
(2015) 04 P&H CK 0305

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal-D-601-DB of 2010 and Criminal Revision No. 2376 of 2010

Gurdial Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313, 319

Evidence Act, 1872 — Section 138, 145

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (2015) 04 P&H CK 0305

Hon'ble Judges : T.P.S. Mann, J; Mahavir Singh Chauhan, J

Bench : Division Bench

Advocate : R.S. Cheema, Senior Advocate, A.S. Cheema and J.S. Virk, for the Appellant; S.S. Dhaliwal, Additional Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Mahavir Singh Chauhan, J.

1. Learned Sessions Judge, Patiala, vide judgment/order dated May 21, 2010 has convicted and sentenced Gurdial Singh, Niranjana Singh, Bhag Singh, Labh Singh, Major Singh, Tarsem Singh and Dattu Singh as under:

Gurdial Singh:

1. Life Imprisonment and a fine amounting to Rs. 10,000/- and in default of payment of fine to further rigorous imprisonment for two years under Section 302 read with Section 149 of the Indian Penal Code, 1860 (IPC, for short);

2. Rigorous imprisonment for one year and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for three months under Section 148, IPC;

3. Rigorous imprisonment for one month and a fine amounting to Rs. 100/- and

in default of payment of fine to further rigorous imprisonment for fifteen days under Section 336, IPC;

4. Rigorous imprisonment for one month and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 341, IPC;

5. Rigorous imprisonment for three months and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 323/149, IPC.

Niranjan Singh:

1. Life Imprisonment and a fine amounting to Rs. 10,000/- and in default of payment of fine to further rigorous imprisonment for two years under Section 302 read with Section 149, IPC;

2. Rigorous imprisonment for one year and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for three months under Section 148, IPC;

3. Rigorous imprisonment for one month and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 341, IPC;

4. Rigorous imprisonment for three months and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 323/149, IPC.

Bhag Singh:

1. Life Imprisonment and a fine amounting to Rs. 10,000/- and in default of payment of fine to further rigorous imprisonment for two years under Section 302, IPC;

2. Rigorous imprisonment for one year and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for three months under Section 148, IPC;

3. Rigorous imprisonment for one month and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 341, IPC;

4. Rigorous imprisonment for three months and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 323/149, IPC.

Labh Singh:

1. Life Imprisonment and a fine amounting to Rs. 10,000/- and in default of payment of fine to further rigorous imprisonment for two years under Section

302 read with Section 149, IPC;

2. Rigorous imprisonment for one year and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for three months under Section 148, IPC;

3. Rigorous imprisonment for one month and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 341, IPC;

4. Rigorous imprisonment for three months and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 323/149, IPC.

Major Singh:

1. Life Imprisonment and a fine amounting to Rs. 10,000/- and in default of payment of fine to further rigorous imprisonment for two years under Section 302 read with Section 149, IPC;

2. Rigorous imprisonment for one year and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for three months under Section 148, IPC;

3. Rigorous imprisonment for one month and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 341, IPC;

4. Rigorous imprisonment for three months and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 323/149, IPC.

Tarsem Singh:

1. Life Imprisonment and a fine amounting to Rs. 10,000/- and in default of payment of fine to further rigorous imprisonment for two years under Section 302 read with Section 149, IPC;

2. Rigorous imprisonment for one year and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for three months under Section 148, IPC;

3. Rigorous imprisonment for one month and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 341, IPC;

4. Rigorous imprisonment for three months and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 323/149, IPC.

Dallu Singh:

1. Life Imprisonment and a fine amounting to Rs. 10,000/- and in default of payment of fine to further rigorous imprisonment for two years under Section 302 read with Section 149, IPC;
2. Rigorous imprisonment for one year and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for three months under Section 148, IPC;
3. Rigorous imprisonment for one month and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 341, IPC;
4. Rigorous imprisonment for three months and a fine amounting to Rs. 500/- and in default of payment of fine to further rigorous imprisonment for fifteen days under Section 323/149, IPC.

2. All the substantive sentences have been ordered to run concurrently.

3. Criminal Appeal D-601-DB of 2010, Gurdial Singh and others versus State of Punjab has been brought by the convicts to assail the findings of conviction and order on sentence while Criminal Revision No. 2376 of 2010, Sukhwinder Singh versus Gurdial Singh and others has been preferred by the complainant with a prayer for enhancement of sentence. Criminal Appeal D-601-DB of 2010 and Criminal Revision No. 2376 of 2010 having emanated from a common judgment/order dated May 21, 2010, are proposed to be disposed of by this common judgment being passed in Criminal Appeal D-601-DB of 2010, Gurdial Singh and others versus State of Punjab.

