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

Criminal Appeal No.137-DBA-2006 (O&M)

Reserved on : February 27, 2020

Date of Decision: October 01, 2020

The State of Punjab

...Appellant

Versus

Gagan Kumar and others

...Respondents

AND

CRM-A-2051-MA of 2016(O&M)

Harvinder Singh @ Sabha

...Petitioner

Versus

Gagan Kumar and others

...Respondents

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

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

Mr. Jagat Vir Dhindsa, Advocate (Legal Aid Counsel),
for the respondents.

HARINDER SINGH SIDHU, J.

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

2. Challenge herein is to the judgment of acquittal dated 03.09.2005 of the Sessions Judge, Jalandhar, whereby, the respondents – accused were acquitted in case FIR No.165 dated 15.10.2002 under Section 302/148/149 IPC, registered at

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Police Station Division No.8, Jalandhar.

3. Criminal Appeal No.D-137-DBA of 2006 has been filed by the State of Punjab. Leave to appeal was granted vide order dated 06.02.2006 passed in CRM-466-MA of 2005.

4. Criminal Revision No.107 of 2006 had been filed by complainant Harvinder Singh. Vide order dated 10.11.2016, it was ordered to be treated as an application for leave to appeal. It was numbered as CRM-A-2051-MA of 2016 and ordered to be listed with CRA-D-137-DBA-2006.

5. The case of the prosecution in a nutshell is that on 15.10.2002 on receipt of MLR of injured Harwinder Singh SI Rajinder Kumar went to Civil Hospital, Jalandhar where he recorded the statement of Harwinder Singh. Harwinder Singh stated that he along with his father Dalwinder Singh and Jaswinder Singh @ Judge son of his uncle Balvir Singh and Sumit Kumar @ Sonu had gone to Doaba College Ground to watch Dussehra. After the Dussehra got over they all started back. He and Sumit Kumar were on scooter. His father Dalwinder Singh and Jaswinder Singh @ Judge were on motorcycle. His father and Jaswinder Singh were a little ahead of them. When they took a turn from Kishanpura Chowk towards Mandir Wali Gali then at a distance of about 5-6 karams ahead of the main gate of the Government School, Bal Krishan Bali (Councillor) his sons, Gagan @ Kaku and Abhey Kumar @ Nikku, Sonu, Pershant @ Pappu and Munish Kumar accompanied by two more persons armed with kirpans were standing in the street. It was about 7.15 PM. They stepped forward and stopped the motorcycle of Jaswinder Singh. They (complainant and Sumit Kumar) stood behind at a short distance out of fear. Bal Kishan Bali raised lalkara

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'Jaswinder Singh had caused injuries to me. He should not be allowed to go unhurt'. Saying this Bal Kishan Bali gave a blow with a kirpan on the head of Jaswinder Singh. Pershant gave a kirpan blow which hit on the left hand of Jaswinder Singh when he raised his hand to ward off the blow. Gagan @ Kaku also gave a kirpan blow on the head of Jaswinder Singh. Jaswinder Singh fell down. Abhey Kumar gave a kirpan blow on the right arm of Jaswinder Singh. Yogesh Kumar gave a kirpan blow on his left arm. Munish Kumar also gave a kirpan blow on the left arm of Jaswinder Singh. When Dalwinder Singh the father of the complainant stepped forward to save Jaswinder Singh, Bal Kishan Bali gave a kirpan blow which hit near his right ear. Dalwinder Singh also fell down. The accused caused more injuries to Jaswinder Singh after he had fallen down. Thereafter they ran away shouting that they had finished Jaswinder Singh. The complainant and Sumit Kumar raised raula. After arranging a vehicle they were taking the injured to Civil Hospital, Jalandhar but Jaswinder Singh died on the way. On the basis of the above statement Ex. PA formal FIR Ex. PA/2 was recorded at Police Station Division No.8, Jalandhar. SI Rajinder Kumar prepared inquest report of the deceased. He got the post mortem conducted. Blood stained earth was taken into possession from the spot. Bal Kishan Bali and Abhey Kumar were arrested on 17.10.2002. Gagan @ Kaku, Munish and Yogesh Kumar were arrested on 28.10.2002. During interrogation accused Gagan @ Kaku, Munish and Yogesh Kumar suffered disclosure statements pursuant where to they all got recovered kirpans. Parshant Kumar could not be arrested and was declared as Proclaimed Offender. On completion of investigation challan was presented.

6. The prosecution examined number of witnesses to substantiate the case against the accused. The statements of the accused u/s 313 Cr. P.C was

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recorded.

