

CASE NO.:

Appeal (crl.) 815 of 2001

Appeal (crl.) 814 of 2001

PETITIONER:

HARJIT SINGH & ORS

Vs.

RESPONDENT:

VS.

DATE OF JUDGMENT: 16/08/2002

BENCH:

N. SANTOSH HEGDE & D. M. DHARMADHIKARI.

JUDGMENT:

DHARMADHIKARI, J

This appeal by three-convicted accused is being decided with Criminal Appeal No.814 of 2001 preferred by the State of Punjab against the acquittal of other three accused in the same incident. These appeals arise out of the judgment of the High Court of Punjab and Haryana dated 27th November, 2000. Additional sessions Judge, Amritsar in Sessions Trial No.1/95 convicted all the six accused for offences under Sections 302, 307, 323, 324, 326 read with Sections 148 & 149 IPC and sentenced them all to life imprisonment and separate sentences with fines for other offences for which they were charged.

The High Court in appeal set aside the conviction of accused Inderjit Singh, Ajaib Singh and Satinderpal Singh. The High Court also acquitted the other three co-accused for charge under Sections 148, 149, IPC.

The three accused namely, Harjeet Singh, Varinderjit Singh and Gursharan Singh have been convicted under Sections 302, 307, 326, 324 and 323 read with Section 34 IPC and the sentences imposed on them by the trial court have been maintained.

All the six accused persons have been alleged to be members of an unlawful assembly and with common object alleged to have committed murder of Harjinder Singh (hereinafter referred to as the "deceased") on 15.10.1994 in Village Chhichrewal within the jurisdiction of Police Station, Jhobal.

The accused were also charged as members of unlawful assembly to have fired at Gurvinder Singh and thus committed an offence under Section 307/149, IPC. They were also charged in the same capacity to have voluntarily caused grievous hurt to Ajeet Singh (not examined). The accused Varinderjit Singh has been charged in furtherance of common intention of the unlawful assembly with common object to have caused grievous injuries to Harjinder Singh by means of "Kirpan," constituting an offence under Section 326 read with Section 149, IPC. Tarsem Singh (who died during the trial) was also charged for voluntarily causing hurt to Harjinder Singh (deceased) and thereby committed an offence under Section 323 read with Section 149, IPC. Accused Ajaib Singh is alleged to have voluntarily caused hurt to Ajit Singh (not examined) and Darshan Singh PW5 with a sharp edged weapon called Gandhali and thereby committed offences punishable under Section 324 read with Section 149 IPC.

We shall first take up for decision Criminal Appeal No.815 of 2001

preferred by the convicted accused Harjit Singh, Varinderjit Singh and Gursharan Singh hereinafter they shall be described as accused Nos.1,2 & 6 being the order in which they were arraigned before the trial court.

The prosecution case rests mainly on the alleged eye witness account of the incident given by Hari Singh (PW1) who is brother of the deceased. Prosecution also examined Gurvinder Singh (PW3) who is also alleged to have been an eyewitness to the incident and received injuries. Darshan Singh PW5 was also examined as alleged eyewitness who received injury in the incident.

The eyewitness account given by Hari Singh (PW1) before the trial court is required to be stated in necessary details for the purpose of appreciating and weighing the prosecution case. This version of the incident given by him is that on 15.10.1994 at about 8.30 in the morning he was proceeding with his son Harjinder Singh (deceased) towards their field. They reached near a circular road and at the place where their stock of wood was lying. Accused No.2, Varinderjit Singh @ Vicky armed with a "Kirpan, Ajaib Singh acquitted accused No.4 armed with a Gandhali and Tarsem Singh (who died during trial) armed with Dang came on a tractor. They were abusing the deceased and shouting that 'they would teach him a lesson.' The witness then raised an alarm 'Mar Ditta-Mar Ditta' whereupon his brother Ajit Singh (not examined), Darshan Singh s/o Ajit Singh (PW5), Sandeep Singh (not examined) and Gurvinder Singh PW3 came there. Accused No.2, Varinderjit Singh (Vicky) inflicted a Kirpan blow on the deceased which hit him on his right elbow, Tarsem Singh, the co-accused who died during the trial gave a Dang blow to deceased Harjinder Singh on the back of his shoulder. Ajit Singh (not examined), Darshan Singh PW5 and Gurvinder Singh, PW3 tried to rescue the deceased and in the process they also received injuries. Accused Varinderjit Singh @ Vicky also inflicted a Kirpan blow on the leg of Darshan Singh PW5. Ajit Singh, who is not examined as witness, also received two injuries on the left leg by blows of Kirpan inflicted by Varinderjit Singh @ Vicky.

