

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **Crl. Appeal No.D-538-DB of 2016**

Rajwinder
...Appellant

VERSUS

State of Haryana
...Respondent

(ii) **Crl. Appeal No.D-575-DB of 2016**

Dinkar
...Appellant

VERSUS

State of Haryana
...Respondent

(iii) **Crl. Appeal No.D-607-DB of 2016**

Sumit
...Appellant

VERSUS

State of Haryana
...Respondent

(iv) **Crl. Appeal No.D-713-DB of 2016**

Mohit Kumar s/o Puna Ram
...Appellant

VERSUS

State of Haryana
...Respondent

(v) **Crl. Appeal No.D-959-DB of 2016**

Mohit Kumar s/o Nasib Singh
...Appellant

VERSUS

State of Haryana

...Respondent

Date of Decision: February 03, 2020

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

Present: Mr.T.S.Sangha, Senior Advocate with
Mr.Narinder Singh, Advocate
for the appellant (in CRA No.D-538-DB of 2016).

Mr.R.K.Handa, Advocate
for the appellant (in CRA No.D-575-DB of 2016).

Mr.Mohnish Sharma, Advocate
for the appellant (in CRA No.D-607-DB of 2016).

Mr.S.S.Nara, Advocate
for the appellant (in CRA No.D-713-DB of 2016).

Ms.Hardlita, Advocate for
Mr.Vineet Chaudhary, Advocate
for the appellant (in CRA No.D-959-DB of 016).

Mr.Vikrant Pamboo, DAG, Haryana
for the respondent-State.

Mr.Jagdish Manchanda, Advocate
for the applicant/proposed respondent No.2.

ARCHANA PURI, J.

Criminal Misc. applications.

The aforesaid applications have been filed under Section 482
Cr.P.C. by the applicant to implead him/her as respondent No.2 in all the
appeals and for cancellation of bail granted to the non-applicants-appellants.

Heard.

All the applications are containing same facts, as the same are arising from same FIR. The appeals are also pending. This Court is not inclined to advert on merits on these applications.

In view of the above, the applications are disposed of.

Main appeals

Challenge in the above-mentioned bunch of appeals, is to the judgment of conviction dated 05.05.2016 and order of sentence dated 10.05.2016 passed by learned Addl. Sessions Judge, Ambala, vide which appellants were held guilty and convicted and sentenced as under:-

<i>Accused</i>	<i>Under Sections</i>	<i>Sentence</i>	<i>In default</i>
All accused	Section 148 IPC	RI for three years	
All accused	Section 302/149 IPC	Imprisonment for life along with fine of ₹10,000/- each.	SI for six months
Rajwinder	Section 25 of the Arms Act	RI for one year along with fine of ₹5,000/-	SI for three months

All the sentences were ordered to run concurrently.

The background facts in nutshell are as herein given:-

That, complainant Randhir Singh, on 03.10.2013, went towards the road side for a walk, after having dinner. Gurdeep Singh also came there for walk and both of them, went towards Nakhrouli side. Thereafter, both of them left for their houses. When Gurdeep reached near street of Khera, the complainant heard a noise and on turning back, he saw that Gurdeep was surrounded by seven young boys on three motorcycles. The complainant reached near Gurdeep. In the meantime, Madan Lal and Gurnam Singh, also reached the spot. Gurdeep told them in injured condition that Mohit, Rajwinder, Sumit, Dinkar along with three other boys had attacked him with knife. He also further told that two months ago, these

boys had quarreled with him, due to cricket match and they were nursing grudge against him. The complainant along with Madan Lal and Gurnam Singh, had noticed that blood was oozing out from private part of Gurdeep. They took Gurdeep To Mullana Medical College in a private vehicle, where doctor declared him dead. The proceedings were initiated in the present case, on the basis of the statement, got recorded by Randhir Singh and investigation swung into action and accused were arrested.

