

**CRA-D-593-DB-2014 and connected case**

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

**CRA No.D-593-DB-2014(O&M)**

Reserved on : January 16, 2020

**Date of Decision: August 27, 2020**

Subha alias Subhash

...Appellant

Versus

State of Haryana

...Respondent

AND

**2.**

**CRA No.D-622-DB-2014(O&M)**

Hoshiyar Singh and others

...Appellants

Versus

State of Haryana

...Respondent

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

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

Ms. Shubhra Singh, Addl. AG, Haryana.

Mr. Sanjay Vashisth, Advocate for  
the complainant.

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**HARINDER SINGH SIDHU, J.**

1. Criminal Appeal No.D-593-DB of 2014 has been filed by Subha @ Subhash, while, Criminal Appeal No.D-622-DB-2014 has been filed by Hoshiyar Singh, Pardeep and Satbir. Both the appeals are instituted against the judgment and order dated 11/12.03.2014 rendered by the Additional Sessions Judge, Narnaul in Sessions Case No. RT-15 of 2010 whereby the appellants, who were charged with and tried for offences

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punishable under Sections 323, 325, 341, 302, 427 read with Section 149 of the Indian Penal Code (for short 'IPC') and sentenced as under:-

| Offence     | Sentence                                                                                                                                                                    |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| U/s 323 IPC | Rigorous Imprisonment for three months;                                                                                                                                     |
| U/s 325 IPC | Rigorous Imprisonment for one year and to pay fine of Rs.5,000/-, each and in default of payment of fine, to further undergo Simple Imprisonment for a period of one month; |
| U/s 341 IPC | Rigorous Imprisonment for one month;                                                                                                                                        |
| U/s 427 IPC | Rigorous Imprisonment for one month                                                                                                                                         |
| U/s 302 IPC | Life Imprisonment and to pay fine of Rs.1,00,000/-, each, and in default of payment of fine, to further undergo Simple Imprisonment for a period of six months.             |

The sentences were ordered to run concurrently. Smt.Babli and Deshraj who were tried with the appellants were acquitted.

2. The case of the prosecution in a nutshell is that on 29.11.2009, a medical ruqqa and MLR was received in Police Station Kanina that one Harish was admitted in CHC Kanina having sustained injuries in a scuffle. Another injured Rajender had been referred to PGIMS Rohtak without MLR. On this HC Satbir reached CHC Kanina and moved application before the doctor regarding fitness of Harish to make statement. The doctor informed that Harish had been referred to PGIMS Rohtak. But it was learnt that Harish had been admitted in Virendra Hospital, Rewari. HC Satbir reached the hospital and after obtaining opinion regarding fitness of Harish to make statement recorded his statement Ex. PA on 30.11.2009.

3. Harish stated that he was studying in 10<sup>th</sup> class in B.R. Senior Secondary School, Sehlang. He was a member of volley ball team of his school (B.R.Adrash Senior Secondary School, Basai Raod, Sehlang). On 29.11.2009 their team had gone to village Bawal for playing. After taking

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part in the game they were returning from the school at Bawal to Sehlang in the school bus of their school. The PTI and the Principal Rajinder were accompanying them. At about 6.15 PM the bus reached near the forest of Chellawas. The bus was being driven on its correct side. The driver of an Alto car gave an indication for the bus to stop. When the bus stopped the driver of the Alto car asked the driver of the school bus as to why he had not given side to him. The teachers of the school tried to persuade him not to quarrel. The number of the Alto car was HR26AE/4835 and the driver disclosed his name as Hoshiyar son of Roop Ram. He threatened to teach the driver of the school bus a lesson and started driving his car ahead of the bus. He called his associates on the mobile. Near the railway crossing at Ateli Road, Kanina near the forest he forced the bus to stop by blocking the way. Meanwhile, 6/7 persons having lathis and dandas in their hands come on 2/3 motorcycles. Just as the Headmaster of the school alighted from the school bus Hoshiyar, the driver of the Alto and the 6/7 persons started beating the Headmaster with their lathis and dandas. When he (Harish) tried to rescue the Headmaster then Hoshiyar Singh gave one lathi blow on his left hand. The other persons also started beating him with lathis and dandas. On noise being raised the PTI, the driver of the school bus and other boys of the team got down from the bus and rescued them. The accused left threatening that today they had escaped but would be killed in the future. Due to the injuries the Headmaster became unconscious. The assailants also broke the window panes of the bus on all four sides by hitting dandas. They had inflicted injuries unnecessarily due to the enmity for not giving side to Alto by the bus driver. The PTI and the driver of the school bus got him (Harish) and the Headmaster admitted at CHC Kanina for treatment. From

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there he was referred to PGIMS, Rohtak but his family got him admitted in a Hospital at Rewari. He stated that he could identify those 6/7 persons if they came in front of him.

4. On the basis of that statement FIR under sections 148, 149, 323, 427, 506 IPC was registered. On 30.11.2009 intimation was received that Rajinder had died due to the injuries sustained by him. Thereafter Section 302 IPC was added. Proceedings under Section 174 Cr. P.C. were conducted. Post mortem of the dead body of Rajinder was got conducted. Accused Hoshiyar Singh was arrested on 30.11.2009. His Alto car No. HR26AE/4835 and mobile were taken into possession. Accused Babli wife of Hoshiyar was arrested on 03.12.2009. Deshraj was arrested on 05.12.2009. Accused Pardeep, Ishwar were arrested on 07.12.2009. Accused Satbir surrendered in the Court on 08.12.2009. The remaining accused could not be arrested. Therefore challan against the aforesaid accused was filed.

5. Initially, since accused Subha @ Subhash, Ajit @ Kalya, Sunil, Ramesh @ Lala, Dharmender Singh, Bhupender @ Mota and Dilbagh all residents of Kanina could not be arrested, they were declared as Proclaimed Offenders on 13.08.2010. Later, Subha @ Subhash was arrested and challan against him was filed.

6. Charges against accused Hoshiyar Singh, Babli wife of Hoshiyar Singh, Ishwar son of Mool Chand, Pardeep son of Ram Kumar, Satbir son of Ram Singh, Deshraj son of Mange Ram for offences under Sections 148, 323, 325, 302, 341, 427, 506 read with Section 149 and 120B IPC were framed. Separate charge against accused Deshraj son of Mange Ram for offence under Section 212 IPC was framed.

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7. The prosecution examined number of witnesses in its support. The statements of the accused under Section 313 Cr.P.C. were recorded. They denied the allegations levelled against them and pleaded false implication. Accused Hoshiyar Singh stated that Rajender (deceased) was sitting on the seat adjacent to the door of the bus. There was no zebra lining on the speed breaker. The bus had jumped on the speed breaker due to high speed. He fell from the bus and received injuries.

