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Manjit Singh Vs. The State of Punjab

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Court : Supreme Court of India

Decided On : Sep-03-2019

Judge : Hon'Ble Mr. Justice a.M. Khanwilkar, Hon'Ble Mr. Justice Dinesh Maheshwari

Appeal No. : 12728 / 2008

Appellant : Manjit Singh

Respondent : The State of Punjab

Advocate for Pet/Ap. : Kamini Jaiswal

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL No.1079 OF 2011 MANJIT SINGH Vs. .APPELLANT(S) THE STATE OF PUNJAB .RESPONDENT(S) WITH Criminal Appeal No.1076 of 2011

JUDGMENT
Dinesh Maheshwari, J.

1. These two appeals by special leave are directed against the common judgment and order dated 11.03.2008, as passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 373 DB of 2005 and 350 DB of 2005 with

other connected matters whereby, the High Court has upheld the judgment and order dated 28/30.03.2005 by the Sessions Judge, Barnala in Sessions Case No.21 of 2001, convicting and sentencing the accused- appellants for multiple offences, including those punishable under Sections 148, 302/149, 323, 324 and 326/149 of the Indian Penal Code (IPC).

2. Put in brief, the relevant background aspects of the matter are as follows:

1. 2.1. The prosecution case has been that on 03.03.2001, the deceased Dalip Singh, Rajinder Pal Singh (PW-5), Gurnam Singh (PW-6) and the complainant Beant Singh1, all residents of Village Mehal Kalan had gone to Barnala Court Complex in connection with the hearing in a criminal case pertaining to FIR No.67 of 1997, Police Station Mehal Kalan, that was adjourned. That very day, the accused persons Manjit Singh2, Labh Singh, Avtar Singh, Bakhtaur Singh, Sukhwinder Singh3, Prem Kumar, and Narain Datt, had also been to the same Court Complex to attend the proceedings in a complaint case of the appellant Manjit Singh, that was also adjourned. At about 11.15 a.m., when Gurnam Singh, Beant Singh, Rajinder Pal Singh and Dalip Singh were about to board their car near the cabin of typists in the Court Complex, they were attacked by the accused persons. 2.2. It was alleged that for carrying out the assault in question, five of the accused persons carried different weapons, where the appellant Sukhwinder Singh as also Labh Singh and Avtar Singh were armed with kirpans; Bakhtaur Singh was armed with kirpan and ghop; and the appellant Manjit Singh was armed with kirch whereas Prem Kumar and Narain Datt were empty handed. According to the allegations, with exhortation by the appellant Manjit Singh, the accused persons carried out the assault in the manner that Labh Singh gave kirpan blow aiming at the head of Beant Singh, who raised his hands 1 The complainant Beant Singh was examined as the first witness in the trial but he expired before completion of his statement. 2 The appellant of Cr. A. No.1079 of 2011 3 The appellant of Cr. A. No.1076 of 2011 2 and the blow hit his right hand; the appellant Sukhwinder Singh aimed his kirpan blow on the head of Dalip Singh but since he raised his hands, the blow hit his right hand; Bakhtaur Singh gave a blow of ghop on the head of Dalip Singh; Prem Kumar and Narain Datt caught hold of the arms of Dalip Singh and Bakhtaur Singh gave another ghop blow on the head of Dalip

Singh; Avtar Singh gave a blow of his kirpan on the left leg of Gurnam Singh; Bakhtaur Singh also gave three blows of ghop on the left cheek, back of the chest and left thigh of Gurnam Singh; the appellant Manjit Singh gave the blows of his kirch, hitting Rajinder Pal Singh on the right hand and on the left hand thumb; and the appellant Sukhwinder Singh hit Gurnam Singh on the back by the handle of his kirpan. 2.3. It was further alleged that upon such an assault, the injured raised alarm whereupon, Amarjit Singh, Balbir Singh, Jit Singh and Gurdeep Singh reached the spot. The injured were taken to the hospital. Upon receiving a message from the hospital, Surinder Pal Singh (PW-9), SHO, P.S. Kotwali went to the hospital and sought the opinion of doctor about fitness of the injured for taking their statements; the injured Beant Singh was declared fit and his statement was recorded at 2.30 p.m., which led to the registration of FIR No.56 of 2001 for the offences punishable under Sections 307, 148, 149, 120-B IPC. The statements of the injured Rajinder Pal Singh and Gurnam Singh were also recorded. However, the injured Dalip Singh was not found fit for making any statement; he was referred to Rajindra Hospital, Patiala; and he was, thereafter, shifted to Dayanand College and Hospital, Ludhiana. He 3 remained hospitalised until 12.03.2001 but the attempts by ASI Gulab Singh (PW-11) to record his statement did not materialise. The injured Dalip Singh, ultimately, expired on 12.03.2001 at 4.30 p.m.; the post mortem of his dead body was conducted on 13.03.2001 at Civil Hospital, Ludhiana. In sequel, the offence punishable under Section 302 was added to the FIR. 2.4. On 08.03.2001, the accused persons Bakhtaur Singh, Labh Singh and Avtar Singh were arrested. The weapon ghop was recovered in pursuance of the disclosure statement of Bakhtaur Singh whereas one kirpan was recovered on the disclosure statement of Labh Singh and another kirpan was recovered on the disclosure statement of Avtar Singh. On 14.03.2001, the appellant Sukhwinder Singh was arrested and in pursuance of his disclosure statement, yet another kirpan was recovered. 2.5. In the course of investigation, the soil splattered with blood was collected from the place of occurrence; site plan was prepared; and statements of other witnesses were recorded. As per the FSL report, the ghop, three kirpans and soil recovered from the place of occurrence were found to be stained with human blood. 2.6. On 24.03.2001, while the other accused persons were charge-sheeted for various offences but, the present

