

2024:PHHC:131444-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-24. 09.2024

CRA-D-899-DB-2007(O&M)

Ram Niwas & Ors

.....Appellants.

Vs.

State of Haryana

.....Respondent.

AND

CRR-109-2009(O&M)

Sher Singh

.....Petitioner.

Vs.

Ram Niwas & Ors

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Lokesh Sharma, Advocate for the Appellants.

Mr. Ashok Chaudhary, Addl. AG Haryana.

**Mr. Salil Dev Singh Bali, Advocate for the
Petitioner in (CRR-109-2009) &
for the Complainant in CRA-D-899-DB-2007.**

JASJIT SINGH BEDI, J.

By this common order we shall dispose of both the
aforementioned cases i.e. one appeal against the judgment of conviction and
order of sentence dated 10/13.10.2007 and the other one criminal revision

seeking enhancement of sentence.

2. As per record, the occurrence took place on 22.09.2003. The judgement was passed on 10/13.10.2007 and the matter has been taken up for hearing now after 21 years of the date of occurrence.

3. The prosecution case in brief is that on receipt of ruqqa from civil hospital, Sohna police reached the hospital and recorded the statement of Sher Singh son of Man Singh complainant. It was stated by the complainant that he had four brothers. The eldest was Deena, younger to Deena was the complainant Ram Singh was younger to him then there was Dalip and the youngest was Ishwar Singh. Sher Singh complainant, Ram Singh and Dalip were residing in their houses constructed in the fields. Deena brother of the complainant resided in the village and near his house, there was the house of Ram Niwas son of Sohan Lal accused. It was further alleged that Sohan Lal and his sons were in litigation with them (complainant party) regarding the rasta. In the evening of 21.9.2003 Sohan Lal son of Lakhmi, Ram Niwas son of Sohan Lal and Balraj son of Ram Kumar embedded stones in the rasta. When the complainant came to know about this fact, he in the morning of 22.9.2003 came to the drawing room of his brother Deena and removed or dug out the embedded stones. At this Hind Pal son of Sohan Lal gave a threat to the complainant etc., to the effect that they would teach them (complainant party) a lesson within ten minutes. After some time Sohan Lal etc., along with the ladies of his family came with spade and stones and started putting the stone in front of the drawing room of Deena brother of the complainant. At that time complainant, his brother Ram Singh, Bhagwana and Deena were sitting in the room. They objected to the embedding (putting) of stones in the rasta. Then ladies from the family of the accused started hurling stones/brick bats and the sons of the

complainant could tell the names of these ladies. Sohan Lal armed with a ballam also came. When the complainant party objected to the hurling of the brick bats and wanted to stop the ladies, Balraj (accused declared proclaimed offender) son of Ram Kumar fired three shots with his gun in the air after standing on the roof of the house of Sohan Lal and then fired one shot at Ram Singh brother of the complainant which hit at his face and on the throat. Consequently Ram Singh fell down on the ground. When the complainant tried to lift Ram Singh, Balraj fired a shot at the complainant and the pellets hit his head. In the mean time Indira wife of Ram Kumar gave a lathi blow on the wrist of the left hand of the complainant and one lathi blow was given by sister of Indira on the thumb of the left hand and second lathi blow was given by Indira on his head. In the meantime Mahesh, Ram Niwas and Jaipal armed with guns also climbed the roof of the house of Sohan Lal and they started firing indiscriminately. Jaipal was armed with a country made pistol. Sunil son of Bijender, Choti wife of Deen Dayal, Bhagwana son of Chuttan also raised alarm and received injuries with the pellets. It is further alleged that Sohan Lal gave a ballam blow lathi twice on the head of Deena. It is further alleged that the complainant party entered their houses to save themselves but still Balraj etc., accused went on firing at them. As a result of the fire arm injuries Ram Singh brother of the complainant died. The complainant party was removed to civil hospital Sohna. Dead body of Ram Singh was also brought to the hospital. It is alleged that Sohan Lal etc., accused had caused injuries and had attacked the complainant party without any right and had killed Ram Singh brother of the complainant and this occurrence has taken place at about 1.00 p.m. As a result of the firing Giri Raj and Ajit, two boys of the caste of Kohli also received injuries from the pellets. Mahender Singh Nephew of the

