

Before S.S. Saron & Darshan Singh, JJ.

PRITPAL SINGH @ TITI AND ANOTHER—Appellants

versus

STATE OF PUNJAB—Respondent

CRA-D No.1084-DB of 2009

March 10, 2017

Indian Penal Code, 1860—Ss.302 and 304-I—Appellants/accused attacked deceased— Gave blows with blunt side of sword and fisticuffs—Injuries inflicted on non-vital parts—Not individually or collectively sufficient to cause death in ordinary course of nature—Intention – to cause such bodily injuries likely to cause death; not definitely to cause death—Cause of death—Pulmonary embolism right side, pneumonia left side and defaulting kidney leading to cardio pulmonary arrest—Sufficient to cause death in the ordinary course of nature—Death after 47 days and due to supervening factors—Not a direct result of injuries—Conviction modified from Section 302 IPC to Section 304-I IPC.

Held that, as per the medical evidence, deceased-Albel Singh has not suffered any serious injury on any vital organ of his body like head, chest, abdomen etc. PW-5 Dr. Gurpreet Kaur Sekhon, who has medico legally examined the deceased, has categorically deposed that the patient was conscious and vitals were stable. Except injury no.5, all the injuries were on the non vital portion of the body. Injury no.5 was also on the pinna of left ear and no medical evidence has been brought on file to show that the said injury was grievous in nature or dangerous to life. Neither, the doctor who had medico legally examined the deceased nor the doctors who had conducted the postmortem examination have given any opinion that the injuries suffered by the deceased were individually or collectively sufficient to cause death in the ordinary course of nature. The cause of death of Albel Singh has been described due to pulmonary embolism right side, Pneumonia left side and defaulting kidney leading to cardio pulmonary arrest which were sufficient to cause death in the ordinary course of nature. In the report Ex.PW8/B, Dr. J.S.Sandhu, Nephrologist has categorically mentioned that pulmonary embolism occurring directly from fractures was least likely at this stage of illness. So, this report of PW-8 Dr. J.S.Sandhu practically rules out the pulmonary embolism as a direct result of the fractures suffered by the deceased. 'Cardiac arrest' is also

called a 'cardiopulmonary' or 'circulatory arrest' and indicates a sudden stop in effective and normal blood circulation due to failure of the heart to pump the blood. It can also be said like this that 'cardiopulmonary arrest' is the failure of ventricles of the heart to contract (usually caused by ventricular fibrillation) with subsequent absence of the heart beat leading to oxygen lack and eventually to death. Thus, all the causes of death of Albel Singh were due to supervening factors and not as a direct result of the injuries. Moreover, the cardiopulmonary arrest which has been mentioned to be due to defaulting kidney was not the sole cause of death. It has only been described as one of the causes of death of Albel Singh. Thus, the injuries caused by the appellants to deceased-Albel Singh were not the direct cause of his death.

(Para 35)

Further held that, as per the statement of deceased (Ex.PW10/E), after the deceased has fallen down on the ground, appellant Pritpal Singh @ Titi gave the blows with the backside of 'sword' and his companions gave fisticuffs to him. This version in the statement of deceased rules out the intention of the appellants to definitely cause the death of Albel Singh. As per the prosecution story, appellant-Pritpal Singh @ Titi was armed with sword, appellant-Bikramjit Singh @ Billu was armed with 'Kirch' and their companions were armed with iron rod and lathi. They could have caused fatal injuries on the vital part of the body of Albel Singh if they really intended to cause his death. There was no reason for appellant Pritpal Singh @ Titi to use the backside of 'sword' and his companions to give fist blows if, their intention would have been to cause his death.

(Para 36)

Further held that, it is also a fact that Albel Singh survived for 47 days after suffering the injuries. When, he was taken to the hospital for the first time, he was conscious and vitals were stable. As mentioned above, none of the injuries suffered by him were individually or collectively sufficient to cause death in the ordinary course of nature. The causes of death of Albel Singh are the supervening factors and he has not died as a direct result of the injuries. But, at the same time we have no doubt that by causing so much injuries with the weapons like 'Kirch' and 'Sword', the assailants must have been intended to cause such bodily injuries to Albel Singh as were likely to cause his death. The offence committed by the appellants thus attracts the mischief of Part I of Section 304 IPC. Reference can be

made to cases *Somon Vs. State of Kerela* 2008 (4) R.C.R. (Criminal) 973 and *Purna Padhi and another Vs. State of Orissa* 1992 Cri. LJ 687.

(Para 37)

Mandeep Kaushik, Advocate
for the appellants.

P.P.S. Thethi, Addl. A.G. Punjab.
S.S.Salar, Advocate
for the complainant.

DARSHAN SINGH, J.

(1) The present appeal has been directed against the judgment of conviction dated 11.11.2009, vide which both the accused-appellants Pritpal Singh @ Titi (appellant no.1) and Bikramjit Singh @ Billu (appellant no.2) were held guilty and convicted for the offence punishable under [Section 302](#) of the Indian Penal Code, 1860 ('IPC'-for short) and the order of sentence of the even dated vide which they were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment thereof to further undergo rigorous imprisonment for a period of two months each.

