.2 Rasvinder Singh Anttal alias Babbi deposed that he knew Harpreet Singh Toor. He had given telephone call to him on the next day of the murder. He told him that from the news paper, he had come to know that he had been named in the murder case of Gurjant Singh. He told him that he was in Goa on 07.07.2014. He told him to collect the bills of the hotel and also to collect the CCTV footage from the hotel.

22. DW.3 Tarlochan Singh deposed that after his retirement from Military, he worked in PWD, Chandigarh. He was living in village Landran. On 07.07.2014, he came to Khera (common place) at about 4.00 PM and remained sitting there upto 8.00/9.30 PM. He knew Rupinder Singh accused. He was present with them on that day at Khera. Accused was working as gate keeper at Sector 23, Chandigarh. He used to go to school at about 8.00/9.00 AM and used to come back at about 6.00 PM. Accused Rupinder Singh was present with him at Khera at 8.00 PM on 07.07.2014.

In his cross-examination, he categorically deposed that he did not know

after 8.00 PM, where the accused had gone.

23. DW.4 Neeraj Singla deposed that he was running mobile repair shop at village Landran. Rupinder Singh accused had come to him at his shop at Landran on 07.07.2014 between 6.00 PM to 7.00 PM and got his mobile re-charged. In cross-examination, he admitted that Rupinder Singh remained present in his shop for 15 minutes between 6.00 PM to 7.00 PM.

24. DW.5 Gurpreet Singh deposed that accused Rupinder Singh was residing in his locality. He was employed as gate keeper in a school at Chandigarh. He used to go to school at 8.00 AM and used to come back at about 6.00 PM. On 07.07.2014 at about 7.00 PM, he came along with Tarlochan Singh, Bhag Singh, Nambardar Dilbagh Singh and Harcharan Sigh etc. to Khera (common place) of the village. He left the place at about 8.15 PM and went to his house. At about 9.00 PM, when he went to his fields, he saw Rupinder Singh in *Chobara* of his house. In cross-examination, he admitted that Gurjant Singh was not having any connection with Saudagar Singh.

25. DW.6 Sehajpal Singh deposed that during the 2014 Session, he was President of Panjab University Student Union. On 07.07.2014, in DAV College, Sector 10, there was quarrel between SOI and PUSU. FIR was registered. He was called by police in Police Station Sector 17, Chandigarh to resolve the dispute. He called Lucky alias Gaurav Patial along with other supporters of PUSU. The matter was resolved. In his cross-examination, he admitted that Lucky alias Gaurav Patial was involved in few other cases of heinous crime.

26. DW.7 Bhupinder Singh deposed that Karam Singh had sought

information under the RTI Act regarding admission of Kulwant Singh in BA Part I and BA Part II. The information was supplied vide Ex.DW.7/A and Ex.DW.7/B.

27. DW.8 Gagandeep Singh deposed that on 03.07.2014, he along with Harpreet Singh and Gurjant Singh had gone to Goa. They had taken the ticket from Dhariwal agent, Phase 7, Mohali. Ex.D1 is the ticket. Ex.D2 is the conditions and Ex.D3 is the envelope. Ex.D4 to Ex.D6 are the boarding passes. On 03.07.2014, they had boarded the plane. They reached Bombay at about 5.30 PM on 03.07.2014. They went to Goa from Bombay on 03.07.2014 by night bus. They went to Ancora Beach resort on 04.07.2014. They stayed in that hotel upto 10.07.2014. Footage was recorded in CCTV cameras of the hotel. CD was obtained by the police. Their movements were shown in the CD. They had gone to Goa Science Center on 08.07.2014. They stayed in Ticlo Resort from 10.07.2014 to 16.07.2014. They paid a sum of ₹ 2,064/- as rent vide Ex.D13. He also produced on record the bills issued by different restaurants and few other bills. In cross-examination, he admitted that Ex.D7 and Ex.D8 only bear the name of Harpreet Singh. He also admitted that the date of departure was not mentioned in the register. Ex.D10 and Ex.D11 do not bear name of any person. Similarly, Ex.D15 to Ex.D52 do not bear the name of any person.

