

lost sight of that no judicial complex has been constructed in districts like Ambala, Karnal, Rohtak out of which new districts were carved out at one stage or the other. No judicial complexes have been constructed at Yamunanagar, Kaithal, Rewari, Panipat etc. It is interesting to note that judicial complexes have been constructed at new district headquarters which have come into being in the recent years whereas in the old towns which were districts even during the British regime, no judicial complexes have been constructed. The inaction on the part of the successive governments whether ruled by one Chief Minister or the other since the creation of Haryana is writ large. We can take judicial notice of the fact that the Court accommodation for District and Sessions, Judges and Additional District and Sessions Judges in at least three district headquarters namely Ambala, Karnal and Rohtak are situated at some distance than the location of the Court Rooms meant for Subordinate Judges. The Members of the Bar as well as litigants have to run from one place to other causing inconvenience, wastage of time and money which can be avoided if judicial complexes are constructed at all the district headquarters. It is never, too late to get it done. We earnestly hope that the Government of Haryana would focus its attention towards the construction of judicial complexes so that the real purpose of adding more districts can be fulfilled.

(24) It deserves to be noted at the end, that a Division Bench of this Court in Civil Writ Petition No. 10428 of 1995 decided on March 27, 1996 '*Punjab and Haryana High Court Bar Association v. Union of India and others*' also issued directions for providing new and suitable Court complexes at Ambala, Karnal, Rohtak, Yamuna Nagar, Panipat, Rewari, Kaithal and Panchkula without any avoidable delay.

R.N.R.

Before Amarjeet Chaudhary and M. L. Koul, JJ.

SUKHWINDER SINGH @ SUKHA AND OTHERS,—Appellants.

versus

STATE OF PUNJAB,—Respondent.

CrI. A. No. 378-DB of 94.

January 28, 1997.

***Indian Penal Code, 1860—Ss. 34, 302 & 304(1) read with S. 149—
Appeal against conviction under section 302 IPC—Case of multiple
accused—Multiple injuries sustained by the deceased—Medical***

evidence not establishing any particular injury likely to cause death—Neither ocular evidence to prove which accused inflicted which injury—Absence of common intention to murder not established beyond reasonable doubt—Conviction under section 302 IPC set aside and converted to S. 304(1) IPC—Sentence reduced to 10 years R. 1—Motive—Proof of—Not necessary, where guilt is otherwise established.

Held, that it is often found that in the case of multiple accused it cannot be noticed by the eye witnesses as to what particular injury was caused by a particular accused and in such cases it is not probable and possible that any particular injury caused the death of the deceased. Although the eye witnesses have stated in their statements that various injuries were caused by the accused with their respective weapons but they could not say which of the injuries were sustained by the deceased on his person by such weapons. The medical evidence states that all the injuries were collectively sufficient to cause death and no inference, therefore, could be drawn that individually any of the injury was likely to cause the death of the deceased. In such circumstances the common intention to murder cannot be established but the case can fall within the ambit of Section 304 read with Section 34 IPC.

(Paras 25 & 26)

Further held, that in the instant case in the absence of common intention to murder being established beyond all reasonable doubts, simply on account of death of the deceased, as a result of cumulative effect of all the injuries inflicted on the person of the deceased, a case for conviction for murder under Section 302 read with Section 34 IPC cannot be sustained.

(Para 28)

Further held, that once it is found that the accused attacked PW2 Chan Singh and the deceased Taran Singh who sustained grievous injuries on their persons, as a result of which Taran Singh died afterwards in the hospital, therefore, an offence of culpable homicide not amounting to murder is made out against the accused beyond any shadow of doubt. Hence, the conviction and sentence of all the accused is changed from Section 302 to Section 304(1) read with Section 149 IPC and instead of life imprisonment all of them shall undergo ten years rigorous imprisonment each and shall pay a fine of Rs. 500 each in default of which shall undergo further rigorous imprisonment for six months each.

