

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

CRA-700-DB of 2005

Reserved on : 05.03.2020

Date of decision : 12.03.2020

Bhupinder Singh and others

.... Appellants

Versus

State of Haryana

..... Respondent

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate, for the appellants.

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

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RAJIV SHARMA, J.

1. This appeal is instituted against the judgment dated 14.09.2005 and order dated 21.09.2005, rendered by learned Sessions Judge, Yamunanagar at Jagadhri, in Sessions Case No. 11 dated 01.03.2002. The appellants were charged with and tried for the offences punishable under Sections 302/323/449/450/149/148 of the Indian Penal Code (for short 'IPC'). They were convicted and sentenced to undergo imprisonment for life under Section 302 read with Section 149 IPC. They were also ordered to

pay a fine of ₹ 2,000/- (Rupees Two Thousand) each, and in default of payment of fine, they were ordered to further undergo rigorous imprisonment for a period of three months each. They were also convicted and sentenced to undergo rigorous imprisonment for a period of five years each under Sections 449/450 read with Section 149 IPC for committing the offence of house trespass. A fine of ₹ 1,000/- (Rupees One Thousand) was also imposed on each of the appellant, and in default of payment of fine they were ordered to further undergo rigorous imprisonment for a period of one month each. The appellants were also convicted and sentenced to undergo imprisonment for one year each under Section 148 IPC. All the sentences were ordered to run concurrently.

2. Appellants Tara Singh, Gurmeet Singh and Didar Singh died during the pendency of this appeal. Hence, appeal qua them stood abated vide order dated 05.03.2020.

3. The case of the prosecution, in a nutshell, is that on 27.11.2001, Sunder Singh SI was on patrolling duty in the area of Chhachhrauli. Constable Shamsher Singh met him and handed over a ruqa Ex.PA sent by the doctor to the Police Station. He reached Police Post Rakshak Vihar, Jagadhri. After receiving ruqa and MLR of Harjit Singh, he went to Civil Hospital, Jagadhri. He came to know that Harjit Singh had already been referred to PGI, Chandigarh. DDR No. 26 was recorded on the basis of statement of Harjit Singh Ex.PM. According to the contents of the statement of Harjit Singh, he and his brother Paramjit had litigation with Gurnam Singh etc. About 5-6 months back, a quarrel took place between them. A case was registered against Gurnam Singh etc. On 26.11.2001, he was

sleeping in his house after taking his food. His brother Balbir Singh, father Jaswant Singh and Paramjit Singh were also sleeping. At about 9.00/10.00 PM, Gurnam Singh, Bhupinder Singh, Tara Singh, Didar Singh and Gurmeet Singh entered into the room, in which he was sleeping. Gurnam Singh removed quilt from his body and set him on fire by sprinkling kerosene oil on his body. Bhupinder Singh gave a *lathi* blow to Paramjit Kaur, sister-in-law of Harjit Singh. His brothers Balbir Singh and Paramjit Singh also reached there. Tara Singh gave a *lathi* blow to Paramjit Singh. Didar Singh gave a *lathi* blow on his left hand. Gurmeet Singh gave *lathi* blow to Balbir Singh on his head and shoulder. Thereafter, the accused ran away from the spot. On 28.11.2001, Sunder Singh SHO along with Tarsem Singh ASI and other police officials went to village Haidarpur to verify the facts. The place of occurrence was photographed. The articles i.e. quilt Ex.P5, *dari* Ex.P6, pillow Ex.P7, bed sheet Ex.P8, bottle Ex.P9, plastic can Ex.P10, another plastic can Ex.P11, *parna* Ex.P12, turban Ex.P13, vest Ex.P14, pant Ex.P15, shirt Ex.P16, another pant Ex.P17 and one cot Ex.P18 were taken into possession. FIR Ex.PQ was registered. On 05.12.2001, a message was received from PGI, Chandigarh that Harjit Singh had expired. Tarsem Singh ASI conducted the inquest proceedings under Section 174 Cr.P.C. He moved an application for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely

implicated. They examined two witnesses in their defence. The accused were convicted and sentenced, as noticed here-in-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case against the appellants. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

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

7. PW.1 Dr. Jagdeep Singh deposed that on the night of 26/27.11.2001, he was posted as Medical Officer at PHC Chhachhrauli. He was on night duty. Harjit Singh was brought to him with approximately 90% burns. He was referred to General Hospital, Jagadhri, immediately. He sent ruqa Ex.PA to SHO Police Station Chhachhrauli.