appellant Manjit Singh as also Prem Kumar and Narain Datt were allegedly found not involved in the crime and they were kept in column No.2 by the Investigating Officer (IO). After committal of the case to the Sessions Court and after framing of charges, the complainant Beant Singh was examined as the first witness of the prosecution 4 on 11.09.2001 but his deposition remained incomplete. This very day, the complainant Beant Singh moved an application under Section 319 of the Code of Criminal Procedure (Cr PC) for proceeding against the appellant Manjit Singh as also against the said Prem Kumar and Narain Datt, who were summoned by the Trial Court by its order dated 19.09.2001. Thereafter, charges were framed against all the accused persons, inter alia, for the offences under Sections 302, 148, 326, 325, 323 IPC. The prosecution sought leave under Section 321 Cr PC to withdraw the case against the appellant Manjit Singh and the said Prem Kumar and Narain Datt but this prayer was declined by the Trial Court by its order dated 09.11.2002 against which, Cr.R. No.2413 of 2002 and C.M. No.2248 of 2002 were filed before the High Court that were also dismissed by the order dated 14.10.2003. Further, the petition for Special Leave to Appeal No.5740 of 2003 filed in this Court was also dismissed by the order dated 17.01.2004.

3. In the trial, the prosecution examined several witnesses, including the injured eye-witnesses Rajinder Pal Singh as PW-5 and Gurnam Singh as PW- 6; the medical officer Dr. Subhash Singla, who had initially examined the injured persons and had prepared the injury reports, as PW-1; and Dr. Jasbir Singh, who had conducted post-mortem on the dead body of Dalip Singh, as PW-7. 3.1. The eye-witnesses, Rajinder Pal Singh and Gurnam Singh, PW-5 and PW-6 respectively, gave the ocular account of the entire incident. PW-5 Rajinder Pal Singh categorically stated that the assault commenced when the 5 appellant Manjit Singh instigated the other accused persons to attack the complainant and his companions. This witness provided a detailed description of participation and involvement of each of the accused in conformity with the version occurring in the FIR. His testimony was corroborated on all the material particulars by PW-6 Gurnam Singh. As noticed, the testimony of the informant Beant Singh remained incomplete due to his demise. 3.2. The appellant Manjit Singh, while denying the allegations in his statement under Section 313 Cr PC, gave a purportedly detailed account that the complainants were annoyed with Prem Kumar, Narain Datt and

himself for the reason that they had given evidence in the case of rape and murder of a co-village girl KK*4, where the offence was allegedly committed by the relatives of the complainant and the injured witnesses. We shall refer to the relevant part of the statement made by the appellant Manjit Singh under Section 313 Cr PC hereafter a little later. 3.3. In defence evidence, the accused persons got examined as many as 13 witnesses. These had been as follows: DW-1 Dr. A.K. Singla, the handwriting and fingerprint expert in relation to the signatures of Rajinder Pal Singh on the court summons and jail records; DW-2, Head Constable Jaswinder Singh in relation to the fact that DW-3 was deployed as driver of the vehicle in which the undertrials were brought to the Court Complex; DW-3 Head Constable Jora Singh, as the alleged eye-witness to the incident; DW-4 Gurcharan Singh Dhaliwal, Advocate who was allegedly present near the scene of crime; DW-5 4 The name of the said victim girl is not required to be mentioned and she is referred as KK* herein. 6 Lakhwinder Singh, the then Superintendent of Police (D) at Barnala; DW-6 Constable Amarjit Singh, another alleged eye-witness who had intervened in the fight that had occurred between the two groups; DW-7 Head Constable Gurcharan Singh; DW-8 J.N. Sharma, Advocate; DW-9 Kulwant Singh, Member Panchayat of Village Dhaner; DW-10 Manjit Singh, teacher in Govt. High School, Wazidke Khurd; DW-11 Rajinder Kumar ALM, PSEB Mehar Kalan; DW-12 Darshan Kumar, Head Warden, Sub-Jail, Barnala; and DW-13 Santokh Singh, Maths Teacher in Govt. High School, Wazidke Khurd.