(Paras 29 & 30)

Further held, that in murder cases on the basis of conjectures and surmises motive is not allowed to be established rather it be proved by the prosecution in clear cut terms showing that in all probabilities there is no reason to disbelieve that the accused committed the crime. Even if the motive is loosely pleaded but the implicit reliance on the prosecution witnesses by the trial Court

with regard to the commission of the crime makes the motive irrelevant for the death of the deceased is homicidal.

(Paras 10 & 11)

R. S. Cheema, Sr. Advocate, with D. P. Singh, Advocate, for the
Petitioner.

Randhir Singh, Deputy Advocate General, Punjab, for the
Respondent.

JUDGMENT

M. L. Koul, J.

(1) The brief facts of the case on the basis of which the appellants have been convicted and sentenced by the trial court under Sections 302, 326 and 324 read with Section 149 of the Indian Penal Code, are broadly narrated as under :—

(2) The appellants Sukhwinder Singh, Mehnga Singh, Balwinder Singh, Mehal Singh and Joginder Singh including two other accused Lakhwinder Singh and Kulwinder (hereinafter referred to as the accused Nos. 1, 2, 3, 6, 7 and 4 and 5 respectively) after forming an unlawful assembly with common object to cause the death of Taran Singh and injuries to Chan Singh being armed with deadly weapons such as *Gandasa, Sua, Pistol* and *dangs* committed the murder of deceased Taran Singh and caused grievous and simple injuries on the person of PW1 Chan Singh. According to the prosecution the said two accused Lakhwinder Singh (accused No. 4) and Kulwinder Singh (accused No. 5) happen to be the real brother of accused 1 to 3 and son of accused No. 6 respectively. Accused Joginder Singh happens to be a common friend of all the other accused. The complainant Swaran Singh PW2 who is the real brother of the deceased Taran Singh and Chan Singh PW1, made a statement Ex. PA before ASI Gurmit Singh PW12 at 10 P.M. on 21st November, 1988 stating that he is a resident of Village Talwandi Malak and by profession is an agriculturist. According to him, the accused Lakhwinder Singh and Mehal Singh some 5/6 years prior to the occurrence arranged his matrimonial alliance from Village Mehs and later on their relations became strained so much so the complainant was not on speaking terms with them. Some two years back the complainant party refused to withstand the matrimonial tie for which the accused became sore and were bearing a grudge against them.

(3) On 20th November, 1988 while the daughter of Piara Singh son of Daulat Singh got married some hot exchange of words took

place between the deceased Taran Singh and accused Mehal Singh, who were present in the function. The complainant and his brothers have constructed a cattle shed towards the road of Village Gajewas. As usual the complainant and his brothers Taran Singh and Chan Singh were on two bicycles going towards the village with a Can of milk after milching their cattle. The deceased Taran Singh and Chan Singh (injured PW1) were on one bicycle and had milk drum in their possession while the complainant was coming on the other bicycle. At about 6 P.M. they reached near the wheat field of Tehal Singh son of Kehar Singh resident of the same village when from the village side a tractor driven by the accused Balwinder Singh reached there. The said accused had a *sua* in his hand and other accused Mehnga Singh was armed with a *Gandasi* who was sitting on the right side of the mudguard of the tractor. Kulwinder Singh accused was having a pistol and he was sitting on the left mudguard of the tractor. Accused Mehal Singh had a *Dang* and accused Joginder Singh who was the friend of his co-accused was armed with a *Gandasi*. Another accused Lakhwinder Singh was ahead of them on a motor cycle and his brother Sukhwinder Singh accused was sitting on the pillion seat of the motor cycle armed with *Gandasa*. They stopped the motor cycle and the tractor. Soon after accused Lakhwinder Singh and Mehal Singh raised a *lalkara* that the complainant and his brother be taught a lesson for picking up a quarrel and they should not be allowed to go scot-free. The accused Sukhwinder Singh opened the attack and gave a *Gandasa* blow which hit the deceased Taran Singh on his left ear. Mehnga Singh gave a *Gandasa* blow which hit the accused on the left side of his forehead. The deceased raised his hands to save himself but accused Sukhwinder Singh gave a *Gandasa* blow on the left wrist of Taran Singh who fell down. The accused Mehnga Singh gave another blow with *Gandasa* on the right leg of Taran Singh while he was lying on the ground. The deceased raised his hands in order to save himself but the *Gandasa* hit on the finger from its sharp side. The accused Balwinder Singh gave a blow with a *sua* to the deceased while he was lying on the ground and this blow hit on the left thigh, left elbow, right leg near the knee joint of Taran Singh. The accused Kulwinder Singh was raising a *lalkara* that he would kill anybody who-so-ever comes nearby. The accused Joginder Singh gave a *Gandasa* blow on PW1 Chan Singh which hit on the right side of his hand. Chan Singh fell down. Balwinder Singh gave a *sua* blow on the right ankle of Chan Singh while he was lying on the ground. Joginder Singh gave a *Gandasa* blow on Chan Singh which hit on his right leg. Joginder Singh also gave a blow with the reverse side