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 under Section 302 read with Section 34 and Section 25 of the Arms Act, against the accused, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as many as 10 witness, besides adducing documentary evidence. The witnesses, so examined as PW-1 Constable Jagsheer Singh, PW-2 EASI Rishi Pal, PW-3 PSI Mahabir Singh, PW-4 EASI Karan Singh, PW-5 Head Constable Bahadur Singh, PW-6 Randhir Singh, complainant, PW-7 Dr.Harpreet Singh, PW-8 Gurnam Singh, PW-9 Head Constable Ravinder Kumar and PW-10 Inspector Narender Singh.

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.

In defence, accused examined two witnesses, namely DW-1 Surinder Kumar and DW-2 Hussan Singh.

After hearing learned Public Prosecutor, learned counsel for the accused and on appraisal of the evidence, brought on record, vide impugned judgment of conviction and order of sentence, appellants were convicted and sentenced, as detailed in the earlier portion of the judgment

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

Lower Court record was requisitioned.

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

So far as, the fact of death of Gurdeep Singh, is concerned, the prosecution has examined PW-7 Dr.Harpreet Singh, who had conducted post-mortem examination on the dead body of Gurdeep Singh along with Dr.O.P.Aggarwal and Dr.Uzma and proved post-mortem report Ex.P20. As such, the fact of death of Gurdeep Singh, stands amply established.

Now, we have to appraise the incriminating role of the appellants.

As per version of the prosecution, the relevant occurrence was witnessed by complainant Randhir Singh, as well as Madan Lal and Gurnam Singh. In the presence of all these three persons, the injured is claimed to have disclosed names of four accused and also deposed about three more persons, to be involved in the attack. However, the assertion of the prosecution about Randhir Singh as well a Gurnam Singh, to be eye

witnesses to the occurrence, stands belied from the circumstances, so

surfing in the evidence, adduced in the present case.

Before adverting to the testimonies of the aforesaid witnesses, it is important to make reference to the testimony of PW-7 Dr.Harpreet Singh. The said witness has categorically proved the post-mortem report, wherein, there is specific mention of existence of one injury on the dead body, which is herein given:-

“Stab wound 03cm x 1 cm on the upper part on the front of left thigh, 10 cm below iliac crest. Wound is elliptical in shape, the margins of the wound are cleanly cut. On dissection underneath muscle and major blood vessels are cut. There is profuse bleeding in the injured area. The thigh is swollen. Clotted blood present in the wound. Infiltration of the blood present in the injured area.”

Furthermore, in the post-mortem report, it is also stated that probable time that elapsed between injury and death was 0 to 1 hour and between death and post-mortem was 12-18 hours. Even, the injuries are stated to be ante-mortem in nature. The cause of death was opined to be haemorrhage and shock, resulting from the above mentioned stab injury. Such being the recitals of the post-mortem report, it is pertinent to mention that while facing cross-examination, the said doctor has categorically stated that injury, in the present case, was on thigh and cause of death in the present case was due to excessive bleeding. He further categorically stated that had the patient been brought and given medical and surgical aid immediately before loss of blood, he could have been saved. Furthermore, said witness deposed that it is possible that if the deceased was not attended

by anyone within an hour, the deceased kept on bleeding from the injury,

which resulted in loss of blood and further resulted into shock and haemorrhage. He also deposed that they did not notice any bandage or any cloth put on the injured portion of the injured/deceased applied by anyone for stopping loss of blood. In the further cross-examination, the said witness has also stated that deceased had not taken any diet about 2-3 hours before his death. He also specifically state that death in this case, might had occurred at around 7.00 p.m.

Now, it is important to make reference to the FIR, which is the first version of the occurrence in question. The FIR **Ex.P4** was got recorded by Randhir Singh, who had reached the spot, after hearing alarm raised by Gurdeep Singh. Therein, the complainant has categorically stated that on 03.10.2013, at about 8.30 p.m., he, after taking the meals, had left for walk towards road and Gurdeep Singh had also come there and both of them went towards Nakhrouli. Thereafter, both of them proceeded towards their respective houses after the walk. He also specifically stated that when Gurdeep Singh reached near the street of Kherawali, he turned back suddenly, on hearing his cries. Then the complainant had further stated that seven boys had surrounded Gurdeep Singh, who had come on three motorcycles. When he reached near Gurdeep Singh, in the meantime, Madan Lal s/o Babu Ram and Gurnam Singh s/o Sadhu Singh, also came on the spot. Furthermore, it is important to make mention that in the FIR, it is stated that Gurdeep Singh told them (complainant and others, who reached the spot) in injured condition that Mohit s/o Nasib Singh, Rajwinder s/o Tejpal, Sumit s/o Pehal Singh, Dinkar s/o Om Parkash along with three other boys, quarreled with him, due to cricket match and they had grudge against him. Further, it is stated in the FIR that complainant along with

