

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

Sr. No.238**CRA-D-2-DB-2005****SUKHWINDER SINGH @ LUCKY****....APPELLANT****VERSUS****STATE OF PUNJAB****....RESPONDENT****CRA-S-2216-SB-2004****RAVINDER SINGH @ JOLLY****....APPELLANT****VERSUS****STATE OF PUNJAB****....RESPONDENT****CRR-352-2005****HARCHARAN SINGH****....PETITIONER****VERSUS****STATE OF PUNJAB AND ANOTHER****....RESPONDENTS****DATE OF DECISION: 26.02.2020****CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN****HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Ashu Kaushik, Advocate,
For the appellant in CRA-D-2-2005.

Mr. Bipan Ghai, Sr. Advocate, with
Mr. Sidharth Sehgal, Advocate, and
Mr. Shantanu Bansal, Advocate,
For the appellant in CRA-S-2216-SB-2004.

Mr. V.M. Gupta, Advocate
For the petitioner in CRR-352-2005.

Mr. A.A. Pathak, Addl. A.G., Punjab.

ARCHANA PURI, J.

Challenge in the present twin appeals and criminal revision, is to the judgment dated 09.10.2004 passed by learned Additional Sessions Judge (Adhoc), Patiala. Appeal bearing number CRA-D-2-2005 has been filed by Sukhwinder Singh, to challenge the judgment of conviction under Section 302 of Indian Penal Code. Appeal bearing number CRA-S-

judgment of conviction under Section 115 read with Section 302 of Indian Penal Code. Besides the same, even the complainant-Harcharan Singh has filed Criminal Revision Petition bearing CRR No.352 of 2005, thereby seeking modification of the judgment of conviction to the extent that conviction of accused-Ravinder Singh may be changed from Section 115 read with Section 302 Indian Penal Code to Section 302/34 Indian Penal Code and to also award him life imprisonment.

Background facts of the case in nutshell are as follows:-

That, complainant-Harcharan Singh has three children Gurwinder Singh alias Tinku aged 18 years, is the eldest son, whereas two daughters are younger to him. His son Gurwinder Singh @ Tinku used to supply nipples of the water tap in the vicinity of the Patiala City. On 04.08.2003, Gurwinder Singh had gone to village Channo, in connection with his work. At about 7:00 p.m., complainant-Harcharan Singh, along with his brother Iqbal Singh, were going towards Kohli Sweet Dharampura Bazar, from their house. When they reached near turning point of the street, they saw three young men namely Sukhwinder Singh @ Lucky, Ravinder Singh @ Jolly and Gurvinder Singh @ Bonny, to have encircled his (complainant's) son and they were having altercation with him. They were proclaiming that today they shall teach a lesson to him (Gurwinder Singh) for quarrelling with Ravinder Singh @ Jolly. Then, Gurvinder Singh @ Bonny and Ravinder @ Jolly, caught hold of the arms of son of the complainant, and Sukhwinder Singh @ Lucky son of Punjab Singh, had taken out a small sword (kirpan) from his dub and struck the kirpan on the left thigh of Gurwinder Singh @ Tinku, on his genitals. Complainant and his companion raised alarm 'na maaro' 'na maaro', upon which, all assailants ran away from the spot, towards Patiala, along with kirpan. Son of the complainant had fallen on the ground. After

making arrangement of the conveyance, the complainant and others had taken injured to Emergency, Rajindra Hospital, Patiala, where the doctor declared him dead. Motive for causing of the occurrence is that some time earlier, assailants had quarrel with the son of the complainant.

Proceedings in the present case were initiated, on the basis of statement got recorded by Harcharan Singh. Case was registered under Section 302, 34 Indian Penal Code.

During course of investigation, inquest report was prepared. The spot of occurrence was inspected. Photography of the spot was conducted. Even the blood-stained earth was lifted from the spot and the same was converted into parcel and taken into possession vide separate memo. Site plan of the spot of recovery was effected. Even, all the three accused were arrested in the present case.

During the course of interrogation, Sukhwinder Singh alias Lucky had made statement, thereby disclosing, having kept concealed one kirpan in his house and only he knew about the same, on the basis whereof, statement under Section 27 of Evidence Act, was got recorded. Thereafter, in consonance with the disclosure, so made, from the disclosed spot, Sukhwinder Singh @ Lucky had got recovered the kirpan from the iron petti of his house and the same was smeared with blood. Said kirpan was converted into parcel and taken into possession vide separate memo.