of Gandasa which hit on the left leg and left arm of Chan Singh. Joginder Singh continued hurling Gandasa blows towards the complainant. However, he kept on retreating his steps and saved himself. After causing the injuries to the deceased and the victim Chan Singh the accused ran away with their respective weapons on the tractor and motor cycle towards the village. Bhag Singh (examined as a witness in defence) reached at the place of occurrence in his car after some time and lifted Chan Singh and Taran Singh to Civil Hospital, Samana.

(4) ASI Gurmit Singh who recorded the statement of the complainant Swaran Singh on the basis of which F.L.R. No. 161 was registered received ruqa No. 159 dated 21st November, 1988 Ex. PT from the Hospital informing him about the admission of the deceased and the injured PW1 in the hospital. The police party reached in the hospital at 8-45 P.M. and application Ex. PR was preferred before the doctor to ascertain his opinion whether the deceased Taran Singh was fit to make a statement or not. He gave his opinion Ex. PR/1 that Taran Singh was unfit to make a statement. Accordingly they moved another application seeking the opinion of the doctor as to whether the injured Chan Singh was fit to make a statement and the reply made by the doctor under Ex. PS/1 was that he too was not fit to make a statement.

(5) On the death of the deceased the offence under Section 307 was converted to Section 302 IPC and the other offences remained the same as contained in Ex. PB. On completion of the investigation the accused were charge-sheeted for the offences under Sections 148, 302, 326, 325, 324, 323 read with Section 149 of the Indian Penal Code and accused Kulwinder Singh was charged for an offence under Section 29 of the Arms Act as well.

(6) On completion of the trial the appellants (accused) were convicted and sentenced as under :—

(7) All of them were convicted under Section 148 and 302 read with Section 149 IPC and ordered to undergo one years rigorous imprisonment and life imprisonment and a fine of Rs. 200 each; in default of payment of fine to undergo further one years rigorous imprisonment each respectively. Joginder Singh and Balwinder Singh were convicted for an offence under Sections 326 and 324 IPC and were ordered to undergo one years rigorous imprisonment and a fine of Rs. 100; in default of which further rigorous imprisonment for three months and six months respectively. All the other accused

were convicted under Section 324 read with Section 149 of the Indian Penal Code and were sentenced to undergo imprisonment for six months. All the substantive sentences awarded were ordered to run concurrently.

(8) Heard Mr. R. S. Cheema, counsel for the accused and Mr. Randhir Singh, Deputy Advocate General, Punjab, for the prosecution, also had a thoughtful consideration over the record on the file.

