

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **Crl. Appeal No.D-1265-DB of 2014**

Ashok Kumar @ Shoki
...Appellant

VERSUS

State of Haryana
...Respondent

(ii) **Crl. Appeal No.D-1316-DB of 2014**

Sandeep Kataria
...Appellant

VERSUS

State of Haryana
...Respondent

(iii) **Crl. Appeal No.D-1347-DB of 2014**

Deepak Yadav
...Appellant

VERSUS

State of Haryana
...Respondent

(iv) **Crl. Appeal No.D-1381-DB of 2014**

Avesh Dahiya
...Appellant

VERSUS

State of Haryana
...Respondent

(v) Crl. Appeal No.D-1421-DB of 2014

Mahesh Malik

...Appellant

VERSUS

State of Haryana

...Respondent

(vi) Crl. Appeal No.D-489-DB of 2015

Deepak Dhankar

...Appellant

VERSUS

State of Haryana

...Respondent

Date of Decision: January 31, 2020

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.R.S.Cheema, Senior Advocate with
Mr.Ishan Khetarpal, Advocate
for the appellant (in CRA No.D-1265-DB of 2014).

Mr.Vinod Ghai, Senior Advocate with
Ms.Kanika Ahuja, Advocate
for the appellant (in CRA No.D-1316-DB of 2014).

Mr.P.S.Hundal, Senior Advocate with
Mr.Premjit Singh Hunda, Advocate
for the appellant (in CRA No.D-1347-DB of 2014).

Mr.Akshay Bhan, Senior Advocate with
Mr.Harparteek Singh Sandhu, Advocate
for the appellant (in CRA No.D-1381-DB of 2014).

Mr.B.S.Jaswal, Advocate
for the appellant (in CRA No.D-1421-DB of 2014).

Mr.S.S.Randhawa, Advocate

for the appellant (in CRA No.D-489-DB of 2015).

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

The bunch of appeals, the detail whereof, has been given in the head note of the judgment, have been filed by various appellants-convicts, to challenge the judgment of conviction dated 08.07.2014 and order of sentence dated 14.07.2014 passed by learned Addl. Sessions Judge, Ambala, vide which they were held guilty and convicted for the commission of offence under Sections 148 and 302 read with Section 149 IPC and they were sentenced accordingly.

The background facts in nutshell are as herein given:-

That, complainant Arun Malik on 26.04.2010, at about 5.30 p.m., was sitting in a room along with Amit Malik and Haneet and he received a telephonic call from Ankit, who apprised him that Deepak Dhankar, Avesh Dahiya, Mahesh Malik, Varinder Dahiya @ Chintu, Rohit Malik @ Goldy etc. have caused injuries to him and he is lying at Old Market, near Mullana College and he should be got admitted in hospital. Thereafter, the complainant along with Amit, Haneet and Balram, had approached him and while they were taking him to M.M.Hospital, Mullana, then they saw that the boys, who had caused injuries to Ankit, were sitting nearby. On seeing the assailants, the complainant and his companions, had returned back, on account of fear. They had then got admitted Ankit to Civil Hospital, Mullana, and he was treated there. After receipt of the

medical report, while in the company of ward servant, they had come to P.S. Mullana and had handed over the medical report. They were assured of appropriate action to be taken against the culprits. On the next day, in the morning, the complainant came to know about police having lodged FIR against them. On next day i.e. 28.04.2010, at about 8.00 P.M., when complainant along with Amit and Kamal were talking at Holy Chowk with surety for their bail, as the police had asked them to get their bail done first and then action will be taken against the other side, in the meanwhile, Avesh Dhiya, Deepak Dhankar, Deepak Yadav, Mahesh Malik, Sandeep Kataria, Goldy, Ravinder Dahiya, Ashok @ Shoky had come there armed with weapons like swords, *gandasis*, knives, *binda* and *lathi* etc. Avesh Dahiya had then given a *lalkara* that today they (complainant side) be caught and all the three should be killed and that no one should escape. They shall be taught a lesson for lodging FIR in the police station. Then all the aforesaid persons, attacked Amit, brother of the complainant. Deepak Dhankar, who was armed with a *gandasi*, had given a blow on the head of his brother. Ashok @ Shoky gave a sword blow on the head of Amit. In the meantime, Mahesh Malik, who was armed with knife, had given a blow on the hand of Amit. Then Rohit Malik @ Goldy, who was armed with danda, had given a danda blow on the body of his brother Amit Malik and all other accused had caused injuries to Amit with their respective weapons. Thereafter, injured Amit had fallen on the ground and the complainant and his companions were frightened and they ran away. Even, assailants, after the murder of Amit Malik, had ran away from the spot. Immediately Suraj Bhan s/o Rattan Singh, who is uncle of the complainant, met them on the

way and he had witnessed the incident. The murder of brother of

complainant had taken place at the behest of Dalip Singh, Security Incharge of M.M. University, Mullana. After that, the complainant (Arun Malik), his uncle (Suraj Bhan) and Kamal, took Amit Malik to M.M. Mullana, Hospital, where, the doctor declared him dead.

Proceedings in the present case, were initiated, on the basis of statement got recorded by Arun Malik, whereupon, FIR was registered.

During the course of investigation, accused were arrested and various weapons of offence as well as motorcycle were recovered, in pursuance of the disclosure statements made by them.