(2) The sequence of the events giving rise to this prosecution are that on 25.11.2006, a telephonic message was received in the Police Station, Division No. 2, Ludhiana about admission of injured Albel Singh in Civil Hospital, Ludhiana. PW-10-ASI Karnail Singh reached at Civil Hospital, Ludhiana and sought the opinion of the doctor, but the doctor declared the injured unfit to make the statement. ASI Karnail Singh again visited the Civil Hospital on 27.11.2006. This time Albel Singh was declared fit to make the statement and his statement Ex.PW10/E was recorded, wherein he stated that they were five brothers. They all were residing in Village kheri. One of his brother namely Amrik Singh had left for abroad two years back. His brothers Gurdial Singh and Harnek Singh have already expired. His another brother Jagjit Singh was an agriculturist in the village. They all were having twenty five acres of land. The partition of the said land was under consideration. They all were cultivating the land separately which were in their respective possession. On 25.11.2005, he went out from his house for walk towards their fields on the metalled road which leads from Village Kheri to Thakarwal. Accused-appellants Bikramjit Singh @ Billu and Pritpal Singh @ Titi, his nephews (sons of his brother Harnek Singh) along with two other youngmen aged about 35-36 years were already present there. Bikramjit Singh @ Billu was

having a 'Kirch', Pritpal Singh @ Titi was having a 'Sword' and the youngmen accompanying them were having 'iron rod' and 'lathi' respectively. When he reached inside the fields at about 3.15. a.m. accused-appellant Pritpal Singh @ Titi raised lalkara that today the matter regarding partition of the land should be finished and Albel Singh should not escape. At this, accused-appellant Bikramjit Singh @ Billu gave the 'Kirch' blow on his right leg. He gave another blow with 'Kirch' on his left leg. Pritpal Singh @ Pitti gave blow with 'sword' on his head, which hit near his left ear. Pritpal Singh @ Titi gave another blow with 'sword' on his right arm. In the meantime, the clean shaved young man gave three- four blows with iron rod on his left arm. The second young man gave Dang blows on his left shoulder and on upper part of his arm. Due to the injuries he fell down on the ground. Pritpal Singh @ Titi gave blow with the backside of 'sword'. His companions also gave him fist blows. On hearing alarm raised by him, Mohinder Singh Lambardar of village Kheri and Ashwani Kumar Sharma resident of Guru Nanak Colony came there. Then, the above said assailants along with their respective weapons fled away from the spot by abusing and threatening the deceased in their white Scorpio vehicle. They said that one is finished and will see the remaining. He further stated that he can identify the youngmen if they were brought before him. Later on, his son Gurvinder Singh reached at the spot who arranged the vehicle and shifted him to Satluj Hospital. Then, he was got admitted in Civil Hospital, Ludhiana. He further stated that due to the dispute with respect to partition of the land, the accused have caused injuries to him as a result of conspiracy. They also took away his purse containing Rs. 12,775/-, licence, card of Member Panchayat and his mobile phone. On the basis of statement Ex.PW10/E made by Albel Singh initially the First Information Report Ex.PW10/G was registered under [Sections 323, 324](#) read with [Section 34](#) of IPC and investigation initiated.

(3) The Investigating Officer also recorded the statement of accused-appellant Bikramjit Singh who was reported to be admitted in Christian Medical College and Hospital, Ludhiana. Said statement was also forwarded to the police station. Thereafter, the Investigating Officer inspected the place of occurrence and prepared the rough site plan Ex.PW10/H.

(4) On 28.12.2006, ASI Rajwinder Singh (PW-11) carried out the further investigation. He arrested accused-appellant Pritpal Singh @ Titi. Albel Singh succumbed to the injuries on 11.01.2007 and the offence under [Section 302](#) of IPC was added. Accused-appellant

Bikramjit Singh @ Billu was arrested on 14.01.2007 by PW-12 Inspector Sandeep Singh. On interrogation he suffered the disclosure statement Ex.PW6/B and in pursuance thereof, he got recovered 'Kirch' from the bushes. The sketch of the said 'Kirch' Ex.PW6/C was prepared and the same was taken into possession vide memo Ex.PW6/D after keeping the same in a sealed parcel. On completion of the formalities of the investigation, the report under [Section 173](#) of the Code of Criminal Procedure, 1973 ('Cr.P.C.'-for short) was presented in the Court.

(5) The case was committed to the Court of Sessions by the learned Judicial Magistrate Ist Class, Ludhiana vide order dated 05.04.2007.

(6) The accused-appellants were charge sheeted for the offence punishable under [Section 302](#) IPC by the learned Additional Sessions Judge, Ludhiana, to which both the accused-appellants pleaded not guilty and claimed trial.

(7) In order to substantiate its case, the prosecution examined as many as thirteen witnesses besides bringing on record the documents.