(9) Firstly, the order of conviction and sentence recorded against the accused is devoid of any motive. There is no *bona fide* and believable evidence led by the prosecution to show that the disengagement of the nuptial tie of the complainant with some girl of Village Mehs arranged by the accused Lakhwinder Singh and Mehal Singh strained the relations between the accused and the complainant party and the accused developed a grudge against them. There is also no cogent and corroborative evidence to this effect as well that some hot exchange of words had taken place between the deceased and accused Mehal Singh in a function when daughter of one Piara Singh of their village got married on 20th November, 1988. No evidence has been adduced by the prosecution to show as to what was the name of the girl with her parentage belonging to village Mehs who was to be married with the complainant. The father of the girl and the girl herself have not been examined as witnesses by the prosecution to establish that any such engagement at the behest of the above mentioned accused had taken place with the complainant. Even Teja Singh or some body else who had attended the marriage ceremony of Teja Singh's daughter have not been examined to show that any hot exchange of words took place between the accused Mehal Singh and the deceased and their relations became so strained that the accused got motivated to kill the deceased. The learned trial court on some surmises and conjectures have even tried to establish that there was some dispute pending between the parties with regard to utilisation of some bore and for that the parties were not talking to each other.

(10) *In murder cases on the basis of conjectures and surmises motive is not allowed to be established rather it be proved by the prosecution in clear cut terms showing that in all probabilities there is no reason to disbelieve that the accused committed the crime.*

(11) Undoubtedly, the prosecution has failed to lead any evidence worthy of credence to be believed that the murder of the deceased

and infliction of various injuries on the person of Chan Singh PW1 was motivated for the fact that accused Lakhwinder Singh and Mehal Singh were up-set for the nuptial tie of the complainant and some girl of village Mehs could not be built up for their marital bondage on the part of the complainant party. In view of the above discussion even if the motive is loosely pleaded but the implicit reliance on the prosecution witnesses by the trial court with regard to the commission of the crime makes the motive irrelevant for the death of the deceased is homicidal. The said view finds recognition in AIR 1976 Supreme Court 2499 as well wherein their Lordships of the Hon'ble Supreme Court have held that "it is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Some times the motive is clear and can be proved; sometimes, however the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye witnesses is credit-worthy and is believed by the Court which has placed implicit reliance on them the question whether there is any motive or not becomes wholly irrelevant.

(12) Almost similar view has been taken in 1981 Criminal Appeals Reporter 203 (S.C.) wherein it has been held that "in any case, it is not a *sine quo non* for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it".

(13) In view of the above case law and having regard to the merits of the case, we are of the view that the motive although not proved has become insignificant for the evidence recorded by the prosecution is convincing and is not open to reasonable doubt that the death of the deceased had not taken place in the incident dated 21st November, 1988.

(14) The other argument advanced by the learned counsel for the accused Mr. R. S. Cheema, was that there was delay of more than 12 hours in lodging the first information report with the police when according to him the occurrence took place at 5.45 P.M. on 21st November, 1988 and the report was lodged with the police at 6.10 A.M. on 22nd November, 1988. Thus the prosecution got enough time to involve the accused in the commission of the crime when actually the complainant had not seen any occurrence with his own eyes.