7. Accused Bal Krishan Bali in his statement under Section 313 CrPC stated that he was Municipal Councillor of Jalandhar Municipal Corporation. He had been provided with police security. The security men always accompanied him. On 15.10.2002 it was Dussehra day and he had been invited as a Chief Guest for the Dussehra function. He was present in the Dussehra ground along with his security man where he also distributed the prizes. On 01.07.2002 Jaswinder Singh (deceased) and others had caused multiple injuries to him. Regarding this the case FIR No.91 dated 01.07.2002 under Sections 307, 452, 427/149 and 148 IPC was registered against Jaswinder Singh and others at Police Station Division No.3, Jalandhar. Jaswinder Singh and his co-accused were arrested. Jaswinder Singh had been released from the custody few days before the present occurrence. On 15.10.2002, Jaswinder Singh along with his brother-in-law Maan Singh @ Manjit Singh, Surjit Singh and Harbhajan Singh and some other persons set his (Bal Kishan Bali) factory and office on fire. They had also set on fire certain other public properties. The house of Munish co-accused and one Gurmit Kaur were also set on fire. On this persons from the locality gathered there. They attempted to dissuade Jaswinder Singh and his companions from nefarious acts. When the latter did not hear the request, the people, gathered there, caused injuries to Jaswinder Singh, who was heading the mob. This resulted in his death subsequently. FIR No.148 dated 15.10.2002 was registered at police Station Division No.3 in relation to the setting on fire the factory and other public properties. Another FIR No.166 was registered in Police Station Division No.6 for setting on fire his house and the houses of others. The case regarding the death of Jaswinder Singh and also the burning of his (Bal Kishan Bali's) office and

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factory as also the houses of Munish Kumar and others were investigated by the SP(Crime) Chandigarh under the directions of ADGP (Crime), Punjab Chandigarh. On the basis of the report, a direction was issued to the SSP by the ADGP (Crime) for proceeding against the persons responsible for setting on fire the properties and also not to arrest him (Bal Kishan Bali), his son Abhay Kumar and Parshant Kumar for the murder of Jaswinder Singh as they had been found to be innocent. However, due to the influence of the local MLA, who was politically opposed to him, the cases regarding setting on fire the different properties by Jaswinder Singh were not investigated to the logical end.

8. Accused Bal Kishan Bali further stated that Balbir Singh, father of Jaswinder Singh (deceased) had earlier got lodged FIR No.101 dated 03.07.2002 against his (Bal Kishan Bali's) sons Gagan Kumar, Abhay Kumar as also Munish Kumar co-accused, which on investigation was found to be false and was cancelled. He stated that the present FIR was registered as a counter-blast of the FIR, which had been got registered by him against Jaswinder Singh and others for causing injuries to him. The Police had not investigated impartially on account of undue influence.

9. Accused Yogesh Kumar in his statement under Section 313 CrPC stated that he had been falsely implicated in the case and he had no concern with the other accused.

10. Accused Abhay Kumar stated that he had been found innocent by the SP(Crime Branch), Chandigarh and he had not been challaned and his name had been put in Column No.2 by the Police.

11. Accused Munish Kumar stated that he had been falsely implicated as his house was also set on fire along with the houses of Bal Kishan Bali and Gurmit

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Kaur by Jaswinder Singh and his men, so that he may not become a witness against them.

12. All the accused have been acquitted.

13. We have heard learned counsel for the parties and have gone through the judgment and record.

14. PW1-Harvinder Singh @ Sabha son of Dalwinder Singh deposed that on 15.10.2002, he, Jaswinder Singh, his father Dalwinder Singh, Sumit Kumar @ Sonu had gone to watch Dussehera at the ground of Doaba College, Jalandhar. While returning from that place, he and Sumit Kumar were on scooter, whereas, his father Dalwinder Singh and Jaswinder Singh were on a Motorcycle. The motorcycle was ahead of them. At about 7.15 p.m, they turned towards Mandir Wali street from Kishanpur Chowk. When they had covered some distance from the main gate of Govt. School, they found Bal Krishan Bali, Parshant @ Pappa, Gaggan @ Kaku, Abhey Kumar @ Niku, Yogesh Kumar @ Sonu, and Munish Kumar alongwith two other persons armed with kirpans. They stopped the motorcycle of Jaswinder Singh. He and Sumit Kumar stopped at some distance due to fear.

15. Bal Kishan @ Bali, raised a Lalkara that Jaswinder Singh had caused him injuries and be taught a lesson. Bal Krishan gave a Kirpan blow on the head of Jaswinder Singh. Parshant Kumar gave a kirpan blow which landed on the left hand of Jaswinder Singh which he raised in order to save himself. Accused Gagan @ Kaku gave a kirpan blow on the head of Jaswinder Singh, Jaswinder Singh then fell down. Abhey Kumar gave a kirpan blow on the right arm of Jaswinder Singh. Yogesh Kumar @ Sonu gave a kirpan blow on the left arm. Munish Kumar gave a Kirpan blow on the left arm. When his father Dalwinder Singh stepped forward to

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save Jaswinder Singh, Bal Krishan @ Bali gave a Kirpan blow on his head which fell near his right ear. His father became unconscious and fell down. The accused caused more injuries to Jaswinder Singh while he was lying on the ground and thereafter ran away. Accused raised Lalkara that they had finished Jaswinder Singh. They arranged a vehicle and removed the injured to the hospital. Jaswinder Singh died on the way. The occurrence was witnessed by him, Sumit Kumar @ Sonu, and Harpreet. He had got recorded his statement Ex.PA to the police which was signed by him in token of correctness. He further deposed that Jaswinder Singh had caused injuries to Bal Krishan and on that account they (accused) caused injuries to Jaswinder Singh. Jaswinder Singh had come on bail four days before the occurrence.