4. In its judgment and order dated 28/30.03.2005 in Sessions Case No.21 of 2001, the Trial Court carried out in-depth analysis of the prosecution evidence, including the testimony of injured eye-witnesses PW-5 and PW-6 and the medical officers, PW-1 and PW-7. The Trial Court also carried out an equally thorough analysis of the evidence adduced by the accused and, after finding that the defence witnesses were either irrelevant or unreliable, rejected the defence theories and found it proved beyond reasonable doubt that the accused joined together and attacked the complainant Beant Singh and his companions, causing various injuries to several persons and fatal injury to Dalip Singh. The conclusion of the Trial Court in relation to the present appellants as also cumulatively in relation to all the accused persons, as occurring in paragraphs 45 to 48 of the judgment dated 28.03.2005, could be usefully reproduced as under:- 45. Accused Manjit

Singh as per PW1 is proved to have caused two injuries on the person of Rajinder Pal Singh by means of Kirch and which M.L.R. Ex. PD and X-ray report 7 Ex. PD/2 shows that both these injuries No.1 & 2 are by sharp means and injury No.3 which is reddish contusion is not attributed to any of the accused.

46. Accused Sukhwinder Singh is opined to have caused a blunt injury by the handle of the Kirpan on the person of Gurnam Singh on the back of the chest opined to be abraded contusion ad that Sukhwinder Singh is also proved to have caused injury to Dalip Singh on right hand by means of a Kripan and which injury as per M.L.R. Ex. PA which is incised wound, caused by sharp edged weapon is deemed to be simple in view of lack of evidence in this regard.

47. That there is abundant evidence to show that accused persons with a common object armed with deadly weapons have rioted while assaulting the complainant side.

48. So, from the overall evidence of the prosecution by way of ocular evidence of the eye-witnesses account, the medical evidence coupled with circumstantial evidence overwhelmingly point out towards the guilt of the accused in the commission of the offence for which they have been charged. The accused are thus held guilty and convicted as detailed below:- i) All the accused ii) Accused Bakhtaur Singh IPC iii) All the co-accused (Numb

6) of and accused Bakhtaur Singh iv) Accused Sukhwinder Singh U/S148of IPC U/S302and 323 U/S302149 IPC U/S323149 IPC U/S324IPC & 323 IPC U/S324149 IPC v) All six co-accused of accused and Sukhwinder Singh vi) Accused Labha Singh vii) All the six co-accused viii) Accused Avtar Singh ix) All the six co-accused of accused Avtar Singh x) Accused Manjit Singh xi) All the six co-accused of accused U/S324149 IPC Manjit Singh U/S323149 IPC U/S324IPC U/S324149 IPC U/S326IPC U/S326149 IPC U/S324IPC84.1. In accordance with the conclusion aforesaid, the accused persons were awarded varying sentences, including that of life imprisonment.

5. Against the order of conviction, the appellants and the co-accused preferred separate appeals before the High Court and pending disposal of appeals, the

sentence awarded to the appellant Manjit Singh as also Prem Kumar and Narain Datt were suspended. Thereafter, by an order dated 24.07.2007, the then Honble Governor of Punjab, in exercise of his power under Article 161 of the Constitution of India, granted pardon to the appellant Manjit Singh as also to the two co-accused persons Prem Kumar and Narain Datt; and directed that they be released with immediate effect. This order granting pardon was also challenged before the High Court by way of writ petition bearing No.2147 of 2008 that was taken up for consideration together with the appeals filed against conviction. While passing the final common judgment and order dated 11.03.2008, the High Court, after dealing with the contentions urged on behalf of the appellants herein and the co-accused, while extended benefit of doubt to Prem Kumar and Narain Datt but, affirmed the conviction of the other five accused persons, including the appellants herein and also set aside the order granting pardon5 while observing, inter alia, as under:- 5 This part of the common judgment dated 11.03.2008, setting aside the order passed by the Honble Governor of Punjab granting pardon to the appellant Manjit Singh, was separately challenged in this Court in C.A. Nos. 2058-59 of 2011 [arising out of SLP (C) No.11544 of 2008].. On 24.02.2011, this Court remanded the matter to the Governor of Punjab for fresh consideration in accordance with law. We were informed during the course of hearing that no fresh decision has been taken after such remand. Be that as it may, in view of the fact that the subject matter of the present appeals relates to the conviction and sentencing of the appellants, no further dilation on the matter relating to the grant of pardon is requisite herein. 9 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 re-mediated 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.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. 10 5.1. The High Court, after examining the defence evidence as also other material on record, rejected the defence contentions, including the plea of alibi of the appellant Manjit Singh, in the following: 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. 5.2. After upholding the conviction and the sentence of five of the accused persons including the appellants, the High Court also examined the question of validity of the order granting pardon to the appellant Manjit Singh and in that regard, after a detailed survey of the case law relating to the power to grant pardon/remission and its judicial review, found that in the present case, the power was exercised only on the perceived public opinion that was clearly impermissible. However, as observed hereinbefore, this aspect of the matter needs no further dilation herein.