8. PW.2 Dr. Rajesh Saini deposed that on 27.11.2001 at 2.25 AM, he medico legally examined Harjit Singh. He noticed that superficial and deep burns were present all over the body barring the head, feet and perineum. Skin was peeled off at several places on the body. About 85% of burns were present. The patient was referred to PGI, Chandigarh for further management. The probable duration of injuries was within 12 hours. In his cross-examination, he admitted that the patient was conscious when he was examined by him. The patient did not tell him how he received burn injuries.

9. PW.4 Dr. Parminder Singh conducted the post-mortem examination. The cause of death, in his opinion, was shock due to septicemia as a result of 85% septic burns. Injuries were ante-mortem in

nature. The weapon used was blunt. The time that elapsed between injury and death was about 8 to 9 days. The time between death and post-mortem examination was 29 hours and 15 minutes. He proved the post mortem report Ex.PE.

10. PW.6 Ram Kumar prepared the scaled site plan Ex.PG. In his cross-examination, he deposed that the points mark 'D' given in the site plan at many places indicate the presence of doors.

11. PW.8 Shri Surinder Singh Bhardwaj, Judicial Magistrate Ist Class, Chandigarh, testified that on 29.11.2001, he was posted as Judicial Magistrate Ist Class, Chandigarh. An application Ex.PJ was given by the police to the Chief Judicial Magistrate, Chandigarh, for recording the statement of Harjit Singh. The application was marked to him by the Chief Judicial Magistrate, Chandigarh, vide order Ex.PJ/1. He passed order Ex.PJ/2 for proceeding to record statement in the presence of the Head Constable, who had given the application. He reached PGI, Chandigarh. He obtained opinion of the Medical Officer as to whether Harjit Singh was fit to make statement. His order in this regard is Ex.PK. The doctor gave opinion Ex.PK/1 that the patient was fit to make statement. He recorded the statement of Harjit Singh injured correctly vide Ex.PK/2. He obtained impression of left toe of left foot of the injured, as he was having plaster on both the hands. He also gave certificate Ex.PK/3 that the injured remained conscious and fit during his statement and that the same was read over to him. The Medical Officer also gave certificate Ex.PK/4 that the patient was conscious and was fit during recording of his entire statement and that his both hands were plastered.

12. PW.9 Rupinder Singh had taken photographs Ex.P1 and Ex.P2. In his cross-examination, he admitted that he did not remember whether there were planks in the door of the room, of which photographs were taken by him.

13. PW.10 Ram Karan deposed that he along with Sunder Singh SHO, ASI Tarsem Singh and other police officials went to the house of Harjit Singh at village Haidarpur, on 28.11.2001. Photographs were taken in his presence. A burnt quilt, burnt bed sheet, burnt pillow, burnt *dari*, one plastic bottle, one can containing kerosene oil, another plastic can containing some kerosene oil, *parna*, turban, vest, pant, shirt, other pant and cot were taken into possession. In his cross-examination, he categorically admitted that the cot, which was taken into possession, was not burnt.

14. PW.11 Randhir Singh HC testified that he along with ASI Tarsem Singh and Constable Gurmeet Singh had gone to PGI, Chandigarh, on 27.11.2001. Statement of Harjit Singh Ex.PM was recorded by ASI Tarsem Singh in his presence and in the presence of Gurmeet Singh Constable. ASI Tarsem Singh submitted an application Ex.PM/1 before the doctor and obtained opinion of the doctor vide Ex.PM/2. On 29.11.2001, he submitted an application Ex.PJ before the Chief Judicial Magistrate, Chandigarh, for recording the statement of Harjit Singh at PGI, Chandigarh. The Magistrate recorded the statement of Harjit Singh on that day. He moved an application Ex.PN before the doctor at PGI, Chandigarh. The doctor gave his opinion Ex.PN/1 that the patient was fit to make statement. In his cross-examination, he deposed that the statement of Harjit Singh was recorded by Tarsem Singh ASI in PGI, Chandigarh, on 27.11.2001.