(8) When examined under [Section 313](#) Cr.P.C, both the accused- appellants pleaded innocence and their false implication by Gurvinder Singh and deceased-Albel Singh. They pleaded that they had land dispute with Albel Singh and for that a written compromise was got affected by the Village Panchayat, wherein Albel Singh had agreed that the land in his possession belongs to accused-appellant Bikramjit Singh @ Billu and will be left after demarcation after harvesting of the paddy crops. After harvesting the paddy crops, Albel Singh left the land for accused-appellant Bikramjit Singh @ Billu as per the compromise and demarcation dated 07.06.2006. Thereafter, the land came in his possession. He has sown the wheat crop in the said land. But, Gurvinder Singh son of Albel Singh was not happy with all this and felt insulted. He got annoyed with his father Albel Singh and started keeping grudge against him. He started to put pressure on his father Albel Singh to forcibly take back the possession of that land and for that purpose, he along with his father Albel Singh hired three persons to help them to take back the possession of the land and also asked them that in case anybody came in between he should be killed. On 25.11.2006, in order to do so, Gurvinder Singh, his father Albel Singh and three unidentified persons armed with 'Kirpans' and other weapons came in their fields and started demolishing the boundary line (Watt) of the land and to built a new boundary line. Bikramjit Singh @ Billu

tried to stop them from doing so. He was attacked and injuries were caused to him. On hearing the alarm raised by Bikramjit Singh @ Billu, his brother Pritpal Singh @ Titi (appellant no.1) came at the spot and saved him from the clutches of the complainant party. They never caused any injury to Albel Singh.

(9) In the defence evidence, accused-appellants examined Amandeep Singh as DW-1, who has deposed about the compromise which took place between Albel Singh and the appellants. Dr. Davinder Singh appeared as DW-2. He was posted at Satluj Hospital, Ludhiana and on 25.11.2006 medico legally examined Albel Singh. He proved MLR Ex.DW2/A and the diagram showing seats of injuries Ex.DW2/B. Sukhwinder Singh son of Gurmail Singh appeared as DW-3, who has deposed in corroboration to the defence plea with respect to the mode of occurrence. Thereafter, the defence evidence was closed.

(10) On appreciating the evidence and the contentions raised by learned counsel for the parties, both the accused-appellants were held guilty and convicted for the offence punishable under [Section 302](#) of IPC by the learned Additional Sessions Judge (Fast Track Court), Ludhiana vide impugned judgment of conviction dated 11.11.2009 and they were ordered to undergo imprisonment for life and to pay a fine of Rs. 5000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of two months each vide impugned order of sentence dated 11.11.2009.

(11) Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by both the appellants.

(12) We have heard Mr. Mandeep Kaushik, Advocate, learned counsel for the appellants, Mr. P.P.S. Thethi, learned Additional Advocate General, for the State of Punjab, Mr. S.S.Salar, Advocate, learned counsel for the complainant and have meticulously examined the record of the case.

(13) Initiating the arguments, learned counsel for the appellants contended that accused-appellants have been falsely implicated in this case and have been wrongly convicted by the learned trial Court for the offence punishable under [Section 302](#) IPC. He contended that the falsity of the prosecution version is evident from the medical evidence. As per the medico legal report Ex.DW2/A prepared by DW-2 Dr. Davinder Singh at Satluj Hospital, Ludhiana, Albel Singh has suffered only nine injuries. Whereas, in the medico legal report Ex.PW5/A

prepared by PW-5 Dr. Gurpreet Kaur Sekhon, Medical Officer, Mini PHG, Jodhan, Ludhiana thirteen injuries have been shown. There is no explanation about this deviation in the number of injuries in both the medico legal reports of Albel Singh.

(14) He further contended that it is alleged that accused-appellant Pritpal Singh @ Titi was armed with 'sword' (kirpan). But, no such 'sword' has been recovered from the possession of accused-appellant Pritpal Singh @ Titi. Thus, even the weapon of offence has not been recovered which is again fatal to the prosecution case.

(15) He further contended that no offence under [Section 302 IPC](#) is made out. There is no grievous injury on any vital part of the body of the deceased. The fractures are only on the lower part of the legs and forearms. He contended that it shows that the accused-appellants had no intention to cause the death of Albel Singh. Albel Singh has not suffered any head injury. PW-5 Dr. Gurpreet Kaur Sekhon has categorically stated that except injury no.5, all the injuries are on the non-vital portion of the body. Injury no.5 was never declared as grievous, which was on the pinna of left ear. He further contended that the cause of death of Albel Singh was not injuries, rather he has died due to pulmonary embolism and cardio pulmonary arrest. The injuries suffered by deceased Albel Singh have not been declared by any of the doctor to be sufficient to cause death in the ordinary course of nature. Thus, he contended that the appellants have been wrongly convicted by the learned trial Court for the offence punishable under [Section 302 of IPC](#). The allegations at the most can attract [Section 326 of IPC](#). To support his contentions, he has relied upon case *Virsa Singh versus State of Punjab*¹.