8. They examined two witnesses DW1 Bhagat Singh and DW2 Beer Singh in their defence.

9. The accused were convicted and sentenced as referred to above. Hence, these appeals.

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

11. PW1 Harish son of Jai Lal aged 15 years deposed that on 29.11.2009 he was a student of 10<sup>th</sup> class in B.R. Senior Secondary School, Sehlang. He was a member of volley ball team. The team had gone to village Bawal on 29.11.2009 to participate in the sports. After taking part in the game, they were returning in a bus. Sugriv was driving the bus. Banshi Lal, PTI, Principal Rajinder Bhardwaj and 18-19 students were travelling in that bus. They reached near the forest of Chelawas at about 6.15 pm. When they were proceeding towards Kanina, Hoshiyar Singh who was travelling in Alto car No. HR26AE/4835 suddenly came in front of bus. Babli his wife was also accompanying Hoshiyar Singh in car. Hoshiyar Singh asked the bus driver as to why he had not given way to his car. The bus driver told him that it was a single road and he should have waited for some time for him to make way. He beg pardoned and was let

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off. The bus started moving. After some time, Hoshiyar Singh took his car ahead of the bus and started driving the car slowly. He did not allow bus to overtake car. Near the railway crossing he stopped car ahead of the bus. When PW 1 and others got down from the bus they saw that 10/12 persons had gathered there. They started assaulting Principal Rajinder with lathis and dandas. When PW1 tried to rescue the Principal from those persons, they started beating him. Hoshiyar Singh inflicted an injury with a stick on the left hand of PW1. He also suffered injury on his left eye which was caused by Lala with danda. He also suffered injury on his head which was caused by Kalia with danda. On receiving injuries he fell down on ground. The assailants threatened to kill them saying that that day they had been saved. The assailants also smashed the glasses of bus. Krishan driver alongwith Mahesh reached there. They witnessed the entire occurrence. The assailants fled away from spot. Krishan and Mahesh took them to CHC Kanina in same bus. He (PW1) was medico- legally examined at CHC Kanina. Principal Rajinder was referred to PGIMS Rohtak but he was taken to Gurgaon. PW1 was also referred to PGIMS Rohtak but his family members took him to Birendera Hospital, Rewari. Hoshiyar, Pappu, Kalia, Dilbagh, Raju, Ishwar Pardeep and Satbir were among the assailants. They were calling each others by these names. He however did not remember the names of other persons. He identified Hoshiyar, Ishwar, Babli, Pardeep and Satbir in Court and stated that other assailants were not present in Court. Hoshiyar had caused injury on the forehead of the Principal. Pappu had also caused injury on his head. Pardeep had caused injury on his abdomen. He did not remember the names of other persons who had caused injuries to Principal Rajinder. Hoshiyar, Pappu and Satbir caused injuries with

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dandas. On the night of 30.11.2009 police had met him in hospital at Rewari and recorded his statement Ex.PA which bears his signatures on point 'A'.

12. During cross examination by learned counsel for accused, he stated that he had told police during investigation that Sugriv was driver of bus; he had mentioned the name of Babli in his statement Ex.PA. He had also stated that driver of bus told accused that it was single road and he should have waited for some time and thereafter driver begged pardon. He had also stated that Lala inflicted a danda on his eye and Kalia inflicted a danda on his head; he had narrated that Krishan and Mahesh had reached the spot and took the injured to CHC Kanina. He was confronted with his statement Ex.PA where it was not so recorded. He had stated in his statement that 10/12 people collected at spot. He was confronted with his statement Ex.PA where 6/7 persons were mentioned. He had mentioned in his statement that Pappu, Kalia, Dilbagh, Raju, Pardeep, Ishwar and Satbir had caused injuries. He was confronted with Ex.PA where it was not so recorded. He volunteered that Krishan had told him the names of assailants later on. He had stated in his statement Ex.PA that accused were calling each other by their name. He was confronted with his statement Ex.PA where it was not so recorded.

13. He stated that none of accused was known to him prior to incident. He had not told name of any of accused to police. He had not even given physical description of any of accused to police. Name, village, caste, parentage of any of accused was not known to him. Police had not shown him any accused for his identification during investigation. He was never called by police for identification parade of accused. He had appeared

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in court 5/6 times during the proceedings of case. He had seen accused on all those days. The other witnesses of case had been accompanying them on these dates. Krishan Kumar for first time told him names of accused when he attended court proceedings. Krishan and Mahesh were known to him prior to the occurrence and he was familiar with their names. He remained in CHC Kanina for 45 minutes. The other persons accompanying him namely driver Sugriv, PTI Banshi Lal, Mahesh and Krishan also remained in hospital during that period. Banshi Lal PTI was carrying a mobile phone. Sugriv driver also had a mobile phone. He did not know whether Krishan and Mahesh were carrying mobile phones. They left Kanina hospital at about 8.00 pm for Rewari. He had narrated to the doctor at Rewari about place of occurrence and manner of occurrence. He could not tell how many injuries in all were inflicted on Rajinder. He volunteered Krishan had seen injuries being inflicted to Rajinder and he could tell. He was tutored about this statement before he made deposition in Court. He could not tell the names of students travelling in bus at the time of incident. They were about 18/19 in number.

14. The first occurrence continued for about 10 minutes. None of the accused had entered the bus at the time of the first occurrence. The second occurrence lasted for about 5-7 minutes. The other assailants reached the spot about 5-7 minutes after the quarrel took place between Hoshiyar and the complainant party. Police reached at Rewari hospital at 11.30/12.00 at night. He did not remember as to how many places police had obtained his signatures and even about the contents of papers on which his signatures were obtained. There was a speed breaker on the road just before the railway crossing. He had not seen any light on the crossing.

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There was only one entry door in the bus and the Headmaster was sitting on the seat adjacent to door. He denied that bus had jumped on speed breaker at a high speed.

15. PW2 Krishan deposed that he was employed as a driver to a bus belonging to B.R. Senior Secondary School, Sehlang. Rajinder Sharma was managing the affairs of said school. He was driver on bus No. HR-66-3162. On 29.11.2009, he drove car No.HR-34C-4717 from Sehlang to Bindpur. Mahesh Kumar Sharma who is brother-in-law of Rajinder Sharma was with him. They started on return journey from Bindpur at about 5.00 pm. On their way to Sehlang, they reached railway crossing Kanina at about 6/6.30 pm. They spotted bus No. HR-47-5547 belonging to their school lying parked near railway crossing. They noticed that a quarrel was going on. They saw Hoshiyar, Pardeep, Ishwar, Satbir, Subha, Kalia, Ajit, Dharmender, Raju and Dilbagh were assaulting Rajinder Sharma, Ramesh and Sunil near bus. Hoshiyar inflicted a blow with sharp edged weapon on head of Rajinder Sharma. Satbir who was carrying a similar weapon inflicted a blow on head of Rajinder. Pardeep who was holding a similar weapon inflicted a blow on abdomen of Rajinder. Ramesh inflicted a blow on his left hand. Accused exhorted that in case Rajinder took any action against them they would finish his life. Pardeep first inflicted a blow to Rajinder Sharma and then to Harish. The driver of bus took the injured to the hospital. He (PW2) accompanied them in his car. He identified Hoshiyar, Ishwar, Pardeep, Satbir and Subha in Court. Injured were referred to Gurgaon for further treatment. Rajinder Sharma died near Dharuhera while he was being taken for treatment. His body was brought to Mahendergarh hospital where his post mortem examination was conducted.