15. PW.12 Jaswant Singh deposed that his son Balbir Singh was employed in a factory at Parwanoo. His family was residing in village Bakshiwala. His other sons Harjit Singh and Paramjit Singh used to reside with him in the village in a joint family. According to him, civil litigation was pending between him and accused Tara Singh and his sons since 1990. He won that case. About six months prior to the occurrence, i.e. on 17.06.2001, accused Bhupinder Singh had inflicted injuries with *kirpan* to his sons Paramjit Singh and Harjit Singh. Tara Singh had given *lathi* blows to his sons. FIR in this regard was registered against them. On 26.11.2001 at about 10.00 PM, his son Harjit Singh was sleeping in a room, which was newly constructed. It was without any plank in the door. Paddy was also lying in that room. He along with his son Balbir Singh and Paramjit Singh, his daughter-in-law Surjit Kaur and grand-son Rajinder Singh was sleeping in another room. He heard noise and came out of his room. He found that all the five accused were standing around the cot, on which his son Harjit Singh was lying. He observed that quilt was removed by Bhupinder Singh, Didar Singh, Gurmeet Singh and Tara Singh from the body of his son. Accused Gurnam Singh sprinkled kerosene oil on the body of Harjit Singh and set him on fire. He raised the alarm. The accused came out of the room. One of them pushed him aside. His daughter-in-law Surjit Kaur was also standing outside the room. His son Harjit Singh was burning. He came out of the room. His sons Balbir Singh and Paramjit Singh had also come out. They started extinguishing the fire from the body of Harjit Singh. Bhupinder Singh caused injuries to Surjit Kaur with *lathi*. She fell down after receiving *lathi* blow. Gurmeet Singh accused gave *lathi* blow to Balbir Singh.

Accused Didar Singh and Tara Singh caused injuries with *lathis* to Paramjit Singh. Accused escaped from the spot. His son Harjit Singh was taken to village Kotri. A car was arranged by his son-in-law. In that car, they took Harjit Singh to Civil Hospital, Chhachhrauli. However, the Medical Officer referred him to Civil Hospital, Jagadhri. They reached Civil Hospital, Jagadhri. Some treatment was given to Harjit Singh. Thereafter, he was referred to PGI, Chandigarh. He came back to Jagadhri in the same car, after getting his son admitted in PGI, Chandigarh, as he had to arrange money. In the morning, he reached PGI, Chandigarh, with money. His son died on 04.12.2001. In his cross-examination, he deposed that there was distance of about 4-5 miles between his village and village Kotri. His son Paramjit Singh stayed with Harjit Singh in PGI, Chandigarh. Aarhti (commission agent) of Chhachhrauli had given him only ₹ 1,500/-. Thereafter, he went to his village to arrange more money. He did not know the name of the Aarhti. He did not go to Police Station Chhachhrauli. He did not remember whether he had stated in his statement before the police that when he came out of his room after hearing noise, all the accused were standing around cot of his son Harjit Singh. He was confronted with his statement Ex.DA, where it was not so recorded. According to him, an electric bulb was hanging in the window, which was having no planks. The electric bulb was throwing lights inside the room and outside the room. He admitted that it was winter season. They had gone to sleep at about 9.00 PM. They extinguished the fire from the body of Harjit Singh, when he came out of the room. He had passed from front of Police Station Chhachhrauli, when he came from PGI on 27.11.2001. He had seen accused Gurmeet outside the Police Station. Many

other people belonging to their *biradari* were also present outside the Police Station. People present there were saying that the other accused, except Gurnam, were inside the Police Station. Gurnam Singh had run away. He did not disclose the occurrence to any member of his *biradari* present on the spot. He did not go inside the Police Station. He did not narrate the occurrence to the police since he was in hurry. The cot had not caught fire. However, some portion of quilt and other clothes were burnt. Balbir Singh, Paramjit Singh and Surjit Kaur were not got medico legally examined, since they were anxious to save the life of Harjit Singh.