28. DW.9 Naeen Ahmad deposed that he was at Shimla on 07.07.2014. Sukhpreet Singh alias Roda was also with him. They had gone near the Mall Road. In his cross-examination, he admitted that he had come to the court at the instance of Sukhpreet Singh.

29. DW.10 Gagandeep proved the application filed by Karam

Singh seeking information under the RTI Act. Attested copy of the same was Ex.DW.10/A.

30. DW.11 Simran Singh deposed that on 03.07.2014, he sold the air ticket to Harpreet Singh, Gagandeep Singh and Gurjant Singh from Chandigarh to Bombay and from Goa to Chandigarh. Ex.D1 was copy of air ticket. It was generated from computer. In cross-examination, he deposed that he could not say whether the persons who had purchased tickets did travel to the destination mentioned therein. The address of the persons purchasing tickets was not mentioned on Ex.D4 to Ex.D6 and Ex.D1.

31. DW.12 Dipti produced the bank account of Harpreet Singh for the period from 01.07.2014 to 31.07.2014 vide Ex.DW.12/B. In her cross-examination, she admitted that ATM card could be used by any person knowing the PIN number.

32. DW.13 Yogesh Kumar deposed that he was running a Readymade cloth shop at Landran. He had installed two CCTV Cameras in his shop. He supplied a CD of footage dated 07.07.2014 in between 8.00 PM to 9.00 PM to the police. Rupinder Singh had visited his shop on that day during the said period.

33. DW.15 ASI Jagir Singh, who had already been examined by the prosecution as PW.16, referred to the SIT report dated 01.10.2014, Ex.DW.15/A. He admitted in his cross-examination that he was not member of SIT. He was only a witness. The author of the report has not been cited as a witness.

34. DW.16 Harbhajan Singh testified that as per the record, no electricity connection was ever released to Maula Service Station at village

Kambali. In his cross-examination, he deposed that he did not know whether Maula Service Station was being run by Maula Singh son of Bhal Singh after taking electricity through wire from his residence, which was situated back side of the Service Station.

35. The post mortem on the body of the deceased was conducted by a Medical Board, consisting of three doctors, including PW.3 Dr. Jagdish Singh Gill. They had noticed as many as 21 injuries on the body of the deceased. Injuries No.1 to 19 were ante-mortem in nature and injuries No.20 and 21 were post mortem in nature. The cause of death was haemorrhage and shock due to cumulative effect of multiple injuries causing multiple fractures and injury to brain (vital organ) which was sufficient to cause death in the ordinary course of nature. The probable duration between injuries and death was about 30 to 40 minutes and between death and post mortem examination was about 18 hours. In his cross-examination, he clarified that injuries noted on the person of the deceased could be suffered both while standing or lying on the ground. These injuries were possible with one or two weapons, if used multiple times. PW.4 Dr. Shalini had medico legally examined Gurjant Singh, before he was referred to PGI, Chandigarh. She proved MLR Ex.PW.4/A. According to PW.12 Dr. Rajiv Gupta, on 07.07.2014, he was on Emergency duty in GMCH, Sector 32, Chandigarh. Patient Gurjant Singh was brought by his friend with the alleged history of physical assault on 07.07.2014 at about 8.30 PM. He had noticed open wound over left palm measuring 12 x 2 cm with active bleeding. There were open wounds over face involving right cheek, lips, tongue and left side of face. There was open wound over right fore-arm

measuring approximately 15 x 5 cm with active bleeding, muscles cut and both bones fore-arm exposed. The patient was referred to PGI, Chandigarh, by ENT/Surgery department due to non availability of maxillo facial and plastic surgeon in their hospital.