(15) In our opinion, the first information report is not a document which can be assailed with any un-avoidable delay. The deceased and the injured were immediately taken to the hospital in the car of DW2 Bhag Singh at Samana who as a defence witness admitted that the statement of the complainant was recorded by the police. There is also positive proof on the record in the form of medico legal report Ex. PP & PP/1 of Taran Singh deceased and Ex. PQ & PQ/1 of Chan Singh injured. From these documents it is found that both the injured reached the hospital at about 7-30 P.M. The distance between Talwandi Malak and Samana is 14 Kms as contained in the FIR Ex. PA/2. Not only that the Station House Officer of Police Station Samana was informed by the doctor at the hospital,—vide Ex. PT about the arrival of the deceased and the injured at 7-30 P.M. on 21st November, 1988. On receipt of this information ASI Gurmit Singh DW-12 came to the hospital and submitted two applications Ex. PR and Ex. PS and the doctor certified at 8-40 and 8-45 P.M. that Taran Singh and Chan Singh were not fit to make the statement. The said documentary evidence shows that the matter was reported to the police without any un-avoidable delay and both the doctor and the police swung into action. This is an important piece of evidence and we see no reason to discard or doubt its credibility. Both the deceased and Chan Singh injured PW1 were seriously injured and the complainant the brother of the deceased and the injured did not waste any time in lodging the report with the police. As he was concerned in saving the life of his injured brothers so he could not be tutored by anybody to lodge a report unnecessarily against the accused unless he has seen the occurrence. No doubt, the complainant has stated that he has made the statement on 22nd November, 1988 with the police but actually on that date the deceased had died and therefore there was change of offence from 307 to Section 302 IPC and the report No. 42 dated 22nd November, 1988 contained in Ex. PB is a proof of that the deceased died in the way while he was being taken to hospital at Patiala.

(16) It was argued by the learned counsel for the defence that DW2 Bhag Singh has deposed that on 21st November, 1988 at about 6.30 P.M. while he was returning to his home, some people stopped him near the place of occurrence and told him that some unidentified persons had earlier caused injuries to the deceased and the injured Chan Singh PW1 and they were required to be shifted to the hospital. He went to Village Talwandi Malak and brought the complainant with him and then lifted the injured to the hospital. In the cross-examination this witness has admitted that he is a

Graduate and a Bank Employee but did not report to the higher authorities about the false implication of the accused in this case. He besides admitted that the statement of PW-2 was recorded in the Civil Hospital, Samana. So, this witness in no manner could wash away the prosecution story that the occurrence took place at 5:30 P.M. on 21st November, 1988 and the deceased and the injured were seriously injured in the incident. It is surprising that DW2 who is a Bank employee and a Graduate did not bother to tell the police at the very time when the statement of the complainant was recorded in his presence by way of FIR that the accused were innocent and rather the crime was committed by some un-identifiable persons. In this view of the matter the first information report was definitely made as promptly as it could be expected and the same furnishes a good corroboration to the testimony of its author Swaran Singh PW/2. So the argument of the learned counsel for the defence that there was delay in lodging the first information report is without any sound footing and hence is rejected.

(17) Once the delay in lodging the first information report with the police is ruled out and it is found that the FIR was lodged with the police promptly as it was expected, then, there is no reason to disbelieve the complainant Swaran Singh PW-2 and Chan Singh PW-1 that the accused were the assailants who attacked the deceased and PW1 Chan Singh as a result of which Chan Singh PW1 and his brother deceased Taran Singh sustained serious injuries and the same resulted into the death of the deceased. The injured Chan Singh who remained hospitalised for a long time due to his good luck survived.

(18) There is no doubt about it that all the three brothers complainant PW-2, Chan Singh PW1 (the injured) and the deceased were returning to Village Talwandi Malak on two bicycles with a Can of milk which they had milched in the cattle shed which is at a distance of 10/12 Killas away from the place of occurrence when they were assailed by the accused party. There is no proof available on the file that the accused had way laid the complainant and his brothers rather they were coming on a tractor and a motor cycle. Both the complainant and Chan Singh PW1 have in an un-impeachable evidence recorded by the trial court proved the material particulars of the statement Ex. PA that the accused Sukhwinder Singh, Mehnga Singh and Joginder Singh were armed with *gandasas* Balwinder Singh was armed with a *Sua* and Mehnga Singh accused had a *dang*. They all attacked the deceased and the injured PW1 with their respective weapons of offence and caused various injuries on the persons of the deceased and the injured Chan Singh.