Madan Lal and Gurnam Singh, saw that blood was oozing from the private part of Gurdeep Singh. Then, complainant took his vehicle and he along with Gurnam Singh and Madan Lal, took Gurdeep Singh in injured condition to Mullana Medical College for treatment, where doctor declared Gurdeep Singh dead. Thus, from the recitals of the said FIR, one thing becomes very certain that after the taking place of the occurrence, the complainant and his companions had reached there . It was only Gurdeep Singh, who had sustained injuries by that time, had disclosed about the involvement of the assailants and the motive for causing of the occurrence.

Now, coming to the statement of Randhir Singh, complainant got recorded on 08.05.2014, wherein, he had stated about having reached near Gurdeep Singh, in pursuance of hearing voice of Gurdeep Singh and in the meantime, Madan Lal and Gurnam Singh had come there. He specifically stated that Gurdeep Singh was lying injured condition and when they asked him about the assailants, then he told them about Rajwinder Singh /o Tej Pal, Mohit s/o Nasib Singh, Dinkar s/o Om Parkash, Sumit s/o Pehal Singh and other three boys, having caused injuries with knives. Therein, he is speaking about injuries and weapons of offence, to be plural. He further specified, when he specifically stated that Gurdeep Singh also received many injuries and blood was oozing from his wounds. He further stated that Gurdeep Singh told that all those accused persons caused him injuries, meaning thereby, more than one injury was caused to Gurdeep Singh and the weapon of offence, was also more than one. This assertion is also contrary to the injuries, so found on the dead body of Gurdeep Singh, as detailed in the post-mortem report. There is mention of only one stab

injury received by Gurdeep Singh. Furthermore, in the statement dated

02.07.2015, which was recorded after the application under Section 319 Cr.P.C. was moved, also the complainant had stated about the injuries and weapon of offence, to be more than one and had also stated about all the aforesaid named persons, to have caused injuries. It should be noted that it is specific claim of the complainant that at about 8.30 p.m., he along with Gurdeep Singh, had gone for a walk and after walk, when they were returning back to their respective houses, then the occurrence had taken place. While facing cross-examination also, the complainant has specifically stated that they kept on walking upto 8.30 p.m. and they parted with each other at 8.25 p.m. Further, he categorically stated that they proceeded from the spot towards the hospital at about 8.35 p.m. and they reached Medical College at 8.50 p.m. In cross-examination, he had stated that occurrence of this case had not taken place at 7.30-8.00 p.m. It had happened only at about 8.30 p.m., with margin of five minutes and further it had not happened at 8.45 p.m. He also specified that they had not reached hospital before 8.30 p.m. They reached Mullana hospital at about 8.45 p.m. However, perusal of the ruqa **Ex.P19**, reveals that it was dispatched at 8.32 p.m. In the light of the same, definitely, the injured had reached Mullana Hospital, much prior to 8.32 p.m. However, the complainant, while facing cross-examination had stated that Mullana is at a distance of about 10½ kms. from their village. He also stated that it took him about 2-3 minutes in bringing his car from his house to the spot. If the seriatim of happening, as stated, by the said witness is taken into consideration and the same is read in consonance with the recitals of the ruqa **Ex.P19**, then definitely, one thing becomes certain that incident had not taken place, at the time, when the