6. Assailing the judgment and order aforesaid, affirming their conviction and upholding the sentence as awarded, the appellants have preferred the present appeals. 11 6.1. Learned counsel for the appellant Manjit Singh has strenuously argued that so far this appellant is concerned, it is amply established in evidence that he was not present at the scene of the incident in question; and has particularly referred to the statement of DW-9 to submit that on the date of incident, the appellant Manjit Singh was present before the said witness at 11.30 a.m. at village Dhaner, that was about 25 kms from the Barnala Court Complex and hence, his presence at the scene of crime at 11.15 a.m. is totally ruled out. Learned counsel has contended that the Trial Court as also the High Court have rejected the plea of alibi without assigning cogent reasons and the same has resulted in serious miscarriage of justice. The learned counsel has argued that the High Court has failed to appreciate the fact that there existed previous enmity between the family of the deceased and the appellant herein because of which, he has been implicated in the said case. In this regard, learned counsel has particularly referred to the fact that PW-5 Rajinder Singh is the brother of Jagraj, who was involved in the aforesaid rape and murder case, that was keenly pursued by the appellant Manjit Singh. The learned counsel has yet further argued that there has not been any evidence as regards common object of the accused persons; no independent witness has been examined; and then, no weapon of offence was recovered at the instance of the appellant. Therefore, according to the learned counsel, conviction of the appellant is not justified. The learned counsel has referred to the decisions in Sikandar Singh & Ors. v. State of Bihar: (2010) 7 SCC477and Subal Ghorai v. State of West Bengal: (2013) 4 SCC607 12 6.2. Learned counsel for appellant Sukhwinder Singh has submitted that there are

material contradictions in the medical evidence as also the ocular version and in any case, the essential ingredients of Section 141 IPC, for formation of an unlawful assembly are not established and, therefore, the conviction of the appellant under Section 302 with the aid of Section 149 IPC is not justified. According to the learned counsel, the only accusation against this appellant is that he had caused simple injury on the little finger of the deceased Dalip Singh and had used the handle of the kirpan to cause injury to PW-5 Rajinder Pal Singh and, on these accusations, the case against this appellant cannot travel beyond the offences of Sections 324 and 323 IPC for which, he has already undergone imprisonment for a period of over 4 years and 10 months. The learned counsel has referred to the decision in Govind Singh v. State of Chattisgarh: (2019) 7 SCALE20 7. Per contra, learned counsel for the State has supported the conviction of appellants with the submissions that the Trial Court and the High Court have dealt with each and every argument raised by the appellants and the impugned judgments do not suffer from any infirmity so as to call for interference. The learned counsel has submitted that the appellant Manjit Singh not only caused injuries on the person of Rajinder Pal Singh but, in fact, instigated the accused party with exhortation prior to the assault and, in the face of clear evidence on record, mere want of recovery of kirch used by the appellant Manjit Singh would not exonerate him. The learned counsel has also contended that when the accused persons, at least five of them, were armed 13 with deadly weapons and assaulted the injured persons simultaneously, all the necessary ingredients of formation of an unlawful assembly with common object stand established. As regards the plea of alibi, the learned counsel has submitted that this plea was never suggested to the prosecution witnesses nor was taken in the statement under Section 313 Cr PC; and the made up witnesses produced in that regard have been duly considered and discarded by the Trial Court and the High Court after thorough appreciation. The learned counsel for the respondent has also relied upon a few decisions, including that in Sahabuddin & Ors. v. State of Assam: (2012) 13 SCC213 8. Having heard learned counsel for the parties and having perused the material placed on record, we are clearly of the view that both these appeals remain bereft of substance and no case for interference at the instance of the appellants is made out. Acquittal of two of the accused persons 9. Before taking up other aspects of the matter for

consideration, apposite it would be to take note of one of the relevant factors that though in this case, the accused Prem Kumar and Narain Datt were alleged to be empty handed and were not assigned the role of causing any injury on any person but, the Trial Court found it to be a case of common object and these two accused persons were held guilty of the offence under Section 148 IPC as also of other offences with the aid of Section 149 IPC. The High Court, though agreed with the Trial Court after thorough examination of the material on record on all the 14 material aspects but, as regards these two accused persons, in the concluding part of its discussion, proceeded to extend them the benefit of doubt while observing as under:- 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. 9.1. Though the aforesaid accused persons Prem Kumar and Narain Datt were acquitted with benefit of doubt and their acquittal has not been challenged but then, this fact, by itself, will not have any mitigating effect on the prosecution case against the other five accused persons, including the appellants. It remains trite that acquittal of co-accused per se is not sufficient to result in acquittal of the other accused. Even if the material evidence against all the accused persons is the same, acquittal of some of them does not lead to a corollary that the other accused also need to be acquitted [vide Yanob Sheikh alias Gagu v. State of West Bengal: (2013) 6 SCC428and Dalbir Singh v. State of Haryana: (2008) 11 SCC425. If after taking the evidence as a whole, the case in relation to the acquitted accused could be segregated from that against the other, such other accused could nevertheless be convicted. Noticeable it is that even as regards the said accused Prem Kumar and Narain Datt, the High Court has not recorded a clean acquittal but has only extended them the benefit of doubt, for no overt act of assault having been assigned to them and they being not armed with any weapon. Even if the 15 involvement of Prem Kumar and Narain Datt is considered doubtful in view of the uncertain role assigned to them, it cannot be said that entire substratum of the prosecution case is lost, or even whittled down. Prosecution Case 10. We may now take note of salient features of the relevant

