

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO. 1853 OF 2009

RANJIT SINGH

Appellant (s)

VERSUS

STATE OF PUNJAB AND ORS.

Respondent (s)

with

CRL.A. Nos. 1855 of 2009, 17-18 of 2010 and 2434-2435 of 2009

Date : 04/07/2013 These Petitions were called on for hearing today.

For Appellant (s) Mr. Rishi Malhotra, Adv.

Ms. Kusum Chaudhary, adv.

Mr. Sanjay Jain, Adv.

For Respondent(s) Mr. Ajay Bansal, AAG,
Mr. Pardaman Singh, Adv.
Mr. Kuldip Singh, Adv.
Mr. Gaurav Yadav, Adv.

Mr. Sudarshan Singh Rawat ,Adv

Hon'ble Mr. Justice T.S.Thakur pronounced Judgment of the Bench comprising His Lordship and Hon'ble Mrs. Justice Gyan Sudha Misra.

Criminal Appeal No. 1853 of 2009 is dismissed as abated qua respondent Mohinder Singh and as not pressed qua respondent Harbans Kaur.

Criminal Appeal No. 1855 of 2009 filed by the appellant Shavinderjit Singh is allowed.

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Criminal Appeals No. 17-18 of 2010 filed by Amrik Singh, Rajinder Singh and Jaswinder Singh allowed.

Criminal Appeals No. 2434-2435 of 2009 filed by Makhan Singh, Gurdial Singh and Balwinder Singh are allowed insofar as appellants Makhan Singh and Gurdial Singh are concerned but dismissed qua appellant-Balwinder Singh in terms of the signed judgment.

Appellants Makhan Singh, Jaswinder Singh, Rajinder Singh, Amrik Singh and Gurdial Singh who are currently undergoing imprisonment shall be released from jail with immediate effect unless otherwise required in any other case. In so far as the appellant Shavinderjit Singh is concerned, he being on bail, the bail bonds shall stand discharged.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master

Signed Reportable judgment is placed on the file.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1853 OF 2009

Ranjit Singh ...Appellant

Versus

State of Punjab ...Respondent

WITH
CRIMINAL APPEAL NO.1855 OF 2009

Shavinderjit Singh ...Appellant

Versus

State of Punjab ...Respondent

AND
CRIMINAL APPEAL NO.17-18 OF 2010

Amrik Singh and Anr. etc. ...Appellants

Versus

State of Punjab ...Respondent

AND
CRIMINAL APPEAL NOS.2434-2435 OF 2009

Makhan Singh & Ors. ...Appellants

Versus

State of Punjab ...Respondent

J U D G M E N T

T.S. THAKUR, J.

1. These appeals by special leave arise out of a common judgment and order dated 17th March, 2009, passed by a Division Bench of the High Court of Punjab and Haryana whereby Criminal Appeals No. 572-DB of 2004, 603-DB of 2004, 646-DB of 2004 and Crl. Revision No.2410 of 2004 have been dismissed while Crl. Appeals No.1362-SB of 2004, and 1388-SB of 2004 have been allowed. Criminal Appeals No.585-DB of 2004 and 1314-SB of 2004 have been similarly allowed by the High Court but only in part and to the extent indicated in the judgment under appeal.

2. The factual backdrop in which FIR No.412 dated 3rd May, 2001, under Sections 302, 307, 148 and 149 IPC and Sections 25, 27, 54 and 49 of the Arms Act came to be registered at Police Station Sadar, Patiala and a charge sheet based on the investigation conducted in the said case and in cross case No.SC No.58T/FTC dated 23rd April, 2004 came to be filed before the Additional Sessions Judge (Ad hoc), Patiala, have been set out at length by the Trial Court as also the High Court in the judgments impugned before us. It is, therefore, unnecessary to recapitulate the same over again except to the extent it is absolutely essential to do so for the disposal of these appeals.

3. Briefly stated, FIR No.412 dated 3rd May, 2001 was registered on the basis of a statement made by Ranjit Singh (PW 11) to the effect that on 3rd May, 2001 at about 4.30/5.00 A.M. the informant was along with his

brother, Amrik Singh and nephews, Vikramjit Singh, Shavinderjit Singh, Ramandeep Singh and Gobind Singh harvesting the wheat crop grown by Amrik Singh over a parcel of land in their possession situate in village Chuharpur Kalan, District Patiala, when a mob comprising several persons named by the informant armed with guns and other weapons like Gandasi, Kirpan and dangs came from the village side shouting that they should not allow the complainant party to escape and should teach them a lesson. Those with guns in the mob started firing at the complainant party. Gunshot injuries sustained by Amrik Singh and his son Vikramjit Singh felled them to the ground. The informant's nephew Shavinderjit Singh also received a gunshot injury. The mob then assaulted the complainant party including Amrik Singh and his son Vikramjit Singh with sharp-edged weapons no matter the two had already collapsed to the ground because of the firearm injuries. They also attacked the informant and Shavinderjit Singh. The informant further stated that Ramandeep Singh and Gobind Singh who had concealed themselves behind the harvesting combine raised an alarm and cried for help whereupon the accused fled away from the spot with their respective weapons.

4. The informant's father and other people from the village in the meantime came to the spot hearing the noise and found Amrik Singh and his son Vikramjit Singh dead due to gunshot and other injuries received by them. They arranged vehicles to remove the informant and Shavinderjit Singh to Rajindra Hospital, Patiala for treatment leaving behind the dead bodies of Amrik Singh and Vikramjit Singh in the fields where the occurrence had taken place. According to the informant the complainant party were in possession of 2= acres of land situated in the vicinity of the village. The girdawari/revenue entries regarding the land were also in the name of Amrik Singh the deceased. The assailants had come to the spot to dispossess the complainant party from the parcel of land in connivance with the Sarpanch of the village.

5. A rival version regarding the genesis of the incident was given by the accused party in the statement of Mohinder Singh recorded by SI Bhag Singh in the Rajindra Hospital at 2.00 p.m. on 4th May, 2001. According to that version the informant was on the night intervening 2nd/3rd May, 2001 sleeping along with his wife, Harbans Kaur on the roof of his house. At about 3.00 a.m. they heard the noise of a harvesting combine machine in the fields which had been taken on lease by the informant from the Gram Panchayat and in which he had grown wheat crop. The wheat crop was being harvested by the complainant party Zora Singh, Amrik Singh, Ranjit Singh sons of Gurdial Singh, Vikramjit Singh, Shavinderjit Singh sons of Amrik Singh and grandsons of Gurdial Singh besides 4-5 other persons with the help of a combine. According to the statement of Mohinder Singh the informant and his wife restrained the driver of the combine from harvesting the crop and questioned him as to why he was doing so. At this stage Amrik Singh the deceased who was carrying a gun fired at him. The gunshot hit the informant on his left leg whereupon his wife raised an alarm. But Shavinderjit Singh fired another gunshot which hit Harbans Kaur on her left arm. Gurdial Singh, Zora Singh, and Ranjit Singh raised a lalkara that Mohinder Singh and his wife should not be allowed to escape. Mohinder Singh at that stage fell unconscious on the ground whereupon Gurdial Singh and his family members forcibly harvested the crop in connivance with each other. Based on the above statement of Mohinder Singh a cross case was registered against Shavinderjit Singh, Zora Singh, Ramandeep Singh and Ranjit Singh under Sections 307, 447, 379, 511, 148 and 149 IPC and under Sections 25, 27, 54 and 59 of the Arms Act.

6. The police investigated both the versions in which process, the investigating officer collected blood-stained earth from near the dead bodies of Amrik Singh and Vikramjit Singh, besides two live cartridges and fourteen empty cartridges seized from the place of occurrence. One combine harvester along with its engine was also seized from the spot besides a kirpan along with its cover, one Toka, one Gandasa (Sharp edged cutting weapons), one Dang (lathi), one iron pipe and a stick.

7. Certain recoveries were made from the accused persons allegedly on the basis of disclosure statements made by them including a .12 bore DBBL Gun that was seized from the house of Balwinder Singh @ Bindi. Another .12 bore DBBL Gun was seized from accused Binder Singh. Similarly, DBBL Gun along with its licence was also seized from the house of Mohinder Singh, accused just as a .315 bore rifle was recovered from the house of Shavinderjit Singh.

8. Post-mortem examination of the dead bodies, ballistics report regarding the use of the weapons and the statements of the witnesses recorded under Section 161 Cr.P.C. completed the investigation and culminated in the filing of a charge sheet against twelve accused persons in the main case and framing of charges against them. In the course of trial, nineteen other persons were added as accused under Section 319 of the Cr.P.C. all of whom pleaded not guilty and claimed a trial.

9. A cross case was similarly filed against Shavinderjit Singh, Ramandeep Singh and Ranjit Singh, but in the course of trial the Court added Zora Singh, Gobind Singh and Gurdial Singh as accused persons under Section 319 Cr.P.C. Gobind Singh and Gurdial Singh having died during the trial, the proceedings abated qua them.

10. The Trial Court recorded the statements of sixteen prosecution witnesses in the main case including PW11-Ranjit Singh, PW12-Shavinderjit Singh who were injured eyewitnesses besides PW13-Ramandeep Singh who also claimed to be present on the spot but escaped any injury. Besides these witnesses the prosecution also examined PW14-O.P. Aggarwal, PW15-Inspector Sewa Singh and PW16-Bhupinder Singh Virk.

11. In the cross case twelve prosecution witnesses were examined including PW1-Mohinder Singh, PW3-Dr. Gian Singh, PW4-Ashok Kumar, PW5-Harbans Kaur (injured), PW7-Charanjot Singh Walia, PW8-Dr. Gurinder Singh Mann, PW9-Bhupinderjit Singh Virk and PW10-Bhag Singh.

12. Accused in both the cases pleaded innocence and false implication in their statements under Section 313 of the Cr.P.C. DW1-Dr. Ruby Oberoi, DW2-Dr. Gian Singh and DW3-Dr. Gurinder Singh Mann were examined in defence in the main case and DW1-Satish Grover, DW-2 Jang Singh, DW-3 Dr. O.P. Aggarwal, DW-4 Dr. Harminder Singh, DW-5 Ashok Kumar and DW-6 Shavinder Singh in the cross case.

13. The Trial Court appraised the evidence adduced before it and held that Gurdial Singh was in cultivating possession of the disputed parcel of land which became the proverbial bone of contention between the rival groups. The trial Court further found that the incident had taken place in two parts. In the first part, twenty two accused persons who were not armed with any firearms participated and committed an offence of rioting punishable under Section 148 of the IPC. One of the accused, Amarjit Kaur, Sarpanch had the right of private defence to protect the property of the Gram Panchayat and was accordingly acquitted. The rest of the twenty one accused persons found guilty under Section 148 were sentenced to imprisonment for a period of three years.

14. As regards the remaining nine accused, the trial Court convicted eight who were alleged to be armed with firearms under Sections 302 and 307 and the provisions of Arms Act sentencing them to life imprisonment for murder and imprisonment for a period of ten years for attempt to murder under Section 307 of the IPC besides fine and sentence in default of payment thereof. The ninth accused viz. Harbans Kaur wife of Mohinder Singh was convicted under Section 302 read with Section 149 IPC and sentenced to life imprisonment. Appellants in the Criminal Appeals No.17-18 of 2010 and Criminal Appeals No. 2434-35 of 2009 were among those convicted for murder and attempt to murder and sentenced as indicated above.

15. In the cross case the trial Court held that even when the disputed plot of land was in possession of the accused in the cross case (Complainant party in the main case), yet they were not justified in using firearms to cause injuries to the opposite party. The trial Court accordingly convicted Shavinderjit Singh under Section 307 of the IPC, while Ramandeep Singh was found guilty under Section 307 read with Section 149 of the IPC. Zora Singh who was added as an accused under Section 319 of the Cr.P.C. was convicted under Section 148 IPC while Ranjit Singh was given benefit of doubt and acquitted.

16. Aggrieved by the judgment and order of conviction and sentence awarded by the trial Court, both the parties appealed to the High Court of Punjab and Haryana. The High Court, as noticed earlier, has dismissed some of those appeals while allowing some others in full or part as we shall presently indicate. Insofar as the conviction and sentence of six accused persons, appellants before us in Criminal Appeals No.17-18 of 2010 and 2434-2435 of 2009 are concerned, the High Court has held, the charges framed against them to have been proved and accordingly affirmed the order of conviction and sentence passed by the trial Court. The appeals filed by Mohinder Singh and Harbans Kaur against their conviction and sentence have been allowed and the said two persons acquitted of the charges framed

against them. That order of acquittal has been assailed in Criminal Appeal No.1853 of 2009 filed by Ranjit Singh. We may straightaway point out that since Mohinder Singh has passed away during the pendency of these proceedings, and since learned counsel for the appellant- Ranjit Singh in the said Criminal Appeal has made a statement on instructions that he does not propose to pursue the appeal against Harbans Kaur, Criminal Appeal No.1853 of 2009 shall have to be dismissed as abated qua Mohinder Singh and as not pressed against Harbans Kaur. This would also mean that qua the said two accused the proceedings stand concluded finally, leaving us with the Criminal Appeals filed on behalf of the six accused in the two sets of appeals filed by them and referred to above, and Criminal Appeal No.1855 of 2009, filed by Shavinderjit Singh against his conviction under Section 307 IPC read with Section 25 of the Arms Act, and the sentence of seven years imprisonment awarded by the High Court. The conviction of the rest of the accused in the two cases, having been set aside, by the High Court, the absence of any challenge to the acquittal has gained finality for the view taken qua them.

17. Coming then to Criminal Appeals No.17-18 of 2010 and 2434-2435 of 2009, we must at the threshold mention that the High Court has on a reappraisal of the evidence adduced at the trial come to the following conclusions:

(i) Amrik Singh and Vikramjit Singh, two victims who got killed in the incident, died because of haemorrhage and shock resulting from the gunshot and other injuries suffered by them. In the case of Amrik Singh, nine injuries were found on his body out of which injuries 1 to 3 were caused by firearms whereas injuries 4 to 9 were caused by sharp edged and blunt weapons. In the case of Vikramjit Singh, eleven injuries were found on his body out of which injuries 1 to 4 were caused by firearms, whereas injuries 5 to 9 and 11 were caused by sharp edged weapons, while injury no. 10 was caused by a blunt weapon.

(ii) From out of the complainant party in the main case, Ranjit Singh and Shavinderjit Singh were also injured. In so far as Ranjit Singh was concerned, PW3-Dr. Harminder Singh found six simple injuries on his person.

In the case of Shavinderjit Singh there were five injuries on his body which were also found to be simple in nature. None of these injuries, it is obvious, were caused by firearms.

(iii) Two of the accused persons namely, Mohinder Singh and Harbans Kaur had also sustained gunshot injuries.

(iv) Neither the complainant party nor the accused have offered any explanation leave alone an acceptable one for the injuries received by the opposite side.

(v) The rival versions as to the genesis of the incident were both highly exaggerated and that both the parties had embellished the actual occurrence by adding embroideries to the same which made it difficult for the Court to believe the two versions in toto.

(vi) Despite such exaggerations and embellishments the case was not one in which the Court could not separate the grain from the chaff and discover the truth.

(vii) The incident had started in the early hours of 3rd May, 2001 when the complainant party comprising Amrik Singh, Vikramjit Singh, Shavinderjit Singh, Gurdial Singh besides four to five other persons started harvesting the crop with the help of a combine in the field. Mohinder Singh and Harbans Kaur appeared on the scene to object to the harvesting of the crop and in the altercation that followed, the deceased Amrik Singh and Shavinderjit Singh fired shots at them with their guns. Two of these guns were recovered from the complainant party. Immediately after this incident, Amrik Singh, son of Gurdial Singh, his son Rajindra Singh @ Raju, Binder Singh and Balwinder Singh appear to have come on the scene with deadly weapons and caused injuries to Amrik Singh and Vikramjit Singh.

(viii) The High Court further held that all the eight persons were not armed with guns as stated by the prosecution witnesses. Some of them were armed with blunt weapons like Gandasi and Lathi. In the opinion of the High Court, in the latter part of the incident only seven persons participated, who caused injuries to the deceased as well as the two injured persons from the complainant party. The involvement of thirty one persons by the complainant side was an exaggeration, just as the allegation that all the thirty one accused were armed with deadly weapons was an exaggeration.

18. Learned counsel for the appellants in Criminal Appeals No.17-18 of 2010 and 2434-2435 of 2009, strenuously argued that since the High Court

had recorded a finding that the versions given by both sides were dubious in nature with several exaggerations and embellishments, made to conceal the truth from the Court, the High Court was not justified in holding the appellants guilty. It was contended that the grain was so irretrievably glued to the chaff that any attempt to separate the two was bound to fail or lead to injustice as has happened in the instant case. It was also contended that the version given by the eye witnesses namely, Ranjit Singh (PW11), Shavinderjit Singh (PW12) and Ramandeep Singh (PW13) was not reliable and that in the absence of any reliable and cogent evidence as to what exactly transpired on the spot, it was unsafe to convict the accused, leave alone half a dozen of them.

19. On behalf of the respondents it was contended that embellishments and exaggerations do not prevent the Court from looking for and discovering the truth, no matter the Courts in this country have often noticed a tendency among the aggrieved party to use an incident involving commission of a crime for implicating as many members of the opposite side as possible. That is what appears to have happened in the instant case also, inasmuch as the prosecution alleged that as many as thirty people came on to the land with deadly weapons, including several firearms. The High Court was, therefore, perfectly justified in acquitting those falsely implicated but that did not prevent the High Court from closely scrutinising and appraising the evidence led in the case to discover the truth and to do justice keeping in view the fact that two persons had lost their lives in the incident.

20. We have given our anxious consideration to the submission made at the Bar. It is true that there is at times a tendency among people affected by a crime to spread the net wider and implicate even those who were not directly concerned with the incident. That tendency has been often deprecated by this Court. Dealing with a similar situation this Court in *Amrita alias Amritlal v. State of MP*, (2004) 12 SCC 224, observed:

"...The tendency of the closely related witnesses to involve all family members in the commission of offence, when there is severe enmity between the deceased and the accused does not mean that the entire testimony shall be rejected and, thus, acquitting even those who committed the crime. The extent to which the evidence is worthy of acceptance depends upon facts of each case. In such cases, it is the duty of the courts to separate the grain from the chaff where it is so possible and to convict the accused if called for on the basis of evidence despite the fact that the same witness also falsely implicated others. Mere acquittal of some of the accused on the same evidence by itself does not lead to a conclusion that all deserve to be acquitted in case appropriate reasons have been given on appreciation of evidence both in regard to acquittal and conviction of the accused...."

21. To the same effect is the order of this Court in *Balaka Singh and Ors. v. State of Punjab*, (1975) 4 SCC 511, where this Court said:

"...the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply. "

22. In *Ganesh v. State of Karnataka*, 2008 (11) SCALE 567, this Court held that :

"... When the prosecution is able to establish its case by acceptable evidence, though in part, the accused can be convicted even if the co-accused have been acquitted on the ground that the evidence led was not sufficient to fasten guilt on them..."

23. In *Sucha Singh and Anr. v. State of Punjab*, (2003) 7 SCC 643,

again this Court pointed out the approach to be adopted in situations where the Courts are dealing with partly true and partly false depositions. The following passage is apposite:

"...Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law..."

24. Reference may also be made to the decision of this Court Ugar Ahir and Ors. v. The State of Bihar, AIR 1965 SC 277, where the Court once again reiterated that the maxim falsus in uno, falsus in omnibus is not a sound rule of law or practice. This Court stated:

"...The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff..."

25. It is trite that even when exaggerations and embellishments are galore the Courts can and indeed are expected to undertake a forensic exercise aimed at discovering the truth. The very fact that a large number of people were implicated in the incident in question who now stand acquitted by the High Court need not have deterred the High Court from appreciating the evidence on record and discarding what was not credible while accepting and relying upon what inspired confidence. That exercise was legitimate for otherwise the Court would be seen as abdicating and surrendering to distortions and/or embellishments whether made out of bitterness or any other reason including shoddy investigation by the agencies concerned. The ultimate quest for the Court at all times remains 'discovery of the truth' and unless the Court is so disappointed with the difficulty besetting that exercise in a given case, as to make it impossible for it to pursue that object, it must make an endeavour in that direction. Inasmuch as the High Court made an attempt in that direction in the case at hand, it did not, in our opinion, commit any mistake. The question whether the conclusions drawn by the High Court as to the guilt of the appellants before us are reasonably supported by the evidence on record, is a different matter to which we must turn immediately.

26. It is important to note that out of thirty one persons arrayed as accused in the case, Mohinder Singh (since deceased), Binder Singh (since deceased) and Balwinder Singh the appellant before us were the only three charged with murder punishable under Sections 302, 307 IPC and Section 27 of the Arms Act. The remaining appellants namely Makhan Singh, Rajinder Singh, Amrik Singh and Jaswinder Singh were charged under Section 302 read with Section 149 IPC and Section 307 read with Section 149 IPC. The second and equally significant circumstance that needs to be kept in view is the fact that according to the FSL report, out of the empty cartridges seized from the place of occurrence, five cartridges had been fired from the gun recovered from Mohinder Singh (since deceased) while six other cartridges were fired from the weapon recovered from appellant-Balwinder Singh. No opinion was, however, given about any cartridges having been fired from the gun recovered from Binder Singh (since deceased). The High Court has acquitted Mohinder Singh (deceased) on the ground that he had fallen unconscious after he sustained a gunshot injury fired from the weapon held by the deceased Amrik Singh. It has on that basis rejected the prosecution case that Mohinder Singh had fired his gun to shoot at Amrik Singh or his son Vikramjit Singh.

27. We are not concerned with the correctness of view taken by the High Court regarding the complicity of Mohinder Singh. We say so because the Mohinder Singh has passed away resulting in the abatement of the appeal

filed by Ranjit Singh against his acquittal. Even so the acquittal may leave a question mark about the circumstances in which six empty cartridges fired, according to the FSL report from the gun of Mohinder Singh have been seized from the place of occurrence. It is nobody's case that Mohinder Singh's weapon was actually fired by somebody else to explain the presence of empty cartridges on the spot. The grounds on which Mohinder Singh was acquitted and the seizure of empty cartridges fired from his weapon appear to be in conflict with each other. Beyond that we do not think it necessary to say more at this stage.

28. That leaves us with the remaining two persons namely Binder Singh (since deceased) and Balwinder Singh who were also directly charged with murder under Section 302 IPC and who were found guilty by the Trial Court. By the time the matter travelled to the High Court the former had passed away. His involvement in the occurrence, therefore, is no longer under scrutiny, which leaves us with the case of the third accused Balwinder Singh who was charged with Section 302 IPC and from whose gun six cartridges are proved to have been fired. The prosecution story as narrated by PW12-Shavinderjit Singh and PW13-Ramandeep Singh clearly implicates Balwinder Singh and proves that he had fired from his gun. That Amrik Singh was hit by a shot fired from the gun by Balwinder Singh, thus gets support not only from ocular testimony of the witnesses named above but by the forensic evidence of the Ballistics Expert and the seizures from the spot. There is in that view no manner of doubt that Balwinder Singh has been rightly convicted by the two Courts below and sentenced to imprisonment for life.

29. That brings us to the remainder of the accused persons namely, Makhan Singh, Gurdial Singh, Amrik Singh, Jasvinder Singh and Rajinder Singh all of whom were accused of having come to the spot armed with guns and shot at the deceased Amrik Singh and Vikramjit Singh. The prosecution case is that these accused persons had freely used their weapons to kill Amrik Singh and Vikramjit Singh. Except the depositions of PWs Shavinderjit Singh and Ramandeep Singh, there is no other evidence to prove that allegation. The deposition of Ranjit Singh (PW11) is of no assistance to the prosecution as he could not be cross examined by the defence on account of his poor medical condition because of which he was declared unfit to depose as a witness. The guns, allegedly carried by these accused persons have also not been seized, nor is there any other independent corroborative evidence regarding the use of the guns such as recovery or seizure of the empty cartridges fired from the guns. That apart if these accused had also carried and fired guns as alleged, the number of casualties on the complainant side would have been much higher and so would be the number of injuries on the victims of the assault. Superadded to all these is the fact that appellants Amrik Singh, Ranjinder Singh and Jaswinder Singh were not even challaned by the investigating officer. They were added as accused persons subsequently under Section 319 Cr.P.C. based on the exaggerated version of the prosecution witnesses about which the High Court has been rightly so critical. The High Court was it appears, aware of all these features, which render the prosecution case suspect, but in order to overcome the difficulty arising out of the absence of recovery of guns allegedly used by these appellants or the absence of any other evidence to support the theory of their use, the High Court has made out a new case in favour of the prosecution by holding that the appellants except Balwinder Singh were armed with sharp and blunt weapons used for causing injuries to the deceased and not guns as claimed by the witnesses examined at the trial. The High Court has observed:

"In the present case, the prosecution witnesses have exaggerated the version and appeared to have implicated all the family members and close relative of Mohinder Singh. When initially the FIR was registered, no specific arm was attributed to any particular person and only omnibus allegations were levelled, but while appearing in the court, each of the accused has been attributed a weapon. Ranjit Singh (complainant) in his statement before the police, on the basis of which the formal FIR was registered, levelled omnibus allegations regarding firing against the accused armed with fire arms. According to him, they fired shot hitting Amrik Singh, Vikramjit Singh and Shavinderjit Singh. Regarding other accused, who were armed with other weapons, he did not attribute any specific weapon or role to anyone. In the court while appearing as PW11, Ranjit Singh

improved his version and attributed specific weapon to each of the accused. He improved his version to the effect that he along with Amrik Singh, Vikramjit Singh and Shavinderjit Singh received gun shot injuries, whereas as per the medical evidence neither Shavinderjit Singh or Ranjit Singh suffered any gun shot injuries. Further, Shavinderjit Singh while appearing in the Court as PW 12 as injured eye-witness, stated that Mohinder Singh and Binder Singh gave rifle shots on the heart of deceased Amrik Singh and Gurdial Singh gave rifle shot on the back of Vikramjit Singh. This witness has attributed specific injuries to both the deceased and injured by all the eight accused, though no such attribution was made in the initial statement before the police. Thus, in our opinion, out of nine persons initially named, who came on the spot with fire arm, only three persons were having the arms and the rest appear to have been armed with other weapons. Out of them, Mohinder Singh and Harbans Kaur were already present at the time of occurrence and they were lying unconscious due to the fire arm injuries received by them. In our opinion, twenty one persons from whom no arm was recovered, did not cause any injury either to the deceased or the injured or any person."

30. The High Court was in our view not correct in holding that while three persons viz. Mohinder Singh (deceased), Binder Singh (deceased) and Balwinder Singh were armed with guns the rest of the appellants were armed with other weapons. There is no evidence to support the finding that remaining accused/appellants were armed with other weapons. The High Court has ostensibly held so, keeping in view the fact that apart from the gunshot injuries found on the bodies of the dead, there were other injuries caused by sharp and blunt weapons also. The presence of these injuries could not, however, be used to place other weapons in the hands of persons who were according to the prosecution case, carrying guns, which they used freely in the incident that saw two persons dead. Suffice it to say that while the High Court was correct in accepting that three guns were carried by the three accused named above, it was wrong in attributing without any evidence to support that finding that injuries to the deceased Amrik Singh and Vikramjit Singh were caused by the five appellants mentioned above with the help of weapons other than firearms.

31. The charge against the five appellants viz. Makhan Singh, Gurdial Singh, Jaswinder Singh, Rajinder Singh and Amrik Singh is one under Section 302 read with Section 149, 307 read with Section 149 and 324, 379 both read with Section 149 IPC.

32. The prosecution, therefore, attempts to implicate these appellants on the basis of their constructive liability arising out of them being members of an unlawful assembly. The object of the unlawful assembly according to the prosecution was to dispossess the complainant party from the land in their cultivating occupation and to prevent them by criminal force from harvesting the wheat crop that the later had grown in the same.

33. We may, before turning to the facts of the case, briefly refer to the legal position as regards the applicability of Section 149 of the IPC, which has fallen for interpretation on numerous occasions in the past before this Court and has been comprehensively dealt with in several pronouncements. The essence of Section 149 IPC is that a member of an unlawful assembly is responsible for the acts committed by any other member of the assembly in the same measure as the persons committing such an act himself is. The section thereby creates a vicarious or constructive liability for all those who share the common object of the unlawful assembly provided the acts constituting the offence are done in pursuit of the common object of the unlawful assembly or are acts which the members of the unlawful assembly knew to be likely to be committed in pursuance of that object.

34. Baladin and Ors. v. State of U.P. AIR 1956 SC 181 was one of the early cases in which this Court dealt with Section 149 IPC. This Court held that mere presence in an assembly does not make a person a member of the unlawful assembly, unless it is shown that he had done or omitted to do something which would show that he was a member of the unlawful assembly or unless the case fell under Section 142 of the IPC. Resultantly, if all the

members of a family and other residents of the village assembled at the place of occurrence all such persons could not be condemned ipso facto as members of the unlawful assembly. The prosecution in all such cases shall have to lead evidence to show that a particular accused had done some overt act to establish that he was a member of the unlawful assembly. This would require the case of each individual to be examined so that mere spectators who had just joined the assembly and who were unaware of its motive may not be branded as members of the unlawful assembly.

35. The observations made in Baladin's case (supra) were considered in Masalti v. State of U.P. AIR 1965 SC 202 where this Court explained that cases in which persons who are merely passive witnesses and had joined the assembly out of curiosity, without sharing the common object of the assembly stood on a different footing; otherwise it was not necessary to prove that the person had committed some illegal act or was guilty of some omission in pursuance of the common object of the assembly before he could be fastened with the consequences of an act committed by any other member of the assembly with the help of Section 149 IPC. The following passage is apposite in this regard:

".....The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by s. 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of Baladin assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, s. 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 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 s. 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...."

(emphasis supplied)

36. Again in Bajwa and Ors. v. State of U.P. (1973) 1 SCC 714 this Court held that while in a faction ridden society there is always a tendency to implicate even the innocent with the guilty, the only safeguard against the risk of condemning the innocent with the guilty lies in insisting upon acceptable evidence which in some measure implicates the accused and satisfies the conscience of the Court.

37. Coming then to the case at hand, the prosecution story is that while the complainant party was harvesting the crop in the fields in their possession, the accused including the appellants herein, came to the spot and started firing upon them. In the first information report lodged by Ranjit Singh, no specific roles were given to the accused, but at the trial the witness attributed specific roles to each one of the appellants. The High Court found the improved version to be full of exaggerations and embellishments resulting in the acquittal of the majority of the accused in the case. We have in the earlier part of this judgment held that the prosecution has failed in its attempt to prove that the appellants except appellant Balwinder Singh were armed with guns when they came to the place of occurrence. We have also turned down the reasoning of the trial Court that while the appellants except Balwinder Singh were not carrying guns they were carrying arms which they used to cause sharp edged and blunt injuries to the deceased. The question then is whether the appellants except Balwinder Singh were members of an unlawful assembly as alleged by the prosecution or have been falsely implicated in that charge because of village factionalism.

38. That in a faction ridden village community, there is a tendency to implicate innocents also along with the guilty, especially when a large number of assailants are involved in the commission of an offence is a matter of common knowledge. Evidence, in such cases is bound to be partisan, but while the Courts cannot take an easy route to rejecting out of hand such evidence only on that ground, what ought to be done is to approach the depositions carefully and scrutinise the evidence more closely to avoid any miscarriage of justice.

39. Keeping the above in view, if we examine the evidence in this case, we find that apart from certain vague and general allegations that the members of the accused party fired at the complainant party, there is no other overt act attributed to them. The allegation that they were carrying guns having been held not proved, the question of their firing from such guns does not arise. So also the finding of the High Court that they were armed with other weapons being contrary to the prosecution case itself has been rejected by us. If that be so, all that the prosecution evidence may prove is that these five appellants were also present on the spot. But, being present on the spot, by itself may not in the peculiar facts and circumstances of the case be enough to implicate them under Section 149 of the IPC. It is true that commission of an overt act, is not an essential ingredient for attracting Section 149 of the IPC but given the exaggerations and embellishments in the prosecution story as noticed by the Courts below and even by us, we consider it unsafe to find the five appellants named earlier to be guilty of murder with the help of Section 149 of the IPC.

40. The same is true even in regard to an offence under Section 307 read with Section 149 of the IPC also. That offence was sought to be alleged and proved against the five appellants on the premise that these appellants shared the common object of Mohinder Singh, Binder Singh and Balwinder Singh of causing death of Shavinderjit Singh by causing injuries to him with the help of deadly weapon like fire arms.

41. Shavinderjit Singh (PW-12) and Ramandeep Singh (PW-13) have attributed the injuries received by them to other accused persons who stand acquitted and whose acquittal has attained finality. What is important is that according to Shavinderjit Singh (PW12), he was attacked by Sharanjit Singh @ Kalu who gave him a dang blow on the left arm while Charan Singh alias Charanu gave him a kirpan blow on his head. Shamsher Singh Mal gave him a Gandasi blow on his head and so did Pammi d/o Charan Singh with a Gandasi (sharp edge weapon). All these blows were according to the witness given when he tried to save Vikramjit Singh and Amrik Singh. The medical evidence led in the case, however, does not support the above version. According to Dr. Harminder Singh (PW3), all the injuries found on the body of Shavinderjit Singh were found to be simple in nature. The medical evidence does not support the allegation that a murderous assault was made on this witness. Even otherwise the witness has made an improvement in his deposition before the Court, as the version regarding the assault on him was not disclosed in the statement under Section 161 of the Cr.P.C. which omission has been duly confronted to him.

42. Similar is the case with the injuries allegedly received by Ranjit Singh (PW-11) which have also been described as simple by Dr. Harminder Singh. The statement of Ramandeep Singh (PW13) makes no qualitative addition to the prosecution case, in so far as an attempt on the lives of Ranjit Singh or Shavinderjit Singh is concerned. This witness does not give the details of the overt acts of the accused persons named by Shavinderjit Singh (PW12) in his deposition. He, on the contrary, shifts the focus to the appellants and accuses them of firing at Ranjit Singh and Shivinderjit Singh from the guns and rifles that they were allegedly carrying. Suffice it to say that the entire case of the prosecution regarding an attempt to murder, Shavinderjit Singh and Ranjit Singh is rendered suspect, with the kind of contradictions, improvements and embellishments noticed by the High Court and even by us. That being so, the conviction of appellants Amrik Singh, Rajinder Singh, Jaswinder Singh, Makhan Singh and Gurdial Singh cannot be sustained even under Section 307 read with Section 149 of the IPC, assuming that these appellants were members of an unlawful assembly and not innocent bystanders unaware of the alleged common object of the assembly. That holds good even in regard to the charges for offences under Section 324 read with Section 149 & 379 read with Section 149 of the IPC also.

43. We are then left with Criminal Appeal No.1855 of 2009 filed by

Shavinderjit Singh, against his conviction under Section 307 IPC read with Section 25 of the Arms Act. The High Court has, while holding the complainant party to be in possession of the land, held that the appellant Shavinderjit Singh was not justified in causing gunshot injuries to Mohinder Singh and Harbans Kaur. The trial Court held on an appraisal of the oral and documentary evidence adduced before it that the parcel of land in dispute was in the cultivating occupation of the complainant party in the main case. That being so, if the scene of crime is reconstructed, we find that, Mohinder Singh's gun is proved to have fired at least six cartridges, empties whereof were recovered from the spot. The Ballistic Expert's report leaves no manner of doubt in this regard. That being so, we have a situation in which both sides were armed with firearms. The prosecution may have in the main case alleged that as many as thirty one persons comprised the aggressor mob at least nine out of whom were armed with guns yet the High Court has accepted that version only in part and to the extent that at only three of the accused viz. Balwinder Singh, Binder Singh and Mohinder Singh were carrying guns. The High Court has while dealing with the main case observed:

"Thus, in our opinion, out of nine persons initially named, who came on the spot with fire arm, only three persons were having the arms and the rest appear to have been armed with other weapons."

44. It is also abundantly proved that the appellant Shavinderjit Singh was injured, no matter the injuries were found to be simple in nature. What is important is that in an atmosphere surcharged as it was in the instant case, firing from both sides, appear to have taken place, in which while Amrik Singh and his son Vikramjit Singh, were killed a shot fired by Shavinderjit Singh appellant appears to have hit Harbans Kaur in the arm. The statement of Dr. Gian Singh (PW3) examined in this case, has proved that injury sustained by Harbans Kaur was a firearm injury. That witness has after describing the injuries on the lateral aspect of left arm middle, said:

"Injuries no.1 and 2 were subject to x-ray and surgical opinion. The probable time of duration was within 6 hours. The weapon used for these injuries was fire arm. Ex. P4 is the correct carbon of the MIR the original of which I have brought today in the court. It bears my signatures and is correct. Ex.P-4/A is the pictorial diagram showing the sea of injuries."

45. The version given by the injured witness Mohinder Singh and his wife Harbans Kaur regarding the cause for their injuries is supported by the medical evidence also. The question, however, is whether the gunshot was fired by the appellant in private defence. The High Court has held that the appellant could not claim the right of private defence because Mohinder Singh was not armed with a gun when appellant Shavinderjit Singh fired at him. We see no basis for that finding. If Mohinder Singh was not carrying his gun, it is difficult to see how the same travelled to the place of occurrence and was used for firing as many as six rounds from the same. Seizure of the empty cartridges and the Ballistic Expert's report establish the use of the gun belonging to Mohinder Singh. We have already expressed our doubts about the view taken by the High Court regarding Mohinder Singh's acquittal, but since Mohinder Singh is dead, we allow the matter to rest at that. The least that can be said, however, is that the Courts below were not, in the facts and circumstances of the case as also the confusion and doubts that arise regarding the truthfulness of the version advanced by the prosecution against appellant Shavinderjit Singh, justified in convicting the appellant Shavinderjit Singh and sentencing him to imprisonment.

46. In the result:

- i) Criminal Appeal No.1853 of 2009 is dismissed as abated qua respondent Mohinder Singh and as not pressed qua respondent Harbans Kaur.
- ii) Criminal Appeal No.1855 of 2009 filed by appellant Shavinderjit Singh is also allowed and the appellant acquitted of the charges framed against him giving him the benefit of doubt.
- iii) Criminal Appeals No.17-18 of 2010 filed by Amrik Singh, Rajinder Singh and Jaswinder Singh are also allowed and the appellants

acquitted of the charges framed against them giving them the benefit of doubt.

iv) Criminal Appeals No.2434-35 of 2009, filed by Makhan Singh, Gurdial Singh and Balwinder Singh are similarly allowed in so far as appellants Makhan Singh and Gurdial Singh are concerned but dismissed qua appellant-Balwinder Singh.

47. Appellants Makhan Singh, Jaswinder Singh, Rajinder Singh, Amrik Singh and Gurdial Singh who are currently undergoing imprisonment shall be released from jail with immediate effect unless otherwise required in any other case. In so far as the appellant Shavinderjit Singh is concerned, he being on bail, the bail bonds shall stand discharged.

.....J.
(T.S. THAKUR)

.....J.
(GYAN SUDHA MISRA)

New Delhi
July 4, 2013