When the three accused Harjinder Singh-A2, Ajaib Singh-A4 and Tarsem Singh (who is dead) as members of the first party, who came in tractor, were inflicting blows on the deceased and the above named alleged eye witnesses, the other three accused persons, namely, Harjit Singh (A1), armed with revolver, Inderjit Singh (acquitted accused No.3) with pistol and convicted accused No.6 Gursharan Singh armed with a double barrel gun came on the spot. It is stated that they were all raising Lalkaras and were abusing. All of them came from the side of house of accused No.6 Gursharan Singh. Further version of PW1 Hari Singh is that when he saw the three accused who joined later armed with firearms he went inside his house and took out a double barrel gun. The eyewitness further states that he saw accused No.1 Harjit Singh firing from his revolver at deceased from a distance of 4-5 Karmas. Gursharan Singh accused No.6 also fired from his double barrel gun at the deceased hitting him on head and arms. On receiving the injuries the deceased fell down. It is alleged that accused No.1 Harjit Singh, accused No.6 Gursharan Singh continued to fire with their firearms towards members of the complainant party. It is then stated that acquitted accused Satinder Pal Singh (A5) with his firearm hit Gurvinder Singh PW3 causing him injury on the right knee. Hari Singh (PW1) then stated that as he saw his son the deceased and Gurvinder Singh PW3 to have fallen on the ground due to injuries caused to them by the bullets fired by the accused, he fired from his own double barrel gun which hit accused No.1 Harjit Singh. He stated that after this incident of firing the accused left the place of occurrence leaving their tractor at the spot.

According to the Autopsy Surgeon, Dr. Harpal Kaur (PW2), the following ante-mortem injuries were found on the person of the deceased:-

1) A punctured lacerated wound with inverted margins measuring 0.5 cms in diameter over left lumbar region of the abdomen mid-way between iliac crest and left costal margins, in the mid axillary line. Blackening present around the wound. On probing the wound was found going deep into the abdominal cavity.

2) A punctured lacerated wound measuring 0.75 cms in diameter on right lumbar region of the abdomen mid-way between iliac crest and the right costal margins, in the mid axillary line. Margins were inverted. No blackening around the wound was found present.

3) A lacerated wound 0.5 cms in diameter over ventral aspect of the right fore-arm mid-way between elbow joint and wrist joint. The wound had inverted margins and on probing was directed upwards towards the elbow. No blackening was found around the wound.

4) A lacerated wound 1.5 cms x 0.25 cm. over the right side of the scalp 3 cms lateral and parallel to the anterior posterior mid-line of the scalp.

On dissection underlying subcutaneous tissue was lacerating and enchyomosed. Underlying skull bone was intact. On opening the skull meninges and brain matter was healthy.

1) An incised wound 5cms x 2 cms over the right elbow joint dorsal lateral aspect. Underlying subcutaneous tissue and muscles cut. Underlying olecranon process of right ulna was cut up to the cortex.

2) An abrasion present over left hip, lateral aspect measuring 5 cms x 0.2 cm.

3) Two parallel abrasions 12 cms x 0.2 cms each at a distance of 2 cms from each other on the left arm posterior aspect over the deltoid region. Underlying subcutaneous tissue enchyomosed. Muscles and bone healthy.

4) An abrasion 1cm x 1 cm on the dorsal aspect of the middle finger of the right hand over middle (sic) underlying muscles and bone healthy.

In the opinion of the Autopsy Surgeon injuries 1&2 caused to abdomen communicated with each other. Doctor also found a cartridge measuring 2 cms in length and 0.25 diameter embedded in the muscles at a distance of 7 cms from injury No.3 which was caused in right forearm midway between elbow joint and wrist joint. The doctor in cross-examination said that injury No.1 caused a punctured lacerated wound with inverted margins measuring 0.5 cms in diameter over left lumbar region of the abdomen. Injury No.2 punctured wound on right lumbar region of the abdomen on which margins were inverted and injury No.3 is on the right forearm from where an embedded cartridge was removed could be result of one single fire. She also admitted that injuries 6 to 8 were possible by rubbing against hard surface. The autopsy surgeon was very definite in her opinion that injury No.4 which is a lacerated wound on the head cannot be the result of a firearm, as there was no blackening or charring. To support her opinion that injuries 1 to 3 could be caused by one single bullet the doctor said that the dimensions of injuries 1 and 3 were the same and injuries 1 to 3 were in the same line and were possible with one bullet.

The prosecution also got medically examined injuries alleged to have been caused to witnesses Darshan Singh (PW5) Gurminder Singh (PW3) to ascertain the nature of injuries caused to them in the alleged incident. We shall deal with that medical report at the appropriate stage when we take for consideration the part allegedly played in the incident by the convicted accused.

According to the prosecution on a disclosure statement made by accused Satinder Pal Singh (Ex.P4) all the firearms alleged to have been used by the accused were recovered with 12 cartridges wrapped in a gunny bag under the heap of crop in the field near the tubewell of accused Inderjit Singh. The

recovery memoranda is Ex.PU/1. Memorandum of disclosure statement Ex.P4 and memorandum of recovery of arms Ex.PU/1 have been signed as witness by Faqir Chand and Virsa Singh both are Police Officer of the rank of Police Assistant Sub-Inspector. Investigating Officer Puran Singh PW9 admits that no independent witnesses have signed the memoranda of disclosure and recovery. Firearms and cartridges recovered were sent to the Forensic Science Laboratory, Chandigarh for obtaining opinion of the Ballistic Expert. In the opinion of the Ballistic Expert the empty cartridges sent for examination could have been fired from the recovered firearms. Copy of the report of the Forensic Science Laboratory is Ex.PZ.

