

(2008) 03 P&H CK 0188
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 350 of 2005

Sukhwinder Singh and others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Constitution of India, 1950 — Article 161, 21, 72
Criminal Procedure Code, 1973 (CrPC) — Section 299, 313, 319, 321, 432
Evidence Act, 1872 — Section 33
Penal Code, 1860 (IPC) — Section 148, 149, 302, 323, 324

Citation : (2008) 3 RCR(Civil) 642 : (2008) 2 RCR(Criminal) 659

Hon'ble Judges : S.D. Anand, J; A.K. Goel, J

Bench : Division Bench

Advocate : T.S. Sangha, with Mr. Nitin Grover, Mr. Vinod Ghai, Ms. Baljit K. Mann, for the Appellant; Rakesh Gupta, Advocate and Mr. Harit Sharma, Advocate, Mr. Rajesh Bhardwaj, DAG, Pb., Mr. Raj Kumar Gupta, Advocate and Mr. D.S. Brar, DAG, Punjab, for the Respondent

Judgement

1. This order will dispose of Criminal Appeal No. 350 DB of 2005, filed by Sukhwinder Singh, Labh Singh, Avtar Singh and Bakhtaur Singh; Criminal Appeal No. 373 DB of 2005 filed by Manjit Singh; Criminal Appeal No. 401 DB of 2005 filed by Narain Datt and Prem Kumar, accused, who stand convicted under Sections 302, 302/149, 148, 323, 324, 326 IPC and sentenced to life imprisonment, apart from other lesser sentences. This order will also dispose of Civil Writ petition No. 2147 of 2008 filed by Rajinder Pal Singh, complainant, seeking quashing of grant of pardon to accused Narain Datt, Prem Kumar and Manjit Singh under Article 161 of the Constitution vide orders dated 28.7.2007, 20.7.2007 and 24.7.2007 of the Governor of Punjab, during pendency of their appeals against conviction.

2. Case of the prosecution is that on 3.3.2001, Dalip Singh deceased, Gurnam Singh PW6, Beant Singh and Rajinder Pal Singh PW5, all residents of Village Mehal Kalan had gone to the Court Complex of Barnala in connection with the

hearing in Criminal Case FIR No. 67 of 1997 pertaining to Police Station Mehal Kalan. The case was adjourned to 5.4.2004. Manjit Singh, Prem Kumar, Narain Datt, Sukhwinder Singh, Labh Singh, Avtar Singh and Bakhtaur Singh had also come to the Court Complex to attend proceedings in a complaint case of Manjit Singh, which was also adjourned. At about 11.15 A.M., Dalip Singh, Gurnam Singh, Beant Singh and Rajinder Pal Singh had hardly reached near the cabin of typists, with a view to board their own car, that Sukhwinder Singh, Labh Singh, Avtar Singh armed with kirpans, Bakhtaur Singh armed with "Ghop", Manjit Singh armed with "kirch", Prem Kumar and Narain Dutt empty handed who were standing behind the cabins, attacked them. Manjit Singh gave "lalkara" asking the co-accused to take revenge for Kiranjit Kaur and not to allow them (the complainant party) to escape. Labh Singh gave kirpan blow aiming at the head of Beant Singh, who raised his hands and the blow hit his right hand. Sukhwinder Singh gave "kirpan" blow aiming at the head of Dalip Singh but since he raised his hands, the blow hit his right hand. Bakhtaur Singh gave blow of his "ghop" to Dalip Singh hitting on his head. Prem Kumar and Narain Datt caught hold of arms of Dalip Singh and Bakhtaur Singh gave another "ghop" blow on the head of Dalip Singh. Bakhtaur Singh gave blow of his kirpan on the left leg of Gurnam Singh. Bakhtaur Singh gave three consecutive blows of "ghop" on the left cheek, back of the chest and left thigh of Gurnam Singh. Manjit Singh gave blow of his "kirch" hitting Rajinder Pal Singh on the right hand. He gave another blow of "kirch" hitting Rajinder Pal Singh on the left hand thumb. Sukhwinder Singh hit Gurnam Singh on the back by the handle of his kirpan. The injured raised alarm, which attracted Amarjit Singh, Balbir Singh and Jit Singh. Gurdeep Singh also came to the spot. The injured were taken to the hospital. On receiving a message from the hospital, Surinder Pal Singh, SHO PS Kotwali PW9 went to the hospital and sought opinion of the doctor about fitness of the injured to make statement. Beant Singh was declared fit to make statement and his statement Ex. PU was recorded at 2.30 P.M., which led to registration of FIR. A copy of special report reached the Magistrate at 4.55 P.M. on the same day. Statements of Rajinder Pal Singh and Gurnam Singh were also recorded. However, Dalip Singh was not declared to be fit to make statement and was referred to Rajindra Hospital, Patiala. He was shifted to Dayanand College and Hospital, Ludhiana. PW 9 visited the place of occurrence, recovered blood stained earth, prepared rough site plan and took other steps. ASI Gulab Singh PW11 visited the hospital at Ludhiana and sought opinion of the doctor about fitness of Dalip Singh to make statement and the same process was repeated every day from 5.3.2001 to 12.3.2001 but on each occasion, he was declared unfit to make statement. Dalip Singh died on 12.3.2001 at 4.30 PM. On 8.3.2001, accused Bakhtaur Singh, Labh Singh and Avtar Singh were arrested. In pursuance of disclosure statement of Bakhtaur Singh, "ghop" was recovered. On disclosure statement of Labh Singh, kirpan was recovered. On disclosure statement of Avtar Singh, kirpan was recovered. On 14.3.2001, Sukhwinder Singh was arrested and in pursuance of his disclosure statement, kirpan was recovered. Vide report Ex.PRR to the FSL, the "ghop", three kirpans and soil recovered from the place of occurrence, were