On completion of investigation, challan was presented. After compliance of Section 207 Cr.P.C., the case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed, against whom challan was presented at first instance. However, during the course of recording of the prosecution evidence, in pursuance of an application under Section 319 Cr.P.C, having been filed, the Court had summoned Avesh Dahiya, Deepak Yadav, Sandeep Kataria, Ashok Kumar @ Shoki and Dalip Singh. Then, charge was framed under Sections 120-B, 148, 149 and 302 IPC against all the accused, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 19 witness, besides adducing documentary evidence.

PW-1 Constable Ram Pal, has deposed about having delivered Special report to the Area Magistrate on 29.04.2010 and proved copy of FIR Ex.P1. **PW-2 Rajiv Kumar, Patwari**, has deposed about

preparation of scaled site plan Ex.P2/B. **PW-3 Constable Sushil Kumar**,

has deposed about clicking of the photographs of the spot, which are Ex.P4 to Ex.P9 and the same were taken into possession by the Investigating Officer vide memo Ex.P3.

PW-4 ASI Om Parkash, has deposed about having accompanied SI/SHO Gurmej Singh on 28.04.2010, in pursuance of receipt of information about fight having taken place at Holy bus stand between the college students. He also deposed about having found Amit Malik, to have already died. Inquest proceedings were conducted by the Investigating Officer in his presence. He further deposed about conducting of the post-mortem examination on the dead body and handing over the dead body to the relatives. He even handed over parcel of the clothes of the deceased along with sample seal, which was earlier handed over to him by the doctor, to the Investigating Officer and the same was taken into possession vide seizure memo Ex.P5, which was attested by him.

PW-5 Rohtash Singh, who is father of the deceased, has deposed about having received information about a fight having taken place between the students on 28.04.2010 at about 8.30 p.m., in which, his son had sustained injuries and admitted in M.M. College and Hospital, Mullana. He further deposed about having reached M.M. College and Hospital, Mullana during night hours along with his brother Partap Singh and others. He also deposed about having joined inquest proceedings and after conducting of the post-mortem examination, the dead body was handed over to him and his brother vide receipt Ex.P4.

PW-6 ASI Amar Singh, PW-7 Constable Sandeep Kumar,

PW-8 Head Constable Ashok Kumar, PW-13 Head Constable Sher

Singh and PW-16 ASI Surinder Singh have tendered into evidence their

affidavits Ex.P6, Ex.P7, Ex.P8, Ex.P23 and Ex.P41 respectively, which is formal evidence.

PW-9 Dr.O.P.Aggarwal, has tendered into evidence his affidavit **Ex.P9**, wherein, he has stated about conducting of post-mortem examination along with Dr.Harpreet Singh, on the dead body of Amit Malik on 29.04.2010. The detail of injuries found on the dead body, are herein given as under:-

1. *Incised wound 9cmx1cm on the back of right side of head. It was 10cm away from right ear. Underneath bone was cut. Clotted blood was present under the cut in the skull cavity, underneath brain was injured.*
2. *There was incised wound 5cmx1cm on the right side of head and on the back side. It was 2 cm below above injury no.1. Underneath bone was cut, brain was injured. Clotted blood was present in the skull cavity.*
3. *Incised wound 7cm x 1 cm on the back of head over the mid line, underneath bone was fractured. Clotted blood was present under the fractured. The brain was injured.*
4. *Incised wound 4cm x 1cm on the left side of back of head. It was 13cm above the posterior hair line and 7 cm from the midline. Underneath skull bone was cut.*
5. *Abrasion 4cm x 1cm was present on the left side of forehead. It was 2cm above the left eyebrow. Clotted blood was seen in the wound.*
6. *Incised wound 3 cm x 1 cm on the left hand between the thumb and the index finger. Clotted blood was present in the wound. It was defence cut.*
7. *Abrasion 5cm x ½ cm was present on the back of left hand. Underneath bone was fractured.*
8. *Three abrasion on back of legs, forearm. Clotted blood was present.*
9. *Redish contusion 5cmx3cm was present on the back of the left arm and above the elbow joint.*
10. *Abrasion 6cmx½cm, 4cmx½ cm, 4cmx1cm were present on the abdomen and swelling.*

11. *Abrasion 4cmx1cm was present on the right side of the chest below the right nipple. Swelling present.*
12. *Abrasion 4cmx1cm was present on the back of right forearm.*
13. *Two abrasion 5cmx1cm, 4cmx1cm were present on the back of chest over right scapular area.*
14. *Abrasion 3cmx1cm present on the right knee joint.*
15. *Abrasion 10cm x 1 cm present on right leg 1.0 cm below the knee joint.*
16. *Multiple abrasion were present on the back of right knee and on the right calf area.*

Furthermore, he also deposed that in their opinion, the cause of death was opined to be due to haemorrhage and shock resulting from above ante-mortem injuries, which was sufficient to cause death in ordinary course of nature. Injuries No.1 to 4 and 6 were caused with sharp weapon and injuries No.5, 7 to 16 were caused with blunt weapon. The probable time elapsed between injuries and death was 0-1 hour and between death and post-mortem was above 12 hours. Post-mortem report is Ex.P10. Further, the said doctor deposed that on 01.06.2010, on the application Ex.P11 of the police, he had given opinion Ex.P11/A.