Prosecution version

4. Prosecution had prosecuted the appellants under Sections 148, 302, 341, 336, 323 and 149, IPC, on the allegations that they, while armed with deadly weapons, viz. a .12 bore DBBL gun, Pickaxes (Kahis), "Tanglis", wooden baton (Balla) and "Dang", formed an unlawful assembly, wrongfully restrained and killed Veer Singh (or say Beer Singh) and caused hurt to Iqbal Singh and Gurbax Singh while appellant Gurdial Singh fired shots from the DBBL gun in the air so as to endanger human life. As per prosecution story, as told by Sukhwinder Singh (PW4) (here-in-after referred to as "the complainant") vide his statement, Exhibit PB, made before ASI Darshan Singh (PW8), complainant's cousins Veer Singh and Pritam Singh had a dispute with appellant Niranjn Singh concerning a passage and watercourse which stood resolved before village "Panchayat". On the day of occurrence, i.e. November 09, 2005, complainant's neighbours, namely Gurbax Singh and his sons Iqbal Singh and Bahadur Singh were irrigating their ancestral land from their ancestral tubewell (commonly called a "Motor"). At or around 12 O'clock in the noon, Dattu Singh, Niranjn Singh and Tarsem Singh armed with a pickaxe, each, Major Singh armed with a "Tangli" Bhag Singh carrying a wooden baton, Labh Singh carrying a "Dang" and Gurdial Singh wielding a .12 bore DBBL gun descended on the scene and started beating

Gurbax Singh, Iqbal Singh and Bahadur Singh who, to save their lives, ran towards the village but were chased, ambushed and beaten by the appellants. Veer Singh came forward to rescue the victims of assault. Appellant Bhag Singh, with an intention to kill, administered two blows of wooden baton on Veer Singh's head followed by another blow on his right hand and yet another on his mouth. Appellant Niranjan Singh exhorted saying that Veer Singh was the bone of contention and therefore be killed. Thereupon Gurdial Singh fired shots in the air from the gun while others caused hurts on Veer Singh's person with an intention to kill him. Gurdas Singh son of Niranjan Singh was stated to be behind the occurrence.

Investigation:

5. Based on the above statement of Sukhwinder Singh (PW4), a formal First Information Report ("FIR", for short), Exhibit PB/2, was recorded at Police Station, Ghagga by ASI Narain Singh under Sections 148, 307, 341, 336, 323 and 149, IPC. Veer Singh, who was taken to Rajindra Hospital, Patiala, succumbed to the injuries at 10.05 p.m. on November 09, 2005 and, accordingly, the offence punishable under Section 307, IPC, was converted into an offence punishable under Section 302, IPC.

6. During investigation, investigating officer recorded statements of witnesses, prepared a visual site plan (Exhibit PH) of the place of occurrence, effected necessary recoveries, including arms licence, Exhibit P10, of Gurbax Singh and two empties of 12 DBBL gun and arrested the appellants. Inquest Report, Exhibit PW12/B was also prepared. Appellant Gurdial Singh, while in police custody, suffered disclosure statement, Exhibit PH/11, and pursuant thereto got recovered a DBBL gun bearing No. AB 850069 (Exhibit P6). Appellant Bhag Singh also, while in police custody, suffered a disclosure statement, Exhibit PH/14, and pursuant thereto got recovered three pickaxes, one wooden "dang" and a four feet long wooden baton ("Balla"), Exhibit P1. Dr. Anil Garg (PW2), of Rajindra Hospital, Patiala, at 03.20 p.m. on November 09, 2005, medico-legally examined Veer Singh vide medico-legal report ("MLR" for short), Exhibit PA. Dr. Arvind Verma, Medical Officer, Civil Hospital, Samana (PW5), at 01.50 p.m. on November 09, 2005 medico-legally examined Iqbal Singh and Gurbax Singh vide MLRs, Exhibits PD and PC, respectively. Dr. S.S. Oberoi (PW12) conducted autopsy on the dead body of Veer Singh vide post mortem report ("PMR" for short), Exhibit PW12/A. On completion of investigation a report in terms of sub-section (2) of Section 173 of the Criminal Procedure Code, 1973 (for short, "the Code") was presented before the learned Area Magistrate.

Proceedings before the Courts below

7. Appellants Tarsem Singh and Dallu Singh, who were found innocent by the investigating agency and were kept in column No. 02, were summoned by the learned trial court by invoking Section 319 of the Code.

8. Learned Additional Sessions Judge, on hearing the prosecutor and the defence

and perusal of the materials before him found a prima facie case triable under Sections 148, 302, 341, 336, 323 and 149, IPC, to be made out and charged the appellants accordingly. Appellants pleaded not guilty and claimed to be tried.

