SUPREME COURT OF INDIA

Avtar Singh

Vs.

State of Haryana

Crl.A.No.1475 of 2010

(B.S. Chauhan and Fakkir Mohamed Ibrahim Kalifulla JJ.)

10.10.2012

JUDGMENT

FAKKIR MOHAMED IBRAHIM KALIFULLA, J.

1. These two appeals arise out of the common judgment dated 27.03.2009 passed in Criminal Appeal No.916-DB/2006 of the High Court of Punjab Haryana at Chandigarh. The second accused is the appellant in Criminal Appeal No.1475/2010. Accused Nos. 4 to 9 are the appellants in Criminal Appeal No.1476 of 2010.

2. According to the case of prosecution, there was a civil suit pending as between Hansa Singh (PW-11) and Surjit Singh S/o Kundan Singh (DW- 2) at Samana (Punjab), that there was also an interim order granted by the Civil Court in favour of Hansa Singh (PW-11) as against Surjit Singh, that after hearing was over on 09.04.2003 in the Civil Court, the complainant party returned back home and were present at the house of PW-10 Harmesh Singh s/o Amarjit Singh in the evening. At that time, one Desa Singh, uncle of Harmesh Singh (PW-10) came and informed that some persons had gathered near the land with reference to which the litigation was pending in the Court at Samana and that they might harvest the crops belonging to Hansa Singh (PW-11). On hearing the said information, Harmesh Singh (PW-10) along with his father the deceased Amarjit Singh, his uncle Hansa Singh, Ujagar Singh s/o Chuman Singh, Paramjit Singh s/o Surjit Singh, Karnail Singh s/o Phuman Singh, Surjit Singh s/o Atma Singh, Darshan Singh s/o Surjeet Singh, Teja Singh s/o Karta Singh, Ranjit Singh s/o Phuman Singh all residents of Bhatian village proceeded towards the field of Hansa Singh at about 7.30 p.m., that when they reached the bandh of Bhatian Dam near the lands of Darshan Singh, the

accused, namely, Kirpal Singh, Raminder Singh s/o Arjun Singh, Mitt Singh, Resham Singh with swords in their hands, Balbir Singh, Jagtar Singh, Fateh Singh armed with gandasis, Raghbir Singh, Avtar Singh armed with barchhis all residents of Dera Amritsaria, Shiv Majra and Kulwant Singh s/o Surjit Singh also with a sword rushed towards them raising a lalkara, that Kirpal Singh gave a sword blow upon the head of Amarjit Singh, father of Harmesh Singh (PW-10) while Raminder Singh gave a blow of sword on the left arm of the deceased Amarjit Singh and Kulwant Singh attacked the deceased on his feet and Balbir Singh, Jagtar Singh and Fateh Singh also attacked the deceased with their weapons. Raghbir Singh with his barchhi, Mitt Singh with his sword, Resham Singh also with a sword and Avtar Singh with a barchhi attacked Paramjit Singh, Ujagar Singh, Surjit Singh, Hansa Singh and Karnail Singh and inflicted injuries upon them. Due to the injuries the deceased Amarjit Singh fell down, that when the complainant went running towards the place of occurrence, the accused party fled away from the spot with their respective weapons. The deceased was stated to have been taken to the civil hospital where he was declared dead by the doctor. The other injured persons were also treated at the very same hospital, and that the statement of PW-10 was recorded at 10.35 p.m. which was forwarded to the police station at PHG, Guhla which came to be registered as FIR No. 51 dated 09.04.2003. Thereafter PW-15 Sub-Inspector took up the investigation, inspected the place of occurrence recorded the statement of witnesses, collected the opinion of doctors, prepared the draft sketch, collected blood stained earth from the place of occurrence, took steps for the arrest of the accused and based on the admissible portion of their confessional statement recovered the weapons and filed the final report before the Court. The case was committed to the Court of Sessions where the appellants along with three other accused came to be charge sheeted for the offences punishable under Sections 148, 302, 326, 325, 324,323 read with Section 149 IPC.