PW-10 Head Constable Jai Kumar, has deposed about having associated in the investigation along with Inspector Vijender Singh, on 15.05.2010. Further, he has deposed about interrogation of Mahesh Malik and Naveen Dahiya, upon which, they had made separate disclosure statements Ex.P12 and Ex.P13 respectively, vis-a-vis concealment of weapons of offence i.e. knife and *palta*. He also deposed about the demarcation of the place of occurrence at their instance. The memos of

demarcated place of occurrence are Ex.P14 and Ex.P15. He further deposed about said accused having produced before the Court of Illaqa Magistrate and the police remand was granted. Thereupon, accused Naveen Dahiya and Mahesh Malik had retracted from their earlier disclosure statements. However, again they had made fresh disclosure statements, which are Ex.P16 and Ex.P17 respectively, on the basis whereof, Naveen Dahiya had got recovered one *binda* from the roof of the house of Jai Singh and Mahesh Malik had got recovered knife from the box lying in the western corner of the room of Jai Singh. He also deposed about the preparation of rough sketches of weapons of offence, so recovered and after having converted into separate parcel, the same were taken into possession vide separate memos.

PW-11 Arun Malik, is the complainant, at whose instance, the proceedings were initiated. He has categorically deposed in consonance with the version of the prosecution as given in the report under Section 173 Cr.P.C., about the assistance rendered by him to Ankit, vis-a-vis the occurrence of 26.04.2010. He also deposed about the occurrence relating to 28.04.2010 caused by the accused persons, in which, injuries were given to his brother Amit Malik, which proved fatal. He also deposed about the occurrence to have been witnessed by his uncle Suraj Bhan. Furthermore, he deposed about having demarcated the place of occurrence, when he accompanied the police. He also deposed that on 29.06.2010, he joined investigation of the present case and he identified, Ravinder Dahiya in the police station, to be present at Holy T-point having *binda* in his hand on 28.04.2010 and he had caused injuries to his brother Amit Malik. He further

deposed about recording of his statement by the Investigating Officer.

PW-12 Suraj Bhan, is uncle of the deceased as well as complainant. He has deposed that on 28.04.2010, he had come to meet his nephews, Amit Malik and Arun Malik as he came to know about some quarrel having taken place between Deepak Dhankar and Rohit Malik @ Goldy on 26.04.2010. He deposed that on 28.04.2010, at about 8.00 p.m., he reached at Holy Chowk because he wanted to solve the dispute between the children. He also deposed that when he reached there, he had seen Amit Malik was discussing with Kamal Sharma. In the meantime, 7-8 boys, having *lathies* and swords in their hands, had come there. He also deposed that one Avesh Dahiya raised *lalkara* that catch hold all three of them and teach a lesson for registering FIR against them. Furthermore, he has deposed about detailed of the manner of injuries caused on the person of Amit Malik by various assailants with their respective weapons of offence. He also deposed that then he met his nephew Arun Malik, who also told him about this attack to be on Amit, which he had also witnessed. He further deposed that they ran in the direction, in which Amit had run and when they reached the place, where Amit had fallen, those boys had already run away with their respective weapons. He also deposed that thereafter, they shifted Amit to M.M. Medical College and Hospital, Mullana. All the accused had caused injuries to Amit in a brutal manner that he died due to such injuries. He also identified the accused and deposed that one accused namely Ravinder Dahiya is not present in the Court as he is facing trial in Juvenile Court.

PW-14 ASI Yameen, who had conducted part investigation of the case, has deposed about having reached the spot of occurrence along with SI Gurmej Singh and other police officials on the day of occurrence.

He also deposed about there he came to to know about shifting of Amit Malik to M.M Hospital, Mullana. Then they had reached M.M. Hospital, Mullana, where Arun Malik had got recorded his statement before the Investigating Officer. They were informed about Amit Malik to have expired. Inquest proceedings were conducted and case was got registered by the Investigating Officer. He further deposed about having visited the spot of occurrence, where Investigating Officer, had collected blood-stained earth, which was converted into parcel and taken into possession vide memo Ex.P24. Furthermore, he deposed about having joined investigation of the present case, conducted by Vijender Singh, SHO on 10.05.2010. He also deposed about Deepak Dhankar and Rohit Malik, to have been interrogated, one by one, on that day and they made disclosure statements, on the basis whereof, they got recovered motorcycle and *danda* respectively. He further deposed about having associated investigation conducted by Inspector Kashmir Singh on 06.10.2010, who had effected arrest of Gurmeet Maan. He also deposed about disclosure statement made by Gurmeet Maan, during the course of his interrogation, on the basis whereof, *danda* was got recovered, which was converted into parcel and taken into possession. The said witness also deposed that on 10.05.2010, Deepak Dhankar and Rohit Malik, in pursuance of disclosure statements, had got identified the place of occurrence, vide memo **Ex.P38** and **Ex.P39** respectively. He also deposed that on 06.10.2010, Gurmeet Maan, in pursuance of his disclosure statement, had got identified the place of occurrence, vide memo Ex.P40.

PW-15 Constable Gulab Singh, has deposed about having associated with investigation of the present case along with Inspector

Deepak Dhankar on 11.05.2010, which is Ex.P34 and on the basis thereof, *gandasi* was got recovered, sketch whereof was prepared and same was converted into parcel and taken into possession vide recovery memo Ex.P30. Even, he got recovered motorcycle bearing registration No.HR-06N-9470 and same was taken into possession vide recovery memo Ex.P37.