complainant had also seen the occurrence. The statement was sent to the police station after making an endorsement by Mohan Singh ASI on the basis of which this case was registered and investigated. Inquest report was prepared. Dead body of Ram Singh was subjected to post mortem examination. Medical reports were collected and on completion of investigation the police put up challan against six accused other than Smt. Indira and Smt. Shakuntala. Then these two accused namely Smt. Indira and Shakuntala were summoned as additional accused.

4. To the charge framed U/s 148/323/325/302/307 IPC read with section 149 IPC on 10.4.2004, all the accused pleaded not guilty and claimed trial. To the charge framed U/s 25 of Arms Act Jaipal accused and to the charge framed u/s. 27 of Arms Act Balraj and Ram Niwas accused pleaded not guilty and claimed trial. Subsequently an application for amendment of the charge was filed as the names of all the injured had not been mentioned in the chargesheet.

5. The Prosecution in its evidence examined Kuldeep Singh HC PW1, Balbir Singh Constable PW2, Dr. Gurvinder Singh PW3, Satpal EHC PW4, Naresh Kumar Draftsman PW5, Bijender Singh PW6, Sher Singh PW7 Dr. Jai Narain PW8 Khem Chand Constable PW9, Kuldeep Singh SI PW10, Dr. Subhash Sandhu PW11, Mohan Singh ASI PW12, Mahavir Photographer PW13 and Khem Chand Constable PW14. Then the statements of the accused were recorded under section 313 Cr.PC. The accused were called upon to enter their defence. They produced Paramjeet DW-1, Sant Ram DW2 and Mangal Singh DW3. Some documents were also produced by the accused in their defence. Accused Ram Niwas in his statement under section 313 Cr.PC denied all the allegations and pleaded his innocence. It was stated by him that on 16.4.93 the Sarpanch moved an

application to the Assistant collector that his father Sohan Lal had encroached upon land Rect No. 75 plot No. 129 contiguous to their plot No. 199. Enquiry was made and it was found that they had left one karam land beyond the wall towards rasta and it was Sher Singh who had encroached upon the public way plot No. 129. Sher Singh and his brothers had a large family. They grabbed the Shamlat Deh and wanted to grab the rasta of plot No. 129 and 255. Suit for injunction was also filed. Sher Singh and others illegally in collusion with authorities demolished their wall, latrine, trees standing in their plot No. 199. It was further stated by the accused that they had filed a criminal complaint and civil suit for their unlawful action. They took recourse to law as they were weak against Sher Singh's family. They had never resorted to any illegal act. They had affixed their stones in the vicinity of their wall towards a rasta bearing plot No. 129 for the safety of their wall in the rainy season. Sher Singh and other had an eye over the passage for the long time so they removed the affixed stones on the day of the incident which was objected to by him, his father Sohan Lal and his brother Jaipal and wife Kamlesh. It infuriated Sher Singh's party. They attacked with spear, lathis etc., Jaipal and Kamlesh pelted stones towards them but they caused injuries to Jaipal, Kamlesh and to the father of this accused with lathis and spear. It was further stated by this accused that his father fell down in order to save himself and Kamlesh wife of Ram Niwas bent upon him and took lathi blows on her back. It was further stated by this accused that on hearing the cries he came to the spot and asked them not to beat mercilessly but they advanced towards him. Then he brought his gun and fired in the air to scare him but they rushed towards him to snatch the gun. It was further stated by this accused that he apprehended danger to his life and his relations so he fired towards them from the gate. They also fired