16. In cross examination he stated that a case had been registered against the sons of Bal Krishan Bali for causing injuries to the family members of Jaswinder Singh. At that time cases were registered against both parties. The quarrel had taken place on 01.07.2002 and a case was registered against Jaswinder Singh, his brother Santokh Singh and five others for causing injuries to Bal Krishan. Jaswinder Singh was arrested in that case. He remained in jail and had come out of jail 3-4 days prior to the occurrence. He stated that Bal Krishan Bali was not the Chief Guest at the Dussehra function which he had attended. He however did not know who was the Chief Guest there. He did not remember at what time the effigies were set on fire and who set them on fire. The distance between the ground of Doaba College (where the Dussehra function was held) and Kishanpura Chowk was less than one kilometer. The house of Jaswinder Singh was at a distance of ½ Km from Kishanpura Chowk. The office of Bal Kishan was

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situated on the way if one went from Kishanpura Chowk to “Do Moraia Pull”. His office falls between Kishanpura Chowk and Mandir Wali Gali. A second street known as “Shanti Depot Street” also leads to the house of Jaswinder Singh. A third street from the left side known as “Gurdwara Wali Galli” also leads to the house of Jaswinder Singh. The occurrence had taken place in the fourth street known as 'Mandir Wali Gali'. He had not mentioned the number of the scooter and the motorcycle to the police. They had left the motorcycle at the place of occurrence. He did not remember if the scooter was also left there. Neither he nor his father was the owner of the motorcycle. He did not produce the scooter before the police. He had taken the police to the spot on the same night. On 15.10.2002 some people who had come to watch the Dussehra were also passing through the street. The shops were also open at that time. They stopped a Maruti car which was passing by. Jaswinder Singh, he himself, his father and Sumit Kumar boarded the car. Neither his signatures nor those of Sumit Kumar were obtained on any register in the hospital. His father was not medico-legally examined in his presence. First aid was also not given to him in his presence. He had lifted Jaswinder Singh and his father. Sumit Kumar also helped him. First of all they put Jaswinder Singh in the car. His body was bleeding. His clothes (of PW 1) were not stained with blood. Only his hands were.

17. PW-2 Dalwinder Singh deposed that on 15.10.2002 at about 7.15 p.m, he alongwith Jaswinder Singh on motorcycle, Harvinder Singh and Sumit Kumar @ Sonu on scooter were coming after watching Dussehra in the ground of Doaba College. They reached in Mandir Wali Gali from Kishanpura Chowki near Govt. School. Bal Kishan Bali, Parshant @ Pappa, Gagan @ Kaku, Abhey Kumar @

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Nikku Sonu @ Yogesh and Munish Kumar were standing at a distance of 5-7 karams from the gate of the School. All of them were having kirpans. There were two other unknown persons who were also carrying kirpans. They stopped the motorcycle which was driven by Jaswinder Singh and on which he was also sitting. Bali raised lalkara that Jaswinder should not escape and that revenge be taken for causing him injuries. Bal Kishan gave a kirpan blow on the head of Jaswinder Singh. Parshant @ Pappa tried to give a blow with kirpan which was stopped by him on his left hand. Gagan gave a kirpan blow on his head. Jaswinder Singh fell down. Abhey Kumar gave kirpan blow on his right arm. Yogesh Kumar gave a kirpan blow on his left arm. Munish Kumar gave a kirpan blow on his left arm. He (PW 2) came forward to rescue Jaswinder Singh and Bal Kishan gave a kirpan blow which fell on his right ear and head. He fell down. The other accused gave him kirpan blows on his chest from its reverse side. They also gave kirpan blows from reverse side on his head. Then all the accused raised lalkara that they had finished Jaswinder Singh. He (PW 2) became unconscious and was removed to the hospital. He came to know that Jaswinder Singh had died.

18. In cross examination he stated that he had contested the Municipal elections in 1991 against Bal Kishan Bali who had won the election. On the day of the occurrence he was wearing a turban. A cut had occurred on his turban. He had handed over the turban to the police. His shirt was blood stained. The police did not take his shirt into possession. He was wearing the shirt when the police met him. His signatures were not obtained on any paper in the hospital. He admitted that Jaswinder Singh was challaned for causing injuries to Bal Kishan and it was a cross case. He did not know whether the motorcycle was left at the spot or not as

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he was unconscious. As he was unconscious he did not know after how much time he was taken to the hospital and in which vehicle.

19. PW3-Dr. K.S Bawa, Medical Specialist, Civil Hospital, Jalandhar deposed that on 16.10.2002 he was posted as Medical Specialist, Civil Hospital, Jalandhar. A Medical Board was constituted by Medical Supdt. Civil Hospital, Jalandhar comprising him and Dr. J.S. Minhas Pathologist, Civil Hospital, Jalandhar to conduct post mortem on the body of Jaswinder Singh. Following injuries were found on the body:

“1. Right hand incised wound 13 cms x 1 cm x .75 ck involving middle phalnx of right ring ringer pronimal phalex or right middle finger and palmer aspect or base of index finger over metacorpall joint which was exposed. Underlying bone was cut except ring ringer. Muscles and other structure torn. Clotted blood was present.

