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BALWAN SINGH AND ORS.

v.

STATE OF HARYANA

(Criminal Appeal No. 1842 of 2014)

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AUGUST 26, 2014

**[T.S. THAKUR, C. NAGAPPAN AND  
ADARSH KUMAR GOEL, JJ.]**

- Penal Code, 1860 - s.302 r/w s.149; s.307 r/w s.149; s.449 r/w s.149; s.148 and s.323 r/w s.149 - Assault launched by unlawful assembly armed with sharp edged weapons and fire-arms - Leading to death of one person and injuries to four others - Prosecution case based on the ocular testimony of PWs 4 and 5, who were daughter-in-law and daughter, respectively, of the deceased - Conviction of appellants - Challenge to - Held: Testimonies of injured witnesses PW4 and PW5 were natural, cogent and trustworthy and non-examination of the other two injured witnesses did not, in any way, affect the prosecution case - PWs 4 and 5 categorically testified about the brutal attack made by the appellants on victims by describing their overt acts during the occurrence - Both of them were rustic women and not tutored witnesses - In the facts of the case, it could not be said that FIR came into being after deliberation - The Investigation Officer PW18 Sub-Inspector seized blood stained earth from the occurrence place and that clinched the situs of the crime - There was also motive for the occurrence - The appellants nurtured a grudge against the victims on account of murder of a person belonging to their party and one of the family members of the complainant side was involved in the said murder and that culminated in the occurrence - However, on facts, the overt act attributed to appellant 'S', namely, attack on neck of the deceased with gandasa, was doubtful and his presence was not established and the benefit of doubt has to be given to*

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him - But so far as the other appellants are concerned, the prosecution version was consistent, namely, that they were armed with the lethal weapons and attacked the deceased and others and the conviction and sentences recorded by the Courts below were correct - Arms Act, 1959 - s. 25. A

*Evidence - Witness - Injured witness - Appreciation of - Held: The evidence of injured witness, being a stamped witness, is accorded a special status in law - Injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because such a witness would not want to let the actual assailant go unpunished.* B C

The prosecution case was that the accused-appellants and other accused armed with sharp edged weapons and fire arms launched assault which led to the death of one person and injuries to four others. The Trial Court convicted the appellants u/s.302 r/w s.149 IPC; s.307 r/w s.149 IPC; s.449 r/w s.149 IPC; s.148 IPC and s.323 r/w s.149 IPC and sentenced them each to undergo imprisonment for life. In addition, appellant 'N' was held guilty for the offence u/s. 25 of the Arms Act and sentenced to undergo rigorous imprisonment for 2 years. The conviction was affirmed by the High Court. Hence the present appeals. D E

Disposing of the appeals, the Court F

HELD: 1.1. The prosecution case is based on the ocular testimony of PW4 and PW5. They are the daughter-in-law and daughter, respectively, of deceased 'B'. They have categorically testified about the brutal attack made by the appellants on victims by describing their overt acts during the occurrence. Both of them in their statements recorded during the investigation, as well as, in their testimonies have stated that electricity lights were on in the house, at the time of occurrence. Their presence in the house cannot be doubted and they H G

A had no difficulty in identifying the assailants. Both of them sustained injuries and the grievously injured PW5 was admitted in the hospital at 3.25 a.m. itself. The medical evidence is available on record. The husband of PW4 and Smt. Phulla were also injured during the occurrence but were not examined. The testimonies of injured witnesses PW4 and PW5 are natural, cogent and trustworthy and non-examination of the other two injured witnesses does not, in any way, affect the prosecution case. [Para 16] [464-B-E]

C 1.2. It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let actual assailant go unpunished. [Para 16] [465-B, C]

E 1.3. The contradictions and variations in the testimonies of the aforesaid witnesses do not go to the root of the case and the substratum of the prosecution version remains undisturbed. It is to be borne in mind that both of them are rustic women and not tutored witnesses. [Para 17] [465-C-D]

F *Mano Dutt vs. State of U.P. (2012) 4 SCC 79* - relied on.

