



(1)

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH

(I) **CRA-D-31-DB-2005 (O&M)**
Buta Khan ... Appellant
Versus
State of Punjab ... Respondent

(II) **CRA-D-34-DB-2005 (O&M)**
Bali Khan & another ... Appellants
Versus
State of Punjab ... Respondent

(III) **CRA-D-62-DB-2005 (O&M)**
Nazar Khan ... Appellant
Versus
State of Punjab ... Respondent

(IV) **CRR-484-2005 (O&M)**
Manjit Kaur ... Petitioner
Versus
State of Punjab and others ... Respondents

Date of Decision: 05.03.2025

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Ghulam Nabi Malik and Mr. Sameydeen, Advocates,
for the appellant(s) in CRA-D-31-DB-2005 &
CRA-D-34-DB-2005.

Mr. Jasdev Singh Mehndiratta, Advocate as Amicus Curiae with
Ms. Jyotnoor Kaur Sethi and Mr. Navreet Dhaliwal, Advocates,
for the appellant in CRA-D-62-DB-2005.



(2)

Mr. Arun Walia, Senior Advocate with
Mr. Marinal Sharma, Advocate,
for the petitioner in CRR-484-2005 and
for the private respondent/complainant,
in CRA-D-31-DB-2005; CRA-D-62-DB-2005 &
CRA-D-34-DB-2005.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of above-mentioned set of three appeals and a revision petition, assailing the same very judgment dated 05.11.2004 passed by the Additional Sessions Judge, Ludhiana, whereby accused namely Buta Khan, Gehna Khan (since expired), Bali Khan, Sher Khan and Nazar Khan have been found guilty of having murdered Sehaj Pal Singh and having caused injuries to Kamaljit Sharma and his sons Pawan Sharma and Ashok Sharma. While Buta Khan, Bali Khan, Sher Khan and Nazar Khan challenge their conviction for offence under Section 302, 326, 325, 323, 148/149 IPC, Manjit Kaur - wife of Sharanjit Singh (complainant) (petitioner in CRR-484-2005) seeks enhancement of sentence imposed upon accused.
2. The matter arises out of FIR No.109 dated 24.08.2001 registered at P.S. Payal, under Sections 302, 316, 325, 148, 149 IPC (Ex.PA/2) lodged at the instance of Sharanjit Singh. The translated gist of his statement (Ex.PA) reads as under:

“I am an agriculturist. Yesterday i.e. on 23.08.2001, when I alongwith my son Sehaj Pal Singh was returning home from bus-stand, Dhamot Kalan and was passing in front of the house of Kamaljit Sharma at about 6.00 PM, we noticed that Gehna Khan alongwith his three sons Bali Khan (armed with *Sua*), Sher Khan @ Guddu (armed with *gandassa*), Buta Khan (armed with



(3)

gandassa) and Nazar Khan son of Darbara Khan (armed with *gandassa*) standing there. Upon seeing us, Gehna Khan raised a *lalkara* that Sehaj Pal Singh be caught and be not spared and be taught a lesson for quarreling with Buta Khan. Thereupon, Buta Khan gave a blow with *gandassa* hitting Sehaj Pal Singh on the back of his head as a result of which he fell down. When I raised alarm, Kamaljit Sharma and his sons Pawan Sharma and Ashok Sharma reached there. Kamaljit Sharma asked the accused as to why they were causing injuries upon which Gehna Khan raised a *lalkara* threatening them to keep away failing which they would also be dealt with in the same manner. However, Kamaljit Sharma did not step aside. Bali Khan gave a blow with his *sua* on the left flank of Kamaljit Sharma. Thereafter, Nazar Khan gave a blow with *gandassa* hitting the forehead of Ashok Sharma. Then Sher Khan inflicted a blow with *gandassa* on the back of head of Pawan Sharma. Thereafter, Nazar Khan gave a blow with his *gandassa* from its reverse side hitting the left arm of Kamaljit Sharma. In the meantime, Lakhbir Singh son of Nazar Singh also came there and thereafter the accused fled away from the spot alongwith their respective weapons. I got admitted my son Sehaj Pal Singh in DMC&H, Ludhiana for treatment, whereas Kamaljit Sharma and his sons Pawan Sharma and Ashok Sharma were got admitted at Civil Hospital, Ludhiana for treatment by Balwinder Singh, Ex-Sarpanch. Today i.e. on 24.08.2001, my son Sehaj Pal Singh has expired. The motive is that about 4/5 days back, there was a minor dispute between my son and Buta Khan and on account of the same, my son has been murdered. Legal action be taken.”