The defence of accused Harjit Singh A1 as contained in his statement recorded under Section 313 Cr.P.C. is as under: He accepts his presence on the date and time of the incident. He also admits that he was carrying his licensed revolver. According to him he belongs to communist party and as was on the hit-list of the terrorists he was allowed to have a licensed fire-arm which he normally carried on his person for his self protection. According to him the cause of the incident is long pending dispute regarding the piece of land on which the complainant party had stocked their wood and thereby caused obstruction to the path which led to the houses of the accused party. To explain the nature of dispute over the piece of land he states that he is member of the Panchayat and with co-accused had approached the Gram Panchayat with a request that the path by which they approached their houses from the village be paved with bricks as the same gets flooded during rainy season. Hari Singh PW1 and their relations including his son deceased Harjinder Singh were opposing such a move as they wanted to illegally occupy that part of the village common land. The Panchayat had approached Hari Singh (PW1) and members of his family but they persisted in their stand. In September 1994 an application was moved before the Naib Tehsildar for demarcation of the street. The members of the staff of Revenue Department and Panchayat visited the spot on 22.2.1994 and held measurement. Hari Singh (PW1) was asked to sign the proceedings prepared by the Kanungo but he refused to sign it. Villagers raised the level of the street by putting earth on it for paving the same with bricks. Deceased Harjinder Singh had placed some logs of wood on the pavement which were removed by the Panchayat before raising the level of the street. On 14.10.1994 the deceased and his relations removed the earth from the pavement. The respectable members of the Panchayat and village requested them to desist from doing so.

On 15.10.1994 the deceased brought the logs of wood on tractor and placed them on the pavement. Tarsem Singh (accused who is dead) and Varinderjit Singh @ Vicky A2 objected as obstruction was caused to passage to their houses. Whereupon deceased who was accompanied with Gurvinder Singh PW3 declared that they would not allow anyone to pave the street. The deceased was carrying a double barrel gun and Gurvinder Singh PW3 a spear. According to accused Harjit Singh he was attracted towards the spot from his nearby house as he heard a noise of quarrel (Raula). The deceased and Gurvinder Singh PW3 made an attempt to assault accused Tarsem Singh and Vicky. Accused Harjit Singh then requested the deceased not to pick up quarrels by placing logs of wood on the path. The deceased thereupon blamed Harjit Singh being member of Gram Panchayat to be the root cause of quarrel and he had been instrumental in raising the level of the street. The deceased on thus getting enraged fired two shots at Harjit Singh, which hit him. They were making further advances towards him to assault. It is at that time, according to Harjit Singh, he opened fire in his defence from the revolver that he was carrying. He further stated that accused Gursharan Singh was also attracted towards the spot on hearing Raula. Then he intervened to rescue Harjit Singh and in the process was also assaulted by PW3 Gurvinder Singh. According to Harjit Singh on receiving a shot from the firearm of the deceased he was seriously injured and was taken to Civil Hospital, Amritsar. He remained indoor patient till 24.10.1994. His statement was recorded by the police in which he gave the version of the incident but the police did not make any investigation against the members of the complainant party.

Thus the plea of Harjit Singh, accused No. 1 is that since his house was near the place of incident he was attracted by the commotion and went to the

spot. He was carrying his licensed revolver which he always carried being member of the communist party and on the hit list of the militants. When deceased fired at him and injured him he fired back at him in exercise of right of private defence of his person. It is also stated that at that time Hari Singh PW1 Darshan Singh PW5 and Ajit Singh were not present and they have falsely been described as eyewitnesses to the incident.

#### CASE AGAINST HARJIT SINGH (A-1)

We take up for consideration first the case of Harjinder Singh (A1).

Learned senior counsel Mr. U.R. Lalit assails the conviction of the accused (A-1) on several grounds. Some of the grounds urged by him are common in assailing the conviction of other two co-accused named Varinderjit Singh @ Vicky (A-2) and Gursharan Singh (A-6). He submits that as has been tried to be proved by the alleged eye-witnesses examined by the prosecution, the incident resulting in death of the deceased happened in two parts. In the first part of the incident, the co-accused Varinderjit Singh @ Vicky (A-2) armed with Kirpan, Ajaib Singh (A-4) armed with Gandhali and Tarsem Singh (who died during trial) armed with a Dang came on tractor. It is submitted that these three co-accused might have proceeded together on the tractor but it is not possible from that evidence and from their subsequent acts to infer that they had a common intention to commit murder of the deceased. They did not carry with them any fire arms. They had proceeded towards the spot only because the deceased had been obstinate in asserting his right to the portion of land on which he had stacked his wood. Learned counsel submits that the other three accused viz., Harjit Singh (A-1), Inderjit Singh (A-3) and Ajaib Singh (A-4) went to the spot after they had heard a commotion described as Raula or noise of fighting. The act of members of party No. 2 in rushing towards the scene of occurrence, where the members of the first party after reaching on a Tractor had already clashed with the deceased and Gurvinder Singh (PW-3), does not show a common intention on their part to commit murder of the deceased.