G 2. The occurrence had taken place in the midnight at 1.30 a.m. leaving one person dead on the spot and four others injured. Two of the grievously injured persons were immediately taken to hospital and the remaining two remained near the body in the house. The distance between the occurrence place and the police station is about 10 kilometers. PW18 Sub-Inspector recorded the statement of PW4 at 9.00 a.m. in the occurrence place and the FIR came to be registered at 10.10 a.m. and the special report was delivered in the Court at about 11.30

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a.m. In the facts of the case, it cannot be said that FIR came into being after deliberation. There is nothing to suspect in the prosecution case. The Investigation Officer PW18 Sub-Inspector has seized blood stained earth from the occurrence place and that clinches the situs of the crime. The contention of the appellants that the occurrence had not taken place in the house of 'B' is devoid of merit. In fact, 'B' immediately succumbed to the injuries and the homicidal death is established by the medical evidence. [Para 18] [465-E-H]

3. There was also motive for the occurrence. The appellants nurtured a grudge against the victims on account of murder of a person belonging to their party and one of the family members of the complainant side was involved in the said murder and that culminated in the occurrence. [Para 19] [466-A, B]

4. The eye witnesses PW4 and PW5 testified appellant Satish @ Shakti gave a gandasa blow on the neck of 'B' and thereafter appellant Satbir Singh gave a gandasa blow on the neck of 'B'. PW14 who conducted autopsy on the body of 'B' found a single injury on the neck of 'B'. Hence the overt act attributed to Satbir Singh, namely, attack on neck of 'B' with gandasa, becomes doubtful and his presence cannot be said to be established and the benefit of doubt has to be given to him. But so far as the other appellants are concerned, the prosecution version is consistent, namely, that they were armed with the lethal weapons and attacked the deceased and others and the conviction and sentences recorded by the Courts below are correct and does not call for any interference. In the result the appeal preferred by the appellant Satbir Singh is allowed and the conviction and sentences imposed on him is set aside and he is acquitted of the charges. The other appeals are dismissed. [Paras 20, 21] [466-C-G]

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**Case Law Reference:****(2012) 4 SCC 79****relied on****Para 16**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1842 of 2014.

B

From the Judgment and Order dated 27.01.2012 of the High Court of Punjab & Haryana at Chandigarh in CRA No. 547 of 2004.

C

**WITH**

Criminal Appeal Nos. 1844 and 1843 of 2014.

Sushil Kumar, Alok Sangwan, Aditya Kumar, Meenakshi Kumar (For Devashish Bharuka) for the Appellants.

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Manjit Singh, AAG., Vivekta Singh, Nupur Choudhary, Sanjay Kumar Rathee (For Kamal Mohan Gupta) for the Respondent.

The Judgment of the Court was delivered by

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**C. NAGAPPAN, J.** 1. Leave granted.

2. These three appeals are preferred against the common judgment dated 27.01.2012 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal no.486-DB of 2004 and Criminal Appeal no.547-DB of 2004.

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3. The appellants herein are six in numbers and were tried along with others for the charges under Sections 148, 149, 302, 307, 449, 323 and 216 of Indian Penal Code and in addition under Section 25 of the Arms Act, 1959 against appellant Naresh and the Trial Court found them guilty of the offence under Section 302 read with Section 149 IPC and sentenced them each to undergo imprisonment for life and to pay fine of Rs.10,000/- each with default sentence; further found them guilty for the offence under Section 307 read with Section 149 IPC

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and sentenced them each to undergo rigorous imprisonment for 8 years and to pay fine of Rs.5000/- each with default sentence; further found them guilty for the offence under Section 449 read with Section 149 IPC and sentenced them each to undergo rigorous imprisonment for 5 years and to pay fine of Rs.3000/- each with default sentence; further found them guilty for the offence under Section 148 IPC and sentenced them each to undergo rigorous imprisonment for 2 years each and found them guilty for the offence under Section 323 read with Section 149 IPC and sentenced them each to undergo rigorous imprisonment for 9 months. In addition appellant Naresh was found guilty for the offence under Section 25 of the Arms Act and was sentenced to undergo rigorous imprisonment for 2 years and to pay fine of Rs.2000/- with default sentence. The Trial Court directed the substantive sentences to run concurrently. Challenging the conviction and sentence the accused preferred appeals in Criminal Appeal no.486-DB of 2004 and Criminal Appeal no.547-DB of 2004 and the High Court allowed the appeal preferred by accused Subhash and acquitted him of the charges. The appeals preferred by the other accused were dismissed. Aggrieved by the confirmation of their conviction and sentence six accused have preferred the present appeals.

