

(1995) 12 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 194 of 1994

Sukhdev Singh Rana

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Dec. 6, 1995**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 196, 197, 198, 199
- Penal Code, 1860 (IPC) - Section 148, 149, 302, 307, 323

Citation: (1996) CriLJ 3060**Hon'ble Judges:** S.K. Kurdukar, C.J; Swatanter Kumar, J**Bench:** Division Bench

Advocate: R.S. Cheema and R.S. Ghai, D.P. Singh, P.S. Mann, T.P.S. Mann, Bipan Ghai, Baldev Singh and R.S. Chahar, for the Appellant; H.S. Hooda and D.S. Bishnoi, D.A.G., for the Respondent

Judgement

Swatanter Kumar, J.

By this judgment we will dispose of Criminal Appeal No. 194-DB of 1994 titled as Sukhdev Singh Rana v. The State of Haryana preferred against the judgment and order of conviction and sentence dated-30-4-1994 passed by the learned Sessions Judge, Bhiwani Criminal Appeal No. 201-DB of 1994, titled as Rajinder Singh v. The State of Haryana preferred by Rajinder Singh against the same judgment and order of conviction against him passed by the learned trial Judge; Criminal Revision No. 389 of 1994, titled as Smt. Sandokhi v. Rajinder Singh, wherein she has prayed that the sentence awarded to the above mentioned three appellants be enhanced to death sentence and Criminal Appeal No. 81-DB(A) of 1995, titled as Smt. Sandokhi v. Dharambir, praying that the three accused-respondents acquitted by the learned trial Court be awarded sentence of death, in the interest of justice.

2. Vide order dated 11 -5-94, a Division Bench of this Court had admitted Criminal Appeal No. 194-DB of 1994, and issued notice qua bail to the State. Vide order dated

3-6-1994, both the appeals were directed to be listed for regular hearing at No. 1 on July 6, 1994 by another Division Bench of this Court, Criminal Revision No. 389 of 1994, was directed to be heard with Criminal Appeal No. 194- DB of 1994, and Criminal Appeal No. 210-DB of 1994 vide order dated 15-7-1994. The matter was listed for regular hearing and during the course of hearing it was brought to the notice of the Bench that no order has been passed on Criminal Appeal No. 81 -DBA of 1995. Vide order dated 2-2-1995 we had allowed Criminal Misc. No. 210-M of 1994, moved in Criminal Appeal No. 81-DBA of 1991, and following orders were passed :-

Leave granted.

Appeal admitted.

Issue notice to the respondents returnable on 1 -3- 1995.

All contentions are kept open.

3. As the matter was part-heard and no error could be attributed to any of the parties, we had considered appropriate to hear all the above mentioned cases together and that was the precise reason as to why all contentions were kept open available to the respective parties vide order dated 2-2-1995.

4. One of the objections raised by the learned counsel appearing for the accused-appellants who have already been convicted as well as the accused who are respondents in the Criminal Appeal No. 81- DBA of 1995, was that the said appeal and the criminal revision were not maintainable as they were not filed by the complainant. This contention of the parties we propose to deal in detail at a subsequent stage.

5. Reverting back to the facts of the present case as they emerge from the record are that on or about 14-12-1989, a private complaint titled as Chandgi Ram v. Dharambir, and five others under Sections 302, 307, 326, 325, 324, 323, 148, 149 IPC. Police Station, Sadar Bhiwani was filed in the Court of Ilqa Magistrate. It was averred therein that there were Lok Sabha Elections in November, 1989, in the country. Ch. Bansilal was nominated as a Congress candidate and Dharambir was Janta Dal candidate for Bhiwani Lok Sabha constituency. This constituency included District Bhiwani and Hansi Assembly constituencies. Jui is a village on Bhiwani-Loharu road and is at a distance of about 30 kilometres from Bhiwani towards Loharu. Hansi is a town at a distance of approximately 37 kilometres from Bhiwani. The complainant and other witnesses who appeared for the complainant are residents of village Jui. The houses of most of these persons are adjacent to each other and there is open space in front of these houses. Towards the north of these houses was a polling-booth where the polling was in progress. Chandgi, Banwari Lal and other witnesses of the complainant were supporters of Ch. Bansilal and some of them were even the relations of Ch. Bansilal.

6. On the morning of 22-11-1989 at about 9.30 a.m. the opposition candidate Dharambir accompanied by his brother Rajbir alias Lala, Rajendra alias Gandhi, Jogender alias Pappu, armed with guns, alighted from a jeep, while Sukhdev Singh Rana, the then Inspector Police, Bhiwani and Dharam Singh a Sub-Inspector Posted in those days in Police Station Badhra, a nearby place, alighted from another jeep and still there was another gypsy and a Matador and a truck load of persons armed with lethal weapons. As soon as these people got down from their vehicles from the first and second gypsy, they started abusing Banwari, Banwari, Chandgi and others folded hands and told them not to abuse. Rajbir accused allegedly caught hold of Banwari and gave a blow from the butt of his gun on his back who fell down. As a consequence thereof, Jasbir standing nearby, tried to come ahead, who was shot at by Rajbir. When one Gudli. aged 17/18 years, a girl, came forward, Rajendra and Dharambir accusal-appellants fired at her. Jaibir and Guddi fell on the ground and succumbed to their injuries on the spot. The police officials Sukhdev Singh Rana and Dharam Singh, who were already abusing the people present on the spot, also started firing indiscriminately, as a result of which Bhan Singh, Sandokhi, Phula, Dharnia, Bimla, Chandgi, Pawan Kumar, Anand Kuur, Dharambir, Ram Phal. Mohan Singh. Basanti and several others received pellet and bullet injuries. Their medico-legal reports are Ex. PD. PG. PH. PJ. PK, PL, PM, PN, PQ, PR. PS and PT. After firing at the people like this, the assailants reversed their vehicles and escaped from the scene of occurrence when only a few persons came from the polling booth and tried to throw brickbats on the assailants, but they escaped. Only one matador was stuck up in the sand which was later on removed.

7. The police was already allegedly present on the spot, but after the incident also, the police came. One Pawan Kumar lodged a report Ex. DK with the allegations that there was a clash between a group of Congress Workers and on the other hand the Janta Dal workers and in that firing, some persons were injured and killed. This case was investigated by Sh. Mahender Singh D. W. 5, the then Sub Inspector, Police, Police Station, Sadar, Bhiwani. This FIR was number 261. No person was arrested by the investigating officer nor any guns or weapons of offence were taken into possession. The FIR was cancelled as untraced because Pawan Kumar had not named any of the assailants.

8. It is stated in the complaint that Jaivir and Guddi died on the spot due to injuries while other persons had suffered bullet injuries because of the indiscriminate firing by the accused. According to the complainant as the police, which was even present at the site, failed to take any action against Dharambir, his brother and associates, the police was apparently in collusion with him because Dharambir at the relevant time was the Minister in the Haryana Government. It is alleged that the statements of the witnesses and even that of the injured were not recorded. Consequently the complainant was compelled to file complaint before the Court.

9. So, the occurrence narrated above is that Dharambir, the Janta Dal, candidate, Rajbir alias Lala. his brother, Jogender alias Pappu and Rajender alias Gandhi with the help of the two police officials killed Guddi and Jaibir in the aforesaid manner and fired at various injured and went back. So, in the complaint it was claimed that the occurrence was witnessed by Dharambir son of Banwari P. W.4 and several others, who were injured on the spot. It was claimed that police had not taken any action in the matter, so they had come in a private criminal complaint.

10. In the private complaint the learned Magistrate examined number of witnesses including the doctors, Chandgi, Ram Phal, Sandokhi etc. and committed the case to the Court of Session for trial in accordance with law. All the persons named in the complaint were committed to the Court of Session to stand trial and they were charged by the trial Court under Sections 302, 307, 323, 148 and 149 of the Indian Penal Code. All of them claimed trial and were tried by the Court of Session. The statements of the accused u/s 313 of the Criminal Procedure Code were recorded wherein they pleaded innocence. Dharambir along with his brother Rajbir claimed alibi and stated that he was present at Hansi at about 9.00/9.30 a.m. and he was never present at Jui at the time of occurrence. Dharambir had raised various pleas including the plea that he had been falsely implicated in the case because he had defeated Ch. Bansi Lal in the elections of 1987, and some of the witnesses examined on behalf of the complainant were relations of Ch. Bansi Lal and there was every likelihood that the said accused and his brother and others were being implicated falsely in this case. It was further pleaded as a plea of defence that there was another FIR lodged being FIR No. 498 for murder at Tosham Railway Crossing, Bhiwani which related to the occurrence of 22-11 - 1989, and the present case was nothing but a counter-blast to the said case. FIR No. 498 is stated to have been lodged against Ch. Bansi Lal, his relations and supporters. Sukhdev Singh and Jogender Singh stated that they were not present at the scene of crime. The learned trial Judge thus had to examine the case of the respective parties specially keeping in view the fact that number of witnesses were examined by the accused in support of their defence. The learned trial Court vide the impugned judgment held Rajender, Sukhdev Singh Rana and Dharam Singh guilty of the offences under Sections 302 read with Section 149 IPC and 307 read with Section 149 I.P.C. and vide separate order sentenced Rajender Singh alias Gandhi to undergo life imprisonment for killing Guddi u/s 302 IPC and a fine of Rs. 25,000/-, and in default of payment of fine to undergo rigorous imprisonment for two years further; sentenced the same accused for 10 years rigorous imprisonment u/s 307 read with Section 149 I. P. C. and a fine of Rs. 10,000/- and in default to undergo rigorous imprisonment for two years further. Sukhdev Singh Rana and Dharam Singh were also sentenced to life imprisonment u/s 302 read with Section 149 I. P. C. and fined Rs. 25,000/- each and in default to further undergo two years rigorous imprisonment each and each one of them was also sentenced for 10 years rigorous imprisonment u/s 307 read with Section 149 I. P. C. and fine of Rs. 10,000/- each and in default to further undergo

rigorous imprisonment for two years. All the sentences were ordered to run concurrently, The fine imposed was directed to be distributed amongst the parents of the deceased Jaivir and Guddi while the fine imposed u/s 307 read with Section 149 I. P. C. was directed to be paid to the injured persons equally.

11. The complainant as well as the accused persons being aggrieved have preferred the afore-mentioned appeals/revision before this Court.

12. Before reading with the merits of this case we would like to deal with preliminary objection which has been raised on behalf of both the accused sentenced and the accused acquitted by the trial Court, with regard to the right of Sandokhi to prefer the criminal revision and criminal appeal before this Court.

13. The contention of the learned counsel Mr. Baldev Singh and Mr. R.S. Ghai, Senior Advocate, is that no revision/appeal could lie by Sandokhi under the provisions of Section 378(4) of the Criminal Procedure Code because she was not a complainant in the case. There is no dispute to the fact that an FIR was registered on the statement of one Pawan Kumar Ex. DK who was an independent person, but no action was taken on the basis of that report. The statements of the injured were not recorded by the police. In the occurrence in question Guddi and Jaivir had died as a result of gun shots while eight others had suffered injuries which included Dharambir, Chandgi Ram and Sandokhi as well. All these persons were even examined by the learned Magistrate in the pre-committal proceedings. Sandokhi is the wife of Banwari Lal who was not injured in the occurrence but has been examined as an eye witness as P. W. 5. Chandgi Ram who had filed complaint in the Court of learned Magistrate and was examined as P. W. 1, unfortunately died on 11-4-1994, even before the appeals were preferred before this Court. Sandokhi has a right to continue the cause because she is one of the victims of the firing who suffered injuries and is an eye witness to the entire occurrence as well. The word "complainant" used in Section 378(4) of the Code cannot be given such a restricted meaning and cannot be construed so as to exclude the victim or the sufferer and who had first-hand information of the incident in question. The concept of locus-standi in relation to the criminal jurisprudence has to be given a wider meaning. The scheme of the Code is such so as to include a successor and even any person who might not be the actual complainant before the Court but had suffered during that incident and was a victim of the assailants. The investigating agency can be put into motion even by a stranger to the occurrence. From the settled principles of law it is clear that it is the right to continue the cause which would form the basis for permitting a person other than the actual complainant who might die in the course of the proceedings to continue the subsequent proceedings. The Supreme Court in the case of [Ashwin Nanubhai Vyas Vs. State of Maharashtra and Another](#), , held as under :-

What the Presidency Magistrate has done is to allow the mother to act as the complainant to continue the prosecution. This power was undoubtedly possessed

by the Presidency Magistrate because of Section. 495 of the Code by which Courts are empowered (with some exceptions) to authorise the conduct of prosecution by any person. The words "any person" would indubitably include the mother of the complainant in a case such as this. Section 198 itself contemplates that a complaint may be made by a person other than the person aggrieved and there seems to us no valid reason why in such a serious case we should hold that the death of the complainant puts an end to the prosecution."

Giving the expression "complainant" a much wider meaning and covering a larger section of people within the ambit and scope of the said expression the Supreme Court in the case of [A.R. Antulay Vs. Ramdas Srinivas Nayak and Another](#), held as under :-

But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the Cr. P. C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contraindicated by a statutory provisions. This general principle of nearly universal application is founded on a policy that an offence i. e. an act or omission made punishable by any law for the time being in force (see Section 2(n), Cr. P. C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people Which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it in to a straight- jacket formula of locus-standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the Court would require an unambiguous statutory provision and a tangled web of argument for drawing a far-fetched implication, cannot be a substitute for an express statutory provision. In the matter of initiation of proceeding before a special Judge under. Section 8(1), the Legislature while conferring power to take cognizance had three opportunities to unambiguously state its mind whether the cognizance can be taken on a private complaint or not. Reliance can also be placed...on the case reported as [Palaniappa Gounder Vs. State of Tamil Nadu and Others](#), . The reliance by the learned counsel for the accused

upon *Sadhu Singh v. Devi Dayal Kohli* (1972) 74 PLR 728, is misplaced because in view of the various pronouncements by the Supreme Court including the above it cannot be held that Sandokhi Devi had no right to file the revision and/or appeal before this Court in the facts and circumstances of the present case. Thus, we reject the preliminary objection raised on behalf of the accused persons.

14. Coming to the merits of these appeals and revision it is clear from the record that on 22-11- 1989 at village Jui in District Bhiwani, there was indiscriminate firing as a result of which Guddi and Jaivir died and number of other persons were injured. There is also no dispute to the fact that there were two political groups involved in the incident, one were the supporters of Ch. Bansi Lal and the others were the supporters of Dharambir. According to the complainant the supporters of Dharambir, which included the accused, used to put pressure upon the complainant and his family to help Dharambir to which they did not agree because they were supporters of Ch. Bansi Lal. The complainant in the complaint has stated that all the six accused persons were present and Rajbir had fired on Jaivir and other accused also while firing upon Guddi, indulged in indiscriminate firing. According to the complainant along with the accused there were other 50-60 persons for their help. In spite of the fact that the police was present and even the investigating officer had registered FIR., still the investigation was not pursued nor the statements of the injured were recorded. This according to the complainant was done under the influence of Dharambir who was minister in the outgoing ministry. This compelled the complainant to file a complaint before the learned Court on 14-12-1989. In support of their case, the complainants examined 16 witnesses which included nearly six eye witnesses to the occurrence, while leading their defence the accused examined nearly eight witnesses to prove their plea of alibi and falsity of the case. Out of the main witnesses examined by the complainant, two witnesses namely Bhan Singh P. W. 2, and Anand Kaur P. W. 3 were declared hostile during their examination before the Court. Rest of the witnesses supported the case of the complainants fully and nothing materially destructive to the case of the complainant could come out in their lengthy cross-examination. All the prosecution witnesses specifically proved the case of the complainant except with very immaterial variation which cannot be said to be abnormal or fatal to the case of the complainant keeping in view the nature of the occurrence, the people involved including the fact that the investigating agency also did not take care of the case as expected. Various doctors medical officers were examined to prove the injuries inflicted upon the victims which had resulted because of indiscriminate firing and were pallet wounds.

15. P. W. 2 Bhan Singh who was the injured himself had to be declared hostile during his examination, but his injuries have been proved on record by Ex. PD and similarly the injuries of P.W. 3 Anand Kaur were proved by Ex. PN. The injuries as per these reports had resulted from fire-arms and these persons were examined on the same day within few hours of the time of occurrence.

16. Sandokhi the appellant-revisionist before this Court was examined as P. W. 6. From the statements of various witnesses which have been examined by the complainant and from the documents on record it is clear that there was an incident at village Jui and the accused were witnessed by the eye witnesses who indulged as members of unlawful assembly in unlawful activity i. e. indiscriminate firing resulting in the death of two individuals and injuries to number of others.

17. As noticed the complainant examined number of witnesses to prove his case. The trial Court on 17-11-1993, had framed charge against all the six accused under Sections 302, 307, 323, read with Sections 148 and 149 of Indian Penal Code.

18. In his statement as P. W. 1 Chandgi Ram stated before the Court that all the accused were present. He stated that they had told the group of the accused that they are going to vote for Congress. On 20 11-1989, a day prior to the date of occurrence, according to this witness Sukhdev Singh and Dharam Chand, who were present in Court while his statement was being recorded, started abusing Banwari and Banwari was given blows by but end of the weapon. The accused fired at Guddi and then accused started firing indiscriminately. The persons who suffered injuries were sent to hospital. According to this witness he had made a complaint to the police and had gone to the police station to find out as to what was the progress of the case, but as there was no progress the injured side filed a complaint. According to this witness the accused along with number of other people had constituted an unlawful assembly.

19. P. W. 2 Bhan Singh who stated that he did not see anybody and that Dharambir was not present at the site, was declared hostile and so was Anand Kaur. Dharam Vir P. W. 4 who is son of Banwari fully supported the version of the complainant and the witness also stated that the people as a result of indiscriminate firing suffered pellet injuries. This witness confirmed the presence of the accused as well as the role attributed to them. P. W. 5 Banwari Lal who himself suffered injuries supported the case of the complainant and further stated that Chandgi remained with him at the scene of occurrence and after 15 minutes police had arrived and had asked the injured to be taken to the hospital. This witness stated that Smt. Sandokhi P. W. is his wife who had also received pellet injuries in her arm and she remained admitted in the hospital for a period of four, months. Smt. Sandokhi wife of Banwari was examined as P. W. 6. She has established on record the unlawful assembly, indiscriminate firing as well as death of the two victims Guddi and Jaivir, who died at the spot. One of the suggestions put to this witness was that nobody knew as to whose bullet hit whom. This suggestion was denied by her.

20. P. W. 8 to P. W. 15 are the doctors of various hospitals who have been examined by the complainants to establish the medico-legal reports of the injured and the post mortem reports of the two deceased persons. The statements of these doctor witnesses clearly establish that the injured as well as the deceased had suffered bullet/pellet injuries which proved fatal to the two and the other injured

including Sandokhi remained under treatment for a considerable period. Dr. M. L. Sharma P. W. 8 who conducted the post-mortem on the dead body of Guddi on 22-11-1989 reported that injuries on her person were sufficient to cause death in the ordinary course of nature and the injuries were fire-arm injuries. The time lapse which is one of the important factors in the present case between the death and the injuries was stated to be within few hours. The postmortem report was Ex. PE. Similarly this doctor performed the post mortem on the dead body of Jaibir. Report with similar findings in Ex. PF. Injuries No. 1,3,5 and 7 on the person of Guddi were the entry wounds and injuries No. 2, 4, 6 & 8 were the exit wounds caused because of gun-fire. The trial Court has rightly concluded that delay in institution of the complaint and the two witnesses not supporting the case of the prosecution and the fact that the weapons were not recovered cannot prove fatal to the case of the complainant. The complainant has specifically pleaded that in spite of the registration of the FIR and the fact that the police was there at the place of occurrence they failed to investigate the case fairly and in accordance with law. The victim or injured party cannot be blamed when the very investigating agency which is under obligation to investigate such offences ignores to discharge its duty. The occurrence is even proved by the police officers who have been examined and the case of the complainant has been fully corroborated by various witnesses. The fact that these witnesses are the relations of one of the candidates in the election and that of the deceased or injured in the facts and circumstances of the case would not affect the veracity and truthfulness of the statements. In [Laxman and Others Vs. The State of Maharashtra](#), it was held as under :-

Witnesses cannot be branded as liars in toto and their testimony rejected outright even if parts of their statements are demonstrably incorrect or doubtful. The astute judge can separate the grains of acceptable truth from the chaff of exaggerations and improbabilities which cannot be safely or prudently accepted and acted upon. It is sound common sense to refuse to apply mechanically, in assessing the worth of necessarily imperfect human testimony, the maxim "Falsus in uho flatus in omnibus."

In another case titled [Sohrab and Another Vs. The State of Madhya Pradesh](#), it was laid down by their Lordships as under:-

Falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate Exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the Court to re-construct a story of its own out of the rest.

In view of the settled position of law as discussed above, there cannot be any legal impediment in accepting the statement of these witnesses to establish the guilt of these three accused namely Rajender alias Gandhi, Sukhdev Singh Rana and Dharam Singh.

21. The three accused convicted by the learned trial Court along with other group of members of the unlawful assembly had indulged in indiscriminate firing and hitting people which proved fatal to the two deceased. It is a settled principle of law that if the offence is committed by any member of unlawful assembly, every person, who at the time of committing of the offence, is member of the such assembly, is guilty of the offence. The political rivalry between the parties cannot be disbelieved and the fact that the supporters of Dharambir were pressurising the supporters of Ch. Bansi Lal to vote for them is also proved on record. The polling booth was at a short distance from the place of occurrence and the various persons had assembled there for casting their votes. The presence of the group even otherwise is normal. Thus, the three convicted accused along with the other large group of persons constituted an unlawful assembly and as such each one of them is liable to be punished for the offences committed by the members of the unlawful assembly. The statements of the complainant's witnesses also find support from the official defence witnesses who admitted that there was a firing at the place of occurrence and this was even reported to the higher authorities. Thus, all these accused persons would be covered under the provisions of Section 149 of the Indian Penal Code and would be liable to be proceeded against in accordance with law.

22. The contention of the learned counsel for the appellants is that once the learned trial Court has acquitted three persons, the rest of the accused even if they were the members of unlawful assembly, are liable to be acquitted because the very basis of the case of the complainant falls to the ground. This contention of the learned counsel is not well founded. For the reasons recorded by the trial Court, three accused persons have been given the benefit of doubt while accepting the plea of Alibi and they were acquitted. This by itself is not a ground for acquitting other co-accused as well. There being positive evidence on record that the other three accused were members of the unlawful assembly with 50-60 other persons who could not be identified and had indulged in unlawful activity of committing the crime, they cannot seek any advantage from the acquittal of the other co-accused. In this regard it will be appropriate to refer to the case of [Marachalil Pakku and Another Vs. State of Madras](#), . In this case two appellants were charged and convicted along with five others for having constituted an unlawful assembly and committed murder, but in appeal before the High Court the live accused were given benefit of doubt and were acquitted and while rejecting such a plea that acquittal of live accused would entitle the other Co- accused of acquittal, the Supreme Court held as under:

After reviewing the evidence and weighing the opinion embodied in the judgment of the High Court that there was no scope left for introducing into the case the theory of the benefit of doubt, that the five accused were wrongfully acquitted and that though their acquittal stood that circumstance could not affect the conviction of the appellants u/s 302 read with Section 149.

23. It is also a settled principle of law which has been reiterated by various Courts that the member's of an unlawful assembly who commit a crime of the present kind, by opening indiscriminating firing on innocent people and having caused threat to them before, then each one of such member of the unlawful assembly is liable to be punished for the offence committed. Equally is the settled principle of law that where the case of the co-accused is distinct and different from the accused acquitted, such convicted accused cannot take any advantage from the acquittal of the co-accused. The plea of alibi having been established in favour of the three acquitted accused and other co-accused being the members of unlawful assembly and having involved in the commission of offence of death of two innocent people and injuring many others cannot avail any benefit in the facts and circumstances of the case.

24. As a necessary corollary to the above argument is the plea of alibi and falsely implicating the three acquitted accused in the present case. In this regard the submission of learned counsel Shri H. S. Hooda is that the trial Court has erred in appreciating the evidence and in fact mislead the evidence in accepting the plea of alibi of the three acquitted accused. Thus, according to him even these accused are liable to be punished in accordance with law. To substantiate this plea the learned counsel has relied upon certain contradictions in the statements of D. W. 1 and D. W. 2. He has further submitted that the plea of alibi is a mere concoction and a false defence.

25. On the contrary the submission of Shri Baldev Singh learned counsel appearing for the acquitted accused is that there is no contradiction between the statements of D. W. 1 and D. W. 2. On the other hand, D. W. 2, Ex. DG and Ex. DH, and the statement of D. W. 4, the chowkidar, fully establish the plea of alibi. According to the learned counsel his clients have been falsely implicated in the case because of political rivalry as Dharambir had defeated Ch. Bansi Lal in the previous elections and the FIR was a counter-blast to the FIR lodged against Ch. Bansi Lal and his associates. Thus, they had a definite motive in involving the acquitted accused falsely.

26. The learned trial Court while discussing the plea of alibi held that the plea of alibi in the case is proved and is correct. The learned trial Judge has made certain observations while giving these findings but no way they have a bearing on the merits of the case and do not affect the findings given by the trial Court. D. W. 1 in his examination-in-chief, of course, had stated that upon his visit at about 9.30 a. m. at Barsi Gate, Hansi he was looted by the 1). S.P. that there was firing and in order to

give protection to the Lok Sabha candidate, they had taken him to Dharamshala. This by itself may not have been sufficient evidence to prove the factum of alibi, but in his statement the said witness thereafter went on saying. that. "we took him out from the hind gate of Dharamshala." The witness has clearly stated that he went to Dharamshala with the D. S. P. and met Dharamvir and thereafter from the hind gate they had managed the way for the said candidate. D. W. 2 the D. S. P. has categorically stated that he was on election duty in Hansi Division in District Hissar. According to this witness there was brick-battling, firing and as a result of which he had taken Dharambir to Dharamshala and then after the S. D. M. D. W. 1 had come the) were able to provide escape to Mr. Dharambir. The chowkidar who was examined as D. W. 4 has also stated that Dharambir was staying in the Rest House at Hansi and has proved the entries Ex. DJ and DJ/1. In the cross-examination of these witnesses no suggestion was put that the records produced by them have been fabricated including the police reports and the crash message. One of the most important document is Ex. DF. This is a crash message which was sent by the DIG, Hissar to the Commissioner and Chief Secretary on 21 -11 -1989 at 11.30 a. m. It was recorded in this crash message about the incident and it was stated that Mr. Dharambir, the candidate, was given shelter in Dharamshala by the police party and where all the three witnesses were named and they were able to provide shelter and passage to Mr. Dharambir. Other two documents which are proved by the witnesses in addition to this document are Ex. DG and Ex. DH, respectively. D. W. 3 was examined to prove these documents which show that Dharambir, his brother, was not present on the date of occurrence at the spot and they had lodged the report in the police station. Hansi on 21 -11 -1989. Rajbir signed this report in the Rojnamcha. In the cross-examination no suggestion was put to the witness that these entries were fabri- cated. This appears to us reasonable that at least these three documents could not be fabricated.

27. While we are in agreement with the reasoning given and law discussed by the trial Court, in view of the above discussion we affirm the judgment of the trial Court as the three accused namely Dharambir, Rajbir alias Lala and Jogender alias Pappu have been able to establish the plea of Alibi and benefit of doubt has been rightly given. As regards other three accused, namely, Rajender alias Gandhi, Sukhdev Singh Rana and Dharam Singh being found guilty of the offences for which they have been convicted by the trial Court. Consequently we maintain the judgment and order of sentence passed by the trial Court, under appeal. Resultantly Criminal Appeal No. 194-DB of 1994, Criminal Appeal No. 201-DB of 1994, Criminal Appeal No. 81-DB(A) of 1995 and Criminal Revision No. 389 of 1994, all are hereby dismissed.