(19) The learned trial court has rightly acquitted accused No. 6 Kulwinder Singh, who was armed with a pistol but did not make use of it and nor there was any injury of fire arm on the body of the deceased. Accused Lakhwinder Singh is alleged to have been driving a motor cycle and is a handicapped person. On the pillion seat Kulwinder Singh accused was sitting with him and he had a pistol in his hand. As the pistol had not been used by Kulwinder Singh and accused Lakhwinder Singh is a handicapped man, it was not likely that he was in a position to drive the motor cycle though the motor cycle is in his name. Even otherwise from the evidence on the record no participation of these two accused is proved that they in any manner have participated in the commission of the crime. Hence they have been correctly acquitted by the trial court.

(20) It was argued by the learned counsel for the defence that once Lakhwinder Singh and Kulwinder Singh accused have been acquitted and it has been found false that they were present on the spot, in such circumstances the evidence of the injured PW1 Chan Singh and Swaran Singh PW-2 is not believable and they are not truthful witnesses for the fact that the complainant did not at all witness the occurrence and the other injured has given statement some fifteen days after the occurrence took place. He got sufficient time to develop upon the prosecution story and to say anything against any of the accused whatever was told to him or he liked. The argument raised by Mr. Cheema is not worth consideration for *it is well settled that if the court disbelieve the prosecution story and gives benefit of doubt to some of the accused that does not necessarily mean that the whole prosecution story is false and all the accused are to be acquitted of the charge.*

(21) One cannot lose sight of the fact that Taran Singh was an eye witness to the offence and was himself victim who suffered many injuries on his person. There is no ground to reject his statement when it is found that he was brought to the hospital in an injured condition by the complainant Swaran Singh in the company of DW-2 who has admitted that soon after the injured was admitted in the hospital statement of the complainant was recorded by the police. He did not say that he did not lift the deceased soon after the occurrence in his car and the matter was immediately reported to the police by the complainant and no delay what-so-ever was caused. The complainant or the injured did not get any time to ponder over the prosecution story and immediately reported to the police that the accused persons had injured the deceased and PW2, as a result

of which both the deceased and PW2 were not in a position to make the statement before the police. In that regard the doctor opined that they were not in a position to make the statement at that time. There is no dispute that the accused were the assailants and they caused serious injuries on the persons of the deceased and the injured. Taran Singh succumbed to the injuries later on whereas Chan Singh recovered from the injuries after a long hospitalization.

(22) Even from the evidence of Bhag Singh DW2 the presence of the complainant on the spot when the occurrence took place is established when he says that the complainant was with him in his car when the deceased Taran Singh and the injured Chan Singh were brought to Samana Hospital. According to him he remained present in the hospital for half-an-hour and the statement of the complainant PW2 was recorded and the doctor of the hospital informed the police about the arrival of the injured in the hospital. His statement in length and breadth supports the prosecution story that the occurrence had taken place and the deceased and PW2 had fallen pray to the assault of the accused who injured them seriously. It was argued by Mr. Cheema that in examination-in-chief DW2 Bhag Singh has stated that he made enquiries from Taran Singh and Chan Singh as to who had caused the injuries to them and they had told him that some unidentified persons had caused injuries to them.

(23) Firstly, it does not sound the judicial mind of the court totally as to why some unidentified people would attack the deceased and the injured PW2 Chan Singh without any reason or motive; and secondly the statement of DW2 Bhag Singh that they told him that they were attacked by some unidentified people is not believable for the fact that both of them were so much seriously injured that they were not in a position to make a statement before the police and were in agony due to injuries sustained by them. In this regard the opinion of the doctor contained in Ex. PR/1 and PS/1 is a proof that they were not fit to make the statement. This falsifies the statement of Bhag Singh DW2 that the deceased and the injured had told him that they were attacked by some unidentified persons and as such this argument of the learned counsel for the defence is without any substance and is not sustainable.