4. The prosecution case in brief is stated thus : PW4 Smt. Rekha is the daughter-in-law of deceased Bani Singh. PW5 Smt. Sudha is the married daughter of the deceased. Accused Naresh and Naseeb are sons of accused Dharambir. Accused Satish @ Shakti and accused Satbir are real brothers. On 26.5.2001 at about 1.30 a.m. PW4 Smt. Rekha and her husband Rishikesh were sleeping in the upstairs room of their house. Her father-in-law Bani Singh, her mother-in-law Smt. Phulla and her sister-in-law PW5 Smt. Sudha were sleeping in the ground floor of the house. At that time accused persons Dharambir carrying gandasa, Naresh armed with country made pistol, Satbir, Satish @ Shakti and Dhillu all armed with gandasa, Balwan carrying jelly, Ram Mehar armed with

- A gandasa and Dhaula armed with darant, all entered their house after scaling the boundary wall. The appellants/accused went upstairs and brought PW4 Smt. Rekha and her husband Rishikesh to the ground floor and exhorted that they should be killed to take revenge for the murder of Yudhvir. Thereafter,
- B Satish @ Shakti inflicted a gandasa blow on the neck of Bani Singh, Satbir caused gandasa blow at the very same place on the neck of Bani Singh, as a result of which, Bani Singh fell down and Dharambir inflicted gandasa blow on his right wrist and Dhillu gave gandasa blow which hit him in between his little and ring finger of the right hand. Dhaula inflicted a darant blow on the right leg of Rishikesh. Ram Mehar gave two gandasa blows on the left side of PW4 Smt. Rekha's back and one gandasa blow on the head of PW5 Smt. Sudha. Naresh fired shots from the pistol which he was carrying. Balwan gave a jelly blow causing an injury on the right hand of Smt. Phulla. Hearing the cries raised by the injured persons, Umed Singh and Ram Kumar rushed to the spot and the appellants/accused ran away with their weapons. Bani Singh succumbed to the injuries on the spot. The injured Rishikesh and PW5 Smt. Sudha were taken to the General Hospital, Bhiwani for treatment.

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5. At 9.00 a.m. on the same day, PW18 Sub-Inspector Balwan Singh reached the occurrence place and recorded Ex.PE the statement of PW4 Smt. Rekha and the Ex.PR, FIR was registered at 10.10 a.m. on the same day. PW 18 Balwan Singh conducted inquest and prepared Ex.PCC inquest report.
- F Ex.PHH is the rough site plan prepared by him. He sent the body of Bani Singh to General Hospital, Bhiwani for conducting post-mortem.

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6. PW14 Dr. N.K. Chaudhary conducted autopsy on the body of Bani Singh on 26.5.2001 and found the following injuries :

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1. An eleptical wound left side of neck starting from midline reaching up to mastoid process measuring 5.5" x 4" involving the left pinna partially amputated. The lower lateral

lobule of pinna, muscles, carotid vessels were exposed and there was subcutaneous echymosis present under the skin, carotid vessels ruptured. Clotted blood present.

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2. Incised wound 1 x .5 inch on the right hand at lower one third laterally placed. Muscle exposed.

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3. Incised wound cutting through the centre of little finger and ring finger at right hand reaching up to middle of palm, Muscle deep fracture of second metacarpal present.

He expressed opinion that death has occurred on account of shock and haemorrhage due to injuries to major vessels and nerves.

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7. PW8 Dr. Vasundhara Gupta examined Rishikesh on 26.5.2001 at 03.25 a.m. and found following injuries :

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1. Lacerated wound of 8 cm x 6 cm over the anterior surface of right leg middle 1/3rd region. Fresh bleeding was present. Advised x-ray and ortho surgeon's opinion.

2. A lacerated wound of 12 x 4 cm over the left side of face extending from the cheek to left frontal region of scalp. Fresh bleeding was present. Advised x-ray band surgeon's opinion.