On 06.08.2003, Sukhwinder Singh alias Lucky had again made statement thereby disclosing about his jeans and T-shirt, which were smeared with blood, to have been concealed by him in washing machine in his chobara and only he knows about the same. After recording of the disclosure statement, Sukhwinder Singh @ Lucky, had got recovered the

jeans and T-shirt, which were smeared with blood and the same were

converted into parcel and taken into possession vide separate memo. During the course of investigation, postmortem of the dead body was also conducted. Photographs were taken into possession. Statements of witnesses were recorded. On completion of the investigation, challan was presented against accused-Sukhwinder Singh @ Lucky under Section 302 Indian Penal Code and against accused Ravinder Singh @ Jolly under Section 302 read with Section 34 Indian Penal Code.

Compliance of Section 207 Cr.P.C. was made.

In pursuance of commitment proceedings, on the basis of material coming forth, charge was framed against accused under Section 302 read with Section 34 Indian Penal Code, to which they pleaded not guilty and claimed trial.

In endeavour to establish its version, the prosecution has examined as many as 13 witnesses, PW-1 Dr. S.S. Oberoi, PW-2 H.C. Karnail Singh, PW-3 Harcharan Singh (complainant), who is father of the deceased, PW-4 Gurbachan Singh, another eyewitness, PW-5 Rajesh Kumar, Photographer, PW-6 Constable Hari Singh, PW-7 HC Malkeet Singh, PW-8 HC Surinder Pal, PW-9 Rajwinder Singh, Draftsman, PW-10 Iqbal Singh, eyewitness, who is brother of the complainant, PW-11 SI Jagrup Singh, who conducted the initial investigation of the case, PW-12 Subhash Chander, PW-13 Inspector Krishan Kumar Panthey, who was subsequent Investigating Officer.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence, were put to the accused in their respective statements under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence.

The plea of false implication, so taken by Sukhwinder Singh @ Lucky,

thereby asserting his innocence, is for the convenience of discussion, reproduced as hereingiven:-

“ I am innocent and have been falsely implicated in the above noted case by the police of police station Kotwali, Patiala.

That on during the night intervening 4-5.8.03 the police of P.S. Kotwali, Patiala, raided the houses of all the residents of Bagichi Mangal Dass and took with them some young boys including myself, Gagandeep Singh @ Bony, Ravinder Singh, Mintu, Tinku, Laddi, Prince and Money. My mother along with some other persons followed the police to the police station Kotwali, Patiala where the police assured that all the boys taken into interrogation and would be released after questioning. After some days the other boys and young persons except me, Gagandeep and Ravinder Singh were detained and other persons were let off by the police by accepting the bribe from them. In the evening Harcharan Singh and Iqbal Singh come to the police station along with some local leaders and other supporters and under the influence of these persons the police of the Police Station Kotwali, Patiala has not registered false case against me, Gagandeep Singh @ Bony son of Savinder Singh and Ravinder Singh @ Jolly son of Joginder Singh. The police of P.S. Kotwali, Patiala arrested me on midnight of 4-5.8.03 when I was sleeping in my house in presence of my mother namely Harbhajan Kaur and my father Punjab Singh and my brother namely Ravinder Singh S/o Punjab Singh also arrested by the police of P.S. Kotwali, Patiala on the same night. My brother namely Ravinder Singh remained in illegal custody of P.S. Kotwali for four days, who

has been let out by the police of P.S. Kotwali, Patiala after taking the bribe of Rs.15,000/-. My father and mother approached the police and the administration but all they told to my father and mother that the matter should be decided by the Court. The witnesses examined by the prosecution are interested witnesses and they have not witnessed the occurrence. They were not at the spot and at the time of alleged occurrence, the case registered against me as a false one and I have committed no offence. All the alleged recovery has been wrongly planted on me and no confession statement has been given by me before the police. Nothing has been recovered by the police from the house of mine. I was student of computer at the time of my arrest. I am living in different Mohalla and I have no relation with the deceased and I was friend of the deceased. I will lead defence evidence to support my defence evidence.”

