

(1984) 02 DEL CK 0034

In the Delhi High Court

Case No : Criminal Appeal No. 162 and 166 of 1981

Ganga Ram and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-02-1984

Acts Referred:

Citation : (1984) 2 Crimes 155 : (1984) 7 DRJ 46

Hon'ble Judges : R.N. Aggarwal, J;M. Sharief-ud-din, J

Bench : Division Bench

Judgement

Aggarwal, J.

(1) Ganga Ram, his brother Shish Ram, Rohtas and Om Parkash, sons of Shish Ram, Ram Phal and his brothers Sri Krishan, Silak Ram and Rain Krishan, sons of Chandgi Ram were sent up for trial on charges u/s 148, 302 read with Section 149 and Section 307 read with Section 149 of the Indian Penal Code.

(2) There was a cross case u/s 308 read with Section 34 of the Indian Penal Code against Risal son of Balu, Ram Niwas and his brother Mohinder Singh, sons of Hazari deceased.

(3) S.M. Aggarwal, Additional Sessions Judge, who tried both the aforesaid cases by a common judgment dated 27th July 1981 found Ganga Ram Shish Ram Om Parkash, Ram Phal, Sri Kishan and Ram of the Kishan guilty of the offences charged with and sentenced each one of them to rigorous imprisonment for one year on the first charge, to imprisonment for life and a fine of Rs. 200.00 and in default to undergo rigorous imprisonment for one year on the second charge and to rigorous imprisonment for three years and a fine of Rs. 200.00 in default to undergo rigorous imprisonment for six months on the last charge. He further found aforesaid six accused guilty of the offence u/s 323 read with Section 149 of the Indian Penal Code and sentenced each one of them to simple imprisonment for one month. Rohtas and Silak Ram accused were given benefit of doubt and acquitted. All the sentences were ordered to run concurrently. In

the cross case the accused were acquitted. The convicted accused have come in appeal against their conviction and sentences.

(4) We may at the outset say that the learned Additional Sessions Judge has fallen into a serious legal error in deciding two separate cases by a common judgment. He has also fallen into an error in reading the evidence recorded in the cross case in the case State v. Ganga Ram and 7 others. In Mitthulal and Another Vs. The State of Madhya Pradesh, it was held:

"IT is elementary that each case must be decided on the evidence recorded in another case though it may be a cross-case cannot be taken into account in arriving at the decision. Even in Civil cases this cannot be done unless the parties are agreed that the evidence in one case may be treated as evidence in the other. Much more so in criminal cases would this be impermissible. It is doubtful whether the evidence recorded in one criminal case can be treated as evidence in the other even with the consent of the accused."

(5) The judgment of the additional Sessions Judge has to be set aside on this ground and we must proceed to consider whether on the evidence recorded in the present case-without looking into the evidence recorded in the cross-case the convictions and sentence recorded against the appellants can be sustained.

(6) Mange Ram husband of Smt. Chalti (Public Witness -4) died sometime back. The accused party and the deceased Hazari are collaterals in the third or fourth degree of Mange Ram made a will bequeathing his estate in favor of the deceased Hazari. This was resented by the accused party. On the death of Mange Ram his agricultural land measuring 14 bighas 8 bids was (Ex. DD) was mutated in favor of Hazari by the Naib Tehsildar. The accused party went in appeal and Smt. Anila Gupta, Revenue Assistant on 24th September 1979 found that the will is not genuine and set aside the order of mutation in favor of Hazari and ordered that the land be mutated in favor of all the heirs (Ex.DE) Hazari filed an appeal against the aforesaid order Along with an application for the stay of the order of the Revenue Assistant. On 5th November 1979 Shri Arora stayed the operation of the order of the Revenue Assistant and this order on 19th November 1979 was further extended up to 3rd December 1979.

(7) Another unfortunate event that took place was that Hoshir Singh aged 18 or 19 the only son of Ganga Ram appellant was abducted on 14th November 1979 and his dead body was found in district Rohtak on 16th November. One of the daughters of Hazari Lal deceased is married to Balbir Singh, resident of Badhsa, Jhajjar Tehsil and Ganga Ram and his co-accused suspected the hand of Hazari, his son Ram Niwas and and his son-in-law Balbir in the abduction and murder of the son of Ganga Ram.