3. Pursuant to lodging of FIR, the matter was investigated by the police. Inquest report was prepared. Post-mortem examination was got conducted on the dead body of Sehaj Pal Singh. The police visited the place of occurrence and prepared a rough site plan. Blood stained soil was lifted from the place of occurrence. Statements of witnesses were recorded in terms of Section 161 Cr.P.C. All the accused were arrested on 26.08.2001. During the course of interrogation, accused Bali Khan suffered a disclosure statement on 29.08.2001 (Ex.PQ) stating that he had concealed a *sua* stained with blood



(4)

near a *Jamun* tree at his tubewell motor. Accused Sher Khan also suffered a disclosure statement (Ex.PR) with regard to his having concealed blood stained *gandassa* in the room of tubewell motor. Accused Buta Khan made a disclosure statement (Ex.PS) as regards concealment of blood stained *gandassa* in the same room of the tubewell. Accused Nazar Khan also made a disclosure statement (Ex.PT) regarding concealment of a blood stained *gandassa* in the heap of soil lying outside the tubewell room. Pursuant to the aforesaid disclosure statements, the accused got the respective weapons recovered, which were taken into possession vide recovery memo Ex.P1 to Ex.P-4. The blood stained weapons were sent for forensic examination and as per the report of the FSL, the same were found to be stained with human blood.

4. Upon conclusion of investigation, challan was presented against all the five accused namely Gehna Khan (since expired), Bali Khan, Sher Khan @ Guddu, Buta Khan and Nazar Khan on 17.10.2001 in the Court of learned Judicial Magistrate Ist Class, Ludhiana, who committed the case to the Court of Sessions vide order dated 05.11.2001. Learned Additional Sessions Judge, Hoshiarpur, finding sufficient grounds to presume that the accused had killed Sehaj Pal and had injured others accordingly framed charges against all the accused for offences punishable under Sections 302, 148, 323, 324, 325, 326/149 IPC on 18.01.2002.

5. The prosecution in order to establish its case examined as many as 12 PWs. The gist of their testimonies is being briefly referred to herein under:-

PW-1 Sharanjit Singh, who is the complainant in the present case, stated in tune with the version got recorded by him in the FIR. He specifically



(5)

stated as regards the injuries inflicted to the deceased and also to complainant Kamaljit Sharma, Ashok and Pawan by the accused.

PW-2 Kamaljit Sharma (injured) stated that on 23.08.2001, when he alongwith his sons Pawan Sharma and Ashok Sharma was present in his house, they heard noise commotion outside the house and when they stepped out, they saw Gehna Khan, Sher Khan, Bali Khan, Nazar Khan and Buta Khan standing there and that while Bali Khan was carrying a *sua*, the remaining accused were armed with *gandassas*. He stated that when Sharanjit Singh and his son Sehaj Pal Singh were seen coming from the side of bus-stop, accused Gehna Khan raised a *lalkara* that Sehaj Pal Singh be not spared and be taught a lesson for quarreling with Buta Khan and upon which accused attacked Sehaj Pal Singh and inflicted injuries to him. He stated that although he and his son stepped forward to intervene, but Gehna Khan raised a *lalkara* telling them to step aside failing which they would meet the same fate. PW-2 described the injuries caused by the accused to Sehaj Pal Singh (deceased) and to others in the same manner as described by the complainant.