2. Incised wound right arm 14 cms x 4 cms x 5 cms obliquely placed from above down wards from medial to lateral asp. ct. Radius bone cut through and through. Underlying structure torn. Clotted blood present.

3. Incised wound left hand extending from base of thumb on palmer aspect 19 cms x 1 cm x .75 cm upto distal phalanx or ring finger. Underlying structure torn. Clotted blood present.

4. Incised wound 7 cms x 2 cm x 3 cms on anterior left arm lower 1/3rd obliquely placed. Underlying structure torn. Clotted blood present.

5. Incised wound 1 cm x 7 cms left arm dorso medial aspect on left lower 1/3rd of forearm skin with underlying parts of muscles chopped off in a form of flap.

6. Incised wound 7 cms x 3 cms by 3 cms on back of right shoulder transversely placed. Underlying structure torn.

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7. *Incised wound 12 cms on left side of neck underlying muscles torn.*
8. *Multiple superficial incised wounds on back in different directions.*
9. *Multiple incised abrasions on both legs.*
10. *Incised wound 13 x 1 x 3 cms on tempo parietal region of skull extending from top of skull towards front of mastoid on right side. Underlying bones cut. Clotted blood present.*
11. *Incised wound 9 x 1 x 3 cms on right parietal region extending from top of skull towards back of mastoid process. Underlying bone cut and meninges torn.*
12. *Incised wound 11.5 x 2 cms left frontal region extending towards left eye brow convex medially raising a flap of underlying tissues and bones. Underlying haematoma present.*
13. *6 cms x 4 cms oval shape abrasion on the outer angle of right eye.”*
20. The cause of death in their opinion was haemorrhage and shock due to injuries described which were ante- mortem in nature and sufficient to cause death in the ordinary course of nature. The probable time that elapsed between injuries and death was within few minutes and between death and post mortem within 24 hours.
21. PW4-Nirmal Kapoor, Clerk DTO Office, Jalandhar brought the summoned record as per which the motorcycle No.PB- 08W-1533 was registered in the name of Jasbir Singh son of Sher Singh on 10.1.98. It was transferred in the name of Smt Alies on 24.12.1998. He proved the registration certificate Ex.PE.
22. PW5-Dalip Singh Draftsman New Courts Complex, Jalandhar prepared scaled plan Ex.PF.

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23. PW7-SI Rajinder Kumar, Traffic Staff, Jalandhar deposed that on 15.10.2002, he was posted as SHO P.S Division No.8. He reached Civil Hospital, Jalandhar on receipt of a chit. Harwinder Singh met him there and got recorded his statement Ex.PA. He made his Endst.EXPA/1 and sent it to the police station and case was registered vide FIR Ex.PA/2. He prepared the inquest report Ex.PC. He sent the dead body for post mortem examination along with his application Ex.PD. He recorded the statements of the witnesses. He recorded the statement of Dalwinder Singh after obtaining opinion of the doctor regarding his fitness. He went to the spot and lifted blood stained earth. Pardeep Kumar produced before him a motorcycle which was taken into police possession vide memo Ex.PG/3. He prepared the rough site plan Ex.PG/4 with correct marginal notes. Head Constable Resham Lal produced before him the clothes of the deceased on the next day which were taken into police possession vide memo Ex.PG/5. He arrested Bal Kishan @ Bali and Abhay Kumar on 17.10.2002. Thereafter the investigation of the case was given to Inspector Ram Singh.

24. In cross examination by Counsel for the accused, he said that after reaching the place of occurrence at about 11.00 PM he did not summon persons from the neighbourhood. He did not record the statement of any person residing in the locality. There were several shops. The house and shops of Bal Kishan had been set on fire when he went there at about 11.00 PM. He did not enquire about that fire. He did not take Harwinder Singh with him to the spot. He did not know how Pardeep Kumar came into possession of the motorcycle. The number of the motorcycle was not mentioned in the FIR. He did not know whether accused Bal Kishan Bali had been provided with a gunman. He did not take into possession any

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record of the hospital except the chit received. He received the MLR of Dalwinder Singh in the hospital at 10.00 PM. In the MLR the arrival time of Dalwinder Singh was not mentioned. He did not take into possession any blood stained clothes of Dalwinder Singh. He would have taken into possession the clothes of Dalwinder Singh if he had noticed any blood on the clothes. He did not take into possession his turban having a cut. He did not take into possession the Bed Head Ticket of Dalwinder Singh.