36. PW.1 Major Singh is one of the eye witnesses. He categorically testified that on 07.07.2014, he was present at Maula Service Station. Two cars, bearing registration No. 8384 and PB-65 U-2828, reached the spot. According to him, appellant Rupinder Singh held arm of Gurjant Singh and gave *kirch* blow on his neck. Appellant Gagandeep Singh gave *kirch* blow on the left side of abdomen and neck of Gurjant Singh. Appellant Kuldeep Singh gave three *kirpan* blows on his head. Appellant Harpreet Singh Toor pointed pistol towards them and restrained them. Sukhpreet Singh alias Roda gave two-three *gandasi* blows on the face and hands of Gurjant Singh. Dalbir Singh alias Dalli gave *kirpan* blow on the left and right arm of Gurjant Singh. Appellant Kamaljit Singh alias Kamla gave *kirch* blow on the neck and head of Gurjant Singh. Accused Gaurav Patial alias Lucky gave *kirpan* blow on the chest and neck of Gurjant Singh. PW.2 Kulwant Singh was also present at the Maula Service Station. He had also seen appellant Rupinder Singh holding the arms of Gurjant Singh. According to him, Rupinder Singh gave *kirch* blow near the neck of Gurjant Singh. Gagandeep Singh alias Ladda gave *kirch* blow on his waist and near neck. Kuldeep Singh also gave two-three *kirpan* blows on the head of Gurjant Singh. Harpreet Singh Toor pointed his pistol against them to prevent them from saving Gurjant Singh. Sukhpreet Singh alias Roda gave injuries on the face of Gurjant Singh with *gandasi*, when he fell down. Dalbir Singh alias

Dalli attacked Gurjant Singh on his left and right arm with his *kirpan*. Kamaldeep Singh alias Kamla attacked Gurjant Singh near his neck and head with *kirch*. Gaurav Patial attacked Gurjant Singh with *kirpan* on his chest and near neck. Gursewak Singh alias Bhoot gave *kirpan* blow on the head of Gurjant Singh.

37. The statements of PW.1 Major Singh and PW.2 Kulwant Singh are duly corroborated by the medical evidence. There are no material contradictions in their statements. It has come on record that PW.1 Major Singh and PW.2 Kulwant Singh had taken the injured to the hospital. It was not necessary for them to sign the medical report. Their blood stained clothes were also taken into possession vide Ex.PW.15/L and Ex.PW.15/M. According to the FSL report Ex.PW.15/QQ, the same were stained with human blood.

38. The scaled site plan Ex.PW.6/A was prepared by PW.6 Baljinder Singh. The appellants made disclosure statements, on the basis of which they got recovered the weapons of offence. Appellant Gursewak Singh alias Bhoot had made disclosure statement vide Ex.PW.7/C. Disclosure statement of appellant Kuldeep Singh alias Deep is Ex.PW.15/Y. Sukhpreet Singh alias Roda made disclosure statement Ex.PW.15/Z. Dalbir Singh alias Daljit Singh alias Dalli had made disclosure statement vide Ex.PW.15/EE. Disclosure statement of appellant Gagandeep Singh alias Ladda is Ex.PW.15/FF. Appellant Kamaldeep Singh alias Kamal made disclosure statement Ex.PW.15/GG.

39. The statement of PW.15 Satwant Singh (Investigating Officer) is duly corroborated by the statement of PW.16 Jagir Singh and PW.17 Balbir

Singh.

40. The clothes of the deceased were also taken into possession. These were produced before the court vide Ex.MO-4 and Ex.MO-5. PW.8 Constable Gurpreet Singh had deposited the parcels at the Forensic Science Laboratory. PW.13 HC Raj Kumar duly proved that the case property was deposited in the police Malkhana and was handed over to him for sending to the Forensic Science Laboratory.

41. The incident had taken place at 8.30 PM. It has come in the evidence that the bulb was on. All the accused were identified by PW.1 Major Singh and PW.2 Kulwant Singh. All the accused belong to the same area.

42. The FSL report is Ex. PW.15/QQ. According to this report, human blood was found on all the exhibits 'A' to 'E'.

43. Appellant Rupinder Singh has taken the plea of alibi. According to him, he was not present at the spot, when the incident took place on 07.07.2014 at 8.30 PM. He examined DW.1 Harcharan Singh. He deposed that appellant Rupinder Singh was working as gate keeper in a school in Sector 23, Chandigarh. On the day of occurrence, he remained with him till 8.30 PM. He has not led any evidence to prove that he was resident of village Landran. The testimony of DW.3 Tarlochan Singh was also relied upon by appellant Rupinder Singh. He deposed that after his retirement, he was residing in village Landran. On 07.07.2014, he came to Khera at about 4.00 PM and remained sitting there upto 8.00/9.30 PM. He knew Rupinder Singh of his village. He was with him at Khera at 8.00 PM on 07.07.2014. In his cross-examination, he categorically deposed that he