PW-3 HC Manjit Singh, who is a formal witness, tendered into evidence his affidavit Ex.PC, wherein he deposed that on 24.08.2001, he was posted as Malkhana Incharge, P.S.Payal and that Inspector Charan Singh had deposited with him case property i.e. parcel containing blood stained soil, parcel of '*nikkar*' blue colour of deceased, parcel of blood stained clothes on 24.08.2001 as well as parcel of blood stained spear and three separate parcels of blood stained *gandassas* on 29.08.2001. He further deposed that on 11.09.2001, all the parcels were sent through Constable Karnail Singh for depositing the same in the office of FSL, Punjab, Chandigarh, which were accordingly deposited on the same day and that as long as the parcels remained in his possession, the same were not tampered with.

PW-4 Pawan Kumar (injured) narrated the occurrence in tune with case of prosecution.



(6)

- PW-5** Ashok Kumar (injured) also stated regarding the occurrence in an identical manner, as stated by complainant.
- PW-6** Dr. G.P.Mangla, Medical Officer, RC Bhagwan Nagar, Ludhiana, who had conducted post-mortem examination on the dead body of Sehaj Pal Singh on 24.08.2001, proved the post-mortem report as Ex.PD, wherein he described the injuries found on the dead body and opined that the cause of death was due to haemorrhage and shock as a result of head injury which was sufficient to cause death in ordinary course of nature and was antemortem in nature.
- PW-7** Dr. U.S.Sooch, Medical Officer, Civil Hospital, Ludhiana, who had medico legally examined Kamaljit Sharma, Pawan Kumar and Ashok Kumar on 23.08.2001, proved their respective MLRs as Ex.PF, Ex.PG and Ex.PH, wherein he described the injuries found on their person.
- PW-8** Constable Karnail Singh, who is a formal witness, tendered into evidence his affidavit Ex.PJ, wherein he deposed that on 11.09.2001, MHC Manjit Singh had handed over to him the case property for depositing the same in the office of FSL, Punjab, Chandigarh, which he accordingly deposited on the same day and that as long as the parcels remained in his possession, the same were not tampered with.
- PW-8** Ashwani Kumar, Draftsman, stated that he had prepared the rough site plan of the place of occurrence and proved the same as Ex.PK. *(This witness is numbered as PW-8 by mistake)*
- PW-9** Constable Gurcharan Singh stated that on 24.08.2001, Inspector Charan Singh had handed over to him the dead body of Sehaj Pal Singh alongwith inquest report to get the autopsy conducted and that he accordingly got the needful done.
- PW-10** Inspector Charan Singh, who is the Investigating Officer in the present case, stated in detail with regard to the investigation conducted by him right from the lodging of FIR upto the filing of challan. He stated that all the accused were arrested on 26.08.2001,



(7)

and were interrogated by him on 29.08.2001 pursuant to which they made disclosure statements and got the weapon of offences recovered. He proved various documents/memos prepared during the course of investigation.

PW-11 Manoj Kumar, Record Keeper, Dayanand Medical College & Hospital, Ludhiana, who had produced the patient record in respect of Sehaj Pal Singh, proved the same.

6. Upon closure of the prosecution evidence, statements of all the accused were recorded in terms of Section 313 Cr.P.C., wherein they denied the case of prosecution in *toto* and pleaded false implication. Accused Sher Khan additionally took a plea that the deceased Sehaj Pal Singh was having illicit relations with Kaki wife of Pawan Sharma and had been visiting the house of Kamaljit Sharma in the absence of other members of the family and that on the day of occurrence, when Sehaj Pal Singh had gone to meet Kaki, he was caught in a compromising position by Kamaljit Sharma, Pawan Sharma and Ashok Sharma and upon seeing them, the deceased tried to escape while putting on his '*nikkar*', but was chased by Kamaljit Singh and his sons and was inflicted injuries with *gandassa* and *sua* and done to death. He further stated that the deceased had also snatched arms from Kamaljit Sharma, Pawan Sharma and Ashok Sharma and had caused injuries to them and that upon hearing their noises, he (accused) had intervened to separate them and in that process, he (accused) also sustained some injuries at the hands of Kamaljit Singh and his sons. Accused Nazar Khan also raised an additional plea to the effect that he has been falsely implicated as he was having a dispute with Kamaljit Sharma regarding a plot.