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He had shown place of occurrence to police. Police had collected blood stained earth from spot and recovered one lathi in his presence. Police had also taken into possession broken glasses of bus vide memo Ex.PC.

16. In cross examination by learned counsel for accused, he stated that he knew names of assailants at the time of occurrence itself. He knew the accused 2/3 years prior to the occurrence. He however had no dealing whatsoever or other connection with the accused prior to the occurrence. He had never talked with the accused persons prior to the occurrence. He had disclosed the names of the accused to PW Harish on the day of the occurrence itself. They reached Kanina Hospital at about 7.30 PM. Bansi Lal the PTI of the school took the injured to the hospital. He (PW 2) reached the hospital in a separate vehicle. Police reached there about 15 minutes thereafter. He had narrated the incident to the police in Kanina Hospital. Police had first recorded his statement, then the statement of the PTI and then the statement of Harish at CHC Kanina. Rajinder Sharma had sustained four injuries. He (PW 2) had been visiting the Court on 10-11 dates in the present case. He had seen the accused on all those dates. Om Parkash driver of the school and Sumer Conductor also knew the accused persons prior to the occurrence.

17. PW3 Sugriv deposed that he had been employed as driver on the school bus of B.R. Senior Secondary School Sehlang for the last three years. The school belong to Rajender Parshad son of Basti Ram resident of village Sehlang. On 29.11.2009 the school team had gone to village Bewal to participate in the sports tournament. He had taken the school team in the school bus bearing Regn. HR-47-5545 which is of yellow colour. Bansi Lal PTI and Rajender Parshad, Head Master were also with them. After

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playing in the tournament their team was returning towards Kanina in the same school bus driven by him. When they reached near Mohanpur turn one Alto car came from Kanina side and was proceeding towards Ateli side. There was exchange of hot words on account of taking of side between him and Hoshiyar driver of Alto car. One lady namely Babli was also sitting in the car. Hoshiyar gave him a slap. He was under intoxication. Then the Head Master Rajender Parshad got down from the bus and tried to pacify Hoshiyar and asked him to take car from the side. Hoshiyar drove his car towards Ateli. He started driving his bus towards Kanina. When they reached near the village forest of Chelawas, the Alto car came from behind and overtook their bus and made them to stop. Hoshiyar threatened to see them ahead. Then he again started driving his bus. When they reached near the Railway crossing on Kanina- Ateli Road, Hoshiyar came there in his Alto car. Babli was sitting in the car. She was making phone calls. Hoshiyar came down from the car. Thereafter 2-3 motorcycles came there on which there were 6-7 boys. It was at about 6.15/6.30 pm. All those 6-7 persons started assaulting Rajender Head Master. Hoshiyar gave a blow with a wooden log on the forehead of Rajender. Satbir also gave a blow with wooden log on the back of head of Rajender. Sunil gave a danda blow on right hand of Rajender. Pardeep gave fist blows on the abdomen of Rajender. All of them were proclaiming 'Lathi Mar Re Sunil, Ramesh, Dharmender, Bhupender, Subha, Ajit alias Kaliya, Dilbag, Raju, Pardeep, Satbir, Hoshier, Ishwar'. They were all proclaiming Maro Maro. All of them went away thereafter. They brought Rajender Head Master to PHC Kanina where from he was referred to Gurgaon since his condition was serious. Thereafter nothing else happened before him. Rajender died on the way.

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The dead body was taken to hospital at Mohindergarh. These 6-7 named person had broken the front window of the bus. Ajit alias Kalia, Bhupender, Dilbag, Dharmender, Raju were the persons who had broken the glass. Hoshiyar had given him slaps. Hoshiyar had also inflicted a lathi blow to Harish of village Nautana who was a student of the school who had participated in the tournament.

18. The dead body was collected on 30.11.2009. Nothing else happened in his presence on 30.11.2009. His statement was not recorded by any officer after 30.11.2009. One bus was taken in possession in his presence. He had seen recovery memo Ex.PD which bears his signatures. He identified the accused in Court as being the assailants who had caused the injuries and had damaged the glass of the bus.

19. In cross examination by counsel for the accused he stated that he had made a statement before the police in Mahendergarh Hospital on 30.11.2009. He had been working as driver of the bus since four years prior to the occurrence. A record of his attendance was being maintained in the school. The assailants were not known to him prior to the occurrence. He came to know the names of Dilbagh, Bhupender, Dharmender, Subha, Ajit, Ramesh, Raju and Pardeep by their utterances at the time of the occurrence. He could not tell as to which accused had called the name of which of the accused. He had told the police that he came to know about the names of the accused by their utterances. (He was confronted with his statement Ex. DB where it was not so recorded). He did not tell the police that the accused were previously known to him (He was confronted with his statement Ex. DB where prior knowledge of the names of Subhash, Ajit, Ramesh, Ishwar and Dilbagh is indicated.) It was dark at the time of occurrence as the sun

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had set in by that time. There were 27 persons in the bus including the students, he himself, the PTI and the Headmaster. Apart from the accused no other person except a tea vendor was present on the spot. The railway crossing was lying open and there was no chowkidar or Railway official present there. There was no speed breaker near the crossing. Accused Hoshiyar had suddenly turned his vehicle and intercepted the way of the bus. But he did not have to apply any emergency brakes.

20. PW4 Dr. Deepak Garg, MO CHC Kanina tendered in evidence his affidavit Ex.PE wherein he stated that on 30.11.2009 he was posted at CHC Mahendergarh. He and Dr. Jai Singh conducted post mortem on the dead body of Rajender Parshad son of Sh. Basti Ram aged 45 years. They noted following positive findings :

1. *“9x2 cm oblique lacerated wound in fronto – partial region in middle of scalp.*
2. *10x4 cm oblique lacerated wound in parieto- occipital region.*
3. *Fracture both bone right forearm present.*
4. *Echymoses around both eyes present.*
5. *10x2 cm abrasion on abdomen present.*
6. *Ruptured membranes of brain and cranial cavity full of blood.”*

Cause of death in their opinion was coma and haemorrhagic shock due to head injury which was ante mortem in nature and sufficient to cause death in routine course of life. Probable time between injury and death was variable. Probable time between death and post mortem within 24 hours.

21. He further stated that the injuries mentioned in the post mortem report could be possible with the lathi Ex .P 1, Ex P2, danda Ex. P3 and wooden logs Ex. P 4 and Ex. P 5.

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22. In cross examination he stated that it is correct that injury No. 4 could be result of injury No.1. Injury No.6 could be result of injury No. 1 and 2. He also admitted that abrasions of the kind as referred to injury No. 5 could be the result of dragging and not by lathi. The possibility of injuries No. 1, 2 and 3 having been caused by the same weapon could not be ruled out. The possibility of the injuries mentioned in the post mortem report being suffered by fall from a running bus could not be ruled out.