3. On the side of the prosecution as many as 16 witnesses were examined and 87 Exhibits were marked. In the 313 questioning, the accused denied all the allegations against them. DWs-1 to 7 were examined on the defence side. Based on the evidence placed before the trial Court, all the accused were found guilty of the offences alleged against them and they were convicted and sentenced to rigorous imprisonment for six months and pay a fine of Rs.1000/- each for the offences under Section 148 IPC and in default of payment of fine to undergo simple imprisonment for a period of two months each, life imprisonment for each for the offence under Section 302 IPC, RI for three years and to pay fine of Rs.2000/- each and in default of payment of fine to undergo simple imprisonment for a period of three months for the offence under Section 326 IPC, rigorous imprisonment for a period of two years along with a fine of Rs.2000/- each and in default to undergo

simple imprisonment for a period of two months each and for the offence under Section 325 IPC rigorous imprisonment for a period of one year along with a fine of Rs.2000/- each and in default to undergo simple imprisonment for a period of two months each. All the sentences were to run concurrently.

4. Aggrieved by the conviction and sentence imposed, all the appellants preferred an appeal and the High Court while confirming the conviction and sentence imposed on the appellants held that the offence alleged against Raghbir (A1), Mitt Singh (A-3) and Resham Singh (A-10) was doubtful and on that ground acquitted them of all the charges levelled against them. Being aggrieved of the above conviction and sentence imposed on the appellants and the confirmation of the same by the High Court, the appellants have come forward with this appeal.

5. Learned counsel at the very outset fairly submitted that the appellants go along with the story of the prosecution to considerable extent in the sense that the filing of the Civil Suit by PW-11 as against Surjit Singh in the Court at Samana was true, that it related to the lands in village Marori, that the suit was admittedly pending on the date of occurrence, namely, 09.04.2003, that on that evening the occurrence took place. Learned counsel also contended that the presence of three of the accused as well as Surjit Singh at the place of occurrence was true. The said three accused were Kirpal Singh (A- 4), Raminder Singh (A-5) and Kulwant Singh (A-9). Learned counsel would, however, strongly urge that the prosecution tampered with the records inasmuch as in the complaint itself, which was preferred by PW-10, there was a specific reference to the presence of Surjit Singh, nevertheless there was no reference to him in the FIR and he was not charge-sheeted and the injuries sustained by him were not specifically explained. According to the learned Senior counsel the Civil Suit preferred by PW-11 ended in a failure, that the name of Surjit Singh (DW-2) was duly recorded in the revenue records as owner of the lands in question and that the accused party were the sufferers at the hands of the complainant party and though a complaint was preferred at the instance of Surjit Singh (DW-2), the prosecution failed to take appropriate action in that regard.

6. According to learned Senior counsel, the accused party when tried to defend themselves from the attack of the complainant party they might have suffered the injuries and the prosecution failed to project the case in the proper direction. By referring to the non-examination of the other injured persons, namely, Jagtar Singh, Paramjit Singh, Surjit Singh and Karnail Singh, the learned senior counsel submitted that there was not enough evidence to support the case of the prosecution. Learned senior counsel argued that when Harmesh Singh (PW-10) met Investigation officer PW-15 at the hospital at 9 p.m. when he was by the side

of the dead body, there was no proper explanation for the registration of the FIR after 1 hour and 35 minutes, inasmuch as, the police station is just across the hospital. Learned Senior counsel also contended that when there was no reference to the name of the accused, namely, Raghbir Singh (A-1), Mitt Singh (A-3) and Resham Singh (A-10) in the record and specific reference to Surjit Singh (DW- 2) the inclusion of A-1, A-3 and A-10 in the FIR and non-arraying of DW-2 as the accused would only go to show that it is a clear case of tampering of the records and consequently the case of the prosecution should not be believed. Learned senior counsel ultimately submitted that it was a sudden fight without any pre-meditation, that in a group clash there were 11 persons on the side of the complainant party and six on the side of accused party in a heat of passion and as there was no cruel attack and in the circumstances when the above factors were proved or at least probabilized there is a great doubt whether Section 149 would apply. The learned Senior counsel would contend that there was no pre-meditation and there was no motive and if at all there was any motive, it might be against PW-11 while the deceased Amarjit Singh was totally unconnected to the dispute relating to the land and any attack on the said deceased Amarjit was so sudden, there was no common object in the alleged murder of the deceased Amarjit Singh. As far as the injuries caused on others are concerned, it was contended that those injuries were all minor injuries and in the circumstances, the conviction could at best be for an offence under Section 304 Part I IPC as against Kirpal Singh (A-4) and under Section 323, IPC as against others. Learned senior counsel would, therefore, contend that whatever sentence has been suffered by the appellants would be sufficient punishment and they are entitled to be released forthwith.

