**Neutral Citation No.2023:PHHC:075694-DB**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**239**

1. **CRA No.D-36 of 2021 (O&M)**

Jagtar Singh and others ... Appellants

Versus

State of Punjab ... Respondent

2. **CRA No.D-68 of 2021 (O&M)**

Hardev Singh alias Billa ... Appellant

Versus

State of Punjab ... Respondent

**Date of Decision: 25/05/2023**

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**
**HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Bipan Ghai, Senior Advocate,
with Mr. Nikhil Ghai, Advocate,
for the appellants.

Mr. Alankar Narula, AAG, Punjab.

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**MANISHA BATRA, J.**

1. This common order will dispose of the captioned CRA No.D-36 of 2021 titled *Jagtar Singh and others v. State of Punjab* & CRA No.D-68 of 2021 titled *Hardev Singh alias Billa v. State of Punjab*.

The aforementioned appeals have been directed against the judgment dated 12.01.2021 and order on quantum of sentence dated 18.01.2021 passed by learned Additional Sessions Judge, Gurdaspur in Sessions Case 07 of 2018 titled as *State v. Hardev Singh alias Billa and others* registered under Sections 302, 427, 148 and 149 IPC in connection with FIR No.13 dated 06.02.2018 at Police Station Dera Baba Nanak whereby the appellants-accused had been held guilty for commission of offences punishable under Sections 302, 147 and 427 of IPC read with Section 149 of IPC and had been sentenced in the following manner:-

| Sr. No. | Name of Convict(s) | Offence under Section(s) | Sentence | Fine | In default of fine. |
|---|---|---|---|---|---|
| 1<br><br>2<br><br>3<br><br>4 | Hardev Singh alias Billa<br><br>Jagtar Singh<br><br>Aman Kumar<br><br>Shamsher Singh alias Surjit Singh | 302 IPC read with section 149 IPC | To undergo Rigorous imprisonment for life | Rs.50,000/- | To further undergo Rigorous imprisonment for one year. |
| | | 147 IPC read with section 149 IPC | Rigorous imprisonment for two years | Rs.5,000/- | To further undergo Rigorous imprisonment for two months |
| | | 427 IPC read with section 149 IPC | Rigorous imprisonment for two years | Rs.5,000/- | To further undergo Rigorous imprisonment for two months |

2. Brief facts of the case relevant for the purpose of disposal of these appeals are that on 06.02.2018, a police party headed by SI Avtar Singh was present at old Bus Stand, Dera Baba Nanak, for partrolling when complainant Baghail Singh reached there and informed that on the same day at about 10:30 AM, he along with Sukhjit Singh was present in his fields

situated near Fatehgarh Churian Road and was spreading pesticides therein, when his brother Subegh Singh was seen coming as a pillion rider from Fatehgarh Churian side on a Grey silver coloured Activa. Sanjiv Kumar @ Goru was riding the same. When Subegh Singh and Sanjiv Kumar reached near the fields, suddenly two bolero vehicles reached there. One was driven by accused Billa @ Hardev and Excise Contractor Nirmal Singh Randhawa was seen sitting besides him. Accused Aman, Jagtar Singh and Surjit Singh were sitting on the rear seats. In the second bolero, four workers of Excise Contractor Nirmal Singh Randhawa, not known by name to the complainant were found sitting. He alleged that accused Nirmal Singh Randhawa raised his arm from the window of his vehicle and gave a lalkara to not to spare Subegh Singh and Sanjiv Kumar who were riding on Activa by further proclaiming that Subegh Singh was a big hurdle for the sale of liquor at their own liquor vend as he was shareholder in the liquor vend of Ramdass Town. While saying so, the accused struck their bolero vehicle against the Activa of Subegh Singh and Sanjiv Kumar due to which both of them fell down and suffered injuries. Subegh Singh tried to get up but the accused reversed their vehicle and again hit Subegh Singh. Both the victims died at the spot. The complainant alleged that he had raised alarm on hearing which the accused had fled away from the spot. He had rushed the victims to the hospital but they were declared to be brought dead. On the basis of his statement, a case under Sections 302, 427, 148 and 149 of IPC had been registered. Investigation proceedings were initiated. Inquest proceedings and post mortem examination of the dead bodies of the victims were also conducted. During investigation, accused Hardev Singh was arrested and

was joined into investigation. Since the remaining accused were not arrested at this stage, therefore, after completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for his trial. Subsequently, accused Nirmal Singh Randhawa, Jagtar Singh, Aman Kumar and Shamsher Singh were also arrested and joined into investigation of the case. The accused Nirmal Singh Randhawa absented himself subsequently and proceedings for declaring him a proclaimed offender were initiated whereas supplementary challan was presented against the remaining accused after completion of investigation against them.

3. Copies of challan were supplied to the accused free of cost. The case was committed to the Courts of Sessions. On finding a prima facie case for commission of offences punishable under Sections 302 read with Section 149, 147 and 427 IPC, the accused were charge-sheeted accordingly. Alternative charge under Section 304 read with Section 149 of IPC was also framed against them. They pleaded not guilty to the charges and claimed trial.

4. To substantiate its case, the prosecution examined as many as 10 witnesses namely, **PW-1** Baghail Singh, **PW-2** Sukhjit Singh, **PW-3** Dr. Arvind Mahajan, **PW-4** ASI Rajwinder Singh, **PW-5** Mohinder Singh, **PW-6** Inspector Avtar Singh, **PW-7** Tarlok Singh, **PW-8** Dr. Amarjit Singh, **PW-9** Harpreet Singh and **PW-10** Inspector Kulwant Singh in all besides placing reliance upon documentary evidence and thereafter the prosecution evidence was closed by learned Public Prosecutor.

5. Statements of accused under Section 313 of Cr.P.C. were

recorded. They pleaded innocence and denied the incriminating circumstances appearing against them. In defence evidence, the accused examined three witnesses namely, **DW-1** Prem Kumar, **DW-2** Jagdish Singh Jasrota and **DW-3** SI Harjit Singh.

6. On appraising the evidence produced on record and considering the contentions raised on behalf of the accused and prosecution, the learned trial Court vide judgment dated 12.01.2021 held the accused guilty for commission of offences punishable under Sections 302, 147 and 427 read with Section 149 of IPC and sentenced them in the manner as indicated above.

7. Feeling aggrieved, the appellants-accused have preferred the instant appeals. Learned counsel for the appellants vehemently argued that the impugned judgment of conviction and order on quantum of sentence were liable to be set aside as the findings given by learned trial Court were perverse being based on misappreciation of the evidence produced on record. The learned trial Court had ignored that there were several material lacunas in the case of the prosecution which had rendered the prosecution story highly doubtful. The learned trial Court had committed a grave error in holding that there was no inordinate or unexplained delay in lodging of the FIR though there was delay of about 5 hours in reporting the matter to the police and the material witnesses had failed to explain the same in a reasonable manner. The presence of PW-1 and PW-2 had not been established beyond doubt rather they were proved to be planted witnesses and their evidence was highly improbable, unnatural and unworthy of any credit. They were also interested witnesses planted as chance witnesses to

the occurrence but could not establish their presence. The identity of the place of occurrence could not be established by the prosecution. The Investigating Officer had conducted the investigation in a highly negligent manner. The medical evidence produced on record did not establish it to be a case of murder rather it was proved to be a case of accidental death of the victims. The motive as attributed to the appellants was also not proved.

8. Elaborating his arguments, learned counsel for the appellants further argued that the appellant Aman Kumar had produced overwhelming evidence on record to prove the plea of alibi but learned trial Court had ignored the same. PW-1 and PW-2 had failed to produce any lease deed qua the property abutting the alleged place of occurrence which falsified their plea of being present at the spot. There was no independent corroboration to the statements of PW-1 and PW-2 even to prove that they had taken the victims to the hospital. No specific overt act had been attributed to the appellants Aman Kumar, Jagtar Singh and Shamsher Singh @ Surjit Singh. The Activa vehicle allegedly recovered from the spot had not been mechanically examined and hence, no evidence had come on record to prove that mischief by damage of such vehicle had been committed by the appellants. The prosecution had miserably failed to prove the ingredients of offence of rioting or forming unlawful assembly by the accused. With these broad submissions, it was argued that the impugned judgment was liable to be set aside, the appeals deserved to be accepted and that the appellants deserved to be acquitted of the offences for which they had been held guilty and convicted. To fortify his argument, learned counsel for the appellants placed reliance upon authorities cited as **Shankar Lal v. State of**

**Rajasthan**, (2004) 10 Supreme Court Cases 632; **State of Punjab v. Pargat Singh and others**, (2018) 15 Supreme Court Cases 233; **Hardev Singh v. State of Punjab**, 1994 Supp (2) Supreme Court Cases 282; **Hasan Murtza v. State of Haryana**, (2002) 3 Supreme Court Cases 1; **Rajesh alias Sarkari and another v. State of Haryana**, (2021) 1 Supreme Court Cases 118 and **Harbeer Singh v. Sheeshpal and others**, (2016) 16 Supreme Court Cases 418.

9. Per contra, it was argued by learned Assistant Advocate General for respondent-State that the findings as given by learned trial Court were well reasoned. The evidence produced on record had been properly appreciated and no fault could be found in the same. The presence of PW-1 and PW-2 at the spot at the time of occurrence had been fully established. The medical evidence produced on record proved that the victims had died due to the multiple injuries sustained by them on the road by hitting of a vehicle and evidence led by PW-1 and PW-2 proved that the appellants had intentionally hit the vehicle of the victims with their bolero vehicle with intention to cause their death. It was, therefore, argued that the appeals were devoid of any merits and were liable to be dismissed.

10. We have given due deliberations to the contentions as raised by learned counsel for the appellants and learned State counsel and have minutely scrutinized the evidence produced on record with their able assistance. On perusal of the medical evidence produced on record in the form of testimony of PW-3 who had conducted post mortem examination of the dead bodies of the victims Sanjiv Kumar and Subegh Singh and the post mortem reports Ex.PW3/C and Ex.PW3/D as proved by this witness, it

stands proved that the cause of death of both the victims was multiple injuries which were sustained on vital as well as non-vital organs on their person, which were ante mortem and sufficient to cause death in the ordinary course of nature. The prosecution version was that these injuries were caused to the victims due to hitting of the Activa vehicle on which the victims were riding at the time of occurrence by the Bolero vehicle driven by the appellant Hardev Singh and occupied by the remaining appellants and absconding accused Nirmal Singh Randhawa whereas according to the appellants, the victims had died due to injuries sustained in a road side accident. Since the question as to whether the injuries so sustained were homicidal or accidental in nature is interlinked with the question as to whether the death of the victims had been caused due to hitting of their vehicle with the vehicle of the appellants and further with the intention to cause their death, therefore, we will delve on this question in the subsequent part of this judgment and after assessment of evidence available on record as to complicity of appellants in the crime.

11. Let us firstly take up the argument as raised by learned counsel for the appellants that there was inordinate and unexplained delay in lodging of the FIR. The case of the prosecution mainly rests upon the testimonies of PW-1 Baghail Singh and PW-2 Sukhjit Singh who claimed themselves to be eye-witnesses to the occurrence. The version of both these witnesses was that the occurrence had taken place at about 10.30 AM on 06.02.2018. It has been revealed from a perusal of Ex.PW6/A endorsement made by PW-6 SI Avtar Singh, Investigating Officer on the statement Ex.PA of the complainant that a *tehrir* had been written and sent to the

police station at 4 PM. In his sworn deposition, PW-6 did not mention the exact time when the information about the occurrence had been received by him but deposed that he had reached at the spot at about 4:30 PM and at hospital Dera Baba Nanak at about 5:30 PM. It has been admitted by the witnesses that the police station and the hospital Dera Baba Nanak are situated within the vicinity of half km. PW-1 Baghail Singh stated that he had gone to Police Station at about 2-2:30 PM and then stated that he had met the police near old bus stand Dera Baba Nanak wherein his statement had been recorded. The FIR was lodged at 4:22 PM. As such, there is a gap of 5 hours between the time when the occurrence had taken place and the time of lodging of FIR.

12. It is well settled proposition of law that the FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any used as also the names of the eye-witnesses if known to the informant. Delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, report not only gets bereft of the advantage of spontaneity, but danger also creeps in of the introduction of colour version, exaggerated account or concocted story as a result of deliberation and consultation (See: **Thulia Kali v. State of Tamil Nadu**, AIR 1973 SC 501; **Satpal Singh v. State of Haryana**, (2010) 8 SCC 714; **Kishan Singh v. Gurpal Singh**, (2010) 8 SCC 775; **Jai Parkash**

**Singh v. State of Bihar**, (2012) 4 SCC 379 and **Manoj Kumar Sharma and others v. State of Chhattisgarh and another**, (2016) 9 SCC 1). In view of this position of law, it is to be seen that the delay of 5 hours in reporting the matter to the police had been satisfactorily explained by material witnesses or not? On going through the sworn depositions made by PW-1 and PW-2, it clearly appears that they were unable to give any reasonable explanation for the delay. Though both these witnesses stated that the occurrence had taken place at 10:30 AM on 06.02.2018 and immediately thereafter they had brought the victims to Civil Hospital, Dera Baba Nanak but their version as to the time when they had reached the hospital was contradictory. PW-1 stated at the first blush that they had reached at the hospital at about 2-3 PM but then stated that they had reached there at about 11-11:30 AM whereas according to PW-2 they had reached at the hospital at about 10:45 AM. PW-1 stated that he did not send anyone to the police station to report about the occurrence. He also stated that he had remained present at the hospital from 11:30 AM to 2-2:30 PM. He rendered no explanation as to why no effort was made by him during this period to report the matter to the police either by himself or through some other person. He was none other than the real brother of the victim Subegh Singh. He stated that he had remained busy in looking after the victims. However, since the victims were declared to be brought dead in the hospital itself, therefore his statement to this effect does not appear to be plausible at all. PW-2 stated that some police officials had reached at the hospital itself at about 12:30 PM but they had not recorded his statement nor they had come in response to any telephonic call made by them whereas it was not the

version of PW-1 at all that the police had reached the hospital by 12:30 PM or at any time before he himself had left for the police station and had met PW-6 near bus stand Dera Baba Nanak. No efforts are shown to have been made either by PW-1 or PW-2 to report the matter to the police before 3:30-4 PM and for giving information about the incident which is quite unnatural. The delay in registering the complaint when the police was present right from the inception is indeed a mystery and would, therefore, not justify either the actions of the complainant and PW-2 or of the police when the case was actually registered.

13. Further, the fact that the police had received information about the occurrence and had reached the hospital even prior to 12:30 PM stands corroborated from the testimony of PW-8 Dr. Amarjit Singh of Community Health Centre, Dera Baba Nanak who deposed that the victim Sanjiv Kumar was brought to him by 11:30 AM by HC Hardev Singh and Constable Manjit Singh and the victim Subegh Singh was brought some time thereafter. There is no reason to disbelieve the testimony of this witness who was an disinterested witness. If it was the police who had brought the victims in the hospital before 12-12:30 PM, then why the complainant or PW-2 Sukhjit Singh did not report about the incident to those police officials has remained totally unexplained. Then PW-8 deposed that he had sent written information Ex.PW-8/A to SHO PS Dera Baba Nanak at 12:40 PM. Strangely, PW-6 who was SHO of the abovesaid police station at that time feigned total ignorance about the fact that such information had been received by him which also raises a doubt about the part played by the Investigating Officer in causing delay in lodging of the FIR. The factum of

bringing the victims to the hospital by the police officials coupled with the fact that even written information was sent to the concerned SHO by 12:40 PM shows that the police was informed about the incident much prior to the lodging of the FIR. The well settled proposition of law is that a delayed First Information Report gives rise to suspicion and puts the Court on guard to look for a plausible and acceptable explanation for the delay. The First Information Report is a document of considerable importance. This document is produced and proved in the criminal trial with the avowed object of obtaining the early information of the alleged criminal activity and to have a record of the circumstances before there was time for them to be embellished or forgotten. A quick information report is a towering circumstance that goes a long way to assure the veracity of the prosecution story as in such cases, there cannot be any time to create and deliberate a false case against the accused. (See: **Johny and others v. State**, 1990 L.W. (Crl.) 175). From the act and conduct of PW-1 and PW-2 of not getting the formal FIR lodged till 4 PM and even the act and conduct of the police of not taking any steps for recording statements of material witnesses till formal FIR was lodged despite the fact that the police had come to know about the occurrence before 12-12:30 PM, an inference can certainly be drawn that the complainant and PW-2 in connivance with the police managed to not to get the formal FIR registered till 4 PM and the intervening time had been utilized by the complainant party for concocting a false story and for implicating the accused in this case and this fact has certainly created a dent over the veracity of the prosecution version, the benefit of which must have gone to the appellants but could not be given by

learned trial Court.

14. Dilating further, the delay in lodging of the First Information Report which could not be satisfactorily explained by the complainant party has one more consequence as the veracity of statements of PW-1 and PW-2 with regard to their very presence at the spot of occurrence has become questionable due to that reason. They claimed to be eye-witnesses to the occurrence. However, their statements are suffering from several material inconsistencies on this point. In their respective sworn depositions, both these witnesses stated that they had rushed the victims to Dera Baba Nanak hospital in some vehicles which were arranged by them from the passers by but at the cost of repetition, it may be mentioned that it was deposed by PW-8 Dr. Amarjit Singh that the dead bodies of the victims were brought to Dera Baba Nanak hospital by two police officials namely, HC Hardev Singh and Constable Manjit Singh and it was not his version that PW-1 and PW-2 had brought the same. PW-8 also stated that it was reported to be a case of accident by the police officials who had brought the victims to the hospital. If PW-1 and PW-2 were actually present at the spot of occurrence and had brought the victims to the hospital, then they would certainly have got incorporated in the record of the hospital that it was a case of murder and not accident and this very fact shows that they were infact not present at the time of occurrence nor they had brought the victims to the hospital. Then, PW-2 stated that the police officials had come to the hospital at about 12:30 PM. He could not tell about the number of those police officials and stated that his statement was not recorded by the police at that time. This appears to be quite unnatural because if PW-2 was actually present at the spot of

occurrence then he would have made utmost efforts to narrate about the same to the police officials who had visited the hospital by 12:30 PM. PW-1 and PW-2 were closely related to one of the victims and, therefore,, were obviously interested witnesses. Though the testimony of such witnesses cannot be thrown out in threshold by branding them as inimical witnesses if they are otherwise true and reliable but the well settled proposition of law is that their statements are to be considered with care, caution and diligence. They claimed themselves to be chance witnesses and were not natural witnesses. As discussed above, they have failed to prove their presence at the spot at the time of occurrence by giving any adequate explanation. Therefore, the possibility that they had been planted to implicate the appellants-accused falsely in this case cannot be ruled out.

15. Other unnatural and improbable instances that can be noted are that both PW-1 and PW-2 had stated that they were sprinkling pesticides in the land which was taken by them on lease when the occurrence had taken place on the road leading from Village Fatehgarh Churain to Dera Baba Nanak which was at a small distance from their fields. Even in the site plan Ex.PW6/D, the presence of these witnesses is shown at a small distance from the place of occurrence. However, PW-2 stated that after the incident had taken place, they had reached at the place of occurrence from their fields in 15-20 minutes. His statement to this effect totally falsifies the version that he was present at the spot at the time of occurrence because if he was actually present at the place of occurrence, which was shown to be at a short distnace from the place where he was present, then this much time would not have been consumed. Then though the prosecution version was

that the incident had taken place on the road leading from Fatehgarh Churian road to Dera Baba Nanak but in the jurisdiction of which particular village this road and the land wherein the witnesses were present had neither been mentioned in the sworn deposition of PW-1 nor reflected in the rough site plan Ex.PW6/D. In the FIR, there was no mention that the said land had been taken by either PW-1 or PW-2 on lease. In his sworn deposition PW-1 stated that he had taken the land wherein pesticides was sprinkled by him on lease from one Sabu. However, he could not produce any document in this regard. Sabu who was claimed to be the owner of the said land had also not been cited and examined as witness. No document in the form of jamabandi showing the exact khewat, khatoni and khasra of the said land had been produced by PW-1 or collected by the Investigating Officer during the course of investigation. PW-6 stated that the land wherein the witnesses were present had been taken on lease by PW-1 from one Surjit Singh who too was not cited as a witness. Nothing was brought on record to prove that Sabu and Surjit Singh were one and the same persons. Then it was recorded in the FIR and it was also stated by PW-1 and PW-2 that two bolero vehicles had reached at the spot one of which was driven by appellant-accused Hardev Singh and the present appellants and absconding accused Nirmal Singh Randhawa were occupants of the same whereas in the second vehicles, four unknown employees of the liquor contractor were sitting. At no stage of investigation, the names or identity of those four unknown persons who were boarding the second vehicle had been tried to be obtained nor it was the version of these witnesses that they could identify those four persons seeing them. They failed to explain as to

how they come to the conclusion that four persons sitting in the second bolero vehicle were employees of the liquor contractor and were present there with an intent to kill the victim as neither PW-1 or PW-2 had stated anything about the identity of those four persons nor had stated that they could identify those persons on seeing them. Therefore, how could they even identify the present appellants who were sitting in the first bolero vehicle, had also not been explained by these witnesses. As per his own saying, PW-2 had reached at the place of occurrence 15-20 minutes after it had taken place from his fields, then how could he see from a distance of 15-20 minutes that they were the appellants who were sitting in the bolero vehicle which was used for hitting the victims. If PWs were at a distance of 15-20 minutes from the place of occurrence then their ability to individually and correctly identify each of the accused from a considerable distance is itself suspected and that also makes their presence at the scene of occurrence at the time of incident as highly unnatural. It will also not disclosed by PW-1 and PW-2 as to from how much distance, the bolero vehicles were noticed while coming towards the spot. The Investigating Officer also remained totally silent on the point as to what investigation had been conducted with regard to the involvement of unidentified persons travelling in another bolero vehicle at the time of occurrence. All inconsistencies as pointed out above cannot be stated to be minor and they are such which go to the root of the matter and have rendered the version of PW-1 or PW-2 about their being present at the spot as highly improbable and unnatural thereby creating a doubt over the truthfulness of prosecution case.

16. It has also come on record that after the dead bodies of the victims had been taken to the hospital, a rampage had been done in the liquor vend of contractor of Singhla group and FIR bearing No.14 dated 07.02.2018 had also been registered in this regard. The version of the accused-appellant was that the members of the complainant party accompanied with a mob had burnt the liquor vend and properties of the liquor contractor with a view to exert pressure to implicate them who were employees of the liquor contractor, falsely in this case due to business rivalry. Though names of the complainant or PW-2 have not been reflected in this FIR but the fact that PW-1 identified himself in photograph Mark DQ goes to show that probably he was also one of the members of the mob which had involved itself in rampage of properties of the liquor contractor. This photograph was taken from the footages of CCTV Camera installed outside the office of liquor contractor. Though PW-1 subsequently denied that he was shown in the photograph Mark DQ but it is his earlier admission that has to be taken into consideration in this regard and due to this fact the defence plea that the appellants being employees of liquor contractor who was having business rivalry with the victims, had been falsely implicated.

17. There is yet another important circumstance creating a doubt about the veracity of the prosecution version. The rough site plan Ex.PW6/D of the place of occurrence had been prepared by PW-6 Inspector Avtar Singh on 06.02.2018 itself. He deposed that he had visited the spot with HC Kuldeep Singh and Davinder Singh Bedi. Interestingly, none of them was cited as a witness nor was claimed to be an eye-witness. In this site plan, PW-6 is shown to have specifically marked the places wherein the

vehicle of the appellants had allegedly hit the vehicle of the victims, where the victims were hit again, and the places where the eye-witnesses were present. However, neither PW-1 nor PW-2 deposed that they had accompanied the Investigating Officer to the place of occurrence and had identified the same as well as the spots where they were present at the relevant time. These witnesses did not even know as to whether the police had visited the place of occurrence or not? The information recorded in the index of this site plan Ex.PW6/D has not been proved by PW-1 or PW-2. It is well settled that any information derived from the witnesses during investigation and recorded in the index of a map must be proved by the witnesses concerned and not by the Investigating Officer. Since, in this case, the information is sought to be proved by the evidence of Investigating Officer only, the same manifestly offends against the provisions of Section 162 of Cr.P.C. and cannot be considered to be admissible in our opinion. In this regard, we place reliance upon **Ibra Akanda v. Emperor**, AIR 1944 Calcutta 339, wherein High Court of Calcutta had made similar observations. We also place reliance upon **Sat Kumar v. State of Haryana**, (1974) 3 SCC 643, wherein the site plan showing the place of occurrence was claimed to have been prepared in consequence of a statement by some witness during investigation to the Investigating Officer. The name of such witness had not been mentioned. The case had already been registered before proceeding to the spot of occurrence. It was observed by Hon'ble Apex Court that a site plan prepared in the way done showing the place of occurrence cannot be admissible in law and no reliance can be placed on the place of occurrence as indicated therein. Reliance is further placed upon

**State of Rajasthan v. Bhawani and another,** (2003) 7 SCC 291, wherein the Investigating Officer had prepared site plan on the basis of statements given by the witnesses. Many things mentioned in the site plan had been noted by the Investigating Officer on the basis of statements of such witnesses. It was held that what the Investigating Officer personally saw and noted alone would only be admissible in evidence and rough sketch prepared by the IO on the basis of statements made to him by the witnesses showing the place where the deceased was hit and also the places where the witnesses were at the time of incident would not be admissible in evidence in view of provisions of Section 162 of Code of Criminal Procedure as it will be no more than a statement made to the police during investigation. Therefore, even it has not been established that the site as shown in the site plan Ex.PW6/D was infact the places of occurrence and this fact has created a serious lacuna in the prosecution case.

18. There is one more circumstance which has rendered prosecution case as well as the factum of presence of PW-1 and PW-2 at the time of occurrence to be doubtful. PW-1 and PW-2 had stated that the occurrence had taken place within their sight on the road which was abutting the fields wherein they were present. As per them, the victims were riding on an Activa vehicle when the appellants had reached there at a bolero vehicle and had hit the vehicle of the victims. It is highly doubtful that the appellants had prior knowledge about the fact that the victims would be passing through their Activa from that very place and at that very point of time i.e. at 10:30 AM, and they would be striking against the Activa with their vehicle. There is nothing on file to show that there was any

intimation with the appellants that at about 10:30 AM victims would be passing through the spot of occurrence. More so, none of the appellants was alleged to be armed with any weapon. It was not the version of PW-1 and PW-2 that either of the assailants had come out of the bolero vehicle to ensure that the victims had succumbed to the injuries sustained by them. As alleged in the FIR, after striking against Activa vehicle, the assailants had reversed their vehicle and had once again hit the victim Subegh Singh. However, in their respective sworn depositions, neither PW-1 nor PW-2 deposed that the appellants had reversed their vehicle for hitting either of the victims. The medico legal report did not prove that the victims had sustained any crush injury. If the victims would have been again hit by way of reversing of vehicle by the assailants then some mark of crush injuries must have been reflected on the dead bodies of the victims. No skid/tyre marks were lifted from the place of occurrence by the Investing Officer to establish that the bolero vehicle had been reversed for the purpose of causing injuries to the victims. The eye-witnesses were closely related to one of the victims. It is quite unnatural that they were nearby the appellants-accused but the latter did not cause any injury to them or did not try to eliminate them even after seeing them. All these circumstances put this Court on guard as they are suspicious circumstances which have not been explained by the prosecution witnesses and have certainly rendered the prosecution case doubtful.

19. Learned counsel for the appellants had also raised an argument to the effect that the plea of alibi as taken by the appellant Aman Kumar stood fully established from the evidence produced by him on record but the

learned trial Court had wrongly rejected the same. It may be mentioned that alibi is not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the facts in issue are relevant. The latin word “alibi” means elsewhere and that word is used for convenience when an accused takes recourse to defense that when the occurrence took place, he was far away from that place that it is extremely improbable that he would have participated in the crime. Undoubtedly, burden is on the prosecution to prove that an accused was present at the scene and participated in the crime and such burden is not lessened by the mere fact that the accused has taken the plea of alibi. However, once the prosecution succeeds in discharging the burden, then it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. In the instant case, the appellant-Aman Kumar examined two witnesses namely DW-1 Prem Kumar and DW-2 Jagdish Singh Jasrota to prove that as on the night of 05.02.2018 and in the morning of 06.02.2018, he was present at Village Ganiari, District Kathua (Jammu) to attend the marriage of daughter of DW-1. Though both witnesses stated that the appellant-Aman Kumar had attended marriage on the night of 05.02.2018 in the abovesaid village and DW-1 even stated that the appellant had left the village at about 9 AM on 06.02.2018. However, judicial notice can be taken of the fact that District Kathua is at a distance of about 124 kms from the jurisdiction of Police Station Dera Baba Nanak. It cannot be stated that certainly that the appellant could not reach there by 10:30 AM if he left Village Ganiari,

District Kathua (Jammu) even in the morning of 06.02.2018. Even otherwise, the evidence led by these defence witnesses who are related with the appellant-Aman Kumar is not of such nature which can be acted and relied upon beyond doubt and, therefore, in our opinion, the same did not help the appellant in proving his plea of alibi. However, nonetheless in view of the discussion as made above, the presence of this appellant along with other appellants at the spot of occurrence has not been established beyond doubt.

20. So far as motive part is concerned, according to the prosecution case, the victims were partners of Ramdass liquor shops whereas the appellants were working with rival liquor contractor and due to business rivalry, the appellants had motive to eliminate the victims. PW-5 Mohinder Singh, Accountant of liquor contractor Baljinder had been examined by the prosecution who deposed that the appellants and the absconding accused Nirmal Singh Randhawa were working under the abovesaid contractor. However, no evidence whatsoever could be produced by the prosecution to prove that there was any personal rivalry between the appellants and the victims or that the appellants at the behest of the liquor contractor had taken the drastic step of killing the victims. As such in our opinion, the prosecution had failed to attribute any motive to the appellants to kill the victim. Since as per the discussion made above, the presence of PW-1 and PW-2 at the spot of occurrence, has not been established beyond doubt, therefore, it was all the more important for the prosecution to prove motive on the part of the appellants which could not be established by leading any satisfactory evidence and this fact has also created a serious dent in the

prosecution story.

21. Lastly, it may be stated that the learned trial Court had held that it was proved to be a case of homicidal death and not death due to sustaining injuries in an accident. Again at the cost of repetition, it is reiterated that PW-8 Dr. Amarjit Singh before whom the victims were brought immediately after the occurrence had deposed that as per the information received by him, it was a case of accident. Further, non-existence of any crush injury on the dead bodies of the victims rules out the possibility that it was a case of murder. More so, as the evidence led by PW-1 and PW-2 about eye-witnessing the occurrence has not found to be creditworthy, it cannot be stated beyond doubt that it was a case of murder.

22. It may also be mentioned here that the appellants Aman Kumar, Shamsher Singh @ Surjit Singh and Jagtar Singh were not attributed any specific overt act in the occurrence at all. They had been charge-sheeted and held guilty for commission of offence of murder with the aid of Section 149 of IPC. Section 149 of IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object under this provision. Mere presence of an unlawful assembly cannot render a person liable unless it is proved that there was a common object and they were actuated by that common object and the said object was to commit some offence as set out in Section 141 of IPC. It is well settled proposition of law that where common object of an unlawful assembly is not proved, the accused cannot be convicted with the help of Section 149. The common object of an unlawful assembly has to be covered from the facts and circumstances of the case. In this case, the prosecution has failed to produce

any satisfactory evidence on record to indicate that all the appellants had formed any lawful assembly to commit an offence of murder of the victims. On the face of the substantive evidence led by the prosecution to prove the guilt of the appellants, the prosecution case in this regard cannot be relied upon.

23. On judging the prosecution case on the touchstone of totality of facts and circumstances, it does not generate the unqualified and unreserved satisfaction indispensably required to enter a finding of guilt against the appellants. Having regard to the evidence available on record as a whole, it is not possible for this Court to unhesitatingly hold that the charges levelled against the appellant have been proved beyond reasonable doubt. Beyond a reasonable doubt is the higher standard of proof that must be made in any control in contrast, the findings of the trial Court are decipherably strained in favour of the prosecution by overlooking many irreconcilable inconsistencies, anomalies and omissions thereby rendering the prosecution case unworthy of credit. This Court is of the opinion that the prosecution has failed to prove the charges against the appellants to the hilt as obligated in law and, therefore, they are entitled to be given benefit of doubt. Accordingly, the appeals filed by the appellants are allowed. The impugned judgment of conviction dated 12.01.2021 and order on quantum of sentence dated 18.01.2021 passed by learned Additional Sessions Judge, Gurdaspur, are set aside. The appellants are acquitted of the offences punishable under Sections 302, 147 and 427 read with Section 149 of IPC. The appellants be released forthwith from custody if not wanted in any other case, upon execution of bonds to the satisfaction of the trial Court which shall remain

in force for a period of six months in terms of Section 437-A of Code of Criminal Procedure. Let a copy of this judgment along with the trial Court record be sent forthwith to the trial Court. A copy of judgment, if applied for, be also made available to the appellants.

24. All the pending criminal miscellaneous application(s), if any, automatically stand disposed of.

**(RITU BAHRI)**
**JUDGE**

**(MANISHA BATRA)**
**JUDGE**

**25/05/2023**
manju

Whether speaking/reasoned Yes/No
Whether reportable Yes/No