16. PW.13 Balbir Singh deposed that they were three brothers. Harjit Singh deceased was his youngest brother. Paramjit Singh was his other brother. He along with his family was residing in nearby village Bakshiwala. His other two brothers and his father used to live together in the village. All the accused were known to him. Civil litigation was going on between them and accused Tara Singh and his sons Bhupinder and Gurnam Singh since the year 1990. On 26.11.2001, he had visited his native village to attend the marriage of his cousin. On that night at about 9.30/10.00 PM, he along with his father Jaswant Singh, brother Paramjit, his wife Surjit Kaur and their son Rajinder were sleeping in one room of their house. Harjit Singh was sleeping on a cot in other room. He heard noise of son of his brother Paramjit that there was fire. His father had come out of the room. He followed him. His brother Paramjit and other family members also came out of the room. He had seen all the five accused while they were coming out of the room, in which his brother Harjit was sleeping. Harjit was burning. Harjit followed the accused and came out of the room. He, his

brother Paramjit and his father tried to extinguish the fire. He put a blanket on the body of his brother. Accused Gurmeet Singh gave *lathi* blow to him on his fore-head. *Lathi* blows were also given to Paramjit and his wife. Thereafter, all the accused ran away. They removed Harjit Singh firstly to village Kotri. After arranging a car, he was taken to Civil Hospital, Chhachhrauli, then to Civil Hospital, Jagadhri, from where he was referred to PGI, Chandigarh. In his cross-examination, he admitted that it was winter season. There were no planks in the door of the room, in which they were sleeping and in the room in which Harjit was sleeping. An electric bulb was hanging inside the window of the room, which was having no plank, and same was throwing light inside the room as well as outside the room. He could not say at what time the accused entered their house, as he was sleeping. The fire was extinguished with the help of a blanket outside the room and beneath a *Berri* tree. The blanket was also burnt.

17. PW.14 Paramjit Singh testified that Harjit Singh was his brother. He knew the accused. Civil litigation was going on between his father and Tara Singh etc. On 26.11.2001, he along with his wife Surjit Kaur, son Rajinder Singh, brother Balbir Singh and father Jaswant Singh were sleeping in a room. His brother Harjit Singh was sleeping in another room. At about 10.00 PM, they heard noise. His father came out of the room. They also came out. Harjit Singh was burning. He saw all the accused coming out of the room, in which his brother was sleeping. His brother was following them. He became busy in getting the fire extinguished from the body of his brother. Accused caused injuries to him as well as to his wife Surjit Kaur and to his brother Balbir. Thereafter, they ran away. Harjit Singh

was taken to village Kotri. Thereafter, he was taken to Civil Hospital, Chhachhrauli and from there to Civil Hospital, Jagadhri and from Jagadhri, he was referred to PGI, Chandigarh. In his cross-examination, he deposed that in his statement before the police, he had stated that all the accused were coming out of the room, in which his brother Harjit was sleeping. He was confronted with his statement Ex.DB, wherein it was not so recorded. Harjit was coming out of the room, while he was burning. No neighbourer had come to their house. He had put quilt on the body of his brother to extinguish the fire under the tree of *Berri*. He admitted that there is distance of about $\frac{1}{2}$ or $\frac{3}{4}$ killa between Civil Hospital, Chhachhrauli and Police Station Chhachhrauli. He along with his father, his brother and his brother-in-law accompanied Harjit to PGI, Chandigarh. His brother-in-law met them at Jagadhri. He had no conversation with him about the incident. His brother-in-law was residing at village Kotri. He did not narrate the incident to his brother-in-law even at village Kotri.