been consumed with the complainant to reach the hospital as Mullana is stated by him, to be at a distance of about 10 ½ kms. In the light of the aforesaid, now coming to the testimony of PW-8 Gurnam Singh, who is also claimed to be an eye witness to the occurrence in question. He had categorically stated that on 03.10.2013, at about 8.00 p.m., he was going to the doctor for taking medicine and Madan Lal had met him. When both of them were passing through the street, they heard noise and they ran towards that side. They noticed Gurdeep Singh was cordoned off by 7-8 persons. He also deposed that when they reached near the spot, those persons had fled away on their motorcycles. Even, Randhir Singh reached there. On their asking, Gurdeep Singh had told them that seven persons had caused injuries to him with knives. Here also, the said witness states about the disclosure of the injuries by Gurdeep Singh, having caused to him with knives. He further stated that it was Gurdeep Singh, who told them the names of four boys, out of them as Rajwinder s/o Tej Pal, Sumit s/o Pehal Singh, Mohit s/o Nasib Singh and Dinkar s/o Om Parkash. He further disclosed that he does not know the name of other three boys. Furthermore, the said witness has also stated that thereupon, they had shifted Gurdeep Singh to the hospital, in the car brought by Randhir Singh, from his house. From the testimony of the said witness also, it is evident that he had not seen the assailants, causing injuries to Gurdeep Singh. He is stating about the disclosure of names of the assailants by injured Gurdeep Singh. He also further stated that it was dark at that time (at the time of occurrence) and he also stated that he had seen seven boys. Thus, from the testimonies of both the so called eye witnesses, it is evident that it was not they, who had witnessed the occurrence. Rather, their presence seems to have been planted

to strengthen the prosecution version. Even, there post-occurrence conduct, as evident from the testimonies itself, raised doubt about their presence at the relevant time. It is pertinent to mention that the doctor, as already detailed aforesaid, had stated about the cause of death in the present case, to be due to excessive bleeding. Even, he has specifically emphasized that had the patient been brought and given medical and surgical aid immediately, before loss of blood, he could have been saved. He also stated about there to be possibility about the deceased was not attended by anyone within an hour and deceased kept on bleeding from the injury, which resulted in loss of blood and further resulted into shock and haemorrhage. Thus, considering the testimony of the aforesaid expert witness, it is further pertinent to mention that it has been specifically observed by the said doctor that they did not notice any bandage or any cloth, put on the injured portion of the injured/deceased, applied by anyone for stopping loss of blood. Considering the same, it is also important to mention that both the eye witnesses PW-6 and PW-8, have categorically stated that they did not tie the wound with the help of towel, *parna* or any other piece of cloth. They did not make an attempt to apply bandage on the wounds of the deceased. This conduct of both the eye witnesses, who otherwise, claimed to be concerned about injured Gurdeep Singh, is against the normal expected human behaviour. Above all, the version of said witnesses, to have witnessed the occurrence, falls flat, when PW-8 Gurnam Singh had stated that the doctor had informed them that name of deceased is Gurdeep Singh.

Also, the conduct of both the said witnesses, is most unnatural, considering the spot of occurrence. The occurrence is claimed to have taken place in the vicinity of the house of the deceased. However, no effort has

been made, either by complainant or Gurnam Singh or by their other companion Madan Lal, who had reached the spot, to apprise the family members of Gurdeep Singh. PW-6 Randhir Singh, has categorically stated in his cross-examination that family members of Gurdeep Singh were not informed, neither they waited for them to arrive at the spot. He further specifically stated that he himself, Gurnam Singh and Madan Lal, had taken deceased to the hospital and no other person, accompanied them. Also, PW-8 Gurnam Singh, had stated that parents of deceased, did not meet them in the hospital, so long, he remained in the hospital on the intervening night of 03/04.10.2013. He also admitted to be correct that dead body of Gurdeep Singh was lying in front of house of Hussan Singh s/o Singh Ram. He also stated that they did not inform about the dead body of Gurdeep Singh lying in front of the house of Hoshiar Singh to anybody from the village, neighbours or family members of the deceased. Further, in the tail-end of the cross-examination conducted on 24.09.2015, he had stated that it is correct that dead body of Gurdeep Singh was lying in front of the house of Hussan Singh s/o Singh Ram. This also belies the version, as put forth by the prosecution, about the said witness, to have witnessed the occurrence in question.