23. PW5 HC Satbir Singh deposed that on 29.11.2009 he was posted at Police Station Kanina. That day on receipt of medical rukka alongwith MLR of Harish he went to CHC Kanina. He moved an application Ex.PF regarding fitness of injured Harish but doctor made endorsement that the patient was referred to PGIMS Rohtak. Thereafter on inquiry he came to know that patient was admitted in Birendra Hospital, Rewari. On 30.11.2009 he went to Rewari and moved an application Ex.PG before the doctor regarding fitness of Harish. The doctor declared the patient fit for making statement. Harish made statement Ex.PA before him which bear his attestation. He made his endorsement Ex.PH on the aforesaid statement and sent the same to Police Station Kanina. He went to the spot alongwith SI/SHO Janki Parshad. SI Janki Parshad lifted blood stained earth from the spot and converted the same into sealed parcel which was taken into possession vide memo Ex.PB. SI Janki Parshad also took into possession the broken glass pieces from the spot vide memo Ex.PC. On the same day Alto car No. HR-26AE-4835 along with one mobile phone of Nokia 7210 were also taken into possession by SI Janki Parshad vide memo Ex.PJ. On 01.12.2009 SI Janki Parshad had taken into possession the damaged bus No.HR-47-5545 vide memo Ex.PD. On 01.12.2009 SI

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Janki Parshad interrogated accused Hoshiyar Singh in his presence. Accused suffered disclosure statement to the effect that he could recover a danda which was kept concealed in bushes in village Gandala Majri and could get the spot demarcated. Accused Hoshiyar Singh was again interrogated on 02.12.2009 by SI Janki Parshad in his presence. During interrogation accused Hoshiyar Singh retracted his earlier disclosure statement Ex.PK/1 and made a new disclosure statement pursuant where to he got recovered one wooden log from his fields near his residential house in village Modi which was taken into possession vide memo Ex.PL/2. He also deposed regarding the disclosure statements made by accused Pardeep, Ishwar Singh, Satbir alias Papu. He identified the accused Satbir alias Papu, Pardeep, Ishwar and Hoshiyar in Court.

24. PW6 ASI Mahesh Kumar deposed that on 19.01.2010 on the asking of Kailash Chand SI/SHO Police Station Kanina and on the demarcation of Bansi Lal he visited the place of occurrence and prepared scaled site plan Ex.PQ of the spot.

25. PW7 Dr. Anil Kumar, MO CHC Kanina tendered in evidence his affidavit Ex.PR wherein he stated that on 29.11.2009 he was posted as Medical Officer at CHC Kanina. On that date at 7.15 pm he medico legally examined Harish son of Jai Lal aged 15 years who came with alleged history of assault. On examination following injuries were found on him :

1. *“Loss of function of left upper limb with features of fractured forearm bone.*
2. *Swelling over right maxillary prominence with abrasion over right lower eyelid.*
3. *An abrasion associated with swelling over right parietal region of skull near sagittal plane.*

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*Babinski's sign was positive with increased spasticity of lower limb. Injury No.(i) was subjected to orthopaedic management, injury no. (ii) was subjected to x ray investigation and injury no. (iii) was subjected to CT scan investigation. All the injuries were caused by blunt weapon/force and the probable duration of injuries was within 24 hrs.”*

He further deposed that as per X-ray report and film of Patient Harish prepared by Birendra Hospital, Rewari there was fracture of both bones of left fore-arm upper 1/3rd. It related to injury No. 1 of MLR. The injury was grievous.

26. PW8 Dr. Birender Yadav, Birendra Hospital, Rewari deposed that on 30.11.2009 he admitted patient Harish son of Sh. Jai Lal for management of fracture both bones left forearm. He was managed by closed nailing of those fractures. He remained admitted till 03.12.2009. His radiological examination was conducted in his hospital. X-ray report Ex.PS was prepared by him which bears his signatures. He proved X-ray films Ex.PS/1 and Ex.PS/2.

27. PW9 HC Balwant Singh tendered in evidence his affidavit Ex.PT in which he stated that on 30.11.2009 he was posted as MHC at Police Station Kanina. He deposed regarding deposit of the case property with him by SI/SHO Janki Parsad which he sent to FSL Madhuban on 16.12.2009.

28. PW10 HC Om Parkash tendered in evidence his affidavit Ex.PU regarding deposit of the case property in FSL Madhuban by him.

29. PW11 SI Janki Parshad stated that on 30.11.2009 he was posted at Police Station Kanina as SI/SHO. On that day he received statement

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Ex.PA of Harish Kumar with the endorsement of HC Satbir Singh. He recorded FIR Ex.PV which bears his signatures. He then received a telephonic message from MHC Police Station Mohindergarh that dead body of Rajender Sharma is lying in the mortuary of GH Mohindergarh. He added Section 302 IPC in the case and this fact was got recorded by him in DDR register. Then he proceeded to GH Mohindergarh. He conducted inquest proceedings Ex.PE/2. He then went to the spot and prepared rough site plan Ex.PX. He requested the medical officer to conduct post mortem examination. He lifted blood stained earth from spot which was converted into sealed parcel and taken into possession vide memo Ex.PB. He had also lifted the pieces of broken glasses and made them into a sealed parcel and took into possession vide memo Ex.PC. Alto car No.HR26-AE-4835 alongwith RC and a mobile phone were also taken into possession by him vide memo Ex.PJ. He arrested accused Hoshiyar Singh, present in Court from Mohanpur turning on same day. On the same day he had taken into possession bus No.HR47-5545 in presence of PW Sugriv and ASI Satbir Singh vide memo Ex.PD.

30. He further deposed regarding the disclosure statement made by accused Hoshiyar, his retracting the earlier disclosure statement and making a new disclosure statement and recovery of a wooden long pursuant to the second disclosure statement. He further deposed regarding arrest of accused Babli on 03.12.2009, arrest of accused Desh Raj on 05.12.2009, arrest of accused Pardeep and Ishwar on 07.12.2009. He identified the accused in Court.

31. In cross examination by counsel for the accused he stated that there was a speed breaker near the place of occurrence. There was Ashram

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of Pandit Nathuram and a tea stall near the place of occurrence. Kanina-Ateli road was a very busy road and many vehicles pass thereon. The sympathisers of Rajinder deceased had put a blockade at Rao Tula Ram Chowk causing a huge traffic jam and almost all police officials of Mohindergarh and Kanina had reached there to resolve the issue. The jam was lifted at 11.15 AM and thereafter he returned to GH Mohindergarh and conducted inquest proceedings. He had inquired about the incident from the inhabitant of the Ashram and the tea stall. The tea vender told that his shop was closed and the inhabitants of the Ashram stated that they were away to the village. As per his investigation the bus and car were coming from opposite directions. The bus was going towards Kanina while the car was coming from the side of Kanina.