18. PW.15 Tarsem Singh ASI deposed that he was posted as ASI in Police Station Chhachhrauli on 27.11.2001. A message was received from PGI, Chandigarh, that Harjit Singh was admitted in PGI, Chandigarh in burnt condition. He reached PGI, Chandigarh. He moved an application Ex.PM/1 before the doctor to seek his opinion. The doctor gave his opinion Ex.PM/2 to the effect that Harjit Singh was fit to make statement. Thereafter, he recorded the statement of Harjit Singh vide Ex.PM in the presence of Randhir Singh HC and Gurmeet Singh Constable. Since the hands of Harjit Singh were burnt, his thumb impression or signatures were not obtained. The signatures of Randhir Singh HC and Constable Gurmeet

Singh were obtained on the same. Photographer was called by the SHO, who took photographs of the place of occurrence. On 05.12.2001, again a message was received from PGI, Chandigarh, that Harjit Singh had died. He went to PGI, Chandigarh and moved an application for post-mortem examination on the body. The post-mortem examination was conducted. In his cross-examination, he deposed that when he reached the PGI, Chandigarh, at about 5.00/5.30 PM on 27.11.2001, nobody from the side of the deceased was found present.

19. PW.16 Sunder Singh SI deposed that he was posted as SHO, Police Station Chhachhrauli, on 27.11.2001. He was on patrolling duty. He received a ruqa Ex.PA. He reached Police Post Rakshak Vihar, Jagadhri. Thereafter, he reached Civil Hospital, Jagadhri. He came to know that Harjit Singh was referred to PGI, Chandigarh. He sent Tarsem Singh ASI to PGI, Chandigarh. Tarsem Singh came back from PGI on 27.11.2001. On 28.11.2001, he along with Tarsem Singh ASI and other police officials went to the house of Harjit Singh deceased. No male member of the family of deceased was found present there. Only one female member namely Surjit Kaur was found present. Photographer was called by him, who took the photographs of the place of occurrence. He recovered some articles, including one cot Ex.P18, from the spot. These articles were taken into possession vide memo Ex.PL. FIR was recorded. In his cross-examination, he deposed that on 28.11.2001, he visited village Haidarpur. Surjit Kaur met him. However, she refused to make statement. She did not show him any injury having been received by her in this occurrence. He prepared report under Section 173 Cr.P.C. It came during investigation that Tara Singh was

falsely involved in this case and he was innocent.

20. DW.1 Nathu Ram deposed that on 26.11.2001, Jaswant Singh and his three sons were taking liquor at their residence in the evening. After some time, they started quarreling with each other and started raising *lalkaras*. He along with many persons reached there. He noticed Balbir Singh and Paramjit Singh grappling with each other. They were fighting. Harjit Singh tried to intervene. When he failed to separate them, he went inside the room. When he came outside the room, he was on fire. He sustained burn injuries. He was taken to the hospital. In his cross-examination, he deposed that the occurrence took place at 8.00/8.30 PM.

21. DW.2 Ramesh Pal testified that he had gone to purchase *Bidi* from a shop. Some persons were running towards the house of Paramjit. He asked them out of anxiety what had happened. One of them replied that they were going to the house of Paramjit, where Paramjit and his brother Balbir were quarreling. He also went to the house of Paramjit. He saw that both the brothers were fighting. One Harjita was also present there. He was the brother of Paramjit and Balbir. He tried to intervene. When the brothers did not stop fighting, Harjita of his own went into the room and set himself on fire. He then came out in the burning condition and fell down. He, thereafter, left the house of Paramjit Singh.

22. According to the FSL report Ex.PH, kerosene residues were detected in exhibit-1, i.e. a bundle of partially burnt multi coloured clothes comprising of a quilt, a *dari*, a pillow and a bed sheet and exhibit-2, i.e. an empty plastic bottle labelled as "Pure Gold". Kerosene was detected in exhibit-3 i.e. some light brown coloured liquid approximately 2 MLs

contained in a plastic can of capacity of five litres.