evidence on record. 10.1. The case of the prosecution on material accusations pivots around the testimony of injured eye-witnesses PW-5 Rajinder Pal Singh and PW-6 Gurnam Singh. PW-5 Rajinder Pal Singh has deposed in conformity with the initial version of Beant Singh on the basis whereof, the FIR in question came to be registered. This witness has testified to the role of each of the accused in the incident in question. Nothing material has come out in the cross- examination to discredit this witness. Of course, a suggestion was made in the cross-examination that he had gone to sub-jail Barnala on 30.09.2002 and demanded Rs. 20,000/- from the accused persons to depose in their favour, which he denied. A few witnesses were examined in defence evidence to prove that this witness PW-5 did visit sub-jail Barnala. However, it is too remote to accept that because of such a visit, the witness might have offered false depositions by taking unlawful consideration. In fact, this very witness is otherwise sought to be discredited by the appellants as an interested witness, for being the brother of one of the accused persons in the said rape and murder case, which was being pursued by the appellant Manjit Singh. This 16 witness had also been one of the injured persons in the incident, having received the blows from the appellant Manjit Singh. In the face of such a fact situation, the suggestion by the defence, that this witness offered support to them for unlawful consideration, could only be rejected as baseless. The Trial Court and the High Court have concurrently found his testimony reliable; and we find no reason to take any different view of the matter. 10.2. The narration of the incident by PW-6 Gurnam Singh has also been consistent with the version occurring in the FIR as also that occurring in the statement of PW-5 Rajinder Pal Singh. He had also been an injured person in the same incident and there is nothing on record to disbelieve or discredit this witness. 10.3. So far as the medico-legal aspect of the matter is concerned, PW-1 Dr. Subhash Singla, who had examined the injured person immediately after the incident, has proved the respective injury reports, inter alia, making out that there were multiple injuries on the person of the deceased Dalip Singh including three injuries from blunt weapon and one from sharp-edged weapon. He also testified about Gurnam Singh having received one injury from a sharp- edged weapon apart from other injuries; and about Rajinder Pal Singh having sustained three injuries, two of them being from sharp-edged weapon. PW-7 Dr. Jasbir Singh

conducted post-mortem on the dead body of Dalip Singh and found haemotoma below the scalp; and on clearing haemotoma, found a fracture. This witness testified that as per his examination, the cause of death was haemorrhage and shock as a result of the head injury. 17 10.4. The facts stand established that the deceased and the other members of the complainant party received many and multiple injuries, including those on the vital body parts from sharp-edged weapons (as also blunt objects). It is also established that Dalip Singh died due to the grievous head injury. Though he died after 9 days from the date of the incident but continuously remained hospitalised and was never in a position to make any statement. The fact that the injuries in question were inflicted by the accused party, with calculated and determined assault on the complainant party, has also been duly established on record. The concurrent findings of the Trial Court and the High Court against the accused persons remain proper and do not appear suffering from any infirmity. Defence Version and Evidence 11. It would also be appropriate to take note of the features emanating from the defence evidence. In all 13 witnesses were examined in defence. Before taking up the relevant witnesses concerning the plea of alibi of the appellant Manjit Singh, we may briefly refer to the other defence witnesses. 11.1. In defence, DW-1 Dr. Atul K. Singh and DW-12 Darshan Kumar were examined in support of the assertion that the witness Rajender Singh visited sub-jail Barnala as per the entries occurring in Mulakat register; and DW-7 Gurcharan Singh was examined in proof of the signatures of the witness Rajender Pal Singh on the summons EX-D-11. As noticed, nothing turns upon this part of defence evidence. 18 11.2. There had been another defence witness DW-5 Lakhwinder Singh who was, at the relevant time, posted as Superintendent of Police (D) Barnala. According to this witness, a complaint was filed before him to the effect that Manjit Singh, Prem Kumar and Narain Datt were not present on the spot during the incident in question. This witness sent a report, Ex. DA, stating the fact that in the investigation carried out by Surendra Pal Singh, SHO Police Station Barnala, Manjit Singh, Prem Kumar and Narain Datt were found not present at the time of occurrence. This testimony had not only been irrelevant but had also been totally unwarranted. As noticed, initially, the investigating agency attempted to exonerate the appellant Manjit Singh as also the said accused Prem Kumar and Narain Datt but the Trial Court, by its order dated

19.09.2001, did exercise the power under Section 319 Cr PC for proceeding against these persons. The prosecution even endeavoured to withdraw the case against the appellant Manjit Singh and the said Prem Kumar and Narain Datt but the prayer was declined by the Trial Court by its order dated 09.11.2002; and the attempts to challenge this order of the Trial Court also failed right upto this Court. In such a position, where the opinion stated in the investigation result qua these persons stood overruled by the judicial order, it had been absolutely unwarranted that such an overruled opinion was sought to be relied upon by way of the testimony of DW-5. Even if this opinion and whatever stated in the report sent by this witness [Ex. DA]. are taken on their face value, nothing whatsoever turns upon them. 19 11.3. The testimony of three other witnesses [DW- 10, DW-11 and DW-13]. examined by the defence in relation to the plea of alibi of the accused Prem Kumar and Narain Datt is not relevant for the present purpose. Plea of alibi of the appellant Manjit Singh 12. The main plank of the contentions on behalf of the appellant Manjit Singh is that he was not present at the scene of crime i.e., within Barnala Court Complex on 03.03.2001 at 11.15 a.m.; and in fact, he was with the witness DW-9 at village Dhaner on the relevant date at 11.30 a.m. The Trial Court, after thorough appreciation of entire record has rejected this suggestion. The High Court has also observed that there was no reliable evidence on record to accept this plea of alibi. Having examined the record, we are satisfied that the Trial Court and the High Court have rightly rejected such a baseless plea after proper appreciation of the evidence on record. 12.1 There are two fundamental, and rather fatal, shortcomings in the plea of alibi of the appellant Manjit Singh: First, that such a plea was not even put in suggestion to the relevant prosecution witnesses including the injured eye- witnesses PW-5 and PW-6. Secondly, and significantly, in his own statement under Section 313 Cr PC, the appellant Manjit Singh, even while making elaborate assertions that he was falsely implicated for having stood against the complainant party in relation to the said rape and murder case of the daughter 20 of Darshan Singh; and while also relying upon the earlier police report where he was sought to be exonerated and earlier attempt on the part of the prosecution to withdraw the case against him, not even remotely stated that he was not present at the site and that, at the relevant point of time, he was present somewhere else. The relevant part of the statement made by the appellant