from their bethak. It was further stated by this accused that they took their injured to the hospital and informed the police about this occurrence. It was further stated that he was to be examined by the doctor but relative of Sher Singh threatened to kill him and he left the hospital and later on surrendered before the police with his gun. The police had colluded with Sher Singh. They did not record their report and twisted the record. The Report was not read over to Jaipal. No firing was done from the roof of the house. The incident took place at plot No. 129 on the land of the accused and not on plot No. 255. Prosecution witnesses had deposed falsely. All the remaining accused also denied all the prosecution allegations and pleaded their false implication in this case. These accused also pleaded their innocence. Jaipal accused adopted the statement made by Ram Niwas co-accused and it was also stated by him that his report was not read over to him by the police. He was medico legally examined in Gurgaon and Safderjung Hospital.

Hind Pal accused denied all prosecution allegations and pleaded his innocence and false implication. It was stated by him that he was not present at the time of occurrence.

Sohan Lal accused adopted the statement of Ram Niwas, accused and it was stated by Sohan Lal that he received grievous injuries. He was medico legally examined at Gurgaon and Safderjung. All the prosecution allegations were denied by this accused.

Mahesh accused also denied all the prosecution allegations and pleaded his false implication and innocence. Indira accused stated that the prosecution witnesses had deposed falsely against her. She was innocent. She had been implicated falsely by the complainant party. All the allegations were denied by her in her statement.

Shakuntala accused also denied all the incriminating

circumstances appearing in evidence against her and it was stated by her that she was found innocent by the police. She had been falsely implicated by the prosecution witnesses.

It may also be mentioned that supplementary statements of the accused under section 313 Cr. P.C. putting documents Ex. PL to Ex. PT etc., was also recorded and the accused stated that they do not know about the documents as a long time had passed and they were in custody since long.

6. A resume of the prosecution evidence adduced in this case is as under:-

Kuldeep Singh HC PW-1 produced his affidavit Ex. PA.

Balbir Singh Constable PW2 produced his affidavit Ex. PB.

Shri M. R. Gill, PP for the state tendered in evidence report of Director FSL Ex. PC and gave up HC Kailash Singh, Constable Satish Kumar and HC Prem Raj as un-necessary vide statement dated 3.6.2004.

Dr. Gurvinder Singh PW3 deposed that on 22.9.2003 he conducted medical examination of Ajit son of Hari Chand and found the following injuries on his person:

Multiple small circular to oval punctured lacerated wound present on:-

1. just about left elbow posteriorly
2. right thigh at mid level posteriorly
3. left cheek just lateral and inferior to left eye with size varying from 0.2 cm x 0.4 cm to 0.4 cm x 0.6 cm. Fresh and clotted blood present. Collar of abrasion present.

Corresponding to injuries No.1 and 2, holes were present in clothes. Margins were blackened. X- rays revealed one radio opaque circular shadow of metallic density in left elbow region and one radio opaque circular shadow of metallic density in right upper thigh region.

Ex. PD copy of the MLR was proved in his statement. It was further stated by this witness that he medico legally examined Monu son of Giriraj and found the following injuries:

Multiple circular to oval lacerated wounds present on 1. mid line of left of posteriorly 2. above left knee posteriorly 3. in the middle of left scapula 4. Left axilla laterally 5. Right arm posteriorly just below shoulder and left side of neck postero laterally with size varying from 0.2 x 0.4 cm to 0.2 x 0.6 cm. Margins were inverted and blackened. Collar of abrasion present. Holes are present in cloth. Corresponding to injuries. Fresh bleeding and clotted blood present.

X-ray revealed two small radio opaque circular shadows of metallic density present one on right upper arm and other on left scapular region and one small radio opaque circular shadows of metallic density present on upper part of right leg.

Copy of MLR Ex. PE is proved. This doctor PW3 also stated about sending of ruqqa Ex. pertaining to the admission of these two injured namely Ajit and Monu in the hospital. It was further deposed by this witness that he medico legally examined Deen Dayal and found the following injuries on his person:

- 1) A CLW of 7cm size on middle of scalp, just left and parallel of mid line. Fresh bleeding was present. X-ray revealed no injury.
- 2) There were complains of generalised body aches. No external injury marks were seen. Patient was kept under observation.