23. Statement of Harjit Singh was recorded by PW.15 Tarsem Singh ASI, vide Ex.PM, on 27.11.2001. According to it, a dispute regarding land with Gurnam Singh son of Tara Singh was pending. On the night of 26.11.2001, after taking meal, he was sleeping on cot in his house. His brother Balbir Singh had also come to the house. His father Jaswant Singh, brothers Balbir Singh and Paramjit Singh were also sleeping in the house. At about 9.00/10.00 PM, Gurnam Singh, Bhupinder Singh, Tara Singh, Didar Singh and Gurmeet Singh, residents of his village, came to his room, where he was sleeping. Gurnam Singh, after removing his quilt, set him on fire after pouring kerosene from the can. Bhupinder Singh gave a *lathi* blow to his sister-in-law Paramjit Kaur. His brothers Balbir Singh and Paramjit Singh came to rescue him. Tara Singh gave a *lathi* blow to Paramjit Singh on his left knee. Didar Singh gave a *lathi* blow to his brother, which was inflicted on the left hand of Paramjit Singh. Gurmeet Singh gave a *lathi* blow on the head and shoulder of his brother Balbir Singh. Thereafter, all the accused ran away from the spot. Thereafter, his brothers Balbir Singh and Paramjit Singh, father Jaswant Singh and sister-in-law Paramjit Kaur laid him in *buggi* and took him to village Kotri, where his sister was married. They called their brother-in-law Bobby, who brought the car from village Kotri. He was shifted to hospital at Chhachhrauli for treatment. The doctor referred him to Civil Hospital, Jagadhri. Thereafter, he was referred to PGI, Chandigarh. His brother hired one Ambulance from Kohli Hospital. His hands were burnt, thus he could not sign the statement. Thumb impression was also not possible. He got his statement recorded in the

presence of HC Randhir Singh and Gurmeet Singh Constable.

24. PW.15 Tarsem Singh ASI deposed that on 27.11.2001, a message was received from PGI, Chandigarh. He went to PGI, Chandigarh. He moved an application Ex.PM/1 before the doctor seeking his opinion whether Harjit Singh was fit to make statement. The doctor gave his opinion Ex.PM/2 declaring Harjit Singh fit to make statement. Thereafter, he recorded the statement of Harjit Singh vide Ex.PM in the presence of Randhir Singh HC and Gurmeet Singh Constable. Since the hands of Harjit Singh were burnt, his thumb impression or signatures were not obtained. The signatures of Randhir Singh HC and Constable Gurmeet Singh were obtained on the same. Thereafter, he came back to Police Station.

25. PW.11 Randhir Singh HC deposed that on 27.11.2001, he along with ASI Tarsem Singh and Constable Gurmeet Singh had gone to PGI, Chandigarh. Statement of Harjit Singh injured was recorded by ASI Tarsem Singh vide Ex.PM. ASI Tarsem Singh submitted an application Ex.PM/1 before the doctor and obtained opinion of the doctor vide Ex.PM/2. On 29.11.2001, he submitted an application Ex.PJ before the Chief Judicial Magistrate, Chandigarh, for recording the statement of Harjit Singh at PGI, Chandigarh. The Magistrate recorded the statement of Harjit Singh at PGI, Chandigarh. He had moved an application Ex.PN before the doctor at PGI, Chandigarh. The doctor had given his opinion Ex.PN/1 that the patient was fit to make statement. In his cross-examination, he deposed that the statement of Harjit Singh was recorded by Tarsem Singh ASI in PGI, Chandigarh, on 27.11.2001.

26. PW.8 Shri Surinder Singh Bhardwaj, Judicial Magistrate Ist

Class, Chandigarh, deposed that an application Ex.PJ was received by him on 29.11.2001. The doctor gave opinion vide Ex.PK/1 that injured Harjit Singh was fit to make statement. He recorded the statement of Harjit Singh correctly vide Ex.PK/2. He obtained impression of left toe of left foot of the injured, as he was having plaster on both the hands. He also gave certificate Ex.PK/3 that the injured remained conscious and fit during his statement and that the same was read over to him. The Medical Officer also gave certificate Ex.PK/4 that the patient was conscious and was fit during recording of his entire statement and that his both hands were plastered.