found to be stained with human blood. Post mortem of Dalip Singh was got conducted on 13.3.2001 at Civil Hospital, Ludhiana. Manjit Singh, Prem Kumar and Narain Datt were kept in column No. 2 by the I.O. They were, however, summoned u/s 319 Cr.PC., vide order dated 19.9.2001. The prosecution sought to withdraw the case against Manjit Singh, Narain Datt and Prem Kumar u/s 321 Cr.PC. which was disallowed by the trial Court vide order dated 7.11.2002 against which Criminal Revision Nos. 2248 and 2413 of 2002 were dismissed by this Court vide order dated 14.10.2003.

3. PW1 Dr. Subhash Singla medically examined Dalip Singh on 3.3.2001 at 11.45 AM and found the following injuries:-

"1. Lacerated wound 8 cm. x 0.5 cm. present on the left side of the scalp, 8 cms. above the left pinna, 1 cm. posterior to anterior hair line. Wound was placed antero-posteriorly and oblique and was bone deep. Fresh bleeding was present. Advised x-ray, was kept under observation and for surgical opinion.

2. Lacerated wound 4.5 cm. x 0.5 cm. present on the left side of head, 8.5 cm. posterior and above the left pinna, 2 cm. posterior to injury No. 1, placed horizontally and obliquely bone deep. Fresh bleeding was present. X-ray was advised and was kept under observation and surgical specialist opinion.

3. Incised wound 1 cm. x 0.5 cm. present on right dorsel on medial side, below little finger. Fresh bleeding was present. Part was swollen and tender. Advised x-ray.

4. Reddish abrasion, 10 cm. x 0.5 cm. present on the right side of chest, above scapula and scapular region."

According to the doctor, injury Nos. 1, 2 and 4 could be by blunt weapon and injury No. 3 could be by sharp-edged weapon.

4. He also medically examined Beant Singh at 12 noon on the same day and found following injuries:-

1. Incised wound, 5 cm x 0.5 cm. vertically placed on the aplmer surface of right hand, extending to the web splace, between little and ring finger shoft tissue deep and was advised x-ray.

2. Incised wound, present on the dorsel surface of distel phalynx close to shoft tissue of the nail, towards the little finger, one cm. x 0.5 cm. in size, Fresh Bleeding was present and was advised x-ray." The above injuries were declared to be simple.

5. PW1 Dr. Subhash Singla then medically examined Gurnam Singh at 12.15 PM on the same day and found following injuries:-

1. Incised wound, 9 cm. x 2.5 cm. was present on the left surface of left leg, in its upper part, just below the left knee joint and was bone deep. Fresh bleeding was present. Wound was horizontally placed. Injury was kept for x-ray and

surgical specialist's opinion.

2. Abraded contusion 4 cm. x 4 cm. on the back of right chest in scapular region and upper part of chest, was reddish in colour and was kept for x-ray.

3. Reddish abrasion, 2 cm. x 0.5 cm. was present on the left cheek.

4. Reddish abraded contusion 6 cm. x 0.5 cm. was present on the middle of left thigh on anteriolateral surface, 22 cm. above the knee joint, was kept for x- ray exam."

Injury No. 1 was declared grievous and Injury Nos. 2, 3 and 4 were declared simple.

6. At 12.30 PM, on the same day, PW1 Dr. Subhash Singla also examined Rajinder Pal Singh and found following injuries:-

1. Incised bleeding wound, 2 cm. x 0.5 cm. on the palmer surface and on the base of left thumb, and was kept for x-ray.

2. Incised bleeding wound, 2.5 cm. x 0.4 cm. was present on the palmer and medial aspect of right fore-arm in its lower part and was kept for x-ray.

3. Reddish contusion, 3 cm. x 2 cm. on the right lower part of the chest, on the back, swelling was present. X-ray was advised."

All the injuries were declared simple.

7. In cross-examination, certain observations which have been referred by the learned counsel for the parties in the evidence of this witness are:-

(i) Pointed weapon always produces a penetrating wound but no penetrating wound was found on the person of Dalip Singh.

(ii) Ex.P1 "ghop" was a pointed weapon;

(iii) No injury on the person of Dalip Singh was declared grievous or dangerous to life.

(iv) No injury on the person of Gurnam Singh was penetrating wound.

(v) Injury No. 3 on the person of Rajinder Pal Singh could be due to fall on the ground.

8. PW7 Dr. Jasbir Singh conducted post mortem on the dead body of Dalip Singh and he made the following observations:

"1. Stitched wound 6 cms. long over the left parietal region, 12 cms. above the left ear just obliquely placed near the mid line.

2. Stitched wound 5 cms. on the left parieto-occipital region transversely placed 3 cms. behind the injury No. 1.

3. C shaped curved stitched wound, 12 cms. long along the parieto - temporal

region.

4. Stitched wound 1 cm. medial and behind to injury No. 3.
5. Scabbed abrasion 6 cms. x 1 cm. over the top of the right shoulder.
6. An infected wound 1 cm. x 1/2 cm. on the dorsem of right hand.
7. Scabbed abrasion 10 cms. x 1/2 cm. over the right scapular region.
8. There was bluish discolouration with diffuse swelling below the left ear.