7. As against the above submissions learned counsel for the State pointed out that the names of Raghbir Singh (A-1), Mitt Singh (A-3), Resham Singh (A-10) do find a place in the record as could be seen from Page 3 Volume III, that rukka was written at 10.30 p.m. and FIR was registered at 10.35 p.m. and, therefore, there was no question of false case or any delay in the registration of the FIR. The learned counsel drew our attention to the order of the Civil Court extending the stay on 09.04.2003 available at pages 207 to 213 of the original records to contend that the dispute with regard to the land and its right of possession was very much in controversy on the date of occurrence as between the parties and as per the version of PW-10 the issue relating to the land was as between his uncle PW11 and Surjit Singh who were fighting for the land in the Civil Court and the deceased Amarjit Singh being the father of Harmesh Singh (PW-10) was closely related to Hansa Singh (PW-11) and consequently he was also fully interested in the claim of Hansa Singh (PW-11) over the land in question and that the submission of the counsel for the appellant to the contrary cannot, therefore, be accepted. Learned counsel for the

State contended that immediately after the occurrence at 7.30 p.m. the deceased was taken to the hospital where he was declared dead by the doctor and the version found in the rukka was found in the FIR and, therefore, there was no question of any falsification in the case of the prosecution. Learned counsel submitted that the case of the prosecution was supported by the injured eye witnesses and, therefore, it was not necessary for the prosecution to multiply witness when the eye witnesses fully supported the case of the prosecution. It was, therefore, contended that the non-examination of Desa Singh, the uncle of Harmesh Singh (PW-10) who gave the information that the accused party were proceeding towards the disputed land with an idea to harvest the crops never caused any dent in the case of the prosecution. In other words, according to the learned counsel even in the absence of Desa Singh's evidence, the case of the prosecution stood proved. Learned counsel further contended that the injuries inflicted upon the deceased as found proved based on the evidence of the doctor in the post mortem report established the intention of the accused to cause the death of the deceased and the injuries sustained by others were also severe though they survived the attack. Learned counsel pointed out that none of the accused party sustained any injuries and, therefore, the theory of private defence was a futile stand. According to the learned counsel, the complainant party were unarmed while the accused were armed heavily, that the complainant party were not the aggressors while the accused party were found to be aggressors by the Courts below was true and in those circumstances when the plea of self defence failed, the charge under Sections 148 and 149, IPC stood fully proved. He also contended that the very fact that the appellants were armed with deadly weapons and caused the death of the deceased, the offence under Sections 148 and 149 were made out and there was no requirement of pre-medication and pre- planning for the offence under Sections 148 and 149 to be made out. The common object as made out on the spot was sufficient to support the conviction imposed on the appellants for the offence under Section 302 IPC as well as under Sections 323, 324 and 325 read with Sections 148 and 149 IPC. The learned counsel, therefore, contended that no interference is called for.