(8) The occurrence took place on 20th November, 1979 at about 5-30 a.m. in front of the House of Hazari. The house of Ganga Ram, Hazari deceased and Ram Phal are located in the same street. The house of Ram Phal comes first, then the house of Hazari and about 50 to 60 feet further down the house of Ganga. A little

beyond the house of Ganga is the Gher of the deceased. There is a land and one or two houses in between the houses of Ram Phal and Hazari. The distance between the two houses is about 40 to 50 feet. The spot of crime is not visible from the Gher. The deceased and his son Mahinder Public Witness -7 used to sleep at the Gher.

(9) The prosecution case as unfolded by Kumari Birtnati aged 15/16 years, daughter of Hazari is that on 20th November at about 5-30 a.m. she went out of the house to urinate. The same time she saw her father coming from the side of Gher to take "Bhant" (Fodder) for the cattle from the house. As he was passing in front of the house of Ganga Ram. Birmati heard a raula from the house of Ganga Ram "PAKAR Lo Sale KO. How could he grab the entire land of Mange" Ganga Ram, Shish Ram, Rohtas and Om Parkash came out of the house of Ganga Ram armed with lathis and jellies, at the same time, she saw Ram Kishan, Ram Phal, Sri Kishan and Chandre coming out of the house of Chandgi. Ram Phal was armed a with Pharsa and his companions with lathis and jellies. Ganga Ram was said to be armed with a jelly. All the accused with their respective weapons started showering blows on Hazari. Public Witness -1 raised alarm and that attracted to the spot her brother Ram Niwas who was sleeping on the first floor of the house and her grand mother Smt. Chalti (widow of Mange Ram). All the accused with their respective weapons also belabored Ram Niwas and Chalti. Hazari on receipt of the injuries fell down. Mahinder Singh Public Witness -7 removed Chalti and Ram Niwas in a car to the hospital.

(10) P.W. 12 Risale also slept at the Gher. Public Witness -6 Ram Kumar aged 10 or 11 years, son of deceased Hazari ran to Risale and told him of the occurrence. Risale rushed to the police station Najafgarh and at 7-05 a.m. made a report, copy of which is Public Witness -12/C. The report made was that a quarrel is going on between Hazari and Ram Phal etc. in village Dishau Kalan. A.S.I. Rameshwar Dayal was entrusted with investigation and he went to the spoil and recorded the statement Ex. Public Witness -1/A of Birmati. A.S.I. Rameshwar Dayal with his endorsement Ex. Public Witness -14/A sent the rukka Ex. PW-1/A to the police station at 8 a.m. for formal registration of the case. The formal report Ex. Public Witness -15/A was recorded at the police station at 8.30 a.m. The distance between the spot of occurrence and the police station is 2 kilometers.

(11) On receipt of the" rukka Ex. Public Witness -1/A, Public Witness -22 Police Inspector Gurmil Singh took over the investigation. Public Witness -22 inspected the scene of crime and got it photographed. Public Witness -22 after preparing the inquest report sent the dead body of Hazari for post-mortem examination. Public Witness -22 lifted blood from three different spots and sealed it in separate parcels. A pair of chappals (Ex. P-1) and a cotton chadar (Ex. P-2) were also recovered from the spot and sealed.

(12) We may say that Ram Kishan one of the accused was also injured in the occurrence and he was also taken and admitted in a hospital.

(13) Dr. Bharat Singh performed autopsy on the dead body of Hazari, aged 40 years and he found the following injuries on his body