From the cross-examination of Hari Singh (PW-1), brother of the deceased, it is pointed out to us that version of giving of Lalkaras by the members of the second party who had rushed towards the scene is a material improvement over version of the eye-witnesses given by them to the police in their statement under Section 161 Cr.P.C. Reading portion of cross-examination of Hari Singh (PW-1) it is pointed out that Hari Singh admitted that he had taken out his own gun and had fired in self-defence. From the Injury Report of Harjit Singh (A-1), it is pointed out that he was seriously injured and his condition was serious when he was admitted to the hospital. On behalf of the accused, Harjit Singh (A-1), the learned counsel severely criticized the reasoning of the High Court in rejecting his plea of self-defence. The High Court on the basis of Injury Report of the accused (A-1) inferred that as he had suffered serious injuries on his legs, he could not have fired in self-defence. Learned senior counsel appearing for the accused assails the above reasoning and conclusion reached by the High Court for rejecting the defence plea of the accused (A-1). He submits that the investigation in the case made by the Investigating Officer was partisan, one sided and did favour to the complainants. In his cross-examination, the Investigating Officer, Puran Singh (PW-9) admits that he had come to know that in the same incident, accused Harjit Singh (A-1) had suffered serious injuries and co-accused Varinderjit Singh and Gursharan Singh had also suffered injuries yet he had made no investigation as to how those injuries were caused to the above members of the accused party.

The learned counsel appearing for the accused argues that in incident in which two parties clashed and there were allegations of cross-firing and assaults on each other, it was the duty of the prosecution to have also explained the injuries sustained by the members of the accused parties. Non-explanation of the injuries to the members of the accused party shows that prosecution has not come out with full and truthful version of the incident. It has suppressed the genesis of the crime. It is, therefore, argued that the eye-witness account given by Hari Singh (PW-1) who is father of the deceased and being his near and dear one should not be believed in the absence of independent corroboration to his version. The incident took place in the day time in the village and must have

been witnessed by many independent witnesses but none of them was examined by the prosecution. He submits that there has been a clear attempt on the part of Hari Singh (PW-1) to rope in as many members of the families of the accused party as was possible. In order to involve other co-accused who had taken no overt part in the incident, a material improvement was made by him in the statement in court by attributing that both the members of the parties (nos. 1 & 2) were raising Lalkaras indicating common intention on their part. It is further pointed out that attempt has been made as an after thought by Hari Singh(PW-1) to explain serious injuries caused to the accused (A-1) with fire arms by taking a false plea that in order to save his son (the deceased Harjinder Singh), Hari Singh (PW-1) had to take out his own gun and fire at the accused, Harjit Singh (A-1). It is argued that this version of Hari Singh (PW-1) is artificial and a lame attempt on his part to some how explain serious fire arms injuries caused to accused Harjit Singh (A-1). This fact of his own firing was not stated by him in his statement under Section 161 Cr.P.C made to the police. The relevant part of the statement of Hari Singh (PW-1) in the court reads thus:-

"I fired twice from my gun. Both the fires might have hit Harjit Singh. But I had not stated to the police in my statement Ex.P.A that any of my fire hit Harjit Singh. I did not state in my statement that Harjit Singh was injured with my fire."

It is on the above circumstances, improvements and omissions, in the statement of Hari Singh (PW-1) that the learned counsel appearing for the accused Harjit Singh (A-1) submits that plea of self-defence of the accused should be accepted by the court. The submission made is that accused (A-1) was seriously injured. The medical report clearly shows that the injuries caused to him were by fire arm. The statement of Hari Singh for the first time in court that injuries to the accused (A-1) were caused by shots fired from his gun is an after-thought and cannot, therefore, be believed. It is, therefore, submitted that Harjit Singh (A-1) who had suffered a fire arm shot from deceased, had to open fire in exercise of his right of private defence of his person. It is argued that there is fallacy in the reasoning of the High Court that accused (A-1) having suffered serious injuries on the legs could not have fired back in self-defence and therefore, his case has to be disbelieved. It is argued that admittedly accused (A-1) had not suffered any injury on any vital part. It is not the medical opinion that by sustaining fire arm injuries on the legs, he might have fallen unconscious. If that be so even after receiving the bullet injuries on his legs, he could have fired back to save himself.

We have given very careful consideration to the relevant evidence and the submissions made by the learned counsel on behalf of accused (A-1). In our opinion, in spite of infirmities in the prosecution case as highlighted above, the plea of self-defence is not available to the accused (A-1) for other reasons. There is nothing on record to disbelieve the version of the prosecution witnesses that three accused as members of the first party armed with lethal weapons came on the tractor and challenged the deceased who was asserting his right on piece of land over which he had placed his stock of wood. The first party has, therefore, a serious grievance against the deceased. Accused Harjit Singh (A-1) was member of the Panchayat and as per his own defence version, he was making efforts through the Panchayat and Revenue Authorities to get the land cleared from encroachment of the deceased so that access through the path to their houses remains unobstructed. His version is that he was attracted by the noise of quarrel between the accused who had first arrived on the spot and the deceased. He admits that on hearing Raula or commotion, he went to the spot with his revolver. He as a member of the Panchayat with other accused wanted that the encroached land be cleared for access to the houses of the accused. His rushing towards the spot with revolver in his hand clearly indicates that he had gone there to help the three other co-accused who had reached the spot before him on a tractor with weapons in their hands. The accused Harjit Singh (A-1), thus, joined the three accused who had earlier reached on the spot on tractor. He was, therefore, one of the members of the aggressor party and had joined others on the spot with his revolver. He being one of the aggressors can claim no right of self-defence. His plea that being on the hit list of terrorist he always carried his licensed arms does not satisfactorily explain his conduct of rushing towards the

