



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

CRA-D-1001-DB-2004 (O&M)

Reserved on 01.09.2025

Pronounced on: 17.09.2025

Joginder Singh Tiger and others

.....Appellants

Versus

The State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H.S. GREWAL**

Argued by : Mr. P.S. Ahluwalia, Advocate with
Mr. Roshneel Singh Brar, Advocate and
Ms. Simerpreet Sekhon, Advocate
for the appellants.

Mr. H.S. Deol, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J.

1. The instant Criminal Appeal is directed against the judgement of conviction and order of sentence both dated 27.10.2004 passed by learned Additional Sessions Judge, Ludhiana, whereby appellants, namely Joginder Singh Tiger, Harjinder Singh alias Jind, Bhagwan Singh alias Honey, Jaspreet Singh, Varinder Singh alias Bittu, Avtar Singh alias Mara and Varinder Singh alias Billu, were convicted, in case FIR No.75 dated 06.05.2001 under Sections 302/324/323/148/149 of the IPC and Sections 25 and 27 of the Arms Act registered at Police Station Sarbha Nagar, Ludhiana, for the murder of Nirbhai Singh, Malkiat Singh and Gurnam Singh, and sentenced accordingly.

2. At the outset, learned counsel for the appellants has informed the Court that appellant No.1-Joginder Singh Tiger has since

expired during pendency of the instant appeal. The factum of his death stands confirmed by the learned State counsel also.

3. In the circumstances, proceedings qua appellant No.1 Joginder Singh Tiger stand abated.

The Case of the Prosecution

4. The case of the prosecution, as unfolded during trial, is that there existed a long-standing dispute over *Shamlat* land between the complainant side, comprising Malkiat Singh and Nirbhai Singh, on one hand, and Joginder Singh Tiger and his family, on the other. Civil litigation in respect of the land had culminated in favour of both Malkiat Singh and Nirbhai Singh.

4(a). On 06.05.2001, at about 10.30 am, Malkiat Singh and Nirbhai Singh commenced raising construction upon the disputed land. At that stage, accused Joginder Singh Tiger arrived at the spot, accompanied by his associates. He was followed by accused Avtar Singh alias Mara, armed with a .12-bore single-barrel gun; accused Varinder Singh alias Billu carrying a .12-bore double-barrel gun; accused Harjinder Singh alias Jind wielding a *gandasa*; and accused Jaspreet Singh, Bhagwan Singh, and Varinder Singh alias Bittu, each armed with a *kirpan*. Accused Joginder Singh Tiger raised a *lalkara*, that none of the complainant's side should be spared.

4(b). On this exhortation, accused Avtar Singh fired a shot from his gun, which struck Nirbhai Singh on the chest. Almost simultaneously, accused Varinder Singh alias Billu discharged his double-barrel gun, inflicting a firearm injury on the chest of Malkiat

Singh. Thereafter, accused Jaspreet Singh, Bhagwan Singh and Varinder Singh alias Bittu attacked Malkiat Singh and Nirbhai Singh with *kirpans*, causing further injuries. When Jagtar Singh (PW-7) and Sukhjit Singh (PW-6) attempted to intervene, they too were assaulted and sustained injuries.

4(c). At this juncture, Gurnam Singh reached the spot, raising an alarm. Accused Joginder Singh Tiger again shouted that he too should not be spared, upon which accused Varinder alias Billu fired at Gurnam Singh, causing firearm injuries on his thighs. All the injured were shifted to DMC Hospital, Ludhiana, where Malkiat Singh and Nirbhai Singh were declared dead. Gurnam Singh also subsequently succumbed to his injuries. Injured Sukhjit Singh and Jagtar Singh survived; they were both medically examined and found injured.

4(d). The medical evidence corroborated the prosecution version in material particulars.

4(e). Dr. U.S. Sooch (PW-1) and Dr. Anil Verma (PW-12) conducted the post-mortems on the three persons—Malkiat Singh, Nirbhai Singh and Gurnam Singh—who succumbed to the firearm injuries. They opined that :

- Nirbhai Singh had died due to firearm injury to the chest (Ex.PC).
- Malkiat Singh sustained a firearm injury which ruptured the liver and aorta leading to death from shock and haemorrhage (Ex.PF).
- Gurnam Singh suffered firearm injuries on his thighs,

which ruptured femoral vessels, causing haemorrhage and shock (Ex.PJ).

- Dr. Amanjit Singh (PW-9) examined injured Jagtar Singh and noted four injuries, including fractures of the frontal and occipital bones, declaring two of them grievous (Ex.PH/1).
- Dr. Adish Awasthi (PW-14) examined injured Sukhjit Singh and found five injuries, all simple in nature, caused by a blunt weapon (Ex.PN).

4(f). The investigation was initially conducted by SI Pawanjit (PW-8), who recorded the statement of complainant Prabhjit Singh (Ex.PW5/A), on the basis of which FIR (Ex.PB/2) was registered. He prepared the site plan (Ex.PD), lifted blood-stained earth, and seized empty cartridges from the place of occurrence.

4(g). Inspector Karam Singh (PW-10) thereafter continued with the investigation. He collected the blood-stained clothes of the deceased (Ex.P12 to Ex.P19), and prepared the relevant recovery memos.

4(h). SI Waryam Singh (PW-13) arrested the accused, recorded their disclosure statements, and effected recoveries. Pursuant thereto :

- Accused Avtar Singh produced a single-barrel gun with cartridges (Ex.P1 to P4).
- Accused Varinder alias Billu produced a double-barrel gun with cartridges (Ex.P5 to P7).
- Accused Jaspreet Singh, Bhagwan Singh, and Bittu

produced *kirpans* (Ex.P8 to P10).

- Accused Harjinder Singh produced a hockey (Ex.P11).

4(i). To establish its case, the prosecution examined 14 witnesses :

- PW-1 Dr. U.S. Sooch : conducted post-mortem of all the three deceased persons.
- PW-2 Balbir Singh, Clerk : produced firearm licence registers and confirmed that accused Avtar Singh and accused Bhagwan Singh were licensees of 12-bore guns.
- PW-3 Harnesh Lal and PW-4 Constable Devinder Singh : Formal witnesses who proved affidavits regarding custody of case property.
- PW-5 Prabhjit Singh, complainant and star eyewitness : narrated the entire occurrence, attributing fatal shots to accused Avtar Singh and accused Varinder Singh alias Billu, *kirpan* blows to accused Jaspreet Singh, Bhagwan Singh and Varinder Singh alias Bittu, and *lalkaras* to accused Joginder Singh Tiger. He proved his statement (Ex.PW5/A).
- PW-6 Sukhjit Singh, injured eyewitness : corroborated the version of the complainant.
- PW-7 Jagtar Singh, injured eyewitness : supported the case of the prosecution.
- PW-8 SI Pawanjit : proved registration of FIR and preparation of site plan.

- PW-9 Dr. Amanjit Singh : examined Jagtar Singh, declared two injuries grievous.
- PW-10 Inspector Karam Singh : carried out major portion of investigation, lifted blood-stained earth and empties, seized clothes of the deceased persons.
- PW-11 SI Jaswinder Singh : produced blood-stained clothes of deceased before the investigating officer.
- PW-12 Dr. Anil Verma : also conducted post-mortem of all the three deceased along with PW-1 Dr. U.S. Sooch; corroborated firearm injuries.
- PW-13 SI Waryam Singh : effected arrest of the accused, recorded disclosure statements, and recovered weapons.
- PW-14 Dr. Adish Awasthi : examined injured Sukhjot Singh and proved his report (Ex.PW14/A, PW14/B and PW14/C).

4(j). In their statements, recorded under Section 313 of the Cr.P.C., the accused denied all incriminating evidence and claimed innocence. Accused Joginder Singh Tiger specifically contended that the Civil Court had already decreed possession of the disputed land in his favour. It was asserted that the complainant party, being aggressors, attempted to raise an illegal wall. According to the defence, deceased Nirbhai Singh was armed with a pistol and deceased Malkiat Singh with a double-barrel gun, while deceased Gurnam Singh had actually died due to firing from the complainant's side.

4(k). In support of this version, the accused tendered certified

copies of Civil Court judgments (Ex.D1 and Ex.D2), claiming that possession of the land stood decreed in their favour. However, no oral evidence was led in defence.

4(1). The learned Trial Court, upon appraisal of evidence, recorded the following conclusions :

(i) The prosecution had successfully established motive, namely the long-standing land dispute.

(ii) The testimony of injured eyewitnesses was found natural, consistent and trustworthy.

(iii) The medical evidence fully corroborated the ocular account, particularly in regard to the firearm injuries causing death of the three deceased persons.

(iv) Minor discrepancies were treated as natural in faction-ridden village cases and not sufficient to discredit the core of the case of the prosecution.

(v) The defence plea that the complainant party were aggressors was rejected, *inter alia*, on the ground that three fatalities had occurred.

(vi) The recovery of weapons at the instance of the accused lent further support to the case of the prosecution.

Accordingly, the learned Trial Court held that :

- Accused Avtar Singh and accused Varinder alias Billu were directly responsible for inflicting fatal firearm injuries.
- Accused Jaspreet Singh, Bhagwan Singh, Bittu, and

Harjinder Singh were liable for participation with the common object under Section 149 of the IPC.

- Accused Joginder Singh Tiger was guilty of exhortation and leadership of the unlawful assembly.

4(m). Ultimately, all the accused were convicted under Sections 148, 302, 307, 323 read with Section 149 of IPC and Sections 25 and 27 of the Arms Act, 1959 and sentenced as follows:-

Name of the accused/co nvict	Offence(s) under Section	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
Joginder Singh Tiger	149 IPC	RI for 02 years	-	-
	302 r/w Section 149 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	307 r/w Section 149 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
	323 r/w Section 149 IPC	RI for 06 months	-	-
Harjinder Singh	148 IPC	RI for 02 years	-	-
	323 IPC	RI for 06 months	-	-
	323 r/w Section 149 IPC	RI for 06 months	-	-
	302 r/w Section 149 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	307 r/w Section 149 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
Bhagwan Singh alias Honey	307 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
	25 of the Arms Act	RI for 03 years	Rs.5,000/-	RI for 03 months
	302 r/w Section 149 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	307 r/w Section 149 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
	323 r/w Section 149 IPC	RI for 06 months	-	-
	148 IPC	RI for 02 years	-	-

Jaspreet Singh	307 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
	302 r/w Section 149 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	307 r/w Section 149 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
	323 r/w Section 149 IPC	RI for 06 months	-	-
	148 IPC	RI for 02 years	-	-
Varinder Singh alias Bittu	148 IPC	RI for 02 years	-	-
	323 IPC	RI for 06 months	-	-
	323 r/w Section 149 IPC	RI for 06 months	-	-
	302 r/w Section 149 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	307 r/w Section 149 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
Avtar Singh alias Mara	148 IPC	RI for 02 years	-	-
	302 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	27 Arms Act	RI for 05 years	Rs.5,000/-	RI for 03 months
	302 r/w Section 149 IPC	RI for life	Rs.10,000/-	RI for 06 months
	307 r/w Section 149 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
	323 r/w Section 149 IPC	RI for 06 months	-	-
Varinder Singh alias Billu	148 IPC	RI for 02 years	-	-
	302 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	27 Arms Act	RI for 05 years	Rs.5,000/-	RI for 03 months
	302 r/w Section 149 IPC	Imprisonment for life	Rs.10,000/-	RI for 06 months
	307 r/w Section 149 IPC	RI for 07 years	Rs.5,000/-	RI for 03 months
	323 r/w Section 149 IPC	RI for 06 months	-	-

Submissions on Behalf of the Appellants

5. Learned counsel appearing for the appellants has assailed the judgement of conviction on numerous grounds, contending that the

findings recorded by the learned Trial Court are legally unsustainable and factually incorrect. It is urged that the learned Trial Court has failed to appreciate binding civil decrees, has disregarded glaring contradictions between ocular and medical evidence, has relied upon interested witnesses whose statements were recorded after an unexplained delay of almost one month, and has altogether overlooked fatal infirmities in investigation.

Background of Civil Litigation and Possession

5(a). Learned counsel has first drawn the attention of this Court to Ex.D1 and D2, the civil decrees pertaining to Khasra Nos.736 and 737. It is submitted that the root of the incident lies in the civil dispute. The Civil Court had categorically decreed that possession of Khasra No.736 vested in the appellants, and such decree was affirmed in appeal (Ex.D2). The complainant side never challenged the said decree, and the same thus attained finality.

(i) In these circumstances, the finding of the learned Trial Court that the complainant party was in possession is manifestly incorrect. Exhibit DC (application for taking police remand) itself shows that it was the complainant party which started raising a wall on the disputed land, whereafter the accused party gathered a number of persons and resisted the said construction. Learned counsel, therefore, has posed the fundamental question : **who was the aggressor, and in whose possession was the land at the time of occurrence?**

(ii) It is argued that the prosecution, in order to succeed, was bound to establish possession. However, no revenue officer or patwari

was examined, no draftsman was produced, and no scaled site plan was prepared. In such circumstances, under Section 114 of the Indian Evidence Act, 1872, an adverse inference must necessarily follow, for crucial evidence which would have belied the case of the prosecution was deliberately withheld.

Suppression of Defence Casualties

5(b). It is further submitted that the prosecution has deliberately suppressed material facts. One person from the side of the accused too lost his life in the same occurrence, and several accused sustained injuries, which stand corroborated by the medical evidence. These casualties, however, were altogether omitted by the prosecution. Such suppression, as per the learned counsel, renders the case of the prosecution unreliable, for the Court cannot sustain a conviction on the basis of a truncated, one-sided narrative.

Investigation and Conduct of Investigating Officers

5(c). Learned counsel has further highlighted grave lapses and partisanship in the investigation. Attention has been drawn to the deposition of PW-8 SI Pawanjit, who admitted in cross-examination that he did not even visit the hospital to record the statements of injured Sukhjot Singh (PW-6) and Jagtar Singh (PW-7). He was subsequently transferred and suspended in connection with this very case. His own record reflects that deceased Gurnam Singh was admitted in the hospital only for one day on 06.05.2001.

5(d). Similarly, PW-10 Inspector Karam Singh admitted that although he remained SHO from 07.05.2001 onwards, it never came to

his notice that injured Jagtar Singh and injured Sukhjit Singh were eyewitnesses of the incident. PW-13 SI Waryam Singh, who took over the investigation on 09.05.2001, candidly admitted that till 24.05.2001 he did not even remember who the eyewitnesses were. He further admitted that he never investigated the cross version and did not examine the civil litigation.

(i) Exhibit DA reveals that the statement of so-called eyewitness Jagtar Singh under Section 161 of the Cr.P.C. was recorded only on 02.06.2001—nearly one month after the occurrence on 06.05.2001. The SHO who recorded this statement was not even cited as a witness. Such delay and omission, according to learned counsel, conclusively demonstrate that injured eyewitnesses were introduced after deliberation, and being interested witnesses, their testimony stands wholly discredited.

Delay and Contradictions in Statements of Injured Witnesses

5(e). Learned counsel has next submitted that there is an unexplained delay of nearly one month in recording the statements of PW-6 Sukhjit Singh and PW-7 Jagtar Singh. Such delay, it is argued, afforded sufficient opportunity for tutoring and improvements. The subsequent statements made by these witnesses are wholly inconsistent with their initial versions and are further contradicted by medical evidence. The very delay, coupled with such contradictions, is fatal to the case of the prosecution.

Suppression of Material Witnesses

5(f). It is further urged that material witnesses were deliberately

withheld. The nephew of deceased Gurnam Singh, who took him to the hospital, was not examined. Ram Singh and Tarsem Lal, who identified the dead body, were also withheld. Though relatives of deceased Malkiat Singh were produced, not a single relative of deceased Gurnam Singh was examined. Learned counsel submits that this selective exclusion indicates a systematic attempt to suppress evidence, particularly since deceased Gurnam Singh was, in fact, aligned with the accused party in the civil litigation. It is wholly improbable that the accused would target deceased Gurnam Singh, who was supporting them against the opposite side.

Medical Evidence Vis-A-Vis Ocular Testimony

5(g). Learned counsel, while referring to the medical evidence, has submitted that it stands in irreconcilable conflict with the ocular testimony :

- PW-12 Dr. Anil Verma, who conducted the post-mortem on Nirbhai Singh, found only firearm injuries, with no *kirpan* injuries at all.
- PW-1 Dr. U.S. Sooch, who examined deceased Gurnam Singh and deceased Malkiat Singh, recorded no *kirpan* injuries.
- PW-14 Dr. Adish Awasthi, who examined injured Sukhjot Singh, found only blunt lacerated wounds, consistent with hockey blows, not incised injuries.

(i) Yet, the so-called eyewitnesses alleged that *kirpan* blows were inflicted. The total absence of incised wounds, learned counsel argued, falsified their testimony and established that the ocular version

is a fabrication.

Contradictions in Prosecution Witnesses

5(h). Learned counsel has further pointed out glaring inconsistencies *inter se* the prosecution witnesses :

- PW-5 Prabhjit Singh could not even state whether the dispute related to Khasra Nos.736 or 737.
- PW-6 Sukhjit Singh attributed *kirpan* blows to the sons of Joginder Singh Tiger, but his own injuries were blunt, not incised.
- PW-7 Jagtar Singh did not attribute any *kirpan* blow to any of the accused on the person of deceased Malkiat Singh, alleging only one blow on his own back.

(i) These contradictions, coupled with the medical record, demonstrate that the testimony of these witnesses is wholly unreliable.

Appellant-Wise Consideration

5(i). It is further argued appellant-wise as follows :

- **Accused Harjinder Singh alias Jind** : alleged in the FIR to be armed with a *gandasa*, yet, in evidence no *gandasa* blows are attributed to him; instead, a hockey stick was shown to have been recovered. This inconsistency renders the recovery planted. The medical evidence does not support this role, and no injuries attributed to him in testimony.
- **Accused Varinder Singh alias Bittu, Jaspreet Singh, and Varinder Singh alias Billu** : alleged to have inflicted

kirpan blows upon the deceased persons. Yet, the post-mortem of all three deceased Nirbhai Singh, Gurnam Singh and Malkiat Singh showed no *kirpan* injuries. Even PW-7 Jagtar Singh did not mention any injury with a *kirpan* being suffered by any of the deceased. Their implication is thus, mechanical, motivated solely by their relationship as sons of accused Joginder Singh alias Tiger.

- **Accused Bhagwan Singh alias Honey** : alleged to be armed with a *kirpan*, has been attributed blows on the person of deceased Malkiat Singh and Nirbhai Singh. However, his conviction rests only on vague and omnibus allegations.

Right of Private Defence and Section 149 of the IPC

5(j). Learned counsel has further submitted that once the civil decrees conclusively establish possession of *khasra* No.736, in favour of the accused, and once Ex.DC (application for taking police remand) demonstrates that the complainant side was raising a wall on the disputed land, it becomes evident that the complainant party were the aggressors.

(i) If the occurrence took place on Khasra No.736, the appellants were entitled to exercise their right of private defence. Alternatively, if the prosecution has failed to prove possession altogether, then the very assembly cannot be termed unlawful, and invocation of Section 149 of the IPC is wholly misconceived. At best, liability, if any, would be individual, not vicarious.

5(k). In conclusion, it has been urged on behalf of the appellants that :

(i) The civil decrees conclusively establish possession with the appellants and show the complainant's side as aggressors.

(ii) Defence casualties and injuries have been deliberately suppressed.

(iii) The investigation conducted by PW-8 SI Pawanjit, PW-10 Inspector Karam Singh, and PW-13 SI Waryam Singh was defective, partisan, and ignored binding civil decrees.

(iv) Injured eyewitnesses were introduced belatedly after a month; their testimony, therefore, is unreliable.

(v) Material witnesses connected with deceased Gurnam Singh were withheld.

(vi) Medical evidence falsifies the ocular version regarding injuries inflicted with *kirpans*.

(vii) Recovery of hockey sticks is inconsistent with the FIR, while allegations regarding use of *kirpan* in inflicting injuries remain uncorroborated.

(viii) Several appellants, especially the sons of Joginder Singh Tiger, have been implicated mechanically on account of relationship.

(ix) Section 149 of the IPC is wrongly invoked; liability, if at all, must be individual.

5(l). On these premises, learned counsel prays that the judgement of conviction and sentence recorded by the learned Trial Court be set aside.

Submissions on Behalf of the Respondent-State

6. *Per contra*, learned counsel appearing for the State, has supported the judgement of conviction passed by the learned Trial Court and has sought to repel the submissions advanced on behalf of the appellants. It is urged that the findings of the learned Trial Court are well reasoned, supported by evidence on record and do not warrant any interference by this Court. The broad submissions are as follows :

Civil Dispute Irrelevant to Criminal Liability

6(a). Learned State counsel submits that much emphasis has been laid by the appellants on civil decrees relating to Khasra No.736 and 737. Being a direct eyewitness account supported by all the material witnesses, the possession or title of these Khasra numbers would be of no avail to the appellants.

(i) Even otherwise, it is argued that possession was never settled beyond dispute. The appellants, under the cover of civil decrees, took law into their own hands. The complainant side, which included Gurnam Singh and Malkiat Singh, were lawfully present on the spot and had every right to resist an unlawful assault. Thus, the reliance of the appellants on civil litigation is a red herring and cannot absolve them of their criminal acts.

Aggression and Use of Deadly Weapons

6(b). Learned State counsel stresses that the appellants came armed with lethal weapons—firearms, *kirpans*, and hockey sticks—and launched a concerted attack on the complainant side. The sheer nature of arms carried and the coordinated assault clearly established

premeditation and an unlawful assembly with a common object. The complainant side suffered fatalities as well as serious injuries. This, learned State counsel submits, belies the plea of private defence and establishes that the appellants were the aggressors.

Casualties on the Side of the Accused do not Exonerate Them

6(c). As regards the contention that there were injuries/fatalities on the side of the accused also, it is submitted that such fact does not exonerate the appellants. What is material is whether the prosecution has proved beyond reasonable doubt that the accused formed an unlawful assembly and committed specific overt-acts resulting in the death of members of the complainant party. The presence of injuries on the appellants only shows that resistance was offered by the complainant side and cannot, by itself, absolve the appellants of their culpability.

Eyewitness Testimony Reliable Despite Delay

6(d). Learned State counsel argues that the evidence of PW-6 Sukhjit Singh and PW-7 Jagtar Singh, who are injured eyewitnesses, cannot be discarded merely on the ground of delay in recording their statements. Injured witnesses, by their very presence at the spot and by virtue of having sustained injuries, enjoy a special evidentiary value, as they would not ordinarily shield the real culprits and implicate innocent persons. The delay in recording their statements is explained by the fact that they were hospitalised and under medical treatment. Courts have consistently held that minor delay in such circumstances is not fatal.

(i) It is further urged that their testimony has been found

trustworthy by the learned Trial Court. Contradictions, if any, are minor in nature and do not go to the root of the matter.

Lapses in Investigation do not Vitiating Trial

6(e). Learned State counsel contends that even if some lapses or irregularities occurred in investigation, the same are not sufficient to demolish the case of the prosecution when credible and trustworthy evidence is otherwise available. It is argued that deficiencies on the part of investigating officers cannot enure to the benefit of accused persons when the substratum of the case of the prosecution stands corroborated by ocular and medical evidence.

Medical Evidence Corroborates, not Contradicts, Ocular Version

6(f). On the question of alleged contradictions between ocular and medical evidence, it is submitted that the two sets of evidence are complementary and not contradictory. The absence of specific *kirpan* injuries does not negate the eyewitness account of the appellants attacking with multiple weapons. Medical science recognises that in a melee, not every blow alleged may leave a corresponding mark or that injuries may vary depending on force, angle, and resistance.

(i) The presence of firearm injuries on all the three deceased and injuries on others, corroborates the prosecution case that the appellants came armed with diverse weapons and used them indiscriminately. Minor variations between ocular and medical evidence are natural and do not erode the core of the case of the prosecution.

Non-Examination of Certain Witnesses not Fatal

6(g). It is further submitted that the prosecution is not bound to examine each and every witness cited in the challan. What is material is the quality, not the quantity of evidence. Non-examination of the nephew who took deceased Gurnam Singh to hospital or the persons who identified the dead body does not affect the case, particularly when injured eyewitnesses and doctors who examined the injured and conducted the post-mortem examinations on the deceased have been examined. The essential fact—that deceased Nirbhai Singh, Malkiat Singh and Gurnam Singh sustained fatal injuries at the hands of the appellants—stands conclusively proved.

Specific Roles of Appellants Proved

6(h). Learned State counsel submits that the prosecution evidence has, with sufficient clarity, established the active participation of each appellant :

- **Harjinder Singh** was found in possession of a weapon recovered pursuant to his disclosure, connecting him with the occurrence.
- **Varinder Singh alias Bittu, Jaspreet Singh and Varinder Singh alias Billu, and sons of Joginder Singh,** were specifically named and attributed with inflicting injuries during the occurrence. Their presence is corroborated by the consistent account of eyewitnesses.
- **Bhagwan Singh alias Honey** and others were also part of the unlawful assembly, contributing to the assault and

sharing the common object.

(i) It is submitted that even if minor inconsistencies exist in attributing specific blows, the presence of the appellants and their participation in the unlawful assembly with a common object to cause grievous harm and death stands proved beyond reasonable doubt.

Common Object under Section 149 of the IPC Attracted

6(i). Learned State counsel has further stressed that the appellants formed an unlawful assembly, armed with deadly weapons, with the clear common object of overawing and assaulting the complainant side in relation to the land dispute. Section 149 of the IPC is squarely attracted in such circumstances. Once membership of an unlawful assembly is proved, it is not necessary for the prosecution to establish specific overt-acts by each accused. The liability is joint and vicarious.

6(j). In sum, learned counsel for the State submits that :

(i) The civil decrees are irrelevant to Criminal culpability; the appellants cannot take law into their hands.

(ii) The appellants were the aggressors, having come armed with deadly weapons and having caused multiple deaths and injuries.

(iii) Injured eyewitnesses are wholly reliable; delay in recording statements stands satisfactorily explained.

(iv) Lapses in investigation, even if any, do not affect the core of the case of the prosecution.

(v) Medical evidence corroborates the prosecution version; minor discrepancies are natural.

(vi) Non-examination of some witnesses is inconsequential when credible evidence is on record.

(vii) Participation of appellants stands proved; their implication is neither false nor motivated.

(viii) Section 149 of the IPC is rightly invoked; the common object of the unlawful assembly stands established.

6(k). It is, therefore, urged that the impugned judgement and sentence recorded by the learned Trial Court is fully justified and calls for no interference.

Findings of the Court

7. Having considered the material on record, submissions made by the counsel for the parties, we now proceed to give our findings after careful appraisal of the entire evidence.

8. On 06.05.2001, the occurrence in question took place at about 10.30 am in the course of a land related dispute. Three persons (Malkiat Singh, Nirbhay Singh and Gurnam Singh) died and two witnesses PW-6 (Sukhjot Singh) and PW-7 (Jagtar Singh) received injuries in the occurrence in question. The prosecution case is that a party led by accused Joginder Singh Tiger and including the present appellants came armed and attacked the complainant party; firearms and other weapons were used. FIR (Ex.PB/2) was lodged by PW-5 Prabhjit Singh. PW-1 Dr. U.S. Sooch, PW-9 Dr. Amanjit Singh, PW-12 Dr. Anil Verma and PW-14 Dr. Adish Awasthi, prepared the medico legal reports of the injured and post-mortem reports of the deceased. Weapons were recovered and produced as per recovery memos; the

register of the licence of the firearms used in the occurrence and FSL report (Ex.PX) link the firearms/cartridges recovered to the licenced firearms. The learned Trial Court convicted all accused under various provisions of the IPC and the Arms Act and imposed sentences as already detailed in the earlier part of this order.

9. Challenge in the present appeal is on multiple grounds— relevance of civil decrees, alleged suppression of injuries on the side of the defence, defects in investigation and delayed recording of statements, contradictions between ocular and medical evidence, non-production of certain witnesses, attribution of specific acts to particular accused, and the applicability of Section 149 of the IPC and private defence.

10. From the rival submissions and record, the issues which arise for our determination are :

(i) Whether the prosecution has proved beyond reasonable doubt that appellants Avtar Singh alias Mara and Varinder Singh alias Billu fired the fatal shots that caused the deaths of the three accused?

(ii) Whether appellant Bhagwan Singh alias Honey stands rightly convicted for offences under the Indian Penal Code and the Arms Act, having regard to his presence, ownership and recovery of weapon of offence and corroboration by the FSL report?

(iii) Whether conviction of accused appellants Varinder Singh alias Bittu, Jaspreet Singh and Harjinder Singh alias Jind deserves to be upheld or whether benefit of doubt should be given in view of the nature of medical injuries, omissions in the ocular account, delay in

recording statements of the injured and other infirmities.

(iv) In addition, certain ancillary questions also arise : effect of civil decrees relied upon by the defence; effect of alleged lapses in investigation (including delay in recording statements under Section 161 of the Cr.P.C. and non-examination of certain witnesses); whether Section 149 of the IPC and the Arms Act would apply.

11. Before proceeding to evaluate the evidence, certain well settled principles need to be recalled :

(a) A decree of Civil Court concerning possession or title over land is of limited relevance in a criminal trial. It may establish motive but does not, in itself, absolve or implicate any party for criminal liability. Criminal liability must rest on evidence led before the Trial Court.

(b) Delay in recording statements of witnesses under Section 161 of the Cr.P.C. is not by itself a ground for rejecting their testimony. The Courts must scrutinise whether the delay is reasonably explained, whether the witness had opportunity to observe the incident, and whether the testimony is corroborated in material particulars.

(c) Evidence of an injured witness carries a special evidentiary weight, as such a person, being a victim of the offence, is unlikely to shield the actual culprit. Nevertheless, the testimony must withstand the test of consistency with medical and scientific evidence.

(d) When ocular testimony is credible and consistent, minor discrepancies with medical evidence do not detract from it. However, where medical evidence completely rules out the possibility of injuries

attributed by ocular testimony, it is unsafe to convict and, therefore, the Court must resolve the inconsistency in favour of the accused.

12. It also may be emphasised that lapses in investigation do not necessarily vitiate a case where the prosecution otherwise proves guilt beyond reasonable doubt; however, omissions that materially effect the reliability of key evidence must be carefully weighed.

13. Adverting to the case at hand, the FIR was promptly lodged by PW-5 Prabhjit Singh, naming the accused. Injured eyewitnesses PW-6 Sukhjit Singh and PW-7 Jagtar Singh consistently deposed that appellants Avtar Singh alias Mara and Varinder Singh alias Billu fired from their guns resulting in the death of all the three deceased—Malkiat Singh, Nirbhai Singh and Gurnam Singh.

14. Their testimony, though recorded with some delay, is corroborated by medical evidence and the recoveries effected. The delay is satisfactorily explained by their hospitalisation, and such circumstance cannot discredit their account.

15. The post-mortem reports of all the three deceased conclusively establish that they succumbed to firearm injuries. The injured witnesses bore firearm and blunt injuries. Significantly, no incised wounds were recorded by the doctors, although the ocular testimony attributed *kirpan* blows to appellants Varinder alias Bittu, Harjinder Singh and Jaspreet Singh.

16. Still further, during investigation, empty cartridges/empties and blood-stained earth (Ex.PD) etc. was seized. Recovery memos show production of firearms and other weapons at the instance of the

accused (Ex.P1 to Ex.P11). PW-2 Balbir Singh, Clerk, produced the licenced registers showing appellants Bhagwan Singh alias Honey and Avtar Singh alias Mara (Ex.PW2/A and Ex.PW2/B) as licensees. As per the FSL report (Ex.PX) the cartridges recovered from the scene of crime matched with the firearms (weapons of offence) whose licence/ownership as already observed are in the name of appellants Bhagwan Singh alias Honey and Avtar Singh alias Mara. These pieces of scientific and documentary evidence lends objective support to the ocular testimony that firearms were used and to the identity of the weapons.

17. It is true that some statements of the witnesses under Section 161 of the Cr.P.C. were recorded after a considerable period of time (for example, statement of PW-7 Jagtar Singh was recorded on 02.06.2001), and that certain witnesses or relatives of deceased Gurnam, were not examined. The investigating officers gave reasons for the course of investigation, and some investigating officers were changed; PW-8 SI Pawanjit acknowledged certain lapses. These facts require careful scrutiny but do not automatically render the entire prosecution case unreliable, where other independent and corroborative evidence exists.

18. Coming first on the claim of the defence that civil decrees prove the possession of the appellants on the land in question, and hence, it was pursuant thereto that they exercised their right of private defence.

19. Learned counsel for the appellants placed heavy reliance

on exhibits D1 and D2 (civil decrees). We reiterate the settled position that a civil decree on title or possession is evidence of background but does not decide criminal liability. Even assuming that the appellants had favourable orders from a Civil Court in respect of certain *khasra*, that fact, if established, would not confer on them a licence to assemble armed men and to use lethal force in the manner recorded in the FIR. The claim of the appellants to the right of private defence is devoid of merit.

20. The remedy lay in lawful recourse to authorities, not in assembling with deadly weapons and taking the law into their own hands. The defence of right of private defence must be shown to be proportionate and contemporaneous; the appellants have not established such justification on the totality of evidence.

21. Coming next to the effect of the lapses during investigation and non-production of certain witnesses. Learned counsel appearing for the appellants pointed to non-examination of the nephew of deceased Gurnam Singh who had taken him to the hospital, persons who identified bodies, and relatives of deceased Gurnam Singh, and also to the delays/lapses by the investigating officers. A truncated or imperfect investigation is regrettable; the prosecution ought to have recorded at the earliest statements of injured witnesses and examined all relevant persons. However, we as Appellate Court are duty bound to assess whether the proved evidence establishes guilt beyond reasonable doubt.

22. Here, core facts—presence of weapons, occurrence of firing at the scene, the deaths and injuries, and the recovery/forensic

linkage—are supported by multiple independent strands (ocular testimony of injured witnesses, medical reports, recoveries, and FSL report). The absence of some peripheral witnesses, while it weakens the completeness of the record, does not substantially impeach the essential, corroborated elements of the case of the prosecution. Accordingly, the lapses do not, in our view, negate the strong cumulative weight of evidence against those accused/appellants Bhagwan Singh alias Honey, Varinder Singh alias Bittu, Avtaar Singh alias Mara, whose individual participation is otherwise proved.

23. Further, the contradictions pointed out between the ocular testimony of the prosecution witnesses including the injured witnesses and the medical evidence on record with regard to the injuries inflicted with *kirpans*, *gandasa*, etc., learned counsel appearing for the appellants has rightly emphasised upon the absence in the post-mortem or MLRs of distinct incised wounds to have been inflicted with *kirpans*. The doctors, who conducted the post-mortem on the three deceased recorded certain blunt trauma injuries (consistent with *gandasa*/hockey blows). It is possible that not every blow in a violent melee leaves a distinct incised mark, and that overlapping injuries or subsequent haemorrhage may obscure certain superficial cuts. That said, where the medical evidence is completely silent about a particular category of injury relied upon to pin responsibility on specific accused, the omission gains significance.

24. As regards our findings with respect to accused/appellant **Avtar Singh alias Mara**, the ocular account of PW-5 Prabhjit Singh,

PW-6 Sukhjit Singh and PW-7 Jagtar Singh, has attributed the firing of a single barrel gun and causing wound on the chest which led to the death of deceased Nirbhai Singh.

25. The medical evidence/post-mortem of deceased Nirbhai Singh (Ex.PC), also confirms his death due to firearm injury to the chest. Moreover, a firearm was produced at the instance of appellant Avtar Singh (Ex.P1 to Ex.P4) and the licence register of PW-2 Balbir Singh and FSL report (Ex.PX), link the empty cartridges recovered at the scene to a firearm connected to the accused party. The FSL report provides an independent scientific link between the firing at the scene and the firearms recovered/produced. Significantly, the testimony of injured eyewitnesses qua appellant Avtar Singh alias Mara is consistent and corroborated by both medical and forensic evidence.

26. On the totality of the material, we are satisfied beyond reasonable doubt that appellant of **Avtar Singh alias Mara** discharged a firearm at the scene and that his act caused the death of deceased Nirbhai Singh. His conviction under Sections 302 of the IPC and Section 27 of the Arms Act, is accordingly upheld.

27. Coming to appellant **Varinder Singh alias Billu**, as per the ocular testimony, he has been attributed firing of a .12 bore double barrel gun, causing grievous/fatal injuries to deceased Malkiat Singh and also firing at deceased Gurnam Singh.

28. The medical evidence (Ex.PF and Ex.PJ) corroborates that deceased Malkiat Singh died of firearm injury (rupture of liver and aorta) and deceased Gurnam Singh also died of firearm injuries; the

nature and location of injuries are consistent with gunshot wounds. Moreover, a double barrel gun was produced (Ex.P5 to P7) and the FSL report links the empty cartridges recovered at scene with firearms whose licences/ownership are in the name of appellant Bhagwan Singh alias Honey (Ex.PW2/B). In particular, the forensic link between the fired cartridges and the firearms used/produced by the accused party, further strengthens the case of the prosecution against him.

29. The ocular and medical evidence prove that appellant Varinder Singh alias Billu fired a weapon at the scene causing fatal injuries.

30. We are, therefore, satisfied beyond reasonable doubt that appellant **Varinder Singh alias Billu** fired at the deceased and caused the deaths referred to above. The conviction of appellant **Varinder Singh alias Billu** under Sections 302 of the IPC and Section 27 of the Arms Act is also upheld in the circumstances.

31. The position in respect of appellant **Bhagwan Singh alias Honey**, requires close analysis because, on the one hand, the medical evidence does not record incised wounds specifically attributable to *kirpan* blows as alleged in the ocular account; on the other hand, there are other cogent factors i.e. the name of this appellant appears in the FIR itself, and the testimonies of the eyewitnesses as a participant.

32. Furthermore, the recovery memos show that *kirpans* and other weapons were produced by appellants Jaspreet Singh, Bhagwan Singh alias Honey and Varinder Singh alias Bittu (Ex.P8 to Ex.P10), firearm licences in the register of PW-2 Balbir Singh reflect that

appellants, Avtar Singh alias Mara and Bhagwan Singh alias Honey as licensees of the weapons of offence (Ex.PW2/A and Ex.PW2/B).

33. Still further, the FSL report matches the cartridges/empties recovered at the scene with the firearms, the use/ownership of which is traceable to members of the accused party—in particular linking certain fired cartridges to a firearm whose licence appears in the name of appellant Bhagwan Singh alias Honey (as per the documentary evidence led by the prosecution). Still further, appellant Bhagwan Singh alias Honey, as per the FIR and eyewitness accounts, was present at the scene of crime. Therefore, his presence at the scene of crime stands established beyond reasonable doubt.

34. On the evidence—even though direct medical corroboration of *kirpan* blows attributable to appellant Bhagwan Singh alias Honey is missing, the cumulative proof (presence at the spot, recovery of weapons at his instance, documentary proof of licence, and FSL report, connecting the cartridges to a firearm, licenced in his name), establishes his participation in the offence/crime in question. Appellant Bhagwan Singh alias Honey is, in the circumstances, liable for offences under Section 25 of the Arms Act.

35. In these circumstances, we hold that appellant **Bhagwan Singh alias Honey** is liable to be convicted only under Sections 25 of the Arms Act and thus his sentence under the Arms Act is maintained. However, conviction of appellant **Bhagwan Singh alias Honey** under Section 307 of the IPC is set aside and he is acquitted under Section 307 of the IPC as no medical corroboration exists qua any incised

wound with a *kirpan* on any of the deceased (which injuries had been attributed to him).

36. Coming next to appellants **Harjinder Singh alias Jind, Jaspreet Singh and Varinder Singh alias Bittu**, they deserve to be given the benefit of doubt as their participation can be said to be doubtful in view of the following circumstances:

(a) The case against appellants **Harjinder Singh alias Jind, Jaspreet Singh and Varinder Singh alias Bittu**, rests solely on allegations of *kirpan/gandasa* blows. Yet, the medical evidence does not corroborate the ocular testimony as no incised injuries were found on any of the deceased. The doctors PW-9 Dr. Amanjit Singh and PW-14 Dr. Adish Awasthi admittedly recorded no incised wounds, despite the ocular claim that *kirpan* blows were inflicted.

(b) Furthermore, the FIR did not even assign them any clear roles in the occurrence in question; all attributions qua them appeared later in the delayed statements made by the two eyewitnesses PW-6 Sukhjit Singh and PW-7 Jagtar Singh. Significantly, no forensic evidence was produced to link the recovered weapons (*kirpan*) to the injuries found on the person of the deceased as well as the two eyewitnesses. The injuries recorded as per the medical evidence on the deceased as well as the injured eyewitnesses PW-6 Sukhjit Singh and PW-7 Jagtar Singh are predominantly firearm injuries or blunt trauma consistent with heavy blunt weapons. The MLR of PW-6 Sukhjit Singh (Ex.PW14/A) attributes his injury to blunt force and does not record incised wounds consistent with cuts with a *kirpan*.

(c) Furthermore, PW-6 Sukhjit Singh and PW-7 Jagtar Singh made material improvements as late as a month after the occurrence in question while getting their statements recorded, which attributed new roles to these three appellants which were conspicuously absent in the earlier versions, particularly in the FIR (Ex.PW8/B).

(d) Furthermore, there is also no site sketch plan or evidence of a draftsman on record to assist precise placement of the accused party at the scene.

(e) Conviction for offences such as murder or attempt to murder requires proof beyond reasonable doubt of both the act and the actor. Where an ocular attribution (for example, a *kirpan* blow causing fatal or grievous injury) is relied upon but the medical evidence is silent and there is no forensic link connecting the particular weapon to a specific injury, the Court must treat the attribution with caution. Improvements made in the statements of the injured witnesses, the absence of independent corroboration on the crucial point (incised injuries), the lack of a site plan or evidence of a draftsman, and the possibility of mis-identification in the chaos of a violent melee together create a real and reasonable doubt in relation to the specific charges invoking Sections 302/307/149 of the IPC and related counts against these three appellants.

37. Hon'ble the Supreme Court Supreme Court in ***Mahendra and another Vs. The State of M.P. : 2022 LIVELAW (SC) 22***, reiterated the prerequisites/ingredients of Section 149 of the IPC in the following terms:-

“It may be noticed that the essential ingredients of Section 149 are that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. To say in other words, it is an essential condition of an unlawful assembly that its membership must be five or more.

At the same time, it may not be necessary that five or more persons necessarily be brought before the Court and convicted. Less than five persons may be charged under Section 149 if the prosecution case is that the persons before the Court and other numbering in all more than five composed an unlawful assembly, these others being persons not identified and un-named.

However, in the instant case, the persons are specifically named by the complainant and against them, after the investigation, chargesheet was filed and all the 20 accused persons faced trial.

It was not the case of the prosecution that there are other unnamed or unidentified persons other than the one who are chargesheeted and faced trial. When the other coaccused persons faced trial and have been given benefit of doubt and have been acquitted, it would not be permissible to take the view that there must have been some other persons along with the appellant in causing injuries to the victim. In the facts and circumstances, it was as such not permissible to invoke Section 149 IPC.”

38. Hence, in view of the ratio of law as enunciated above, liability under Section 149 of the IPC is attracted only when three essential elements stand established : (i) the existence of an unlawful assembly; (ii) the proof of a common object of such assembly; and (iii) the offence was committed either in direct prosecution of that common object, or was one which the members of the assembly knew was likely to be committed in prosecution of such object. The common object need not be articulated in express terms; it may be inferred from

surrounding circumstances, such as the nature of the weapons carried, the prior animosity between the parties, and the concerted or violent manner of the assault.

39. Still further, to attract the rigors/liability under Section 149 of the IPC, it is *sine qua non* to first establish an assembly constituting five or more persons. In view of the infirmities and deficiencies noted hereinabove, the three appellants namely **Harjinder Singh alias Jind, Jaspreet Singh and Varinder Singh alias Bittu**, are entitled to the benefit of doubt. Their conviction, which rests solely upon uncorroborated allegations regarding the infliction of *kirpan*/gandasa injuries, cannot be sustained in law. Consequently, the conviction and sentence imposed upon them are hereby set aside, and they are acquitted of all the charges framed against them.

40. In these circumstances, Section 149 of the IPC would not be invocable against all the remaining appellants namely Bhagwan Singh alias Honey, Avtar Singh alias Mara and Varinder Singh alias Billu. The conviction of all present appellants/accused under Section 148 and 149 of the IPC is, thus, set aside.

41. Resultantly, the conviction of the appellants, namely **Bhagwan Singh alias Honey, Avtar Singh alias Mara and Varinder Singh alias Billu**, shall stand confirmed only to the following offences:

Sr. No.	Name of the appellant/convict	Offence(s) under Section
1.	Bhagwan Singh alias Honey	25 Arms Act
2.	Avtar Singh alias Mara	27 Arms Act
		302 IPC
3.	Varinder Singh alias Billu	302 IPC
		27 Arms Act

42. Chief Judicial Magistrate concerned is directed to take necessary steps to take appellants **Bhagwan Singh alias Honey, Avtar Singh alias Mara and Varinder Singh alias Billu**, into custody to serve out their remaining sentence.
43. The instant appeal stands disposed of accordingly.
44. Pending applications, if any, also stand disposed of.

(MANJARI NEHRU KAUL)
JUDGE

17.09.2025		(H.S. GREWAL)
Vinay		JUDGE
	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No