On exploration of the skull, there was big haematoma below the scalp. On clearing the haematoma there was fracture of left frong operietal and occipital region in its middle. A part of bone measuring 6 cms. x 4 cms. on the right parietal area was missing. Brain matter and memberane was exposed. Cranial cavity contained blood.

On examination of the thorax the lungs were congested. One examination of abdomen, liver and spleen were pale looking Rest organs were healthy.

The cause of death in this case, in our opinion was due to haemorrhage and shock as a result of head injury which was sufficient to cause death in the ordinary course of nature. All the injuries were ante mortem in nature.

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The cause of death in this case was haemorrhage and shock due to head injury. The haemorrhage is of two types, i.e. Primary and secondary. Injuries No. 1 to 4 were all on the head. Injuries No. 7 and 8 are not on the head. Injury Nos. 1 to 4 were operational injuries. I cannot say as to whether these were operational incised wounds. If the operation is performed and injuries are caused then the operational injuries are always incised wound. I did not find any other injury on the head except injuries No. 1 to 4. the haemorrhage can occur at the time of operation. In relation to injury No. 6 in this case, infection had cropped up. Injury No. 7 was in the healing process. Same is my reply in relation to injury No. 5. Injury No. 5 was not likely to cause death in this case. Same is my reply in respect of injuries No. 6, 7 and 8."

9. PW5 Rajinder Pal Singh and PW6 Gurnam Singh are injured eye witnesses, who have furnished the ocular account. Beant Singh injured, who was author of the FIR, died during pendency of the trial on 9.3.2002. He was examined-in-chief as PW-1 on 11.9.2001, but his evidence had not been completed.

10. The accused denied the prosecution allegations. Manjit Singh accused took the plea that he was found innocent during investigation. He was an eye witness to the murder and rape of co-villager Kiranjit Kaur on account of which the complainant party was annoyed with him and with Prem Kumar and Narain Datt. They had pursued the case of Kiranjit Kaur. He examined DW1 Dr. AK Singla, Handwriting Expert, DW2 HC Jaswinder Singh, DW3 HC Jora Singh, DW4 Gurcharan Singh Dhaliwal, DW5 Lakhwinder Singh, DW6 C. Amarjit Singh, DW7

HC Gurcharan Singh, DW8 JN Sharma, Advocate, DW9 Kulwant Singh, Member Panchayat, DW10 Manjit Singh, teacher working in Govt. High School, Wazidke Khurd, DW11 Rajinder Kumar, ALM, PSEB, DW12 HC Darshan Kumar, Head Warden, Sub Jail, Barnala and DW13 Santokh Singh, Math Master, Shaheed Rehmat Ali Memorial Govt. high School Qazidke Khurd, inter alia, to prove that accused Manjit Singh, Prem Kumar and Narain Datt were not present at the time of occurrence.

11. The trial court accepted the prosecution version mainly by holding that version given by Gurnam Singh PW6 and Rajinder Pal Singh PW5 who were injured witnesses, was reliable and truthful. Evidence of Beant Singh who died on 9.3.2002 and who had been examined in chief as PW1 before his death, was also read u/s 299 Cr.PC. read with Section 33 of the evidence Act. Plea of alibi raised by the accused was rejected, inter alia, on the ground that the said plea was not taken u/s 313 Cr.PC. and the defence evidence was not acceptable to substantiate the plea of alibi.

12. We have heard learned counsel for the parties and perused the record.

13. Contention raised on behalf of Bakhtaur Singh accused who is attributed fatal injuries to the deceased, is that since the death took place after nine days, intention to cause death could not be inferred and at best, knowledge to cause death could be inferred. He also submitted that injuries could not be by "ghop", which was a pointed weapon. There was nothing to show that the injuries were sufficient to cause death in the ordinary course of nature. Death may be on account of intervening circumstances unnecessary medical interference or medical negligence. Record of surgery was not produced. The injuries could be surgical injuries. Case will not fall u/s 302 IPC. He relied upon judgment of the Hon'ble Supreme Court in Harish Kumar Vs. State (Delhi Administration),

14. Learned counsel for Sukhwinder Singh accused (who attempted to cause injury on the head of the deceased but on account of deceased raising his hand), the injury was received on the hand, submitted that the injury attributed to Sukhwinder Singh could have been received by him in the course of injuries caused by Bakhtaur Singh. Injury was on the little finger and was a simple injury. In the alternative, there being no pre-meditation and there being no common unlawful object, Sukhwinder Singh could not be convicted under Sections 302/149 IPC but he may be responsible for his individual act.

15. Learned counsel for Labh Singh and Avtar Singh accused submitted that they had been attributed injuries to Beant Singh and Gurnam Singh respectively and had not touched the deceased and they could not, thus, be vicariously held liable for the acts of Bakhtaur Singh and Sukhwinder Singh.

16. Learned counsel for Manjit Singh, accused, apart from submitting that since he was attributed injury only to Rajinder Pal Singh and not the deceased, he could not be held guilty for murder, submitted that his plea of alibi stood proved. It was also submitted that weapon of offence was not recovered from him.