9. During the course of trial complainant Sukhwinder Singh (PW4) reiterated on oath the complete prosecution version and injured Gurbax Singh (PW3) and Iqbal Singh (PW1) corroborated him, almost verbatim. Dr. Anil Garg (PW2) of Rajindra Hospital, Patiala, told the learned trial court that at 03.20 p.m. on November 09, 2005, he medico-legally examined Veer Singh vide MLR, Exhibit PA. Dr. Arvind Verma, Medical Officer, Civil Hospital, Samana (PW5), revealed that at 01.50 p.m. on November 09, 2005 he medico-legally examined Iqbal Singh and Gurbax Singh vide MLR's, Exhibit PC and PD, respectively. Dr. S.S. Oberoi (PW12) testified that he conducted autopsy on the dead body of Veer Singh vide post mortem report ("PMR" for short), Exhibit PW12/A. Krishan Lal Garg (PW13) proved medical report, Exhibit PW13/A, on record. ASI Darshan Singh (PW8), SI Jagbir Singh (PW6), ASI Satnam Singh (PW14), MHC Hardial Singh (PW9), Constable Jaswinder Singh (PW10), C-II Darshan Singh (PW15), Dr. Harish Tuli (PW16), and Patwari Daljit Singh (PW7) highlighted various stages and aspects of investigation.

10. When examined under Section 313 of the Code, appellants denied all the incriminating circumstances appearing against them in the prosecution evidence and while reiterating plea of their innocence and false implication came out with a plea that there was a dispute between appellant Gurdial Singh and PW Gurbax Singh concerning irrigation of land with the help of a plastic pipe. The dispute was settled with the intervention of village "Panchayat" and it was agreed that the plastic pipe should be laid underneath, and not over the path. Still, on November 09, 2005, PW Gurbax Singh was irrigating the fields with the help of a plastic pipe laid above earth over the passage. Appellants Gurdial Singh and Bhag Singh objected to it. Upon this PW Gurbax Singh brought out his .12 bore DBBL gun and fired firstly in the air and then towards appellant Gurdial Singh with an intention to kill him. He, however, lied on the earth to save himself. PWs Iqbal Singh and Bahadur Singh attacked appellants Gurdial Singh and Bhag Singh with a pickaxe and sword, respectively. Veer Singh intervened to rescue them whereupon Gurbax Singh, Bahadur Singh and Iqbal Singh caused injuries to him also.

11. Appellants examined HC Jagrata Ram and Sukhbir Singh (both designated as DW1) to bring on record attested copy of Daily Diary Report ("DDR", for short), Exhibit D1, entry No. 30 dated November 09, 2005, Exhibit D2, and the factum of issuance of Arms Licence, Exhibit P10, in favour of PW Gurbax Singh and entry of the DBBL gun, Exhibit P6, therein, vide entry, Exhibit DW1/A.

12. On appraisal of the evidence in the light of the submissions made by the public prosecutor and the defence, learned Sessions Judge concluded that the prosecution was able to establish appellants' guilt beyond reasonable doubt and, accordingly, convicted and sentenced them as here-in-before stated.

In criticism and defence of the impugned judgment/order:

13. We have heard learned counsel for the parties and have examined the record.

14. Learned counsel representing the appellants have argued with vehemence that case of the prosecution is a loosely-knit string of falsities and is liable to be rejected. To seek rejection of prosecution story learned counsel for the appellants have laid stress on the following points:

1. Presence of PW Sukhwinder Singh on the spot at the time of the occurrence is extremely suspicious because he has made a very general statement as regards the occurrence; has not been able to specifically state who caused what injury to whom; does not know with certainty the time of occurrence (because when confronted with an over-writing in his statement, Exhibit PB, with regard to the time, he has said that he does not know if figure "10" has been made to read as "12" or vice versa); is not shown to have intervened or to have received any injuries, in the occurrence; does not talk of the factum and manner of injuries received by two of the appellants, namely Niranjana Singh and Bhag Singh in the occurrence; and did not accompany either the deceased or the injured PWs to the hospital.

