

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Criminal Appeal No. 253 of 2005

Reserved on : 5.12.2012

Decided on : 31.12.2012

State of Himachal Pradesh.

...Appellant.

Versus

1. Sukhpreet Singh alias Sukha, son of Sh. Jagjit Singh, resident of Sunder Kutia, Below Abdulpur, Pinjore, Haryana.
 2. Bharat Bhushan alias Kaku son of Sh. Harbans Lal, resident of 117/1, Krishna Nagar, Shimla, District Shimla, H.P.
- ...Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting ? No

**For the Appellant : Mr. Vivek Thakur, Addl. A.G. with
Mr. Rajesh Mandhotra, Dy. A.G.**

For the Respondents : Mr. N.S.Chandel, Advocate.

Kuldeep Singh, Judge

The acquittal of respondents in Session Trial No. 23-S/7 of 2004/2003 by Additional Sessions Judge, Fast Track Court, Shimla on 15.3.2005 has been assailed in appeal by the State.

2. The prosecution case, in brief, is that on the statement Ex.PM under Section 154 Cr.P.C. of PW-13 Gurchet Singh, FIR dated 20.8.2003 Ex.PK was registered. The further prosecution case is that on 20.8.2003 PW-13 complainant a transporter had come to Shimla to have deliberations with Sub Divisional

¹ *Whether reporters of Local Papers may be allowed to see the Judgment ?yes*

Magistrate (Urban), Shimla for transportation of apples. He came in Scorpio Jeep No. CH-03K-5979 alongwith PW-14 M.K.Sishodia, Rattan Lal, Sachin, Gurender Singh, two sons of M.K.Sishodia and two gun men who were provided to M.K.Sishodia by Kalka Police.

3. The complainant had deliberations with Sub Divisional Magistrate, he and others came to Mall Road from where PW-14 went to the office of Deputy Inspector General of Police. PW-14 disclosed that the police protection was to be provided to him at Police Station Sadar.

4. At about 3.00 p.m. the complainant etc. were proceeding to take food and were near Shimla Watch Company on the Mall Road. Summy, Sukha alias Sukhpreet, Bobby, Pondy, Mani, Bharat Bhushan alias Kaku and Bawa Amarjit Singh were seen there. Summy and respondent No.1 were armed with swords. There were 10-12 other boys who were accompanying Summy etc. and were having rods and knives. Summy and respondent No.1 attacked the complainant and PW-14 with swords.

5. PW-14 sustained injuries on his head, hand and legs. The complainant sustained injuries on his face and hands. On receiving the information, PW-9 Jagdish Sharma, SHO alongwith PW-15 Het Ram, ASI reached the spot. The complainant and PW-14 were removed to IGMCH, Shimla for treatment, their MLCs Ex.PA and Ex.PB were obtained. The site plan Ex.PE was prepared and recoveries were made. The respondent No.2 made a disclosure statement and consequently swords, knife and three dandas were recovered. The opinion from F.S.L., Bharari was obtained.

6. It came during investigation that there was an old enmity between the complainant party and Bawa Amarjit Singh and for this reason, the gang members of Bawa Amarjit Singh had attacked the complainant and PW-14, who had come to Shimla for transportation of apples. It came further in the investigation that respondent No.1 was having a sword with which he attacked the complainant and PW-14 and caused injuries. Summy was having a knife with which he caused injuries to them. Pondy and Mani were having dandas with which they gave beatings to the complainant and PW-14. The respondent No.2 gave beatings with fist blows.

7. The respondents were arrested but Summy, Pondy, Bobby and Mani could not be apprehended. The challan was submitted in the Court against the respondents. The respondent No.1 was charged for offences punishable under Sections 147, 148, 307, 326, 325, 324, 323 read with Section 149 IPC and respondent No.2 was charged for offences punishable under Sections 147, 148, 307, 326, 325, 323 read with Section 149 IPC.

8. The respondents pleaded not guilty. The prosecution has examined 16 PWs. The evidence of the prosecution was closed by the order of the Court on 14.2.2005. The statements of respondents were recorded under Section 313 Cr.P.C. They denied the prosecution case. The respondents did not lead any evidence in defence. The Additional Sessions Judge, acquitted the respondents on 15.3.2005, hence the appeal.