17. Learned counsel for Narain Datt and Prem Kumar submitted that they were empty handed and only role attributed to them was of catching hold of hands of the deceased, which was not probable. The deceased being 80 years of age, was not likely to run away and once he was given head injury, there was no reason to catch hold of him. The role of catching hold of the deceased was not substantiated by any tangible evidence.

18. Learned counsel for Manjit Singh, Narain Datt and Prem Kumar accused also submitted that they were exonerated during investigation and on their representation, the State sought to withdraw from the prosecution against them, which was not allowed by the trial court as well as by this court. During pendency of this appeal, they were granted pardon by the Governor of Punjab under Article 161 of the Constitution, which was fully justified.

19. Learned counsel for the complainant submitted that grant of pardon to Manjit Singh, Narain Datt and Prem Kumar was clear abuse of power which interfered with the hearing of the appeal. The order of pardon was vague and only mentioned that "taking into reckoning peculiar and exceptional features of the case", prayer for pardon was granted. The judgment of the trial court convicting the said accused was in operation and could not be reversed by the executive order of pardon.

20. Learned counsel for the State submitted that power of pardon was exercised on account of widespread public belief of false implication of Narain Datt, Prem Kumar and Manjit Singh, who were leaders of the Action Committee for Justice for securing justice for late Kiranjit Kaur. Learned counsel for the State relied upon judgment of the Hon''ble Supreme Court in Kehar Singh and Another Vs. Union of India (UOI) and Another, , to submit that grant of pardon does not amount to modifying or amending the judicial record and the governor could come to a different conclusion from the conclusion reached by the court. Power of grant of pardon was different from the judicial power. The order of Governor was not justiciable on merits and could not be subjected to judicial review. He also relied on judgements of the Hon''ble Supreme Court in Epuru Sudhakar and another v. Govt. of AP and another, 2006 (3) AC 447 : 2006 (4) RCR (Criminal) 616, judgment of Madras High Court in Maddela Yerra Chennugadu and others, In Re:, 1955 The Indian law Reports 92, to submit that the power could be exercised even after conviction which did not affect power of the High Court to examine the validity of conviction and sentence. He also relied upon judgements of the Hon''ble Supreme Court in Maru Ram and Others Vs. Union of India (UOI) and Others, K.M. Nanavati Vs. The State of Bombay, , Dattaraj Nathuji Thaware v. State of Maharashtra judgment of this Court in Hukam Singh v. The State of Punjab and others, AIR 1975 P&H 148 (FB), and FB judgment of Bombay High Court in State Vs. Kawas Manekshaw Nanavati, about the scope of power of pardon.

21. On merits, learned counsel for the State and the complainant submitted that, subject to decision on the issue of pardon, case of the prosecution was fully

proved against all the accused by evidence on record.

22. The questions for consideration are:-

(i) Whether case of the prosecution is proved against all the appellants by evidence on record ?

(ii) Whether order of pardon is sustainable in law ?

Re: Q.(i)

23. We are of the view that case of the prosecution stands fully established against Sukhwinder Singh, Labh Singh, Bakhtaur Singh, Avtar Singh and Manjit Singh, while Narain Datt and Prem Kumar are entitled to benefit of doubt.

24. PW5 Rajinder Pal Singh has fully supported the version given in the statement of Beant Singh on the basis of which, FIR was recorded. He has confirmed the role of all the accused. Occurrence took place in the broad day light. Identity of the accused was known to the witnesses. Rajinder Pal Singh is nephew of the deceased Dalip Singh. FIR was prompt. There is no improbability in the accused assaulting the deceased and the witnesses in the manner alleged. There is no serious infirmity in the evidence of PW5 Rajinder Pal Singh. His version is consistent and reliable. The assault was clearly pre-meditated as five of the accused came with weapons. His version is fully supported by PW6 Gurnam Singh. Though, cross-examined at length, their testimony remained unshaken. The version of the said witnesses is duly corroborated by medical evidence. We are not in agreement with the observation of the trial Court that evidence of Beant Singh could be relied upon. Excluding evidence of Beant Singh, who died before cross-examination, does not in any way affect the case of the prosecution.

25. Reference to the statement of PW5 Rajinder Pal Singh shows that Manjit Singh raised an exhortation to the co-accused to take revenge. He was armed with a "kirch". Mere non-recovery of "kirch" is not by itself of any consequence once his participation in giving exhortation and causing assault is established. At best, it may be a discrepancy in the investigation, which cannot by itself be a ground to reject the prosecution case. Moreover, the investigating agency had not challaned him and had declared him innocent, which explains the reason for not effecting recovery of weapon. His role is established by medical evidence of examination of Rajinder Pal Singh PW5, who had two injuries with a sharp-edged weapon. Manjit Singh not only gave one blow but also repeated the blow to Rajinder Pal Singh. PW-5 Rajinder Pal Singh could not have made any mistake in implicating Manjit Singh. Contention that Manjit Singh was implicated on account of enmity, cannot be accepted. It is well known that enmity is a doubled edged weapon and the same reason could have provided motive to Manjit Singh. His role is specific and is duly corroborated. He was the first to initiate the assault.

26. Evidence of Gurnam Singh and Rajinder Pal Singh which corroborates the earliest version given by Beant Singh, has to be preferred over the defence

witnesses. Manjit Singh did not raise the plea of alibi in his statement u/s 313 Cr.PC. Evidence of DW3 HC Jora Singh, DW4 Gurcharan Singh Dahliwal and DW6 C. Amarjit Singh cannot be held to be reliable. Evidence of DW5 Sakhvinder Singh is merely an opinion. So is the evidence of DW8 JN Sharma, Advocate. Evidence of DW7 HC Gurcharan Singh is not reliable to prove the plea of alibi.