PW-17 SI Gurmej Singh, is the Investigating Officer of the present case. He has deposed about having come to know about the taking place of the occurrence on 28.04.2010. Thereafter, he had gone to M.M. Hospital, Mullana, where he was informed about Amit Malik, injured to have expired. He also deposed that complainant Arun Malik had got recorded his statement **Ex.P22**, which was signed by him and his endorsement upon the same is Ex.P42, on the basis whereof, FIR was got registered, copy of which is Ex.P43. He also deposed about having collected ruqa Ex.P45 and conducted inquest proceeding on the dead body of Amit Malik, which is Ex.P46. Thereafter, vide application Ex.P3, he deputed Head Constable Om Parkash, for facilitating conducting of the post-mortem examination on the dead body. He also deposed about having gone to the spot and lifted blood-stained earth from the spot, which was converted into parcel and taken into possession, vide recovery memo Ex.P24. He further deposed about preparation of rough site plan of the spot of occurrence, which is Ex.P47. Even, Head Constable Om Parkash, has produced before him parcel of clothes of the deceased, which were taken into possession, vide memo Ex.P5. He also deposed about further investigation to have been transferred to Inspector Vijender Singh.

PW-18 Inspector Kashmir Singh has also deposed about

having handed over the investigation of the present case on 30.09.2010. On

06.10.2010, he had effected arrest of Gurmeet Maan, who had surrendered before learned Area Magistrate. He also deposed about said accused, during the course of interrogation, having made disclosure statement Ex.P31, regarding his involvement in the present case and on the basis of the statement, so got recorded by him, he got recovered danda, which was taken into possession vide recovery memo Ex.P32. Sketch of the same was prepared, which is Ex.P33. He further deposed that the place of occurrence was identified by him vide Ex.P40. Rough site plan of the place of recovery is Ex.P48. He further deposed that on 12.11.2010, he had produced the parcel of the aforesaid *dandas*, recovered from Ravinder Dahiya and Gurmeet Maan, by moving an application Ex.P49. The concerned Medical Officer, after opening the seal, examined the *danda* and gave opinion Ex.P50 and handed over re-sealed parcel to him. He also deposed that on completion of investigation of the present case, he prepared supplementary report under Section 173 Cr.P.C. on 13.12.2010.

PW-19 ACP Vijender Singh, has deposed about having handled the investigation of the present case on 30.04.2010 and he recorded statements of various persons on that very day, as well as on 01.05.2010 and 03.05.2010. He also deposed about having effected arrest of Deepak Dhankar and Rohit Malik on 09.05.2010 and further also deposed about the disclosure statements made by them, during the course of investigation. He has also deposed about the subsequent disclosure statement made by Rohit Malik, thereby, admitting his involvement in the crime in the present case and to get the motorcycle bearing registration No.HR-12M-6011 make Apache and *danda* recovered. He also deposed that on the basis of the

into possession vide memo Ex.P28 and Ex.P30 respectively. He also deposed about the similar disclosure statement made by Deepak Dhankar on 11.05.2010, which is **Ex.P34** and on the basis thereof, *gandasi* and motorcycle bearing registration No.HR-06N-9470 were got recovered and the same were taken into possession, vide memo Ex.P36 and Ex.P37 respectively. This witness further deposed that place of occurrence was identified by both Deepak Dhankar and Rohit Malik vide memo Ex.P38 and Ex.P39. He also deposed about the arrest of Naveen Dahiya and Mahesh Malik, effected on 14.05.2010 and both the said accused, having suffered disclosure statements on 15.05.2010, which are Ex.P13 and Ex.P12 respectively, thereby, admitting their involvement in the present case. Also, they made further disclosure statements, on the basis whereof, they had got identified place of occurrence, vide memo Ex.P14 and Ex.P15 and also on the basis of disclosure statements, Ex.P16 and Ex.P17 respectively, they got recovered, wooden *binda* and knife respectively, sketches whereof were prepared and the same were taken into possession, vide recovery Ex.P19 and Ex.P21. He also prepared the site plan of place of recoveries, which are Ex.P56 and Ex.P57. Furthermore, he has deposed about having facilitated the preparation of the scaled site land Ex.P2/B. He also deposed about having effected arrest of Ravinder Dahiya on 29.06.2010, who was declared juvenile and separate challan was presented against him. He further deposed about taking into possession various documents from MHC Amar Singh and further deposed about regarding of statements of various witnesses. He also deposed about presentation of report under Section 173 Cr.P.C., after completion of the investigation.

Thereafter, learned Public Prosecutor tendered into evidence,

report of FSL Ex.P51 and Serological report Ex.P52 and closed the evidence.

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 their innocence and asserted their false implication. They had taken the plea that their signatures having obtained by the police forcibly, on the basis whereof, requisite memos, were fabricated.

In defence, accused examined as many as 2 witness namely, DW-1 Kamal and DW-2 Vikram Singh.

DW-1 Kamal, has deposed about running a chemist shop at village Holy. On 28.04.2010 at about 8.00 p.m., Amit Kumar resident of Village Bhaiswal, District Sonapat, studying in Mullana Institute was sitting with him. Since, it was drizzling, he told that he intends to drink wine and as such, he went to bring wine. He further deposed that when he had just covered a distance of 15-20 paces, two boys on a motorcycle, had a snick with his shoulder and they got indulged in hot words. In the meantime, both the boys assaulted Amit Kumar and chased him, till he fell on the ground. On hearing the noise, he reached near Amit, who was lying in pool of blood and in the meantime, both the boys fled away. He also deposed that he asked Amit Kumar, as to whom he should inform, on which, he provided him (this witness) phone number of his brother Arun Kumar and his uncle Suraj Bhan, to whom he had informed accordingly and asked them to reach M.M.Hospital, Mullana. He also deposed that he removed Amit Kumar with the help of his friend Vikram Singh S/o Pawan Kumar, to Hospital. He also

deposed that Amit Kumar (since deceased) succumbed to his injuries at about 9.30 p.m. At about 11.45 p.m., uncle and brother of Amit Kumar (since deceased) had reached the hospital and thereafter, he (this witness) along with Vikram, had left the hospital. He also deposed that he had seen the accused persons, present in the Court (at the time of recording of his statement) and that none of them, are out of the said two boys, who had caused injuries to Amit Kumar on 28.04.2010.