2. As per prosecution version appellant Gurdial Singh fired two shots in the air from the gun he was carrying, with an intention to kill Veer Singh (the deceased) and the gun, Exhibit P6, is shown to have been recovered at his instance vide memorandum, Exhibit PH/12, pursuant to his disclosure statement, Exhibit PH/11 but, astonishingly, as recorded in Arms Licence, Exhibit P10, and deposed to by Sukhbir Singh (DW1) the gun, Exhibit P6, belongs to PW Gurbax Singh and as per report, Exhibit PX, of Forensic Science Laboratory, one of the empty cartridges recovered from the spot was fired from the gun, Exhibit P6, while no opinion qua the other could be given as percussion cap thereof was missing. Prosecution has failed to explain how the loaded gun, Exhibit P6, belonging to PW Gurbax Singh, reached appellant Gurdial Singh. In fact, factum of only one gun, viz. Exhibit P6, belonging to PW Gurbax Singh having been recovered and report, Exhibit PX, strengthen defence version that PW Gurbax Singh had fired upon appellant Gurdial Singh with an intention to kill him because he and appellant Bhag Singh had raised an objection after they had found PW Gurbax Singh irrigating the fields with the help of a plastic pipe laid above earth over the passage contrary to the settlement reached before the village "Panchayat".

3. A reference to MLRs, Exhibits PC and PD, pertaining to injured PWs Iqbal Singh and Gurbax Singh reveals that the two injured PWs were taken to the hospital at 01.50 p.m. on November 09, 2005 by Karamjit Singh through police of Police Station, Ghagga and it has been admitted by Sukhwinder Singh (PW4) that police had come to village Kakrala at or around 02.00 p.m. on the day of occurrence and at that time deceased Veer Singh was also present there. Even as per MLR, Exhibit PA, Veer Singh reached the hospital at Patiala at 03.20 p.m. on that day from village Kakrala by traversing a distance of about forty

kilometers. This leaves nothing to doubt that the police had reached the village before injured PWs Iqbal Singh and Gurbax Singh were taken to the hospital and had met Veer Singh (the deceased) before he was taken to the hospital. In spite of this neither the deceased nor either of the injured PWs Iqbal Singh and Gurbax Singh made a statement before the police describing the occurrence. This indicates that FIR, Exhibit PB/2, was recorded at 10.30 p.m. on November 09, 2005 on the basis of statement, Exhibit PB (which is shown to have been recorded at 09.00 p.m. on that day) after due deliberations and the delay has, evidently, been misutilised to give a twist to the real story and to introduce false witnesses.

4. It is the case of the prosecution that Veer Singh (deceased) intervened in the occurrence and thereupon appellant Bhag Singh inflicted two blows of wooden baton on his head which proved fatal. To other appellants simple and unspecified hurts to the injured PWs Iqbal Singh and Gurbax Singh have been attributed. From the circumstances enumerated in the foregoing paragraphs it is clearly borne out that the complainant party did not honour the compromise arrived at between the parties before the village "Panchayat" and had come to the spot armed with deadly weapons like a DBBL gun, a pickaxe and a sword. Thus, either members of the complainant party were the aggressors or it was a case of sudden fight.

5. It also comes out from the record that appellants Niranjana Singh and Bhag Singh also received injuries at the hands of members of the complainant party but the prosecution has failed to explain these injuries. It probabilises the plea put up by the defence that there was a dispute between appellant Gurdial Singh and PW Gurbax Singh concerning irrigation of land with the help of a plastic pipe; the dispute was settled with the intervention of village "Panchayat" and it was agreed that plastic pipe should be laid underneath, and not over the path; still, on November 09, 2005, PW Gurbax Singh was irrigating the fields with the help of a plastic pipe laid above earth over the passage; appellants Gurdial Singh and Bhag Singh objected to it whereupon PW Gurbax Singh brought out his .12 bore DBBL gun and fired firstly in the air and then at the appellant Gurdial Singh with an intention to kill him but he lied on the earth to save himself. PWs Iqbal Singh and Bahadur Singh attacked appellants Niranjana Singh and Bhag Singh with a pickaxe and sword, respectively; Veer Singh intervened to rescue them whereupon Gurbax Singh, Bahadur Singh and Iqbal Singh caused injuries to him also; and that the appellants returned the attack in defence of their person and property.

15. On the contrary, learned counsel appearing for the respondent-State and the complainant have argued, with no less vehemence, that evidence available on record is sufficient to lead to the conclusion that the appellants formed an unlawful assembly within the meaning of Section 148, IPC; wrongfully confined PWs Iqbal Singh and Gurbax Singh and thereby rendered themselves liable under 341, IPC; in furtherance of common object of the unlawful assembly inflicted

hurts on the persons of injured PWs Iqbal Singh and Gurbax Singh within the meaning of Section 323/149, IPC; and appellant Bhag Singh, in furtherance of common object of the unlawful assembly administered fatal blows of wooden baton on the head of Veer Singh rendering himself liable under Section 302 and other appellants under Section 302 read with Section 149, IPC.