Manjit Singh under Section 313 Cr PC is reproduced as under: - "Q.19. Anything else to say?. Ans. I am innocent. An enquiry in this regard was conducted by the SHO/PS kotwali, Barnala and other high officers of the police and they all agreed that the present case has falsely been got registered against me and I was placed in Column No.2. The Addl. P.P. for the State had moved an application U/s 321 Cr.P.C. for withdrawal of the case against me as the said case has been falsely registered against me but Sh. S. S. Gupta, the learned Addl. Sessions Judge, Barnala, dismissed the same and against the said order the State has filed an appeal in the Honble High Court which is still pending there and the proceedings have been stayed. The complainant party is the biggest landlord party, of Mehal Kalan town, where a police station is also there. They had murdered a girl namely KK* after raping her. Said KK* was the daughter of Darshan Singh, who was a handicapped Teacher and was a poor person. I was the eye witness in the said case and was also cited as a defence witness by the complainant party but he did not depose according to them and had spoken the truth as such, the complainant party got annoyed against him. I and Prem kumar and Narain Dutt had been pursuing the case of said KK*, who was not having any heir and in that case some persons of the complainant party were sentenced to life imprisonment. The complainant party being the big landlords have got the present false case registered against us. There was not need to catch hold an old person aged about 80 years. As per the Doctor he would have fallen on receipt of one injury only being of old age and weak physique. There was no need of catching hold him by two persons. We have no friendship or enmity with the other accused. I am innocent and have been falsely implicated in 21 the present case, by the complainant party on the strength of much money and land. I am having separate residence than the other four accused and of separate occupation. 12.2. In defence evidence, DW-2 Sukhwinder Singh was examined to testify that DW-3 Jora Singh was posted as driver on the vehicle in which, the undertrials were brought to the Barnala Court Complex. The witness DW-3 stated that on 03.03.2001, he was deputed as driver on the said vehicle; that about 11 a.m., he heard commotion and reached the spot where 4/5 persons were causing injuries to 4/5 persons; and that the accused Narain Datt, Prem Kumar and Manjit Singh were known to him and they were not present on the spot. DW-6 Amarjit Singh

stated that he was also on duty in the Court Complex Barnala; that there was a fight between the parties whereupon, he separated the parties and collected the kripans; that the accused Manjit Singh, Prem Kumar and Narain were known to him and these persons were not present on the spot where the fight took place. DW-4 Gurcharan Singh Dhaliwal, Advocate, claiming himself to be an eye-witness stated that 3/4 persons caused injuries to 3/4 persons; and that he had not seen the accused Prem Kumar, Narain Datt and Manjit Singh causing injuries to the victims. DW- 8 J.N. Sharma, Advocate stated that a letter of appreciation on the role of the Constable Amarjeet Singh was sent to the SSP Barnala from the Bar but he did not verify the correctness of the incident. 12.3. As regards plea of alibi of the appellant Manjit Singh, the direct witness examined in the matter had been DW-9 Kulwant Singh, said to be a member 22 of the Panchayat. This witness stated that on 03.03.2001, at 11.30 a.m., the appellant Manjit Singh came to his house in village Dhaner along with a lady member regarding the level of a street, and he had gone with them to the spot. According to the witness, the appellant Manjit Singh was not perplexed at that time. This witness expressed ignorance if on 03.03.2001, Manjit Singh had appeared in a case pending in the Court of JMFC Barnala. This witness did not make any application to the Panchayat or to the higher authority regarding the alleged false implication of the appellant Manjit Singh. The conduct of this witness DW-9 and most of the other witnesses examined in defence in relation to the plea of alibi, to say the very least, had been queer and too unnatural to inspire any confidence. 12.4 The witnesses DW-3 Jora Singh and DW-6 Amarjit Singh were admittedly serving in police establishment as Head Constable and Constable respectively. From their testimony, this much is apparent that an occurrence indeed took place on the given date, at the given time, and at the specified place i.e., the Court Complex Barnala. They allegedly intervened in the fight between two factions. It sounds rather strange that despite being the eye- witnesses to the incident and being the police personnel themselves, neither they took care to report the matter to the police station immediately nor the IO could take their statements and cite them as prosecution witnesses. The conduct of DW-4 Gurcharan Singh Dhaliwal, Advocate had been equally unnatural. If he was the eye-witness to the incident in the Court Complex, there was no reason that being a law professional, he would not have reported 23