27. In the statement of Harjit Singh recorded by PW.15 Tarsem Singh ASI, vide Ex.PM, it was stated that at about 9.00/10.00 PM, Gurnam Singh, Bhupinder Singh, Tara Singh, Didar Singh and Gurmeet Singh, came to his room, where he was sleeping. Gurnam Singh, after removing his quilt, set him on fire after pouring kerosene from the can. The statement of PW.12 Jaswant Singh was recorded vide Ex.DA, wherein he had stated that at about 9.00/10.00 PM, Gurnam Singh, Bhupinder Singh, Tara Singh and Didar Singh came to their house in the room of his son Harjeet Singh. Gurnam Singh, after removing his quilt and sprinkling the kerosene, set him on fire. PW.14 Paramjit Singh in his statement Ex.DB deposed that at about 9.00/10.00 PM, Gurnam Singh, Bhupinder Singh, Didar Singh and Gurnam Singh came in the room of his brother Harjit Singh and while he was lying inside, Gurnam Singh after removing the quilt set him on fire by pouring kerosene. Thus, as per Ex.PM, Ex.DA and Ex.DB, Gurnam Singh had removed the quilt from the body of Harjit Singh and put him on fire. However, the fact of the matter is that in the statement Ex.PK/2 recorded by

PW.8 Shri Surinder Singh Bhardwaj, Judicial Magistrate Ist Class, Chandigarh, on 29.11.2001, Harjit Singh stated that he was alone in his room. His father, two brothers and one sister-in-law were sleeping in another room. At about 10.00/10.30 PM, Tara Singh, Bhupinder Singh, Gurnam Singh, Didar Singh and Gurmeet Singh came. They sprinkled petrol and kerosene upon him. He raised alarm. Thereafter, he was put on fire.

PW.12 Jaswant Singh, in his examination-in-chief, deposed that at about 10.00 PM on 26.11.2001, his son Harjit Singh was sleeping in a room. It was newly constructed. Bhupinder Singh, Didar Singh, Gurmeet Singh and Tara Singh removed quilt from the body of his son. Gurnam Singh sprinkled kerosene and set him on fire. In his statement Ex.PK/2, recorded by the Judicial Magistrate on 29.11.2001, Harjit Singh had stated that in the evening at about 3.30/4.00 O'Clock on 26.11.2001, he had gone to the disputed land. The dispute was with Tara Singh and his wife Gian Kaur had given the power of attorney to her husband. He had taken two rehra of soil from there and had slept in a room in the night. He was all alone. In his earlier statement recorded by Tarsem Singh ASI on 27.11.2001, Harjit Singh had not stated that he had gone to the disputed land on 26.11.2001. There is variance in the statement of Harjit Singh, recorded earlier by Tarsem Singh ASI on 27.11.2001 vide Ex.PM, and recorded on 29.11.2001 by the Judicial Magistrate vide Ex.PK/2. According to the earlier version in Ex.PM, Ex.DA and Ex.DB, accused Gurnam Singh alone had removed quilt from the body of Harjit Singh, but in statement made by Harjit Singh vide Ex.PK/2 and in the statement of PW.12 Jaswant Singh made before the Court, it was stated that accused Bhupinder Singh, Didar Singh, Gurmeet

Singh and Tara Singh had removed quilt and Gurnam Singh had put Harjit Singh on fire.

28. PW.12 Jaswant Singh deposed that the accused ran away from the spot. Neither he, nor PW.13 Balbir Singh nor PW.14 Paramjit Singh tried to catch hold of the accused. According to PW.12 Jaswant Singh, they took Harjit Singh to village Kotri, where his daughter and son-in-law used to reside, as no vehicle was available in their village. A car was arranged by his son-in-law from village Kotri, which was nearby. In that car, they took Harjit Singh to Civil Hospital, Chhachhrauli. The conduct of PW.12 Jaswant Singh is unusual. According to him, he reached PGI, Chandigarh and thereafter, came to his village to arrange money from his Aarhti. He did not know the name of the Aarhti. He also deposed that he had passed from front of Police Station Chhachhrauli, when he came from PGI, Chandigarh, on 27.11.2001, but did not lodge any report with the police. It has also come in the statement of PW14 Paramjit Singh that distance between Civil Hospital, Chhachhrauli and Police Station Chhachhrauli was about $\frac{1}{2}$ or $\frac{3}{4}$ killa.

