

(1963) 02 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 279 of 1962

Bagicha Singh and others

APPELLANT

Vs

The State and others

RESPONDENT

Date of Decision : 11-02-1963

Acts Referred:

Arms Act, 1959 — Section 19(1), 4
Criminal Procedure Code, 1898 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 323

Citation : (1963) 02 P&H CK 0035

Hon'ble Judges : R.P. Khosla, J; Bedi, J

Bench : Division Bench

Advocate : M.L. Sethi and Dara Singh, for the Appellant; K.L. Jagga, Assistant Advocate-General, for the Respondent No. 1 and Messrs. H.L. Sibal and Satish Sibal, for the Complainant, for the Respondent

Judgement

J.S. Bedi, J.—Bagicha Singh, aged 35, Kartar Singh, aged 25 and Devindar Singh alias Joginder Singh, aged 23, the three Appellants in Criminal appeal No. 279 of 1962, along with Mohinder Singh, brother of Bagicha Singh and Kirpal Singh alias Pritam Singh, brother of Kartar Singh, were sent up for trial under Sections 148, 302/149, 323/149, 323/149 and 324/149, Indian Penal Code, for having formed an unlawful assembly and armed with deadly weapons on the 16th July 1961 at village Ayalki, committed the offences of rioting, murder of Jagir Singh, and causing grievous hurt with sharp-edged weapon to Gujjar Singh P W., simple hurt with blunt edged weapon to Gujjar Singh and simple hurt with sharp-edged weapon to Chanan Singh P. W. in prosecution of common object of that assembly. In the Sessions Court, additional charges u/s 302, Indian Penal Code, against Bagicha Singh, u/s 323, Indian Penal Code, against Mohinder Singh and Kartar Singh, u/s 326, Indian Penal Code, against Kirpal Singh alias Pritam Singh and u/s 324, Indian Penal Code, against Devinder Singh were framed. The trial was held by Shri S. C. Mittal, Sessions Judge, Hissar, who, vide his order dated the 28th February, 1962, acquitted all the accused of the charges under Sections

148, 302/149, 326/149, 324/149 and 323/149 Indian Penal Code. Kirpal Singh alias Pritam Singh accused was also acquitted of the remaining charge against him, while Mohinder Singh accused was given the benefit of doubt and also acquitted. Bagicha Singh was, however, convicted u/s 326, Indian Penal Code, and sentenced to seven years" rigorous imprisonment and a fine of Rs. 500/-, or in default of payment of fine to further undergo rigorous imprisonment for one year. Kartar Singh was convicted u/s 323, Indian Penal Code, and sentenced to one year"s rigorous imprisonment and a fine of Rs. 300/-, or in default of payment of fine to further undergo rigorous imprisonment for three months. Devinder Singh was convicted u/s 324, Indian Penal Code, and sentenced to two years" rigorous imprisonment and a fine of Rs. 400/-, or in default of payment of fine to further undergo rigorous imprisonment for six months. Out of the above fines, if realised, Rs. 400/- were ordered to be paid to Mukhtiar Singh P. W , Rs. 200/- to Gujjar Singh P.W. and Rs. 300/- to Chanan Singh P W. Feeling aggrieved against the above order, the three Appellants mentioned above have preferred an appeal to this Court. On the other hand the State has also filed an appeal (Criminal Appeal No 609 of 1962) against the above order and acquittal of two accused. The learned Sessions Judge further, by separate orders of the same date, convicted Bagicha Singh, Devinder Singh, Kartar Singh and Mohinder Singh u/s 19(1) of the Indian Arms Act and sentenced each of them to six months" rigorous imprisonment. The sentences of the first three were, however, ordered to run concurrently with those passed in the main case Against those orders Bagicha Singh, Devindar Singh, Kartar Singh and Mohinder Singh have preferred Criminal- Appeal Nos. 280, 281, 282 and 283 of 1962 respectively. So, all these matters will be disposed of by this judgment "

2. The story for the prosecution as given by Tara Singh (P. W. 1) and others briefly runs as under: The parties in this case come from village Ayalki in the district of Hissar. Out of the accused Kirpal Singh alias Pritam Singh and his brother Kartar Singh Appellant migrated to this village only 2 or 3 months before this occurrence. Their cousin Jasmer Singh was married to the sister of Devinder Singh accused who was on friendly terms with Bagicha Singh and his brother Mohinder Singh accused. All the accused therefore belonged to the same party. The motive in this cast- is said to be that a couple of days before this occurrence the cattle of Bagicha Singh accused entered the chart field of Jagir Singh deceased and damaged the same. Mukhtiar Singh (P. W. 8), the deceased"s son, drove the cattle away and beat them whereupon Mohindar Singh accused asked Mukhtiar Singh as to why he had driven them out. Mukhtiar Singh P. W. replied that he had done so as the cattle had damaged the chart crop. Mohindar Singh accused thereupon threatened Mukhtiar Singh and told him that they would see to it. Jagir Singh deceased, father of Mukhtiar Singh P. W., on that day was not present in the village.

3. On the day of occurrence, i. e. the 16th July 1961, at about 7 p. m. all the accused turned up at the house of the deceased which adjoins the house of Tara Singh P. W, his brother. Bagicha Singh accused out of them shouted for the

deceased. Tara Singh, however, replied that the deceased was not in the house. After saying so Tara Singh P. W. went out and saw that Mohinder Singh accused was armed with a Gandasi and the rest of the accused carried spears. They then proceeded towards the house of Pritam Singh (P. W. 6). Tara Singh knew that Jagir Singh was listening to the radio in the Baithak of Pritam Singh P. W. He, therefore, became apprehensive and took a different route for the Baithak of Pritam Singh, P. W. Before he reached that house, all the five accused had already reached there. At first Bagicha Singh accused abused Jagir Singh by the mother and challenged him to come out saying that he would teach him a lesson for beating the cattle. Jagir Singh at that time along with Chanan Singh (P. W. 5), Pritam Singh (P. W. 6) and Gujjar Singh (P. W. 7) was listening to the radio at the house of Pritam Singh P. W. He came out at which Bagicha Singh gave a Barcha blow in his abdomen followed by a Gandasi blow on the forehead by Mohindar Singh accused with the blunt side of the weapon. Jagir Singh fell down. Gujjar Singh P. W. intervened and was given a spear blow by Kirpal Singh accused in the abdomen. Kartar Singh accused also gave a spear blow which fell on the hand of Gujjar Singh. Devinder Singh accused similarly caused injury with his spear which fell on the abdomen of Chanan Singh P. W. Pritam Singh and Tara Singh P. Ws. entreated the accused to spare the victim. Bagicha Singh accused thereupon remarked that they had injured those whom they wanted to injure and directed his companions to return home. They then left the place. The injured were removed to the Baithak of Jagir Singh deceased. The accused, however, sat outside the house of Tara Singh, their uncle, in order to prevent any one going for report. Moreover it rained heavily throughout the night and, therefore, the matter could not be reported to the police at night. At about 7.30 p.m. Tara Singh P. W. informed Phulu Ram Sarpanch (P. W. 9) of this occurrence. The Sarpanch came to the Baithak of Jagir Singh met the injured and on enquiry from them was given the details of the occurrence.

4. On the next morning the injured were placed on a cart and taken to the hospital at Fatehabad where they reached at about 10 a.m. The injured were examined by Dr. R. T. Gulati, Assistant Surgeon Fatehabad, on that day. Jagir Singh was examined at 1 p.m. and was found to have the following injuries on his person.

1. One stab wound 1" x (1/2) x 2" deep situated on the left side of the lower abdominal wall, about (1/2)" from the front middle line of the body and 1(3/4)" below and outward to the left of umbilicus. When probe was passed (blunt) it went towards back and inwards to the middle line under the abdominal musculature.

2. One oblique contused wound 2(3/4)"x (1/4)" and bone deep situated on the left side of head involving upper left part of frontal bone and anterior part of the left parietal bone. Injury No. 1 was kept under observation. No. 2 was simple in nature caused by a blunt weapon. Injury No. 1 was caused by some sharp pointed weapon.

5. Gujjar Singh was medically examined by the doctor at 2.15 p. m. and following injuries were found on his person:-

1. One stab wound $1\frac{1}{4}$ " x $\frac{1}{2}$ " and muscle deep situated on the left lower top of abdominal wall starting from the left anterior superior iliac spine of left bone and went downward and inwards to the pubic.

2. One transverse contused wound $\frac{1}{2}$ " x $\frac{1}{6}$ " and muscle deep situated on the dorsum of right hand below the third metacarpal joint of right index finger.

Injury No. 1 was caused by some sharp pointed weapon and was kept under observation. No. 2 was simple in nature caused by blunt weapon and of within 24 hours" duration.

6. On the person of Chanan Singh, who was examined by the doctor at 3.10 p. m., the following injury was noticed:-

1. One slightly oblique stab wound 1" x $\frac{1}{4}$ " and muscle deep situated on the lower part of left side of abdomen about $\frac{3}{4}$ " from the middle line and $2\frac{1}{2}$ " from the symphysis pubic. When blunt probe was passed it went downwards and inwards under the abdominal musculature. The injury was simple in nature caused by some sharp pointed instrument within 24 hours" duration.

7. A ruqqa was sent by the doctor at about 4 p.m. to the police station. On receipt of that ruqqa the police arrived in the hospital and recorded the statements of Gujjar Singh, Jagir Singh and Chanan Singh, the three injured persons, and also of Pritam Singh and Tara Singh P. Ws. On the basis of Chanan Singh's statement the first information report was registered at 4.15 p. m on the 17th July 1961, by Shri Harbans Lal, A. S. I. The Assistant Sub-Inspector then left for the spot accompanied by Pritam Singh P. W. and others and searched for the accused, but they were not traceable in the village. He stayed for the night in the village and on the next morning, i e. on the 18th July 1961, started for Fatehabad in search of the accused. An about 1 p. m. he went to the hospital at Fatehabad where the doctor gave him a ruqqa, Exhibit P. U., telling him that the condition of Jagir Singh was serious and that his statement be got recorded, Shri Harbans Lal A. S. I. thereupon applied, vide Exhibit P. U/1, to Shri Tek Chand Magistrate for recording the dying declaration of Jagir Singh. The Magistrate accordingly went to the hospital and recorded the same in the form of questions and answers, vide Exhibit P. U/3. Nobody at that time intervened or prompted the deceased in making the statement although about 20 or 25 persons were at that time present in the hospital who were probably related to the deceased. Jagir Singh, however, succumbed to his injuries on the 18th July 1961 at 5.30 p m.

8. On the 18th July 1961 Rao Bihari Lal, Sub-Inspector (P. W 22) took over investigation from Shri Harbans Lal A. S. I. On receipt of information that Jagir Singh had expired, he applied to the doctor for performing the autopsy on the dead body of Jagir Singh, Dr. R. T. Gulati performed the post-mortem

examination of Jagir Singh deceased on the 19th July 1961 at 8.00 a. m. and noted the following injuries:

1. One sutured wound 1" x 1/2" on the left side of lower abdominal wall about from the front middle line of the body and If below and outwards to the left of umblicus.
2. One sutured wound 2(3/4)" x 1/4" situated on the left side of the head upper outer part involving the frontal and parietal region.

The death in the opinion of the doctor was due to perforation of small intestines as a result of the stabbing by sharp pointed weapon which caused evacuation of faecal matter into the abdominal cavity leading to peritonitis also. Injury No. 1 was, in his opinion, individually sufficient in the ordinary course of nature to cause death.

9. As the condition of Gujjar Singh was stated to be serious, his dying declaration was also got recorded by Shri Tek Chand Magistrate, vide Exhibit P. U/5, on the 18th July 1961 between 10 and 11 p. m.

10. On the 19th July 1961 Bagicha Singh, Kartar Singh, Devindar Singh and Mohindar Singh accused were produced by Phulu Ram Sarpanch before the Station House Officer in the village school. Rao Bihari Lal S. H. O. arrested and interrogated them in the presence of Inderjit Singh and Jawala Singh P. Ws. Bagicha Singh accused stated that he had concealed a Barchha in the fodder in the courtyard of his residential house and that be could get the same recovered. His statement. Exhibit P. K., was recorded. He then led the investigating party to that place and produced the Barchha P. 4 therefrom. It was bloodstained and was therefore made into a sealed parcel and taken into possession vide memo, Exhibit P. L. Kartar Singh accused was then interrogated by the S H. O. in the presence of the same witnesses, who stated that he had concealed a Barchha under a cot in his house and that he could get the same recovered. His statement, Exhibit P. W., was recorded. He then led the investigating party to that place and produced Barchha P. 8 therefrom. No bloodstains, however, were visible on it, but the same was taken into possession vide memo Exhibit P. M. Similarly Devindar Singh accused on interrogation stated that he had concealed a Barchha in the fodder in his house and that he could produce the same. His statement. Exhibit P. Q., was recorded. He then led the investigating party to his house from where he produced the Barchha P. 5, which was taken into possession vide memo Exhibit P. R. Mohindar Singh accused was interrogated next who stated, vide his statement Exhibit P. S., that he had concealed his Gandasi in the husk of gram lying outside his Kotha and that he could get the same recovered. Thereafter he led the investigating party to that place and produced Gandasi P. 7 from there which was taken into possession vide memo Exhibit P. T. All the above-mentioned disclosure statements and recovery memos were prepared by the Station House Officer and duly attested by Inderjit Singh and Jawala Singh P. Ws. The accused also thumb-marked or signed their

statements The Barchhas recovered were made into sealed parcels and sent to the Chemical Examiner, Punjab Government, and then to the Serologist and Chemical Examiner to the Government of India, for analysis, who found two of them to be stained with human blood. Kirpal Singh accused was arrested on the 23rd July 1961 by the Station House Officer. He was interrogated by Shri Harbans Lal A. S. I. on the 30th of that month in the presence of Baaz, Singh (P. W. 13) and Bhagel Singh (P. W. 14), when he stated that he had concealed a Barchha in the bushes near the field of Kumba Bishnoi and that he could get the same recovered His statement, Exhibit P. A which is on the file of the Arms Act case, and a copy of which is Exhibit P. X., was recorded. He then led the investigating party to that place and produced Barchha P. 6 therefrom which was bloodstained. The same was taken into possession and made into a sealed parcel vide memo Exhibit P. B. on the file of the Arms Act case, a copy of which is Exhibit P. X11 which was attested by Bhagel Singh and Baaz Singh P. Ws. This Barchha was also in due course sent to the Chemical Examiner, Punjab, and then to the Serologist and Chemical Examiner to the Government of India, for analysis and was found to be stained with human blood.

11. After due investigation the accused were sent up for trial. They denied the allegations against them and stated that the case against them was false. With regard to the disclosure statements they stated that their signatures or thumb-impressions were obtained on blank papers by the police. Bagicha Singh stated that he had been involved in this case on account of enmity with Jagir Singh. Mohindar Singh accused stated that on account of enmity with his brother Bagicha Singh accused he had also been involved in this case, and added that he seldom lived in the village. Kirpal Singh alias Pritam Singh accused stated that on the day of the alleged occurrence he was not in the village, and that he had been implicated in this case on account of enmity with Gujjar Singh P. W. Kartar Singh accused also stated that on account of dispute with Gujjar Singh P. W. he had been implicated in this case, and added that on the day of occurrence he had gone to village Ganda from where he returned after the alleged occurrence. Devindar Singh accused stated that he had been implicated because he was in cultivating possession of about 8 Bighas of land belonging to his uncle Pritam Singh P. W. None of the accused, however, produced any witness in defence.

12. The prosecution has examined a number of witnesses but the most important ones who have given the ocular version of the prosecution story are Tara Singh (P. W. 1), Chanan Singh (P. W. 5). Pritam Singh (P. W. 6) and Gujjar Singh (P. W. 7). Out of these eye-witnesses Chanan Singh and Gujjar Singh bear injuries on their persons. Their presence therefore at the spot is conclusively proved. Pritam Singh (P. W. 6) is admittedly the uncle of Davinder Singh accused. Tara Singh P. W. is no doubt the brother of the deceased, but that alone is no ground for looking at his evidence with suspicion. None of these eye-witnesses bears any grudge or animus against any of the accused, nor they seem to be interested in the deceased, except Tara Singh P. W. Under the circumstances, there is no reason whatsoever why their sworn testimony should not be accepted as correct.

The criticism levelled by the learned defence counsel against Tara Singh P. W. is firstly that he is the brother of the deceased, and secondly that there was no occasion for him to go to the Baithak of Pritam Singh at the crucial time. Tara Singh P. W., however, has given a convincing explanation that he knew that the deceased had gone there and that when the accused came outside the house of Jagir Singh and shouted for the latter, he came out and saw them armed with deadly weapons. On seeing the accused he became apprehensive and in order to inform Jagir Singh of the ill designs of the accused ran as fast as he could to the Baithak of Pritam Singh. The defence counsel also contended that Tara Singh P. W. probably reached the spot after this occurrence and in that connection he referred me to the dying declaration of Jagir Singh. A perusal of Jagir Singh's dying declaration, Exhibit PU/3, however, falsifies the above contention of the defence counsel. It is clearly mentioned therein that Tara Singh also arrived at the spot at the time of this assault, He also drew our attention to the dying declaration of Gujjar Singh P. W., but the latter did state in Court that Tara Singh was present at the time of the assault. The witness was confronted with his dying declaration. Exhibit PU/5. The learned Sessions Judge was of the view that his dying declaration also showed that Tara Singh reached the spot late. I have also gone through the dying declaration of Gujjar Singh, where it is stated that Tara Singh along with Pritam Singh separated the parties. It is, therefore, obvious that Tara Singh was present at the time of this assault at the spot. The learned Sessions Judge was, therefore, not correct in remarking that the dying declaration supported the argument of the defence counsel.

13. another circumstance which according to the defence counsel makes the presence of Tara Singh at the spot at the time of this occurrence doubtful is the absence of injuries on his person, but it appears that Tara Singh did not bodily intervene and only kept on entreating the accused to refrain from the assault. Moreover the real grouse of Bagicha Singh and other accused was not against Tara Singh P. W. but against Jagir Singh and his family and that also was due to the fact that Bagicha Singh's cattle were turned out from the field of Jagir Singh by the latter's son Mukhtiar Singh a couple of days or so before this occurrence. All the P. Ws. including Pritam Singh, who is admittedly an uncle of Davinder Singh, have vouchsafed about the presence of Tara Singh at the spot at the crucial time.

14. another argument raised by the defence counsel against Tara Singh P. W. was that the marriage of Davinder Singh's sister had taken place on the 8th July 1961 with one Jasbir Singh, but according to Tara Singh P. W. that marriage took place a couple of months or so before and thus he suppressed the truth. This argument was advanced on the strength of the application marked "B" which Tara Singh son of Labha Singh made to the Tehsildar, Fatehabad, to obtain permission to use loudspeaker in connection with the marriage of his son Jasbir Singh which was to fall on the 8th July, 1961. The explanation of Tara Singh and other witnesses, however, was that Devindar Singh accused's sister was to be married to one Jasmer Singh and not Jasbir Singh. This application does not

show that the marriage of Jasbir Singh was to be celebrated with the sister of Devindar Singh. It may be that this marriage also took place in the village on the 8th July, 1961, but it cannot be said that the same was in connection with Devindar Singh's sister. May be the sister of Devindar Singh was married to Jasmer Singh two or three months before this occurrence.

15. another circumstance which according to the defence counsel shows that Tara Singh P. W. is a liar is that when questioned Tara Singh denied that Hazura Singh accompanied the injured to the hospital, while it has been proved so by Exhibit P. A , the medico-legal report of the doctor. It may be that Hazura Singh arrived at the hospital later and did not accompany the injured from the village. At any rate, these are very minor matters and have hardly any bearing on the facts of this case. I have, therefore, no doubt that Tara Singh was present at the spot at the time of this occurrence. Even if for the sake of arguments we hold that Tara Singh reached there later, still the evidence of the other eye witnesses, namely, Gujjar Singh, Chanan Singh and Pritam Singh clinches the issue. They are entirely disinterested witnesses and their presence at the spot is established, more so by Pritam Singh P. W. who is the uncle of Devindar Singh accused. There is, therefore, no reason why Pritam Singh should support the prosecution story when no animus against him is established by any of the accused.

16. The next argument advanced by the defence counsel was that the first information report in this case was belated. He submitted that the occurrence is alleged to have taken place at about 7 p.m. on the 16th July 1961. The distance between the police station and village Ayalki is about 5 miles and yet we find that the report in this case was not recorded earlier than 4.15 p.m. on the next day. This argument also, in my opinion, has little force for the reason that it is abundantly proved on the record that an hour or so after this occurrence it started raining heavily which continued till the next morning. It is also in evidence that no tempo, bus or truck was available at that time of the night. Under the circumstances Tara Singh could not- have removed the injured on that night immediately after the assault. They, however, left the village on the next morning at about 8 a.m. on a cart and reached Fatehabad hospital at about 10 a.m. The injured were immediately examined. It is true that Dr. Gulati has made somewhat contradictory statements as to when he examined the injured and when he sent their medico-legal reports to the police. But that confusion on his part does not adversely affect the prosecution case. According to the defence counsel all this time was taken by Tara Singh and others to manipulate the steps which they should take in this case. This argument would have had some force if the previous relations of the parties were strained, but that is nobody's case. This delay, if at all, becomes immaterial when we find that about half an hour after this assault Tara Singh gave the information to Phulu Ram Sarpanch and also its details. Phulu Ram then came to the Baithak of Jagir Singh and made enquiries about this occurrence. Phulu Ram was told by the injured as to how this assault was perpetrated on them. Phulu Ram Sarpanch has corroborated the first information report and other ocular evidence in this case. There is nothing

on the record whatsoever to show that Phulu Ram is an interested witness. In fact no allegation by the accused is levelled against him. The testimony of Phulu Ram, who is a Sarpanch and a disinterested witness, goes a long way against the accused.

17. In the appeal filed by the State against the acquittal of Kirpal Singh alias Pritam Singh and Mohindar Singh accused, notice was issued against Kirpal Singh accused only and not against Mohindar Singh. One of the reasons which the Sessions Judge gave for acquitting Kirpal Singh accused was that in the first information report neither Kirpal Singh's parentage was given nor it was stated that he was the brother of Kartar Singh accused, and that if Kirpal Singh was there, these facts should have been given in the first information report. The second reason given by the learned Sessions Judge while acquitting him was that the house of Gurbakhsh Singh, father of Kirpal Singh accused, is situated on the back of the house of Gujjar Singh P. W., and that if this accused was one of the assailants, there was no reason why his full particulars were not given in the first information report, particularly when Chanan Singh P. W. stated that he knew before this occurrence that Gurbakhsh Singh lived in the house at the back of Gujjar Singh's house and that he knew him by face then. The learned trial Judge has also remarked that Chanan Singh is a clever witness. The Sessions Judge, however, it appears did not read the first information report carefully. It is stated in the first information report that "Bagicha Singh son of Bir Singh, Kartar Singh and Kirpal Singh sons of unknown Jat Sikh, Devindar Singh son of Chanan Singh * * * came together outside in front of the Baithak." It is clear, therefore, that Kartar Singh and Kirpal Singh are mentioned in the first information report as brothers. It is true that it is not stated in clear words that Kirpal Singh and Kartar Singh are brothers, but if they are the sons of the same father, one can arrive at the conclusion that they are. It is possible that a witness may know the name of a person but not that of his father although they happen to be neighbours. Moreover there is no evidence whatsoever on the record to show that there was any other Kirpal Singh living in village Ayalki. However if we once come to the conclusion that the eye-witnesses are entirely disinterested and true, particularly Pritam Singh P. W. who is related to Devindar Singh accused, there is no reason whatsoever why their sworn testimony should not be relied upon. From their statements it is crystal clear that it was Kirpal Singh alias Pritam Singh Appellant, brother of Kartar Singh accused, who took part in this assault. It is true that the evidence of the recovery of spear from Kirpal Singh is held to be doubtful, but in my opinion the evidence of the eye-witnesses in this case conclusively proves the case regarding Kirpal Singh's participation in this assault.

18. Now the next point which we have to consider is as to what offence the accused have committed, and whether Section 149 or Section 34 of the Indian Penal Code along with Section 302, Indian Penal Code, would apply to this case. Lengthy arguments were advanced on this point. The learned Counsel for the State submitted that the accused -in this case were armed with deadly weapons such as spears and a Gandasi. They belonged to the same party and were

friendly with Bagicha Singh accused who had animus against Jagir Singh and his family. They came fully armed to the house of Jagir Singh and asked him to come out. When they were told that he was not there they followed the deceased at the Baithak of Pritam Singh P. W. thinking that he would probably be there as the villagers at that time of the evening usually went to his Baithak to listen to his radio. There was one radio set in the houses of the Jats which was with Pritam Singh P. W. and the other was with Bishnois, The accused on reaching there Shouted for Jagir Singh to come out and then opened the assault on him. The number of injuries given to him were two-one on the head and the other on the abdomen-both on vital parts, the one given in the abdomen proved fatal and was sufficient in the ordinary course of nature to cause death. He submitted, therefore, that under the circumstances it is crystal clear that the accused came there armed with the set purpose of settling scores for ever with Jagir Singh. If their intention was only to remonstrate or express their disapproval, they could have come there unarmed or at the most might have carried sticks. For the above reasons the case would fall under clause "thirdly" of Section 300, Indian Penal Code. Now, according to this clause culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. The defence counsel on the other hand submitted that although these circumstances are there, but we cannot definitely say that the intention of the accused was to commit murder of Jagir Singh and that if they had any such designs not only Bagicha Singh or Mohindar Singh would have remained contended by causing injuries to the victim but the other accused, namely, Kartar Singh, Devindar Singh and Kirpal Singh would also have assaulted Jagir Singh their principal enemy. This argument, however, is neither here nor there. The only point which we have to see is whether the fatal injury caused to the victim, Jagir Singh, was with the intention of causing the same and whether it was sufficient in the ordinary course of nature to cause his death. What we find from this section is that the prosecution has to prove the following fact's before it can bring a case u/s 300 "thirdly":-First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, fourthly, it must be proved that the injury of the type, just described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of ,nature. The evidence before us is quite clear that Bagicha Singh aimed the blow in the abdomen of Jagir Singh and succeeded in causing the injury. There is nothing on the record to show that he intended to cause some other injury but by some accident or otherwise the one in question was caused. He is, therefore, clearly guilty of the offence of murder u/s 302. Besides we find that Gujjar Singh and Chanan Singh P. Ws. also have their injuries in the

abdomen which is the most vital part of the body.. Although these injuries were simple, it cannot, however, be said that the intention of the accused was to cause simple injuries only. It just happened that the victims probably receded back or otherwise tried to escape and only the tip of the weapons of the assailants touched their abdomen. There is also no doubt that the injury on the person of Jagir Singh deceased was sufficient in the ordinary course of nature to cause death. The contention of the State counsel therefore is correct, and must prevail.

19. The defence suggestion was that the Muklawā ceremony of Devindar Singh accused's sister had taken place on the day of occurrence which was being celebrated by the accused and the deceased besides some P. Ws. and that during the festivities some altercation took place which led to exchange of blows between them in a drinking drawl, but it could not be said who hit whom. While supporting this suggestion the defence counsel submitted that although injuries to Gujjar Singh and Chanan Singh P. Ws. were caused in the abdomen yet those were simple, which shows that the attack was feeble and that could only be if the assailants were under the influence of drink. The suggestion on the face of it seems to be fallacious. Firstly, if there was any exchange of blows, as now suggested, the accused who are said to be drunk at that time could not have escaped without receiving a single injury. Secondly, there is nothing on the record to show that the Muklawā ceremony of the sister of Devinder Singh accused took place on the day of occurrence or even a day before, nor is there any evidence that the parties were in fact drinking together. Thirdly, if such festivities in fact took place, those should have been in the house of Devindar Singh accused, whose sister's Muklawā ceremony is alleged to have taken place, and not in the Baithak of Pritam Singh or outside it. It is in evidence that in the Baithak of Pritam Singh P. W. a number of villagers come to listen to the radio. That place therefore would be the last one where celebrations of that type could have taken place. Regarding the second argument, it is true that injuries in the abdomen caused to Gujjar Singh and Chanan Singh P. Ws were simple, but they were fortunate in escaping with these minor injuries. It is likely that at the time of assault the victims receded back and thus the aim of the assailants did not have full effect. If the suggestion was true, there is no reason why the accused in this case were unable to examine a few God fearing men from the village to support their case, but they have utterly failed to do that. Moreover if the facts were, otherwise the accused or any one of their friends or relations would have immediately run to the police station and lodged a report earlier than the one lodged in this case by the accused, or a counter one a little later. None of the accused in this case has taken this plea when examined u/s 342, Criminal Procedure Code. It is clear, therefore, that the suggestion remains just a suggestion and nothing more ; hence it is rejected.

20. The learned defence counsel then submitted that the injury to Jagir Singh was alleged to have been caused on the 16th of July 1961 at about 7 p.m. although the deceased expired at 5.30 p. m. two days later. It was, therefore, possible that some other complications were set in which resulted in Jagir

Singh's death, but no question was put to the doctor on that point. The evidence of the doctor is crystal clear that injury No. 1 was sufficient in the ordinary course of nature to cause death, and the description of the injury itself even to a layman shows that the doctor was quite correct in stating so. The State counsel in support of his contention cited *Virsa Singh v. State of Punjab* AIR 1958 S.C. 365.

21. The next point, therefore, which requires consideration is whether the case of the accused other than Bagicha Singh would fall u/s 302 read with Section 149, or u/s 302 read with Section 34, Indian Penal Code, Before applying Section 149 the Court must find with certainty that there were at least five persons sharing the common object. It is, however, not essential that five persons must always be convicted before Section 149 can be applied. Where it is possible to conclude that though five persons were unquestionably at the place of offence the identity of one or more is in doubt the conviction of the rest with the aid of the section would be good. In the present case we find that although an appeal against the acquittal of Mohindar Singh as well was filed by the State, but the Bench admitting the appeal only issued notice against Kirpal Singh alias Pritam Singh, and not against Mohindar Singh. Under the circumstances, taking into consideration the view propounded in *Dalip Singh and Others Vs. State of Punjab*, *Bharwad Mepa Dana and Another Vs. The State of Bombay*, and *Kartar Singh v. State of Punjab* AIR 1961 S.C. 1787, I am of the opinion that Section 149, Indian Penal Code, would not be applicable in this case, but the proper section under which the three remaining accused can now be convicted would be Section 302 read with Section 34, Indian Penal Code.

22. The defence counsel submitted that the accused were not charged u/s 302 read with Section 34, Indian Penal Code, but this matter has been clinched in *Kartar Singh v. State of Punjab* A I. R.1961 S. C. 1787. As already mentioned, the defence counsel also stated that if the other accused shared the common intention with Bagicha Singh, they also would have showered blows on the deceased, but this argument is fallacious for the reason that it is not necessary for all the accused to cause injuries to the main victim. It is enough if the other accused are there to help the principal accused in perpetrating the offence. In the present case we find that Kirpal Singh, Kartar Singh and Devindar Singh accused kept Chanan Singh, Gujjar Singh, Pritam Singh and Tara Singh P. Ws. at bay and did not permit them to interfere and in doing so caused injuries to Gujjar Singh and Chanan Singh and those also on the vital parts of their bodies. It was a providential escape for Gujjar Singh and Chanan Singh that the spears which caused injuries in their abdomen did not penetrate further. The case against the accused is further, to some extent, corroborated by the recovery of weapons at their instance. There is, therefore, no escape from the conclusion that the proper section under which the four accused should be convicted is Section 302, read with Section 34, Indian Penal Code.

23. As mentioned in the beginning of this judgment Mohindar Singh, Kartar

Singh, Devindar Singh and Bagicha Singh have also filed appeals against their conviction under the Arms Act. The evidence against them consists of the statements of Jawala Singh and Inderjit Singh P. Ws. besides Rao Bihari Lal Sub-Inspector. The details of these recoveries are already given above. In fact the defence counsel was unable to advance any convincing argument against these recoveries. Out of the three P. Ws. mentioned above, only Inderjit Singh could at the most be said to be friendly with the deceased, but there is nothing on the record to show that he had any grudge or ill will against the accused. At any, rate there is nothing against Jawala Singh and Rao Bihari. Lal P. Ws. as to why their statements in the cases against Bagicha Singh, Mohindar Singh, Kartar Singh and Devindar Singh should not be relied upon. Their conviction seems to be proper and so also the sentence under the Arms Act. In the case of Mohindar Singh, however, the defence counsel submitted that the Gandasi, which is alleged to have been recovered from him, does not fall within the definition of "arms" as given in Section 4 of the Indian Arms Act, 1878 According to the above section, "arms" includes fire-arm. bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arm. This section does not include Gandasi amongst arms The above definition, however, is not exhaustive. The counsel further submitted that it is always the purpose for which an implement is primarily used which determines the question whether it does or does not fall within the definition of "arms". Implements or articles primarily intended for domestic or agricultural use are not arms under the Act and takwas fall under the former category, and in this connection cited AIR 1940 468 (Lahore) He also cited Emperor v. Satish Chandra Roy I. L. R. 1907 34 Cal 749, and submitted that neither the length, breadth or the form of the blade of a weapon, nor the handle afford any certain test of its classification as "arm". Whatever can be used as an instrument of attack or defence, or cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, falls within the purview of the Act. The State counsel submitted that the Gandasi is also a deadly weapon and is as dangerous as a spear. We have seen the Gandasi in question. In my view it is immaterial whether a weapon is effective enough to cause the death of the opponent and, if it does so, it must fall within the definition of arm. If this view is held, it would then amount to this that even a pen-knife or a sickle, or an ordinary Takwa or Gandasi used in the kitchen and for other household purposes must be held to be an arm under the Arms Act, but that view would, in my opinion, be preposterous. The main thing we have to set is the one laid down in the above authorities, i. e. as to what is the primary object or purpose of a particular weapon. If it is meant for domestic use or other such allied matters, it cannot be held to be an arm within the purview of the Arms Act. As far as this case is concerned there is no evidence that the weapon could not be used for agricultural or domestic purposes. The matter, however, is not free from doubt. Mohindar Singh accused therefore, is given the benefit of the doubt and acquitted under the Arms Act case. Kirpal Singh alias Pritam Singh accused has already been acquitted by the Court below in the case under the Arms Act and there is no appeal by the State

against his acquittal in that case.

24. The result is that the conviction and sentence of the other three accused, namely, Bagicha Singh, Devindar Singh and Kartar Singh under the Arms Act stands, and their appeals against the same are dismissed.

25. As regards the main case, the conviction of Bagicha Singh Appellant is altered to one u/s 302, Indian Penal Code, and that of Kartar Singh, Devindar Singh and Kirpal Singh alias Pritam Singh Appellants to one u/s 302/34, Indian Penal Code. Taking, however into consideration all the facts and circumstances of this case, we feel that the lesser sentence of imprisonment for life in case of all the four accused, namely, Bagicha Singh. Kartar Singh, Devindar Singh and Kirpal Singh alias Pritam Singh, would meet the ends of justice, and we order accordingly. Consequently, with this modification in the convictions and sentences of the accused, the State appeal is allowed to the extent indicated above and the appeal filed by the Appellants (Criminal Appeal No. 279 of 1962) is dismissed. Sentences to run concurrently.

R.P. Khosla, J.

26. I agree.