32. PW12 Ramesh Kumar Inspector/SHO Police Station City Narnaul deposed that on 09.12.2009 he was posted as SHO Police Station Kanina. On that day he had received investigation of the present case. On that day he had interrogated accused Ishwar. He made disclosure statement Ex.PY to the effect that he can get recovered the danda which he kept concealed in his house in a cattle shed of his house. On the same day accused Pardeep also made disclosure statement Ex.PZ to the effect that he can get recovered the motorcycle used in the crime which he had concealed in his house. He also disclosed that he can get recovered a danda. Thereafter he had also interrogated Satbir who had made disclosure statement Ex.PAA wherein he disclosed that he can get recovered danda and motorcycle used in the crime and blood stained lower from his house. Thereafter, Ishwar got recovered danda from his house vide recovery memo Ex.PBB. Danda is Ex.P1. Pardeep got recovered one lathi Ex.P5 from his

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house which was taken into police possession vide recovery memo Ex.PDD. Accused Pardeep also got recovered one motorcycle No. HR 34A 4871 from his house which was taken into police possession vide memo Ex.PEE. Accused Satbir got recovered one motorcycle No.HR34C 5715 from his house which was taken into possession vide memo Ex.PGG. He also got recovered one track suit lower stained with blood which was taken into police possession vide memo Ex.PHH. *Lathi is Ex.P2* The said accused Ishwar, Pardeep and Satbir also got identified the place of occurrence. He identified the said accused in Court.

33. In cross examination he stated that he had not got conducted the test identification parade of any of the accused. He admitted that the informant did not know any of the accused prior to the occurrence. He had not tried to verify who were the other children who had accompanied Harish to the tournament.

34. PW13 Sher Singh Mechanic Haryana Roadways Narnaul (Retired) deposed that on 12.12.2009 he was in charge mechanic Haryana Roadways Narnaul. That day, he mechanically examined bus No. HR 47 5545. On examining the same he found that front big glass right side and driver window glass were in broken condition. Except that there was no defect found in the vehicle. He proved his report Ex.PRR .

35. In cross examination he stated that the damage suffered by the bus could be caused by stone pelting.

36. PW14 ASI Satbir Singh deposed that on 01.12.2009 he was posted in Police Station Kanina. On that day Janki Parshad SHO joined him in investigation of this case. That day Sugriv produced one bus No. HR47-5545 before SHO which was taken into police possession vide memo

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Ex.PD. On 14.03.2011 he arrested accused Subhash alias Subha in this case. During interrogation he suffered a disclosure statement Ex.PSS pursuant where to got recovered danda which was taken into possession vide memo Ex.PSS/2.

37. PW15 ASI Anil Kumar stated that on 03.12.2009 he was posted as HC in Police Station Kanina. On that day Janki Parshad SI/SHO associated him during investigation of this case. He deposed about the interrogation of Smt. Babli .

38. PW16 C. Satender Kumar deposed that on 09.12.2009 he was associated during investigation of this case by Inspector Ramesh Kumar. He deposed regarding interrogation of accused Ishwar Singh, Pardeep, Satbir alias Pappu, the disclosure statements suffered by them and the recoveries pursuant thereto.

39. PW17 SI Kailash Chand deposed that in January 2010 he was posted as SHO Police Station Kanina. He had partly investigated this case. On 19.01.2010 on his asking and on demarcation of Bansi Lal scaled site plan of place of occurrence was prepared by HC Mahesh Kumar. He had recorded the statements of witnesses namely Constable Mukesh, HC Balwant, HC Om Parkash and Sher Singh Mechanic on 19.02.2010 under Section 161 Cr.P.C. After conclusion of investigation of this case he had prepared report under Section 173 Cr.P.C.

40. PW18 Mukesh Kumar JTO Mobile BSNL Narnaul brought summoned record of mobile phone No. 9416818843. As per the official record this phone belonged to Rattan Lal son of Govind Singh resident of Mohalla Dev Sathan Narnaul as prepaid customer activated on 19.09.2005. On 29.11.2009 this mobile sim No. 9416818843 was being used in the

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mobile phone set IMEI No. 35693003009566. As per official record mobile sim No. 9467539715 belongs to Bhupender son of Ram Singh resident of village Kanina as a prepaid customer. It was activated on 02.05.2009. On 29.11.2009 this mobile sim was being used in the mobile phone set IMEI No. 35570602093917. He proved the call details of mobile phone sim No. 9467539715 Ex.PW18/A.

41. PW19 Constable Mukesh Kumar deposed regarding delivery of special report Ex.PV/1 to Illaqa Magistrate and Senior Police Officers on 30.11.2009 without any delay on my fault.

42. As per FSL report Ex. PX blood was detected on Ex. 1 (blood stained earth). Ex.-2 (stick), exhibit-3 (lower) and exhibit-4 (lathi) were stained with blood. As per serological analysis of the blood it was of human origin. However the result regarding the group was inconclusive.

43. DW1 Bhagat Singh son of Sumer Singh deposed that he had been member of Municipal Committee from Ward No.5. On 30.11.2009 he was present in his house. The police came to him. 5-6 boys were with the police. Police asked him whether he knew Hoshiyar Singh resident of village Modi. The police also enquired whether he knew any relative of Hoshiyar Singh who might be residing in Kanina. He informed the police that he neither knew Hoshiyar Singh nor any of his relatives. The police then asked for the voter list of village Kanina. He gave the police the voter list. They took it from him and went to village Kanina along with the boys. Those boys were in the age group of 14-15 years. The police team was headed by SHO Janki Parshad of PS Kanina.

44. In cross examination he stated that the voter list pertained to Ward No. 5 of Kanina. He could not say how many of the accused facing

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trial in this case belonged to his ward. Satbir accused belonged to his ward.

45. DW 2 Beer Singh son of Bihari Lal, agriculturist of Village Kanina deposed that on 30.11.2009 he was sitting in front of his baithak. SHO Janki Parshad along with 5-6 boys in the age group of 14-15 years come to him. The SHO enquired whether he knew Hoshiyar Singh of village Modi or any of his relatives in village Kanina. He informed the SHO that he neither knew Hoshiyar Singh nor any of his relatives. The police was carrying a voter list. The police asked him to see the voter list. On asking about the reason for the same the police informed that there had been a quarrel the previous evening and they were searching for the culprits. He however told the police that he could not read the voter list because of poor eyesight.

46. Sh. Vinod Ghai Ld. Senior Counsel for the appellants has raised the following contentions:

- (i) Identity of the accused has not been proved beyond doubt.
- (ii) Presence of PW 2 and PW 3 at the spot is doubtful.
- (iii) Offence under Section 302 IPC is not made out.