Likewise, the plea so taken by Ravinder Singh is also reproduced hereingiven:-

“Yes sir. I am innocent and I have been falsely implicated in this case. I know the deceased Gurvinder Singh s/o Harcharan Singh who lived in Khalsa Mohalla, Patiala. Deceased Gurvinder Singh was an addict and he used to take drugs and used to roam in the street and create nuisance. My father Joginder Singh had on various occasions checked Gurvinder Singh and requested his father to check his son from creating nuisance in the locality as woman folk is also residing in all the neighbouring houses. Harcharan Singh had a grudge against me and my father on this account. I did not cause any injury to

the deceased nor did I hold his arm when the deceased was assaulted in respect of the injuries suffered by him on the night intervening 4.8.2003/5.8.2003. Infact, on 4.8.2003, at about 7/7-14 P.M., I was present in my shop, Dharampura Bazar Patiala, when we heard Rolla in the street, myself came out of the shop and find/found that Gurvinder Singh was lying on the street and was stabbed by some unknown persons who had run away after causing the injuries. Many persons including neighbouring shop-keepers had come there. Harcharan Singh and Iqbal Singh were not present there. The injured was removed to the Hospital by the persons who had collected there and I have come back to my shop. There was a talk that some 5/6 persons had come and had quarreled with Gurvinder Singh and caused him injury before running away. Harcharan Singh and Iqbal Singh had gone to the Hospital. My father had also gone to the hospital being a neighbourer. Later during the night intervening 4/5-8-2003, the police raided the house of residents of Bagichi Mangal Dass/ Khalsa Mohalla, Patiala and they took with them 10/12 young boys including myself at 1 A.M. My father and other residents of the locality followed the police to the police station Kotwali, Patiala, where the police assured to all the persons that the boys being taken for interrogation and would be released after questioning. Later myself, Sukhwinder Singh and Gagandeep Singh @ Bony were detained and other persons were let off by the police. During night 4/5-8-2003 Harcharan Singh, Iqbal Singh had come to the police station alongwith the local leaders and their supporters. With their influence, they got registered a false report regarding the

occurrence involving me and other co-accused. Neither myself nor other co-accused had made any statement before the police nor had we got recovered any articles in lieu of our statement. My father had made representation against my false involvement in the case to the High-ups in the administration but they all told to my father that the matter would be decided by the Court. The witnesses examined by the prosecution are interested witnesses who had not even witnessed the occurrence but have become false witnesses. The independent natural witnesses who are running business in the neighbouring shops did not support the false story of the prosecution and as such the investigating officer did not record statements of the said witnesses purposely. They have also tried to collect false evidence to falsely involve me. The complainant and his brother yield influence and on this account they have threatened the neighbouring shop-keepers not to appear as defence witnesses. The accused Sukhwinder Singh @ Lucky lives in a different Mohalla and is not a close friend of me. I am innocent and have committed no offence. False case has been planted against me with the reasons mentioned in abovesaid paras.”

In defence, the accused examined DW-1 Naresh Mittal, Proprietor of City Cable as well as DW-2 Subhash Patialvi and DW-3 Narinder Kaur.

After hearing learned Public Prosecutor for the State and the learned defence counsel as well as on appraisal of the evidence brought on record, vide judgment dated 09.10.2004, accused-Sukhwinder Singh @ Lucky was held guilty and convicted under Section 302 IPC, whereas

accused-Ravinder Singh @ Jolly, was held guilty and convicted under Section 115 read with Section 302 IPC.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellants, Sukhwinder Singh @ Lucky and Ravinder Singh @ Jolly have filed the present appeals. Even, Harcharan Singh (complainant) has filed the Criminal Revision Petition to challenge the impugned judgment, making a prayer for conversion of the conviction of Ravinder Singh from Section 115 read with Section 302 IPC to Section 302/34 IPC and further made a prayer for sentencing appellant-Ravinder Singh to life imprisonment.

Lower Court Record was requisitioned.

We have heard the learned counsel for the appellants/petitioner, learned State Counsel as well as perused the Lower Court Record.

At this juncture, it is pertinent to mention that the occurrence in question was allegedly caused by three persons namely Sukhwinder Singh @ Lucky, Gurvinder Singh @ Bonny and Ravinder Singh @ Jolly. However, proceedings qua Gurvinder Singh @ Bonny were bifurcated, being juvenile.

At the very outset, learned counsel for the appellants have submitted that both the appellants are innocent and have been falsely implicated in the present case. In fact, it is submitted by the learned counsel in unison that the learned trial Court has not appreciated the evidence in correct perspective. In fact, the entire case is based on the testimonies of the interested witnesses, who are closely related to the deceased. In fact, PW-4 Gurbachan Singh, who was also padded in the prosecution, has not been believed by the learned trial Court, which itself points out the exaggerated efforts, so made at the instance of the

prosecution, to ensure the conviction of the accused. Besides the

interested witnesses, also it is submitted that no independent witness has been associated in the investigation of the case, though the occurrence had taken place, in the thickly populated area. Moreover, there are discrepancies in the testimonies of prosecution witnesses. Also, it is submitted that the father of the deceased, namely, Harcharan Singh, has denied about the fact of his having given interview and denied his presence in the CCTV recording, which has been duly proved. Moreover, it is submitted that intention to cause murder as such, is not established as there is only one stab wound, on the person of deceased. As such, it is submitted that prosecution version cannot be termed to be free from doubt and, therefore, benefit of this doubt ought to be extended to the accused.