DW-2 Vikram Singh, companion of Kamal, who had reached the spot of occurrence, in which Amit Malik, was inflicted injuries, has also deposed in consonance with the testimony of DW-1 Kamal.

Thereafter, evidence of the defence was closed.

After hearing learned Public Prosecutor, learned counsel for the accused and on appraisal of the evidence, brought on record, vide judgment dated 08.07.2014, it was concluded that prosecution has not been able to prove its case beyond shadow reasonable doubt against accused Gurmeet Maan, Navin Dahiya and Dalip Singh, hence, they were acquitted in the present case. Also, vide same judgment, it was concluded that the prosecution has sufficiently proved that accused Avesh Dahiya, Deepak Dhankar, Deepak Yadav, Mahesh Malik, Sandeep Kataria, Rohit Malik @ Goldy and Ashok Kumar @ Shoki, being members of unlawful assembly, while armed with deadly weapons and in prosecution of common object of the said assembly, committed murder of Amit Malik and hence, were held guilty and convicted for the offence punishable under Sections 302, 148 and 149 IPC. Vide order of sentence dated 14.07.2014, all of them were sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>In default</i>
148 IPC	Rigorous imprisonment for two years	
302/149 IPC	Imprisonment for life and to pay fine of ₹5000/- each	SI for six months

Both the sentences were ordered to run concurrently.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, appellants-convicts have filed the seven appeals, the detail whereof, has been given in the head note of the judgment.

At this juncture, it is pertinent to mention that during the pendency of the present appeals, Rohit Malik @ Goldy, had died and consequently, appeal filed by Rohit Malik @ Goldy i.e. CRA No.D-1469-DB of 2014 stands abated.

We have heard learned counsel for the appellants and learned State counsel and have perused the record.

At the very outset, it is pertinent to mention that in the present case, the ball was set rolling, at the instance of complainant Arun Malik, who had stated about the incident of quarrel, at first instance, having taken place on 26.04.2010, in which, Ankit, one of his friends, was injured and the complainant along with Haneet and Balram, had got him admitted in the hospital. Thereafter, they came to know about an FIR registered against them by the rival party, as result whereof, the complainant and others, on 28.04.2010, at about 8.00 p.m., were present Holy Chowk and were talking to surety. At that time, the complainant was accompanied with Amit Malik and Kamal. In the meanwhile, Avesh Dahiya, Deepak Dhankar, Deepak Yadav, Mahesh Malik, Sandeep Kataria, Goldy, Virender Dahiya, Ashok @

Shoki, who were armed with *gandasis*, swords, *lathies* and knives, came at

the spot and Avesh Dahiya, raised *lalkara* to catch hold all three of them and they should not escape, for getting the FIR lodged against them. Thereupon, all these persons had attacked them. Avesh Dahiya, had given *lalkara*. Thereupon, Deepak Dhankar, had given *gandasi* blow on the head of Amit Malik, Ashok @ Shoki, gave a blow of sword, Mahesh caused injury on the hand of Amit, whereas, Goldy, with his *danda*, had inflicted injury on the body of Amit. The other accused had caused injuries with their respective weapons. Amit had fallen down. Complainant and Kamal, on account of fear, had ran away and accused killed brother of the complainant and thereafter, ran away. In the meanwhile, Suraj Bhan, uncle of the complainant, met them on the way and he had seen the entire occurrence. Also, it is claim of the complainant that accused had caused death of Amit, at the instance of Dalip Singh, Security Officer. Then, complainant along with his uncle Suraj Bhan and Kamal, had brought Amit to M.M. Hospital, Mullana, but he was declared dead. Arun Malik, in his complaint, which forms the first version of the occurrence had named eight accused to be present at the spot and he also named Dalip Singh, who had conspired with the accused and at whose instance, offence was committed.

Subsequently, on 19.05.2010, the complainant had got recorded another statement, in which, he had named various other persons, like, Ravinder Dahiya, Gurmeet Maan and Rohit Malik. It should also be noted that ten persons had faced trial in the present case. One Ravinder, was declared juvenile and Virender Dahiya, during the course of investigation, was found to be innocent by the police and was not challaned.

Initially, challan was presented against four persons.

Supplementary challan was then presented against Gurmeet Maan and then,

in pursuance of application under Section 319 Cr.P.C., the Court had summoned, Avesh Dahiya, Deepak Yadav, Sandeep Kataria, Ashok @ Shoki and Dalip Singh.