47. The case was initiated on the statement Ex.PA of PW1 Harish recorded at Birendra Hospital, Rewari by HC Satbir on 30.11.2009. Harish stated that he was studying in 10<sup>th</sup> class in B.R. Senior Secondary School, Sehlang. He was a member of volley ball team of his school. On 29.11.2009 their team had gone to village Bawal for playing. After taking part in the game they were returning from the school at Bawal to Sehlang in the school bus of their school. The PTI and the Principal Rajinder were accompanying them. At about 6.15 PM the bus reached near the forest of Chellawas. The bus was being driven on its correct side. The driver of an

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Alto car gave an indication for the bus to stop. When the bus stopped the driver of the Alto car asked the driver of the school bus as to why he had not given side to him. The teachers of the school tried to persuade him not to quarrel. The number of the Alto car was HR26AE/4835 and the driver disclosed his name as Hoshiyar son of Roop Ram. He threatened to teach the driver of the school bus a lesson and started driving his car ahead of the school bus. He called his associates on the mobile. Near the railway crossing at Ateli Road, Kanina near the forest he forced the bus to stop by blocking the way. Meanwhile 6/7 persons having lathis and dandas in their hands come on 2/3 motorcycles. Just as the Headmaster of the school alighted from the school bus Hoshiyar, the driver of the Alto and the 6/7 persons started beating the Headmaster with their lathis and dandas. When he (Harish) tried to rescue the Headmaster then Hoshiyar Singh gave one lathi blow on his left hand. The other persons also started beating him with lathis and dandas. On noise being raised the PTI, the driver of the school bus and other boys of the team got down from the bus and rescued them. The accused left threatening that today they had escaped but would be killed in the future. Due to the injuries the Headmaster became unconscious. The assailants also broke the window panes of the bus on all four sides by hitting dandas. They had inflicted injuries unnecessarily due to the enmity for not giving side to Alto by the bus driver. The PTI and the driver of the school bus got him (Harish) and the Headmaster admitted at CHC Kanina for treatment. From there he was referred to PGIMS, Rohtak but his family got him admitted in a Hospital at Rewari. He stated that he could identify those 6/7 persons if they came in front of him.

48. While deposing in Court as PW1, he named some of the

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assailants and the specific injuries inflicted by them. He stated that when he (PW 1) and others got down from the bus they saw that 10/12 persons had gathered there. They started assaulting Principal Rajinder with lathis and dandas. When he (PW1) tried to rescue the Principal from those persons, they started beating him. Hoshiyar Singh inflicted an injury with a stick on his left hand. He also suffered injury on his left eye which was caused by Lala with danda. Another injury was given on his head by Kalia with danda. On receiving injuries he fell down on ground. The assailants also smashed the glasses of bus. Krishan driver alongwith Mahesh reached there. They witnessed the entire occurrence. Krishan and Mahesh took them to CHC Kanina in same bus. He (PW1) was medico- legally examined at CHC Kanina. He remained in CHC Kanina for 45 minutes. The other persons accompanying him namely driver Sugriv, PTI Banshi Lal, Mahesh and Krishan also remained in hospital during that period. Principal Rajinder was referred to PGIMS Rohtak but he was taken to Gurgaon. PW1 was also referred to PGIMS Rohtak but his family members took him to Birendera Hospital, Rewari. Hoshiyar, Pappu, Kalia, Dilbagh, Raju, Ishwar Pardeep and Satbir were among the assailants. They were calling each others by these names. He however did not remember the names of other persons. He identified Hoshiyar, Ishwar, Babli, Pardeep and Satbir in Court. Hoshiyar had caused injury on the forehead of the Principal. Pappu had also caused injury on his head. Pardeep had caused injury on his abdomen. He did not remember the names of other persons who had caused injuries to Principal Rajinder. Hoshiyar, Pappu and Satbir caused injuries with dandas.

49. There is no doubt that there are considerable improvements in

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his deposition over his initial statement Ex PA. In his initial statement he did not mention about PW 2 Krishan and Mahesh having arrived at the spot and having witnessed the entire occurrence and having taken him to the hospital. In his initial statement he had mentioned about 6/7 persons as having come on three motorcycles. But while deposing in Court he gave their number as 10/12. In his statement Ex. PA he did not mention that the accused were calling each other by their names but he said so while deposing in Court. Further in his cross examination it was elicited from him that none of accused was known to him prior to incident. He had not told name of any of accused to police. Krishan Kumar for first time told him names of accused when he attended court proceedings. He was tutored about the statement before he made deposition in Court.

50. But neither the discrepancies/ improvements referred to above nor the facts elicited in cross examination detract from the essentials of the manner in which the occurrence unfolded, the involvement of the driver of the Alto car No. HR26AE/4835 who had disclosed his name as Hoshiyar Singh, the injuries caused by the assailants to him and Principal Rajender. However, the identity of the assailants other than Hoshiyar Singh the driver of the Alto could not be said to have been established from his deposition.

51. But the aspect of identity and the specific injury caused by each accused is put beyond doubt by the deposition of PW2 Krishan and PW3 Surgeev the driver of the bus.

52. PW2 Krishan deposed that he was employed as a driver to a bus belonging to B.R. Senior Secondary School, Sehlang. On 29.11.2009 he along with Mahesh Kumar Sharma (the brother-in-law of Rajinder Sharma) were coming in car No.HR-34-C-4717 from Sehlang to Bindpur. They

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reached railway crossing Kanina at about 6/6.30 pm. They spotted bus No. HR-47-5547 belonging to their school lying parked near railway crossing. They noticed that a quarrel was going on. They saw Hoshiyar, Pardeep, Ishwar, Satbir, Subha, Kalia, Ajit, Dharmender, Raju and Dilbagh were assaulting Rajinder Sharma, Ramesh and Sunil near the bus. Hoshiyar inflicted a blow with sharp edged weapon on head of Rajinder Sharma. Satbir who was carrying a similar weapon inflicted a blow on head of Rajinder. Pardeep who was holding a similar weapon inflicted a blow on abdomen of Rajinder. Ramesh inflicted a blow on his left hand. Accused exhorted that in case Rajinder took any action against them they would finish his life. Pardeep first inflicted a blow to Rajinder Sharma and then to Harish. The driver of bus took the injured to the hospital. He (PW2) accompanied them in his car. He identified Hoshiyar, Ishwar, Pardeep, Satbir and Subha in Court. In cross examination he stated that he knew names of assailants at the time of occurrence itself. He knew the accused 2/3 years prior to the occurrence though he had no dealing whatsoever or other connection with the accused prior to the occurrence. He had disclosed the names of the accused to PW Harish on the day of the occurrence itself. Rajinder Sharma had sustained four injuries.