16. It is also argued on behalf of the complainant/revisionist that sentence awarded to the appellants under Sections 302 and 302/149, IPC is on the lower side and it deserves to be adequately enhanced.

17. No other or further point has been urged on either side.

Findings in appeal

18. Factum of the occurrence is not in dispute. How the occurrence took place and who initiated it, is the real conundrum that craves an answer.

19. Let's first examine the story propounded by the prosecution.

Inherent weaknesses of prosecution story:

20. According to the prosecution story complainant's cousins Veer Singh and Pritam Singh had a dispute with appellant Niranjana Singh concerning a passage and watercourse which stood resolved before village "Panchayat". On the day of occurrence, i.e. November 09, 2005, complainant's neighbours, namely Gurbax Singh and his sons Iqbal Singh and Bahadur Singh were irrigating their ancestral land from their ancestral tubewell. At or around 12 O'clock in the noon, Dattu Singh, Niranjana Singh and Tarsem Singh armed with a pickaxe, each, Major Singh armed with a "Tangli", Bhag Singh carrying a wooden baton, Labh Singh carrying a "Dang" and Gurdial Singh wielding a .12 bore DBBL gun descended on the scene and started beating Gurbax Singh, Iqbal Singh and Bahadur Singh who, to save their lives ran towards the village but were chased, ambushed and beaten by the appellants. Veer Singh came forward to rescue the victims of assault. Appellant Bhag Singh, with an intention to kill, administered two blows of wooden baton on Veer Singh's head followed by another blow on his right hand and yet another on his mouth. Appellant Niranjana Singh exhorted saying that Veer Singh was the bone of contention and therefore be killed. Thereupon Gurdial Singh fired shots in the air from the gun while others caused hurts on Veer Singh's person with an intention to kill him. Gurdas Singh son of Niranjana Singh was stated to be behind the occurrence and Sukhwinder Singh (PW4) to have witnessed it. Gurdas Singh has not been brought before the Court and perusal of testimony of Sukhwinder Singh (PW4) renders his presence on the spot at the time of the occurrence unsubstantiated.

21. It has been admitted by Sukhwinder Singh (PW4) that police had come to village Kakrala at or around 02.00 p.m. on the day of occurrence and at that time deceased Veer Singh was also present there. Though Section 138 of the Indian Evidence, 1872 ("Evidence Act", for short) provides an opportunity to the prosecution to re-examine a witness to seek an explanation from the witness in

respect of a new matter brought in by the witness but the prosecution thought it wasteful to avail itself of such an opportunity to ask for an explanation from Sukhwinder Singh (PW4) with regard to his revelation that when he and Veer Singh were present there at about 02.00 p.m., police had come to the village. Reluctance of the prosecution in this behalf leads to the irresistible inference that it accepted as correct what was stated by the witness. Not only this, in MLR, Exhibit PA, pertaining to Veer Singh (deceased) it is mentioned that he reached the hospital at Patiala at 03.20 p.m. on that day. Distance between village Kakrala, where the occurrence is shown to have taken place, and Rajindra Hospital, Patiala, where the deceased was medico-legally examined, is stated to be about forty kilometers. Such a distance could be traversed in less than an hour. Thus, arrival of the deceased in Rajindra Hospital, Patiala at 03.20 p.m. also probabilises his presence in village Kakrala at or around 02. 00 p.m. Still further, as rightly pointed out by learned counsel for the appellants it is recorded in MLRs, Exhibits PC and PD, pertaining to injured PWs Iqbal Singh and Gurbax Singh that they were taken to the hospital at 01.50 p.m. on November 09, 2005 by Karamjit Singh through police of Police Station, Ghagga. This leaves nothing to doubt that the police had reached the village before injured PWs Iqbal Singh and Gurbax Singh were taken to the hospital and had met Veer Singh (the deceased) before he was taken to the hospital. Why statement either of the deceased or either of the injured PWs Iqbal Singh and Gurbax Singh was not recorded and why did the investigating officer waited for Sukhwinder Singh (PW4) to make a statement till 09.00 p.m. inspite of the fact that he was neither injured in the occurrence nor was connected with the occurrence or subject matter of the dispute, in any manner, is the riddle left unsolved by the prosecution. It is nobody's case that the deceased Veer Singh and the injured Pws Iqbal Singh and Gurbax Singh were unfit to make a statement. Reluctance of the prosecution to bring forth either of them as author of the FIR performe leads to an inference that an effort has been made by the prosecution to misdirect the investigation and paint a story different from what had actually happened.