27. DW-3 HC Jora Singh deposed that he was a driver of the vehicle which brought the undertrials to the Court. He heard the noise at about 11-00 A.M. and saw 25-30 persons present who were armed with kirpans and one armed with a "ghop" and he again said that the two persons were armed with kirpans and he saw 4/5 persons causing injuries to 4/5 persons. Manjit Singh, Narain Datt and Prem Kumar were known to him and they were not present on the spot. Manjit Singh in his statement u/s 313 Cr.PC. in reply to question No. 19 stated that he alongwith Prem Kumar and Narain Datt were pursuing the case relating to Kiranjit Kaur. It could not be said that he was not present in Court. DW-3 HC Jora Singh did not give his version immediately after the occurrence. Though he deposed that he had gone to the house of Lakhwinder Singh SP (D), the time of his giving statement to the SP(D) has not been furnished. As a Head Constable, it was his duty to report the version immediately and if he could specify who were not present, he should have specified who were the persons who assaulted the complainant party. He has not specified as to how he happened to know Narain Datt, Prem Kumar and Manjit Singh. He has not given complete version of even what he saw. His testimony is clearly partisan. Similarly, DW-4 Gurcharan Singh Dhaliwal, Advocate has deposed that 3/4 accused persons caused injuries to 3/4 persons. He claims to be an eyewitness. He also did not report the matter to the police about the occurrence immediately. DW-6 Constable Amarjit Singh also claims to be an eye witness, who deposed that 25/30 persons were present and he separated the parties and collected kirpans from them. He also did not immediately report the matter to the police. The evidence of these three defence witnesses is clearly partisan and cannot be held to be reliable.

28. The version of defence witnesses lends support to the prosecution case to the extent of assault of 4/5 persons by 4/5 persons. Involvement of Sukhwinder Singh, Labh Singh, Bakhtaur Singh, Manjit Singh and Avtar Singh stands established.

29. Labh Singh was the first to give a blow, which hit the hand of Beant Singh, though the blow was aimed at the head. Beant Singh was medically examined and two injuries were found on his hand.

30. Sukhwinder Singh gave kirpan blow aiming at the head of Dalip Singh, which hit his hand.

31. Bakhtaur Singh gave two "ghop" blows to Dalip Singh on the head. He also gave a blow on the left leg of Gurnam Singh and also three more blows to him. The said role was corroborated by medical examination of Dalip Singh and Gurnam Singh.

32. We do not find any merit in the contention that the death of Dalip Singh was not on account of injuries caused by Bakhtaur Singh but only on account of surgical injuries or that the injuries were not sufficient in the ordinary course of nature to cause death of Dalip Singh. It is clear that the death of Dalip Singh was on account of injuries caused by the accused Bakhtaur Singh. Intention of causing death can be clearly inferred. Sukhwinder Singh also assaulted Dalip Singh but he received injuries on the hand instead of on the head. Though, Labh Singh and Avtar Singh caused injuries to Beant Singh and Gurnam Singh respectively, they cannot avoid responsibility for the consequences, which could easily be foreseen by them in respect of injuries caused to Dalip Singh. Same is the position with regard to accused Manjit Singh. There is no reliable evidence to accept the plea of alibi raised by Manjit Singh. We have thus no hesitation in upholding conviction of Sukhwinder Singh, Labh Singh, Avtar Singh, Bakhtaur Singh and Manjit Singh.

33. We are unable to accept the plea that the offence was not of murder. The case clearly falls u/s 302 IPC. Judgment in Harish Kumar (supra) is distinguishable. Mere fact that the death of Dalip Singh took place nine days after the occurrence or that there was possibility of other causes supervening, cannot be a ground to hold that the death was on account of injuries. Dalip Singh was never fit to make any statement and he had received head injuries. He was 80 years of age. Causing of head injuries to a person of such advanced age gives rise to an inference that the act of causing head injuries was with an intention to cause death. Nexus between the injuries and the death is patent. PW-1 Dr. Subhash Singla, who first examined Dalip Singh referred him to a more specialised Hospital for the obvious reason that he was not confident of handling his case. Merely because he did not mention the injuries to be serious or grievous or dangerous to life, would, in the circumstances of the case, be immaterial. Surgery at such an advanced stage would be the last option when a patient may not otherwise also survive. Instant death is not an ingredient of the offence. Only requirement is that the death should be a consequence of the act of the accused. Once death is direct consequence of the injuries caused, there is no reason to hold that the offence does not fall u/s 302 IPC. We may also refer to parameters laid down by the Hon'ble Supreme Court in Virsa Singh Vs. The State of Punjab, , Anda and Others Vs. The State of Rajasthan, State of Madhya Pradesh Vs. Ram Prasad, and Patel Hiralal Joitaram Vs. State of Gujarat,

34. It is well settled that evidence of a doctor is a matter of opinion and if oral account is reliable, the same cannot be rejected on a hypothetical opinion of different possibilities.

35. It is patent that the accused formed an unlawful assembly with a common object of causing the death of Dalip Singh. They brought lethal weapons with them. They found the deceased an easy prey in the Court Complex, where he had come to attend the hearing. Even defence witnesses have deposed about assault by 4/5 persons with kirpans. The five accused were clearly members of

unlawful assembly and shared the common object. In these circumstances, individual role of the accused is of no significance. Section 149 IPC was fully attracted to the present situation. The law on the point has been reiterated, inter alia, in Gangadhar Behera and Others Vs. State of Orissa, .