Ex. PG photocopy of the MLR is proved in his statement. It is further deposed by this witness that he medico-legally examined Sher Singh following injuries on his person:

- 1) Two small oval to circular 0.2 to 0.4 cm size lacerated wound present

on left temporal region, 3cm apart. Fresh bleeding present. Margins are inverted and blackened. Collar of abrasion present. X-ray revealed two circular radio opaque shadows of metallic density seen in left side of scalp.

- 2) A CW of 1 x Vi cm present 1 Vi cm behind injury No. 1.
- 3) Swelling and tenderness of left wrist on hand with multiple abrasions. X-ray revealed fractures right radial bone.

Carbon copy of the medical report Ex.PH was proved in his statement. X-ray report Ex. PH/1 and x-ray film Ex. PH/2 to Ex. PH/4 were also proved. Then this doctor also medico legally examined Bhagwana son of Chuttan and found the following injuries on his person:

- 1) A small abrasion on left wrist posteriorly
- 2) A circular 0.2 x 0.4 cm lacerated wound on left little finger at distal end posteriorly. Fresh bleeding present. Margins is inverted and blackened. Collar of abrasion present.
- 3) A 1 to 1 cm oval lacerated wound on posterior side of right thigh just above right knee. Fresh bleeding present. Margins is inverted and blackened. Collar of abrasion present.
- 4) A 0.2 x 0.4 cm sized lacerated wound on dorsom of right foot at mid level. Fresh bleeding present. Collar of abrasion present. Margins inverted and blackened.

X-ray revealed three small linear radio opaque of shadows of metallic density present on proximal phalynx of left ring finger and left little finger and left wrist.

Carbon copy of the MLR Ex. PJ, X-ray report Ex. PJ/1 and X-ray film Ex. PJ/2 to Ex.PJ/4 are proved in his statement.

This doctor PW3 also medico legally examined Vijender son of Deen Dayal and found the following injuries on his person:

A circular 0.2 to 0.4 cm lacerated wound on left ring finger laterally. Collar of abrasion present. Fresh bleeding present. Margins is inverted and blackened. X-ray revealed one small circular radio opaque shadow of metallic density seen in proximal phalynx of left hand.

Carbon copy of the MLR is Ex. PK and X-ray report Ex. PK/1 and X-ray film Ex. PK/2 is proved in his statement.

Further Dr. Gurvinder Singh PW3 deposed that he also medico legally examined Sunil vide MLR carbon copy of which is Ex. PL and found the following injuries on his person:

- 1) A CLW of 3 cm size on middle of scalp at mid line. Fresh bleeding was present. X-ray revealed no bony injury.
- 2) Patient complaint of body aches. No external injury marks were seen. Patient was kept under observations.

Ruqqa Ex. PM is also proved in his statement. It is further stated by this doctor that he medico legally examined Chotti wife of Deen Dayal and found the following injuries on her person:

- 1) A 0.3 x 0.5 cm oval lacerated wound present on left side of anterior abdominal wall near umbilicus with inverted and blackened margins. Clotted blood present. Patient was advised x-ray abdomen.
- 2) Patient complaint of body aches. No external injury marks seen. Patient was kept under observations.

Carbon copy of the MLR Ex. PN and ruqqa Ex. PO are also proved in his statement. In cross examination this doctor has also admitted that on 22.9.2003 he examined Jaipal accused and found the following injuries on his person:-

- 1) A CLW of 5cm size on middle of scalp at midline. Fresh bleeding present. X-ray was advised for the injury.

- 2) Swelling and tenderness of right shoulder. X-ray was advised.
- 3) Patient complains of body aches but no other external injury mark was seen.

Photocopy of the MLR Ex. DB is proved in his statement.