22. Another circumstance that needs a mention here and indicates towards effort of the investigating agency to bring in changes in the story to suit its version, is an over-writing in statement, Exhibit PB, with regard to time of the occurrence. Sukhwinder Singh (PW4), author of the statement has admitted that figure "10" has been changed to figure "12" and that when he made the statement, Exhibit PB, this over-writing was not there.

Did PW Sukhwinder Singh witness the occurrence

23. Sukhwinder Singh (PW4), author of the FIR, Exhibit PB/2, though claims to have witnessed the whole occurrence but has failed to disclose purpose of his presence on the spot of the occurrence. The occurrence, as per case of the prosecution, took place near the fields of Gurbax Singh (PW3). These fields of Gurbax Singh (PW3), according to Sukhwinder Singh (PW4) are two-three kilometers away from the village on its western side whereas Sukhwinder

Singh's fields, as per his own admission, are two-three kilometers away from the village on its eastern side. He claims to have gone to have a round of his fields at or around 11.00 a.m. that too without any specific work. If this statement of Sukhwinder Singh (PW4) is accepted to be correct, he was at least four-six kilometers away from the place of occurrence and, as such, cannot be expected to have witnessed it. He claims to have met the police at or around 02.00 p.m. but is shown to have made statement, Exhibit PB, at 09.00 p.m. at Patiala. He did not know who inflicted blows of wooden baton on the head of the deceased and did not say how appellants Bhag Singh and Niranjana Singh received injuries. He has not been able to describe who inflicted what injuries and to whom and has made a very general statement saying that the appellants caused injuries to PWs Iqbal Singh and Gurbax Singh and to the deceased. Though he claims to be a cousin of the deceased and to have witnessed the occurrence but is not shown to have intervened to save him and the injured PWs Iqbal Singh and Gurbax Singh or to have shouted for help or to have accompanied any one of them to the hospital. These circumstances strengthen appellants' plea that this witness did not witness the occurrence and that the occurrence did not take place in the manner stated by him.

Evidence of Iqbal Singh and Gurbax Singh

24. Iqbal Singh (PW1) and Gurbax Singh (PW3) no doubt are injured witnesses but their statement that dispute regarding passage of water was between these witnesses and Bahadur Singh on one side and Niranjana Singh on the other runs contrary to the prosecution version (as contained in Exhibit PB/2 and deposition of PW3, Sukhwinder Singh) according to which the dispute was between Veer Singh and Pritam Singh sons of Amar Singh on one side and Niranjana Singh on the other. With regard to the injuries on the persons of appellants Niranjana Singh and Bhag Singh they have exhibited their ignorance but have admitted that both of them remained admitted in the hospital (for ten days, according to Sukhwinder Singh, PW4). They made improvements over their statements, Exhibits DA and DD, on very material aspects of the matter and have, thus, rendered their depositions unworthy of credit. To illustrate, part of the deposition of Iqbal Singh (PW1) that as per settlement reached before the "Panchayat" they were to irrigate their land through an underground water channel; Sukhwinder Singh (PW4) had his fields near their (complainant party) fields and was attracted to the scene of occurrence and witnessed it; Veer Singh (deceased) was also attracted to the scene of occurrence; appellant Bhag Singh inflicted a wooden baton blow on the right hand of the deceased and other appellants continued giving beatings to him; and that appellant Bhag Singh gave injuries to the deceased and other appellants to them (injured PWs Iqbal Singh and Gurbax Singh) was found to be improvement upon his statement, Exhibit DD, made before the investigating officer when he was confronted with his police statement in compliance of the provisions of Section 145, Evidence Act. Same is true of the statement of Gurbax Singh (PW3) that appellant Niranjana Singh had been threatening them (the complainant party); they (the complainant party) were

irrigating their fields through an underground pipe; Sukhwinder Singh (PW4) had his fields near their (complainant party) fields and was attracted to the scene of occurrence and witnessed it; Veer Singh, whose fields adjoin those of the complainant party, was not there initially and came to the scene of occurrence later on; and that appellant Gurdial Singh had fired shots to deter the persons present there so that they could not save them (injured PWs Iqbal Singh and Gurbax Singh).