36. The present case is a clear case where accused decided to take law in their own hands, in utter disregard of the `Rule of Law". They apparently wanted to do `justice" themselves, having assumed that the legal system will not be adequate to take care of alleged accused of murder and rape of Kiranjit Kaur. This cannot be allowed in a civilized society governed by `Rule of Law", whatever be the notion of the accused. If this is allowed, no person accused of a crime may have an opportunity to prove his innocence before Court and the system of punishment on proof of guilt, in a fair trial, will become meaningless and will lead to anarchy. It is only the `Rule of Law" that can strike the right balance between the degree of retribution and the harm caused or crime committed. Where individuals take the retribution decision in their own hands, it could trigger a desire for further retribution in all those sanctioned excessively or wrongfully, which could lead to a vicious circle that can easily spiral out of control. The result would be dangerous blood feuds. Such `vigilantism" is also a reflection of legitimacy of the State as a whole. Only when individuals respect the criminal justice system and its legitimacy, will they continue to obey the law themselves.

37. Article 21 of our Constitution guarantees right to life, unless deprived by procedure established by law. Article 10 of the Universal Declaration of Human Rights, 1948 provides right to fair and public hearing by an independent tribunal in determination of rights and obligations of any criminal charge. Article 11 thereof, provides for presumption of innocence. Similar is the provision of Article 14 of the International Covenant of Civil and Political Rights, 1966 (ICCPR - Ratified by India in 1976).

38. As regards Prem Kumar and Narain Datt, who were empty handed, they have been given the role of having caught hold of the deceased. If it can be held that they were members of the unlawful assembly, even if no overt-act is proved against them, they will be liable for the murder. However, we are of the view that in absence of tangible evidence, they ought to be given benefit of doubt.

39. Accordingly, while upholding conviction and sentence of Sukhwinder Singh, Labh Singh, Bakhtaur Singh, Avtar Singh and Manjit Singh and dismissing their appeals, we give benefit of doubt to Narain Datt and Prem Kumar and acquit them. Their appeals stand allowed.

Re: Q(ii)

40. The question for consideration is whether order of pardon is immune from challenge and if not, whether the same is sustainable. The nature and scope of power of pardon/remission has been gone into in our recent judgment dated 1.2.2008 in Criminal Appeal No. 633-SB of 1994 (Lakhwinder Singh v. State of Punjab), wherein after referring to the case law, it was observed as under:-

"9. It may be noticed that though, remission is an executive power of the State, such a power cannot be exercised ignoring public interest. Power of the Executive is not absolute and has to be exercised to achieve the purpose for which it is conferred and giving of liberal remissions to convicts of serious offences is clearly failure to exercise power for the purpose for which the same is conferred.

9.1 The issue of nature of power of pardon/remission under Articles 72/161 of the Constitution and under Sections 432/433 Cr.PC. has been gone into in several decisions of the Hon"ble Supreme Court.

In K.M. Nanavati Vs. The State of Bombay, , the Hon"ble Supreme Court referred to the history of the pardon provisions and noticed that though historically, the same may have been royal prerogative under constitutional scheme, the same is governed by rule of law and not by rule of men. Rule of law implies absence of arbitrary exercise of power.

In Maru Ram and Others Vs. Union of India (UOI) and Others, it was observed:-

"62. An issue of deeper import demands our consideration at this stage of the discussion. Wide as the power of pardon, commutation and release (Arts. 72 and 161) is, it cannot run riot; for no legal power can run unruly like John Gilpin on the horse but must keep sensibly to a steady course.....It is that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power. We proceed on the basis that these axioms are valid in our constitutional order.

63.....It necessarily follows that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty of the citizen, cannot be a law unto itself but must be informed by the finer canons of constitutionalism.....

It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the Executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.....The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will....

All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author, and Founder of society.

65.....For example, if the Chief Minister of a State releases every one in the prisons in his State on his birthday or because a son has been born to him it will

be an outrage on the Constitution to let such madness survive. We make these observations because it has been brought to our notice that a certain Home Minister's visit to a Central Jail was considered so auspicious an omen that all the prisoners in the jail were given substantial remissions solely for this reason.....

If, on the other hand, a brutal murderer, blood thirsty in his massacre, has been sentenced by a court with strong observations about his bestiality, it may be arrogant and irrelevant abuse of power to remit his entire life sentence the very next day after the conviction merely because he has joined the party in power or is a close relation of a political high- up.....

66. Once we accept the basic theses that the public power vested on a high pedestal has to be exercised justly the situation becomes simpler. The principal considerations will turn upon social good by remission or release...."

In *Kehar Singh and Another Vs. Union of India (UOI) and Another*, , it was observed:-

"7.....In the United States, however, after the founding of the Republic, a pardon by the President has been regarded not as a private act of grace but as a part of the constitutional scheme. In an opinion, remarkable for its crudities and clarity, Mr. Justice Holmes, speaking for the Court in *W. I. Biddle v. Vucro Perovich*, (1926) 71 Law ed 1161, enunciated this view, and it has since been affirmed in other decisions. The power to pardon is a part of the constitutional scheme, and we have no doubt, in our mind, that it should be so treated also in the Indian Republic....."