the matter or would not have been examined by the IO. Curiously, DW-4 attempted to suggest that 3/4 persons caused injuries to 3/4 persons while DW-6 stated that 4/5 persons were causing injuries to 4/5 persons. This discrepancy in the number of persons involved is not without significance. The intention of DW-4 had clearly been to tone down the gravity of offence and to avoid the figure of 5 so as to take the case away from Section 149 IPC. In any case, mere suggestion in the negative by these persons that they did not see the three accused persons Manjit Singh, Prem Kumar and Narain Datt on the spot does not displace the cogent and trustworthy evidence adduced by the prosecution. The Trial Court and High Court have rightly discarded these witnesses as being wholly unreliable. 12.5. In the given set of facts and circumstances, where the plea of alibi was not put in suggestion to the relevant prosecution witnesses; and, in his own statement under Section 313 Cr PC, the appellant Manjit Singh, did not state that he was not present at the site at the relevant point of time and he was present somewhere else, this plea could only be rejected as a crude afterthought and nothing else. In the given circumstances, the witness DW-9, Kulwant Singh could only be said to be a made-up witness, who was lately introduced to somehow make out a case of the presence of the appellant Manjit Singh at a different place at the relevant point of time. Such a witness could not have been accepted for want of the basis of such a plea by way of cross-examination of the prosecution witnesses as also by way of specific assertion in the plea of the appellant Manjit Singh in his statement under 24 Section 313 Cr PC. Apart that there is no supporting material in relation to the assertion so made by this witness, it is also noteworthy that when the appellant was keenly pursuing the said rape and murder case of the village girl and the matter was fixed in the Court on 03.03.2001, there was every reason for him to be present in the Court Complex where the hearing was to take place. Viewed from any angle, the plea of alibi, as put forward by the appellant Manjit Singh, remains hollow and could only be rejected. Other contentions 13. The other contention on behalf of the appellant Manjit Singh that his connectivity with the crime is not established for want of recovery of weapon of offence has only been noted to be rejected. As noticed, the IO in the first place did make recoveries on the disclosure statements of other four accused persons. As regards the appellant Manjit Singh, the IO chose to proceed in the direction that he was innocent and

was falsely implicated. That seems to be the fundamental reason for the IO not making any attempt for recovery of the weapon of offence used by the appellant Manjit Singh. However, this omission has no adverse bearing on the prosecution case, where involvement of the appellant Manjit Singh rather as the leader of the assembly, who started the assault with exhortation and then participated in the assault, stands established beyond doubt. 13.1. Further, there is hardly any force in the suggestion that the appellant Manjit Singh was falsely implicated for enmity. In the circumstances of this 25 case, if anything of so-called enmity is to be taken into consideration, the same equally operates against the appellant and his companions, as admittedly, the appellant was keenly pursuing the aforesaid case of rape and murder and the complainant party was comprising of the persons related with the accused in the said case. The factor of enmity would only lend support to the prosecution case towards the object and motive of the assembly to attack, assault and cause hurt to the members of the complainant party. 13.2. Likewise, the submission about want of independent witnesses in support of prosecution case is also baseless. There is no rule that in every criminal case, the testimony of an injured eye-witness needs corroboration from the so-called independent witness(es). When the statement of injured eye-witness is found trustworthy and reliable, the conviction on that basis could always be recorded, of course, having regard to all the facts and surrounding factors. In the present case, the reliable evidence of the injured eye-witnesses cannot be discarded merely for the reason that no independent witness was examined. Unlawful assembly and rioting with deadly weapons 14. It has been vehemently argued on behalf of both the appellants that the essential ingredients of Section 141 IPC for the formation of unlawful assembly with the common object having not been established, the conviction of the appellants with the aid of Section 149 IPC is not justified. 26 14.1. The relevant part of Section 141 IPC could be usefully extracted as under:- xxx 141. Unlawful assembly.- An assembly of five or more persons to designated an unlawful assembly, if the common object of the persons composing that assembly is- xxx Third.- To commit any mischief or criminal trespass, or other offence; or xxx xxx Explanation.- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. xxx xxx 14.2. Section 149, rendering every member of unlawful assembly guilty of offence committed in prosecution of

common object reads as under:- 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. 14.3. We may also take note of the principles enunciated and explained by this Court as regards the ingredients of an unlawful assembly and the vicarious/constructive liability of every member of such an assembly. In the case of Sikander Singh (supra), this Court observed as under:- 15. The provision has essentially two ingredients viz. (i) the commission of an offence by any member of an unlawful assembly, and (ii) such offence must be committed in 27 prosecution of the common object of the assembly or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object. Once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability for the offence committed by a member of such unlawful assembly under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. *** *** *** 17. A common object does not require a prior concert and a common meeting of minds before the attack. It is enough if each member of the unlawful assembly has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to

be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful.