1. One lacerated wound on the right side frontal area of skull placed obliquely size of the wound was 2"X?" bone deep. 2. One lacerated wound over the right frontal area of skull placed horizontally. Size ""X"" scalp deep. 3. One lacerated wound over the left parietal eminence placed anteriorly posteriorly. Size of the wound was ""X? " bone deep. 4. One lacerated wound over the left mastoid area placed obliquely. Size 3"X"" bone deep. 5. One lacerated wound over the left occipital area size 2"X"" bone deep. 6. One lacerated wound over the left temporal area size ""X?" scalp deep. 7. One lacerated wound over the left ear size ?" muscle deep. 8. One lacerated wound on the right side tip of the nose extending on to right lip size 1?" muscle deep. 9. Abrasion all over the left shoulder and back side of left arm in an area of 7"X4" Red. 10. One contusion on the lateral side of left arm placed obliquely size 3"X1" with central pale and Red margin. 11. Multiple abrasions on right deltoid area varying in size from l"X?" to 1/2"X 1/4". 12. Abrasion on the back of right fore-arm over red .. 13. Abrasions on the both side of both hands in the form of patches red in colour. 14. Abrasions on both knees on the front side size 2"X1" (each side) red in colour. On internal examination Dr. Bharat Singh found the following : "There was generalised aeration all over the undersurface of scalp, more prominent on the left side. There were multiple depressed and fissured fractures of frontal, left parietal, left temporal and part of occipital bones. There was no sharp cut on the skull bones under-neat the external wounds on the scalp. But there was depressed and fissured fracture only. There was extra dural haemorrhage on left side and sub-dural haemorrhage on both side of the brain. Brain was lacerated on the left parental area".

(14) The doctor gave the opinion that the injuries were possible by blunt object. He further opined that injuries on the skull were sufficient to cause death in the ordinary course of nature. In cross-examination the doctor stated that injuries 1 to 3 are not possible by fall against hard projecting surface. The further doctor stated that injuries 9 to 14 were simple in nature and could be caused by fall or by dragging the body on the hard surface. He further stated that injuries on the back side of the skull could not be caused from the front side.

(15) Dr. (Mrs.) R.K. Metta(PW-17) on 20th" November 1979 examined Smt. Chalti and she found the following injuries on her person : 1. C.L.W. Forehead left side about 1""X?" in size. 2. Blunt injury face left side. Pain, tenderness, swelling, deformity. 3. C.L.W. with blunt injury left hand about ?"X?" in size. Pain, tenderness, swelling mobility restricted, deformity. 4. One C.I.W. left arm below elbow joint about "X?i" in size with clean cut margins probing not attempted. 5. One C.I.W. about 1/2"X 1/2" in size left: upper arm with clean cut margins probing not attempted. 6. Three clean incised wounds about 1/4"X1/4" in size left upper arm probing not attempted. 7. Blunt injury left elbow and lower arm. Pain, tenderness, mobility restricted. 8. Three clean incised wounds right knee joint about 1/4"X 1/4" in size with clean cut margins. Probing not attempted. 9.

Blunt injury right upper arm and right elbow. Pain, tenderness, deformity mobility restricted. 10. Blunt injury right hand. Pain, tenderness, swelling mobility restricted.

(16) The doctor gave the opinion that injuries 2, 3 and 7 were grievous and caused with blunt and sharp object. Dr. Matta in cross-examination stated that injuries No. 2, 7, 9 and 10 could be caused by a fall on or against a hard surface but that was possible only if a person falls from considerable height on a hard surface. The doctor further stated that the injuries on the hands of the patient are not possible by a single fall.

(17) PW-18 Dr. T.M. Viswas examined Ram Niwas on 20th November 1979 at 10 a.m. and found the following injuries on his person. 1. Head injury with C.L.W. scalp multiple. 2. Blunt injury chest. 3-Blunt injury right thigh. On X-ray examination no bony injury was found. The doctor gave the opinion that injuries were simple and could be caused with a blunt weapon.

(18) PW-21 Dr. A.K. Redy on 20th November 1979 examined Ram Kishan accused and found a C.L.W. scalp about 4" with C.L.W. left side of neck about I" fracture of left side of skull. The doctor stated that the patient was operated for the head injury and he was discharged from the hospital on 24th December 1979.

(19) We may at this place notice that Public Witness -1 in cross-examination stated that she had seen Ram Kishan lying injured at the spot and according to her he got injuries at the hands of his companions. Public Witness -7 gave a similar Explanation for the injuries on the persons of Ram Kishan accused.