Thus, summing up the arguments, learned counsels for the appellants, have made a prayer for the acquittal of the accused.

On the contrary, learned State Counsel as well as learned counsel for the complainant have assiduously submitted that the fact of death of Gurwinder Singh caused by the injury inflicted at the instance of the appellants, which proved fatal, stands amply established. There is eyewitness account, in the form of testimonies of the complainant PW-3 Harcharan Singh, PW-4 Gurbachan Singh and PW-10 Iqbal Singh, which further finds corroboration from the medical evidence brought on record. Also, it is submitted that additional credence is coming forth from the recovery of weapon of offence and the bloodstained clothes of the accused-Sukhwinder Singh. Even the report of Forensic Science Laboratory, which has been proved as Ex.PX, establish about the kirpan, the weapon of offence, to be having human blood and so is the case of the clothes of the accused. Also, learned counsel for the complainant had

Ravinder Singh and therefore, his role as such, do not establish about abetment of the offence and therefore he be also punished under Section 302 read with Section 34 Indian Penal Code. Thus, while concluding, a prayer has been made for dismissal of both the appeals and acceptance of Revision Petition.

In a criminal trial, how intriguing may be the facts and circumstances of the case, the charges made against the accused must be proved, beyond all reasonable doubts and the requirement of proof, cannot lie, in the realm of surmises and conjectures.

So far as, fact of death of Gurwinder Singh is concerned, the same stands amply established from the medical evidence brought on record. Dr.S.S. Oberoi, Associate Professor of Department of Forensic Medicine, Medical College, Patiala, has been examined as PW-1 and he has categorically deposed about having conducted postmortem on the dead body of Gurwinder Singh. On 05.08.2003, he found the following injury suffered on the dead body:-

“1. A stab wound spindle shape with sharp margins with one end clear and second end blunt measuring 2x1 cms present on the antero medial aspect of upper part of left thigh about 5 cms below middle of inginal line. On dissection, the wound was going medially onward and upwards upto a depth of four cms. cutting the underlying blood vessels and muscles. Fresh blood was present in a around the wound and both the lower limbs. Clothes were also stained with blood.”

He also opined that cause of death was due to haemorrhage and shock due to the injury, which was ante mortem in nature and sufficient to cause death in ordinary course of nature. He also stated that injury

mentioned in the postmortem could have been caused by the weapon

shown to him. He proved a carbon copy of the postmortem report, which is Ex.PA. Thus, in the light of the testimony of the aforesaid doctor coupled with the recitals of the postmortem report, the fact of death of Gurwinder Singh, stands amply established.

Now to establish the incriminating role of the appellants, the prosecution heavily relies upon the testimonies of three witnesses, namely, Harcharan Singh, PW-3, who is father of the deceased and at whose instance, the prosecution ball went rolling, as well as Gurbachan Singh, PW-4 and Iqbal Singh, PW-10.

So far as PW-4 Gurbachan Singh is concerned, though, he has been asserted to be an eyewitness to the occurrence in question and had also in his examination-in-chief stated about the manner of occurrence caused by the accused persons, but however, in his cross-examination, he had stated about his presence in Zirakpur vis-à-vis tracing of the truck loaded with goods, which had not reached the destination. In the cross-examination, he had stated about having started from Zirakpur at 7:30 p.m. He further stated in the cross-examination that it took him about one hour and fifteen minutes to reach Patiala from Zirakpur. He neither admitted nor denied that he reached at 9:30 p.m. Considering his statement as a whole, there appears to be a mismatch of timing of the presence of the said witness in Zirakpur and then reaching Patiala at the time of taking place of the occurrence, which has not been reconciled. Precisely on this account, the learned trial Court has rightly discarded the testimony of PW-4 Gurbachan Singh.

The most material witnesses are Harcharan Singh PW-3, who is complainant and also another eyewitness PW-10 Iqbal Singh. Before adverting to the testimonies of the said witnesses, it is pertinent to

mention that throughout the arguments, learned counsel have

categorically submitted that these witnesses are interested witnesses as they are closely related to the deceased PW-3 Harcharan Singh, who is father of the deceased, whereas, PW-4 Iqbal Singh, is brother of the complainant and uncle of deceased.