In cross examination this doctor has also admitted that he examined Sohan Lal accused and found the following injuries on his person:

- 1) An incised wound of 2 and a half cm (2 Vi cm) size on left forearm posteriorly with swelling and tenderness.
- 2) Swelling and tenderness of left wrist and hand. For both these injuries X-ray was advised.
- 3) Patient complains of body aches but no other external injury mark was seen.

It is also deposed that on X-ray examination fracture of left Ulna and fracture metacarpal of left index finger was seen. Photocopy of the MLR Ex. DD is also proved in his statement and in cross examination this doctor has also stated that he medico legally examined Kamlesh wife of Ram Niwas and found the following injuries on her person:

- 1) Patient complain of chest pain. No external injury mark was seen.
- 2) Patient complain of pain abdomen. No external Injury mark was seen.
- 3) Multiple rail road patterned bruises all over the back. Injury was kept under observation.

Photocopy of the MLR Ex. DF is proved in his statement.

Satpal EHC PW4 has stated that on 22.9.2003 he was handed over one parcel, one envelope, two bottles which he handed over to 10 vide memo Ex. PQ.

Naresh Kumar Draftsman PW-5 has proved scaled site plan

Ex.PR on the demarcation of Mahender Singh.

Bijender Singh PW6 was the injured eye witness of the occurrence and in order to avoid repetition his statement in detail has not been recapitulated.

Sher Singh PW7 was also an injured eye witness of the occurrence and has also stated about the part played by the accused. In order to avoid repetition his statement has not been narrated in detail. Sher Singh however proved his statement Ex. PS made to the police.

Shri M. R. Gill PP for the state gave up Smt. Chotti and Deena PWs as un-necessary.

Dr. Jai Narain SMO PW8 conducted the post mortem examination of the dead body of Ram Singh son of Man Singh on 23.9.2003. A carbon copy of post mortem report Ex. PT is proved in his statement. The cause of death in his opinion was due to haemorrhage and shock and injuries on the left lung producing emphysema and collapse due to the injury of major vessels in the neck and lung injury respectively due to the fire arm injury and the injury was ante mortem in nature and sufficient to cause death in the ordinary course of nature.

Shri M. R. Gill, PP for the State gave up Bhagwana, Mahabir Constable, Ramesh Kumar, Ajit, Monu and Sunil as unnecessary vide statement dated 12.11.2005.

Further vide statement dated 13.5.2006 Shri M. R. Gill, PP for the state gave up Mahender Singh and Tota Ram PWs as unnecessary.

Khem Chand PW9 stated that on 22.9.2003 he was posted in PS Sohna and he delivered this special report of this case to Illaqa Magistrate without any delay.

Kuldeep Singh SI PW10 has stated that on 22.9.2003 he was posted as SI/SHO in PS Sohna. On receipt of the information he went to

village Kiranj and verified the investigation. On 23.9.2003 Balbir Singh Constable handed over post mortem report along with two sealed parcels containing clothes and bullets which were taken into possession vide memo Ex. PU. He also recorded the statement of the witnesses under section 161 Cr. P. C. On 25.9.2003 Mohan Singh ASI arrested Ram Niwas accused. On 26.9.2003 on interrogation Ram Niwas accused made disclosure statement Ex. PV and in furtherance of the same he got recovered one double barrel gun from his house along with his licence. The sketch of the same was prepared. Recovery memo Ex. PV/1 was prepared. It was further stated by this witness that on 1.10.2003 Sohan Lal accused on interrogation made disclosure statement Ex. PX and got recovered ballam in pursuance of the disclosure statement which was taken into possession vide recovery memo Ex. PX/1. Accused Jaipal also made a disclosure statement Ex. PY. On 3.10.2003 Balraj, Mahesh and Hind Pal accused were arrested. Mahesh accused made a disclosure statement Ex. PZ. Balraj accused made disclosure statement Ex. PAA and Hind Pal accused also made disclosure statement Ex. PBB. Balraj accused got recovered double barrel gun. Sketch of the gun is Ex. PAA/2 and the site plan of the place of recovery is Ex. PAA/3. Hind Pal accused had got recovered lathi. Rough site plan was prepared on completion of investigation report under section 173 Cr. P.C. was prepared.