(16) On the other hand, Mr. P.P.S.Thethi, learned Additional Advocate General, for the State of Punjab assisted by Mr. S.S.Salar, Advocate, learned counsel for the complainant contended that the difference in the number of injuries mentioned in the medico legal reports of Albel Singh can be the result of an oversight by the doctors concerned. They further contended that the non-recovery of the 'sword' from the possession of appellant-Pritpal Singh @ Titi is also not going to adversely affect the substantive evidence led by the prosecution to prove the commission of the offence.

(17) They further contended that the accused-appellants have

¹ 1958 SCR 1495

been rightly convicted by the learned trial Court for the offence punishable under [Section 302](#) of IPC. Both the accused-appellants were armed with deadly weapons i.e. 'sword' and 'kirch'. Accused-appellant Pritpal Singh @ Titi has aimed the 'sword' at the head of deceased-Albel Singh, but it hit at the pinna of his left ear. Deceased-Albel Singh was beaten brutally. He suffered more than thirteen injuries on his body including eight fractures. Four injuries were with sharp weapons. The causing of so much injuries with deadly weapons clearly shows the intention of the accused-appellants to cause death of Albel Singh.

(18) They further contended that though, the cause of death of Albel Singh has been mentioned to be pulmonary embolism but the said pulmonary embolism and cardio pulmonary arrest has been caused due to kidney failure which was the direct result of the injuries caused to Albel Singh by the appellants. They contended that deceased Albel Singh had no history of renal disease. He received the injuries on 25.11.2006 and he had to go for dialysis for acute kidney failure and dialysis was done on 28.11.2006 i.e. just within three days after he suffered the injuries. They further contended that PW-8 Dr. J.S.Sandhu, Professor of Nephrology, DMC & Hospital, Ludhiana has categorically stated that Myoglobin is excreted by the kidneys due to trauma which can lead to acute kidney failure. He has also made it clear that rhabdomyolysis is the Myoglobin coming from muscle injuries. In his report Ex.PW8/B also PW-8 Dr. J.S.Sandhu has categorically mentioned that the multiple fractures has led to traumatic rhabdomyolysis with acute tubular necrosis with septicemia with sudden death most likely pulmonary thromboembolism. In support of their arguments, they have also drawn our attention to Harrison's Principles of Internal Medicine, Table 279-1 to contend that traumatic injuries can lead to rhabdomyolysis. Thus, they contended that the kidney failure which led to pulmonary embolism was the direct result of the injuries caused to Albel Singh by the appellants and the same was sufficient to cause death in the ordinary course of nature. Thus, they pleaded that appellants have been rightly convicted for the offence punishable under [Section 302](#) of IPC. To support their contentions, they relied upon cases *Brij Bhukhan and others* versus *State of U.P.*², *Anda and others* versus *State of Rajasthan*³, *Sudershan Kumar* versus *State of Delhi*⁴ and *Kashmiri Lal and others* versus *State of Punjab*⁵.

² 1957 CriLJ 591

³ 1966 CriLJ 171

⁴ 1975 CriLJ 16

(19) We have duly considered the aforesaid contentions.

(20) At the first instance deceased Albel Singh was taken to Satluj Hospital, Ludhiana and was medico legally examined by DW-2 Dr. Davinder Singh, who has prepared the medico legal report Ex.DW2/A and found nine injuries on his person.

(21) Thereafter, he was shifted to Civil Hospital, Ludhiana and was again medico legally examined by PW-5 Dr. Gurpreet Kaur Sekhon, Medical Officer, Mini PHG, Jodhan, Ludhiana. As per the statement of PW-5 Dr. Gurpreet Kaur Sekhon and the Medico Legal Report Ex.PW5/A prepared by her, deceased-Albel Singh has suffered total thirteen injuries on his person.

(22) If, we carefully compare the injuries on the person of Albel Singh, there is no material difference in the seat of injuries in both the medico legal reports. The affected part of the body in both the medico legal reports are almost the same. The difference in the number of injuries mentioned in the medico legal reports may occur due to difference of observations by the doctor concerned. It is a fact of common knowledge that power of observation differ from person to person. It may be possible that DW-2 Dr. Davinder Singh might have missed some injuries to note. DW-2 Dr. Davinder Singh has medico legally examined Albel Singh on 25.11.2006 at 09.40 a.m. and Albel Singh stayed in that hospital only till 12.30 p.m. Thereafter, he was taken to Civil Hospital, Ludhiana where he was medico legally examined by PW-5 Dr. Gurpreet Kaur Sekhon at 03.20 p.m. PW-5 Dr. Gurpreet Kaur Sekhon has not been confronted with medico legal report Ex.DW2/A and no suggestion has been put to her that more injuries were fabricated after the medico legal examination of Albel Singh at Satluj Hospital, Ludhiana. Deceased-Albel Singh was already having serious injuries. So, there was no reason for fabrication of the injuries. Consequently, the difference of injuries in the medico legal reports Ex.DW2/A and EX.PW5/A appears to be the difference of observation and omission of some injuries at the time of the initial medico legal examination of Albel Singh, which could not be a ground to create any dent in the prosecution case.