Keeping in view this manner of the prosecution version, so unfolded, at the very outset, learned counsel for the appellants have submitted that learned trial Court has not appreciated the evidence, brought on record, in correct perspective. Rather, it is submitted that the evidence so brought on record and relied upon by the prosecution, is incoherent and insufficient, in form, continuity and content and falls short of the legally prescribed standards, to return a finding of guilt, on the basis thereof. Making reference to the evidence, learned counsel for all the appellants submitted the prosecution has failed to establish the guilt of accused persons, beyond shadow of reasonable doubt. Learned counsel for the appellants, in unison, have very painstakingly drawn our attention to the various aspects of the case, which according to them, demolish the very substratum of prosecution case. They have emphatically submitted that there are yawning gaps, in between, which in all human probability, do not link the accused persons, to the commission of crime. In fact, it is pointed out that there is no acceptable evidence to establish the linkage of the accused for the purposes of committing crime as the presence of both the eye witnesses, so set up by the prosecution, is rendered doubtful from their cross-examination. Another witness Kamal, who as per the version of the prosecution, was also accompanying the complainant, at the relevant time, has deposed about the occurrence to have been caused by some unknown boys. In fact, he has deposed about having informed complainant and his

submitted that the version, so coming forth from the mouth of DW-1 Kamal as well as DW-2 Vikram Singh, is more probable and it renders the claim of the prosecution to be doubtful, the benefit whereof, ought to be extended to the accused. As such, a prayer has been made for acceptance of all the appeals and to set aside the impugned judgment and to acquit all the appellants.

On the contrary, learned State counsel has refuted the claim of the appellants. In fact, he has submitted that there is vivid eye witness account of the occurrence, given, by the complainant PW-11 Arun Malik and PW-12 Suraj Bhan. In fact, it is submitted that Kamal, who was accompanying the complainant, at the time of occurrence, has been won over by the accused and only on account of same, he has suppressed the incriminating role of all the accused. It is further submitted that both the eye witnesses have, in a very candid manner, deposed about the active participation of all the accused persons, in the occurrence in question and they have also deposed about the respective weapons of offence of all the accused and seats of injuries, so caused by them. Thus, the incriminating role of the appellants, do stand amply established. In the light of the same, it is submitted that judgment of conviction has been rightly passed by learned trial Court and sentence, so awarded, is just and reasonable. As such, a prayer, has been made for dismissal of all the appeals.

Before proceeding further to the factual and evidential appraisal in the case in hand, it is important to make mention about manner of appraisal of evidence in a criminal trial. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the

its case in the realm of “**may be true**” but has to essentially elevate it to the grade of “**must be true**”. In a criminal trial, however, intriguing may be 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. It is a duty cast on the Court to ensure that mere conjectures or suspicion, do not take the place of legal proof and in a situation, where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be exercised to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non existent, but as entertain-able by an impartial, prudent and analytical mind, judged on the touch stone of reason and common sense. At the same time, also one has to consider that primary postulation in criminal jurisprudence is that, if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted. Very close to the same, there has to be underlying string running throughout about the inalienable interface of presumption of innocence and the burden of truth, in a criminal case, which is always on the prosecution.

So far as, fact of death of Amit Malik, is concerned, the same stands amply established from the medical evidence brought on record. PW-9 Dr.O.P.Aggarwal has deposed about himself and Dr.Harpreet Singh, to have conducted post-mortem examination on the dead body of Amit Kumar on 29.04.2010. He has proved the post-mortem report, which is Ex.P10. Further, in the affidavit Ex.P9, he has also given the detail of injuries, found on the dead body of Amit Malik. In the light of the same, the

fact of death of Amit Malik, stands amply established.

Since, it is the claim of the complainant himself that Kamal was present along with him at the relevant time of occurrence having caused by the assailants, it is pertinent to mention that said Kamal, who was earlier cited as prosecution witness, has not been examined by the prosecution. In fact, he has been examined as **DW-1**. It should be noted that this witness has categorically deposed about Amit Malik to be present in his chemist shop on 28.04.2010 at about 8.00 p.m. and that, when he intended to drink wine, he had gone to bring the same and just covered the distance of 15-20 paces, then two boys on a motorcycle had snick with his shoulder and they got indulged in hot words and in the meantime, both the boys assaulted Amit Kumar and also chased him, till he fell on the ground. He also deposed that on hearing noise, he reached near Amit, who was lying in pool of blood and in the meantime, both the boys fled away. He also categorically deposed that he asked Amit, to whom he should inform, upon which, he provided him phone number of his brother Arun Kumar and his uncle Suraj Bhan, to whom this witness had informed and asked them to reach M.M.Hospital, Mullana. He also deposed that he along with his friend Vikram, removed Amit Kumar to Hospital. He also deposed that Amit Kumar succumbed to his injuries at about 9.30 p.m. At about 11.45 p.m., his uncle and brother of Amit Kumar (since deceased) had reached hospital and thereafter, he (this witness) along with Vikram, had left the hospital. To the similar effect, is the testimony of DW-2 Vikram Singh, who had facilitated the removal of Amit Malik to the hospital along with Kamal. He has also deposed about injured to have given phone numbers of his uncle

accordingly, informed them, to reach M.M. Hospital. Though, it is now claimed by the prosecution that Kamal, had been won over by the accused, but however, it is pertinent to mention that though the said defence witness has been subjected to lengthy cross-examination, but nothing material elicited out, to strengthen the version of the prosecution. In fact, taking place of the occurrence, in the light of the testimonies of both these witnesses, as such, is not disputed by the appellant side. However, they contest the role, assigned to the appellants.

Now, to establish the incriminating role of the appellants, the prosecution banks upon the testimonies of complainant PW-11 Arun Malik and his uncle PW-12 Suraj Bhan. The star witness of the prosecution is PW-11 Arun Malik, who was accompanying the deceased, at the time of occurrence. Even though, it is the claim of the prosecution that Kamal was also accompanying them, at the time of occurrence but however, the said witness, has stepped into witness box as DW-1. He had stated about the information having given to both, brother as well as uncle of the injured, soon after the occurrence, on asking of the injured, to reach M.M. Hospital. Considering the testimonies of DW-1 and DW-2, a note of caution does pass on to the mind, vis-a-vis the presence of complainant and his uncle Suraj Bhan, at the relevant time of occurrence.