25. PW8-Dr. Baldev Singh, Medical Officer, Civil Hospital, Jalandhar deposed that on 15.10.2002, he was posted as EMO in Civil Hospital, Jalandhar. On that day, he examined Dalwinder Singh at 10.10 p.m. He found the following injuries on his person:

- “1. Incised wound 1 cm cutting the right ear lobule through and through 2 cm below tragus of ear pinna. Bleeding was present.*
- 2. Patient complained of pain chest. X-ray was advised.*
- 3. The patient complained of pain scalp and headache. X-ray skull was advised.*
- 4. Patient complained of pain in right shoulder.”*

He declared the injuries No.1 and 4 as simple and kept injuries No.2 and 3 under observation for x-ray. He declared the weapon to be sharp for injury No.1 and blunt, if any, for injuries No.2, 3 & 4. The duration of injuries was within six hours. On receiving the report of X-ray, he declared injuries No.2 & 3 as simple.

26. PW-9-Inspector Ram Singh Bhandal, Police Line, Jalandhar deposed that on 20.10.2002, he was posted in CIA Jalandhar. The investigation of this case was handed over to him on that day. Bal Kishan @ Bali and Abhay Kumar were in police custody in P.S Division No.8. He joined them in the investigation and

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interrogated them. On 29.10.2002 accused Munish Kumar, Gagan and Yogesh Kumar were produced before him. A kirpan was recovered in pursuance of the disclosure statement Ex.RJ made by Munish Kumar whose sketch Ex.RJ/1 was prepared and was taken into police possession vide memo Ex.PJ/2. Similarly, a kirpan was recovered in pursuance of the disclosure statement Ex.PK of accused Gagan Kumar which was taken into police possession vide memo Ex.PK/1. A kirpan was also recovered in pursuance of the disclosure statement Ex.PL made by accused Yogesh Kumar which was taken into police possession vide memo Ex.PL/1.

27. In cross examination, he stated that all the recoveries were made from one courtyard. He verified the antecedents of the deceased in this case. He did not enquire in how many cases he was involved. He did not enquire about his antecedents from P.S. Division No. 8.

28. PW11-Head Constable Jatinder Kumar PS Division No.3 Jalandhar brought the FIR register of the year 2002. He proved photo copy of FIR No.91 of P.S Division No.3 Ex.PO.

29. PW12-Gulzar Singh, SI Police Lines Jagraon deposed that on 29.10.2002, he was posted in CIA staff, Jalandhar. He joined the police party headed by Inspector Ram Singh. He deposed regarding the disclosure statements made by Munish Kumar, Gagan and Yogesh Kumar and the recovery of the kirpans pursuant to the same.

30. In cross examination he stated that all the recoveries were made from one place. The recoveries were made from the courtyard of the house. No person from the neighbourhood was joined at the time of effecting the recoveries.

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31. DW1 Sanjay Sharma, a Transporter r/o Kishanpura, Jalandhar deposed that he had gone to the park where Dussehra festival was being celebrated on 15.10.2002. The Dussehra function was organized by Bal Yuva Dussehra Committee. Bishamber Lal was the President of the said Committee. He reached the Dussehra ground at about 5.00 pm. Accused Bal Kishan Bali was the Chief Guest on that occasion, who had reached at about 6.00/6.15 pm. He was received by the Members of the Committee. He distributed the prizes. On the occasion, photographs were also taken. He proved the photograph Ex.D1. He also appears in the photograph at Point 'A', Bishamber Lal was at point 'B' and Bal Kishan Bali was at point 'C'. The prize distribution continued upto 6.30 pm. Bal Kishan Bali also set on fire the effigies of Rawana, Megh Nath and Kumbkaran. Thereafter, there was fire works, which continued for about half an hour. The Langer was also served on that occasion. They got free from the Dussehra ground at 7.50 pm. Thereafter, they went for tea at the residence of Bishamber Lal – President. About 20-25 persons were present there. The younger son of Bal Kishan Bali was also with them. When they were taking tea, Harpal Mintu reached the house of Bishamber Lal. He informed that a mob had set his office and factory on fire. He further told that in the mob, there were many persons including Jaswinder Singh @ Judge. On hearing this, Bal Kishan Bali accompanied by his gun men left the place at about 7.30/7.45 pm.

32. DW2 Harpal Singh, a Wine contractor, Jalandhar deposed that on 15.10.2002 at about 7.15/7.30 pm, he was going to Kishanpura Chowk, where his wine shop is situated. After checking the shop at Kishanpura Chowk, he was proceeding towards Sant Cinema where he had another wine shop. When he reached near the shop of Bal Kishan Bali, he saw 15-20 persons. Jaswinder Singh

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@ Judge was also one of them. They set on fire the office and factory of Bal Kishan Bali. Thereafter, they proceeded towards the house of Bal Kishan Bali. He (DW2) knew that Bal Kishan Bali was in Dussehra ground. He reached there. He learnt that Bal Kishan Bali had gone to the house of Bishamber Lal, the President of the Dussehra Committee. Then he (DW2) went to the house of Bishamber Lal. 15-20 persons were present there including Bishamber Lal, Bal Kishan Bali and his son Nikku. The gunmen of Bal Kishan Bali were also present there. Sanjay Sharma was also present there. He (DW2) told Bal Kishan Bali about his factory setting on fire by a mob which included Jaswinder Singh @ Judge. Thereafter, he left to attend his business.