(23) It is not disputed that as per the prosecution version accused- appellant Pritpal Singh @ Titi was armed with a 'sword' and he caused the injuries to deceased-Albel Singh with sword. But, the

said 'sword' which was used by accused-appellant Pritpal Singh @ Titi as weapon of offence has not been recovered. But, mere non recovery of weapon of offence is not a ground to discard the prosecution case. The Hon'ble Apex Court in case *Mritunjoy Biswas* versus *Pranab @ Kuti Biswas and another*⁶ has laid down as under:-

"32. In *Lakhan Sao v. State of Bihar and Another*, [2002 (2) R.C.R. (Criminal) 812: 2000 (9) SCC 82], it has been opined that the non-recovery of the pistol or spent cartridge does not detract from the case of the prosecution where the direct evidence is acceptable.

33. In *State of Rajasthan v. Arjun Singh and Others*, 2011 (4) R.C.R (Criminal) 270: 2011 (5) Recent Apex Judgments (R.A.J.) 194: 2011 (9) SCC 115, this Court has expressed that mere non- recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place. Thus, when there is ample unimpeachable ocular evidence and the same has been corroborated by the medical evidence, non- recovery of the weapon does not affect the prosecution case."

(24) In case *Gurjant Singh* versus *State of Punjab*⁷ also the Hon'ble Apex Court has laid down that it is well settled that from the mere non-recovery of the weapon alone, the case against the accused concerned cannot be held to be not substantiated when there is otherwise positive, convincing and credible ocular evidence to prove the presence of the said accused and his participation in the crime. In the instant case also deceased-Albel Singh has made his statement Ex.PW-10/E to PW-10 ASI Karnail Singh in fit estate of mind narrating the circumstances leading to his death, which amounts to his dying declaration. The case of the prosecution is also fully corroborated from the testimonies of PW-2 Mohinder Singh and PW-3 Ashwani Kumar, the witnesses of occurrence and the medical evidence. In the statement of deceased Ex.PW10/E, statement of PW-2-Mohinder Singh and statement of PW-3-Ashwani Kumar the presence and participation of accused Pritpal Singh @ Titi has been specifically mentioned. In

⁶ 2014 (1) R.C.R. (Criminal) 1

⁷ 2002 (8) JT 238

these circumstances, the non recovery of the 'sword' i.e. the weapon of offence from the possession of accused- appellant Pritpal Singh @ Titi will have no adverse affect on the veracity of the prosecution case.

(25) The next question arises as to what offence is attracted for the act committed by the accused-appellants. Accused-appellants have been convicted by the learned Additional Sessions Judge (Fast Tract Court), Ludhiana for the offence punishable under [Section 302](#) of IPC i.e. for committing the murder of Albel Singh. In the scheme of [IPC](#), 'culpable homicide' is genus and 'murder' is its specie. All murders are culpable homicide, but not vice versa. Speaking generally, 'culpable homicide' sans special characteristic of murder is culpable homicide not amounting to murder.

(26) In order to attract the offence punishable under [Section 302 IPC](#), the act committed by the culprit should fall within the purview of [Section 300](#) of IPC which defines the murder. [Section 300](#) of IPC reads as under:-

300. Murder.--Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

(Secondly)--If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--

(Thirdly)--If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)--If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

(27) As per the aforesaid provision of law, under clause first, the culpable homicide is murder if the act by which the death is caused is done with intention of causing death. Clause secondly deals with the acts done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. Clause thirdly deals with acts done with intention of causing bodily injury to a person and the bodily injury intended to be inflicted

is sufficient in the ordinary course of nature to cause death. Clause fourthly comprehends generally the commission of imminently dangerous act which must in all probability cause death. Thus, in order to attract the offence punishable under [Section 302 IPC](#), the act committed by the accused must fall in any of the clauses of [Section 300](#) of IPC mentioned above.

(28) The occurrence in this case has taken place on 25.11.2006 at 03.15 a.m. As per the statement of PW-5 Dr.Gurpreet Kaur Sekhon and the medico legal report Ex.PW5/A prepared by her, deceased-Albel Singh has suffered the following injuries:-