(24) The only argument of the learned defence counsel which is worth consideration is that in a situation where five people attacked the deceased and the injured Chan Singh with deadly weapons and inflicted various injuries on their bodies, it is not possible for an eye

witness to notice as to which of the particular injuries have been caused by a particular accused. According to the prosecution the accused jointly fell upon the complainant PW-2 and the deceased and caused several injuries on their bodies while they were standing and lying on the ground, so one cannot say as to which of the particular injuries were caused by which of the particular accused.

(25) In this regard it is felt very essential to make reference to the statement of Dr. P. K. Singla PW10 who medico legally examined the deceased and the injured on 21st November, 1988. He found 9 injuries on the person of Taran Singh deceased as quoted below :—

1. Incised wound $2\frac{1}{2}$ cm \times 1 cm on the middle of the left pinna. It was horizontal in shape. Pinna had been cut through and through along with the cartilage. Wound was bleeding and was advised X-ray.
2. Incised wound $1\frac{1}{2}$ cm \times $\frac{1}{2}$ cm \times bone deep on the middle of the left eye brow. It was vertical in shape. Wound was bleeding and was advised X-ray.
3. Incised wound $1\frac{1}{2}$ cm \times $\frac{3}{4}$ cm \times $2\frac{1}{2}$ cm deep on the out side of left elbow. Wound was bleeding and there was swelling all around the wound.
4. Incised wound 1 cm \times $\frac{1}{2}$ cm \times bone deep on the inner side of left wrist, underlying ulna bone was fractured and the wrist was deformed.
5. Swelling 12 cm \times 8 cm on the back of the right hand. It was bluish in colour and tender to touch. Advised X-ray.
6. Incised wound $\frac{1}{2}$ cm \times $\frac{1}{2}$ cm on the back of the right index finger. Wound was bleeding.
7. Penetrating wound 1 cm \times $\frac{3}{4}$ cm \times 3 cm deep on the inside of right leg upper half portion. Advised X-ray.
8. Incised wound 1 cm \times $\frac{3}{4}$ cm \times 1 cm deep on the inside of right leg near the ankle. Wound was bleeding.
9. Penetrating wound 1 cm \times $\frac{1}{2}$ cm \times 3 cm deep on the outside of the left thigh, lower half portion.

Accordingly, the doctor found five injuries on the person of Chan Singh, which are narrated as under :—

1. Incised wound 5 cm × 1 cm × bone deep on the right side of the head, 9 cm above the right pinna. Wound was vertical in shape. Advised X-ray.
2. Abrasion 3 × $\frac{1}{2}$ cm on the back of left elbow. Diffuse swelling was present all around this injury. Advised X-ray.
3. Incised wound 1 cm × $\frac{1}{2}$ cm × bone deep on the inside of right leg, 3 cm above the ankle. Wound was bleeding and was advised X-ray.
4. Penetrating wound $\frac{1}{2}$ cm × $\frac{1}{2}$ cm × bone deep on the outside of the right leg 2 cm above the ankle. Wound had clean cut margins. Underlying bone appeared to be broken. Advised X-ray.
5. Lacerated wound 4 cm × 3 cm × bone deep on the front of left leg. 9 cm above the ankle. Leg was deformed and the underlying bone was fractured.

The said doctor conducted the post-mortem examination on the dead body of the deceased on 22nd November, 1988 and repeated all the 9 injuries which he had earlier noticed in the medico legal examination as mentioned in Ex. PP/1. According to the doctor the death of Taran Singh was due to shock and haemorrhage as a result of the injuries suffered by him, which were sufficient to cause death in the ordinary course of nature and were ante-mortem in nature. In the same manner the injuries sustained by PW2 were serious in nature. *It is often found that in the case of multiple accused it cannot be noticed by the eye witnesses as to what particular injury was caused by a particular accused and in such cases it is not probable and possible that any particular injury caused the death of the deceased.*

(26) We have meticulously gone through the evidence of Dr. Singla and he has nowhere stated that any particular injury individually was likely to cause death of the deceased rather he has stated that death in his opinion was caused due to shock and haemorrhage as a result of injuries described above which means that due to all the injuries sustained by the deceased which were

sufficient to cause death in the ordinary course of nature. Although the eye witnesses have stated in their statements that various injuries were caused by the accused with their respective weapons but they could not say which of the injuries were sustained by the deceased on his person by such weapons. The medical evidence states that all the injuries were collectively sufficient to cause death and no inference therefore could be drawn that individually any of the injury was likely to cause the death of the deceased. In such circumstances the common intention to murder cannot be established but the case can fall within the ambit of Section 304 read with Section 34 IPC.

(27) It has been held in AIR 1992 Supreme Court 969 that "once the doctor has categorically stated that although the injuries were collectively sufficient to cause death but individually any of the injury was not likely to cause death. In the aforesaid circumstances it cannot be definitely held that the accused had been harbouring a common intention to murder the deceased and with such common intention they had inflicted knife injuries on the person of the deceased."

(28) In the instant case in the absence of common intention to murder being established beyond all reasonable doubts, simply on account of death of the deceased, as a result of cumulative effect of all the injuries inflicted on the person of the deceased, a case for conviction for murder under Section 302 read with Section 34 IPC cannot be sustained. In this view we are fortified from AIR 1956 S.C. 654 wherein it has been held "that as no injury caused on the vital part of the body of the deceased is not shown to have been caused by a particular accused, therefore, in the circumstances of the case the intention of the accused was not to kill the deceased outright. They, therefore, inflicted the injuries on the person of the deceased but caused such bodily injuries as they must have known would likely cause death having regard to the number and nature of the injuries. In the circumstances of the case the proper section under which the appellant should have been convicted was Section 304(1) and not section 302 IPC".

(29) In the circumstances of the present case as discussed above, once it is found that the accused attacked PW2 Chan Singh and the deceased Taran Singh who sustained grievous injuries on their persons, as a result of which Taran Singh died afterwards in the hospital, therefore an offence of culpable homicide not amounting to murder is made out against the accused beyond any shadow of doubt.

(30) Hence, the conviction and sentence of all the accused is changed from Section 302 to Section 304(1) read with Section 149 IPC, and instead of life imprisonment all of them shall undergo ten years rigorous imprisonment each and shall pay a fine of Rs. 500 each in default of which shall undergo further rigorous imprisonment for six months each. The other convictions and sentences for the offences under Sections 148, 326 and 324 read with Section 149 recorded by the trial court against the accused are upheld.

(31) With the above modification in conviction and sentence the appeal stands dismissed.

R.N.R.

Before Amarjeet Chaudhary & N. C. Khichi, JJ.

KAMAL SINGH SINGHMAR,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

C.W.P. 9074 of 93.

23rd August, 1996.

Constitution of India, 1950—Art. 226—Selection beyond advertised vacancies is impermissible—Two posts of District Attorney advertised, however, additional requisition for two more posts sent to the recruiting agency before the selection—Such additional appointments can be made—Condition in the advertisement that the number of posts are subject to variation to any extent has to be limited to requisitions sent prior to selection and not beyond—Purpose of waiting list is simply to fill up vacancies caused due to non-joining of candidates and not to fill up the anticipated vacancies—Selection beyond advertised and additional notified vacancies quashed.

Held, that it is not in dispute that the Commission had advertised two posts of District Attorneys but in view of condition in the advertisement that the number of posts are subject to variation to any extent, it can be assumed that variation can be before the selection and in public interest, keeping in view the exigency of the service and immediately succeeding the closing date. If the additional requisition is sent to the recruiting agency after the closing date, as is apparent in this case from the letter dated 16th March, 1992, the terms of advertisement that number of posts are subject to variation can be stretched to that extent only and we deem it proper to give benefit of the same to that extent only in the present case. So far