33. DW3 Hardial Singh brought the FIR Register containing FIR No.148 dated 15.10.2002. He stated that the case was still under investigation.

34. DW4 S.P.S. Parmar, S.P. (Crime Branch), Punjab Police Headquarters, Chandigarh stated that an enquiry in this case was entrusted to him by the orders of ADGP (Crime). He had visited Jalandhar in connection with the enquiry. He inspected the alleged spot of occurrence. He recorded statements of number of witnesses from both the sides. He also went into the matter of setting on fire the factory regarding which FIR No.148 dated 15.10.2002 under Sections 452, 436, 427, 148, 149 IPC was registered at Police Station Division No.3, Jalandhar. He recommended action against Man Singh @ Manjit Singh, Surjit Singh, Harbhajan Singh, Gurmit Singh, Kulwant Singh @ Joshi, Surat Singh @ Suraj in FIR No.166 dated 15.10.2002 under Sections 436, 427, 452, 148, 149 IPC, Police Station Division No.8, Jalandhar. On the basis of his enquiry, he recommended that Bal Kishan Bali and his son Abhay Kumar, Parmod Kumar be not challaned in case FIR No.165 dated 15.10.2002, as they had been found innocent during the enquiry.

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35. DW5 Bishamber Dass (Bishamber Lal) deposed that he was President of Bal Yuva Dussehra Committee Kishanpura. Dussehra was celebrated on 15.10.2002. Bal Kishan Bali was the Chief Guest on the last day of the Dussehra celebrations. Bal Kishan Bali was Municipal Councillor and represented the said Ward. He reached the Dussehra ground at about 6.00 pm, where, he was received by the Members of the Committee. He distributed prizes to the Members of the Committee who organized the function. The prize distribution took about half an hour. The effigies of Rawana, Megh Nath and Kumbkaran were set on fire by Bal Kishan Bali. Thereafter, the crackers took about 30 minutes. Thereafter, Bal Kishan Bali went to his house where tea was served. He proved the photograph Ex.D3 of the Committee Members, who were waiting for Bal Kishan Bali. He stated that photographs Ex.D1 and D2 were taken at the time of prize distribution. He stated that Bal Kishan Bali distributed the prizes. He identified that he was at point 'B' and Bal Kishan Bali was at point 'C' in photographs Ex.D1 and D2. He and Bal Kishan Bali appeared in photographs Ex.D4, D5, D6, D7 and Ex.D8. Ex.D9 was the photograph just before the effigies of Rawana, in which Bal Kishan Bali was at point 'C'. Bal Kishan Bali reached at his house take tea. When they were taking tea, Mintu came there and told that his (Bal Kishan Bali's) factory and office were set on fire. On hearing this Bal Kishan Bali and his gunmen and Abhay Kumar left his house at 7.45 pm.

36. DW6 Constable Rajinder Kumar brought the FIR Register containing FIR No.166 dated 15/16.10.2002 under Sections 436, 427, 452, 148 and 149. He stated that in the said FIR investigation was still pending.

37. DW7 Jasbir Singh, photographer stated that the photographs Ex.D1 to D9 had been taken by him. In photograph Ex.D6 he could be seen as receiving the

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Memento from Bal Kishan Bali. These photographs were taken at Dushhera festival on 15.10.2002. The photographs were taken by the digital camera, hence, the negatives were not available.

38. It had been argued by the Ld. counsel for the accused that as per the prosecution case, the deceased and others were coming from the Dussehra function held in Doaba college to their houses when the incident took place. PW1 Harvinder Singh had admitted that house of Jaswinder Singh (deceased) was half kilometer from Kishanpura Chowk. His house falls on the road leading to village Lamba Pind. There is another street known as 'Shanti Depot Street' which comes next from Kishanpura Chowk to "Domoria Pulli" which also leads to the house of Jaswinder Singh. There is a third street on the left side, which also leads to the house of Jaswinder Singh. The occurrence had taken place in the 4th street known as 'Mandir Wali Gali'. It was argued that in view of the admitted enmity between the deceased and accused Bal Kishan Bali on the way back to his home from the Dussehra function there was no reason for the deceased to skip three streets and take the fourth the street in which office and house Bal Kishan Bali were situated. The Ld.Trial court accepted this contention also noted that the accused could also not have known that the deceased on their way back from the Dussehra function would be taking the street in front of their house and not the other three streets. There was, thus, no occasion for them to be standing in the street waiting to cause injuries to the deceased.

39. The Ld.Trial Court also noted that it had been duly proved on record that on the day of the incident the factory and house of accused Bal Kishan Bali had actually been set on fire. Though PW2 Dalwinder Singh in his examination-in-chief had deposed that he did not know whether the office of Bal Krishan Bali and

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the houses of others had been set on fire on the day of occurrence, however, in cross-examination he stated that later he came to know about this fact. PW7 SI Rajinder Kumar also admitted that the house and factory of Bal Krishan Bali had been set on fire, regarding which a case had also been registered in Police Station Division No.8, Jalandhar and Police Station Division No.3, Jalandhar.