Dr. Subhash Sindhu PW11 stated that he sent four sealed bottles in two packets containing metallic body to SHO PS City Gurgaon for onward handing over the same to the Director FSL, Karnal. Pellets were recovered from the body of Monu, Vijender, Ajit and Bhagwana and Ex. PU was the document prepared in this regard.

Mohan Singh ASI PW12 stated that on 22.9.2003 he received information from the hospital regarding the admission of the injured. He

recorded the statement of Sher Singh which is Ex. PS. He took Mahender Singh from the hospital and went to the spot in village Kiranj. He also took photographs. He inspected the spot and prepared rough site plan Ex. PX. He also took into possession blood stained earth, shoe of the deceased and two empty cartridges vide memo Ex. PY. He also took into possession two pieces of quilt and plastic pieces of gutka. On the same day he also took into possession sealed clothes of Monu and Ajit. From the hospital he went to PS Sohna and deposited the case property. On 23.9.2004 he prepared inquest report which is Ex. PT/2. On 25.9.2003 he arrested accused Ram Niwas. Empty cartridges Ex. P10 and Ex. P11 were also proved in his statement.

Mahavir Photographer PW13 proved photographs Ex. PI to Ex. P11 and negatives Ex. P12 to Ex. P22 of the place of occurrence.

Khem Chand EHC PW14 stated that on 22.9.2003 MHC handed over special report of the case for delivery of the same to Illaqa Magistrate and higher authorities.

Prosecution tendered in evidence certified copies of the order Ex. PL to Ex. PP and also tendered in evidence documents marked A to H and I and J and closed the prosecution case.

The accused were called upon to enter their defence and in defence they produced Paramjeet DW1 who was a photographer. He proved photographs Ex. D1 to Ex. D3 and negatives Ex. D4 to Ex. D6 and it was stated that at the instance of Sohan Lal he had taken the photographs.

Sant Ram DW2 stated that Shakuntala was his sister. She was married in the year 1980. After one year of the marriage she was deserted by her husband and in-laws. She was residing with him in village Nawada, District Gurgaon. Ration card was also existing in her name in this village. It was further stated that on 22.09.2003 she was in village Nawada at his house

and he had told this fact to the police.

Mangal Singh DW3 stated that Shakuntala was residing with her brother in village Nawada since the date of her marriage. She was also getting pension as old age pensioner in their village and he is Lumberdar of the village. On 22.9.2003 she was present in the village. Documents Ex. D3 to Ex. D6 were also produced by the accused in their defence.

7. Vide judgment and order dated 10/13.10.2007 Ram Niwas and Mahesh (appellant nos.1 & 4) were convicted and sentenced as under:-

Sr. No.	Offence	Imprisonment	Fine	In Default
1.	302 r/w 34 IPC	RI for Life each	Rs.5,000/- each	RI for 02 Years each
2.	307 r/w 34 IPC	RI for 07 Years each	Rs.2,000/- each	RI for 01 Year each
Ram Niwas				
Sr. No.	Offence	Imprisonment	Fine	In Default
1.	27 of Arms Act	RI for 03 Years	Rs.1000/-	RI for 06 Months

Convicts Jai Pal, Sohan Lal and Smt. Indira (appellant nos.2,3 & 5) were convicted and sentenced as under:-

Sr. No.	Offence	Imprisonment	Fine	In Default
1.	323 r/w 34 IPC	RI for 01 Years each	-	-
2.	325 r/w 34 IPC	RI for 03 Years each	Rs.1,000/- each	RI for 06 Months each

All the aforesaid sentences were ordered to run concurrently.

Hind Pal and Shakuntala were acquitted giving them benefit of doubt.