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8. On the same day PW8 Dr. Vasundhara Gupta examined PW5 Smt. Sudha and found the following injury :

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Lacerated wound of 8 cm x 4 cm x 1 cm over the left side of frontal region of scalp. Swelling was present. Profuse bleeding was present. Advised x-ray and surgeon's opinion. The patient was kept under observation and subjected to x-ray and opinion for nature of injuries. Duration of injury was within 24 hours. Kind of weapon was to be given after x-ray report. Copy of MLR is Ex.PM which bears my signature.

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A 9. PW15 Dr. Mahender Kumar examined PW4 Smt. Rekha on 26.5.2001 and found the following injuries :

B 1. A lacerated wound triangular shape having 4 cm length of each arm on left lower back, superficial, redish in colour at the level of L4 and L5. Advised x-ray lumbar area AP and lateral also opined for General Surgeon's opinion. Injury was kept under observation.

C 2. A lacerated wound present at upper back on the left lateral side measuring 6 cm x .5 cm x .5 cm and another just above it measuring 3 cm x .5 cm x .5 cm. Advised x-ray thorasic AP and lateral and opined for surgeon opinion.

10. PW15 Dr. Mahender Kumar also examined Smt. Phulla and found the following injuries :

D 1. Swelling, tenderness the right forearm. Advised x-ray. AP and lateral and opined for ortho surgeon opinion.

2. Complaint of pain in the left foot.

E 11. PW18 Sub-Inspector Balwan Singh seized blood stained earth, one khol of cartridge and one sikka from the occurrence place by preparing a Memo and recorded the statements of witnesses. He arrested the accused and recovered the weapons on the information furnished by them in their disclosure statements. On completion of investigation  
F final report came to be filed in the case.

12. During the trial the prosecution examined PWs 1 to 27 and marked documents. The accused persons were examined under Section 313 Cr.P.C. and their statements were recorded.

G Thereafter, two witnesses were examined in defence. The Trial Court acquitted accused Balbir Singh and found the remaining nine accused guilty. Out of them accused Naseeb was released on probation since he was found to be a juvenile. The remaining eight accused were convicted and sentenced as  
H stated earlier.

13. On appeal to the High Court the appeal preferred by accused Subhash was allowed and he was acquitted of the charges and at the same time, the appeals preferred by the other appellants/accused were dismissed. Challenging their conviction and sentence six accused have preferred the present appeals.

14. Shri Sushil Kumar, learned senior counsel appearing for the appellants, contended that there was inordinate delay in registering the FIR and it has come into existence after due deliberations to falsely implicate the appellants and the prosecution case should be discarded. He also contended that as per the testimonies of the eye witnesses accused Satish @ Shakti and Satbir Singh gave individual gandasa blows on the neck of Bani Singh, whereas the post-mortem doctor has noticed single injury only on the neck of Bani Singh and hence the overt act attributed to Satbir Singh is doubtful and his presence itself is not established. It is his further contention that out of four persons alleged to have been injured during the occurrence, two alone were examined as witnesses and the non-examination of other two injured witnesses affects the prosecution case and makes it doubtful. Lastly, he contended that the occurrence had not taken place inside the house of Bani Singh and the appellants are falsely implicated due to party faction in the village.

15. Per contra, Shri Manjit Singh, learned Additional Advocate General appearing for the respondent-State, contended that it is midnight occurrence and the parties are known to each other, being residents of the same village and PW4 Rekha and PW5 Sudha have not only witnessed the occurrence but sustained injuries in the attack made by the assailants on them and their testimonies have rightly been relied upon and after the occurrence immediate attention was given to take the injured to the hospital and thereafter the police were informed and it cannot be said that there was undue delay in

A this regard and the conviction and sentences imposed on the appellants are sustainable.