40. The Ld.Trial Court also disbelieved the prosecution version that on the day of the alleged incident PW1 Harvinder Singh and PW2 Dalwinder Singh were returning after watching Dussehra function on motorcycle and scooter respectively. PW1 Harvinder Singh had deposed that motorcycle had been left at the place of occurrence. He did not remember whether the scooter had also been left at that place. However, when the Police visited the place of occurrence, it did not find either the scooter or motorcycle lying there. Neither PW1 nor PW2 were able to explain as to from where the motorcycle and scooter had come in their possession and where they disappeared after the occurrence as they were not found at the spot. Moreover, the scooter was not produced before the Police nor were its particulars were made known. Though it was alleged that the motorcycle bearing No.No.PB-08W-1533 was produced before SI Rajinder Kumar by one Pardeep Kumar however, said Pardeep Kumar had not been examined as a witness. PW4 Nirmal Kapor, Clerk in the office of DTO, Jalandhar deposed that the said motorcycle was registered in the name of Jasbir Singh and later transferred in the name of Alies on 24.12.1998. She was not produced in the witness box. The Ld.Trial Court accordingly concluded that the prosecution had not been able to connect the motorcycle produced before SI Rajinder Kumar with the present case.

41. PW3 Dr.K.S.Bawa, who conducted the postmortem of the dead body of Jaswinder Singh stated that the body was brought to the hospital by Sumit

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Kumar and Pardeep Kumar. Both these persons were not examined. The Ld.Trial Court held that this cast a doubt on the prosecution case and falsified the version that PW1 Harvinder Singh and PW2 Dalwinder Singh had taken the deceased to the hospital.

42. According to PW1 Harvinder Singh, his father Dalwinder Singh was not medico-legally examined in his presence nor was any first-aid given to him in his presence. He also did not know that his father was medico-legally examined at 10.15 pm. As per his MLR Ex.PH, PW2 Dalwinder Singh was brought to the hospital by his other son Harjit Singh. PW2 Dalwinder Singh also stated that he was taken to the hospital by his son Harjit Singh and his son PW1 Harvinder Singh did not sign any paper regarding his admission.

43. PW1 Harvinder Singh claimed to have taken the Police to the place of occurrence, but SI Rajinder Kumar specifically deposed that Harvinder Singh did not accompany him to the spot.

44. PW1 Harvinder Singh had deposed that he had lifted Jaswinder Singh –injured. He was helped by his father and Sumit Kumar. All three put Jaswinder Singh in the car. At that time Jaswinder Singh was bleeding. The Trial court found it strange that the clothes of Harvinder Singh were not stained with blood. He even did not sign the inquest report Ex.PC. All these facts further strengthened the doubt about the presence of Harvinder Singh presence at the time of occurrence.

45. The Ld.Trial Court also found the presence of PW2 Dalwinder Singh at the spot to be doubtful. In his statement under Section 161 CrPC, PW2 Dalwinder Singh had stated that the *kirpan* blow inflicted by Bal Krishan Bali had hit him behind the right ear. The Ld. Trial court noted that considering the manner in which the injury was alleged to have been inflicted, the injury should have been

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on his head behind the ear and not only on the ear lobe. However, as per the MLR Ex.PH, there was no injury at the back of the ear. Only the lobe of his right ear was shown to have been cut. The Trial Court found it strange that the injury could have been caused on the ear of Dalwinder Singh in such a manner that it cut only right ear lobe and did not cause a scratch on any part of his body not even on his head. As per Dr.Baldev Singh (PW8) there were three other injuries on the person of Dalwinder Singh, which were complaint of pain in the chest, scalp and in right shoulder, but there was no visible mark of injury at any other place. On X-ray examination of the injuries of Dalwinder Singh, the same were found to be simple in nature. The Ld.Trial Court held that the presence of Dalwinder Singh at the spot could not be established simply because of these injuries because his cross-examination completely ruled out his presence at the spot. PW2 Dalwinder Singh stated that he had been wearing a turban wherein a cut occurred and the same was handed over to the Police. Dr.Baldev Singh (PW8), who conducted medico- legal examination of PW2 Dalwinder Singh stated that he was not wearing any turban at that time. He also stated that the Police did not take into possession the turban. PW7 SI Rajinder Kumar deposed that he had not taken the turban of Dalwinder Singh having any cut into possession. PW2 Dalwinder Singh had deposed that his shirt was blood-stained. He was wearing the shirt when the Police came but the Police did not take it into possession. PW8 Dr.Baldev Singh in his cross-examination stated that if the clothes are blood stained or have any cut, that fact is mentioned in the medico-legal report and the clothes are taken into possession. He did not mention this fact in the MLR Ex.PH meaning thereby that the clothes/shirt was not blood stained and there was no cut in the turban. PW7 SI Rajinder Kumar also deposed that he did not take into possession any blood stained shirt of

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Dalwinder Singh. Rather he did not notice that any clothes of Dalwinder Singh were stained with blood. He would have taken into possession such clothes had he noticed blood thereon. From this, the Ld.Trial Court concluded that the version of Dalwinder Singh that he received injuries at the spot and his shirt was stained with blood was incorrect.