During the course of arguments, much emphasis has been laid upon both the eye witnesses i.e. PW-11 and PW-12, to be closely related to the deceased and therefore, their testimonies do not inspire confidence, as they are interested witnesses.

Relationship is not a factor to effect credibility of a witness. It

allegations against an 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 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 is often a sure guarantee of truth. Every case has to be adjudicated in the backdrop of its own factual position and the Courts have to adopt a careful approach and analyse the evidence to find out, whether it is cogent and reliable.

In the FIR Ex.P1/P43, the complainant has specifically stated about the manner of causing of the occurrence by the assailants. This FIR Ex.P1/P43 is the first version, qua the occurrence in question. It is pertinent to mention that though the complainant, in the FIR, had specifically stated about the participation of the assailants and named them but he categorically stated that Avesh Dahiya had raised *lalkara* to catch hold all three of them and they should be killed and that no one should escape. Further, he stated that all the people attacked his brother Amit and then he gave the description of the injuries, so caused by the various persons. However, it is pertinent to mention that in the examination-in-chief, the said witness has deposed in consonance with the version, so given but however, **'men may tell lies, but circumstances do not'** and traces of falsity are evident, if one goes through the cross-examination of the said witness. It is pertinent to mention here that said witness, in cross-examination, has admitted that no injury was received by him as well as his companions. Even, Kamal had not sustained any injury. Even their clothes were not stained with blood,

though, it is the claim of the said witness that he along with Kamal and Suraj Bhan, had shifted his brother to M.M. Hospital. It is pertinent to mention that this witness has deposed about having taken the injured to hospital on the motorcycle. If so, there is total silence, as to whose motorcycle was available there and in what manner, all three of them, had taken the injured to hospital, on motorcycle and furthermore, where the motorcycle was dropped, relating to the same, there is nothing, as such, pointed out by the said witness. Not only this, it is further essential to note that the said witness, though, has specifically named the assailants and the weapons of offence with which they were armed and kind of injuries, so given to the injured, but however, he was unable to give other general details of his day-to-day living and surroundings nearby. While facing cross-examination, he had stated that he had studied in M.M. University, Mullana for two years. Except the department of Civil Engineering, he was not aware of any other department of M.M. University, Mullana nor he knew about all the students studying in the said University. Furthermore, he had also stated that however, he knew some students, who resided with him in the hostel and some students, who resided in rented room near to his room at Barara and Mullana but he stated further that he does not know their names today (on the day of recording of his cross-examination). Further, he stated that he does not know the neighbours of his room situated in Mullana and Barara. Also, he stated that he does not know owner/landlord of the rented accommodation, where he was residing at Mullana, at the time of occurrence. He had not given the name of owner of the aforesaid accommodation to the police in any of his statement. He

statement before the police. He also stated in cross-examination that he does not know the distance between police station and M.M. Medical College and Hospital, Mullana. In the light of the same, whether actually, he was studying in M.M. University, Mullana, at the relevant time, raises a big question mark. Not only this, he also stated that he does not remember, as to whether, the students, who were arrested in this case, were shown to him by the police. He also deposed that the Investigating Officer and learned Public Prosecutor, did not enquire from him about the individual presence and identity of Ashok Kumar @ Shoki and as such, he cannot identify Ashok Kumar @ Shoki. He also stated that he had seen one person from the back and since, there were so many accused, he could not properly identify that person, whose back he had seen. He thought, he was Ashok Kumar @ Shoki but it may be correct that he could not identify Ashok Kumar as one of the assailant and it is possible that he was not present. He also deposed that from the back, he construed that the man was Ashok Kumar but in fact, he was not Ashok Kumar. This shows the indecisiveness on the part of this witness regarding the participation of Ashok Kumar @ Shoki, one of the accused of the present case, in the occurrence in question.

Furthermore, PW-11 Arun Malik had also stated that he had told the police that his brother had died at the spot, which is contrary to the medical record, so coming forth.

Another material witness of the prosecution is PW-12 Suraj Bhan, who is uncle of the complainant. It is claim of the prosecution that Suraj Bhan had witnessed the occurrence. He had specifically stated that on 28.04.2010, at about 8.00 p.m., he had reached Holy Chowk because he

talking about the occurrence, which is alleged to have taken place on 26.04.2010. He also deposed that when he reached there, he had seen Amit Malik, his nephew, was discussing with Kamal Sharma. In the meantime, 7-8 boys having *lathies*, swords in their hands came there and further, he deposed about the manner of causing of the occurrence by the assailants. However, it is pertinent to mention that the version, so put forth, by the said witness, is contrary to the recitals of the FIR, wherein, the complainant had stated that out of fear, they had ran away and assailants had also ran away, after murdering Amit Malik, at the spot. Immediately, his uncle Suraj Bhan, had met them on the way and he had seen the occurrence. Meaning thereby, the complainant, after the occurrence, when had gone away from the spot, out of fear, on the way, he met Suraj Bhan and if it be so, definitely, the said witness, cannot be claimed to have witnessed the occurrence. Even his presence, at the relevant time, becomes doubtful, when we make reference to his cross-examination. In the cross-examination, he had stated that when he had come to Mullana, he sat with the landlord and after resting a while, he started walking out. On the way, he met one boy, who knew him and he gave lift him on bike and took him to Holy T-point. How, this witness came to know about presence of his nephew at Holy T-point, is a big question mark. Even, he has not specified the person, from whom he took lift on the motorcycle. He has categorically stated that he had not enquired the name of the boy, who took him on the motorcycle nor he has been cited as witness in the present case. He also stated in cross-examination that Amit Malik was taken to the hospital by Arun Malik and Kamal Sharma. This itself contradicts the version, so put forth by the complainant, in the FIR and then