(20) During investigation at the instance of Om Parkash Sri Kishan, Shish Ram and Silak Ram, lathis were recovered. The lathis recovered from Silak Ram and Sri Kishan had blood, stains on them, the blood stains were examined Chemically and they were found to be of human blood. Except Ram Kishan and Ram Phal, the remaining accused denied their presence at the spot. Ram Kishan gave the following version of the occurrence :

"RAMPhal, Silak Ram and Sri Kishan accused are may real brothers. Silak Ram is not known by the name of Chandre. Chandre is some other person. It is not the name of Silak Ram. Our father has expired much earlier before the present occurrence. We have no other brother or any male member in the family. Mange Ram was our common collateral. He died issueless. Hazari deceased wanted to grab the land of Mange Ram, on the basis of some forged will. Matter was taken to the court of Revenue Asstt. Delhi Smt. Anila Gupta, R.A. disbelieved the will filed by Hazari deceased and vide her order dated 24-9-1979 ordered that the land of Mange Ram be mutated in the names of all the heirs. Consequently, the land of Mange Ram was mutated in the names of Hazari deceased, Ganga Ram and Sis Ram, co-accused and in my name and in the names of my brothers, Silak Ram and Sri Kishan on 5-11-1979. Hazari deceased & his sons bore grudge against me and my brothers on that account. The only son of Ganga Ram named Hosyiar Singh was abducted on 14-11-1979 and found murdered on 16-11-1979

at the place in the jurisdiction of P.S. Jhajjar (Rohtak) Haryana. We had oats our suspicion on "Hazari and his son in the said murder. Thus Hazari and his son felt bad over it.

(21) On 20-11-1979 at about 5 a.m. I was going from my house to answer the, call, of nature. I was surrounded by Hazari deceased and his sons Ram Niwas and MahinderSingh(PWs). Hazari deceased and Mahinder Singh, Public Witness s. were armed with lathis, while Ram Niwas, Public Witness was armed with axe. All the three attacked me with their respective weapons. Ram Niwas, Pw was blindly moving the axe. I raised alarm. On hearing of which my brother Ram Phal armed with lathi arrived on the spot. The blunt part of the axe strict on my head. Ram Niwas gave me two or three blows while Hazari deceased and Mahinder Singh Public Witness s beat me with lathis. My brother also moved lathi towards the complaint party to save me from their clutches. On receipt of injuries, I fell down on the ground and become unconscious and reamed conscious after remaining several days in the hospital. As a result of these injuries I am not keeping balance of mind. Had Ram Phal not arrived at the spot, I would have been killed by the complainant party. My brother Silak Ram & Shri Kishan were not present on the spot and they did not participate in the fight. I am innocent. I have been falsely implicated in the case due to enmity.

(22) Ram Phal made a statement similar to his brother Ram Kishan. As regards the actual occurrence he made the following statement:

"ON20-11-1979 at about 5 A.M. my brother Ram Kishan co-accused was going from the house of answer the call of nature. He was surrounded by Hazari deceased and his sons Ram Niwas and Mahinder Singh. Hazari deceased and his son Mahinder Singh were armed with lathis while Ram Niwas, Public Witness of the case was armed with axe. All the three attacked my brother Ram Kishan with their respective weapons. Ram Niwas was blindly moving the axe and its blunt part struck on the head of my brother Ram Kishan. Hazari deceased and Mahinder Singh also beat Ram Kishan with lathis. Ram Kishan raised an alarm and on hearing of which I came out of the house and saw Hazari and his sons beating my brother mercilessly. I picked up lathis from my house and rushed to the spot and started moving my lathi to save my brother and in the process Hazari deceased received injuries on his person. Hazari deceased fell down on the ground. Thereafter Ram Niwas and Mahinder Singh attacked me with their respective weapons. I warded off their, assault with the support of my lathi. Smt. Chalti also arrived on the spot and she and Ram Niwas also received injuries in the fight. Mahinder & Ram Niwas took their father in the house, while we removed our brother to safdarjung Hospital. Had I not moved my lathi towards complainant party, my brother Ram Kishan would have been killed by the complainant party.