18. In Masalti v. State of U.P.: AIR 1965 SC202a Constitution Bench of this Court had observed that: (AIR p. 211, para

17) 17. Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such 28 as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. 14.4. In the case of Subal Ghoral (supra), this Court, after a survey of leading cases, summed up the principles as follows:- 52. The above judgments outline the scope of Section 149 IPC. We need to sum up the principles so as to examine the present case in their light. Section 141 IPC defines unlawful assembly to be an assembly of five or more persons. They must have common object to commit an offence. Section 142 IPC postulates that whoever being aware of facts which render any assembly an unlawful one intentionally joins the same would be a member thereof. Section 143 IPC provides for punishment for being a member of unlawful assembly. Section 149 IPC provides for constructive liability of every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly who knew to be likely to be committed in prosecution of that object. The most important ingredient of unlawful assembly is common object. Common object of the persons composing that assembly is to do any act or acts stated in clauses First, Second, Third, Fourth and Fifth of that section. Common object can be formed on the spur of the moment. Course of conduct adopted by the members of common assembly is a relevant factor. At what point of time common object of

unlawful assembly was formed would depend upon the facts and circumstances of each case. Once the case of the person falls within the ingredients of Section 149 IPC, the question that he did nothing with his own hands would be immaterial. If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that 29 offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly.

53. But this concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. Quite often, people gather at the scene of offence out of curiosity. They do not share common object of the unlawful assembly. If a general allegation is made against large number of people, the court has to be cautious. It must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly. Unless reasonable direct or indirect circumstances lend assurance to the prosecution case that they shared common object of the unlawful assembly, they cannot be convicted with the aid of Section 149 IPC. It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the unlawful assembly is at a particular stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution. 14.5. We need not expand on the other cited decisions because the

basic principles remain that the important ingredients of an unlawful assembly are the number of persons forming it i.e., five; and their common object. Common object of the persons composing that assembly could be formed on the spur of 30 the moment and does not require prior deliberations. The course of conduct adopted by the members of such assembly; their behaviour before, during, and after the incident; and the arms carried by them are a few basic and relevant factors to determine the common object. 14.6. The facts of the present case, as established by the prosecution, makes it clear that on the relevant date i.e., 03.03.2001 and at the relevant time i.e., 11.15 a.m., at least five of the accused persons, including the present appellants were present at the Barnala Court Complex. The members of the complainant party purportedly came to the very same Court Complex to attend the hearing of the aforesaid rape and murder case of the village girl in which, their kiths and relatives were the accused persons and the case was being pursued by the appellant Manjit Singh. It is also established that when the persons related with the complainant party were about to board their vehicle, the accused persons attacked them with weapons. Significantly, the attack on the complainant party was triggered with exhortation by the appellant Manjit Singh to avenge the rape and murder of the village girl in the expressions Aj Eh Bach Ke Naa Jaan KK* Da Badla Lai Kay Rahenge6. This clearly brings out the motive for the attack as also the object of the assembly. Moreover, the blows hurled by the accused persons on the members of the complainant party had been of wide range, sufficient force and chosen aims. The appellant Manjit Singh himself had given two blows to the witness PW-5 on either of his hands. Labh Singh gave kirpan blow on the head of Beant Singh. The 6 That would translate nearly as: Let them not escape today; KK* shall be avenged. 31 appellant Sukhwinder Singh aimed the first blow on Dalip Singh but hit the right hand of the victim. The appellant Sukhvinder Singh caused yet another injury to PW-6 Gurnam Singh by the handle of his kirpan. These were apart from the repeated blows by the accused Bakhtaur Singh on the head of the deceased Dalip Singh with his ghop and then three blows to PW-6 Gurnam Singh. That apart, Bakhtaur Singh also gave the blow of his kirpan on the left leg of Gurnam Singh. It is beyond the pale of doubt that the accused persons had acted in concert and the object had clearly been to ensure causalities amongst the members of the complainant party.

On the applicable principles, we have no hesitation in concluding that the accused persons did constitute an unlawful assembly; did indulge in rioting in the Court Complex with deadly weapons; and did cause grievous bodily injuries to members of the complainant party. The deceased Dalip Singh was attacked rather repeatedly by the members of this unlawful assembly and he sustained grievous injury on the head that proved fatal. The background aspects as also the conduct of the accused persons at and during the incident leaves nothing to doubt that each of the member of this assembly remains liable for the offence committed by himself as also by every other member of the assembly.

15. Before concluding, we may point out that in the case of Govind Singh (supra), as relied upon by the learned counsel for the appellant Sukhwinder Singh, the incident occurred in the sudden quarrel and in spur of moment where the appellant picked up chimney lamp and threw it on his daughter who died because of burn injuries sustained in the incident. In the given fact 32 situation, this Court converted the conviction from Section 302 IPC to that under Section 304 Part-II IPC and reduced the sentence of imprisonment to the period already undergone. We are unable to find any applicability of this decision to the facts of the present case. Conclusion 16. Accordingly, and in view of the above, these appeals fail and are, therefore, dismissed. The appellants shall surrender before the Court concerned within a period of four weeks from today and shall serve out the remaining part of their respective sentence(s). (A.M. KHANWILKAR) .....J.

.....J.

(DINESH MAHESHWARI) New Delhi, Date:

3. d September, 2019. 33

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