

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR****Division Bench****PRESENT:****HON'BLE MR. JUSTICE N.K. GUPTA  
&  
HON'BLE MR. JUSTICE G.S. AHLUWALIA****CRIMINAL APPEAL NO. 323 OF 2003****Gabbar Singh****-Vs-****State of Madhya Pradesh**

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Shri Prem Singh Bhadoriya, Shri R.P. Singh and Shri Sushil Goswami, counsel for the appellant.

Shri Kamal Jain, Public Prosecutor for the respondent/State.

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**&****CRIMINAL REVISION NO. 284 OF 2003****Ramkali****-Vs-****Mantram @ Brijmohan and others**

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Shri Sunil Soni, counsel for the applicant.

Shri Sushil Goswami, counsel for the respondents No.1 to 3.

Shri Kamal Jain, Public Prosecutor for the respondent No.4/State.

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**J U D G M E N T  
(27/10/2016)****PER JUSTICE G.S. AHLUWALIA:**

Since both the matters are related with the common judgment dated 5.4.2003, hereby they are disposed off with present one judgment.

**2.** By this appeal the appellant has called in question the correctness of judgment dated 05.04.2003 passed in S.T. No. 71/2002 by the First Additional Sessions Judge Dabra, District Gwalior by which the appellant has been convicted for offences punishable under Sections 302 and 504 of IPC and has been directed to undergo Life Imprisonment with fine of Rs. 1000/- and Rigorous Imprisonment of seven days respectively. Both the sentences have been directed to run concurrently.

**3.** A criminal revision No.284/2003 has been filed by the complainant Ramkali challenging the correctness of the part of the same judgment by which the respondents Mantram, Bheem Singh and Sanjay Singh have been acquitted for offences punishable under Section 302 r/w Section 120-B of IPC. Both the cases are being considered and decided by this judgment.

**4.** The prosecution story in short is that on 29.09.2001 at about 20:30-20:45 the complainant Ajab Singh, Gopal, Mahesh, Rajvir, Purshottam and deceased Gyan Singh were sitting on a platform outside the Mata Mandir in village Antri and were talking to each other. At that time the appellant Gabbar Singh and Mantram (acquitted accused) came there. Appellant Gabbar Singh started abusing Gyan Singh. When the deceased objected to it and asked the appellant Gabbar Singh not to abuse, at that time the appellant Gabbar Singh fired at Gyan Singh by means of a country made pistol causing injury to him on the chest. Thereafter, the appellant Gabbar Singh and Mantram ran away from the spot. It was alleged that the acquitted accused persons Bheekam, Mantram and Sanjay had conspired with appellant Gabbar Singh to kill Gyan Singh. FIR was lodged by Ajab Singh (PW-3) in police Station Antri, District Gwalior on

29.09.2001 itself at 21:15. The appellant was arrested on 29.11.2001 and his memorandum under Section 27 of Evidence Act was recorded on 29.11.2001 itself and in pursuance to the information given by the appellant in his memorandum recorded under Section 27 of Evidence Act, a country made pistol and two live cartridges were recovered from the house of the appellant Gabbar Singh. The country made pistol was sent to the armorer to find out that whether the same is a fire arm and also in a working condition or not. The police after completing the investigation filed charge sheet against the appellant Gabbar Singh, Bheekam Singh (acquitted accused), Sanjay (acquitted accused) and Mantram (acquitted accused).

**5.** The trial court framed charge under Sections 302 and 294 of IPC against the appellant Gabbar Singh and framed charge under Section 302 r/w Section 120-B of IPC against the acquitted accused Mantram, Sanjay and Bheekam Singh.

**6.** The accused persons abjured their guilt and pleaded not guilty.

**7.** The trial court after considering the evidence adduced by the prosecution as well as defence evidence, convicted and sentenced the appellant Gabbar Singh as mentioned above.

**8.** We have heard the learned counsel for the parties.

**9.** The prosecution in support of its case examined Raghunath Singh (PW-1), Gopal S/o Nandram (PW-2), Ajab Singh (PW-3), Veer Singh (PW-4), Rajveer Singh (PW-5), Raj Kumar (PW-6), Gopal S/o Jagram (PW-7), Ramswaroop (PW-8), Mahesh Jogi (PW-9), Ranvir (PW-10), Balvir Singh (PW-11), Jaibhanu Tiwari (PW-12), Ashok Singh (PW-13), Dr. Surendra Singh Jadon (PW-14), Santosh Singh Head

Constable (PW-15), Harvilas (PW-16), Mahesh Singh (PW-17), Ajay Chanana (PW-18), Roop Singh Chauhan (PW-19), Rajendra Singh Kushwah (PW-20). The appellant Gabbar Singh examined Ramdas Kadam, Head Constable (DW-1) as his defence witness.

**10.** In order to prove the nature of the death, the prosecution has examined Dr. Surendra Singh Jadon (PW-14) who had conducted postmortem of the deceased Gyan Singh. Dr. Surendra Singh Jadon (PW-14) has stated before the trial court that on 13.09.2001 he was posted in JAH Gwalior on the post of Medical Officer. He had conducted the postmortem of the deceased Gyan Singh. On examination of the body, he had found the following injuries:-

(1) One lacerated wound at chin whose dimension was 3x0.5x0.5 cm.

(2) One gunshot entry wound which was of 0.8 cm diameter and was 11 cm. below the suprasternal notch and was right to mid-line and the wound was surrounded by the mark of charring which was spread over the area of 5 cm. on each side and there was a corresponding wound in the cloths of the deceased. The exit wound was not visible.

On internal examination, vital organs including heart and left lung were found penetrated and the bullet was recovered from the chest wall. As per the information of the doctor, the cause of death was due to shock and excessive bleeding because of injuries caused to the heart and left lung. Also, it was sufficient to cause death in natural course of life. The death was homicidal in nature and had occurred within a period of 6 to 24 hours prior to the time of postmortem. The postmortem report is Ex.P15.

**11.** The learned counsel for the appellant in the arguments have not challenged the evidence of Dr. Surendra Singh Jadon (PW-14) as well as the postmortem report Ex.P15. Accordingly, it is held that the death of the deceased Gyan Singh was homicidal in nature and was caused due to the gunshot injury.

**12.** The next question for consideration is that who has caused the solitary injury to the deceased Gyan Singh. Gopal S/o Nandram (PW-2), Gopal S/o Jagram (PW-7), Mahesh Jogi (PW-9), Ranvir (PW-10), Ashok Singh (PW-13) and Rajendra Singh Kushwah (PW-20) have not supported the prosecution case and were declared hostile.

**13.** Raghunath Singh (PW-1) has stated that on 29.09.2001 he was in his house when Veer Singh, Mahesh etc. were bringing Gyan Singh who was unconscious. When these persons were passing in front of his house he enquired from Veer Singh, Mahesh etc. that what has happened, then Veer Singh informed this witness that the appellant Gabbar Singh has shot the deceased Gyan Singh. It is further stated by this witness that he also went to the police station along with these persons and the FIR was lodged by Veer Singh. Gyan Singh was taken to Gwalior and this witness also accompanied him. However, Gyan Singh expired on the way. Even then, the deceased Gyan Singh was taken to Gwalior Hospital. When the dead body was brought back to Antri the postmortem was conducted. This witness was cross-examined by the counsel for the appellant who specifically denied the suggestion that he did not have any talks with Veer Singh or Mahesh Singh and he also specifically denied the suggestion that Veer Singh, Mahesh Singh had not met with him. It was submitted by the counsel for the appellant that in the examination-in-

chief itself this witness has stated that the FIR was lodged by Veer Singh and whereas the prosecution has filed the FIR Ex.P/4 which is alleged to have been lodged by Ajab Singh, therefore, it was contended by the counsel for the appellant that the prosecution has suppressed the FIR lodged by Veer Singh and, therefore, an adverse inference should be drawn.

**14.** Ajab Singh (PW-3) has specifically stated that after the incident took place he along with Veer Singh (PW-4), Rajvir Singh (PW-5), Purshottam took the deceased Gyan Singh to the police station and he had lodged the FIR against the appellant Gabbar Singh. No suggestion has been given by this witness that any other FIR was lodged by Veer Singh. Even otherwise, when the witnesses have specifically stated that Veer Singh had also gone to the police station along with other prosecution witnesses including the complainant Ajab Singh (PW-3), therefore, it cannot be held that the police has suppressed any other FIR. Further Veer Singh has admitted in his cross-examination that FIR was lodged and signed by Ajab Singh. Furthermore, no suggestion in this regard has been given to Ajay Chanana Sub Inspector (PW-18) who had recorded the FIR Ex.P/4 on the complaint of complainant Ajab Singh Kirar (PW-3). When the appellant has not challenged the incident, then the contention of the counsel for the appellant that the police has suppressed any FIR is misconceived.

**15.** In order to prove the incident, Ajab Singh (PW-3) and Rajveer Singh (PW-5) have stated specifically that on 29.09.2001 at about 8:30 in the night, Purshottam, Gopal, Mahesh, Rajveer, Parsu and deceased were sitting on platform outside the Pandaji temple and they were talking about the agricultural activities. At that time, the appellant Gabbar Singh and Mantram (acquitted accused) came there

and the appellant and Mantram (acquitted accused) abused the deceased Gyan Singh. When the deceased Gyan Singh objected and asked them not to abuse, then the appellant Gabbar Singh once again started abusing him and said that you cannot scold me and took out a country made pistol and fired at him from a close range, causing injury to the deceased Gyan Singh on his chest. Thereafter, the appellant Gabbar Singh and Mantram (acquitted accused) ran away from the spot. The deceased Gyan Singh after walking for 20-22 steps fell down. He was taken to the police station by these witnesses, where the FIR was lodged by Ajab Singh (PW-3). As already mentioned above, the appellant Gabbar Singh has not challenged the manner in which incident is alleged to have taken place by the prosecution witnesses, therefore, it is held that the deceased along with the other prosecution witnesses were sitting on platform outside the temple and were talking about the agricultural activities, when the appellant Gabbar Singh came there and without any provocation or any overt act on the part of the deceased or any of the prosecution witnesses started abusing the deceased Gyan Singh and when the deceased objected to such an act of appellant Gabbar Singh, the appellant Gabbar Singh took out a country made pistol and without any provocation fired at the deceased causing injury on his chest which resulted in the death of the deceased.

**16.** It is then submitted by the counsel for the appellant Gabbar Singh that if the entire incident is considered in a proper perspective then it would be clear that the appellant Gabbar Singh had acted in his private defence. It is well established principle of law that in order to set up the plea of private defence, it is not necessary for the appellant to take specific defence but from the surrounding

circumstances he can establish that he had acted in exercise of his right of private defence. However, to claim the right of private defence to the extent of causing death, the accused must show the circumstances available on record to establish that there was reasonable ground for the appellant to apprehend that either death or grievous hurt would be caused to him. However, it is also clear that no right of private defence accrues when there is no apprehension of the danger and there should be a necessity of avoiding an impending danger either clear or apparent. However, the right of private defence is not available to a person who himself is an aggressor. Further, Section 99 of IPC clearly provides that the injury which is caused by the accused exercising the right of private defence should commensurate with injury with which he is threatened. View of the court is fortified by the judgment of the Supreme Court in the case of **Arjun vs. State of Maharashtra reported in (2012) 5 SCC 530** in which it is held as under:-

“22. The law clearly spells out that the right of private defence is available only when there is a reasonable apprehension of receiving injury. Section 99 IPC explains that the injury which is inflicted by a person exercising the right should commensurate with the injury with which he is threatened. True, that the accused need not prove the existence of the right of private defence beyond reasonable doubt and it is enough for him to show as in a civil case that preponderance of probabilities is in favour of his plea. The right of private defence cannot be used to do away with a wrongdoer unless the person concerned has a reasonable cause to fear that otherwise death or grievous hurt might ensure in which case that person would have full measure of right to private defence.

23. It is for the accused claiming the right of private defence to place necessary material on record either by himself adducing positive



evidence or by eliciting necessary facts from the witnesses examined for the prosecution, if a plea of private defence is raised. (*Munshi Ram v. Delhi Admn, State of Gujarat v. Bai Fatima, State of U.P. v. Mohd. Musheer Khan, Mohinder Pal Jolly v. State of Punjab and Salim Zia v. State of U.P.*)

*24. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find out whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting."*

**17.** It is contended by the counsel for the appellant that from the evidence of Ajay Chanana (PW-18) and Ramdas Kadam (DW-1) it is clear that the deceased had a criminal record. It is further submitted that when the appellant Gabbar Singh noticed that Gyan Singh was sitting along with other prosecution witnesses then it gave a reasonable apprehension in his mind that the deceased might cause harm or injury to him, as a result of which, the right of private defence accrued in favour of the appellant Gabbar Singh.

**18.** The submission made by the counsel for the appellant is misconceived and contrary to law. If the facts of the present case are considered in the light of the well established principle of law with regard to the right of private defence, it is clear that the appellant himself was aggressor. It is not a case of the appellant Gabbar Singh that any of the prosecution witnesses or the deceased were armed with any weapon. Neither any suggestion has been given to any of the prosecution witnesses nor there is any

material available on record to show that after noticing the appellant Gabbar Singh either any of the prosecution witness or the deceased reacted in any manner. No overt act on their part has been suggested or pointed out by the counsel for the appellant. On the contrary, he has fairly admitted that there is nothing on record to show that any of the prosecution witness or the deceased reacted in any manner after noticing the appellant Gabbar Singh. It is submitted by the counsel for the appellant that since the deceased had a criminal record, therefore, that itself is sufficient to raise reasonable apprehension in the mind of the appellant Gabbar Singh to the effect that the deceased may cause injury to him. Here it is not out of place to mention here that Ramdas Kadam (DW-1) in paragraph 4 of his deposition has admitted that the appellant Gabbar Singh is also registered as ante social element in the police station. This admission on the part of the defence witnesses clearly shows that the appellant Gabbar Singh himself has a criminal record, therefore, the contention of the counsel for the appellant that merely because the deceased had a criminal past is sufficient to raise a reasonable apprehension of receiving injury in the mind of the appellant Gabbar Singh is misconceived. Apart from this, it is clear that the prosecution witnesses and the deceased were sitting on a platform out side the temple. If the appellant Gabbar Singh was having any apprehension of the deceased then he should have avoided in going towards that direction. In fact, from the facts and circumstances of the case, it is clear that the appellant Gabbar Singh voluntarily went towards the place where the deceased along with the prosecution witnesses were sitting. Another important aspect is that the appellant Gabbar Singh was carrying a country made pistol

with him whereas all the prosecution witnesses and the deceased were unarmed. Thus, it is clear that the appellant Gabbar Singh himself was an aggressor and there was no reaction from the side of any of the prosecution witnesses or the deceased which may have given a reasonable apprehension of receiving injury in the mind of the appellant Gabbar Singh and thus it is held that no right of private defence had accrued in favour of the appellant Gabbar Singh. The contention of the counsel for the appellant that the appellant Gabbar Singh had acted in exercise of his right of private defence is misconceived and rejected.

**19.** It is further submitted by the counsel for the appellant that considering the manner in which the incident is alleged to have taken place, the act of the appellant Gabbar Singh would fall in Exception 4 of Section 300 and, therefore, the offence would fall under Section 304 Part-I and not under Section 302 of IPC.

**20.** To buttress his contention, the counsel for the appellant has relied upon the judgments of Supreme Court passed in the case of **Daya Nand vs. State of Haryana** reported in **AIR 2008 SC 1823** and **Bunnial Chaudhary vs. State of Bihar** reported in **AIR 2006 SC 2531**. It is submitted by the counsel for the appellant that a single gunshot injury was caused to the deceased and, therefore, it should be held that there was no intention on the part of the appellant Gabbar Singh to cause death of the deceased.

**21.** In the considered view of this Court the manner in which the offence has been committed, the contention of the appellant is misconceived and liable to be rejected. The Supreme Court in the case of **Mohd. Rafique @ Chachu vs. State of West Bengal** reported in **(2009) 3 SCC (Cri) 966** has considered the distinction between Section

299 and 300 and has held as under:-

"20. Thus, according to the rule laid down in *Virsa Singh case* even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

21. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons- being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid."

Similarly, in the case of **Joginder Singh vs. State of Punjab** reported in **(2009) 3 SCC (Cri) 1446**, the Supreme Court has held as under:-

"11. In this case though one pallet was recovered and there was only one injury but that does not on the facts of the case take the offence out of the purview of Section 302 of IPC. It cannot be laid down as a rule of universal application that when there is one shot fired, Section 302 IPC is ruled out. It would depend upon the factual scenario, more particularly, the nature of weapon, the place where the injury is caused and the nature of the injury."

In the case of **State of Madhya Pradesh vs.**

**Shivshankar** reported in **(2014) 10 SCC 366**, it has been held by the Supreme Court as under:-

"9. After due consideration of the rival submissions, we are of the view that the High Court has clearly erred in holding that the offence falls under Section 304 Part-I, IPC. It is clear from the case of the prosecution mentioned above that the accused first slapped the complainant which was followed by verbal abuses and thereafter the accused brought the licensed gun and fired at the deceased, who died. It was, thus, a voluntary and intentional act of the accused which caused the death. Intention is a matter of inference and when death is as a result of intentional firing, intention to cause death is patent unless the case falls under any of the exceptions. We are unable to hold that the case falls under Exception 4 of Section 300, IPC as submitted by learned counsel for the respondent. Exception 4 is attracted only when there is a fight or quarrel which requires mutual provocation and blows by both sides in which the offender does not take undue advantage. In the present case, there is no giving of any blow by the complainant side. The complainant side did not have any weapon. The accused went to his house and brought a gun. There is neither sudden fight nor a case where the accused has not taken undue advantage."

In the case of **Bhagwan Munjaji Pawade vs. State of Maharashtra** reported in **(1978) 3 SCC 330** has held as under:-

"6. We do not think much can be made out of the stray observation of the High Court 'that the appellant had far exceeded his right of private defence'. The circumstances of the case disclose that no right of private defence, either of person or of property, had ever accrued to the appellant. The deceased was unarmed. Exception 2 can have no application. It is true that some of the conditions for the applicability of Exception 4 to Section 300

exist here, but not all. The quarrel had broken out suddenly, but there was no sudden fight between the deceased and the appellant. 'Fight' postulates a bilateral transaction in which blows are exchanged. The deceased was unarmed. He did not cause any injury to the appellant or his companions. Furthermore, no less than three fatal injuries were inflicted by the appellant with an axe, which is a formidable weapon on the unarmed victim. Appellant, is therefore, not entitled to the benefit of Exception 4, either."

**22.** If the facts and circumstances of the case are considered in the light of Sections 299 and 300, it would be clear that the deceased and the prosecution witnesses were sitting together and talking to each other with regard to agricultural activities. They were not armed with any weapon. They did not react after noticing the appellant Gabbar Singh. In fact, Gabbar Singh came to them and started abusing the deceased. The deceased merely asked the appellant Gabbar Singh not to abuse. After hearing this, the appellant Gabbar Singh got aggressive, took out a country made pistol and without there being any retaliation or overt act on the part of either the deceased or any of the prosecution witnesses and without any provocation he fired at the deceased causing injury on his chest. It is also clear that merely because only one gunshot injury was caused to the deceased would not ipso facto take out the case from the purview of murder.

**23.** Considering the facts and circumstances of the case, this Court do not find any perversity in the findings recorded by the trial court in holding the appellant Gabbar Singh guilty for offence punishable under Section 302 and hence findings are confirmed and it is held that the appellant is guilty of committing murder of Gyan Singh.

**24.** So far as the offence committed under Section 504 of IPC is concerned, the trial court did not frame the charge of that offence and in absence of that charge, the appellant could not be convicted of that offence. The trial court has framed the charge under Section 294 of IPC. Offence under Section 294 and 504 of IPC are different in nature. On uttering obscene words any of the citizen present at the spot may feel annoyance but for offence under Section 504 of IPC a particular victim is required to be provoked by abusing him. Hence when both the offences have no similarity, the appellant could not be convicted of offence under Section 504 of IPC within the head of charge under Section 294 of IPC. Hence, the trial court has committed an error of law in convicting the appellant for offence under Section 504 of IPC.

**25.** Now the next question for consideration is that whether the acquittal of the respondents in Criminal Revision No. 284/2003 was in accordance with law or not. With regard to the role attributed to Mantram, it is submitted by the counsel for the complainant that the respondent Mantram had come along with Gabbar Singh and had also abused the deceased, therefore, it is clear that he had conspired with the appellant Gabbar Singh to kill the deceased Gyan Singh. In this context the FIR Ex.P/4 is important. There is a complete omission of the fact that Mantram had also abused the deceased Veer Singh. Similarly in the police case diary statement recorded under Section 161 of Cr.P.C. of Ajab Singh (PW-3) which has been marked as Ex.D/1, there is a complete omission to the effect that Mantram had also abused the deceased. So far as the presence of Veer Singh (PW-4) is concerned the trial court has found to be doubtful at the time of incident. As

regards the evidence of Rajveer Singh (PW-5) to the effect that Mantram had also abused the deceased is concerned, on perusal of his police statement recorded under Section 161 of Cr.P.C. which has been marked as Ex.D/3 it is clear that there is complete omission in this regard. The prosecution has failed to prove that Mantram had participated in the commission of offence either physically or orally. Merely on the basis of presence of Mantram on the spot at the time of incident it cannot be held that he had conspired with appellant Gabbar Singh to kill Gyan Singh. The Supreme Court in the case of **Chanakya Dhibar vs. State of WB** reported in **(2004) 12 SCC 398** has held as under:-

“18 There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See Bhagwan Singh and Ors. v. State of M.P. (2002) 2 Supreme 567. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are



compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra AIR 1973 SC 2622, Ramesh Babulal Doshi v. State of Gujarat (1996) 4 Supreme 167, Jaswant Singh v. State of Haryana (2000) 3 Supreme 320, Raj Kishore Jha v. State of Bihar (2003) 7 Supreme 152, State of Punjab v. Karnail Singh (2003) 5 Supreme 508, State of Punjab v. Pohla Singh (2003) 7 Supreme 17 and Suchand Pal v. Phani Pal JT (2003) 9 SC 17.

The learned counsel for the applicant could not point out any perversity in the finding of the trial court. Further when two views are possible, the one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the deceased is to be adopted.

**26.** So far as the culpability of Sanjay and Bheekm (both acquitted accused persons) against whom the charge was under Section 302 r/w 120-B of IPC is concerned, there is no evidence on record to show that at any point of time these acquitted accused persons had conspired with the appellant Gabbar Singh to kill the deceased Gyan Singh.

**27.** Having considered the evidence available on record against the accused persons Mantram, Sanjay and Bheekam, this Court is of the considered view that they have been rightly acquitted by the trial court and the finding of the trial court in this regard cannot be said to be perverse, hence the criminal revision filed on behalf of the complainant against the judgment dated 5.4.2003 by which the respondents in Criminal Revision No. 284/2003 have been acquitted of the charge punishable under Section 302

r/w Section 120-B of IPC is dismissed. The respondents in Criminal Revision are on bail, their bail bonds and surety bonds are discharged.

**28.** On the basis of aforesaid discussion appeal filed by the appellant is hereby partly allowed, his conviction as well as the sentence of offence under Section 504 of IPC is set aside. However, conviction and sentence of offence under Section 302 of IPC is maintained.

**29.** A copy of the judgment be sent to the trial court along with the record for necessary information.

**(N.K. GUPTA)**  
**Judge**  
**(27.10.2016)**

**(G.S. AHLUWALIA)**  
**Judge**  
**(27.10.2016)**

(alok)