53. PW3 Sugriv was the driver of the school bus involved in the incident. He deposed that on 29.11.2009 he had taken the school team to village Bewal to participate in the sports tournament. Bansi Lal PTI and Rajender Parshad Head Master were also with them. After playing in the tournament their team was returning towards Kanina in the same school bus driven by him. When they reached near Mohanpur turn one Alto car came from Kanina side and was proceeding towards Ateli side. There was

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exchange of hot words on account of taking of side between him and Hoshiyar driver of Alto car. Hoshiyar gave him a slap. He was under intoxication. Then the Head Master Rajender Parshad got down from the bus and tried to pacify Hoshiar and asked him to take car from the side. Hoshiyar drove his car towards Ateli. He started driving his bus towards Kanina. When they reached near the village forest of Chelawas, the Alto car came from behind and overtook their bus and made them to stop. Hoshiyar threatened to see them ahead. Then he again started driving his bus. When they reached near the Railway crossing on Kanina- Ateli Road, Hoshiyar came there in his Alto car. Hoshiyar came down from the car. Thereafter 2-3 motorcycles came there on which there were 6-7 boys. All those 6-7 persons started assaulting Rajender Head Master. Hoshiar gave a blow with a wooden log on the forehead of Rajender. Satbir also gave a blow with wooden log on the back of head of Rajender. Sunil gave a danda blow on right hand of Rajender. Pardeep gave fist blows on the abdomen of Rajender. All of them were proclaiming 'Lathi Mar Re Sunil, Ramesh, Dharmender, Bhupender, Subha, Ajit alias Kaliya, Dilbag, Raju, Pardeep, Satbir, Hoshiyar, Ishwar'. They were all proclaiming Maro Maro. All of them went away thereafter. These 6-7 named person had broken the front window of the bus. Ajit alias Kalia, Bhupender, Dilbag, Dharmender, Raju were the persons who had broken the glass. Hoshiyar had given him slaps. Hoshiyar had also inflicted a lathi blow to Harish of village Nautana who was a student of the school who had participated in the tournament. In cross examination he stated that the assailants were not known to him prior to the occurrence. He came to know the names of Dilbagh, Bhupender, Dharmender, Subha, Ajit, Ramesh, Raju and Pardeep by their utterances at

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the time of the occurrence.

54. Thus it is that PW2 Krishan knew the assailants for 2-3 years prior to the incident. He had happened to reach the spot and witnessed the entire incident. PW1 Harish and PW3 Sugriv got to know the names of the assailants as they were calling each other by their names when assaulting Rajinder, the Headmaster and PW 1 Harish. While normally any accused would like to conceal his identity, but instances are not unknown where the assailants in an act of misplaced bravado may openly proclaim their identity. The present appears to be one such case where not only the driver of the Alto had disclosed his name at the very outset, but the other assailants also openly called out each other's name at the time of assault. Thus the presence of Hoshiyar, Pardeep, Ishwar, Satbir, Subha, Kalia, Ajit, Dharmender, Raju and Dilbagh at the spot appears established. Hoshiar, Pardeep and Satbir have been identified in Court by PW 1, PW 2 and PW 3. The appellant Subha @ Subhash has been identified by PW 2 and PW 3.

55. The involvement of the bus and the presence of Rajinder, the Headmaster in the bus is not even denied by the accused. Consequently, the presence of PW3 Surgriv the driver of the bus can also be taken to be not disputed.

56. Accused Hoshiyar in his statement under Section 313 Cr.P.C. had taken the plea that Rajender (deceased) was sitting on the seat adjacent to the door of the bus. There was no zebra lining on the speed breaker. The bus had jumped on the speed breaker due to high speed. He fell from the bus and received injuries. This defence cannot be believed in the face of the eyewitness account. Further it does not explain the injuries on PW 1 Harish and the broken window panes of the bus.

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57. The specific injuries caused to the deceased Rajinder and injured Harish as mentioned by the PWs have been corroborated by medical evidence. PW2 and PW3 have specifically deposed that accused Hoshiyar and Satbir inflicted lathi blows on the head of Rajinder and Pardeep gave blow on his abdomen.

58. PW4 Dr. Deepak Garg MO CHC Kanina who along with Dr. Jai Singh conducted post mortem on the dead body of Rajender Parsad noted the following injuries:

- “1. 9x2 cm oblique lacerated wound in fronto – partial region in middle of scalp.*
- 2. 10x4 cm oblique lacerated wound in parieto- occipital region.*
- 3. Fracture both bone right forearm present.*
- 4. Echymoses around both eyes present.*
- 5. 10x2 cm abrasion on abdomen present.*
- 6. Ruptured membranes of brain and cranial cavity full of blood.”*

He further stated that the injuries mentioned in the post mortem report could be possible with the lathi Ex .P 1, Ex P2, danda Ex. P3 and wooden logs Ex. P 4 and Ex. P 5.

59. PW1 Harish deposed that Hoshiyar Singh inflicted an injury with a stick on his left hand. He also suffered injury on his left eye which was caused by Lala with danda. Another injury was given on his head by Kalia with danda. PW3 Sugriv stated that Hoshiyar Singh inflicted lathi blow to Harish. The inflicting of injuries on PW Harish has been corroborated by medical evidence. PW7 Dr. Anil Kumar who medico-legally examined Harish and found the following injuries on his person.

- “1. Loss of function of left upper limb with features of*

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*fractured forearm bone.*

2. *Swelling over right maxillary prominence with abrasion over right lower eyelid.*

3. *An abrasion associated with swelling over right parietal region of skull near sagittal plane.”*

Babinski's sign was positive with increased spasticity of lower limb. All the injuries were caused by blunt weapon/force. He further deposed that as per X-ray report and film of Patient Harish prepared by Birendra Hospital, Rewari there was fracture of both bones of left fore-arm upper 1/3rd. The injury was grievous.

60. The case of the prosecution is further corroborated by the recoveries made from the accused pursuant to their disclosure statements.

61. PW11 SI Janki Parshad deposed regarding the disclosure statement made by accused Hoshiar, pursuant where to he got recovered of a wooden log. As per the Recovery Memo. Ex. PL/2 it was a quadrangular sawing wood of length 33 inches, thickness 1 ¼ x 1 inch. It was blood stained. PW12 Ramesh Kumar Inspector/SHO Police Station City Narnaul deposed that Ishwar got recovered danda from his house vide recovery memo Ex.PBB. Danda is Ex.P1. Pardeep got recovered one lathi Ex.P5 from his house which was taken into police possession vide recovery memo Ex.PDD. Accused Satbir got recovered one motorcycle No. HR 34C 5715 from his house which was taken into possession vide memo Ex.PGG. He also got recovered one track suit lower stained with blood which was taken into police possession vide memo Ex.PHH. Lathi is Ex. P 2.

62. As per FSL report Ex. PX blood was detected on Ex. 1 (blood stained earth). Ex.-2 (stick), exhibit-3 (lower) and exhibit-4 (lathi) were stained with blood. As per serological analysis of the blood it was of human

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origin. However the result regarding the group was inconclusive.

63. The next question that remains to be determined is whether offence is one under Section 302 or one of culpable homicide not amounting to murder and whether all the accused can be held liable for the same on the principle of vicarious liability under Section 149 IPC.

64. It has been held that the existence of common object to commit murder has to be decided in the facts and circumstances of each case, by the nature of weapons used by members of the assembly, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case.