1. Superficial bruise with contusion 12 cm x 4 cm on dorsal surface of left forearm near elbow with diffuse swelling extending to upper arm above elbow. Advised x-ray.
2. Lacerated wound 1 cm x 1 cm on outer surface of left elbow with fresh blood oozing out. Advised x-ray.
3. Diffuse swelling of whole of left forearm with superficial laceration about 5 cm x 2 cm in the center. Advised x-ray.
4. Lacerated wound about 1 cm x 1 cm on dorsum of left hand in the center with diffuse swelling of whole hand with contusion 5 cm x 3 cm at the base of the hand. Advised x-ray.
5. Incised wound about 5.5 cm x 1 cm on upper Pinna of left ear with through and through piercing extending to temporal region of head and face on other side. Advised ENT opinion.
6. Superficial bruise with diffuse swelling about 6 cm x 3 cm on outer surface of left upper arm near shoulder. Advised x-ray.
7. Contusion about 10 cm x 6 cm on outer surface of right upper arm in the middle with diffuse swelling. Advised x-ray.
8. Incised wound about 4 cm x 2 cm on right elbow dorsal surface with blood oozing out with diffuse swelling. Tenderness plus plus. Advised x-ray right elbow and forearm.
9. Diffuse swelling of whole of right forearm with bending and discontinuous movement with lacerated wound

above 4 cm x 2 cm on wrist. Tenderness plus plus. Advised x-ray.

10. Diffuse swelling on dorsum of right hand towards little and ring fingers. Tenderness plus plus. Advised x-ray.
11. Incised wound multiple four in number varying from 4 cm x 6 cm x 1 to 2 cm with bruising (reddish blue) and diffuse swelling of whole of left lower leg with ankle. Blood was oozing out. Advised x-ray.
12. Incised wound multiple four in number varying from 4 cm to 6 cm x 1 to 2 cm with blood oozing out and diffuse swelling of whole of right lower leg with ankle. Advised x-ray.
13. Superficial bruise about 6 cm x 5 cm on interior surface of left lower leg in the center.

(29) As per the statement of PW-7-Dr.Meenakshi Gupta, Radiologist and the x-ray report Ex.PW5/C, deceased-Albel Singh has suffered fracture of left Ulna, fracture of left third, fourth and fifth meta-carpals, fracture of right radius and Ulna, fracture of right fibula and fracture of left fibula. Thus, deceased Albel Singh had suffered various fractures. He has suffered injury no.5 on the upper pinna of the left ear with through and through piercing extending to temporal region of head and face on other side. He was referred to ENT specialist for opinion. But, from the statement of PW-5 Dr. Gurpreet Kaur Sekhon, it comes out that the report of the ENT specialist was not received and the said injury was not declared as grievous or simple. Dr. Gurpreet Kaur Sekhon further deposed that patient was conscious and vitals were stable. He has been medico legally examined by PW-5 Dr. Gurpreet Kaur Sekhon after about 12 hours of the occurrence and at that time deceased-Albel Singh was conscious and his vitals were stable, though blood was oozing from many injuries. She further deposed that except injury no.5, all the injuries were on the non-vital part of the body. As already mentioned, deceased was referred to ENT specialist for opinion with respect to injury no.5, but no such report was received. So, the nature and impact of this injury was not known.

(30) Deceased-Albel Singh was caused the injuries on 25.11.2006 at about 3.15 a.m. and he died on 11.01.2007 i.e. after 47 days of the occurrence. PW-4 Dr. Raj Kumar Kaur along with Dr.

Gurbinder Kaur conducted the autopsy on the dead body of Albel Singh. They reported the cause of death of Albel Singh as under:-

"The cause of death in this case in our opinion due to (1) Pulmonary embolism right side, (2) Pneumonia left side and (3) Defaulting kidney leading to cardio pulmonary arrest which is sufficient to cause death in the ordinary course of nature."

(31) As per the aforesaid medical opinion the cause of death of deceased-Albel Singh was not the injuries suffered by him, rather he has died due to pulmonary embolism right side, pneumonia left side and defaulting kidney leading to cardio pulmonary arrest. All these factors are the supervening circumstances leading to death of Albel Singh.

(32) Deceased-Albel Singh has remained under treatment of PW-8 Dr. J.S.Sandhu. He has prepared his certificate/report Ex.PW8/B. From the statement of PW-8 Dr. J.S.Sandhu, Professor of Nephrology, DMC & Hospital, Ludhiana, it comes out that deceased had acute kidney failure and on 28.11.2006 he was advised dialysis which was done on the same day. Thereafter, he required regular dialysis. He received the last dialysis on 10.01.2007 and died on 11.01.2007 at 08.30 p.m. Report Ex.PW8/B of Dr. J.S.Sandhu counter signed by the Medical Superintendent and Registrar of DMC & Hospital, Ludhiana reads as under:-

"As per records patient Albel Singh, 57 years old male was admitted history of assault on 25.11.2006. He did not have past history of any illness. He presented to DMC & Hospital on 27.11.2006 at 07.25PM, vide Admission no. 34857, C.R.No. 101502. Patient had multiple fractures and had oliguric acute renal failure precipitated by rhabdomyolysis. Patient required dialysis support for acute renal failure and had started recovering from acute renal failure. Patient went into diuretic phase of acute renal failure after approximately 1 month. Orthopedic surgeons treated the fracture part and injury parts. Patient was shifted to Nephrology unit on 09.12.2006. He had evidence of septicemia, which was treated with appropriate antibiotics. He had deranged liver fountains test possible due to septicemia, which was treated. He was given prophylaxis for DVT. On 11.12.2006 the day of expiry he had normal vitals with a blood pressure of

130/80 of mmHg. At 08.00 PM he had sudden cardiac arrest, which could be because of pulmonary embolism, in view of the fact he was bed ridden since 27th November, 2006. Pulmonary embolism occurring directly from fractures was least likely at this stage of illness.