spot with revolver. Accepting the defence version that the deceased fired at the accused (A-1) and seriously injured him on the legs, it can be said to be an act committed by deceased in exercise of his (deceased's) right of private defence. In such circumstances, if the deceased had first fired at the accused (A-1), as the latter arrived on the spot with a revolver, the right of private defence was available to the deceased and not to the accused.

Not much importance can be attached to the fact that there was serious lapse on the part of Investigating Officer in not investigating the facts leading to the cause of injuries to the accused (A-1) and the other co-accused in the same incident. It has been admitted on behalf of the accused that they had not filed any counter complaint or First Information Report against the members of the deceased party. There is no explanation for the same. Even if the accused (A-1) was admitted in hospital, nothing prevented him or other co-accused from lodging a report of commission of offence by the members of the deceased party. The plea of self-defence, therefore, is clearly an after-thought. The accused (A-1) had suffered serious fire arm injuries in the incident and could not possibly have denied his presence and participation in the incident. Accused (A-1) has, therefore, come up with the false plea of self-defence which, for the aforesaid reasons we do not find worthy of acceptance. The conviction of the accused Harjit Singh (A-1), therefore, deserves to be maintained under Section 302 IPC for causing death of the deceased.

We shall now take up for consideration the cases of convicted accused Varinderjit Singh @ Vicky (A-2) and Gursharan Singh (A-6).

Case against the accused Varinderjit Singh @ Vicky (A-2).

As per the eye-witness account, accused Varinderjit Singh @ Vicky (A-2) was member of the first party who went on tractor to the spot with a Kirpan.

Learned counsel firstly submits that accused (A-2) who was a member of the first party could not have been convicted under Section 302 with aid Section 34 of IPC by attributing common intention to him with co-accused Harjit Singh who shot at and killed the deceased. It is submitted that the case of prosecution is that the deceased died by fire arm injuries caused to him by accused Harjit Singh (A-1). The medical evidence also supports the version that the three injuries Nos. 1, 2 and 3 could have been caused by one bullet. There is an entry-wound and exist-wound and a deep injury on forearm from which a cartridge embedded in the muscles was recovered as per the post-mortem report of the deceased. In the opinion of Autopsy Surgeon, one revolver shot could have caused all the three injuries. Other three injuries including one said to have been caused on the head of the deceased was not found to be a fire arm injury. The accused (A-2), it is argued, only carried a Kirpan and was a member of the first party who came on tractor. This accused and other two co-accused who accompanied him on tractor could not have expected that on hearing Raula or commotion, accused (A-1) would appear on the scene with a revolver and would fire at the deceased. If at all the common intention is to be attributed to three accused who came on tractor and on reaching the spot caused injuries to members of complainant party, at worst show their common intention to cause injuries to the deceased to teach him a lesson for encroaching on the disputed land and for his obstinate attitude. The members of the first party only inflicted simple and grievous injuries to the members of complaining party. They did not inflict any serious injuries on any vital part of the body of the deceased. The cause of death of deceased was not due to any injuries caused to him by any of the three accused who first came on a tractor. In these circumstances, with the aid of Section 34 of IPC, accused (A-2) could not have been convicted under Section 302 of IPC for the fatal shot by fire arm of the accused (A-1) who was a member of the second party and had reached the place of occurrence little after the first accused party had arrived.

Having given our thoughtful consideration to the submissions made in the light of the evidence on record, we find that there is sufficient force in the submissions made by the learned counsel on behalf of the accused (A-2). As has been stated above since accused(A-2) was member of the first party of the

accused who had come on tractor, he cannot be attributed common intention with accused Harjit Singh (A-1) who joined the first party at a later point of time with his revolver. As has already been noticed above, it has been alleged that all the accused of the first and second party were raising Lalkaras and came out of the house of Gursharan Singh. This allegation has been found to be a material improvement made by Hari Singh (PW-1) over his statement made to the police under Section 161 Cr.P.C. in which there is complete omission on that part of his version of Lalkaras. The evidence on record, therefore, does not show that accused Varinderjit Singh @ Vicky (A-2) had any common intention with accused Harjit Singh (A-1) in commission of murder of the deceased. The trial court and High Court, therefore, cannot be held to be right in convicting accused Varinderjit Singh @ Vicky (A-2) for offence under Section 302 read with Section 34 of IPC. The conviction of accused (A-2) under Section 302 read with Section 34 of IPC is, therefore, set aside and he is acquitted of the said charge.

We have now to consider whether the conviction of accused (A-2) is sustainable under Sections 307, 323, 324 and 326 read with Section 34 of IPC.