29. PW.14 Paramjit Singh deposed that Harjit Singh was taken to village Kotri. They arranged a car from village Kotri and took him to Civil Hospital, Chhachhrauli. In his cross-examination, he deposed that his brother-in-law met them at Jagadhri, but he did not have any talk about the occurrence with him. His brother-in-law and his father met them in village Kotri. His brother-in-law had arranged a car. He did not narrate the occurrence to his brother-in-law even at village Kotri. This is his unusual conduct. If car was being arranged by his brother-in-law, he would have told

him the manner in which the occurrence had taken place.

30. The case of the prosecution is that the cot, quilt, *dari*, pillow and bed sheet were recovered from the place of occurrence vide memo Ex.PL. As per the statements of PW.12 Jaswant Singh and PW.14 Paramjit Singh, cot did not catch fire. It is unbelievable that when according to the prosecution, so many people had thrown kerosene on the body of Harjit Singh, cot on which he was lying would not catch fire. We have seen the photographs of the cot. There is no fire mark on it.

31. The case of the prosecution is that Harjit Singh was sleeping in a room having no plank in the door. The incident happened in the night on 26.11.2001. It was winter season. It is not believable that the deceased would sleep in a room without any plank in the door. A question was put to PW.9 Rupinder Singh photographer in his cross-examination as to whether he had seen planks in the door of the room or not. His answer was that he did not remember whether there were planks in the door of the room. PW.6 Ram Kumar, who had prepared the scaled site plan Ex.PG, deposed that the points mark 'D' in site plan at many places indicate the presence of doors.

32. PW.13 Balbir Singh in his cross-examination deposed that the fire was extinguished with the help of a blanket outside the room and beneath a *Berri* tree. Similar statement has been made by PW.14 Paramjit Singh that he had put quilt on the body of his brother to extinguish the fire under the tree of *Berri*. This tree has not been shown in the rough site plan Ex.PO.

33. PW.15 Tarsem Singh ASI deposed in his cross-examination that when he reached the PGI, Chandigarh, at about 5.00/5.30 PM on

27.11.2001, no body from the side of the deceased was found present. It took him about 45 minutes in recording the statement of Harjit Singh. No male member was found present in the house of the deceased, when he visited the village on 28.11.2001. PW.16 Sunder Singh SI deposed that when he visited village Haidarpur on 28.11.2001, Smt. Surjit Kaur met him. She refused to make statement. The close family members of the deceased were supposed to be with the deceased at the time of his admission in PGI.

34. Harjit Singh had not signed the dying declaration. PW.8 Shri Surinder Singh Bhardwaj, Judicial Magistrate Ist Class, Chandigarh, deposed that Harjit Singh was having plaster on his both the hands. In case of burn injuries, plaster was not supposed to be put on his hands.

35. The case of the prosecution throughout is that Harjit Singh was put on fire by throwing kerosene on him by all the accused. In that process, the blanket was burnt but the cot did not catch fire. It is very surprising that so many people tried to put off the fire, but no one received burn injury. According to the prosecution, family members of the complainant received injuries, but none of them was medico legally examined.

36. Thus, the prosecution has failed to prove its case against the appellants beyond reasonable doubt.

37. Accordingly, the appeal is allowed. The impugned judgment dated 14.09.2005 and order dated 21.09.2005 rendered by the learned trial court are set aside. Appellants Bhupinder Singh and Gurnam Singh are acquitted of the charges framed against them. They are on bail. Their bail bonds and surety bonds are discharged. However, since appellants Tara Singh, Gurmeet Singh and Didar Singh died during the pendency of the

appeal, therefore, appeal qua them stood abated vide order dated 05.03.2020.

(**RAJIV SHARMA**)
JUDGE

March 12, 2020
ndj

(**ARCHANA PURI**)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No