In *Ashok Kumar alias Golu Vs. Union of India and others*, , it was observed:

"14. In *Kehar Singh and Another Vs. Union of India (UOI) and Another*, on the question of laying down guidelines for the exercise of power under Art. 72 of the Constitution this Court observed in paragraph 16 as under:

"It seems to us that there is sufficient indication in the terms of Art. 72 and in the history of the power enshrined in that provision as well as existing case law, and specific guidelines need not be spelled out. Indeed, it may not be possible to lay down any precise, clearly defined and sufficiently channelised guidelines, for we must remember that, the power under Art. 72 is of the widest amplitude, can contemplate a myriad kinds of and categories of cases with facts and situations varying from case to case, in which the merits and reasons of State may be profoundly assisted by prevailing occasion and passing time. And it is of great significance that the function itself enjoys high status in the constitutional scheme."

These observations do indicate that the Constitution Bench which decided *Kehar Singh's* case was of the view that the language of Art. 72 itself provided sufficient guidelines for the exercise of power and having regard to its wide amplitude and the status of the function to be discharged thereunder, it was

perhaps unnecessary to spell out specific guidelines since such guidelines may not be able to conceive of all myriad kinds and categories of cases which may come up for the exercise of such power. No doubt Maru Ram and Others Vs. Union of India (UOI) and Others, the Constitution Bench did recommend the framing of guidelines for the exercise of power under Arts. 72 and 161 of the Constitution. But that was a mere recommendation and not a ratio decidendi having a binding effect on the Constitution Bench which decided Kehar Singh's case. Therefore, the observation made by the Constitution Bench in Kehar Singh's case does not upturn any ratio laid down in Maru Ram's case. Nor has the Bench in Kehar Singh's case said anything with regard to using the provisions of extant Remission Rules as guidelines for the exercise of the clemency powers."

In Swaran Singh Vs. State of U.P. and Others, , it was observed:-

"12. In view of the aforesaid settled legal position, we cannot accept the rigid contention of the learned counsel for the third respondent that this Court has no power to touch the order passed by the Governor under Article 161 of the Constitution. If such power was exercised arbitrarily, mala fide or in absolute disregard of the finer canons of the constitutionalism, the by product order cannot get the approval of law and in such cases, the judicial hand must be stretched to it.

13. In the present case, when the Governor was not posted with material facts such as those indicated above, the Governor was apparently deprived of the opportunity to exercise the powers in a fair and just manner. Conversely, the order now impugned fringes on arbitrariness...."

In State of Haryana and Others Vs. Mohinder Singh, , circulars issued by the State of Haryana u/s 432 Cr.PC. were considered. It was observed that prisoners had no absolute right for remission of their sentence except what is prescribed by the law and the circulars issued thereunder. Convicts of particular offences could certainly be relevant consideration not to exercise power of remission. In the said circulars, convicts of rape were specifically excluded.

Again in Satpal and another v. State of Haryana and others, 2000 (2) R.C.R. (Criminal) 757 : AIR 2000 SC 1702, it was found that the Governor granted pardon without application of mind without considering the total period of sentence actually undergone. It was observed:-

"6....When an accused is convicted of heinous offence of murder and is sentenced to imprisonment of life the authority who has been conferred with power to grant pardon and remission of sentence under Article 161 of the Constitution must be made aware of the period of sentence in fact undergone by the said convict as well as his conduct and behaviour while he has been undergoing the sentence which would be all germane considerations for exercise of the power. Not being aware of such material facts would tend to make an order of granting pardon arbitrary and irrational as has been held by this Court in

Swaran Singh Vs. State of U.P. and Others, The entire file had been produced before us and we notice the uncanny haste with which the file has been processed and the unusual interest and zeal shown by the authorities in the matter of exercise of power to grant pardon. We also fail to understand how the order in question could show that the prisoner is in jail while in fact he was free at large and had not surrendered to serve the sentence notwithstanding the positive direction of this Court dated 10-12-1998 disposing of the appeal filed by the State."

In Epuru Sudhakar and Another Vs. Govt. of A.P. and Others, it was observed:-

"35. Two important aspects were also highlighted by learned Amicus Curiae; one relating to the desirability of indicating reasons in the order granting pardon/remission while the other was an equally more important question relating to power to withdraw the order of granting pardon/remission, if subsequently, materials are placed to show that certain relevant materials were not considered or certain materials of extensive value were kept out of consideration. According to learned Amicus Curiae, reasons are to be indicated, in the absence of which the exercise of judicial review will be affected.

36. So far as desirability to indicate guidelines is concerned in Ashok Kumar's case (supra) it was held as follows:

"17. In Kehar Singh's case (supra) on the question of laying down guidelines for the exercise of power under Art. 72 of the Constitution this Court observed in paragraph 16 as under:

"It seems to us that there is sufficient indication in the terms of Art. 72 and in the history of the power enshrined in that provision as well as existing case law, and specific guidelines need not be spelled out. Indeed, it may not be possible to lay down any precise, clearly defined and sufficiently channelised guidelines, for we must remember that the power under Art. 72 is of the widest amplitude, can contemplate a myriad kinds and categories of cases with facts and situations varying from case to case, in which the merits and reasons of State may be profoundly assist by prevailing occasion and passing time. And it is of great significance that the function itself enjoys high status in the constitutional scheme".