did not know where appellant Rupinder Singh had gone after 8.00 PM. Appellant Rupinder Singh also relied upon the testimony of DW.4 Neeraj Singla to the effect that he was in his shop on 07.07.2014 between 6.00 PM to 7.00 PM. However, he was oblivious where appellant Rupinder Singh had gone after 7.00 PM. Similarly, Rupinder Singh has relied upon the testimony of DW.5 Gurpreet Singh. He testified that on 07.07.2014 at about 7.00 PM, he came to Khera (common place) of the village. He left the place at about 8.15 PM. When he went to his fields at about 9.00 PM, he saw Rupinder Singh in *Chobara* of his house. The fact of the matter is that this witness also did not know about the whereabouts of Rupinder Singh after 8.15 PM. DW.13 Yogesh Kumar was also examined by appellant Rupinder Singh to prove that he was in his Readymade cloth shop at Landran at the time of occurrence. He had produced CCTV footage vide CD Ex.DW.13/A. The CD was played in the court, but nothing tangible came out of it. Appellant Rupinder Singh could not prove the plea of alibi. Thus, his presence on the spot is duly proved.

44. The defence taken by appellant Harpreet Singh is that he along with Gagandeep Singh and Gurjant Singh was away to Goa on 07.07.2014. They stayed in one hotel from 04.07.2014 to 10.07.2014 and thereafter, in another hotel from 10.07.2014 to 16.07.2014. They came back on 18.07.2014. DW.2 Rashvinder Singh Anttal alias Babbi made statement only to the effect that he had told appellant Harpreet Singh to collect the evidence from hotels, where he had stayed. DW.8 Gagandeep Singh deposed that he along with Harpreet Singh and Gurjant Singh had gone to Goa on 03.07.2014. He placed on record the tickets and boarding passes

Ex.D1 to Ex.D6 from 10.07.2014 to 16.07.2014. He produced CDs Ex.D55, Ex.D56 and Ex.DW.16/B. Nothing could be extracted from these CDs. These CDs were not sent to any FSL. No employee from Ancora Beach Resort or Ticlo Resort was produced to prove that these CDs belong to these Resorts. No certificate was ever produced to prove these CDs, as envisaged under Section 65-B of the Indian Evidence Act. Even in one of the CDs, which was played in the court, it was not clear that the footage belonged to which place. The bills produced by DW.8 Gagandeep Singh are only photographs, which are not admissible in evidence. Ex.D4 to Ex.D6 dated 03.07.2014 are only photostat copies. The ticket Ex.D1 does not mention the name of the passenger. The bills dated 06.07.2014 and 07.07.2014, Ex.D17 and Ex.D18, are in the name of Naresh. It is also intriguing to note that appellant Harpreet Singh was claiming that he had gone to Goa by air, but came back by train. A person who goes by air, generally, comes back by air. Appellant Harpreet Singh, though had taken the plea of alibi, but could not prove the same.

45. Appellant Sukhpreet Singh alias Roda has also taken the plea of alibi. According to DW.9 Naeen Ahmad, he was with him at Shimla. However, according to him, he had come back on 07.07.2014 at about 7.00 PM. He has not even deposed regarding the mode of transport for going to Shimla. Since the appellants, who had taken the plea of alibi, could not prove the same, therefore, they were present at the spot.

46. The plea of alibi is a double edged weapon. In case the accused fails to prove the plea of alibi, his presence at the spot cannot be ruled out.

Their Lordships of Hon'ble the Supreme Court in **Binay Kumar Singh vs**

State of Bihar (1997) 1 SCC 283, have held that once the prosecution succeeds in discharging the burden, it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. Their Lordships have held as under :-

“22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

"The question is whether A committed a crime at Calcutta on a certain date; the fact that on that date, A was at Lahore is relevant."

