

(1982) 01 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 129 of 1979

Dev Raj and Others

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 05-01-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 307, 323, 34

Citation : (1982) 11 ILR HP 81

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : A.S. Sukhaja and M.G. Chitkara, for the Appellant; K.C. Rana and K.D. Sud, for the Respondent

Judgement

V.D. Misra, C.J.—This appeal is directed against the judgment of Sessions Judge, Hamirpur, convicting the Appellants under Sections 302/34, 307/34 and 452 of the Indian Penal Code and sentencing each of them to imprisonment for life under the first count, to rigorous imprisonment for five years under the second count, and to rigorous imprisonment for three years under the third count.

2. Panditu Ram was in possession of two kanals of land in the area of village Dhakawa. He allowed his "sala" (brother-in-law) Ram Chand deceased to set up a saw mill on this land (one of the accused is also named Ram Chand). A nominal rent was charged. Ram Chand deceased set up a flour mill, rice sheller, and a kohlu. These machines were covered by a temporary shed. A machine for sawing wood was also put up by him. This was fixed on one side of the shed. Ram Chand accused disputed the right of Panditu Ram over the land. The result was civil and criminal litigation.

3. Panditu Ram had two sons. One was Pritam Chand deceased and the other is Ramesh Chand P.W. Pritam Chand used to work in the saw mill. Ramesh Chand used to work as a driver with a transport company. He was living at Kalka.

4. On 28th March, 1979, Ramesh Chand made an application Ex. PP to Shri Ajeet Lal Sharma, Divisional Forest Officer, Hamirpur (D.F.O.). Ramesh Chand reported that Des Raj and Ram Chand accused had been illicitly felling chil trees and that logs of various descriptions had been unloaded at the saw mills of Bhagwan Dass and Dhian Singh in Shukar khad at about 11.00 A.M. on 25th March, 1979. The D.F.O. asked Ramesh Chand to come to Bhagwan Dass's saw mill the following day. Next day (i.e. 29th March) the D.F.O. went to Shukar khad-He first checked the saw mill of one Dhian Singh and found that he was not maintaining any register. 20 logs were reported to be of Des Raj accused at that saw mill. Then the D.F.O. checked the saw mill of Bhagwan Dass. Here he met Ramesh Chand. It was found that 86 logs were lying at Srola nallah. Logs lying at the saw mill were also counted. 70 logs were reported to be of Des Raj accused. Necessary action was taken against both the mills and the mill owners were directed not to release the logs belonging to Des Raj accused.

5. In the evening of 29th March, 1979, Ramesh Chand went to the saw mill of his maternal uncle Ram Chand deceased. His brother Pritam Chand as well as Ram Chand were present there. Bakshi Ram, an employee of Ram Chand, was also present. At about 8.00 or 9.00 P.M. they were sitting by the chulah. The mill had electricity. The bulbs fixed inside and outside the mill had been switched on.

6. It is the case of the prosecution that Ram Chand accused along with his three sons Des Raj, Dev Raj and Hem Raj came there. They started abusing Ram Chand deceased by calling him "gunda, badmash" who had informed against them to the D.F.O. The deceased was asked to come out so that he could be taught a lesson. The deceased told them not to fight but to take recourse to law. At this stage, it is alleged, Des Raj and Dev Raj accused picked up iron pipes lying there while the other two accused picked up wooden phattis. All of them are stated to have opened their attack on Ram Chand, Pritam Chand and Ramesh Chand. Dev Raj and Des Raj are stated to have hit Ram Chand and Pritam Chand on the head with their respective iron pipes. Dev Raj is stated to have also hit Ramesh Chand on the head with his pipe. The other two accused are alleged to have entered the gate and started giving phatti blows. Bakshi Ram saved himself by hiding at the back of the flour mill machine. The whole incident lasted for about 15 to 20 minutes. All the three injured fell down unconscious and the accused left the place leaving behind their pipes and wooden phattis.

7. Soon after the incident one Suresh Kumar P.W. arrived at the mill to get his maize grinded. Bakshi Ram took the maize from him and asked him to go and send Panditu Ram from the village. Suresh Kumar accordingly informed Panditu Ram at about 9.00 P.M. Panditu Ram came to the mill. He found both his sons as well as his "sala" lying injured on the pucca floor inside the mill. Bakshi Ram apprised him of the incident. Panditu Ram started weeping. He was shocked at what he saw. After sometime Panditu Ram thought of bringing some responsible man from the village. He went to the house of Shri Durga Singh, Pradhan of Badahan. But the Pradhan was not in the house. However, his brother Rattan

Singh was there. Panditu Ram brought Rattan Singh to the mill. It was decided to shift the injured to the hospital. Bakshi Ram and Ramesh Chand were sent to procure a truck. After sometime a truck was brought. The injured were put in the truck and taken to the nearest hospital which was a primary health centre at Bhotta. Panditu Ram was left behind at the mill.

8. It was about 4 or 5 A.M. when they reached the hospital. Dr. C.L. Bhardwaj (P.W. 14) was there. He examined the injured between 5.00 A.M. and 5.30 A.M. On the person of Pritam Chand the doctor found the following injuries:

1. Scalp: (i) Crushed lacerated wound 1 cm posterior to the frontal hair line 2 cm x 1 cm with clotted blood.

(ii) Bruise just near the hair line on forehead on the right side.

(iii) Depressed boggy in frontal region on the left to middle line 3 cm posterior to hair line.

2. Right Hand:

(i) Lacerated wound distal phalanx 2cm x 5mm middle finger.

(ii) Crushed wound 1 cm, ring finger just on the distal and middle phalanx.

(iii) Index finger pricked by a wooden piece, middle phalanx.

3. Left Lower Limb:

(i) Abrasion just above the knee.

The injured was advised X-Ray of his scalp. The diagnosis was "Head injury with intracranial haemorrhage with paraplegia". The doctor noticed that Pritam Chand was unconscious. He could not move any limbs. The only sensation left was the feeling of the pricking. The doctor's report about the injured is Ex. PT. Pritam Chand expired soon thereafter at Bhotta hospital.

9. Ram Chand injured was found by the doctor to be semi-conscious, crying, violent and restless. He was abusing and talking irrelevantly. The following injuries were found on his person:

1. Lacerated wound scalp 5 cm x 5 mm, 10 cm from the frontal hair line.

2. Subapponurotic hematoma with black eye right side.

3. Fracture proximal phalangeal bone of right middle finger with dorsal lacerated wound. Stitched in one stitch.

4. Abrasions on the left leg.

The patient was advised for X-Ray skull.

The diagnosis was "Head injury with hemiplegia left side with fracture right middle finger proximal phalanx." Medicolegal report about this injured is Ex. PU.

10. Ramesh Chand injured was found conscious but drowsy. Left side of his face was found soiled with blood. The following injuries were found on his person:

1. 6 cm x 1/2 cm skin deep lacerated wound in parietal area 17 cm from the frontal hair line bifid anteriorly with clotted blood.
2. Arcuate lacerated wound 12 cm from frontal hair line 4 cm x 1/2 cm skin deep in frontal area with clotted blood.

Left Arm:

Bluish discolouration in the middle of left arm transversely with tenderness.

Back:

Multiple linear cross bruises marks on the back from scapular region to the sacral region varying from 3 to 5cm in width with central pale portion and edges bluish.

The patient was advised X-Ray of skull and left arm A.P. and lateral view.

Ex. PV is the medico-legal report. The doctor referred the surviving injured, that is Ram Chand and Ramesh Chand, to Civil Hospital, Hamirpur.

11. Though the patients were referred to Civil Hospital, Hamirpur, no conveyance was easily available. The result was that it was 2.10 P.M. when Ramesh Chand and Ram Chand injured reached this hospital. Ramesh Chand remained under treatment in this hospital. He was discharged on 6th May, 1979. X-Ray of the skull of Ramesh Chand showed a fracture of the left temporal bone. But Ram Chand's condition became grave and he was transferred to P.G.I. hospital Chandigarh on 3rd April, 1979, at about 3.00 A.M. He died the same day at 12-noon.

12. The doctor opined that injuries found on the persons of the three injured could be caused by iron pipes.

13. Dr. C.L. Bhardwaj (P.W. 14) examined Dev Raj and Des Raj accused between 9.00 and 9.30 A.M. on 30th March, 1979. Dev Raj accused was found conscious and walking. However, whole of his scalp was found smothered with clotted blood. No history of unconsciousness, vomiting and headache was given to the doctor who was told that the patient had come to the hospital on foot. The following injuries were found on the person of Dev Raj:

1. Scalp: incised wound in occipito-parietal area elliptical in shape. Maximum dimensions are 8 cm x 1 cm x 5 cm, 12 cm from left mastoid process. Wounds stitched in 8 stitches. No other scalp injury was found.
2. Right shoulder: Bruises irregular in dimensions.
3. Left thigh: bruises in transverse direction. Incised wound scalp with multiple bruises.

The doctor was of the opinion that all the injuries were simple in nature and their

probable duration was less than 24 hours. It was also opined that injury No. 1 was caused with sharp weapon while the other injuries were caused with blunt weapon. Medico-legal report in respect of Dev Raj is Ex. PW. The injured was advised admission but he refused to be admitted.

14. Des Raj was found conscious having walked to the hospital. The following injuries were found on his person:

(A) Incised wounds in occipito-parietal area.

(1) 6 cm x 1/2 cm x 1/2 cm antero posteriorly elliptical 10 cm from right mastoid process.

(2) 5 cm x 1/2 cm x 1/2 cm antero posteriorly elliptical 8 cm from left mastoid process.

(3) 4 cm x 1/2 cm x 1 1/4 cm antero posteriorly elliptical 10 cm from left mastoid process.

(4) 4 cm x 1/2 cm x 1/4 cm antero posteriorly elliptical 12 cm from right mastoid process.

B. Left forearm:

Abrasion on the lateral and posterolateral aspect.

Left Shoulder:

5 cm x 1 cm abrasion 2 x 1/2 cm from clavicle nearest point in scapular area.

Back:

1 x 1-1/2 cm abrasion on the back just at the iliac crest 21 cm from the mid line.

Right Arm:

Abrasions.

Multiple incised wound on scalp with abrasions.

In the opinion of the doctor all the injuries were simple in nature and of less than 24 hours duration. Injuries at (A) were found to have been caused with sharp-edged weapon whereas the rest of the injuries were found to have been caused with blunt weapons. Des Raj was also advised admission but he refused. The medico-legal report of this injured is Ex. PX.

15. Now, Dr. Bhardwaj sent a ruka Ex. P-AA from Bhatta dispensary to Police Station Hamirpur reporting about the injured having been brought to the hospital. This ruka reached the police station at 12 noon. A.S.I. Pritam Singh (P.W. 28) left the police station and reached Primary Health Centre Bhatta, at 3.00 P.M. Before he could start investigation, District Inspector Hari Singh (P.W. 29) reached the dispensary at 3.30 or 3.45 P.M. The Inspector started the investigation. Bakshi Ram returned from Civil Hospital Hamirpur to Bhatta

dispensary. His statement Ex. PA was recorded at 5.00 P.M. It was sent to the police station and the formal first information report Ex. P-AK was recorded at 6.00 P.M.

16. Inspector Hari Singh took over the investigation. He held an inquest on the dead body of Pritam Chand. The inquest report is Ex. PAX. The dead body was sent for postmortem examination. He also arrested Des Raj and Dev Raj accused. On 31st March, 1979, he visited the scene of crime. A rough site plan Ex. PAY was prepared. Blood stained rice husk and saw dust found inside the mill were taken into possession. Two iron pipes as well as two wooden phattis were also taken into possession as weapons of offence. One of the iron pipes appeared to be blood stained. One of the wooden phattis also appeared to be blood stained. The blood stained iron pipe and wooden phatti were produced from inside the mill whereas the other iron pipes and wooden phattis were produced from outside the mill by Bakshi Ram. These were duly taken into possession. The scene of crime was also photographed. Injury statements of the two accused were prepared and they were sent for medical examination. Statement of Ramesh Chand was recorded on 7th April, 1979, when he was declared fit by the doctor. The blood stained articles as well as the blood stained earth were sent for chemical examination. The Chemical Examiner found blood on these articles sent to him.

17. The postmortem examination was conducted on the dead body of Pritam Chand by Dr. P.S. Dogra (P.W. 25) on 31st March, 1979. He found the following injuries:

1. There was bruise 10" long x 3/4" wide reddish blue in colour on the edges and pale in centre on the left thigh on antero lateral aspect in the middle.
2. Bruise 3" long 3/4" wide reddish blue in colour on the edges and pale in centre on the right thigh in the antero medial aspect in the lower one-third of the thigh 6" above the right knee joint.
3. Lacerated wound on the distal phalanx of middle finger 3cm x 1/2 cm in size on left hand. Blood staining present.
4. Lacerated wound 1 cm x 4 mm with crushed edges 1 cm behind the left brow line.
5. Depressed bogginess in frontal region on the left side of mid line 3 cm behind the brow line.

Examination of scalp, skull and vertabrae showed that scalp was swollen, more on the right side. On dissection all the layers of scalp were infiltrated with blood.

Examination of skull showed fracture extending from the middle (inter parietal suture) extending along right fronto parietal suture for 3" and then on parietal bone for 2". On left side it extended from middle on to frontal bone in a curved and then along the fronto parietal suture for 1" and then passing on the left

temporal bone.

18. In his opinion the cause of death was neurogenic shock and cardiorespiratory failure due to injury to brain and shock due to internal haemorrhage in the left lung. The probable time that elapsed between injury and death was about 12 to 24 hours and between death and postmortem about 24 hours. According to the doctor, head injury in this case was sufficient in the ordinary course to cause death. The injury could be caused by iron pipe. His report is Ex. PAU.

19. The postmortem examination on the dead body of Ram Chand was conducted on 4th April, 1979, at P.G.I. Chandigarh by Dr. Inderjit Dewan (P.W. 6). He found the following injuries:

1. A lacerated (stitched) wound 6 cm long on the right side of scalp 9 cm above right pinna and 4 cm rt. of middle line starting 18 cm above nasion. The wound had a contused area, dark blue in colour around the wound. It had variable width which was from 1/2 to 1 cm on the left side of wound and 1/4 to 1/2 cm on rt. of wound. The wound was deep upto bone which was fractured underneath. The wound was partially healed and was 1/4 to 1/2 cm wide on opening the stitches.
2. A stitched lacerated wound 1/2 x 1/4 cm on dorsum of 1st Phalanx of rt. middle finger.
3. An oblique abrasion 3x5 cm on anterolateral side of rt. forearm 5 cm above wrist.
4. Four abrasions 2x 1 cm, 1x1 cm, 1/2 x 1 cm, 1/2 x 1 cm on back of rt. elbow.
5. Abrasion 1.5x1 cm, on back of left forearm 3 cm below elbow.
6. Abrasion 1.5 x 1 cm on middle of left chin.
7. Abrasion 4x2 cm on outer aspect of left leg 4 cm above ankle.
8. Abrasion 1/2 x 1/2 cm on left tibial tuberosity.
9. Abrasion 1/2 x 1/2 cm in front of rt. knee.
10. An oblique abrasion 3x1 cm on back of upper part of rt. hip.
11. Two abrasions 1 x 1 cm and 1/2 x 1/2 cm on middle of left hip.

Fracture of skull under injury No. 1:

An antero-posterior fracture 16 cm long starting from middle of rt. supra-orbital margin extended upwards and backwards and slightly medially to reach a point 3cm from middle line and 5 cm above right parietal eminence. Ten cm from commencement of fracture, another fracture 5 cm long extended to rt. and backwards to reach the parietal eminence. Fourteen cm above the commencement of main fracture, another fracture 4cm long extended forwards and medially. The bone between these fracture lines was depressed. Brain: Weight 1.410 g., oedematous. Both tonsils deeply grooved. Extra-dural

haemetoma on superolateral surface of rt. side of brain in frontal and parietal lobes in an area 16x10 cm depth was only 1/4 cm. Cortical veins dilated on both sides. Area of subarchnoid haemorrhage of variable size on both sides on suprolateral surfaces, maximum area being 7x5 cm right side. Left side of middle fossa full of blood. An area of laceration 2x2 cm on the basal surface of left temporal lobe. Right lung weighed 1 kg. was oedematous and congested, upper lobe showed patchy consolidation. Left lung was also oedematous and congested) upper lobe showed patchy consolidation.

Stomach showed patchy areas of peticheal haemorrhages and contained 10 cc of dark green fluid.

20. In the opinion of the doctor the cause of death was oedema of the brain following extensive fracture of the skull following head injury and injury No. 1 on the head with fracture of skull following head injury and injury No. 1 on the head with fracture of skull underneath. Postmortem report is Ex. PC.

21. During investigation Hem Raj and Ram Chand were arrested. They were found to have injuries on their person and were sent for medical examination. Dr. I.D. Nehru (P.W. 8) of District Hospital, Hamirpur examined Hem Raj on 4th April, 1979, at 5.30 P.M. and found following injuries on his person:

1. An abrasion 3/4" x 1/4" running transversely over the base of right thumb on dorsal aspect covered with brownish dark scab.
2. Abrasion 1/4" x 1/4" above downward covered with dark brown scab part of scab peeled of situated 1" below the base of index ringer on dorsum right side.
3. Abrasion 1/4" x 1/4" below injury No. 2 above the wrist joint one inch upward.
4. Abrasion 1/4" x 1/4", 1" lateral to the injury No. 2 covered brown scab.

All these injuries were found simple in nature.

22. Dr. Radhika Sud (P.W. 9) of Primary Health Centre, Nadaun, examined Ram Chand on 5th April, 1979, at 11.15 P.M. She found one abrasion 2 cm x 1 cm on the medial aspect of left knee, dark brown in colour. This injury was found to be simple in nature caused by blunt weapon.

23. After completing the investigation all the accused were charge-sheeted.

24. The defence of Dev Raj and Des Raj accused, as disclosed in their statements recorded u/s 313 of the Code of Criminal Procedure, be better described in the words of Des Raj accused. He states:

This case has been planted falsely. Along the southern wall of the machine there is a path and on the other side of the path is our field. The wheat crop was standing in that field. The wheat crop was being trampled upon by the passers-by. I and my brother Dev Raj went there with loads of bushes and threw them near the path in our field in order to erect the fence. Thereupon Ram Chand, Pritam Chand and Ramesh Chand came there. They were abusing us and raising

lalkara that we would be put to death as to why we had placed the bushes there. All the three had come together. They attacked us at once with their weapons and were saying aloud that we would be finished. In self defence we picked up the phattis lying nearby and acted in self defence. Bakshi Ram was not present there. He is not the servant of the complainant but is only their relation. The occurrence took place outside the machine. My father and my brother were not present at the time of occurrence.

25. Both these accused denied knowledge of Ramesh Chand making any complaint to the D.F.O. and the latter checking saw mills of Bhagwan Dass and Dhian Singh and directing them not to release the logs belonging to the accused. Ram Chand and Hem Chand accused denied their presence. They stated that they have been falsely implicated since the complainant's party wanted every male member of the accused's family to be made an accused.

26. Mr. Sukhaja, learned Counsel for the Appellants, contends that Bakshi Ram is a false witness and Ramesh Chand is not telling the truth. He submits that the fight did not take place in the manner narrated by these eye witnesses. According to him, the fight had taken place outside the shed between Dev Raj and Des Raj on the one side and the deceased and Ramesh Chand on the other side and after the fight the injured were taken into the shed. The delay in lodging the F.I.R. is stated to be the result of the time taken to make up the story.

27. Now Ramesh Chand is one of the injured. It is true that his statement was recorded by the police after a few days. But then it could not be helped. He had received serious injuries and indeed was lucky to escape death. The delay in recording his statement was because of his physical conditions which did not allow the police to record it earlier. Ramesh Chand supports the prosecution version fully. He was the person who had complained to the D.F.O. against the accused. According to him all the four accused had given him fist blows also. He had gone to the rescue of Ram Chand and Pritam Chand when he was hit on the head by Dev Raj. He had fallen down unconscious on receipt of the head blow and thereafter it was not possible for him to know what happened. His statement that even after becoming unconscious he felt some fist blows being given or the assault being continued for ten or fifteen minutes, is at best his conjecture which has to be ignored.

28. Bakshi Ram's presence was natural. Like Pritam Chand he also used to work at the saw mill of Ram Chand deceased. Bakshi Ram is also related to this deceased. It may be recalled that Bakshi Ram had sent the message to Panditu Ram through Suresh Kumar (P.W. 2). Suresh Kumar is a lad of 15 years who had come to get his maize ground. Suresh Kumar was apparently won over and was declared hostile. He, however, admitted coming to the flour mill. He goes on to admit that he had informed Panditu Ram about the fight. Of course, he goes on to say that he had seen all the three injured lying outside the shed and crying "Hai, Hai". But if the injured were lying outside, then a good quantity of blood would have dropped there since nobody could have taken them inside the shed

for a long time. We have no evidence of the blood being found outside the shed.

29. There is no doubt that the injuries received by the complainant's party were of such a nature that all the three injured would have become unconscious on receiving the head injuries. In this state of affairs if Bakshi Ram was not there then nobody would know as to what happened and who were the assailants. If the injured were in a position to talk, then even Suresh Kumar would have talked to them. Suresh Kumar's going back and informing Panditu Ram took some time. We have no reason to disbelieve that by the time Panditu Ram came all the injured were unconscious and it was Bakshi Ram who had given him some details of the occurrence. Though the F.I.R. was delayed but it was definitely recorded long before Ramesh Chand injured was in a position to make a statement and talk to the police. We have, therefore, no reason to disbelieve that Bakshi Ram must have witnessed the occurrence. Bakshi Ram also states that it were Dev Raj and Des Raj who had first entered the mill shed. It were these accused who had given the lalkara (challenge) asking Ram Chand deceased to come out. It is true that he did not in his statement to the police describe the various blows attributed by each accused to each injured. However, his supplementary statement was also recorded and that statement did not stand contradicted.

30. Much has been made about Bakshi Ram and Panditu Ram not informing the police soon after the incident. Both of them have explained that their anxiety was to remove the injured to the hospital in order to save them. There is nothing wrong in Panditu Ram stating that he was in a state of shock on seeing two of his sons bleeding profusely and lying unconscious. Primary Health Centre, which is the nearest dispensary, was at Bhotta. Bhotta, we understand, is at a good distance from the place of crime. Despite their anxiety to reach the dispensary quickly they could not take the injured to Bhotta dispensary before 5 P.M. Thereafter, under the advice of the doctor, the injured were sought to be removed immediately to the hospital at Hamirpur which is about 20 kilometers away. Again, transport had to be arranged. Bed head ticket of Ram Chand Ex. PAB of this hospital shows that the injured reached there at 2.10 P.M. The, police reached Bhotta dispensary at 3.15 P.M. Bakshi Ram who had gone to the hospital at Hamirpur came back to Bhotta dispensary at about 5 P.M. when his statement was recorded. There is thus apparently no delay in recording his statement.

31. We may at this stage add that copy of the F.I.R. was not sent to the Magistrate as a special report till 10 A.M. next day. No reason has been given for this delay, The distance between the police station and the residence of the Chief Judicial Magistrate is hardly about a furlong or so. The delay in not sending the special report soon after the F.I.R. was recorded is a serious matter indeed. We would, therefore, look at the F.I.R. with suspicion.

32. Mr. Sukhaja then contends that it were the deceased and Ramesh Chand injured who were the aggressors and Dev Raj and Des Raj Appellants were justified in causing injuries to the injured in exercise of right of self defence. He submits that the prosecution has completely failed to explain the injuries

received by Dev Raj and Des Raj and so they have failed to give the genesis of the fight.

33. Now, it is true that both Des Raj and Dev Raj had gone to Bhatta Civil Dispensary for medical aid. They were indeed examined by Dr. Bhardwaj between 9.00 and 9.30 A.M. As already noticed, both of them refused to be the indoor patients. Both of them had come on foot to the dispensary and there is nothing to show how they travelled between their village and this dispensary. It is true that these accused in their statement u/s 313 of the Code of Criminal Procedure state that the complainant's party had reached the dispensary earlier and so the doctor did not admit them under their influence.

34. That Dr. Bhardwaj was not fair to the accused-Appellants is evident from the fact that a Medical Board had to be constituted in order to examine these two accused. This Board consisted of Dr. R.S. Dhiman (P.W. 10), Dr. M. Kaushal and Dr. N.K. Singla (P.W. 15). The Board found the following injuries on the person of Des Raj accused:

1. There were two straight scars healed wounds with stitch marks of the sizes of 2" each in length on the right side of the parietal region 3" above the mastoid process. X-Ray was not required for the injury.

2. Two scars of healed wounds 2 cm each with the stitch marks on the left side of parietal region 2-1/2" above mastoid process. X-Ray was not required.

3. There was a healed superficial abrasion with scab off on left shoulder 2" long and wide behind the tip of the acromion. X-Ray was not required.

4. There was another superficial abrasion with the scab off about 1/2 cm in diameter just lateral to the acromion. X-Ray was not required.

5. There was a superficial abrasion with scab off over the right sacro iliac joint, about the dimple of the venus, 1/2 cm in diameter. X-Ray was not required.

6. There were abrasions on the postero lateral aspect of the left forearm with scab off;

(a) 1" above the lower ulnar prominence transverse in direction 2.5 cm x 1 cm;

(b) 3" above lower ulnar prominence 1" x 1/2";

(c) In between the above mentioned abrasions (a) and (b) there was a tender bony swelling present;

(d) 6" below the elbow joint 1 cm x 1/2 cm.

35. X-Ray was advised of the left forearm and X-Ray report No. 64 dated 11-4-1979 showed fracture of lower one-third of the ulnar without displacement. Callus was not seen.

36. Injury No. 6(c) was found grievous, rest were found simple. Probable

duration of injuries was opined within two weeks.

37. The report was signed by the Board Members. The X-Ray was taken on 11-4-1979. Ex. DB is the carbon copy of the medical examination.

38. The Board found the following injuries on the person of Dev Raj accused:

There was a straight healed scar on the vertex 3-1/2" long on left parietal region obliquely placed. Tenderness over the posterior end of the scar on the medial aspect 1 cm away in an area of 1 cm. No haematoma or depression was palpable. No other evidence of injuries on the body was seen at that time including right shoulder, left forearm and left thigh.

39. X-Ray of skull was advised and X-Ray plate is No. 80 dated 17-4-1979. A definite opinion regarding X-Ray could not be given so the X-Ray was sent to Radiologist Snowdon Hospital, Simla through the police. But neither the report nor the skiagram of the skull was ever received by the Board.

40. Ex. DC is the carbon copy of the medico-legal report. The same was signed by the doctors of the Board. Both the accused remained in the hospital for treatment and investigation from 9-4-1979 to 18-4-1979.

41. The evidence leaves no doubt that the Board found a fracture of lower one-third of the ulna on the left hand of Des Raj. It had also advised X-Ray of the skull. This was sent to the Radiologist of Snowdon Hospital, Simla, through the police. It has come in evidence that the police never took this X-Ray to the Radiologist for his opinion. No reason has been given to us why the Radiologist of Snowdon Hospital was not consulted. The investigation of this case was obviously not fair to the accused. We have, therefore, closely scrutinised the evidence.

42. However, the question to be decided is whether the injured were the aggressors or it were the accused-Appellants who had opened the assault. The evidence on record leaves no doubt that it were the Appellants who had gone to the mill of Ram Chand deceased. There was a long standing enmity between the parties. Earlier in the day, logs belonging to the party of the accused were ordered to be withheld by the D.F.O. They had thus an additional immediate grievance which was a serious one. They had thus trespassed into the mill of the deceased to teach them a lesson. It is true that they came empty handed. But then all the four had come. There was exchange of abuses and quarrel developed from stage to stage. Till the injured received the head injuries and fell unconscious, they must have fought and it can be safely presumed that they must have caused injuries to the accused. We have already found that the injuries were caused to the complainant's party inside the shed. We have no doubt that the accused-Appellants were indeed the aggressors. They had thus no right of self defence. On the other hand it was the complainant's party who were trying to defend themselves. In these circumstances the accused-Appellants cannot derive any benefit of the injuries sustained by them.

43. Now, the question arises as to what offences have been committed by each

of the Appellants. That the Appellants, to begin with, had no intention of causing even grievous hurt to any of the injured when they came to this mill, is apparent from the fact that all of them had come unarmed. They might have had the intention of, at the most, giving a thrashing. However, whatever the initial intention might be, the intention to cause grievous hurt or death can develop at any stage of the quarrel. Evidently a stage reached when Des Raj and Dev Raj Appellants picked up iron pipes whereas the other co-accused picked up wooden phattis. When Des Raj and Dev Raj hit the injured on their head with their respective iron pipes, it is clear that they had the intention to cause the death. Both of them were also individually charged u/s 302 of the Indian Penal Code and in our opinion have been rightly convicted. But then can it be said that the other two accused-Appellants, Ram Chand and Hem Raj, had also the common intention with Des Raj and Dev Raj accused to cause the death of Ram Chand and Pritam Chand. We have to keep in mind the fine distinction between same or similar intention and common intention. It is true that both Ram Chand and Hem Raj Appellants had picked up the wooden phattis in order to hit the deceased. We have seen these phattis and indeed these can cause grievous hurts. But the fact remains that the evidence does not show that they caused any grievous hurt to Ram Chand and Pritam Chand deceased by these phattis. All the grievous injuries found on the heads of the deceased and Ramesh Chand injured have been attributed to Des Raj and Dev Raj and no other grievous injury is found to have been received by these three injured. We, therefore, find it difficult to hold that Ram Chand and Hem Raj Appellants can be said to have the common intention to cause the death of Ram Chand and Pritam Chand deceased and cause grievous hurt to Ramesh Chand (P.W. 2).

44. Jagrup Singh Vs. State of Haryana, and contends that Des Raj and Dev Raj would fall under Exception 4 of Section 300 of the Indian Penal Code. In that case the accused had given a fatal blow on the deceased with blunt side of a gandhala. However, on the facts of that case the Court came to the conclusion that the blow was given in the heat of the moment without premeditation and in a sudden fight. The facts of that case have no relevance to the present case.

45. Another case cited by Lakshmi Singh and Others Vs. State of Bihar, It was observed by the Supreme Court that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. No doubt this principle has to be applied in the circumstances of each case. We have already discussed in detail the facts and circumstances of this case where we have found that the Appellants were indeed the aggressors who had trespassed into the mill of the deceased where the fight had taken place. Non explanation of the injuries on the accused-Appellants, therefore, will not "be fatal to the prosecution in the circumstances of this case.

46. Ram Chand and Hem Raj Appellants would therefore, be responsible for their

individual acts. They would, therefore, be guilty of trespass with the intention of causing simple hurt. Each of them would, therefore, be guilty under Sections 451 and 323 of the Indian Penal Code.

47. The conviction of Dev Raj and Des Raj Appellants u/s 302 of the Indian Penal Code is up-held. Dev Raj's conviction u/s 307 of the Indian Penal Code is also up-held. Their sentences on each count are up-held. Their conviction u/s 452 of the Indian Penal Code is converted to one u/s 451 of the Indian Penal Code and sentence reduced to six months rigorous imprisonment. Hem Raj and Ram Chand Appellants are sentenced to imprisonment already undergone by them in respect of each count. They were released on bail at the time of admission of the appeal. Their bail bonds are hereby discharged.