Though the said witnesses are close relatives of deceased- Gurwinder Singh, but however, it is pertinent to mention that relationship is not a factor to effect credibility of a witness. Why so, a relation would conceal actual culprit and make allegations against any innocent person. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is a personal cause for enmity, then there is a tendency to drag in an innocent person, against whom, a witness has a grudge, along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship, far from being a foundation, often assure guarantee of truth. Each case has to be appraised in the factual backdrop, so coming forth. However, outright rejection of the testimony of the witness, who is related to the victim, as such cannot be there. The Courts have to adopt a careful approach and analyze the evidence, whether it is cogent and reliable. If the witnesses stepping into the witness box are related to the deceased, it only cautions the Courts, to scrutinize the testimonies, more carefully.

Even though, in the present case, there is no independent witness examined, but the same as such, does not ipso facto render the prosecution version, doubtful. It is also necessary to keep in mind that when such an incident happens, all of a sudden, the people in the vicinity carry a feeling of hesitation to come forth and render assistance to the Investigating Agency. In the case in hand, the occurrence had taken place

in the market and at such an hour, where the presence of the people,

ought to be there, in the vicinity of the occurrence. However, it is pertinent to mention that even though, people present may witness the occurrence, but they are hesitant to associate as independent witness in the investigation of the case, to avoid inconvenience to be caused to them and also on account of societal pressures working thereafter.

Now coming to the testimony of Harcharan Singh PW-3. He is the father of the deceased. He has categorically deposed about having witnessed the occurrence along with his brother Iqbal Singh. He has given the vivid description of all the three assailants, to have encircled his son and that accused-Sukhwinder Singh, took out a small kirpan and hit the same on the left thigh near testicles. He also further deposed that in pursuance of alarm raised by them, all the accused fled away from the spot and his son was taken to hospital, where the doctor declared his son to be dead. He has proved his statement which is Ex.PC. Though, learned Lower Court has stated that this witness is partially reliable and partially not reliable, but however, the submission, so made now by the learned counsel for the appellants in this regard, is not acceptable. Very true, as so pointed out by the learned counsel for the appellants about the news telecast from CCO Channel on 05.08.2003 and 06.08.2003, to have not been disclosed or admitted by the said witness. In fact, copy of the news item, has been proved by way of leading secondary evidence. However, the said witness denied about the person depicted in the same to be himself and also denied the identity of the person, so appearing in the news item. However, it is pertinent to mention that the video cassette relating to the news item, which has come on record, is not the original cassette and in fact is the copy. The original cassette is stated to have been destroyed, whereupon the application for secondary evidence was

Mittal, had appeared and deposed to this effect, but, it is pertinent to mention that there is nothing as such coming on record, about copy to have so been preserved vis-à-vis the destruction of the original cassette and why the copy as such was retained. In the light of the same, when the duplicate, as such has come on record, the chances of tampering with, addition or editing of the news as such, cannot be ruled out. Even though, it is submitted that in the interview the complainant had stated about his son to have been attacked by 5-6 gundas and they had given multiple injuries, but however, it is pertinent to mention that this interview as such, so asserted by the defence side, has also taken place, after the cremation of his son, whereas the FIR was got lodged soon after the occurrence. Thus, FIR was got lodged with promptitude and therefore the weaving of the story with deliberations and consultations as such, is not there. The father of the deceased cannot be expected to be in a stable state of mind, therefore, if any such interview is also assumed to have been given by him, that also matters not much, as the version of the occurrence had already been got recorded by him. Otherwise also, the proper contents of the interview, do not stand established from the copy of the cassette, which has come on record. In the light of the same, Harcharan Singh, as such, cannot be stated to be partially reliable. He has given the vivid description of the happening of the occurrence, in which fatal injuries were caused by the appellants to his son, Gurwinder Singh.