46. The Ld.Trial Court noticed that it has been proved on the file that PW1 Harvinder Singh and PW2 Dalwinder Singh were inimical to the accused. PW2 Dalwinder Singh admitted in cross-examination that he had contested the election of Municipal Corporation against Bal Krishan Bali, in which he was defeated. PW1 is son of PW2. Jaswinder Singh (deceased) was nephew of Dalwinder Singh. Jaswinder Singh had caused injuries to Bal Krishan Bali and cross-cases had been registered against both the parties regarding the earlier occurrence. The Trial Court concluded that in view of the previous enmity the statements of PW1 and PW2 could not be found to be free from animosity.

47. On the other hand the Trial Court believed the contention on behalf of accused Bal Krishan Bali that at the time of the alleged occurrence he was present at the Doaba College, Jalandhar for Dussehra celebrations. DW1 Sanjay Kumar, DW5 Bishamber Dass were also present at that place on 15.10.2002. They had deposed about the presence of Bal Krishan Bali on the occasion as Chief Guest and that he had reached the Dussehra function at 6.15 pm. He set the effigies of Ravana, Megh Nath and Kumbkaran on fire. Thereafter, there was play of fire works. They got free from the Dussehra ground at 7.15 pm. Thereafter they went to the residence of DW5 Bishamber Dass where tea was arranged. It was at that place that DW2 Harpal Singh came to the house of Bishamber Dass and informed them that a mob had set on fire the house and factory of Bal Krishan Bali.

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Thereafter, Bal Krishan Bali accompanied by his gunman and younger son Abhay Kumar left the residence of Bishamber Dass at 7.30-7.45 pm. The present occurrence is alleged to have taken place at 7.15 pm. The presence of Bal Krishan Bali at the house of Bishamber Dass and at the Dussehra ground was fully corroborated by the photographs taken on the occasion which were proved by DW5.

48. The Ld.Trial Court concluded that a perusal of the evidence revealed that investigation of the case had not been impartial. According to PW1 Harvinder Singh, shops were open at the time of occurrence. PW2 Dalwinder Singh also stated that at the time of the occurrence the shops were open and the people were passing through the street. However, PW7 SI Rajinder Kumar did not record the statements of the persons of the locality where the occurrence had taken place though he admitted that there were several shops. Though the house and factory of Bal Krishan Bali were set on fire, SI Rajinder Kumar did not enquire about the incident of fire. According to PW1 the motorcycle on which Jaswinder Singh deceased and Dalwinder Singh were going was left at the spot. However, no motorcycle was found at the spot by SI Rajinder Kumar. It was only subsequently that a motorcycle was produced before him by Pardeep Kumar. According to PW7 SI Rajinder Kumar he did not know as to how Pardeep Kumar came into possession of the motorcycle. He even did not record the statement of the owner of the motorcycle that the same had ever been lent to Jaswinder Singh and then how the motorcycle came in possession of Pardeep Kumar who had produced it before him. He even did not try to know if Bal Krishan Bali had been provided with a gunman. He even did not check the record of the hospital to know who had got the injured or deceased admitted in the hospital. As per PW2 Dalwinder Singh, his shirt was

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stained with blood. It was not taken into possession by the Police. PW2 Dalwinder Singh deposed that his turban was taken into possession by the Police. However, PW7 SI Rajinder Kumar did not produce the turban in court. To the contrary, PW7 stated that he had not taken into possession any turban having any corresponding cut. The Ld.Trial Court concluded that the investigation was concluded in a slipshod manner to help the injured party to the detriment of the accused.

49. In sum, the Trial Court concluded that PW1 Harvinder Singh and PW2 Dalwinder Singh were not present at the place of occurrence when the alleged incident took place. They had been introduced later as false witnesses to support the case. The natural witnesses, the owners and occupiers of the houses and shops, who were present at the spot, had been withheld from evidence. There were loopholes in the investigation showing that efforts had been made to implicate the accused. The defence version was more probable and trust-worthy. Accordingly, it was concluded that the prosecution had failed to prove the case against the accused beyond reasonable doubt. Thus, all the accused were acquitted by giving them benefit of doubt.

50. The Ld. Trial Court has given cogent reasons for disbelieving the prosecution case. Whereas, the defence were able to lead sufficient evidence to indicate that the accused Bal Krishan Bali along with his accused younger son Abhay Kumar and gunman was present in the house of DW 5 Bishambar Dass at the time when the incident is alleged to have occurred and they left the place only on being informed by DW2 Harpal Singh that the offices and house of Bal Krishan Bali had been set on fire.

51. It is well settled the scope of interference with a judgment of acquittal is limited. If the view taken by the Trial Court is a possible view, it is not open to

the higher Court to reverse the judgment just because another view is possible.

52. Accordingly, the Appeal of the State as also the Miscellaneous Application filed by the complainant impugning the judgment of the Trial Court, are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 01, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No