in the witness box, about this witness to be accompanying the complainant

while taking away injured to the hospital. Furthermore, he had stated that he went to the hospital by taking lift from someone and he reached the hospital before 9.00 p.m., which is also contrary to the ruqa, so proved in evidence. Also, he stated in the cross-examination that none of the accused was got identified by the police from him during the course of investigation. He admitted to be correct that at no point of time, he named Ashok Kumar as a person, who inflicted injuries to Amit Malik and he also categorically stated that he cannot identify Ashok Kumar. He further stated that he had never met Dalip Singh, Security Officer for any specific purpose. He also stated that they never alleged the involvement of Dalip Singh in this case. Also, further this witness has not been able to state about having known other assailants. Though, further in cross-examination, he had stated that he had to lift his nephew from the spot, but however, his clothes or his body was not stained with blood, which is highly improbable, as injured was profusely bleeding, at the relevant time. Thus, from the cross-examination of the aforesaid witness, it becomes shaky about his presence, at the relevant time as asserted in the examination-in-chief. Keeping the same in view, it is important to make reference to the testimony of PW-17 SI Gurmej Singh, who had reached the hospital, soon after the occurrence and had got recorded the statement of the complainant. The said witness, in the cross-examination, has stated that at about 9.15 p.m., they had left for the hospital and reached there at 9.30 p.m., which was at a distance of 2.5 km. from the spot. He also stated that he immediately went to the Emergency, where he was informed that the doctors were checking the injured as informed by the Junior Doctors. At about 9.45 p.m., the doctors handed over him ruqa of injured being brought dead. He was handed over two ruqas, which are

Ex.P45 and Ex.DX. He also stated that he had seen Ex.P45, which pertains to patient Amit being alive at 9.10 p.m., whereas, Ex.DX was handed over regarding patient expired at 9.25 p.m. He further categorically stated that he immediately tried to trace out the witness and thereafter, tracing him out at 11.00 p.m., he recorded his statement. Thus, from this part of the cross-examination, it is evident that complainant was not readily available for recording of his statement, at the time of visit of the Investigating Officer to the hospital. It was only at 11.00 p.m., the statement of the complainant was recorded, which is so evident from his statement, proved in evidence. Nowhere, he mentions about having met Suraj Bhan, at any stage. No document has been got signed from Suraj Bhan. It is also pertinent to mention that Suraj Bhan, for the first time, had got recorded his statement to the police on 01.05.2010. When specifically Suraj Bhan is claimed to be an eye witness to the occurrence, it sounds very improbable that his statement would not be recorded by the Investigating Officer, soon after the initiation of action, though, he had specifically stated in the cross-examination that the police had also arrived at the hospital, at the same time, when they reached.

In the light of ruqas Ex.P45 and Ex.DX, it is important to make reference to the cross-examination of PW-9 Dr.O.P.Aggarwal, who had categorically admitted that patient was alive when he was brought to the hospital, which counters the claim of the eye witnesses about injured to have succumbed to injuries at the spot. It is also pertinent to mention that the said doctor has stated that in the inquest report, there was mention that head of the body had bandage around it and when the body had come to them, for post-mortem examination, there was no pipe in the nose of the

body and dressing around the head of the body. He further stated that in the inquest report, it has been mentioned that nose of the dead body, had a pipe in it. He did not enquire from anyone as to why said pipe and bandage, were not on the dead body, when the same was produced before them for post-mortem examination. It seems that patient was given treatment soon after his arrival in the hospital and he died subsequently. This is so also evident from two ruqas Ex.P45 and Ex.DX but however, no record of treatment, so given, has been duly proved. All the more, it counters the claim of the eye witness, about the death to have occurred instantly, at the spot.

In the light of the aforesaid circumstances, so spelt out from the cross-examination of the eye witnesses i.e. PW-11 Arun Malik and PW-12 Suraj Bhan, coupled with the medical evidence, so coming on record and also in the light of testimony of the Investigating Officer PW-17 SI Gurmej Singh, definitely, an element of doubt, creeps about the occurrence in question, to have been witnessed by Arun Malik and Suraj Bhan. In the light of same, the version, so put forth in defence, by way of examination of DW-1 Kamal, who, as per version of the prosecution, was also present, at the relevant time of occurrence, seems to be more probable. The only conclusion, which can be drawn is about the occurrence to have taken place and injuries having inflicted on the person of Amit Malik, which proved fatal but however, the incriminating role of the appellants, vis-a-vis causing of the occurrence, do not stand established, beyond shadow of reasonable doubt. Thus, the benefit of doubt, ought to be extended to all the appellants.

Resultantly, all the appeals are hereby accepted and the

Shoki, Sandeep Kataria, Deepak Yadav, Avesh Dahiya, Mahesh Malik and Deepak Dhankar, are hereby acquitted of the charges, levelled against them.

As accused-appellants, are on bail, their bail bonds, stand discharged.

(JITENDRA CHAUHAN)	(ARCHANA PURI)
JUDGE	JUDGE
January 31, 2020	
Vgulati	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No