Final diagnosis:- History of assault with multiple fractures with traumatic rhabdomyolysis with acute tubular necrosis with septicemia with sudden death most likely pulmonary thromboembolism."

(33) In his testimony, Dr. J.S.Sandhu has explained that Myoglobin is an endogenous nephrotoxin which comes from the muscles due to a trauma or non traumatic injuries and this myoglobin is excreted by the kidneys and it can damage the kidneys leading to acute kidney failure usually in a patient who has less volume in the blood. The rhabdomyolysis means the Myoglobin coming from the muscle injuries. The opinion of Dr. J.S.Sandhu finds support from Harrison's Principles of Internal Medicine, 18th Edition, page no. 2298, wherein it is mentioned as under:-

"AKI (Acute Kidney Injury) may be caused by a number of endogenous compounds, including myoglobin, hemoglobin, uric acid, and myeloma light chains. Myoglobin can be released by injured muscle cells, and hemoglobin can be released during massive hemolysis leading to pigment nephropathy. Rhabdomyolysis may result from traumatic crush injuries, muscle ischemia during vascular or orthopedic surgery, compression during coma or immobilization, prolonged seizure activity, excessive exercise, heat stroke or malignant hyper-thermia, infections, metabolic disorders (e.g., hypophosphatemia, severe hypothyroidism), and myopathies (drug-induced, metabolic, or inflammatory)."

(34) From the aforesaid medical evidence and opinions, there is no escape from the conclusion that the injuries caused to deceased-Albel Singh might have led to traumatic rhabdomyolysis causing his kidney failure. But, there is absolutely no medical evidence on record to show that the injuries suffered by deceased-Albel Singh individually or collectively were sufficient to cause death in the ordinary course of nature to attract clause thirdly of [Section 300](#) of IPC. As per the cause

of death mentioned in the postmortem report, Albel Singh has died due to pulmonary embolism, Pneumonia and cardio pulmonary arrest.

(35) As per Modi's Medical Jurisprudence and Toxicology 25th Edition, Chapter 29, the simple fractures are not ordinarily dangerous. It has been stated as under:-

"Fractures are not ordinarily dangerous, unless they are compound, when death may occur from loss of blood, if a big vessel is wounded by the split end of a fractured bone, or from fat embolism, septicaemia, gangrene or tetanus."

(36) But, at the same time in the cases of fractures of bones, there is always a serious danger to life from fat embolism. Pulmonary embolism has been defined as a blockage of arteries in the lungs by fat or a blood clot.

Rs.Pulmonary Embolism' is described in Medical Dictionary, 2nd Edition, by P.H. Collin as under:

"blockage of a pulmonary artery by a blood clot"

Further, it must be noted that pulmonary arteries take deoxygenated blood from the heart to the lungs for oxygenation.

In Taylor's Principles and Practice of Medical Jurisprudence, it is stated:

"Pulmonary embolism is a condition in which thrombi are formed on the walls of the pelvic and leg veins and such thrombi break away and embolise to the lungs. The veins themselves are usually normal and the condition is referred to as phlebothrombosis in contradistinction to thrombophlebitis where thrombosis occurs in a vein which is already inflamed. In this latter case embolism is much less likely to occur as the inflammation anchors the thrombus to the vessel wall. Although the thrombosis is the primary event the embolus itself usually consists of a tube of thrombus with a central core of clotted blood. When it reaches the lung its effects depend on its size. Small ones are carried to the periphery of the lung where they cause pulmonary infarcts but large ones straddle the bifurcation of the pulmonary artery completely blocking the blood circulation. Spasm of the pulmonary arteries around the thrombus only helps to make matters worse. The cause of

the thrombosis is thought to be damage to the vessel wall by slowing of the blood flow and pulmonary embolism frequently causes death in people who are confined to bed, particularly in the postoperative period. It has even been observed in people confined to an aeroplane seat on long journeys such as the flight to America."

(37) Hon'ble Apex Court in case *Mohd. Asif* versus *State of Uttranchal*⁸ has laid down as under:-

"Pulmonary embolism is, thus, caused by reason of the blockage in the lungs, a clot may form on any part of the body and then travel upto the lungs. Pulmonary embolism is an extremely common and highly lethal condition that is a leading cause of death in all age groups. It may arise from anywhere in the body. It may be caused even during long air travels as commonly it arises from the calf veins. It is not a disease by itself."