23. The Latin word alibi means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the

*prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide *Dudh Nath Pandey v. State of U.P.* (1981) 2 SCC 166; *State of Maharashtra v. Narsingrao Gangaram Pimple* AIR 1984 SC 63)."*

47. Their Lordships of the Hon'ble Supreme Court in **Krishnan and another Versus State represented by Inspector of Police, (2003) 7 Supreme Court Cases 56**, have held that documents of general nature not specifically ruling out possibility of accused's presence at the site of the occurrence at the point of time cannot be relied upon to accept the plea of

alibi. Their Lordships have held as under :-

“25. Other plea relates to alibi claimed by accused-appellants Krishnan and Ganesan. Accused-appellant Krishnan claimed that he had given a warning notice and it would be evident from the warning notice itself. Accused Ganesan relied on some documents to claim that he was in a school at the relevant point of time and could not have been at the spot of occurrence. It has been held by the trial Court that the documents were too general in nature and did not in any way establish that at the relevant point of time accused appellant Ganesan was not at the site of occurrence. It has also been held by the trial Court that fabricated documents were pressed into service. The conclusion does not suffer from any infirmity.

26. Similarly, warning notice does not indicate anything on which relevance was placed by accused Krishnan. It did not in any way rule out the possibility of his presence at the place of occurrence. His claim has also been rightly discarded by the courts below.”

48. DW.15 ASI Jagir Singh, who was already examined by the prosecution as PW.16, only identified the signatures of SIT members on the SIT report. The CD of CCTV footage produced by him vide Ex.DW.16/B was not played in the court. The documents Ex.DW.16/C to Ex.DW.16/F were the photostat copies. The statement of Receptionist was not produced on record. The SIT report was also not produced on record by the prosecution.

49. There was previous enmity between the parties. It has come in the statements under Section 313 Cr.P.C., that Gurjant Singh and Neetu had caused injuries to appellant Sukhpreet Singh. They were pressurising the appellants to compromise the matter. In that case, appellants Gagandeep Singh, Daljit Singh and Kamaldeep Singh were witnesses. According to the version of Rupinder Singh, his brothers Jatinder Singh and Satnam Singh were involved in a murder case of Saudagar Singh.

50. There is no inordinate delay in lodging the FIR. The injured was firstly taken to GMCH, Sector 32, Chandigarh. Thereafter, he was referred to PGI, Chandigarh. The first endeavour is to save the life. The appellants were duly identified by PW.1 Major Singh and PW.2 Kulwant Singh.

51. It is true that the names of appellants Rupinder Singh, Gaurav Patial and Harpreet Singh were not mentioned in the FIR, but their names were later on added. Their Lordships of the Hon'ble Supreme Court in **Latesh alias Dadu Baburao Karlekar Versus State of Maharashtra, (2018) 3 Supreme Court Cases 66** have held that merely because names of accused are not stated and their names are not specified in FIR, that may not be a ground to doubt contents of FIR and the case of prosecution cannot be thrown out on such count. Their Lordships have held as under :-

“36. In the backdrop of the factual matrix, we would like to deal with several contentions raised on behalf of the accused. It is specifically put forth on behalf of the accused that P.W.2 in the initial statement has not specifically disclosed the names of the accused nor attributed individual roles of the accused, when the case of P.W.2 is

that the accused are very much known to each other. Further, P.W.2 revealed the names of the accused a few days after the incident by way of a supplementary statement with an intention to implicate the accused because of previous enmity. To appreciate this particular contention, it would be appropriate to reproduce the part of the FIR (translated herein) :

“The fact is that at the mentioned date, time and place all the six accused persons mentioned here have made illegal mob, held dangerous weapons like knife, chopper, sword, scythe etc., made life threatening attack on the deceased person named Jagdish Narayan Hingne aged 26 and killed him. Similarly, they attacked on his brother Vitthal Narayan Hingane and injured him seriously. Hence the crime is filed against them.”

37. *There is no dispute with regard to the fact that the entire case of the prosecution depends upon the evidence of P.W.2 and P.W.11 who are the eyewitnesses to the incident. Admittedly, basing on the statement of P.W.2, the FIR was registered, and initially he has not revealed the names of the accused. Subsequently in a supplementary statement, he has narrated the details of the incident.*