As against accused Varinderjit Singh @ Vicky, Hari Singh PW1 has stated that accused Vicky had inflicted a Kirpan blow to the deceased which hit him on his right elbow. Thereafter he is alleged to have inflicted a Kirpan blow on the leg of Darshan Singh PW5. The witness in cross-examination admits that allegation against Vicky that he gave two Kirpan blows also to Ajit Singh on his left leg was not told to the police in his statement under Section 161 Cr.P.C. Ajit Singh has not been examined.

The other eyewitness PW3 Gurvinder Singh corroborates PW1 in stating that Vicky came with the first party holding a Kirpan. On the alleged part played in the incident by Vicky, this witness states that a Kirpan blow was inflicted by him on the deceased on his right elbow but he admits that he did not mention the fact to the police in his statement under Section 161 Cr.P.C. He also admits that he did not tell anyone in the village as to how he received injuries. As per the defence taken by accused Vicky in the course of cross-examination of eyewitnesses and his statement under Section 313 Cr.P.C., he was present at the place of occurrence. He states that accused No.1 Harjit Singh fired at the deceased in his defence.

We have already extracted the relevant part of the post-mortem report describing the ante-mortem injuries suffered by the deceased. We have also noted that as per medical opinion injury Nos.1,2, & 3 could have been caused by one fire from the revolver. The other injuries found on the body of the deceased are injuries Nos.4 to 8. Injuries 6,7 & 8 are abrasions. Injury No.4 is lacerated wound. Only injury No.5 which is incise 5cms. X 2cms. Over the 'right elbow joint dorsal lateral' could have been caused by a Kirpan, which is a sharp edged weapon. This injury is not on any vital part of the body and was not in the ordinary course of nature sufficient to cause death. So far as Darshan Singh PW5 is concerned he does not remember who caused injuries to him. The three injuries as are found on his person in injury report on examination by Dr. Varinderjit Singh PW7 which include contusions and abrasions, are likely to have been caused by use of some blunt object. Only injury No.3 found on the person of Darshan Singh is an incised wound of 3.5 x 1 cm muscle deep on the front of right knee of the inner surface, which alone could be caused by sharp edged weapon like Kirpan. Gursharan Singh PW3 has categorically stated that he is not aware who caused him firearm injuries. Dr. KK Sharma who medically examined him states on the basis of the X-Ray report that injuries 1 & 2 caused on the right leg of Gurvinder Singh were injuries which could have been caused by firearm. The other two injuries 3 & 4 are "contusions" and are described as simple injuries.

On the overall discussion and appreciation of evidence we are of the opinion that the common intention would be inferred against party No. 1 who had come on a tractor with lethal weapons but not fire arms. The party no. 2 which rushed to the place of occurrence on hearing commotion cannot be held to have

acted with any common intention amongst themselves. Accused Varinderjit Singh @ Vicky (A-2) cannot, therefore, be held guilty of offence under Sections 302 and 307 read with Section 34, IPC. On the basis of the allegations found to have been proved against him he caused grievous and simple injuries to the deceased and being the member of party no. 2 who had gone on a tractor with common intention to cause injuries to the deceased and the eyewitness, is liable to be convicted under Sections 326, 324 read with Section 34, IPC. His conviction and sentences imposed on him by the trial court under Section 326, 324 read with Section 34 and 322 read with Section 34 alone deserve to be maintained.

Case against Gurshan Singh accused No.6

According to the version of eyewitnesses, Gursharan Singh A6 was member of party No.2 who reached on the spot subsequently after party No.1 were already engaged in altercation and wordy duel with the deceased. This accused is alleged to have reached on the spot armed with a double barrel gun. We have already disbelieved the version of the eyewitness that he was also raising Lalkaras with other co-accused. According to Hari Singh PW1 accused Gursharan Singh A6 fired with his double barrel gun towards the deceased and hit him on the head, arm and flank. We have already extracted above contents of the post-mortem report of the deceased in which the doctor is very clear in his opinion that the injury found on the head of the deceased did not appear to have been caused by any firearm. It is therefore unsafe to rely on the testimony of PW1 Hari Singh that accused No.6 Gursharan Singh hit the deceased on any vital part of the body. The eyewitness also admit that Gursharan Singh had also fired at other members of the complainant party and then had himself fallen down on the ground.

The other eyewitness Gurvinder Singh PW3 corroborates PW1 that accused No.6 had fired with his double barrel gun and hit the deceased on his head and other parts of the body. We have already stated above that in the absence of firearm injury on the head of the deceased this part of the version of eyewitness cannot be relied. PW3 has suffered as per the injury report, firearm injury in his right leg but he very categorically stated that he did not know who fired at him as there was firing all over.