These observations do indicate that the Constitution Bench which decided Kehar Singh's case (supra) was of the view that the language of Art. 72 itself provided sufficient guidelines for the exercise of power and having regard to its wide amplitude and the status of the function to be discharged thereunder, it was perhaps unnecessary to spell out specific guidelines since such guidelines may not be able to conceive of all myriads kinds and categories of cases which may come up for the exercise of such power. No doubt in Maru Ram's case (supra) the Constitution Bench did recommend the framing of guidelines for the exercise of power under Arts. 72/161 of the Constitution. But that was a mere recommendation and not ratio decidendi having a binding effect on the

Constitution Bench which decided Kehar Singh's case (supra). Therefore, the observation made by the Constitution Bench in Kehar Singh's case (supra) does not upturn any ratio laid down in Maru Ram's case (supra). Nor has the Bench in Kehar Singh's case (supra) said anything with regard to using the provisions of extant Remission Rules as guidelines for the exercise of the clemency powers."

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48. Inevitable conclusion, therefore, is that if it comes to the knowledge of the Government that the pardon has been obtained on the basis of manifest mistake or patent misrepresentation or fraud, the same can be rescinded or cancelled.

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63. Exercise of Executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty. This discretion, therefore, has to be exercised on public consideration alone. The President and the Governor are the sole Judges of the sufficiency of facts and of the appropriating of granting the pardons and reprieves.

However, this power is an enumerated power in the Constitution and its limitations, if any, must be found in the Constitution itself. Therefore, the principle of Exclusive Cognizance would not apply when and if the decision impugned is in derogation of a Constitutional provision. This is the basic working test to be applied while granting pardons, reprieves, remissions and commutation."

41. We may also refer to observations of the Hon"ble Supreme Court in paras 22, 25, 34, 64, 66 in Epuru Sudhakar (supra), laying down that power of remission was not immune from judicial review and could be struck down if the same was exercised on irrelevant considerations.

42. Thus, though there is no dispute about the legal position that power to grant pardon is constitutional power without any limitation and could be exercised even during pendency of an appeal, it does not mean that the same could be exercised on irrelevant grounds. Such power is also subject to judicial review on well known grounds - illegality, irrationality and impropriety. Power has to be exercised for a valid purpose. The judgments in Kehar Singh, Epuru Sudhakar, Madeela, Maru Ram, K.M. Nanavati, Bikas Chatterjee, Hukam Singh and State of Bombay v. KM Nanavati (supra) relied upon by learned counsel for the State do not go beyond the law discussed above.

43. Coming to the facts of the present case, the justification pleaded in the reply is as under:-

"Ever since the lodging of FIR, there has been a widespread public belief that

Sarvshri Narain Dutt, Prem Kumar and Manjit Singh had been falsely implicated in the murder of Dalip Singh, because of their role as leaders of the Action Committee set up to secure justice for the Late Kiranjit Kaur's family. This has been corroborated by the investigation into the case, during the course of which, the above three persons were found to be innocent. The Intelligence Wing has also supported the innocence of these persons."

44. The above reason is clearly unsustainable for exercise of power of pardon. If approved, it would amount to holding that "public belief" or "view of the investigating agency" would override a Court verdict about guilt or otherwise of an accused. This will be against Rule of Law, and cannot be allowed. Moreover, there is no barometer to gauge "the public belief". There is no reference to the fact that the court had rejected the view of the investigating agency and the defence evidence and even disallowed prayer for withdrawal of the case or that appeal was pending in this court where the same issue was to be gone into. It is not mentioned as to how "public belief" was assessed.

45. It may be worthwhile to refer to the observations of the Hon'ble Supreme Court in People's Union for Civil Liberties Vs. Union of India (UOI) and Another, -

"12. Then again what is the yardstick to measure public perception. Admittedly, there is no barometer to gauge the perception of the people. In a democracy there are many people who get elected by thumping majority to high legislative offices. Many a times public perception of a class of society in regard to such people may be that they are not desirable to hold such post but can such a public opinion deprive such people from occupying constitutional or statutory offices without there being a law to the contrary ? There is vast qualitative difference between public prejudice and judicial condemnation of an Institution based on public perception....."

46. In State of Maharashtra v. Rajendra Jawanmal Gandhi etc., AIR 1997 SC 3986, it was observed:-

"37.....A trial by press, electronic media or public agitation is very antithesis or rule of law. It can well lead to miscarriage of justice....."

47. The Law Commission of India in its 200th report (31st August 2006), considered the issue of prejudice caused by media trial of guilt or otherwise of an accused. If public perception about guilt or otherwise of an accused were to be substitute for trial in Court, this will be interference with rule of law. Exercise of power under Article 161 of the Constitution on perceived public opinion is clearly impermissible, whatever be the width of power for grant of pardon. In a system governed by rule of law, guilt or innocence is a matter of adjudication by a Court and public opinion cannot substitute such adjudication. We have already referred to the provisions of Article 21 of the Constitution, Universal Declaration of Human Rights, International Covenant of Civil and Political Rights, laying down the need for a fair procedure and a fair trial from the point of view of the accused as well as from the point of view of a victim. No person can be punished or exonerated

merely on the basis of a perceived public opinion.

48. Question (ii) is answered accordingly.

49. In view of above, the writ petition is allowed and the impugned orders granting pardon to Manjit Singh, Narain Datt and Prem Kumar are set aside.

50. The writ petition and Criminal Appeals are disposed of in above terms.