(8)

7. In their defence, the accused examined **DW-1** Dr. Prem Pal Gili, who stated that on 23.08.2001, he was posted at CHC, Payal and on the said day, he had medico legally examined Kehar Mohd. son of Gehna. He proved the medico legal report in respect of Kehar Mohd. as DW1/A, wherein he described the injuries found on his person.
8. The learned trial Court, upon considering the evidence on record, held that the prosecution had fully established its case and consequently, held all the accused guilty for the charges framed against them and sentenced them as under:

Sr. No.	Name of the convict	Offence	Imprisonment	Fine	In default
1.	Buta Khan	302 IPC 326/149 IPC 325/149 IPC 323/149 IPC 148 IPC	Life imprisonment 3 years 2 years 6 months 1 year	Rs.5000/- Rs.2000/- Rs.1000/- - -	3 years 9 months 6 months - -
2.	Gehna Khan (since expired)	302/149 IPC 326/149 IPC 325/149 IPC 323/149 IPC 148 IPC	Life imprisonment 3 years 2 years 6 months 1 year	Rs.5000/- Rs.2000/- Rs.1000/- - -	3 years 9 months 6 months - -
3.	Bali Khan	302/149 IPC 326/149 IPC 325/149 IPC 323 IPC 323/149 IPC 148 IPC	Life imprisonment 3 years 2 years 6 months 6 months 1 year	Rs.5000/- Rs.2000/- Rs.1000/- - - -	3 years 9 months 6 months - - -
4.	Sher Khan	302/149 IPC 326/149 IPC 325/149 IPC 323 IPC 323/149 IPC 148 IPC	Life imprisonment 3 years 2 years 6 months 6 months 1 year	Rs.5000/- Rs.2000/- Rs.1000/- - - -	3 years 9 months 6 months - - -
5.	Nazar Khan	302/149 IPC 326 IPC 325 IPC 323 IPC 323/149 IPC 148 IPC	Life imprisonment 3 years 2 years 6 months 6 months 1 year	Rs.5000/- Rs.2000/- Rs.1000/- - - -	3 years 9 months 6 months - - -



(9)

9. It may here be mentioned that out of the aforesaid five accused, who had been convicted and sentenced by the trial Court, one of them namely Gehna Khan has expired and proceedings qua him already stand abated vide order dated 20.02.2025 passed in CRA-D-62-DB-2005.
10. Learned counsel for the accused, while assailing their conviction, broadly made the following submissions:
 - (i) that it is a case where the accused have been falsely implicated and that the genesis of occurrence has been suppressed. It has been submitted that as a matter of fact the deceased was having illicit relations with Kaki wife of Pawan Kumar and on one of the visits of the deceased to the house of Kaki, he was caught red-handed by Kamaljit Sharma and his sons Pawan Sharma and Ashok Sharma and the deceased after putting on his '*nikkar*' tried to run away but was chased by Kamaljit & his sons and was inflicted injuries and done to death. It has been submitted that the deceased at the time of death was wearing only a '*nikkar*' which would go a long way to prove the defence plea set up by accused Sher Khan.
 - (ii) that the presence of the witnesses Ashok Sharma and Pawan Sharma is highly doubtful inasmuch as although they claimed to have been injured in the occurrence but PW-7 Dr. U.S.Sooch, Medical Officer, Civil Hospital, Ludhiana, who proved their MLRs, stated that while he had examined the aforesaid two injured on 23.08.2001 but the MLRs were



(10)

recorded on 29.08.2001, which would clearly show that the MLRs in question are a result of manipulations particularly when the Doctor i.e. PW-7 himself stated that when the MLRs were prepared, the injured i.e. Pawan Kumar and Ashok Kumar were not present. It has been submitted that under these circumstances it remains unexplained as to how the Doctor was able to record the injuries meticulously in MLRs as have been recorded. Learned counsel, thus, submitted under these circumstances when presence of eye witness is doubtful, the impugned judgment could not sustain and is liable to be set aside.

(iii) that admittedly it is a case where the deceased was found to have sustained one injury only, which is attributed to appellant – Buta Khan, as is the case of prosecution and there is nothing on record to show that the other accused nursed any common intention or had any common object to kill Sehaj Pal Singh, therefore, the conviction of the other accused with regard to offence under Section 302 IPC, in any case, is not sustainable.

11. Opposing the appeals, learned State counsel submitted that having regard to the consistent testimonies of 4 eye-witnesses including stamped witnesses i.e. Kamaljit Sharma, Pawan Sharma and Ashok Sharma, there is no room to doubt the case of prosecution in any manner and that minor discrepancies would not cause any dent in the case of prosecution.



(11)

12. Learned counsel for the revision petitioner while pressing the revision petition submitted that the sentence imposed upon the accused is on the lesser side and that the same needs to be enhanced.
13. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
14. Since it is the specific case of the complainant that on 23.08.2001, the accused had inflicted injuries to his son Sehaj Pal Singh (deceased), it is apposite to first of all examine the medical record pertaining to the injuries sustained by the deceased and the cause of death. The prosecution has examined PW-6 Dr. G.P. Mangla, who had conducted the post mortem examination on the dead body of Sehaj Pal Singh on 24.08.2001. He proved the post-mortem report as Ex.PD and described the injuries found on the dead body as under:

“1. Stitched wound 4" in length slightly curved on the top of the head placed obliquely on the mid line.

On exploration of skull there was big hematoma present underneath the scalp on the occipital and both the parietal region. There was fracture of both the parietal bone and right side of the occipital bone. There was sub dural hematoma present in the parieto occipital region and cranial cavity contain blood and brain mattle was contused.”
15. PW-1 Dr. G.P.Mangla opined that cause of death in this case was due to hemorrhage and shock as a result of head injury which was sufficient to cause death in ordinary course of nature and was antemortem in nature. PW-1 Dr. G.P.Mangla was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of his cross-examination so as



(12)

to either doubt the veracity or his opinion. As such, we find that the medical evidence led by the prosecution is in tune with the ocular version.

16. In the present case, we find that apart from the complainant, who has narrated in detail the manner of incident, having categorically stated that all the accused were armed with *sua* and *gandassas* and Buta Khan gave a blow with *gandassa* on the back of head of Sehaj Pal Singh, the case of the prosecution is supported by the testimonies of PW-2 Kamaljit Sharma, PW-4 Pawan Kumar and PW-5 Ashok Kumar, who had been attracted to the spot upon alarm having been raised. The said witnesses are not just independent witnesses, but are stamped witnesses as well as they had also been inflicted injuries by the accused. The prosecution has led medical evidence in the shape of PW-7 Dr. U.S.Sooch to prove the injuries found on the person of PW-2 Kamaljit Sharma, PW-4 Pawan Kumar and PW-5 Ashok Kumar. PW-7 Dr. U.S.Sooch, who had medico legally examined the three injured namely Kamaljit Sharma, Pawan Sharma and Ashok Sharma on 23.08.2001, proved their respective MLRs as Ex.PF, Ex.PG and Ex.PH and described the injuries found on their person as under:

Kamaljit Sharma:

1. Lacerated wound 3/4" x 1/4" x muscle deep on the back and upper part of the left forearm placed obliquely with marked swelling. X-ray was advised.
2. Stabbed wound 1" x 1/2" x query depth with lacerated margin placed horizontally on the mid axillary line on the left lower part of the chest with fresh bleeding. X-ray was advised for the chest and abdomen and injury was referred to surgical specialist for expert opinion.



(13)

3. Two abrasions 1" x 1/8" and 3/4th" apart placed obliquely on the front of left shoulder

Pawan Kumar:

1. Lacerated wound 1/2" x 1/4" x bone deep vertical on the occipital area with fresh bleeding. X ray was advised.
2. Abrasion 5" x 1/2" horizontal on the left infracapular area with ooz.
3. Complained of pain just above the right knee.

Ashok Kumar:

1. Incised wound 4" x 1/2" x bone deep 1" inside. The hair line crossing the mid line on the both frontal and parietal area with profused bleeding. X-ray was advised.
2. Abrasion 3/4" x 1/4" on the medial side of right knee.

17. PW-7 Dr. U.S.Sooch stated that while injuries No.2 & 3 on the person of Kamaljit Sharma were simple injuries, injury No.1 was declared as grievous injury upon receipt of report of radiologist. In respect of injuries found on the person of Pawan Kumar, PW-7 Dr. U.S.Sooch stated that all were simple in nature. PW-7 Dr. U.S.Sooch further stated that while injury No.2 on the person of Ashok Kumar was simple injury, injury No.1 was declared as grievous injury upon receipt of report of radiologist.
18. Learned counsel for the accused/appellants, however, vehemently assailed the presence of aforesaid three witnesses i.e. PW-2 Kamaljit Sharma, PW-4 Pawan Kumar and PW-5 Ashok Kumar at the spot while submitting that PW-7 Dr. U.S.Sooch, who had allegedly examined them categorically stated during the course of cross-examination that the MLRs in respect of Pawan Kumar (Ex.PG) and Ashok Kumar (Ex.PH) were prepared on 29.08.2001, when the injured were not present. Learned counsel submitted that given the fact that the occurrence had taken place on 23.08.2001 and the said MLRs came to be recorded after about 5/6 days and that too in the absence of the



(14)

injured, it is apparent that the said medical evidence is manoeuvred and under these circumstances their presence at the spot is rendered doubtful.

19. There is no dispute as regards the date of occurrence which is 23.08.2001. MLRs in respect of Pawan Kumar (Ex.PG) and Ashok Kumar (Ex.PH) came to be recorded on 29.08.2001. PW-7 Dr. U.S.Sooch categorically admitted that when the said MLRs were prepared, injured Pawan Kumar and Ashok Kumar were not present. Under these circumstances, it will not be safe to rely upon the said MLRs. In any case, the factum of a witness having been injured is just an additional factor which would render some kind of assurance regarding his presence at the spot, but in case his testimony is found to be credible then even in the absence of medical evidence regarding his own injuries, the same can be considered.
20. In any case, as far as the 3rd injured witness i.e. PW-2 Kamaljit Sharma is concerned, the medical evidence led by the prosecution as regards his injuries does not suffer from any infirmity. PW-2 Kamaljit Sharma was examined on 23.8.2001 at 10.45 AM. There is no inconsistency or any discrepancy as regards the date or time of medical examination of Kamaljit Sharma so as to cast any doubt as regards the authenticity of the MLR (Ex.PF). As far as MLRs pertaining to other two injured namely Pawan Kumar and Ashok Kumar are concerned, it appears that although they were examined by the Doctor concerned on 23.08.2001, but the MLRs came to be formally recorded on 29.08.2001 pursuant to a request made by the police. The relevant extracts from the examination-in-chief of PW-7 are reproduced herein under:



(15)

“On the same day at 11.15 PM, I also examined Pawan Kumar son of Kamaljit aged 27 years r/o VPO Dhamot, but the MLR was prepared on 29.08.2001 on police request since the patient had no reference slip from PHC Payal on 23.08.2001.....

..... On 23.08.2001 at 11.30 PM, I also medico legally examined Ashok Kumar son of Kamaljit aged 24 years r/o VPO Dhamot. The MLR was prepared on the police request on 29.08.2001 since the patient had no reference slip with him on 23.08.2001.”

21. Thus, even if there is some doubt as regards the admissibility of the medical evidence pertaining to Pawan Kumar and Ashok Kumar, the medical evidence pertaining to Kamaljit Sharma does not suffer from any doubt so as to make it inadmissible. The fact that Kamaljit Sharma, who is an eye-witness, sustained injuries, which have been found to be duly proved, lends absolute assurance as regards his presence at the spot. He has narrated the occurrence identically as stated by PW-1 Sharanjit Singh (complainant) and has fully corroborated his statement.
22. During the course of arguments, learned counsel for the appellants pressed upon their contention that in fact it is a case where deceased had been inflicted injuries on account of his having illicit affair with Kaki wife of Pawan Sharma and when he was caught red-handed, he was given beatings by Kamaljit Sharma and his sons Pawan Sharma and Ashok Sharma leading to his death, as is also the stand taken by one of the appellants namely Sher Khan. Learned counsel while hammering forth his aforesaid contention submitted that since it is only a '*nikkar*' which was handed over to Constable Gurcharan Singh by the Doctor concerned after conducting post-mortem examination on the dead body of Sehaj Pal Singh, the same is in tune with the



(16)

plea set up by accused Sher Khan, wherein he stated that the deceased, having been caught in compromising position ran away from the spot immediately by putting on his '*nikkar*' only. Learned counsel also referred to the testimony of PW-6 Dr. G.P.Mangla, who had conducted the post-mortem examination on the dead body and who categorically stated that only a '*nikkar*' was there on the dead body.

23. However, this Court finds that it is not the case that the deceased was found to be wearing '*nikkar*' only at the time of his death. A perusal of the statement of the Investigating Officer namely PW-10 Inspector Charan Singh shows that on 24.08.2001, Sharanjit Singh (complainant) produced before him a pant and a *parna* of Sehaj Pal Singh, which were stained with blood and which were taken into possession by the police. PW-1 Sharanjit Singh (complainant) also stated that immediately after the occurrence the deceased had been taken to hospital in injured condition, but he could not survive and died during night. He stated that on the next day, he got his statement recorded and thereafter he alongwith police reached the hospital and he had produced the blood stained clothes of his son (deceased) i.e. pant and a *parna* before the police, which were taken into possession vide recovery memo Ex.PB. The said clothes were sent to the FSL for examination alongwith weapons recovered pursuant to the disclosure statements of the accused/appellants and the same were found to be stained with human blood as per report Ex.PX. As such, the contention on behalf of the appellants that the deceased was only wearing a '*nikkar*' and had ran away from the house of Kamaljit Sharma is not borne out from evidence. Rather, it is evident that the blood stained clothes i.e. pant and *parna* were produced before the police by



(17)

the complainant, which upon chemical examination were found to be stained with human blood. There is nothing on record to substantiate the plea of alleged illicit relations of the deceased with Kaki wife of Pawan Sharma. Consequently, stand of the accused that it is not the accused, but Kamaljit Sharma and his sons, who had killed the deceased does not hold any ground. The plea of one of the accused in statement recorded under provisions of Section 313 Cr.P.C. that the deceased upon being attacked by Kamaljit Sharma and his two sons managed to snatch weapons from them and that he (deceased) inflicted injuries to Kamaljit Sharma and his sons does not seem plausible inasmuch the deceased being unarmed would hardly have been in a position to snatch a weapon from three assailants and even inflict injuries to them. The said plea is apparently implausible and cannot be accepted.

24. The testimonies of PW-1 Sharanjit Singh (complainant) and the three eye-witnesses/injured i.e. PW-2 Kamaljit Sharma, PW-4 Pawan Kumar and PW-5 Ashok Kumar are consistent on all material facts of the case. They narrated the incident identically. PW-2 Kamaljit Sharma is a stamped witness. PW-2 Kamaljit Sharma and his two sons i.e. PW-4 Pawan Kumar and PW-5 Ashok Kumar are neither relatives nor friends of deceased or complainant and are in fact independent witnesses. Nor do they have any axe to grind against the accused so as to have deposed falsely. The weapons, which were recovered at the instance of the accused/appellants i.e. *sua* from Bali Khan and *gandassa* from each of the accused Sher Khan, Buta Khan and Nazar Khan were found to be smeared with blood. Thus, even if the factum of existence of injuries on the person of Pawan Kumar and Ashok Kumar is not taken into account, the accused would still be liable in respect of simple as well as grievous injuries



(18)

found on the person of Kamaljit Singh apart from their liability with respect to murder of Sehal Pal Singh.

25. It may here be mentioned that although the accused examined DW-1 Dr. Prem Pal Gili, who stated that he had medically examined Kehar Mohd. son of Gehna on 23.8.2001 and had found some injuries, but the presence of Kehar Mohd. at the spot is not borne out from any document or evidence and nor said Kehar Mohd. stepped into the witness box. As such, the medical evidence pertaining to injuries on Kehar Mohd. is rendered irrelevant.
26. As regards the contention of the appellants that it is a case of a single injury only on the person of the deceased, which is attributed to only one accused and that the other accused cannot be held responsible for the same, this Court finds that it is a case where the four out of the five accused namely Buta Khan, Bali Khan, Nazar Khan and Sher Khan were duly armed with sharp edged weapons and pursuant to a 'lalkara' raised by Gehna Khan, they not only killed the deceased Sehal Pal Singh but also caused injuries to other persons as well who tried to intervene. The manner and conduct of accused shows that they had gathered at the spot with a pre-determined object of killing Sehal Pal Singh. Hon'ble Supreme Court in Rabindra Mahto & Anr. Vs. State of Jharkhand 2006(10) SCC 432, held as under :

“ There is a distinction between the common object and common intention. The common object need not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the assembly gathered before the commission of the crime at the spot itself. There need not be prior meeting of the mind. It would be enough that the members of the assembly which constitutes five or more persons,



(19)

have common object and that they acted as an assembly to achieve that object. In substance, Section 149 makes every member of the common unlawful assembly responsible as a member for the act of each and all merely because he is a member of the unlawful assembly with common object to be achieved by such an unlawful assembly. At the same time, one has to keep in mind that mere presence in the unlawful assembly cannot render a person liable unless there was a common object and that is shared by that person. The common object has to be found and can be gathered from the facts and circumstances of each case.”

(emphasis supplied)

27. In the present case, the facts suggest that the accused had initially nursed a common object to inflict injuries to Sehaj Pal Singh only, but when they were obstructed in prosecution of said object by Kamaljit Sharma and his sons they caused injuries to the said interveners as well in order to give effect to their common object. It appears that such like intention or object was formed at the spot. Under these circumstances, even if only one of the assailants is attributed the fatal injury to the deceased, the other accused would still be vicariously liable having done acts in prosecution of a common object and thus cannot escape from their liability as regards the murder of Sehaj Pal Singh and also as regards causing injuries to Kamaljit Sharma, who alongwith his sons had tried to intervene so as to save Sehaj Pal Singh. The aforesaid contention as regards there being no vicarious liability is thus found to be devoid of merits and cannot be accepted.
28. No other argument is raised before this Court. Consequently, we do not find any infirmity in the findings of guilt as recorded by the trial Court and the same are hereby affirmed. The appeals filed on behalf of the



(20)

accused/appellants challenging their conviction are sans merit and are hereby dismissed.

29. As far as criminal revision filed by Manjit Kaur - wife of the complainant is concerned, we find that the accused have been sentenced to undergo imprisonment for life on account of offence under Section 302 IPC and have also been imposed sentence of imprisonment for varying terms in respect of other offences. It is not one of those rarest of rare case which would justify a sentence stringer than life imprisonment. The case in hand does not warrant imposition of death penalty. Consequently, the criminal revision also deserves dismissal and is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

05.03.2025
Vimal

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**