Recovery of gun:

25. Very definite and precise case of the prosecution in FIR, Exhibit PB/2, and in the depositions of PWs Sukhwinder Singh, Gurbax Singh and Iqbal Singh has been that appellant Gurdial Singh was carrying a .12 DBBL gun and had fired shots in the air. Even the gun, Exhibit P6, is shown to have been recovered vide memorandum, Exhibit PH/12, pursuant a disclosure, Exhibit PH/11, stated to have been made by him. Forensic expert, in report, Exhibit PX, has opined that one of the two empties recovered from the spot vide memorandum, Exhibit PG, was fired from the gun, Exhibit P6. According to memorandum, Exhibit PH/12, the gun so recovered, bore number 85000694. Interestingly, it is recorded in Arms Licence, Exhibit P10, that the DBBL gun bearing No. 85000694 belongs to Gurbax Singh (PW3) (and not to appellant Gurdial Singh). Arms Licence, Exhibit P10, memorandum, Exhibit PH/12, and report, Exhibit PX, have been heavily relied upon by the prosecution. Therefore, prosecution cannot run away from the consequences flowing from these documents which lead to the only conclusion that the gun, Exhibit P6, was owned by Gurbax Singh (PW4) and not by appellant Gurdial Singh. This position is further fortified by Sukhbir Singh (DW1), a Junior Assistant of the office of District Magistrate, Patiala by stating on oath that as per entry, Exhibit DW1/A, an extract from the record maintained in the office of said District Magistrate, Arms Licence bearing No. 1862/DM/P/May/1986 was issued in the name of Gurbax Singh son of Bhagwan Singh resident of village Kakrala, Police Station, Ghagga, District Patiala and on this licence a DBBL gun bearing No. 85000694 has been entered in his name on November 23, 1986. Particulars of the Arms Licence and those of the person in whose name it has been issued match particulars of Arms Licence, Exhibit P10, and PW3, Gurbax Singh, respectively. It may be hastily added here that it is nobody's case that the gun was snatched by appellant Gurdial Singh from Gurbax Singh (PW3) and the prosecution has not ventured to explain how it reached hands of appellant Gurdial Singh.

Bone of contention:

26. It is the categorical case of the prosecution that there was a dispute between Veer Singh and Pritam Singh on one side and Niranjana Singh on the other with regard to passage of water for irrigation and this dispute stood settled with the intervention of the village "Panchayat". Though the settlement arrived at between the parties is part of the record but from the evidence of PWs Iqbal Singh, Gurbax Singh and Sukhwinder Singh it transpires that under the

settlement the complainant party was required to irrigate their land through an underground water channel. All the above-cited witnesses of the prosecution have been unanimous in saying that on the day of occurrence PW Gurbax Singh and his two sons PW Iqbal Singh and Bahadur Singh were irrigating their fields through the underground channel as per the settlement. All the three of them have denied defence plea that Gurbax Singh etc. were irrigating their fields through a pipe laid over the earth on the passage contrary to the "Panchayat" settlement and the appellants had objected to it. However, on this point also the prosecution witnesses have been caught on wrong foot. SI Jagir Singh (PW6) and ASI Darshan Singh (PW7), the investigating officers, have unequivocally stated that when they visited the spot there was no underground water channel and, instead, Gurbax Singh etc. were irrigating their fields through a pipe laid over the earth on the passage. Daljit Singh (PW7), author of scaled site plan, Exhibit PW7/A, has also revealed that there was no underground pipe for irrigating the fields adjoining the passage on both sides near the tubewell.

Injuries on the persons of appellants, Niranjana Singh and Bhag Singh:

27. It has already been noticed in the preceding paragraphs of this judgment that the FIR, Exhibit PB/2, is silent with regard to injuries on the person of appellants Niranjana Singh and Bhag Singh and PWs Iqbal Singh, Gurbax Singh and Sukhwinder Singh have exhibited their ignorance in the matter while admitting that these appellants remained admitted in the hospital for quite some time (for ten days according to PW Sukhwinder Singh). No doubt, according to Dr. Anil Garg (PW2) when he medico-legally examined Veer Singh he found that there were (i) 6 x 6 cms swelling on right temporal area of skull region, 3 cms above his right ear; (ii) 2 x 2 cms reddish abraded swelling on the middle of his skull (scalp region), 9 cms backside of anterior hair line and 14 cms above the left ear; (iii) black eye (both); and (iv) bleeding from his both nostrils and that injuries No. 3 and 4 could be result of injuries No. 1 and 2 and according to Dr. Arvind Verma (PW5) on the person of Iqbal Singh (PW1) were found (i) a 2 cms x 3 cms wide bone deep lacerated wound on the right side of scalp interiorly on forehead 1 cm above medial end of right eye; (ii) complaint of pain and swelling on right medial side of right hand with edema and tenderness present; (iii) an abrasion on interior of chin 5 inches below right tuberosity with edema present; and (iv) a contusion on right deltoid area; and on the body of Gurbax Singh (PW3)(i) a 1 cm x 2 cm wide x 3 mm deep lacerated wound on left ear with fresh blood oozing therefrom; (ii) a 1.5 x 2 mm x 0.5 cms deep lacerated wound, with rough margins, on lateral side of left fore-arm, 2 inches above the wrist, laterally; (iii) a 1" x 2 mm x 0.5 cm deep lacerated wound, with rough margins, on lateral side of left thumb; and (iv) a 0.5 cm x 2 mm x 3 mm lacerated wound on medial side of proximal part of left palm but in cross examination Dr. Arvind Verma (PW5) also revealed that on that very day, vide MLRs, Exhibits DB and DC, he also medico-legally examined appellants Niranjana Singh and Bhag Singh and found injuries on their bodies as per description given below:

Niranjan Singh:

- i. Swelling and tenderness on right temporal region;
- ii. A 1 cm oblique x 1 mm x 2 mm deep lacerated wound on right dorsum of little finger over PIP joint with rough margins and fresh blood oozing therefrom; and
- iii. Complaint of pain and tenderness on right shoulder.

Bhag Singh:

- i. A 1 cm x 2 mm x 1 mm deep incised wound, with sharp margins and fresh bleeding, on posterior of right ear. 1 cm vertical underlying cartilages were seen;
- ii. A 1 mm x 1 mm transverse lacerated wound on the right side of angle of right mandible;
- iii. A lacerated wound, with irregular margins, on first web space between thumb and index finger of left hand. Underlying muscles were seen;
- iv. Swelling and tenderness on right temporal region with a small laceration seen on the right upper temporal area;
- v. A lacerated wound on medial side of palm of right hand between distal and proximal transverse crease; and
- vi. Pain and tenderness on right thigh.

Conclusion:

28. Reluctance of the prosecution witnesses to disclose receipt of injuries by appellants Niranjan Singh and Bhag Singh when read in conjunction with other circumstances as per details given in the earlier part of this judgment and the fact that case of the prosecution is based on the evidence of Iqbal Singh, his father Gurbax Singh and Sukhwinder Singh, first cousin of deceased Veer Singh, as also the background fact that the parties had stressful relations, lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident, including the genesis of the occurrence. Circumstances appearing on record also establish that investigation has been carried out in a partisan manner and the real story has been given such a twist as to make the truth to yield before falsity and coloured version. Otherwise, from the evidence available on record it clearly emerges that PW Gurbax Singh and his sons namely Bahadur Singh and PW Iqbal Singh, in disregard of the settlement arrived at before the village "Panchayat" resorted to irrigation of their fields by laying a pipe over the passage and when the appellants objected to it, PW Gurbax Singh vainly fired upon one of them (Gurdial Singh) and the others caused injuries to appellants Niranjan Singh and Bhag Singh and the appellants repelled the attack in self defence. It may be added, though at the cost of repetition, that PW Gurbax Singh, indisputably, was armed with a DBBL gun and injuries on the person of appellant Bhag Singh included an incised wound on the posterior of right ear, two lacerated wounds, besides swelling and tenderness on right

temporal region and injuries on the person of appellant Niranjana Singh included a lacerated wound on right dorsum of his little finger, pain and tenderness on right shoulder and swelling and tenderness on the right temporal region. This tilts the balance of preponderance of probability towards the defence plea that there was a dispute between appellant Gurdial Singh and PW Gurbax Singh concerning irrigation of land with the help of a plastic pipe which was settled with the intervention of village "Panchayat" and it was agreed that a plastic pipe should be laid underneath, and not above the earth/path. Still, on November 09, 2005, PW Gurbax Singh was irrigating the fields with the help of a plastic pipe laid above the earth over the passage. Appellants Gurdial Singh and Bhag Singh objected to it. Upon this PW Gurbax Singh brought out his .12 bore DBBL gun and fired firstly in the air and then towards appellant Gurdial Singh with an intention to kill him. He, however, lied on the earth to save himself. PWs Iqbal Singh and Bahadur Singh attacked appellants Niranjana Singh and Bhag Singh with a pickaxe and sword, respectively. Veer Singh intervened to rescue them whereupon Gurbax Singh, Bahadur Singh and Iqbal Singh caused injuries to him also and that the appellants returned the attack in self defence as they genuinely apprehended danger to their lives at the hands of the members of complainant party who were armed with deadly weapons like a DBBL gun, a pickaxe and a sword and in fact, did attack them therewith.

29. In the consequence, the appeal (CRA-D-601-DB of 2010) succeeds and is allowed. Impugned judgment and order are set aside. Appellants are acquitted of the offences of which they have been charged and convicted. Consequently, Criminal Revision No. 2376 of 2010 fails and is dismissed.

30. If not required in any other case, appellants be set at liberty forthwith.

31. Amount of fine, if already deposited by them, shall be refunded to the appellants as per procedure known to law.