9. We have heard the learned Additional Advocate General on behalf of the State and Mr. N.S.Chandel, Advocate, learned counsel for the respondents and have also gone through

the record. The learned Additional Advocate General has submitted that the Court below has misconstrued, mis-interpreted the evidence on record and has erred in acquitting the respondents. The prosecution has proved the case against the respondents.

10. On behalf of the respondents, it has been submitted that the prosecution has miserably failed to prove the case against the respondents. The prosecution story is highly improbable. The FIR has been registered on the basis of statement under Section 154 Cr.P.C. after deliberations. The prosecution story from the evidence of the prosecution itself has been proved to be false. Ramandeep alias Sammi, Jaspreet Singh alias Bobby, Harpreet Singh alias Pondy and Hardeep alias Mani were separately tried in S. Trial No. 4-S/7 of 2006 for the same incident and they were acquitted on 16.4.2008. The State has filed no appeal against their acquittal. There are inherent infirmities in the prosecution case which have not been explained by the prosecution, no fault can be found with the acquittal of the respondents. The learned counsel for the respondents has supported the impugned judgment.

11. In order to appreciate the rival contentions, it is necessary to refer to evidence which has come on record. Ex.PM is the statement under Section 154 Cr.P.C. of PW-13 Gurchet Singh Garcha recorded by PW-15 ASI Het Ram. PW-13 in Ex.PM has stated that he is a transporter at Kalka and Chandigarh. He came in vehicle No. CH-03K-5979 alongwith Madhulesh Kumar Sishodia, Rattan Lal, Sachin, Gurender Singh and two sons of Sishodia as well as two gun men of Sishodia brought from Police Station, Kalka for having deliberations with SDM (U), Shimla for transportation of

apples. The deliberations were held with SDM, papers were handed over to him. Thereafter, they came to the Mall Road and stood there. Sishodia went to the office of D.I.G. and returned after some time and told that he would take security from Police Station, Sadar.

12. They were going to take their meals, they saw Summy, Sukha, Bobby, Pondy, Mani, Bharat Bhushan alias Kaku and Bawa Amarjit Singh. Summy and Sukha were having swords with them. They were standing on the Mall Road near Shimla Watch Company at about 3.00 p.m. There were 10/12 boys also with them, who were having rods and knives. Summy and Sukha attacked him with swords, they also attacked M.K.Sishodia with swords. M.K.Sishodia sustained injuries on head, hand and legs. He also sustained sword injury on his hand. Bawa Amarjit Singh and aforesaid boys attacked them. On the basis of Ex.PM, FIR Ex.PK was recorded at 5.35 p.m. on 20.8.2003 showing time of occurrence from 3.00 p.m. to 3.15 p.m.

13. PW-13 in the Court has stated that he had come to Shimla on 20.8.2003 to meet SDM. After meeting SDM on 20.8.2003 he came to the Mall Road, Sishodia also met him at about 3.00/3.15 p.m. They reached in front of a Watch Company on the Mall Road. Summy and Sukha were having Kirpans in their hands, they attacked Sishodia with Kirpans on his head. Pondy, Bobby, Amarjit and Bharat Bhushan gave him beatings with rods which were with them. He intervened and sustained injuries.

14. PW-13 continued he was having a stick which he used to stop the blows of Kirpan. In the meantime, police reached the

spot. The police took them to the hospital. The police recorded his statement Ex.PM which he signed in Punjabi. The police might have taken his thumb impression. The police took into possession clothes which he was wearing. He identified sword Ex.P-2, dandas Ex.P-4, P-5 and Ex.P-6 and Sukha was having a Kirpan with which he gave blow on the head of Sisodhia. Bharat Bhushan was having a danda with which he gave blow to Sishodia.

15. PW-13 in cross-examination has stated that for the last 10/12 years, he had no truck in his name. He admitted that on account of recovery of weapons from his vehicle a case was registered against him. He denied having appended thumb mark on Ex. PM, volunteered he had signed his statement in Punjabi which was recorded by the police. The police had reached within 10-15 minutes. It emerges from the statement of PW-13 that relations between him and Bawa Amarjit Singh were not cordial and they were involved in several cases in past.

16. PW-14 Madhulesh Kumar Sishodia has stated that a matter was pending in the High Court of Himachal Pradesh which was decided on 31.7.2003. He had requested his counsel Sh. R.K.Gautam, to obtain attested copy of the order. On 18.8.2003 the counsel telephonically informed that certified copy of the order was ready and he asked him to collect the copy on 20.8.2003. On 18.8.2003 he came to know that PW-13 Gurchet Singh Garcha had been contemplating to visit Shimla on 20.8.2003 to meet SDM, Rural, Shimla. He preferred to accompany PW-13 by taking lift in his vehicle in order to come to Shimla for collecting the copy of the order. He had enmity with Amarjit Singh since 20.2.2003.

17. PW-14 continued and stated that they reached Shimla around 12.30 p.m. On Mall Road he spotted Summy, son of Amarjit Singh Bawa. They started moving from reporting room, the Mall Shimla towards SDM office. At scandal point he again spotted Summy alongwith 5/6 boys and they pointed towards him (PW-14) by raising finger. He became suspicious. At about 1.00 p.m. he, PW-13 and others went to the Chamber of SDM (Rural) Shimla. At about 1.30 p.m. they came to the Mall Road, he requested PW-13 to bring to the notice of S.P., Shimla about his apprehension of attack by Summy and his gang man. He asked PW-13 and others to wait on the Mall Road. He alongwith his son came to the office of S.P. but Reader told him that S.P. was away and told him that he could contact DIG, S.R. Mardi in case of emergency. He went to the office of DIG and told him his apprehension and requested him for security. DIG talked to Sadar Police and directed them to provide him (PW-14) one armed body guard upto Parwanoo barrier. DIG asked him to go to Sadar Police Station for providing body guard to him.

18. PW-14 also stated before going to Police Station Sadar, he preferred to visit the office of his counsel Sh. R.K.Gautam, which was on way in order to collect the certified copy of order of the High Court. The counsel handed over the same to him. At about 3.00 p.m. he left his office. On arrival of his son, he and PW-13 started proceeding towards Police Station Sadar through Mall Road. In front of Shimla Watch Company he spotted a group of persons armed with swords, dandas. He could recognize Sukha. Summy alias Ramandeep and other 5/7 assailants having

dandas in their hands. He recognized Bharat Bhushan alias Kaku etc. Amarjit Singh Bawa was also standing at short distance from this group of assailants but he was not carrying any arms in his hand.

19. PW-14 further stated Summy and Sukha wielded swords in the air and hit on his head with swords. One sword of Sukha hit him on the head and the other sword of Summy was taken by him on his brief case by raising it in order to protect himself. Amarjit cried and shouted 'Kee Mar Do Salay Ko'. He became unconscious and fell on the ground, the other attackers also started giving him blows with dandas. Hardly he had stood on his feet when other sword blows were given to him. He sustained injuries.

20. PW-14 continued that PW-13 tried to save him by taking the sword blows on his stick which he was carrying at that time. He sustained several injuries and fractures. The police reached the spot within 10/15 minutes. He was attacked at 3.30 p.m. He and PW-13 were shifted to hospital. He identified sword Ex.P-2, dandas Ex.P-4, Ex.P-5 and Ex.P-6 which were used by the assailants. He was medically examined. In cross-examination, he denied that two constables of Haryana police had accompanied him in the vehicle. It appears from the statement of PW-14 that relations between him and Amarjit Singh Bawa were not cordial.

21. PW-16 Divya Partap Singh son of M.K.Sishodia has stated that on 20.8.2003 he, his father and PW-13 came to Shimla in the vehicle in which they had taken lift. There were in all 7 persons in the jeep. They reached Shimla at about 12/12.30 p.m.

They parked the jeep near lift and started towards the Mall Road. On the Mall Road, Summy pointed towards his father in order to identify him to 5/6 boys who were accompanying him. PW-13 apprehended an attack on his (PW-16) father. They first of all visited the office of SDM. After visiting the office of SDM, his father went to the office of S.R.Mardi, DGP for providing security. He told his father to visit Police Station Sadar from where gun man would be provided to him. From the office of DGP, his father and others proceeded towards the office of Sh. R.K.Gautam, Advocate where his father went alone and they kept on waiting for him on the Mall Road. After collecting the copy, his father alongwith PW-13 were going towards Police Station. He was moving about 10 feet behind them.

22. PW-16 further disposed that Sukha, Summy, Mani, Pandy, Bobby and Bharat Bhushan alias Kaku attacked his father when they reached below Ladies Park. Summy and Sukha were having swords, first blows were given by Sukha on the head of his father, the other co-accused were having dandas. PW-13 tried to save his father by placing his stick to obstruct the blows, in this exercise PW-13 was also injured. Bharat Bhushan gave knife blows as a result of which PW-13 sustained injuries. PW-13 and his father sustained injuries. Bawa Amarjit Singh was also standing at some distance and was asking the accused to kill them. The accused persons in the meantime managed to run away.

23. In cross-examination, PW-16 has stated that from Kalka they had taken lift in the vehicle of PW-13 at 9.30 a.m. They were waiting for bus at Kalka when they took lift. PW-13 on seeing

them asked them as to why they were standing at the bus stand. He denied that two police personnel had come with them from Kalka in their vehicle. He denied portion 'A' to 'A' of statement Ex.PJ. At the time of attack they were 10-15 paces away from the accused. He could not explain why other persons who were accompanying them did not intervene.

24. PW-9 Jagdish Sharma, Inspector has stated that he was SHO, Police Station Sadar from July 2000 to September, 2003. On 20.8.2003 an information was received at Police Station Sadar that a quarrel had taken place on the Mall Road. On this, he went to the spot alongwith other police officials. On the spot, two persons PW-14 M.K.Sishodia and PW-13 Gurchet Singh were found lying in injured condition. They were removed to IGMC, Shimla. The site plan Ex.PE was prepared. After some investigation, he handed over the investigation to PW-15 Het Ram, ASI.

25. In cross-examination, he has stated that when he reached the spot PW-14 M.K.Sishodia and PW-13 Gurchet Singh Garcha were lying in injured condition. PW-13 Gurchet Singh Garcha, PW-14 M.K.Sishodia and PW-16 Divya Partap Singh had only told that the persons of Bawa Amarjit had attacked them. I did not register any case on the statement of those persons that they had been attacked by the men of Bawa Amarjit Singh. In the statement of PW-16 Divya Partap Singh, it had come that he had come alongwith two gun men. The vehicle in which PW-14 M.K.Sishodia had come to Shimla was checked by Head Constable

Lal Singh and from it swords, gandas and dandas were recovered and an FIR Ex.D-1 was registered.

26. PW-15 Het Ram, ASI has stated that on 20.8.2003 at about 3.25 p.m. an information was received from Reporting Room, the Mall Shimla that a quarrel had taken place on the Mall Road in front of Shimla Watch Company. A rapat Ex.PC was entered in daily diary. On receipt of this information, he, PW-9 SHO Jagdish and other officials reached the spot. PW-13 Gurchet Singh Garcha and PW-14 M.K.Sishodia were lying in injured condition. He took them to IGMC for medical and obtained their MLCs Ex.PA and Ex.PB. He recorded the statement Ex.PM of PW-13 and there upon FIR Ex.PK was registered. The recoveries were made. On 21.8.2001 (sic 21.8.2003) Bharat Bhushan was arrested. On 28.8.2003 Bharat Bhushan made a disclosure statement Ex.PR and thereupon sword, Ex.P-2, dandas Ex.P-4, Ex.P-5 and Ex.P-6 and knife Ex.P-15 were recovered. On completion of investigation, he handed over the file to SHO Vijay Sharma.

27. PW-15 in cross-examination has stated that he did not enquire from SDM about the discussion of PW-13 Gurchet Singh Garcha and PW-14 M.K.Sishodia for transportation of apples. It has not come in the investigation that M.K.Sishodia had gone to DIG, S.R.Mardi for police protection nor he told himself to him. There was no instruction from DIG to Police Station Sadar to provide police protection to M.K.Sishodia. The injured told him that Bawa Amarjit Singh's goons had given them beatings. He did not reduce their such version in writing and sent the same to Police Station for registration of the case. He made inquiries from the injured for

about 2/3 hours and thereafter he recorded the statement of PW-13 Gurchet Singh Garcha Ex.PM. It came in his investigation that M.K.Sishodia PW-14 was accompanied with two constables of Kalka Police. He had not recorded their statements nor associated them in the investigation.

28. PW-15 further continued that swords, gandasas, dandas etc. were recovered from the vehicle in which PW-13 Gurchet Singh Garcha and PW-14 M.K.Sishodia had come and for this reason a case under Arms Act has been registered against them. PW-14 M.K.Sishodia did not state that in order to take the copy of judgment he had visited the office of Sh. R.K.Gautam, Advocate. It has come in the investigation that on the date of occurrence Bawa Amarjit Singh was in Himachal Bhawan at Delhi as per mark 'DX'.

29. Ex.PA and Ex.PB MLCs of PW-13 and PW-14 and Ex.PZ and Ex.PZ-1 FSL reports are not in dispute. The respondents have denied their involvement. Therefore, the statement of PW-1 Dr. Sunder Chainta and detailed discussion on Ex.PA and Ex.PB, Ex. PZ and Ex.PZ-1 is not necessary. The question is whether the prosecution has proved the offence against the respondents beyond reasonable doubt. Before examining the truth in the statements of PW-13, PW-14 and PW-16, it is necessary to consider disclosure statement Ex.PR and recovery memo Ex.PU.

30. Ex.PR and Ex.PU are allegedly witnessed by Bhupinder Singh, Inder Singh and also signed by Bharat Bhushan. PW-2 Bhupinder Singh has stated that on 28.8.2003 he had gone

to Police Station Sadar in connection with his own work. In his presence police did not record the statement of anyone. He was declared hostile and was cross-examined. In cross-examination, nothing supporting the prosecution was extracted from him. He however admitted his signatures on the disclosure statement which at that stage was mark 'Z'. He denied that the signatures of Inderjeet (sic Inder Singh) were also obtained. PW-3 Inder Singh has stated that on 28.8.2003 he had gone to Police Station Sadar alongwith PW-2 Bhupinder Singh. In his presence the police did not record the statement of anyone, his signatures were taken on a paper. He was declared hostile and was cross-examined. He denied the signatures of Bhupinder Singh were also obtained. He however admitted his signatures on disclosure statement and recovery memo.

31. The respondent No.2 Bharat Bhushan alias Kaku in his statement under Section 313 Cr.P.C. has denied that he made disclosure statement and recoveries were made in pursuance of his disclosure statement. It has come in the statement of PW-15 Het Ram, ASI that respondent Bharat Bhushan was arrested on 21.8.2003 and he made disclosure statement Ex.PR on 28.8.2003. PW-15 has stated that disclosure statement Ex.PR was signed by Bhupinder Singh and Inderjeet Singh. But PW-2 Bhupinder Singh and PW-3 Inder Singh have denied that any disclosure statement was made by Bharat Bhushan, they only admitted their signatures on Ex.PR. PW-15 has not stated that recovery memo Ex.PU was signed by Bhupinder Singh and Inder Singh. Thus, the statements of PW-2 and PW-3 remained virtually un rebutted that Bharat

Bhushan made no disclosure statement and no recoveries were made at the instance of Bharat Bhushan. Bharat Bhushan was arrested on 21.8.2003. He allegedly made disclosure statement on 28.8.2003 during this period he was in custody. The disclosure statement of Bharat Bhushan after seven days in custody also creates suspicion regarding the truthfulness of disclosure statement and recoveries in pursuance thereof.

32. The prosecution case hinges on the testimonies of PW-13, PW-14 and PW-16. The initial version of prosecution story has been revealed in statement under Section 154 Cr.P.C. Ex.PM of PW-13. He has stated that he is a transporter at Kalka and Chandigarh. But in the Court, PW-13 has admitted that for the last 10/12 years he had no truck in his name. PW-13 has not explained once he was not having any truck in his own name, how he was engaged in the transport business at Kalka and Chandigarh. The prosecution case is that PW-13 had planned to come to Shimla to have talks with SDM, Shimla for transportation of apples. PW-14 M.K.Sishodia also came to Shimla alongwith PW-13 and others on 20.8.2003 for collecting the copy of order of the High Court from Sh. R.K.Gautam, Advocate, who represented PW-14 in that case. PW-13 in Ex.PM has not stated that PW-14 was actually with him when he had deliberations with SDM, Shimla on 20.8.2003. PW-13 in the Court has stated that after meeting SDM on 20.8.2003 he came to the Mall road, Sishodia met him at about 3.00/3.15 p.m. PW-14 in the Court has stated that PW-13 and others went to SDM (Rural). At about 1.30 p.m. they came to the Mall Road. PW-13 in Ex. PM has stated that when they came to Mall Road Sishodia

went to the office of DIG and returned after some time. PW-14 has stated that at about 1.30 p.m. he requested PW-13 to bring to the notice of S.P. Shimla about his apprehension of attack by Summy and his gang man. He alongwith his son came to the office of S.P. and thereafter contacted DIG, S.R.Mardi, who talked to the Sadar Police and directed them to provide PW-14 one armed body guard upto Parwanoo. PW-13 in the statement in the Court has not stated that PW-14 met S.P., Shimla.

33. The prosecution case is that the complainant party was proceeding towards Police Station Sadar for obtaining police guard for the security of PW-14 as directed by DIG, Mardi but on the way PW-14 went to meet Sh. R.K.Gautam, Advocate for obtaining the copy of order. After obtaining the copy of the order from Sh. R.K.Gautam, Advocate, the complainant party was in front of Shimla Watch Company when it was attacked by the respondents and others. PW-13 in Ex.PM has stated that Summy and Sukha attacked PW-14 with swords. Bawa Amarjit Singh and other boys attacked them. PW-13 in the Court has stated that he intervened and he sustained injuries. He used the stick which he was carrying to stop the blows of Kirpan, but said stick has not been recovered. PW-13 has also stated that Bharat Bhushan was having a danda with which he gave blow to Sishodia. On the contrary PW-16 has stated that Bharat Bhushan gave knife blows as a result of which PW-13 sustained injuries. There are thus material contradictions in ocular version.

34. PW-13 has denied that he appended his thumb impression on Ex.PM, he asserted that he signed his statement in

Punjabi. The statement Ex.PM is thumb marked and not signed in Punjabi by PW-13. FIR Ex.PK has been recorded on the basis of statement Ex.PM. The author of statement PW-13 has questioned the statement Ex.PM by stating that the statement he had given to the police was signed in Punjabi but the statement Ex.PM is thumb marked. This creates suspicion in the prosecution story. PW-13, PW-14 and PW-16 have stated that Bawa Amarjit Singh was on the spot. PW-14 even stated that Amarjit cried and shouted 'Kee Mar Do Salay Ko'. PW-15 ASI Het Ram, who partly investigated the case has stated that it has come in the investigation that on the date of occurrence Bawa Amarjit Singh was in Himachal Bhawan at Delhi. This shakes the bottom of the prosecution case. According to the prosecution, the complainant party was attacked by the goons of Bawa Amarjit Singh, who himself was supervising the attack. It has been proved from the prosecution evidence itself that on the date of occurrence Bawa Amarjit Singh was at Delhi and not at Shimla.

35. It has come in the statements of Investigating Officers PW-9 Jagdish Sharma and PW-15 Het Ram, ASI that swords, gandasas, dandas etc. were recovered from the vehicle in which PW-13 Gurchet Singh Garcha and PW-14 M.K.Sishodia had come and for this reason a case under Arms Act has been registered against them. This shows that PW-13 and PW-14 had come from Kalka to Shimla equipped with swords, gandasas and dandas with some planning. After the occurrence when the vehicle in which they had come was returning it was intercepted and swords, gandasas and dandas were recovered from the said vehicle. The

recovery of swords, gandasas, dandas etc. from the vehicle in which complainant party had come to Shimla from Kalka is significant in view of defence version that complainant party had come to Shimla to give beatings to Bawa Amarjit Singh but when he was not found then complainant party quarreled with each other and sustained injuries.

36. PW-9 Jagdish Sharma, Investigating Officer has stated that when he reached the spot PW-14 M.K.Sishodia and PW-13 Gurchet Singh Garcha were lying in injured condition. PW-13, PW-14 M.K.Sishodia and PW-16 Divya Partap Singh had only told that the persons of Bawa Amarjit Singh had attacked them. However, despite this specific information, PW-9 did not think it proper to record the statements of PW-13, PW-14 M.K.Sishodia or PW-16 Divya Partap Singh, even though it came to his notice that cognizable offence was committed. PW-15 Het Ram, ASI another Investigating Officer has stated that he made inquiries from the injured for 2/3 hours and thereafter he recorded the statement of PW-13 Gurchet Singh Garcha Ex.PM. On Ex.PM time 5.15 P.M. has been shown under the signatures of Het Ram, ASI. The occurrence took place at about 3.15 p.m. There is no explanation why PW-9 did not record the statements of PW-13, PW-14 or PW-16 when they informed him that they were attacked by the persons of Bawa Amarjit Singh. It shows that the statement Ex.PM of PW-13 under Section 154 Cr.P.C. was recorded after due deliberations and thereafter FIR Ex.PK was registered which creates suspicion.

37. It has come in the statements of PW-13, PW-14 and PW-16 that several persons were accompanying them at the time of occurrence, but none of them come to the rescue of PW-13 and PW-14 when they were attacked. PW-16 son of PW-14 claimed that he was present on the spot, but even he did not come to the rescue of his father, who was attacked. This unnatural conduct of PW-16 creates doubt about his very presence on the spot. PW-16 in the Court has denied that two police personnel had come with them from Kalka in their vehicle. He denied portion 'A' to 'A' of his statement Ex.PJ recorded under Section 161 Cr.P.C. wherein he stated that he came alongwith his father M.K.Sishodia, Gurchet Singh Garcha, Rattan Lal and two gun men to Shimla.

38. The prosecution has not collected any evidence from the office of SDM, Shimla whether actually PW-13, PW-14 had come to meet SDM, Shimla on 20.8.2003. There is no evidence that DIG, S.R.Mardi directed the Police Station Sadar to provide police security to PW-14. According to PW-14 and PW-16 the copy of order of the High Court was obtained by PW-14 from Sh. R.K. Gautam, Advocate before the complainant party was attacked. As per FIR Ex.PK it was Wednesday on 20.8.2003. On Wednesday around 3.00 p.m. Advocate of the High Court is not expected to be in his Chamber. It is not the case of the prosecution that it was a holiday or Sh. R.K.Gautam, had told that he would finish his work by 3 O'clock and therefore, he had asked PW-14 to collect the copy of the order on 20.8.2003 at 3.00 p.m. The said copy of the order of the High Court supplied by Sh.R.K.Gautam, Advocate to PW-14 has not been recovered nor an explanation has been given where

that copy had gone. Sh. R.K.Gautam, Advocate was not produced and examined as a witness. The statements of PW-14 and PW-16 regarding supply of copy of High Court order by Sh. R.K.Gautam, Advocate to PW-14 are not reliable. There is no worth believing evidence that in fact PW-14 at the relevant time had come to Mall Road to collect copy of the High Court order and thereafter he was to go to Police Station Sadar for obtaining police security.

39. It has come in the statement of PW-15 that M.K.Sishodia PW-14 was accompanying with two constables of Kalka Police but those constables were not associated in the investigation. The recovery of swords, dandas and knife has not been linked with the commission of offence. The occurrence took place around 3.15 p.m. on the Mall Road in front of the shops but no independent witness has been examined by the prosecution.

40. It has not been denied that four accused of the same incident namely Ramandeep alias Sammi, Jaspreet Singh alias Bobby, Harpreet Singh alias Pondy and Hardeep alias Mani were tried separately in Session Trial No. 4-S/7 of 2006 and they were acquitted by the Additional Sessions Judge, Fast Track Court, Shimla on 16.4.2008 and no appeal has been filed by the State against their acquittal. This strengthens the view taken by the Additional Sessions Judge, Fast Track Court, Shimla in the present case in acquitting the respondents. There are material contradictions in statements of prosecution witnesses. The trial Court has appreciated the oral and documentary evidence on record properly. We are of the considered view that the trial Court has committed no mistake in appreciating the evidence. The view

taken by the trial Court in acquitting the respondents is in consonance with the evidence on record. The prosecution has miserably failed to bring home the charge. There is no merit in the appeal.

41. In view of above, the appeal fails and is accordingly dismissed. Bail bonds of the respondents are discharged, pending application also disposed of.

**(Deepak Gupta)
Judge.**

**December 31,2012.
(GR)**

**(Kuldip Singh)
Judge.**