38. *The value to be attached to the FIR depends upon facts and circumstances of each case. When a person gives a statement to the police officer, basing on which the FIR is registered. The capacity of reproducing the things differs from person to person. Some people may have the*

ability to reproduce the things as it is, some may lack the ability to do so. Some times in the state of shock, they may miss the important details, because people tend to react differently when they come across a violent act. Merely because the names of the accused are not stated and their names are not specified in the FIR that may not be a ground to doubt the contents of the FIR and the case of the prosecution cannot be thrown out on this count. Coming to the facts of the case, it is nobody's case that P.W.2 was not injured and was not hospitalized for sometime due to the injuries caused to him by the assailants and also lost his brother. It is most probable that he might have given a general statement for the purpose of registering the complaint which was recorded by police few hours after the incident has taken place. Later, when once he was out of shock, the supplementary statement was recorded, then he has disclosed the names of the accused and has attributed specific overt acts to each of the accused. It is settled law that FIR need not be an encyclopedia of the incident laying out minuscule details and instances of how the crime was committed. Hence, in view of the above discussion we do not find force in the contention put forth on behalf of the accused which is rightly rejected by both the Courts."

52. The recoveries have been made from the open places, which were accessible to all. Their Lordships of the Hon'ble Supreme Court in **Yakub Abdul Razak Memon Versus State of Maharashtra through CBI, Bombay, (2013) 13 Supreme Court Cases 1** have held that recovery from

open space or a public place is admissible. Their Lordships have held as under :-

“1708. In view of the above, it cannot be accepted that a recovery made from an open space or a public place which was accessible to everyone, should not be taken into consideration for any reason. The reasoning behind it, is that, it will be the accused alone who will be having knowledge of the place, where a thing is hidden. The other persons who had access to the place would not be aware of the fact that an accused, after the commission of an offence, had concealed contraband material beneath the earth, or in the garbage.

1709. to 1792. x x x

1793. The submission made by Mr. Mushtaq Ahmad, learned counsel appearing on behalf of the appellant that the recovery was made from a public place and, therefore, could not be relied upon and cannot be accepted, as it is the accused alone on whose disclosure statement the recovery was made and it is he alone, who is aware of the place he has hidden the same. It cannot be presumed that the other persons having access to the place would be aware that some accused after the commission of an offence has concealed the contraband material beneath the earth or in the garbage.

1794. to 1796. x x x

1797. In view of the above, merely because the contraband was recovered from a public place i.e. a place accessible to the public at large, the same does not mean that the recovery

is to be discarded. In case, the articles had been hidden by digging up the earth, covering the same up with garbage or other material, the public may not have taken note of it. The same remained in the specific knowledge of the accused i.e. where and also the manner in which the said articles were hidden. Moreover, the recovery cannot be discarded for want of signature of the accused on the recovery memo.

1798. to 1845. x x x

1846. Thus, in view of the above, the submission made by Mr. Mushtaq Ahmed, stating that as the recovery had been made from an open place to which all persons had access, cannot be relied upon and is not worth acceptance.

1847. Undoubtedly, the appellant's disclosure statement had been made before the police, as well as the panch witness. The fact that he did not disclose the place where the contraband had been hidden remains entirely insignificant, for the reason that he had led the police party to the said place, and that the said recovery had been made at his behest. The open space from where the recovery had been made though was accessible to anybody, it must be remembered that the contraband had been hidden, and that it was only after digging was done at the place shown by the appellant, that such recovery was made. Hence, it would have been impossible for a normal person having access to the said place, to know where the contraband goods were hidden.”

53.

Learned counsel appearing on behalf of appellant Gagandeep

Singh alias Ladda has tried to prove that Kulwant Singh was known to him, since he was his class fellow. It cannot be presumed that all the students are known to each other.

54. There were as many as 21 injuries on the person of the deceased. The prosecution has already examined two eye witnesses, i.e. PW.1 Major Singh and PW.2 Kulwant Singh. It was, thus, not necessary to examine Prem Singh, who had come to PGI with Major Singh. The maximum injuries on the body of Gurjant Singh were on vital parts of the body. The appellants had attacked Gurjant Singh with deadly weapons, which led to his death. They were armed. They constituted unlawful assembly with intention to kill Gurjant Singh. They have rightly been convicted under Section 302 read with Section 149 IPC, Sections 341, 506 and 148 IPC.

55. Pistol was got recovered on the basis of disclosure statement made by Gursewak Singh alias Bhoot. Thus, his conviction under Section 25 of the Arms Act is upheld.