8. Having heard learned counsel for the appellant as well as counsel for the State and having bestowed our serious consideration to the judgment impugned in these appeals, as well as, that of the trial Court and the material papers placed before us, at the outset, when we examine the whole edifice of the crime, we find that it related to the disputed land situated in village Marori (Punjab) as between Surjit Singh (DW-2) and Hansa Singh (PW-11). According to DW-2 at the behest of PW-11 he purchased the property, that he has perfected the title over it, yet PW-11, under the guise of his continued right to possession was causing hindrance to the

ownership of DW-2. As the issue was brewing over a considerable length of time, prior to the year 2003, that on the fateful date it transpired that in the Civil Suit preferred by PW-11 in the Court of Samana, the interim order granted earlier in favour of PW-11 by way of stay was extended by the Civil Court. As per the narration of events, it was disclosed that the parties returned back to their respective homes in the village in the evening while Harmesh Singh (PW-10), Hansa Singh (PW-11) and the deceased Amartjit Singh were discussing about the issue, one Desa Singh, the uncle of Harmesh Singh (PW-10) arrived there and gave the information that the accused party was proceeding towards the disputed land with the idea of harvesting the crops raised by Hansa Singh (PW- 11). Since there was an order of stay existing in favour of PW-11, it was quite apparent that the information furnished by Desa Singh prompted the complainant party to proceed towards the land in question with a view to protect their crops.

9. The said conduct displayed by the complainant party who were all related was quite natural. Nowhere it was brought out in evidence that while they were proceeding towards the disputed land they were all armed with any dangerous weapons, except lathis in the hands of Teja Singh and Ranjit Singh as stated by PW-11 in his oral evidence. On the other hand, even according to Surjit Singh, DW-2 he along with his son Kulwant Singh and other son Tarsem Singh, Amar Singh, cousin Kirpal Singh and other accused were going towards the said land and thereby admitted the factum of the correctness of the information alleged to have been received by the complainant party about their proceeding towards the land for harvesting the crops. He further went on to depose that when they had gone on Killa towards the West through the bandh, the complainant party pounced upon the whole lot of them but caused injuries only to him. There is further admission to the effect that their party also caused injuries to the complainant party with the rider that such causing of injuries was by way of self defence. He fairly admitted that while he received lot of injuries, the complainant party also received injuries.

10. A reading of the evidence of PWs-10, 11 and 13 read along with the version of DW-2 as regards the manner of infliction of injuries amply establish to a considerable extent the fact about the happening of the occurrence on the way to the disputed land in question near the bandh apparently referring to Bhatian bandh which has been specifically mentioned by the prosecution witnesses. While on the one hand, according to the prosecution, the complainant party was proceeding towards the land with a view to protect the crops from being harvested by the accused party, as per the version of DW-2, at the point where both the parties met at Bhatian bandh, a clash occurred in which casualties were the death of the deceased Amarjit Singh apart from injuries sustained by Hansa Singh (PW-11),

Jagtar Singh, Paramjit Singh Surjit Singh S/o Atma Ram, Karnail Singh and Harmesh Singh son of the deceased Amarjit Singh. The evidence of the doctor who attended on the injured witnesses PWs-10, 11 and 13 as well as the other injured persons disclosed that everyone of them suffered cut injuries with the aid of dangerous weapon such as gandasa, kirpan and sword. This was the sum and substance of the manner in which the occurrence took place where Amarjit Singh was murdered while the other injured persons were inflicted with severe injuries. In that process, none of the assailants suffered any injuries except DW-2 whose grievance was quite independent of the genesis of the crime alleged against the appellants.

11. Learned counsel for the appellant in the forefront submitted that having regard to the specific reference made in the rukka about the presence of Surjit Singh but yet not being made a party to the crime and non-consideration of the grievance of the said Surjit Singh with reference to the extent of injuries sustained by him which according to him were inflicted upon him by the complainant party, the prosecution case was not truthful, tampering of the whole case with a view to pin down the appellants and the other accused by fabricating the evidence. Learned counsel for the State in his submission, however, pointed out that there could not have been any false case fastened on the appellants inasmuch as the rukka which was prepared at 10.30 p.m. at the hospital was received at the police station and thereafter the law was set in motion by registering the FIR without any loss of time. According to learned counsel, the rukka was written at 10.30 p.m. and the FIR was registered at 10.35 p.m. wherein the entire allegations brought out in the rukka were duly carried out and in the said circumstances, there was no basis at all for submission made on behalf of the appellants alleging false case foisted against the appellant. We find force in the said submission of learned counsel for the State. As far as non-inclusion of Surjit Singh (DW-2) as an accused or as a witness is concerned, though in the first blush, it may appear as though some deliberate attempt was made at the instance of the prosecution to suppress certain vital factors, on a close scrutiny, we find that except referring to the name of Surjit Singh in the rukka, there was no specific overt act alleged against him in regard to his participation in the actual crime of assault or inflicting of injuries or use of any weapon against either the deceased or any other person. Therefore, the non-inclusion of Surjit Singh in the array of accused by the prosecution cannot be taken so very seriously in order to doubt the whole genesis of the case alleged against the appellant and the other accused.