Accused Gursharan Singh had rushed on hearing commotion towards the scene of occurrence along with other co-accused who constituted party No.2. The accused who subsequently rushed towards the spot with firearms in their hands cannot be said to have gone with any common intention because there was hardly any time with them for meeting of minds. It is prosecution's own case that members of party Nos.1 & 2 both had a grudge on the stubborn attitude of the deceased because despite intervention of the Panchayat he had been asserting his right to the disputed land. It is undeniable that common intention can develop on the spur of the moment and can be inferred from the overt acts committed by the accused. We find no evidence in this case to come to a conclusion that after the members of party No.2 rushed with firearms to the place of occurrence a common intention developed between them. As has been stated by the eyewitnesses, by the time the members of accused party No.2 reached on the spot, the scuffle had already commenced between members of party No.1 and deceased. The appearance of the members of accused party No.2 therefore could raise an inference that they had gone to intervene in the quarrel to support the members of accused party No.1 who had already reached on the spot on a tractor. In the aforesaid circumstances we do not find any ground to infer common intention inter-se between members of party No.2 who rushed on hearing commotion towards the place of occurrence. In the absence of common intention on their part, they cannot be held vicariously liable for the commission of criminal acts of other co-accused who were members of party No.2. The accused constituting party No.2, therefore, can only be held liable for their individual acts.

See following observations of Justice Krishna Iyer speaking for this Court in Hira Lal Malik vs. State [ AIR 1977 SC 2236 ] :

"When a crime is committed by the concerted action of a plurality of persons constructive liability implicates each participant, but the degree of criminality may vary depending not only on the injurious sequel but also on the part played and the circumstances present, making a personalized approach with reference to each. Merely because of the fatal outcome, even those whose intention, otherwise made out to be far less than homicidal cannot, by hand sight-reading, be meant to have had a murderous kindred mens rea."

Common intention is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime as also prior and subsequent attendant circumstances. Mere participation in the crime with others is not sufficient to attribute common intention to one of others involved in the crime. The subjective element in common intention therefore should be proved by objective test. It is only then one accused can be made vicariously liable for the acts and deeds of the other co-accused.

The members of party No.1 reached on the spot variously armed with weapons other than firearms. They declared their intention to teach a lesson to the deceased for his stubborn attitude in asserting right to a piece of land intended for common use. A common intention can be inferred on their part from their conduct in reaching the spot together on a tractor and their subsequent acts in causing grievous and simple injuries to the deceased and the eye-witnesses.

The members of second party armed with firearms may have come from the same direction to the place of occurrence on hearing a commotion created due to fight between members of party No.1 on one part and the members of the deceased party on the other part but on this version of the incident the members of party No.2 cannot be said to have a common intention either amongst themselves or with members of party No.1 who had already reached the spot. The members of party No.2 who rushed to the place of occurrence acted individually on their own impulses and reactions to the altercation which had already commenced between members of party No.1 and the deceased's party. Since the incident happened in two parts, as described above, common intention can be inferred inter-se between members of party No.1 who had earlier reached on tractor but, no common intention can be interred against them with members of party No.2 who had rushed with firearms towards the place of occurrence afterwards and fired at members of the accused party.

The members of party No.2 reacted differently in their own manner and would therefore be liable for their individual acts. No common intention can be inferred on the part of members of party No.1 with members of party No.2.

Looked at from this angle Gursharan Singh (A6) as per the medical report of the injured eyewitnesses can be said to have caused grievous and simple injuries by use of his firearm. Therefore, in our considered opinion he is also liable to be acquitted of the charge under Section 302 and 307 IPC read with Section 34 IPC. His conviction and sentences passed by the trial judge under Section 326, Section 324 and 323 IPC read with Section 34 IPC or imprisonment with fines separately imposed for those offences, therefore is liable to be maintained.

Criminal Appeal No. 814 of 2001 State of Punjab Vs Harjit Singh

We now take up for consideration the appeal preferred by the State of Punjab. By this appeal, judgment of the High Court dated 22.11.2000 of acquittal of the accused viz., Inderjit Singh, Ajaib Singh and Satinderpal Singh has been questioned. This appeal is also directed against the acquittal of other convicted co-accused for offences under Sections 148 and 149 of Indian Penal Code (for short I.P.C.).

The High Court in acquitting the three accused Ajaib Singh, Inderjit Singh and Satinderpal Singh, has not discussed evidence in detail. We have, therefore, ourselves looked into the record and heard the learned counsels appearing for the State and the accused.

Ajaib Singh is alleged to be a member of the accused party No.1 which came first on tractor to the spot. Allegations against Ajaib Singh is that he was carrying a Gandhali and caused injury to Darshan Singh (PW-5). Darshan Singh has also alleged that after giving him a blow on the right side of the abdomen, Ajaib Singh also inflicted a Gandhali blow to Ajit Singh. In cross-examination, Darshan Singh admits that this fact of infliction of Gandhali blow by Ajaib Singh on him and Ajit Singh has not been mentioned by him to the police in his statement recorded under Section 161 Cr. P.C. In the statement to the police, this witness never stated that he had received a Gandhali blow on the right knee and right side of the abdomen. The other alleged injured witness Ajit Singh has not been examined. Dr. Varinderjit Singh (PW-7) has medically examined the injuries of Darshan Singh (PW-5). The following injuries were found on Darshan Singh :-

1. A reddish contusion 4 cm x 1 cm on the front of the right abdomen in the vertical direction 6 cm to the right of the umbilicus.
2. An abrasion 13 cm x cm on the front of the right abdomen in the vertical direction 6 cm to the right of the umbilicus.
3. An incised wound 3 1/2 cm x 1 cm muscle deep on the front of right knee on the inner surface inner side of the patella.
4. An abrasion 2 cm x cm on the lateral surface of left leg in its middle third.