8. While the convicted accused filed Criminal Appeal No.899-DB-2007 challenging their conviction, the complainant filed a Criminal Revision No.109-2009(O&M) seeking enhancement of sentence.

9. The Counsel for the appellants in CRA-D-899-DB-2007 and CRR-109-2009 has brought it to the notice of this Court that appellant no.1-

Ram Niwas and appellant no.3-Sohan Lal have since passed away and Balraj was declared a proclaimed offender during the course of the Trial.

10. The Counsel for the appellants contends that Mahesh Kumar has been convicted under Section 302 IPC and Section 307 read with Section 34 IPC. As per the allegations he had gone to the roof along with Ram Niwas and Jai Pal and had fired shots from there. However, firstly, on his arrest, no recovery of any firearm was effected from him and secondly two empty cartridges recovered from the spot, were sent for forensic analysis as per which the cartridges had been fired from the weapons recovered from Balraj Singh (proclaimed offender) and Ram Niwas (since deceased). Therefore, it is his contention that the false implication of Mahesh could not be ruled out and he ought to be acquitted of the charges framed against him.

11. As regards appellant Jaipal & Smt. Indira, he contends that the medical evidence was contrary to the ocular account. Smt. Indira had been declared to be innocent and had been summoned under Section 319 Cr.PC. He, therefore, contends that these two accused were also entitled to acquittal.

12. The Counsel for the complainant and the counsel for the State on the other hand contend that the offences stood established beyond reasonable doubt against all the accused. In fact, even Jaipal and Smt. Indira were liable to be convicted for the offences under Section 302/307 read with Section 34 IPC along with the substantive offences committed by them under Sections 323/325 read with Section 34 IPC. Therefore, the present appeal was liable to be dismissed and the sentence awarded to the appellant-Jaipal and Smt. Indira ought to be enhanced.

13. We have heard counsel for the parties and perused the record.

14. A perusal of the testimony of PW-6 Bijender and PW-7 Sher

Singh would show that as regards Mahesh Kumar, the allegations are that he had gone to the roof where he along with Ram Niwas and Jaipal had fired shots on the complainant party when Balraj had fired his fourth and fifth shot. However, the shots allegedly fired by Mahesh Kumar, Ram Niwas and Jaipal are not stated to have struck anyone. It is a matter of record that when Mahesh Kumar was arrested no recovery of any firearm was effected from him. Two weapons were recovered from Balraj and Ram Niwas. Two empty cartridges were also recovered from the spot and as per report of the FSL the empty cartridge had been fired from the weapons recovered from Balraj Singh and Ram Niwas. Further, Jaipal against whom identical allegations had been levelled stands acquitted of the offence(s) under Sections 302/307 on the ground that he also received injuries. In this situation, it is quite possible that a net had been knit so as to implicate Mahesh Kumar as well. Therefore, while giving him the benefit of doubt, we deem it appropriate to acquit him of the charges framed against him.

15. As regards Jaipal and Smt. Indira, it may be pointed out that the medical evidence is totally in consonance with ocular account qua the role attributed to these accused. The injuries attributed to them are apparent from the medico legal reports of the injured. Therefore, we find no infirmity in the judgment of conviction qua these appellants and the appeal qua them stands dismissed.

16. However, as the occurrence took place 21 years ago, the substantive sentence of the appellants Jaipal and Smt. Indira is modified and reduced as under:-

Sr. No.	Offence	Sentence Reduced to	Fine	In Default
1.	323 r/w 34 IPC	RI for 06 months each	-	-
2.	325 r/w 34 IPC	RI for 06	Rs.1,000/-	RI for 06

		months each	each	Months each
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17. In view of the aforementioned discussion, the criminal appeal (CRA-D-899-DB-2007) stands allowed qua Mahesh and he is acquitted of the charges framed against him; qua Jaipal and Indira it stands dismissed with modification of the sentences as mentioned in para no.14; whereas the revision petition (CRR-109-2009) seeking enhancement of sentence stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 24, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>