65. In ***Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743*** Hon'ble Supreme Court observed as under:

*“35. The identification of the common object essentially requires an assessment of the state of mind of the members of the unlawful assembly. Proof of such mental condition is normally established by inferential logic. If a large number of people gather at a public place at the dead of night armed with deadly weapons like axes and firearms and attack another person or group of persons, any member of the attacking group would have to be a moron in intelligence if he did not know murder would be a likely consequence.”*

In ***Joseph v. State, (2018) 12 SCC 283*** Hon'ble Supreme Court observed:

*“12. The scope of two parts of Section 149 IPC has been explained in *Rajendra Shantaram Todankar v. State of Maharashtra*, wherein this Court has explained Section 149 and held as under: (SCC pp. 263-64, para 14)*

*“14. Section 149 of the Indian Penal Code provides that*

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*if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of the committing of that offence, is a member of the same assembly is guilty of that offence. The two clauses of Section 149 vary in degree of certainty. The first clause contemplates the commission of an offence by any member of an unlawful assembly which can be held to have been committed in prosecution of the common object of the assembly. The second clause embraces within its fold the commission of an act which may not necessarily be the common object of the assembly, nevertheless, the members of the assembly had knowledge of likelihood of the commission of that offence in prosecution of the common object. The common object may be commission of one offence while there may be likelihood of the commission of yet another offence, the knowledge whereof is capable of being safely attributable to the members of the unlawful assembly. In either case, every member of the assembly would be vicariously liable for the offence actually committed by any other member of the assembly. A mere possibility of the commission of the offence would not necessarily enable the court to draw an inference that the likelihood of commission of such offence was within the knowledge of every member of the unlawful assembly. It is difficult indeed, though not impossible, to collect direct evidence of such knowledge. An inference may be drawn from circumstances such as the background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime. Unless the*

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*applicability of Section 149 — either clause — is attracted and the court is convinced, on facts and in law, both, of liability capable of being fastened vicariously by reference to either clause of Section 149 IPC, merely because a criminal act was committed by a member of the assembly every other member thereof would not necessarily become liable for such criminal act. The inference as to likelihood of the commission of the given criminal act must be capable of being held to be within the knowledge of another member of the assembly who is sought to be held vicariously liable for the said criminal act.”*

*(emphasis supplied)*

*The same principles have been reiterated in State of Punjab v. Sanjiv Kumar.*

*13. Creation of vicarious liability under Section 149 IPC is well elucidated in Allauddin Mian v. State of Bihar, wherein this Court held: (SCC pp. 16-17, para 8)*

*“8. ... Therefore, in order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence*

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*provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly.”*

*14. Whether the members of the unlawful assembly really had the common object to cause the murder of the deceased has to be decided in the facts and circumstances of each case, nature of weapons used by such members, the manner and sequence of attack made by those members on the deceased and the circumstances under which the occurrence took place. It is an inference to be deduced from the facts and circumstances of each case (vide Lalji v. State of U.P.; Ranbir Yadav v. State of Bihar; Rachamreddi Chenna Reddy v. State of A.P.).”*

66. As per the prosecution there was an altercation between PW3 Surgriv the driver of the school bus and accused Hoshiyar on account of the bus not giving side to Hoshiyar who was driving the Alto. The bus driver explained that it was a single road. Hoshiyar drove away. He then called the other accused who came on 2-3 motorcycles. He went ahead, blocked the way of the bus and forced it to stop. When Rajinder, the Headmaster got down Hoshiyar and the other accused started assaulting him with lathis and dandas. Accused Hoshiyar and Satbir inflicted lathi blows on the head of Rajinder and Pardeep gave blow on his abdomen. When PW 1 Harish got down to save the Headmaster Hoshiyar Singh inflicted an injury with a stick on his left hand. He was also given injury on his left eye by Lala with

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danda. Another injury was given on his head by Kalia with danda.

67. The accused/ present appellants were armed with lathis and dandas. As per Ex. PKK the lathi bamboo got recovered by accused Satbir had a length of 5 ft, Its circumference at the top portion was 3 inches. The circumference of the lower portion was 4 inches. As per Ex. PLL the total length of the lathi got recovered by accused Ishwar was 38 inches. The circumference of the front portion was 2 ½ inches. Circumference of the back portion was 3 ½ inches. As per Ex.PMM the length of the lathi bamboo got recovered by accused Pardeep was 50 ½ inches. Circumference of the front portion was 4 inches. Circumference of the back portion was 4 ½ inches.

68. The fact that accused who were called to the spot by Hoshiyar who bore a grudge against the driver of the bus for not giving him side came armed with lathis and dandas, the fact that the driver was not alone but the bus was carrying a number of students and staff did not indicate that there could be any intention other than to beat/ belabour the driver. Nor in such a situation could the accused being members of the assembly know that death was likely to be caused in prosecution of the common object of that assembly.

69. Accordingly, it has to be held that the accused did not have the common object to cause death. Nor in such a situation could the accused being members of the assembly know that death was likely to be caused in prosecution of the common object of that assembly.

70. But they did share the common object to inflict injuries and even cause damage to the bus or know that such was the likely result.

71. Based on the recovery effected on the disclosure statement of

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Hoshiyar he was armed with a quadrangular sawing wood of length 33 inches, thickness 1 ¼ x 1 inch. He gave a blow with the same on the forehead of Rajinder. Satbir also gave a blow with wooden log on the back of head of Rajender. The blows caused “9x2 cm oblique lacerated wound in fronto – partial region in middle of scalp.”, “10x4 cm oblique lacerated wound in parieto- occipital region.” Ruptured membranes of brain and cranial cavity full of blood was also observed. As per PW4 Dr.Deepak Garg cause of death was coma and haemorrhagic shock due to head injury which was ante mortem in nature and sufficient to cause death in routine course of life. Though the intention of accused Hoshiar and Satbir who inflicted the injuries on the head of Rajender may not have been to cause his death, but these two accused certainly can be imputed with the knowledge that the injury inflicted by them would result in death. Thus, they are guilty of offence under Section 304 Part I.

72. Accused Pardeep inflicted blow with his lathi on the abdomen of Rajinder. During post mortem examination it was noticed that a “10x2 cm abrasion on abdomen present.”

73. Accused Hoshiyar also inflicted injury with his lathi to Harish which resulted in fracture of his left forearm. The injury was grievous.

74. No specific injury has been imputed to Subha @ Subhash.

75. All the accused have also been convicted under Sections 323, 325, 341 IPC and 427 IPC read with Section 149 IPC and sentenced to undergo rigorous imprisonment for each offence. Their conviction under these sections is maintained.

76. Accordingly, Criminal Appeal No.D-593-DB of 2014 filed by Subha @ Subhash is partly allowed. He is acquitted of the charges under

**CRA-D-593-DB-2014 and connected case**

Section 302 IPC read with Section 149 IPC. But his conviction and sentence under Sections 323, 325, 341 and 427 IPC read with Section 149 are maintained.

77. Criminal Appeal No.D-622-DB-2014 is also partly allowed. Accused Pardeep is acquitted of the offence under Section 302 IPC read with Section 149 IPC. The conviction of accused Hoshiyar and Satbir is altered from Section 302 IPC to Section 304 Part I. The conviction and sentence awarded to Pardeep, Hoshiyar and Satbir for the offence under Sections 323, 325, 341 and 427 IPC read with Section 149 are maintained.

78. List on 09.09.2020 to hear accused Hoshiyar and Satbir on the quantum of sentence under Section 304 Part I IPC.

**(RAJIV SHARMA)**  
**JUDGE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**August 27, 2020**  
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|-----------------------------|----------|
| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |