
(2012) 05 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 306 of 2006 and Criminal Appeal No. 370 of 2006

Dilbag Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 30-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313
Penal Code, 1860 (IPC) — Section 100, 102, 105, 302, 307

Citation : (2012) 3 ShimLC 1253

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Advocate : Ajay Kochhar with Mr. Vivek Sharma,-Accused and Mr. R.K. Sharma, A.A.G. with Mr. J.S. Guleria, Assistant A.G. for the Appellant-State, for the Appellant; R.K. Sharma, Senior Additional Advocate General with Mr. J.S. Guleria, Assistant Advocate General for the Respondent-State in Criminal Appeal No. 306 of 2006, Mr. Ajay Kochhar, Advocate for the Respondent-Accused in Criminal Appeal No. 370 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—For an offence, which is alleged to have been committed on 5.3.2005, accused were put to trial. In terms of judgment dated 27.7.2006, passed by the Addl. Sessions Judge, Fast Track Court, Una, District Una, H.P., in Sessions Case No. 10/05 RBT 66/05/05 (Sessions Trial No. 9/06), titled as State v. Dilbag Singh and another, Dilbag Singh (accused No. 1) stands convicted and Usha Devi (accused No. 2) stands acquitted of the charged offence. It is the case of prosecution that on 5.3.2005 deceased Sh. Rachpal Singh, husband of Smt. Kanta Devi (PW-1) was returning home on a bicycle carrying fodder (grass). PW-1 heard cries of her husband saying "hai maar ditta". When she rushed to the spot from where cries were coming, she saw Dilbag Singh (accused No. 1) giving blows to Sh. Rachpal Singh with a kassi (spade) on his head. PW-1 also saw Usha Devi (accused No. 2) wife of accused No. 1, giving blows with fists. When PW-1 cried for help, her daughter Kumari Sapna (PW-3) and brother-in-law

Sh. Mohinder Singh (PW-2) rushed to the spot. Seeing the aforesaid persons, accused Dilbag Singh immediately ran away from the spot along with his wife on his scooter which he had parked nearby. Sh. Rachpal Singh was immediately rushed to the hospital at Daulatpur, where he was examined by Dr. Jagdish Singh (PW-5). Police was informed telephonically and HC-Rajinder Singh (PW-13) made daily diary entry (Ext. PW 13/A) about the same in the record. ASI Mohinder Singh (PW-12) who was posted at Police Post Daulatpur, on the information furnished by PW-13, proceeded to the hospital where he found Sh. Rachpal Singh lying in an unconscious condition and being administered medical treatment by the Doctor. Consequently he recorded statement of PW-1 u/s 154 Cr. P.C. (Ext. PW 1/A) which was sent through HC-Nardev Singh (PW-18) along with a rukka (Ext. PW 12/ A) to the Police Station, Gagret where F.I.R. No. 36/05, dated 5.3.2005 (Ext. PW 15/A) was registered by HC-Ravinder Kumar (PW-15) under Sections 307 read with Section 34 IPC at 9.50 p.m. In the meanwhile Sh. Rachpal Singh succumbed to the injuries sustained by him and Dr. Jagdish Singh (PW-5) issued MLC (Ext. PW 5/A). The accused persons, after fleeing away from the spot went to the police station to register a criminal case for having suffered injuries. He was also sent for medical examination to the hospital at Daulatpur where he was examined by Dr. Jagdish Singh (PW-5) who issued MLC (Ext. DA). Medical examination of accused Usha Devi was also got conducted by PW-5 who issued MLC (Ext. DB). SI-Om Parkash (PW-21) who was posted as Addl. S.H.O. Police Station Gagret took charge of the investigation and visited the spot in the morning of 6.3.2005. He recovered sample of blood stained soil vide memo (Ext. PW 2/A) in the presence of Sh. Randeep Kumar (PW-6). Cycle belonging to the deceased was also taken into possession vide recovery memo (Ext. PW 21/C). Accused were arrested same day and blood stained shirt of accused Dilbag Singh was also taken into possession vide seizure memo (Ext. PW 21 /D). In the presence of Sh. Bachitter Singh (PW-8) and Sh. Om Parkash (PW-9), accused Dilbag Singh made disclosure statement (Ext. PW 8/A) which was recorded by the Investigating Officer and also got recovered the weapon of offence i.e. kassi (Ext. P-1) which was taken into possession vide memo (Ext. PW 8/ B). Police also took into possession scooter on which accused had fled away from the spot. Photographs of the spot were taken into possession by the police. Place of occurrence of offence was got demarcated from the revenue officials and necessary revenue record got prepared and taken into possession. Post mortem of the body of deceased was got conducted by Dr. Vipin Sharma (PW-11) and reports (Ext. PW 11/A and 11/B) taken into possession by the police. The sample of the blood stained soil and clothes of relevant persons were sent for chemical analysis to the Forensic Science Laboratory, Junga and opinion (Ext. PW 11/C, 11/ D and 11/E) taken on record by the police. Investigation revealed complicity of the accused to the alleged crime, consequently challan was presented in the Court for trial.

2. Accused were charged for having committed offences punishable u/s 302 read with Section 34 of the Indian Penal Code to which they did not plead guilty and

claimed trial.

3. In order to prove its case, prosecution examined as many as 22 witnesses and statements of the accused u/s 313 Criminal Procedure Code were also recorded in which they took up the following common defence:--

I am innocent and has been falsely implicated in the case as on the alleged occurrence in the evening deceased Rachhpal Singh was uprooting the fencing of my house with Kassi and when I objected Rachhpal Singh gave me sickle blow and in the meantime Usha Rani came over there who was also given sickle blow by Rachhpal Singh and during scuffle Rachhpal Singh fell down over the Kassi and sustained injuries as it all happened to protect my life and property.

4. Accused desired to lead evidence and in spite of opportunity afforded, no witness was examined in defence and as such trial Court closed the defence evidence.

5. Appreciating the material on record, Court below convicted accused Dilbag Singh for having committed an offence punishable u/s 302 IPC and sentenced him to undergo imprisonment for life and also pay fine of an amount of Rs. 10,000/- and in default thereof to further undergo simple imprisonment for a period of one year. However trial Court did not find the charge of conspiracy to have been proved against the said accused and accused Usha Devi who in any event was acquitted of charge of murder.

6. Assailing the impugned judgment dated 27.7.2006 passed by learned Addl. Sessions Judge, Fast Track Court, Una, District Una, H.P. in Sessions Case No. 10/05 RBT 66/05/05, Sessions Trial No. 9/06, accused Dilbag Singh has filed Criminal Appeal No. 306 of 2006. Challenging the very same judgment, State has also filed Cr. Appeal No. 370 of 2006 against acquittal of accused Usha Devi.

7. We have heard Sh. R.K. Sharma, learned Senior Addl. Advocate General duly assisted by Sh. J.S. Guleria, Assistant Advocate General on behalf of the State as also Mr. Ajay Kochhar, learned Counsel on behalf of the accused persons. We have also minutely examined the testimonies of the witnesses and other documentary evidence placed on record by the prosecution. Having minutely examined the record, we are of the Considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court is well reasoned and is based on complete and proper appreciation of evidence (documentary and ocular) placed on record. There is neither any illegality/ infirmity nor any perversity in the same.

8. Accused Dilbag Singh has been held guilty of having committed murder of his real brother Sh. Rachpal Singh. The incident was witnessed by wife Smt. Kanta Devi (FW-1) and daughter Kumari Sapna (PW-3) of the deceased as also by Sh. Mohinder Singh (PW-2) another brother of accused Dilbag Singh and the deceased. Prosecution has only examined close relatives of the deceased. It is urged by learned defence Counsel that in the given facts and circumstances,

considering the fact that there was prior dispute inter se between the two brothers i.e. the convict and the deceased, prosecution ought to have examined independent witnesses to corroborate the testimonies of otherwise interested persons. Having minutely examined the testimonies of material prosecution witnesses we find that they otherwise inspire confidence and require no corroboration. It is not a rule of law that in every case testimony of interested witness requires corroboration, more so in the instant case where we find that presence of the convict on the spot is not disputed at all. According to accused Dilbag Singh, deceased was uprooting the fence of his house with a kassi which act was objected to by him. At that time deceased Sh. Rachpal Singh gave a blow with his sickle. When Usha Devi arrived at the spot, even she was also given a blow with the sickle. During the scuffle Sh. Rachpal Singh fell over the kassi which was lying on the ground and sustained injuries. According to accused Dilbag Singh he acted in self defence to protect his life and "property.

9. The law with regard to right of private defence is now well settled. It is a settled position of law that right of private defence commences as soon as reasonable apprehension of danger to body arises. The danger must be imminent/ present and real. This right does not extend to inflicting of more harm than what is necessary to inflict for the purposes of defence. The right would be justified if the assault caused reasonable apprehension of death or grievous hurt to the person exercising such right. In order to find whether right of private defence is available or not, injuries received by the accused, imminence of threat to his safety, injury caused by the accused and the circumstance whether accused had time to take recourse to public authority are all relevant factors to be considered.

10. The Apex Court in Darshan Singh Vs. State of Punjab and Another, has culled out the following principles regarding right of private defence:-

(i) Self-preservation is the basic human instinct and is duly recognized by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognize the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step

by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the material on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.

11. Further the Apex Court in *Sikandar Singh and Others Vs. State of Bihar*, has held as under:--

24. Section 96, IPC provides that nothing is an offence which is done in exercise of the right of private defence. The expression "right of private defence" is not defined in the Section. The Section merely indicates that nothing is an offence which is done in the exercise of such right. Similarly, Section 97, IPC recognises the right of a person not only to defend his own or another's body, it also embraces the protection of property, whether one's own or another person's against certain specified offences, namely, theft, robbery, mischief and criminal trespass.

25. Section 99, IPC lays down exceptions to which rule of self-defence is subject. Section 100 IPC provides, inter alia, that the right of private defence of the body extends, under the restrictions mentioned in Section 99 IPC, to the voluntary causing of death, if the offence which occasions the exercise of the right be an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault. In other words, if the person claiming the right of private defence has to face the assailant, who can be reasonably apprehended to cause grievous hurt to him, it would be open to him to defend himself by causing the death of the assailant.

26. The scope and width of the right of private defence is further explained in Sections 102 and 105 IPC, which deal with commencement and continuance of the right of private defence of body and property respectively. According to these provisions, the right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt or threat, to commit offence, although the offence may not have been committed but not until there is that reasonable apprehension. The right lasts so long as reasonable apprehension of the danger to the body continues. (See: *Jai Dev Vs. The State of Punjab*,

27. To put it pithily, the right of private defence is a defensive right. It is neither a right of aggression nor of reprisal. There is no right of private defence where there is no apprehension of danger. The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger which is not self-created. Necessity must be present, real or apparent. (See: *Laxman Sahu Vs. State of Orissa*,

28. Thus, the basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property. That being so, the necessary corollary is that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is sought to be averted or which is reasonably apprehended and should not exceed its legitimate purpose.

29. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon host of factors like the prevailing circumstances at the spot; his feelings at the relevant time; the confusion and the excitement depending on the nature of assault on him etc. Nonetheless, the exercise of the right of private defence can never be vindictive or malicious. It would be repugnant to the very concept of private defence. (See: *Dharam and Others Vs. State of Haryana*,

30. It is well settled that the burden of establishing the plea of self-defence is on the accused but it is not as onerous as the one that lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea of self-defence to the hilt and may discharge the onus by showing preponderance of probabilities in favour of that plea on the basis of the material on record.

31. In *Vidhya Singh Vs. State of Madhya Pradesh*, this Court had observed that right of self-defence should not be construed narrowly because it is a very valuable right and has a social purpose. (Also see: *Munshi Ram and others v. Delhi Administration*, AIR 1968 SC 702; *The State of Gujarat Vs. Bai Fatima and Another*, and *Salim Zia Vs. State of Uttar Pradesh*,

32. In order to find out whether right of private defence was available or not, the occasion for and the injuries received by an accused, the imminence of threat to his safety, the injuries caused by the accused and circumstances whether the accused had time to have recourse to public authorities are relevant factors, yet the number of injuries is not always considered to be a safe criterion for determining who the aggressor was. It can also not be laid down as an

unqualified proposition of law that whenever injuries are on the body of the accused person, the presumption must necessarily be raised that the accused person had caused injuries in exercise of the right of private defence. The defence has to further establish that the injury so caused on the accused probabilise the version of the right of private defence.

12. Recently in *Ranjitham Vs. Basavaraj and Others*, the Apex Court has reiterated the aforesaid principles by holding that:--

It is well settled that the right of private defence cannot be weighed in a golden scale and even in absence of physical injury, in a given case, such a right may be upheld by the Court, provided there is reasonable apprehension to life or reasonable apprehension of a grievous hurt to a person. Further, the onus of proof on the accused as to exercise of right of private defence is not as heavy as on the prosecution to prove guilt of the accused and it is sufficient for him to prove the defence on the touchstone of preponderance of probabilities. Furthermore, whether a person legitimately acted in exercise of his right of private defence is a question of fact to be determined on the facts and circumstances of each case. In a given case it is open to the Court to consider such a plea even if the accused has not taken it, but the surrounding circumstances establish that it was available to him. The burden is on the accused to establish his plea. The burden is discharged by showing preponderance of probabilities in favour of that plea. The injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and whether the accused had time to have recourse to public authorities, are all relevant factors to be considered.

13. We shall proceed to examine the testimonies of the witnesses keeping in view the aforesaid settled principles of law. We find that the convict has not disputed the fact that he himself went to the police station to lodge F.I.R. and was examined by Dr. Jagdish Singh (PW-5). Now the Doctor has opined that accused Dilbag Singh sustained an incised wound over the tip of left index finger over the ventral aspect measuring 2 1/2 inches in circular tapering at the ends and fresh bleeding was present. He was examined at about 9.30 p.m. on 5.3.2005. Significantly no other injury was found on his body. Doctor further advised that X-ray of left hand of the said accused be got carried out. But then there is uncontroverted testimony of the Doctor to the effect that accused Dilbag Singh did not turn up after his initial examination. Also Doctor clarified that injury on the body of the said accused could be sustained by a fall if a person were to flee after inflicting injuries to some other person. Accused Usha Devi was also examined by the Doctor and only bruises over her left arm were found. She also complained of tenderness over the left iliac region and left lumbar region. Now undisputedly injury sustained by accused persons were neither fatal nor life threatening nor can they be said to have been caused with a sickle, as is so alleged by the accused. It could not be shown that prosecution acted unfairly towards the accused. Police could not recover any sickle from the spot of

occurrence of crime.

14. Also accused were arrested by the police only on 6.3.2005. It is not their case that the police unfairly dealt with their complaint or did not carry out necessary investigation prior to their arrest. Even after their arrest or during trial they did not make any such grievance in that regard. Why is it that accused Dilbag Singh did not make himself available for further medical examination is a lingering question which he has left unanswered and unexplained during trial. After all he had acted in private defence. He admitted his presence on the spot. Deceased was his real brother. According to him the deceased was removing the fence which had been set up in front of his house which was objected to by the accused. According to the accused this happened in the evening of 5.3.2005. It is not the case of accused that deceased or any of his family members had threatened, intimidated or had come armed with an intention of causing bodily injury or hurt to accused Dilbag Singh. Accused Dilbag Singh could have waited till the morning and then brought the matter to the notice of the members of the Panchayat, more so, for the fact that he himself has suggested to the witnesses that the matter pertaining to the boundary dispute was taken up by him with the Panchayat. In this regard he could have reported the matter to the police himself. It is not suggested to the police officials (witnesses) that they carried out investigation in an unfair manner and deliberately did not recover and place on record the sickle with which he was allegedly assaulted by the deceased. It is also not the case of this accused that in the past deceased or his family members had ever intimidated, threatened or assaulted him or his family members. There never was any attempt of assault on the part of the deceased or his family members. Hence we find that accused in the instant case has taken up a false plea of self defence, which in any event remains unexplained and prima facie unsubstantiated. We may also notice that defence taken by the accused cannot be said to be probable also for the reason that injuries suffered by the convict-accused were not on his vital part of the body nor was he having any apprehension or threat to the life of his family.

15. Dr. Jagdish Singh (FW-5) found the following injuries on the body of the deceased:-

1. A sharp well defined margin wound measuring 6" X 1" over the right occipito-parietal region. Skin deep. Fresh bleeding was present wound tapping at the end skull bone palpable.
2. Another well defined margin wound with some irregular margin wound over the left parieto occipital region. Skin deep- Fresh bleeding was present. Skull bone palpable measuring 5" X 2" in length and width.
3. Mucous membrane of the lower lip oedematous from inside, bleeding was present.
4. Oedema and ecchymosis over the whole face as well as around both eyes were present.

5. An irregular wound skin deep over the left medial aspect of the left eye, fresh bleeding was present measuring 2" X 1/2.

6. An irregular wound over the right knee just below right knee joint just below it 1" X 1/2.

16. According to him (PW-5) injuries No. 1 and 2 were caused with a sharp weapon and the remaining injuries were caused with a blunt weapon. It is not the case of the accused that deceased had repeatedly fallen on the weapon of offence i.e. kassi as a result of which he sustained the aforesaid injuries. Also in this regard there is following unrebutted testimony of the Doctor (PW-5) which clearly establishes falsity of the defence of accused Dilbag Singh:--

The injuries No. 1 and 2 mentioned in MLC Ext. PW 5/A of Rachhpal Singh cannot be caused by a simple fall of the person over object lying with its blade side upwards more particularly Kassi Ext. P.1 which I have seen in the Court today.

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The injuries No. 1 and 2 mentioned in MLC Ext. PW. 5/A of Rachhpal Singh may be caused if a person has repeated falls with force on object lying with its blade upside like Kassi Ext. P.1.

17. Before we deal with the testimonies of the complainant party we shall first deal with the testimony of the remaining witnesses. We find that most of these witnesses have not been cross examined on material aspects.

18. According to PW-21, accused made disclosure statement (Ext. PW 8/A) which led to recovery of weapon of offence (Ext. P-1) in the presence of Sh. Bachitter Singh (PW-8) and Sh. Om Parkash (PW-9). We have minutely examined the testimonies of these witnesses on this aspect and find that except for the variation with regard to the timing when the accused was interrogated, there is not much contradiction and minor contradiction with regard to the timing is also insignificant and immaterial. PW-8 states that interrogation took place at about 11.30 a.m., whereas, PW-9 states that it took place at about 9 a.m. The difference in time is not significant so as to render the otherwise inspiring testimonies of these witnesses, in the back drop of the defence of the accused.

19. It is also urged by learned Counsel for the convict that spot map (Ext. PW 21/A) does not depict (he correct place where the incident actually took place. But then, in our considered view, this cannot be a ground for acquittal of accused Dilbag Singh and a fact fatal to the prosecution case. At best it is a case of faulty preparation of the spot map by the Investigating Officer. Otherwise also we find that in cross examination this fact has not been suggested clearly, in the manner in which it is argued before us, to the Investigating Officer who prepared spot map (Ext. PW 21/A).

20. We find that prosecution has substantiated through reports (Ext. PW 11/C, 11/D and 11/E) that the sample of soil collected from the spot matched with the

sample of the soil removed from the weapon of offence. We also find that blood found on the clothes of the deceased i.e. blood group-B matched with the sample of blood found on the weapon of offence.

21. As per the post mortem report conducted by Dr. Vipin Sharma (PW-11), deceased died due to fatal injuries sustained by him. Viscera which was examined by the experts also substantiated that no poisonous substance was found. Injury on the body of the deceased could be caused with the weapon which also was shown to the Doctor, who clearly opined that deceased died on account of injuries so sustained by him.

22. Pradhan, Krishan Rana (PW-4) states that he was informed by the daughter of the deceased that her father had died on account of a quarrel which took place with Dilbag Singh. According to this witness he was told that Dilbag Singh had killed her father. Now this version of his remains un rebutted as there is no cross examination at all to this testimony of the witness. Testimony of this witness, in any event corroborates version of so called interested witnesses.

23. In Court, Smt. Kanta Devi (PW-1) has fully narrated the prosecution version. She states that in the morning of 5.3.2005, accused Dilbag Singh and accused Usha had a quarrel with her husband. The issue pertained to heap of cow dung over which certain fuel wood had been thrown by someone. Sh. Dilbag Singh had called a Panchayat on the spot and fuel wood was removed. At that time her husband was not at home as he had gone to bring fodder. In the evening she heard cries of her husband calling "hai maar ditta". She immediately rushed towards the place from where such cries were coming and saw accused Dilbag Singh giving beatings with a kassi to her husband. Blows were given on his head and face. Accused Usha also gave beatings to her husband. When she cried for help her daughter and brother-in-law Sh. Om Pal reached the spot. Then both the accused persons ran away on a scooter. Immediately a vehicle was arranged for her husband to be taken to the hospital. Her statement was recorded by the police at the hospital where her husband died. She identified the weapon (Ext. P-1), with which injuries were inflicted by accused Dilbag Singh to her husband. We find that there is some improvement in her version in Court. She was confronted with her statement (Ext. PW 1/A) wherein there is no reference of any quarrel over a heap of cow dung. But then this improvement/exaggeration by itself cannot be a ground to disbelieve this witness. This witness admits that Panchayat had come on the spot and fencing uprooted in front of the heap of cow dung. But then at that time, as has been so suggested by the accused himself, her husband was not present. In her uncontroverted testimony she states that she did not intervene by catching the accused though she cried for help. She explains that at that time she was at a distance of five feet away from her husband. Her improvements/exaggerations are with respect to events which took place in the morning and not with regard to the events which took place at the time of occurrence of incident. We otherwise find her testimony to be absolutely inspiring in confidence and trustworthy.

24. Sh. Mohinder Singh (PW-2) has corroborated the version so narrated by PW-1. We also find that version of PW-2 and PW-1 stands corroborated by PW-3. Careful scrutiny of testimonies of these witnesses would reveal that in any event deceased was not the aggressor. Simply because occurrence took place near the house of the accused or that deceased was allegedly trying to remove the fence set up by the accused would in no manner mean that deceased was the aggressor. On the contrary it stands established that deceased was coming back home in the evening carrying fodder for livestock. His cycle was recovered from the spot with the fodder tied to the same. Spot witnesses in one word have corroborated the testimonies of each other about the occurrence of the incident. We find their testimonies to be trustworthy, reliable and their version to be cogent, consistent and convincing.

25. Animosity and hostility is a double edged sword. Accused Dilbag Singh has tried to establish, through the testimony of material prosecution witnesses, that there was prior animosity and land dispute between him and the deceased. But then this fact by itself could also be a reason to cause harm to the deceased or disbelieve the witnesses. It is not a case where quarrel took place and on the spur of moment, convict caused injuries to the deceased. Accused Dilbag Singh gave blows with a sharp edged weapon on the vital parts of the deceased without any sufficient provocation or cause. He did not give one blow but various blows. He was aware of the consequences of the same. It stands established that at the relevant time deceased was alone. Accused gave repeated blows with a kassi to his own brother and as such in our considered view accused does not deserve any sympathy or leniency, even with regard to the sentence, as is so urged by the learned defence Counsel.

26. Hence we find no reason to interfere with the impugned judgment rendered by the Court below with regard to complicity of accused Dilbag Singh. He has rightly been convicted and sentenced in accordance with the settled principles of law.

27. Coming to the appeal filed by the State we find that testimonies of prosecution witnesses cannot be said to have fully established the charge of common intention of both the accused persons to have killed the deceased. Trial Court in our considered view, rightly held that mere presence of accused Usha Devi on the spot by itself would not infer the said common intention. The trial Court rightly observed that :--

The evidence on the record has only established that deceased Rachhpal Singh was given blows by accused Dilbag Singh with a Kassi Ext. P.1 on his head and other parts of body which resulted into his death. There is nothing to show that the Kassi in question was given to accused Dilbag Singh by Usha Devi. There is nothing on record to show that Usha Devi had brought the Kassi at the spot from her house or cow-shed. There is no cogent evidence to show that she had also beaten the deceased or took active part in the commission of crime. Rather, the evidence show that at one occasion she had withdrawn her husband from the

spot when he was ready to attack Rachpal Singh with a Kassi. This fact has been admitted by PW-3 Kumari Sapna. The version of PW-2 Mohinder Singh is also relevant in this regard. He has stated in his examination-in-chief that Usha Devi had stopped Rachhpal Singh and then Dilbag Singh gave a Kassi blow on his nose. But no such fact is there in his statement recorded by the police u/s 161 Cr.P.C. and he was confronted by the defence with his statement in the Court and statement u/s 161 Cr.P.C., which clearly prove that he has made improvement regarding the fact that Usha Devi had stopped Rachhpal Singh. This being improvement cannot be believed and it also goes in favour of accused Usha Devi. So far as PW-1 is concerned, possibility of her version regarding Usha Devi because of over jealousy on account of death of her husband cannot be ruled out. Resultantly, Usha Devi cannot be held liable for the offence in question.

28. In our considered view trial Court has correctly appreciated the material placed on record by the parties and arrived at its just conclusions. Findings of conviction and sentence of accused Dilbag Singh as also acquittal of accused Usha Devi are based on complete and proper appreciation of ocular and documentary evidence. In our considered view, prosecution has been able to establish the guilt of accused Dilbag Singh, beyond reasonable doubt, by leading clear, cogent, consistent and trustworthy evidence. We see no reason to interfere with the findings recorded by the Court below. Both the appeals stand dismissed. Bail bonds, if any, furnished by the accused Usha Devi are discharged.