(38) As per the medical evidence, deceased-Albel Singh has not suffered any serious injury on any vital organ of his body like head, chest, abdomen etc. PW-5 Dr. Gurpreet Kaur Sekhon, who has medico legally examined the deceased, has categorically deposed that the patient was conscious and vitals were stable. Except injury no.5, all the injuries were on the non vital portion of the body. Injury no.5 was also on the pinna of left ear and no medical evidence has been brought on file to show that the said injury was grievous in nature or dangerous to life. Neither, the doctor who had medico legally examined the deceased nor the doctors who had conducted the postmortem examination have given any opinion that the injuries suffered by the deceased were individually or collectively sufficient to cause death in the ordinary course of nature. The cause of death of Albel Singh has been described due to pulmonary embolism right side, Pneumonia left side and defaulting kidney leading to cardio pulmonary arrest which were sufficient to cause death in the ordinary course of nature. In the report Ex.PW8/B, Dr. J.S.Sandhu, Nephrologist has categorically mentioned that pulmonary embolism occurring directly from fractures was least likely at this stage of illness. So, this report of PW-8 Dr. J.S.Sandhu practically rules out the pulmonary embolism as a direct result of the fractures suffered by the deceased. 'Cardiac arrest' is also called a 'cardiopulmonary' or 'circulatory arrest' and indicates a sudden stop in

⁸ 2009 (2)R.C.R. (Criminal) 440

effective and normal blood circulation due to failure of the heart to pump the blood. It can also be said like this that 'cardiopulmonary arrest' is the failure of ventricles of the heart to contract (usually caused by ventricular fibrillation) with subsequent absence of the heart beat leading to oxygen lack and eventually to death. Thus, all the causes of death of Albel Singh were due to supervening factors and not as a direct result of the injuries. Moreover, the cardiopulmonary arrest which has been mentioned to be due to defaulting kidney was not the sole cause of death. It has only been described as one of the causes of death of Albel Singh. Thus, the injuries caused by the appellants to deceased-Albel Singh were not the direct cause of his death.

(39) As per the statement of deceased (Ex.PW10/E), after the deceased has fallen down on the ground, appellant Pritpal Singh @ Titi gave the blows with the backside of 'sword' and his companions gave fisticuffs to him. This version in the statement of deceased rules out the intention of the appellants to definitely cause the death of Albel Singh. As per the prosecution story, appellant-Pritpal Singh @ Titi was armed with sword, appellant-Bikramjit Singh @ Billu was armed with 'Kirch' and their companions were armed with iron rod and lathi. They could have caused fatal injuries on the vital part of the body of Albel Singh if they really intended to cause his death. There was no reason for appellant- Pritpal Singh @ Titi to use the backside of 'sword' and his companions to give fist blows if, their intention would have been to cause his death.

(40) It is also a fact that Albel Singh survived for 47 days after suffering the injuries. When, he was taken to the hospital for the first time, he was conscious and vitals were stable. As mentioned above, none of the injuries suffered by him were individually or collectively sufficient to cause death in the ordinary course of nature. The causes of death of Albel Singh are the supervening factors and he has not died as a direct result of the injuries. But, at the same time we have no doubt that by causing so much injuries with the weapons like 'Kirch' and 'Sword', the assailants must have been intended to cause such bodily injuries to Albel Singh as were likely to cause his death. The offence committed by the appellants thus attracts the mischief of Part I of [Section 304](#) IPC. Reference can be made to cases *Somon* versus

*State of Kerela*⁹ and *Purna Padhi and another* versus *State of Orissa*¹⁰.

(41) Cases relied upon by learned counsel for the complainant are quite distinguishable on facts as in all those cases the injuries suffered by the deceased were sufficient to cause death in the ordinary course of nature. Whereas, the said medical opinion is totally missing in this case.

(42) Thus, keeping in view our aforesaid discussion, the present appeal is hereby partly allowed. The conviction of the appellants is hereby modified from [Section 302 IPC](#) to [Section 304-I IPC](#). The custody certificates of both the appellants placed on record by the learned State counsel shows that accused-appellant Pritpal Singh @ Titi has undergone the actual sentence of eight years nine months and twenty eight days. He has earned remission of eight years and thereby he has undergone total sentence of sixteen years nine months and twenty eight days as on 19.12.2016. Similarly, accused-appellant Bikramjit Singh @ Billu has undergone the actual custody of eight years eight months and seven days. He has also earned the remission for eight years and thereby he has 21 of 22 undergone the actual sentence of sixteen years eight months and seven days as on 16.02.2017. Thus, both the appellants have already undergone a long period in jail. Thus, it will be just and expedient to sentence both the appellants for the period already undergone by them in custody. However, they are ordered to further pay a sum of Rs. 1 lac each as fine in addition to the fine of Rs. 5000/- each already imposed by the learned trial Court and in default of payment of fine, they will undergo rigorous imprisonment for a period of six months each. Out of the fine so realized, a sum of Rs. 2 lacs shall be paid as compensation to the legal heirs of deceased-Albel Singh as per rules.

Shubreet Kaur

⁹ 2008 (4) R.C.R. (Criminal) 973

¹⁰ 1992 CriLJ 687