Besides the aforesaid witness, another material witness is Iqbal Singh, who has stepped into the witness box as PW-10. The said witness has also categorically stated that on 04.08.2003 at about 7:00 p.m., he along with his brother Harcharan Singh, was coming to Dharampura Bazar. When they reached the turning of the road towards Kohli Sweets,

and Ravinder Singh @ Jolly and Gurbinder Singh @ Bonny, had surrounded his nephew Gurbinder Singh @ Chinka. They were having altercations with him near Khalsa Karyana Store. Further, he also stated that they were saying that they will teach him a lesson for quarreling with Jolly. Then, two other accused had caught hold of the arms of Gurbinder Singh (deceased) and Sukhwinder Singh @ Lucky took out small sword from his dub and gave a sword blow on his nephew near the genital part. He also further categorically stated that in pursuance of alarm '**na maaro**' '**na maaro**', raised by them, three assailants had ran away from the spot along with the weapon of offence. Thus, this witness has also given very cogent and vivid eyewitness account about the causing of the occurrence by the appellants along with fellow accused, whose proceeding have been bifurcated being juvenile.

The ocular version, so coming forth, also finds strength from the medical evidence, so coming on record. PW-1, Dr.S.S. Oberoi, who conducted the postmortem, has also categorically stated about there to be one stab injury on the person of the dead body, which has already been detailed aforesaid. He proved the postmortem report. Even, the clothes of the deceased were having corresponding cut. The weapon of offence was shown to the doctor and he had stated that the injury mentioned in the postmortem report, could have been caused by this weapon. Also further, as per the FSL report, Ex.PX, the clothes of the deceased and weapon, were stained with human blood, which also strengthens the prosecution version.

Additional credence is lent to the version of the prosecution from the fact of recovery of weapon of offence i.e. kirpan at the instance of accused-Sukhwinder Singh. In pursuance of disclosure statement made

offence, as such, was recovered, which was stained with human blood, which fact has already been observed aforesaid from the recitals of the FSL report. Besides the aforesaid, even the jeans and T-shirt, so got recovered at the instance, in pursuance of the disclosure statement, so made by Sukhwinder Singh @ Lucky, were found to be smeared with human blood.

Thus, considering the aforesaid evidence in entirety, the incriminating role of Sukhwinder Singh is amply established. In fact, he was carrying kirpan in his dub and he had taken out the same while the altercation was taking place with the deceased and he had inflicted injury on the person of the deceased. His incriminating role, as such, stands amply established. However, it should be noted that it was during the course of altercation with the deceased, Sukhwinder Singh had taken out kirpan from his dub and had given a single blow on the thigh, which caused injury to the genitals of the deceased. However, there is no evidence as such, coming on record, about the assailants having made efforts to repeat the blow. It is, thus, proved that appellant-Sukhwinder Singh @ Lucky, had no intention to inflict the injury, sufficient to cause death in the ordinary course of nature. As such, it cannot be concluded with certainty of Sukhwinder Singh having intention to cause death of the Gurwinder Singh, and therefore, his case falls within the parameters of Section 304 (II) Indian Penal Code.

So far as, appellant-Ravinder Singh is concerned, it is claimed that there was common intention of causing of the occurrence, and therefore, his conviction ought to be with the aid of Section 34 Indian Penal Code and his case was not covered under abetment. To seek aid of Section 34 Indian Penal Code, the meeting of mind has to be there. The true concept

the position in law is just the same as if each one of them have done it individually by themselves. The existence of a common intention amongst the participants in the crime is essential element of application of this section. However, as already observed aforesaid, Sukhwinder Singh @ Lucky, during the course of altercation with the deceased had taken out a knife from his dub and has given a blow with the same. In the light of the same, when the accused-Ravinder Singh @ Jolly and his companion, who was a juvenile, had surrounded the deceased and Sukhwinder Singh @ Lucky had caused the injury with the kirpan, it cannot be said that there was common intention, but however, abetment as such was there.

The FIR in the present case had been lodged with the promptitude, and therefore, the weaving of the false roles of the appellants on account of deliberations and consultations, as such, are ruled out. As already detailed aforesaid, the complainant, PW-3 Harcharan Singh and PW-10 Iqbal Singh, who had witnessed the occurrence, have given vivid and clear eyewitness account of the taking place of the occurrence. Considering the same and the manner of inflicting of the injury and also considering single blow having been inflicted, which has been observed to have been inflicted without intention to cause murder, the appeal as such **is partly accepted and the conviction of the appellant-Sukhwinder Singh @ Lucky stands modified from Section 302 Indian Penal Code to 304 (II) Indian Penal code and his sentence is reduced from life imprisonment to 10 years. Likewise, sentence qua appellant Ravinder Singh @ Jolly, stands modified from Section 115 read with Section 302 Indian Penal Code to Section 115 read with Section 304 (II) Indian Penal Code and**

his sentence remains the same. However, the Revision Petition, so filed by the complainant, is hereby dismissed, being without merits.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

26.02.2020

Himanshu

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No