In cross-examination, Doctor has stated that injury Nos. 2, 3 and 4 are simple in nature and could be self inflicted. Injury No. 2 appears to have been caused with a blunt weapon. Similarly, injury No.1 was so simple and it could be caused by a friendly hand. On this state of evidence, Ajaib Singh appears to have been falsely implicated and his acquittal is, therefore, well merited.

So far as the case against acquitted accused Inderjit Singh is concerned, he is alleged to be a member of the party no. 2 who rushed to the spot on hearing Raula or commotion. It is alleged that he had carried with him a pistol and fired towards the complainant party along with co-accused Gursharan Singh (A-6) and Satinderpal Singh(A-5). Neither Gurvinder Singh (PW-3) nor Darshan Singh (PW-5) states that bullet fired from the pistol of Inderjit Singh hit any of them. Darshan Singh merely stated that he had received fire arm injuries on his right knee but has very categorically stated that he did not know who fired and caused that injury to him as according to him all were firing. The Investigating Officer, Puran Singh (PW-9) in cross-examination, admitted that he did not find any empty cartridges fired from pistol on the spot. In these circumstances, an omnibus statement of the eye-witnesses could not be believed that Inderjit Singh had fired from pistol in his hand which caused fire arm injuries to the complainant party.

Lastly as against acquitted accused Satinderpal Singh(A-5), no case has been proved by the prosecution. Darshan Singh (PW-5) has alleged use of double barrel gun by Satinderpal Singh who also is alleged to have rushed to the spot on hearing Raula or commotion. Gurvinder Singh (PW-3), as has already been pointed out, has not definitely stated that as to whether Satinderpal Singh fired had caused injuries to him. So is the statement of Darshan Singh (PW-5) who had stated that Satinderpal Singh had taken a position along with other co-accused and had started firing at them. In cross-examination, he admitted that the fact of firing at him by Satinderpal Singh with double barrel gun was not mentioned by him to the police in his statement under Section 161 Cr. P.C.

In the above state of evidence which is not clinching against the accused, the conclusion of the High Court that the three acquitted accused are entitled to have the benefit of doubt cannot be said to be a wrong appreciation of evidence or so perverse as to justify taking a different view and interfere with the order of acquittal.

Apart from the version of eye-witnesses discussed above, the trial court attached importance to the fact that on a disclosure statement of accused Satinderpal Singh, pistol alleged to have been used by Inderjit Singh was recovered under memorandum Ex.P-19. We have referred to the statement of Investigating Officer Puran Singh (PW-9). He is unable to explain the reason for not procuring the attendance and signature of independent witnesses on the disclosure statement Ex.P-V and memorandum of recovery Ex.P-U/1. We have noted that these memoranda have been signed only by two police officers Faqir Chand and Virsa Singh. It is unbelievable that all the accused persons who have alleged to use their fire arms/weapons kept all the arms concealed in a open field in a gunny bag under a heap of straw. In the absence of independent witnesses and the alleged place of concealment being accessible to public, the evidence of disclosure statement and the consequent recovery of arms and weapons do not at all inspire confidence. In any case, it is not a piece of evidence which could be relied by the trial court to convict the accused by treating it as eye-witness account.

We have also heard learned counsel appearing for the State who tried to show from the evidence that the presence of three acquitted accused was fully proved by the prosecution. In appeal against acquittal, the appreciation of evidence done by the High Court, unless it appears to be unreasonable, should not be interfered with. We have ourselves looked into the whole evidence on record. In our opinion, none of the three accused persons against whom no specific overt acts have been proved can be held guilty either with the help of Section 149 of IPC or with Section 34 of IPC. Their acquittal, therefore, is sustained.

As we have maintained the acquittal of three co-accused persons, the remaining three accused persons cannot be convicted under Sections 148 and 149 of IPC and their acquittal for those charges, therefore, is also sustained.

In conclusion, Criminal Appeal No. 815 of 2001 preferred by the three convicted co-accused, is partly allowed. The conviction of appellant/accused Harjit Singh (A-1) and sentences imposed on him under Sections 302, 324, 323 & 326 of IPC are hereby maintained. He is acquitted of charges and sentences imposed on him under Section 307 read with Sections 148 & 149 of IPC.

The conviction of appellant/accused Virenderjit Singh @ Vicky (A-2) under Section 302 and 307 read with Section 34 of IPC is set aside instead he is convicted under Sections 323, 324 & 326 read with Section 34 of the IPC and he is sentenced with imprisonment and fine as directed by the trial court in its judgment. His acquittal by the High Court under Section 148 and 149 of IPC is maintained.

The conviction of appellant/accused Gursharan Singh (A-6) under Section 302 & 307 read with Section 34 of IPC is set aside instead he is convicted and

sentenced separately as ordered by the trial court with imprisonment and fine under Sections 326, 324 and 323 of IPC. He is acquitted of charge under Section 34, IPC. His acquittal under section 148 and 149 of IPC is hereby maintained.