B 16. The prosecution case is based on the ocular testimony of PW4 Rekha and PW5 Sudha. They are the daughter-in-law and daughter, respectively, of deceased Bani Singh. They have categorically testified about the brutal attack made by the appellants on victims by describing their overt acts during the occurrence. Both of them in their statements recorded during the investigation, as well as, in their testimonies have stated that electricity lights were on in the house, at the time of occurrence. Their presence in the house cannot be doubted and they had no difficulty in identifying the assailants. Both of them sustained injuries and the grievously injured PW5 Sudha was admitted in the hospital at 3.25 a.m. itself. The medical evidence is available on record. Rishikesh and Smt. Phulla were also injured during the occurrence but were not examined. The testimonies of injured witnesses PW4 Rekha and PW5 Sudha are natural, cogent and trustworthy and non-examination of the other two injured witnesses does not, in any way, affect the prosecution case. In a similar fact situation this Court in the decision in *Mano Dutt vs. State of U.P.* (2012) 4 SCC 79, held thus :

F “29. As per PW5, Dr. Surya Bhan Singh, he had examined Salik Ram Yadav as well as Nankoo on 22.10.1977 itself and noticed as many as five injuries on Salik Ram and four injuries upon the person of Nankoo. He stated that the deceased was the son of Nankoo, while Salik Ram was his brother. These injuries were suffered by them from a blunt object.

G 30. Salik Ram was examined as PW2 and his statement is cogent, coherent, reliable and fully supports the case of the prosecution. However, the other injured witness, Nankoo, was not examined. In our view non-examination of Nankoo, to which the accused raised the objection, would not materially affect the case of the prosecution.

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Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain protect the real culprit." .....

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It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let actual assailant go unpunished.

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17. The contradictions and variations in the testimonies of the aforesaid witnesses, in our considered view do not go to the root of the case and the substratum of the prosecution version remains undisturbed. It is to be borne in mind that both of them are rustic women and not tutored witnesses.

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18. The occurrence had taken place in the midnight at 1.30 a.m. leaving one person dead on the spot and four others injured. Two of the grievously injured persons were immediately taken to hospital and the remaining two remained near the body in the house. The distance between the occurrence place and the police station is about 10 kilometers. PW18 Sub-Inspector Balwan Singh recorded the statement of PW4 Rekha at 9.00 a.m. in the occurrence place and the FIR came to be registered at 10.10 a.m. and the special report was delivered in the Court at about 11.30 a.m. In the facts of the case, we are unable to appreciate the contention of the appellants that FIR came into being after deliberation and there is nothing to suspect in the prosecution case. The Investigation Officer PW18 Sub-Inspector Balwan Singh has seized blood stained earth from the occurrence place and that clinches the situs of the crime. The contention of the appellants that the occurrence had not taken place in the house of Bani Singh is devoid of merit. In fact, Bani Singh immediately succumbed to the injuries and the homicidal death is established by the medical evidence.

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A 19. There was also motive for the occurrence. The  
appellants nurtured a grudge against the victims on account of  
murder of Yudhvair, son of Gugan Singh, belonging to their party  
and one of the family members of the complainant side was  
involved in the said murder and that has culminated in the  
B occurrence.

20. While considering the involvement of Satbir Singh in  
the occurrence, we find some difficulty. The eye witnesses PW4  
Rekha and PW5 Sudha have testified Satish @ Shakti gave a  
gandasa blow on the neck of Bani Singh and thereafter Satbir  
C Singh gave a gandasa blow on the neck of Bani Singh. PW14  
Dr. N.K. Chaudhary who conducted autopsy on the body of Bani  
Singh found a single injury on the neck of Bani Singh. Hence  
the overt act attributed to Satbir Singh, namely, attack on neck  
of Bani Singh with gandasa, becomes doubtful and his  
D presence cannot be said to be established and the benefit of  
doubt has to be given to him. But so far as the other appellants  
are concerned, the prosecution version is consistent, namely,  
that they were armed with the lethal weapons and attacked the  
deceased and others and the conviction and sentences  
E recorded by the Courts below are correct and does not call for  
any interference.

21. In the result the appeal preferred by the appellant Satbir  
Singh in Special Leave Petition (Criminal) no.6674 of 2012 is  
F allowed and the conviction and sentences imposed on him is  
set aside and he is acquitted of the charges. The other two  
appeals in Special Leave Petition (Criminal) no.6673 of 2012  
and Special Leave Petition (Criminal) no.6384 of 2012, are  
dismissed.

G Bibhuti Bhushan Bose

Appeals disposed of