56. In **Vinubhai Ranchhodbhai Patel Versus Rajivbhai Dudabhai Patel and others, (2018) 7 Supreme Court Cases 743**, their Lordships of the Hon'ble Supreme Court have held that Section 149 IPC propounds vicarious liability in two contingencies by declaring that if member of unlawful assembly commits offence in prosecution of common object of that assembly, every member is guilty of offence committed by other members of unlawful assembly and even in cases where some members do not share common object to commit particular offence but if they had knowledge of fact that some other members of assembly are likely to

commit that particular offence in prosecution of common object, they would also be liable. Their Lordships have held as under :-

“14. It appears from the above that no clear charges appear to have been framed. At any rate, no document is brought to our notice showing the charges framed by the Court in spite of repeated enquiry. It must be remembered that it is a case where three persons died and five persons were injured allegedly in an attack by all the accused. Causing death to each one of the three persons or causing injury to each one of the five persons is a distinct offence. Similarly, an offence under Section 307 is a distinct offence specific to a particular victim. The offences under 7 Sections 147 and 148 are distinct offences. Section 49 IPC does not create a separate offence but only declares the vicarious liability of all the members of an unlawful assembly in certain circumstances.

15. It was held by a three-Judge bench of this Court in **Shambhu Nath Singh & Others v. State of Bihar**, AIR 1960 SC 725 :

“6. Section 149 of the Indian Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object”
[emphasis supplied]

However, there are benches of a lesser smaller strength which have observed that Section 149 creates a specific and distinct offence. In view of

the fact that decision in Shambu Nath Singh was decided by a larger Bench, the law declared therein must be taken to be declaring the correct legal position. With utmost respect, we may also add that the same is in accord with the settled principles of the interpretation of the statutes having regard to the language of Section 149 and its context.

16. to 20. x x x

21. This Court in **Bala Seetharamaiah v. Perike S. Rao, (2004) 5 SCC334** held:

“8. Unfortunately, the Sessions Judge did not frame charge against the accused persons for offence punishable under Section 302 IPC read with Section 149 IPC. It is also important to note that the relevant prosecution allegations so as to bring in the ingredients of the offence punishable under Section 302 IPC read with Section 149 IPC also were not incorporated in the charge framed by the Sessions Judge. The accused were not told that they had to face charges of being members of an unlawful assembly and the common object of such assembly was to commit murder of the deceased and in furtherance of that common object murder was committed and thereby they had a constructive liability and thus they committed the offence punishable under Section 302 IPC read with Section 149 IPC. Of course the mere omission to mention Section 149 may be considered as

an irregularity, but failure to mention the nature of the offence committed by them cannot be said to be a mere irregularity. Had this mistake been noticed at the trial stage, the Sessions Judge could have corrected the charge at any time before the delivery of the judgment. In the instant case, the accused were told to face a charge punishable under Section 302 simpliciter and there was no charge under Section 302 IPC read with Section 149 IPC. Therefore, it is not possible to reverse the conviction of the accused under Section 326 IPC and substitute the conviction for the offence punishable under Sections 302/149 IPC as there was no charge framed against them for such offence.”

22. When a large number of people gather together (assemble) and commit an offence, it is possible that only some of the members of the assembly commit the crucial act which renders the transaction an offence and the remaining members do not take part in that “crucial act”-for example in a case of murder, the infliction of the fatal injury. It is in those situations, the legislature thought it fit as a matter of legislative policy to press into service the concept of vicarious liability for the crime. Section 149 IPC is one such provision. It is a provision conceived in the larger public interest to maintain the tranquility of the society and prevent wrong doers (who actively collaborate or assist the commission of offences) claiming impunity on the ground that

their activity as members of the unlawful assembly is limited.

23. The responsibility of the prosecution and/or of the Court [in a case like the one at hand where large numbers of people (5 or more) are collectively accused to have committed various offences and subjected to trial] - in examining whether some of the members of such group are vicariously liable for some offence committed by some of the other members of such group - requires an analysis. Such analysis has two components – (i) the amplitude and the vicarious liability created under Section 149; and (ii) the facts which are required to be proved to hold an accused vicariously liable for an offence.”

57. Accordingly, the prosecution has proved its case against the appellants beyond reasonable doubt. There is no merit in the instant appeals and the same are dismissed.

(RAJIV SHARMA)
JUDGE

May 22, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes