

Case NO.:
Appeal (crl.) 722 of 1993

PETITIONER:
JASWANT SINGH

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 04/04/2000

BENCH:
D.P. WADHWA & RUMA PAL

JUDGMENT:
JUDGMENT

2000 (2) SCR 903

The Judgment of the Court was delivered by

RUMA PAL, J. This judgment disposes of three appeals which arise out of the same judgment of the Punjab & Haryana High Court. The appellant in the first appeal has challenged the judgment because it upheld his conviction under Section 323 and sections 302/34 of the Indian Penal Code (IPC) in respect of the murder of Kulwant Singh and Bidhi Shankar. The three appellants in the second appeal have also appealed against their conviction by the High Court for the same offence under Sections 148, 307/149, 323/149, 302 and 302/149 IPC. The appellant in the third appeal was the complainant and he is aggrieved by the judgment of the High Court because two of the accused were acquitted.

The case of the prosecution was that there was a long standing enmity between the accused and the deceased. Darshan Singh a relative of the accused had been murdered. Kulwant Singh and Bidhi Shankar had been charged with the murder, but had been released on bail. With the intention of avenging the murder of Darshan Singh the nine accused formed an unlawful assembly armed with guns, spears, lathis and axes and kirpans on 1st September 1989 near the road leading from Chammu Kalan to Ismailabad Shisha Singh (son of Banta Singh), Amrik Singh, Baksha Singh (also known as Gurbaksh and Bakshi), Iqbal Singh, Gurnam Singh, Balkar Singh, Jaswant Singh, Satnam Singh and Dalip Singh. Amrik Singh and Balkar Singh were carrying guns; Jaswant Singh and Satnam Singh were carrying lathis, Shisha Singh was carrying a 'gandasi', Iqbal Singh and Gurnam Singh were carrying 'naizas' and Baksha Singh and Dalip Singh were carrying kirpans. That morning Jagjit Singh (appellant in the third appeal) and Bidhi Shankar were driving two motor-cycles with Kulwant Singh riding pillion on Jagjit's motor cycle and Raj Rani, Bidhi Shankar's mother, riding pillion on the motor-cycle of her son, Bidhi Shankar along that road. They were going to get medical treatment for Kulwant Singh and Raj Rani. They were waylaid on the road at 11.00 A.M. by the nine accused persons. Jaswant Singh (appellant in the first appeal) struck Jagjit on the head with a lathi as a result of which Jagjit's motor-cycle went out of control and fell on the road. Shisha Singh inflicted a gandasi blow to Bidhi Shankar. Jagjit Singh fled and hid behind a wall when Balkar Singh fired a shot at him. Kulwant Singh and Bidhi Shankar both ran into the house of Shisha Singh (son of Waryam Singh) and locked the door. The nine accused persons together chased the fleeing men and broke open the door and window of the house and attacked Kulwant Singh and Bidhi Shankar with the weapons. Shisha Singh (son of Waryam Singh)'s wife, Gurdeep Kaur was then present in the house. Bidhi Shankar and Kulwant Singh tried to defend themselves by taking kirpans which were hanging on pegs in the room and they inflicted wounds on Baksha Singh, Amrik Singh and Shisha Singh. Although all the nine accused took part in the attack on Kulwant Singh and Bidhi Shankar, Iqbal and Baksha in fact, inflicted the fatal wounds on Kulwant Singh while Shisha,

Gumam, Satnam and Dalip struck Bidhi Shankar fatally. After the incident took place the assailants left taking their weapons with them.

Jagjit Singh lodged the complaint with the local police station at 12.20 p.m. He named each of the nine accused. (Ex. PA). On the basis of his complaint a case was registered under Sections 302, 307, 323, 148, 149, 120-B and 452 IPC against Shisha Singh (son of Banta Singh) (accused no. 1), Baksha Singh (accused no. 2), Amrik Singh (accused no. 3), Gurnam Singh (accused no. 4), Iqbal Singh (accused no. 5), Dalip Singh (accused no. 6), Balkar Singh (accused no. 7), Jaswant Singh (accused no. 8) and Satnam Singh (accused no. 9).

Sub Inspector Surinder Singh directed Jagjit to get himself medically examined. The Doctor Dr. Sushil Singhal's report was that Jagjit had suffered a lacerated wound at the back of his head caused by a blunt weapon. S.I. Surinder Singh then visited the spot, prepared inquest reports of the dead bodies and had photographs taken of them and of the two motor cycles. From the room where the dead bodies of Kulwant Singh and Bidhi Shankar were found, he collected the broken pieces of the door and windows, broken sheaths, chaddar, turban, one empty cartridge, blood, blood-stained earth and the hair clutched in the right fist of Kulwant Singh. The two motor-cycles were also taken into possession (Exhibits PR1 to PR8). A site plan was prepared.

The next day, a post-mortem was conducted on the body of Kulwant Singh by Dr. P.K. Goel and Dr. K.K. Chawla. They submitted a report (Ex. PC) to the effect that death was due to hemorrhage and shock because of multiple injuries which were ante mortem and sufficient to cause death in the ordinary course of nature. The injuries found were listed as follows :

(1) There was an incised wound 15 cm x 3 cm on the right side of face, transversely placed starting from just near right ear going towards chin, bone deep. Muscles and sub-cutaneous tissues were infiltrated with blood. Clotted blood was present in the wound.

(2) There was an incised wound in the neck cutting through and through except a flap of skin posteriorly by which head was connected with trunk. All the muscles vessels, trachea vertebral column had been cut open at the level of C3-4 vertebra. The wound was starting 6 cm behind the right ear lobule and 1 cm below it; going across below it. The front of neck to left side ending at the level of left ear lobule four cm below it. Near the left end of the wound muscles are partially cut. Muscle and subcutaneous tissues were infiltrated with blood.

(3) There was an incised wound 2 x 0.2 cm transversely placed on the back of left little finger over the middle phalanx. Sub cutaneous tissues were deep.

(4) 4 MM oval lacerated wound on the lateral side of right arm 8 cm below the accromian. The edges were blackened. A corresponding wound was present on the middle side of the arm 3 MM lacerated wound a track of infiltration is found connected with the two wounds.

(5) There was an oval lacerated wound 3 MM in size 1 cm above the left nipple. Subcutaneous tissues were deep. The margins were blackened. Wound was situated on the 4th rib. No pellet was found on exploration.

(6) There was oval lacerated wound 4 MM size situated 4 cm to left of mid line just over the 9th rib. Margins were blackened. No pellets found on exploration.

(7) There was an incised wound on the lateral side of right knee joint 6x2 cms bone deep. Subcutaneous tissues and muscles were infiltrated with blood." A post mortem was also conducted in respect of Bidhi Shankar's body by Dr. S. Saini. His report (Ex. PL) was that Bidhi Shankar's body had the

following twenty injuries :

1. A large incised wound over the right side of face extending from right ear pinna to chin. Underlying structure including bone, muscle and blood vessel were all cut and open. The size of the wound was 8x2 inches. Clotted blood was present in and around the wound.
2. An oblique incised wound on the upper part of the left side of for head. It was bone deep and underlying bone was also cut. The size was 3 inches x 1/2 inch.
3. An oblique incised wound on the left side of face extending from cheek bone down to lower mandible. The size was 4 inches x 1/2 inch. It was muscle deep and the underlying muscles were cut
4. An incised elliptical (sic) wound on left side of upper part of neck. It was 1/2" x 1" in size. Both ends narrow and the margin was sharp it was 1/2 inch in breadth. Clotted blood was present around the wound.
5. An incised elptical (sic) wound horizontal on left side of the mid line near middle of neck. It was 3 cm x 0.75 cm in size. Narrow on both end and horizontal.
6. A small oval subcotancous deep blackish margins size 1 cm x 0.8 was present over upper part of left side of chest over 2nd intercortal space. No track inside was found. Margins were irregular.
7. An incised elptical (sic) wound 2 cm and bone deep over the left side of mid line of sternum over 5th intercortal space.
8. An incised elptical (sic) wound 3 cm x 1.8 cm over the left side of lower part of chest over 9th intercortal space. On exploration wound was going deep into lung and injuring lower part of lung.
9. An horizontal bruise 3 cm x 1 cm darkish reddish hi colour near the anterior area of lower part of injury No. 8.
10. An incised wound on the right side and front of chest in the 5th intercostal space in the mamerry line. It was elptical (sic) shape with both ends narrow and was about 2 cm 0.75 cm. On exploring it was extending upto lung and there was blood in the cavity.
11. An irregular bruise 1.5 x 0.3 cm on the right side of upper part of chest. It was darkish, in colour.
12. Another irregular bruise darkish, reddish in colour over the upper part of the sternum. 1.5 cm xl cm.
13. A small oval lacerated wounds sub-cotaneous deep 0.5 cm x 0.5 cm in size over the abdominal wall on right lateral side above 3 cm below the rib margins. Margins were black and irregular. No track or pellet were found.
14. Little finger of the right hand was amputated at the base margins were clean cut. Ring finger of this hand had a bone deep incised wound, crossing it obliquely over its breadth, and terminal phalynx of big finger had a muscle deep incised wound covering its breadth obliquely.
15. Another incised wound over the middle right hand over its palm. It was muscle deep and of the size of 3 cm x 0.7 cm. Both edges were narrow.
16. An oblique, long bruise over lower part of right side of the chest and abdomen. 13 cm x 1 cm in size and darkish, reddish in colour.
17. Incised elptical (sic) wound 3.5 cm x 1.5 cm and subcotaneous tissues deep over the middle of front of right thigh.

18. A long incised wound over the dorsal surface of upper part of left forearm. It was vertical and was 11 cm x 2.5 cm in size and was muscle deep.

19. Another incised wound 2.5 cm x 1 cm, muscle deep with both ends narrow about 9 cm above the wrist over the dorsal surface of left fore arm.

20. A transverse incised wound 2.5 cm x 0.5 cm medial to medial malleolus over right leg. Margins were sharp. Subcutaneous tissues were deep and infiltrated of blood around it was present"

It was also opined that death was due to hemorrhage and shock and due to the above named injuries which were ante mortem in nature and sufficient to cause death in the ordinary course of nature.

Shisha Singh and Baksha Singh were arrested on 5.9.89. Pursuant to statements made by them while in police custody a Gandasi (Ex. PV) and a Kirpan were recovered. Gumam Singh was arrested on 6.9.89. His statement (Ex. PA) led to the recovery of a blood stained naiza blade. Dalip Singh and Satnam Singh were arrested on 8.9.89. Dalip Singh's statement led to the recovery of a Talwar and Satnam Singh's statement (Ex. PO) also led to the recovery of a Talwar. After the arrest of Balbir Singh and Iqbal Singh, on 8.9.89 they also made disclosure statements (Ex. PJ and PK) leading to the recovery of a gun, one empty cartridge and 4 live cartridges. It was found that the gun in fact belonged to Iqbal Singh. Amrik Singh was arrested on 16.9.89. His statement (Ex. PP) led to the recovery of an empty cartridge and a gun which belonged to Mohinder Singh.

On 26.9.89 Mohinder Singh was also arrested on the ground that he had been part of the conspiracy to murder Kulwant Singh and Bidhi Shankar (Ex. PW). On 17.9.89 SI Surinder Singh applied for collecting hair from the beard of Amrik Singh for comparison with the hair found clutched in Kulwant Singh's hand. The Magistrate's order recorded Amrik's refusal (Ex. PW1).

The weapons recovered were sealed in the presence of one Chetan Dev. These together with the various items collected from the site, were sent to the Forensic Science Laboratory for analysis. The Laboratory reports (Ex. PZ, Ex. PZI) stated, inter alia, that the blood found on the naizas and kirpans was human blood and the empty cartridges had been fired from the recovered guns. (Ex. PN).

After completion of the investigation the police submitted the charge sheet and the case was committed to the Court of sessions for trial.

The charges as recorded by the Trial Court were that :

(i) All the accused were charged under Section 148 IPC that they were members of unlawful assembly, in prosecution of their common object to commit murders of Kulwant Singh and Bidhi Shankar and attempted to commit murder of Jagjit Singh Marwah.

(ii) Bakkar Singh was charged with firing a gun shot at Jagjit Singh with intent and knowledge that his death could be caused under Section 307 IPC. The rest of the accused were charged for the various liabilities under Section 307 read with Section 149 of the Indian Penal Code.

(iii) Baksha Singh and Iqbal Singh were charged for the offence of committing murder of Kulwant Singh and the rest of the accused were charged for the offence under Section 302 read with Section 149 of the Indian Penal Code.

(iv) Shisha Singh and Gurnam Singh, Satnam Singh and Dalip Singh were charged with causing the death of Bidhi Shankar under Section 302 of the Indian Penal Code and Baksha Singh, Amrik Singh, Iqbal Singh, Jaswant

Singh, Balkar Singh and Mohinder Singh were charged for the offence under Section 302 read with Section 149 of the Indian Penal Code for the murder of Bidhi Shankar.

(v) Jaswant Singh was charged with having voluntarily caused hurt to Jagjit Singh Marwah under Section 323 of the Indian Penal Code whereas the rest of the accused for the act were charged for the offence under Section 323 read with Section 149 of the Indian Penal Code.

(vi) All the accused were further charged that in prosecution of common object of the unlawful assembly they had agreed to commit the murder of Kulwant Singh and Bidhi Shankar and attempted to commit murder of Jagjit Singh Marwah and Mohinder Singh abetted the commission of the said offence by giving his licensed gun to his co-accused Amrik Singh to use the same for the commission of the said offence, in prosecution of the agreement and was charged under Section 302 read with Section 120-B IPC.

(vii) Mohinder Singh was also charged for the offence punishable under Section 30 of the Arms Act that he having parted with the possession of his D.B.B.L. Gun on 1.9.1989 contravened the terms of the licence.

(viii) Amrik Singh was charged for the offence punishable under Section 27 of the Arms Act for making unlawful use of the gun in the commission of murders of Kulwant Singh and Bidhi Shankar and also charged for the offence under Section 25 of the Arms Act for having in his possession D.B.B.L. Gun along with two live cartridges without any permit or licence.

(ix) Iqbal Singh was charged under Section 30 of the Arms Act that he was licensee of single gun No. 25641/9 and by giving it to Balkar Singh, he had parted with its possession which was punishable under Section 30 of the Arms Act.

(x) Balkar Singh was charged for the offence punishable under Section 27 of the Arms Act for making unlawful use of the single barrel gun for making an attempt to commit the murder of Jagjit Singh Marwah."

The defence of Shisha Singh, Baksha Singh and Amrik Singh was self defence. According to them, Amrik Singh was dragged into the house by Kulwant Singh and Bidhi Shankar and that Shisha Singh and Baksha Singh in their attempt to rescue Amrik Singh caused the injuries to Kuldip Singh and Bidhi Shankar. All the other accused claimed that they were falsely implicated and were not there at all.

Thirteen witnesses were examined by the prosecution, namely, Gurdeep Kaur (PW 1), Jagjit Singh (PW 2), Dr. P.K. Goel (PW 3), Raj Rani (PW 4), Dr. Susheel Sigal (PW 5), (who examined Jagjit Singh, Shisha Singh, Amrik Singh and Baksha Singh) Chetan Dev (PW 6), ASI Sube Singh (PW 7), Satish Kumar (Police Photographer) (before whom the disclosure statements of the accused and by whom recoveries of the weapons were made, (PW 8), Dr. D.S. Saini, (PW 9), ASI Rajmal (PW 10), Mukesh Kumar (PW 11) who drew the site plan) Raghbir Singh (PW 12 who recorded the FIR) and SI Surinder Singh (PW 13).

The defence produced six witnesses (a) Subhash Chopra (DW 1) in support of Iqbal's defence that Iqbal had deposited his gun with him; (b) Dr. R.K. Kaushal (DW 2) to testify as to the nature of gun wounds; (c) Mahesh Inder, court official to produce an FIR filed by Shisha relating to a dispute between one Darshan Singh and Kulwant Singh and subsequent murder of Darshan Singh by Kulwant Singh and his associates which included Bidhi Shankar, (d) Dr. S.K. Bhalla (DW 4) and (e) Dr. A. Allawani (DW 5) both of whom testified as to the wounds on Amrik (f) ASI Ranga Ram (DW 6) to prove that Dalip Singh had claimed to be an eye witness to the murder of Darshan Singh.

The Trial Judge meticulously considered the evidence and the arguments and

in an elaborate judgment found charges 1 to 6 proved against all the accused except Mohinder Singh who was acquitted of the charge under Section 148 IPC. Mohinder Singh was however found guilty of violating Section 30 of the Arms Act. Balkar Singh and Iqbal Singh were also found guilty of offences under Sections 30 and 27 of the Arms Act but acquitted in respect of the offence under Section 25 of the Arms Act as conviction under that Section could not be done without the sanction of the District Magistrate which had not in fact been obtained.

After convicting the accused for the offences as found, the Trial Court considered the arguments on the quantum of punishment and sentenced Shisha Singh, Baksha Singh and Amrik Singh for their offence under Section 302 IPC and for the remaining accused convicted under Section 302/149 IPC to imprisonment for life. For the other convictions different terms of imprisonment and fines were imposed. All sentences were to run concurrently.

All the accused appealed. The High Court was of the view that the case against Gurnam Singh, Iqbal Singh, Dalip Singh, Balkar Singh, Satnam Singh and Mohinder Singh had not been proved and as such they were acquitted of all charges. The High Court altered the conviction in respect of Shisha Singh, Baksha Singh, Amrik Singh and Jaswant Singh to offences under Sections 302/34 IPC. Jaswant Singh was held guilty under Section 323 IPC and Shisha Singh, Baksha Singh and Amrik Singh under Sections 323/34 IPC. Amrik Singh's conviction under Section 27 of the Arms Act was also maintained. As far as Mohinder Singh was concerned his conviction under Section 302/120 B IPC was set aside but his conviction and sentence under Section 30 of the Arms Act was upheld.

Jagjit sought to prefer an appeal by way of Special Leave before this court against the acquittals. The Special Leave Petitions against Mohinder Singh, Balkar Singh, Dalip Singh and Satnam Singh were dismissed but granted as far as Iqbal Singh and Gurnam Singh were concerned.

Since all the appeals are being disposed of simultaneously keeping in view the fact that the third appeal is one against acquittal, it would be appropriate to deal with that appeal first before assessing the evidence.

The principle to be followed by Appellate Courts considering an appeal against an order of acquittal is to interfere only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable" it is a compelling reason for interference (See : Shivaji Sahabrao Bobade v. State of Maharashtra, [1973] 2 SCC 793). The principle was elucidated in Ramesh Babulal Doshi v. State of Gujarat, [1996] 9 SCC 225 :

"While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions."

[See also : George v. State of Kerala, (1998) CrL. L.J. 2034 (SC)].

We have found such demonstrable perversity in the decision of the High Court, particularly in its appreciation and application of the provisions of Sections 34 and 149 IPC.

Both sections deal with the vicarious liability of an accused for an offence committed by another. Under Section 34 IPC "when a criminal act is done by several persons in furtherance of the contemplation of all, each of such persons is liable for that act in the same manner as if it were done

by him alone" Similarly Section 149 IPC provides for the guilt of every member of an unlawful assembly if in prosecution of a common object an offence is committed, or which the members know would be likely to be committed in prosecution of that object.

The similarity of the sections lies in the requirement of a common object or intention or a pre-arranged plan in furtherance of which the act is done. The difference lies in the degree of actual participation required in the criminal enterprise. The nature of participation under Section 34 IPC has been considered in the case of Ramaswami Ayyangar v. State of Tamil Nadu, [1976] 3 SCC 779 at p. 783 :

"Section 34 is to be read along with the preceding Section 33 which makes it clear that the "act" spoken of in Section 34 includes a series of acts as a single act. It follows that the words "when a criminal act is done by several persons" in Section 34, may be construed to mean "when criminal acts are done by several persons". The acts committed by different confederates in the criminal action may be different but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim, or may otherwise facilitate the execution of the common design. Such a person also commits an "act" as much as his co-participants actually committing the planned crime, in the case of an offence involving physical violence, however, it is essential for the application of Section 34 that the person who instigates or aids the commission of the crime must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence the commission of which is the aim of the joint criminal venture. Such presence of those who in one way or the other facilitate the execution of the common design, is itself tantamount to actual participation in the "criminal act". The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result."

The emphasis is on physical presence, and promotion or facilitation of the crime.

As far as section 149 IPC is concerned in addition to the common object, merely being a member of an unlawful assembly within the meaning of Section 141 IPC may be sufficient. As held in Lalji v. State of U.P., [1989] 1 SCC 437.

"Once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with lathis, and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly. While overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149. It must be noted that the basis of the constructive guilt under Section 149 is mere membership of the unlawful assembly, with the requisite common object or knowledge.

[See also State of A.P. v. Thakkadiram Reddy & Ors., [1998] 6 SCC 554.]

The High Court accepted the statement of Jagjit Singh to the effect that

all the nine accused including Gurnam Singh and Iqbal Singh being armed, way-laid the two motor cycles, that Jagjit was struck on the head by Jaswant Singh, that Shisha Singh hit Bidhi Shankar with the 'gandasi', and that all the accused chased the fleeing Kulwant Singh and Bidhi Shankar and broke open the door of the house in which they had taken shelter.

The High Court also accepted the evidence of Raj Rani, the mother of Bidhi Shankar (PW4). This is what was said about her testimony :

"Now coming to the testimony of Raj Rani (PW 4) she has reiterated the prosecution version as given by Jagjit Singh (PW2). She too was cross-examined at length but the defence counsel could not elicit anything which could favour the defence and discredit the prosecution."

The specific evidence given by Raj Rani was that Gurnam Singh and Iqbal Singh armed with naizas along with the other accused not only way laid them, but were present when Shisha Singh inflicted a gandasi blow on the head of Bidhi Shankar and Jaswant Singh hit Jagjit with a lathi. She had also said that all the accused chased the two victims shouting that the enemies would not be spared, and that all the accused excepting Balkar Singh who stood guard outside, entered the room after the door was broken and that after the accused left, she found Bidhi Shankar and Kulwant Singh were both dead with multiple injuries on their bodies.

The High Court also accepted the evidence of Gurdeep Kaur (PW 1) in no uncertain terms when it said :

if

"Gurdeep Kaur (PW 1) in whose house the occurrence had taken place was cross-examined at length but nothing material could be extracted from her testimony which could shatter her credibility or would throw any doubt about her presence at the place."

Again at another place it was reiterated :

"She did not deviate from the prosecution version despite a searching cross-examination. She withstood the test of cross-examination."

Now Gurdeep Kaur had testified :

"I had seen from the adjoining room that Bakshish Singh and Iqbal Singh accused grappled with Kulwant Singh and attempted to throw him on the ground but he was resisting their that attempt. Amrik Singh started loading his gun to fire at Kulwant Singh but Iqbal Singh intervened and stopped Amrik Singh from loading the gun and added that Kulwant Singh would be killed in the same manner as his father was killed. Kulwant Singh then had caught the beard of Amrik Singh and they grappled with each other. Jaswant Singh also joined the accused to over power Kulwant Singh and Baksha Singh with kirpan severed the head of from the body. Iqbal Singh, Jaswant Singh and Baksha Singh had also caused injuries to Kulwant Singh."

She had also categorically asserted :

"Bidhi Shankar was attacked by Dalip Singh, Shisha Singh, Gurnam Singh & Satnam Singh and had killed to death with Kirpan and Naiza and Gandasi."

Thus the accepted evidence was that there was an unlawful assembly of all the accused, which, with the common object or premeditated plan of murdering Kulwant Singh and Bidhi Shankar, waylaid chased and attacked them resulting in their death. All the elements of both sections 149 and 34 IPC were there.

Although each case must be decided on its own facts, a somewhat similar

situation arose in State of Haryana v. Tek Singh, [1999] 4 SCC 682. In that case

"They came all of a sudden armed with the deadly weapons and attacked the victims, who rushed to take shelter in house. In such a fact situation, some contradictions as to who assaulted whom, with what weapon and whether it was by the sharp edge or blunt side of the gandasa are bound to be there, particularly when the blows are given in quick succession, it would be against the ground reality to expect the eye witnesses to depose exactly on which part of the body the blow landed. In these circumstances, even if there is some exaggeration with regard to the infliction of blows, it would hardly be a ground for rejecting their testimony. It may be futile to expect an exact description of the details of the attack on the victims by each accused from the window of one of the deceased who witnessed the dastardly act or from eyewitnesses. The accused were known to the widow and the witnesses. Their names were disclosed immediately. Hence, the presence of the accused at the scene of offence was established. They all were armed with deadly weapons and came together. In such a situation, when the presence of the accused who were armed with deadly weapons is established beyond doubt, Sections 148 and 149 IPC would come into operation and they would be liable for the offences."

In the case before us the High Court found the ingredients of both section 34 EPC and of Section 149 IPC were proved as far as all the accused were concerned, when it said :

"It can well be interred that the accused on coming to know that Jagjit Singh and Bidhi Shankar had started on their motorcycles towards Ismailabad, premeditated and collected near the house of Darshan Singh and in order to take revenge of the murder of Darshan Singh brother of Shisha Singh, accused all of them in prosecution of the common object which was to kill Kulwant Singh and Bidhi Shankar did commit the murder of both of them."

This should have been sufficient to hold all the accused guilty under Sections 34 and 149. And yet the High Court acquitted Gurnam Singh and Iqbal Singh on the ground that :

"Their participation in the commission of the crime does not stand proved. According to Gurdeep Kaur (PW-1), Iqbal Singh and Gurnam Singh accused were armed with Neza. However, the Doctors, who performed autopsy on the dead bodies of Kulwant Singh and Bidhi Shankar did not find any injury caused by Neza. Therefore, their participation in the crime is not free from doubt. Consequently, the conviction of Iqbal Singh and Gurnam Singh accused is set aside."

In other words what the High Court did was look for evidence that Gumam Singh and Iqbal Singh had actually struck the blows on the victims. This conclusion is not only contradictory to its own finding but is based on an erroneous interpretation of the provisions of both Section 34 and 149 FPC as authoritatively laid down. The order of the High Court acquitting Gurnam Singh and Iqbal Singh therefore cannot stand.

We may now consider the evidence to see whether the guilt of Shisha Singh, Baksha Singh, Amrik Singh, Gumam Singh and Iqbal Singh has been established.

A fact which has not been disputed either by the complainant or the 'accused and which both sides have called in aid of thek respective cases is that it all started with a dispute over a 'Bara' between Kesar Singh and Darshan Singh on the one side and Kulwant Singh (deceased) on the other. According to the accused, because of this enmity, Darshan Singh was murdered by Kulwant Singh and his associates including Bidhi Shankar. In fact both Kulwant Singh and Bidhi Shankar were charged with Darshan Singh's murder. All the accused are either relatives of Darshan or Kesar: Shisha

Singh, Baksha Singh and Amrik Singh were Darshan's brothers: Gurnam Singh and Iqbal Singh were Darshan's sons and Jaswant Singh is Kesar's son.

According to the prosecution this enmity provided the motive for the commission of the crime by the accused. According to the defence it provided the motive for Kuldip Singh and Bidhi Shankar not only to initiate the attack on Amrik Singh but also to falsely implicate the other accused of the crime. Both the courts below have accepted the version of the prosecution and we see no reason to differ with their assessment of the evidence in this regard.

We have also noted the concurrent finding of fact that the accused being armed had accosted the victims while they were travelling on motorcycles from Chammu Kalan to Ismailabad. Both Courts accepted the evidence of Gurdeep (PW1), Jagjit (PW2) and Rajrani (PW4) as being consistent, corroborative and credible. Even if one excludes the presence of the other accused whose acquittals by the High Court were not interfered with by this Court, the remaining six accused formed an unlawful assembly within the meaning of Section 141 IPC. Their object in forming the assembly was to murder Bidhi Shankar and Kulwant Singh. This premeditation is evidenced not only by their foregathering on the road with deadly weapons but also by their subsequent conduct commencing with the lathi blow to Jagjit Singh by Jaswant Singh and the gandasī blow to Bidhi Shankar by Shisa Singh and followed by the concerted chase of the victims and forcible entry into the house where the victims had taken shelter and finally leaving the site after the murder, together.

"Prior concert and arrangement can, and indeed often must, be determined from subsequent conduct, as for example, by a systematic plan unfolding itself during the course of the action which could only be referable to prior consent and pre arrangement, or a running away in a body or a meeting together subsequently."

[See : Pandurang v. State of Hyderabad, ATR (1955) SC 216.]

That the murders took place in the room where the bodies were found has not been disputed. The blood stained floor, the photographs and the site plan which were proved substantiate this. Evidence of the broken door corroborates the forcible entry.

The accused Gurnam Singh, Iqbal Singh and Jaswant Singh say that they were falsely implicated, but they led no evidence either oral or documentary to show that they were elsewhere. Even the High Court accepted that these accused were present at the scene of the murders. The evidence shows further that they actively participated in the crime. Apart from the oral testimony of the prosecution witnesses is the unimpeachable medical evidence of the doctors who conducted the post mortems and the recovery of the weapons from the places indicated by the accused all of which sufficiently prove their involvement in the crime.

As far as Gurnam Singh and Iqbal Singh are concerned they were carrying naizas. A naiza is a spear or pike - like weapon causing invisible wounds. The High Court mis-read the evidence of doctors when it said that "the doctors did not find any injury caused by Neza". The post mortems showed several deep incised wounds on both the deceased. The doctors did not say that the injuries could not be caused by naizas. What they had said was that the incisions could have been caused by a sharp weapon "including a gandasī or a kirpan". The word "including" indicates that it could have been some other sharp weapon.

The Trial Court in fact found :

"The injury No. 3 which was incised would 2 x 0.2 cm on the person of Kulwant Singh, injury no. 4 which was 1/2 x 1/4" elliptical wound injury no. 7 which was incised elliptical wound 2 CM and bone deep on the person of

Bidhi Shankar, Keeping in view the size of the injuries (they) could possibly to the result of Neza blow."

In fact the narrowness and depth of the incised wounds as indicated in the Post Mortem Reports supports the Trial Court's finding. The naizas recovered consequent upon the disclosure statements made from the places indicated by Gurnam Singh and Iqbal Singh were found by the Forensic Science Laboratory to be covered with human blood. No explanation was given by either of these accused as to this telling circumstance which indicated their participation in the crime.

As far as Jaswant Singh is concerned, that he formed part of the armed group which intercepted the victims and initiated the assault by striking a blow on Jagjit Singh's head is established by the evidence of Jagjit Singh himself, and Rajrani. That Jagjit Singh's wound could have been caused by a lathi blow is corroborated by the evidence of Dr. Sushil Singhal. Jaswant Singh's complicity in the attack of the victims continued when he along with the other accused chased the victims as they fled to take shelter. This would be sufficient to hold him guilty under Sections 149 and Section 34 IPC. In addition his actual participation in the killing was seen and testified to by Gurdeep Kaur. Gurdeep Kaur's evidence was that Jaswant Singh facilitated

the killing of Kulwant Singh not only by beating him but also by helping the other accused to overpower him. It is true that in cross examination Gurdeep Kaur said "I do not know who of the accused had caused injuries to whom of the deceased as I had seen all the accused causing injuries to the deceased" but this does not detract from evidence of participation of Jaswant Singh in the murder of the deceased. The effect of this seeming contradiction is considered in greater detail in connection with Shisha Singh, Baksha Singh and Amrik Singh. The medical evidence of bruises is consistent with the finding of lathi blows and has been so stated by the doctors who conducted the post-mortems.

As far as Shisha Singh, Baksha Singh and Amrik Singh are concerned, they admitted they were there but pleaded self defence. The accused claimed that both the Trial Court and the High Court had erred in relying on the evidence of Gurdeep Kaur as she was not an independent witness and particularly when her statements at the trial had not been made earlier when interrogated by the police under Section 161 of the Code of Criminal Procedure. It is also submitted that neither Jagjit (PW 2) nor Raj Rani (PW 4) had seen the commission of crime and that although Gurdeep Kaur in her evidence had referred to the presence of two other eye witnesses namely Omkar Nath and Som Nath neither them had been called as witnesses.

It would be unfair to the Courts below to hold that they had merely relied on the evidence of Gurdeep Kaur. They had considered the evidence of all the witnesses including the material and medical evidence particularly the wounds on the victims and concluded that the charges under Section 302/34, 323/34 IPC were established. Besides the place of occurrence being inside the residence of Gurdeep Kaur it was natural that she should be present.

Section 161(2) of the Code requires the person making the statements 'to answer truly all questions relating to such case, put to him by such officer....'. It would, therefore, depend on the questions put by the police officer. It is true that a certain statement may now be used under Section 162 to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872. Previously, the law was as enunciated in Tehsildar Singh and Another v. The State of Uttar Pradesh, [1959] 2 SCR 875: as "omissions, unless by necessary implication be deemed to be part of the statement, cannot be used to contradict the statement made in the witness-box."

Now the Explanation to Section 162 provides that an omission to state a fact in the statement may amount to contradiction. However, the explana-

tion makes it clear that the omission must be a significant one and 'otherwise relevant' having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

Reading Section 161(2) of the Criminal Procedure Code with the Explanation to S.I.62, an omission in order to be significant must depend upon whether the specific question, the answer to which is omitted, was asked of the witness. In this case the Investigating Officer, PW 13 was not asked whether he had put questions to Gurdeep Kaur asking for details of the injuries inflicted or of the persons who had caused the injuries.

As already noted Gurdeep Kaur's testimony in this regard was believed by both Courts. Both the trial Court as well as the High Court were of the view that although Gurdeep Kaur had not given to the Police particulars of who had caused which injury she had not deviated from the actual occurrence and the manner in which it had happened. This Court has also held that "an incident where a number of persons assaulted three persons at one and the same time with different weapons, some contradictions as to who assaulted whom and with what weapon were not unlikely, and such contradictions could not be made a ground to reject the evidence of eyewitnesses, if it was otherwise reliable. See : Satbir v. Surat Singh, [1997] 4 SCC 192. Both the Courts below have also come to the conclusion as a matter of fact that the omissions were not contradictions in the particular context. There is no reason for us to interfere with this concurrent finding of fact.

In any event, the viciousness and extent of the injuries inflicted on the victims compared with the injuries suffered by Shisha Singh, Baksha Singh and Amrik Singh belies the plea of self defence. Kulwant Singh's head was virtually severed from his body. Both bodies bore deep slash wounds, incised wounds gunshot wounds and extensive bruising. On the other hand Dr. Sushil Singhal (PW 5) who examined Shisha Singh had only found a wound between the left thumb and forefinger (Ex. DD). He also testified that he had examined Baksha Singh and found one wound on the left forearm (Ex. DE). Even the defence witnesses (DW5 and DW6) said that Amrik Singh had suffered cuts and lacerations. Furthermore, the plea was taken by these accused for the first time in their statements recorded under Section 313 of the Code of Criminal Procedure Finally, no such plea of self-defence was put in cross-examination to any of the prosecution witnesses. The High Court, in the circumstances, rightly rejected the plea of self-defence as an afterthought.

For all these reasons, we allow the appeal of the complainant by setting aside the order of acquittal and restoring the decision of the Sessions Court and dismiss the appeals filed by Shisha Singh, Baksha Singh, Amrik Singh and Jaswant Singh. Consequent upon our allowing the complainant's appeal, all the appellants are also convicted under Section 302/449 IPC. If any of the accused is on bail he shall surrender to his bail bond and be taken into custody forthwith to serve out the sentences imposed upon him.