From the cross-examination of PW-6 Randhir Singh, it is evident that after the occurrence having taken place, he had gone to his house to bring the car, for taking injured to the hospital. He also admitted that house of the deceased is in the *abadi*, whereas, his house is at a distance of about 200 meters from village *abadi*. Thus, his house is at much distance, from the house of the deceased but still, no effort has been made to

inform the family members of Gurdeep Singh qua the injuries sustained by

him. This conduct is also highly improbable.

Besides the aforesaid, the said witnesses have not been able to depose about the details of the motorcycles, upon which, the assailants had come. They have also not been able to depose about the side, towards which the assailants had fled, after causing of the occurrence. Considering, all the aforesaid circumstances, so spelt out, the version of the prosecution, cannot be termed to be free from doubt, relating to the occurrence, having witnessed by the aforesaid witnesses. Rather, it probalises about the plantation of presence of both the said witnesses, vis-a-vis the occurrence in question. In the light of the same, it is very important to make reference to the witnesses examined by the accused in defence. Two witnesses have been examined by the accused namely DW-1 Surinder Kumar as well as DW-2 Hussan Singh. As per DW-1 Surinder Kumar, on 03.10.2013 at about 7.30 p.m., while he was watching T.V. in the house of Pehal Singh, father of accused Sumit, along with Sumit and Pehal Singh, then, they came outside the house in the street, when the electricity had gone and then they heard that Gurdeep s/o Soran is lying dead near the house of Hussan. Then, he along with others had gone there, where they heard that Hussan had taken Gurdeep Singh to the hospital. Further, he has deposed about existence of enmity on account of panchayat elections between Randhir Singh and Pehal Singh, who is father of accused Sumit. Even, DW-2 Hussan Singh, has categorically stated that he had spotted Gurdeep Singh to be lying by the side wall of house of Hoshiar Singh, which is situated opposite to his house, in the street, on 03.10.2013 at about 7.15-7.30 p.m. He further deposed about manner of having attended to Gurdeep Singh, on coming to

Puran Singh, uncle of Gurdeep Singh, Naib Singh and several other women folk from the neighbourhood, had reached there. He also stated that Gurvinder had given a call on mobile phone of Randhir s/o Singh Ram but he also did not reach the spot. He further stated that he along with Jatinder, Puran, uncle of Gurdeep, took Gurdeep Singh in a car to the hospital. Enroute to hospita, Gurdeep Singh breathed his last. The version, so put forth, by the said defence witnesses, gains strength from the recitals of the ruqa Ex.P10, where there is mention about Gurdeep Singh, to have been brought by Puran Chand and the relationship is also mentioned as uncle. Even though, name of Randhir Singh, neighbour, as such, has also been mentioned, however, it is pertinent to mention that Randhir Singh has specifically stated that he along with Gurnam Singh and Madan Lal, had taken the injured to the hospital and that nobody else had accompanied them to the hospital. This assertion by PW-6 Randhir Singh is countered by the recital of the ruqa, where, there is mention of Puran Chand. In the light of the same, when presence of PW-6 Randhir Singh and PW-8 Gurnam Singh, as such, has been observed not to be free from doubt, the mentioning of name of Puran Chand, in the ruqa **Ex.P19**, strengthens the version of defence, about the manner of spotting of Gurdeep Singh in injured condition, outside the house of Hoshiar Singh and Hussan Singh. Even, the timing of spotting of injured Gurdeep Singh, so deposed by DWs, seems to be more probable, keeping in view the time of dispatch of ruqa.

In order to secure conviction of the accused, the prosecution was required to prove and establish the guilt of the accused, beyond shadow of reasonable doubt. However, in the event of reasonable doubt, its benefit

has to enure to the accused. As already detailed aforesaid, the case in hand,

cannot be termed to be free from doubt, as such, the appellants are held entitled to benefit of doubt.

Consequently, we find merit in all the appeals filed by the appellants and the same are allowed. The impugned judgment of conviction dated 05.05.2016 and order of sentence dated 10.05.2016 passed by learned Addl. Sessions Judge, Ambala, are set aside.

As appellants are stated to be on bail, therefore, their bail/surety bonds stand discharged.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

February 03, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No