12. Learned counsel further submitted that though the prosecution would claim injuries on several persons of the complainant party, the other persons who were

stated to have been injured or were present at the place of occurrence were not examined. In this context, it will be relevant to refer to the decision of this Court reported in Tej Prakash v. The State of Haryana [JT 1995 (7) SC 561] wherein this Court held that all the witnesses of the prosecution may not be called and it is sufficient if witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution. The legal position has been stated in paragraph 18 as under:

> "18. In support of his contention that serious prejudice was caused to the appellant by non-examination of Phool Singh who, had been cited by the prosecution as one of the witness, Mr. Ganesh relied upon Stephen Senivaratne v. The King, AIR 1936 P.C. 289, Habeeb Mohammad v. The State of Hyderabad, 1954 (5) SCR 475 and the State of UP and another v. Jaggo Alias Jagdish and others 1971 (2) SCC 42. The aforesaid decisions can be of little assistance to the appellant in the present case. What was held by the Privy Council and this Court was that witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution and that failure to examine such a witness might affect a fair trial. It was also observed that all the witnesses of the prosecution need not be called. In the present case, the witnesses who were essential to the unfolding of the narrative had been examined."
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> (Emphasis added)
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> The law on this aspect can be succinctly stated to the effect that in order to prove the guilt of the accused, the prosecution should take earnest effort to place the material evidence both oral and documentary which satisfactorily and truthfully demonstrate and fully support the case of the prosecution. Where there were several persons stated to have witnessed the incident and the prosecution examined those witnesses who were able to depose the nature of offence committed more accurately leaving no room for doubt about the involvement of the accused in the occurrence and the extent of their involvement with specific overt act and also were able to withstand the cross-examination by maintaining the sequence and the part played as originally stated, it will be wholly irrelevant and unnecessary to multiply the number of witnesses to repeat the same version.

13. As rightly pointed out by the trial Court as well as the High Court, if really the case sought to be pleaded at the instance of DW-2 as against the complainant party

were true and he really suffered any injury at the hands of the complainant party, it was not known why he did not pursue his complaint of such a serious nature by taking appropriate recourse to law. Though according to DW-2 as well as the doctor who is alleged to have examined him who was examined as DW-3, he suffered extensive injuries (viz) as many as five, of which one was an incised wound, we find considerable doubt and suspicion as regards the version spoken to by both the witnesses in particular about the nature of injuries sustained and its truthfulness. We say so because admittedly while the occurrence had taken place on 09.04.2003 between 7 to 7.30 p.m. according to the doctor (viz) DW-3, DW-2 approached the hospital at Guhla only at 4.10 p.m. on 10.04.2003 where he stated to have subjected himself for medical examination. DW-3 in his evidence admitted that on 10.04.2003 he was posted at PHC, Guhla on emergency duty. The photocopy of MLR is Exhibit DX along with X-ray dated 12.04.2003 by way of Exhibit DA and intimation alleged to have been sent to Guhla Police station on 10.04.2003 as Exhibit DY placed before the Court to support the claim of medical evidence. In the cross examination, DW-3 tacitly admitted that he had no document to show that he was on emergency duty at Guhla hospital on 10.04.2003. He, however, claimed that the assignment of duty by way of roster would be available in the office of SMO Guhla but no steps were taken at the instance of DW-2 or DW-3 to exhibit the said document in order to show that DW-3 was really on duty on 10.04.2003 at PHC Guhla which was not his regular place of duty as a doctor. Therefore, the cumulative consideration of the factum of DW-2 stated to have gone to the hospital only on the next day evening, namely, 10.04.2003 at 4.10 p.m. the extent of doubt about the factum of such medical examination held on the person of DW-2 by DW-3 rightly persuaded the Courts below not to give credence to the claim of DW-2 as regards the injuries alleged to have been sustained by him at the hand of the complainant party. Therefore, the submission made on behalf of the appellants by making reference to the said factor in order to doubt the case of the prosecution to hold that the whole case was fabricated by tempering the records does not appeal to this Court.

14. Once we steer clear of the said hurdle relating to the case projected against the appellants and the other accused and when we see the whole evidence read with the evidence of DW-2 himself, it only goes to show that the prosecution story as placed before the trial Court which was appreciated while finding the appellant guilty of the offence alleged against them is fully justified. In the result, therefore, the role played by the accused in causing the serious injuries on the deceased as well as on the other injured witnesses and other persons as found proved does not call for any interference.

15. If once that conclusion is irresistible, the only other question to be considered is the plea of self-defence which was argued on behalf of the appellant. In this context, the conclusion of the trial Court in holding that it was the accused party who had attacked the complainant party and thereby the complainant party cannot be held to be aggressors was perfectly justified. The trial Court has also noted that the issue was relating to the land situated at place Marori. The trial Court also noted that when the two groups happened to clash and from among the two groups, the members of the group of the complainant party were only the sufferers inasmuch as several of them sustained injuries and everyone of them suffered cut injuries which injuries were demonstrated before the Court by the medical evidence in uncontroverted terms that they were caused by either gandasi or kirpan or sword and the injuries sustained by the deceased Amarjit Singh which was the cause for his death as opined by the medical evidence while at the same time none of the persons in the accused party sustained any injury, the ultimate conclusion of the Court below in holding the accused were squarely responsible and by calling them as the party who indulged in the aggression cannot be found fault with. The evidence of DW-2 was clear to the effect that the persons who accompanied him carried gandasi and sottas, that three were holding gandasis and three were holding sottas. He also admitted in categorical terms that none of the five persons who accompanied him received any injuries except himself. Therefore, even going by the version of DW-2 himself they were armed with dangerous weapons. Therefore, when they proceeded towards the disputed land with arms such as gandasi and kirpans it amply disclosed their mindset to deal with the complainant party sternly against whom they had a definite grudge relating to the land with reference to which the dispute was brewing for quite a long period of time prior to the date of occurrence, namely, 09.04.2003. More so, as established before the trial Court, the interim order passed against them by the Civil Court was extended on that very date, namely, 09.04.2003 which was a cause for prejudice against the complainant party.

16. On the other hand, the very fact that there were extensive injuries sustained by the complainant party and the death of the deceased in the process of assault inflicted upon them only goes to show that the plea of self-defence was wholly a make a belief version which had no legs to stand and was rightly rejected by trial Court as well as the High Court. We, therefore, do not find any substance in the said submission of the learned counsel.

17. Learned counsel was stressing to a very great extent that it is a case of extending self-defence and, therefore, the case would fall under first part of 304,

that Section 149, IPC would not apply to any of the appellants while they may be liable for their individual offences.

18. We have considered the plea of self-defence in detail and have found that there was no acceptable basis for the said claim and once the theory of self-defence stands rejected, we find no scope to apply the submission that the case would fall under Section 304 Part I and that too exclusively as against A-4 Kirpal Singh alone and not others. Having regard to our conclusion that the accused party was the aggressor and having regard to the possession of dangerous weapons it was amply demonstrated that the game play was preplanned to deal with the complainant party when they were proceeding towards the disputed land in question while meeting them at the bandh at Bhatian. The subsequent conduct of the appellants in having inflicted the severe injuries and causing death of the deceased Amarjit Singh only go to show that it was a clear case of pre-meditation. The contention that it was a sudden fight and was without pre-meditation has, therefore, no basis at all. It is relevant to note that at least three types of dangerous weapons apart from Lathis were in the possession of the accused party. The very fact that the death of the deceased Amarjit Singh was due to the cut injuries inflicted upon him and the other injuries as noted in the body of PWs-10, 11 and 13, as well as, other injured persons of the complainant party was clear proof of the fact that the accused party was present at the place of occurrence, namely, the Bhatian bandh fully prepared to attack the complainant party which they were able to successfully carry out. The admission of DW-2 that none of the accused party was injured also goes to show that everyone of the accused party was standing at the spot with a clear mindset to assault the members of the complainant party. Therefore, it is a futile attempt on the side of the appellants now to contend that it was a sudden fight without any pre-meditation. For the very same reason the contention that in a heat of passion in a group fight the injuries were inflicted cannot also be accepted. The further contention that the accused party did not act in a cruel manner is again a fact contrary to the true state of affairs which prevailed at the place of occurrence. Therefore, it was too much for the appellants to expect and contend that the case would fall under Exception IV to Section 300 IPC. The said contention has to be stated only to be rejected.

19. Once the claim of absence of pre-meditation is rejected, only other submission was that the appellants, if at all they were aggrieved, it was only against PW-11 Hansa Singh and the deceased Amarjit Singh unfortunately fell a prey in the process and, therefore, there was no common object involved in order to attract Section 149, IPC. Again this was a submission which was one in desperation. Even going by the submission of the learned counsel if the accused party had a motive as

against Hansa Singh (PW-11) that very fact was sufficient enough to bring the action of the accused party in having caused injuries on the witnesses and other persons as well as the cause for the death of the deceased Amarjit Singh to squarely rope them in the process of their common object. Section 149 provides that if offence is committed by a member of an unlawful assembly in commission of the object of that assembly then every person who at the time of committing of that offence is a member of that assembly would be guilty of that offence. In this context, it will be worthwhile to refer to the earliest decision on this subject reported in Mizaji and Anr. v. State of U.P. - AIR 1959 SC 572 wherein this Court has held as under:- "6. This section has been the subject matter of interpretation in the various High Courts of India, but every case has to be decided on its own facts. The first part of the section means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed……."

(Emphasis added)

20. Therefore, applying the above said principle, it can be safely held that everyone of the members of the accused party must have been fully aware that having regard to the fact that dangerous weapons were in their possession, that they had an axe to grind against Hansa Singh (PW-11), that there was every likelihood of the offence of that magnitude would be the ultimate outcome and the factum of such grave offence ultimately brought them within the four corners of the said Section and there was no escape from it. Therefore, the argument that there was no common object to murder Amarjit Singh also stands rejected. The manner of causing injury on the person of Amarjit Singh also goes to show that all of them were determinative of showing their might by ensuring that the deceased and other injured persons did not escape from their assault and the deceased ultimately succumbed to the injuries inflicted upon him. The assailants ensured that the deceased was hit on his head and every vital part of the body and the chopping of the torso of both the legs was only to ensure that there was no way to escape for the person from the gruesome attack. The totality of the manner in which the

assailants acted at the place of occurrence while inflicting the injuries on the deceased as well as others only displayed their united mind and effort in the fulfillment of their objective at the spot and, therefore, there was no scope to individualize the conduct of the assailants in order to mitigate the gravity of the charges found proved against the appellants. Therefore, the submission made by learned senior counsel that at best Kirpal Singh (A-4) can alone be found guilty of the offence under Section 302, IPC or under Section 304 Part I while others may be guilty of the lesser offence falling under Section 323, IPC cannot be accepted. Having regard to the gravamen of the charges found proved against the appellants, we do not find any scope to bring it under Section 304 Part I IPC based on the submission made on behalf of the appellants.

21. As held by us earlier the offence found proved against the appellants squarely fall under Section 302, IPC and the punishment imposed on the appellants for the said offence as well as the other charges levelled against them was fully established, the conviction and sentence imposed on the appellants, therefore, do not call for any interference. The impugned judgment cannot be assailed, the appeals fail and the same are dismissed.