(23) My brother Silak Ram and Shri Kishan were not present on the spot. They did not participate in the fight, nor did the other co-accused persons participate in this fight. Public Witness 3. Ram Niwas and Public Witness 4 Smt. Chalti were

injured in the occurrence and their presence during the occurrence is beyond challenge. Ram Kumar Public Witness -6 was in the house and his presence also at the spot of crime is natural and probable. Public Witness -7 Mahinder was in the Gher just about 200 feet away from the spot of occurrence and his being attracted to the scene of crime on hearing the shouts of his sister Bir Mati is probable. It was Public Witness -7 who had rushed Ram Niwas and Chalti to the hospital. Since no independent witness has come forward from the locality to give evidence, the court has to scrutinise the evidence of Public Witness s 1, 3, 4, 6 and 7 with care and. caution to eliminate any false involvement.

(24) PW-1 claimed to be a witness right from the start of the occurrence. On receiving a report at 7-05 a.m. from Public Witness -12 Risale, that a quarrel is going on between Hazari and Ram Phal etc., A S.I. Rameshwar Dayal rushed to the spot and recorded the statement Ex. Public Witness -1/A of Bir Mati. The rukka Ex. Public Witness -1/A was dispatched to the police station for formal registration of the case at 8 a.m.

(25) Sarvashri Sethi and Mathur, learned counsel for the appellants contended that the reason given by Bir Mati to be out of the house at 5-30 A.M. is not believable because a young girl aged 15 or 16 would not go out of the house to urinate when there is a place inside the house for urinating. We are unable to appreciate why the police would make Public Witness -1 a witness to the occurrence falsely. The police could have easily chosen Ram Niwas, Chalti or Mahinder. The presence of the first two could not be disputed by any one. Public Witness -1 in the first report has stated that Ram Phal was armed with a Pharsa and remaining accused with lathis and jellies. Public Witness -1 in court attributed jelly to Ganga Ram; Pharsa to Ram Phal and lathis to the remaining accused. Public Witness s Ram Niwas, Chalti, Ram Kumar and Mahinder have all consistently attributed pharsa to Ram Phal, jelly to Ganga Ram and lathis to the remaining accused.

(26) Sarvashri Sethi and Mathur contended that in the first report except Ram Phal the remaining accused were not ascribed any specific weapons or role and that it was only in court that specific role has been attributed to each accused. We agree that in family feuds and fights there is a tendency with the complainant party to rope in as many members of the opposite party as may be possible and care has to be taken that no innocent person has been involved by the witnesses" in the case.

(27) Ram Kishan and Ram Phal accused admit their presence during the occurrence. They have put forward a counter version. Ram Kishan has stated that he was going to answer the call of nature and" Hazari and Mahinder armed with lathis and Ram Niwas with an axe attacked him, that on his raising an alarm Ram Phal came with a lathi and to defend him he wielded the lathi in which Hazari, Ram Niwas and Chalti were injured. Ram Phal stated that he had used the lathi to prevent further harm being done to Ram Kishan and that Hazari, Ram Niwas and Chalti received injuries in the fight.

(28) The medical evidence does not support the above version of Ram Kishan and Ram Phal. The number and nature of injuries on the deceased Hazari and Smt. Chalti and Ram Niwas go against the defense version and lend credence to the prosecution case. The medical evidence shows that Hazari and Chalti were belabored mercilessly, The number of injuries found on the body of Hazari and Chalti shows that the blows were showered on them indiscriminately. The description of the injuries on Chalti shows that. more than one type of weapon was used. The medico legal report in respect of Chalti shows that she had three type of injuries (1) contused Lacerated wound, (2) contused lacerated wound with clean cut margins and (3) Incised wounds.

(29) The injuries found on the body of Chalti clearly prove that in addition to lathi a sharp weapon was used in the. infliction of the injuries on Chalti. The post-mortem examination of Hazari showed multiple depressed and fissured fractures of frontal, left parietal, left temporal and part of the occipital bones. The external injuries and the internal examination of the deceased is indicative that the weapon used was a heavy weapon. The eye witnesses have deposed that Ram Phal gave pharsa blows on Hazari. True, no injury has been found on the body of the deceased caused with a sharp object but it is possible that the pharsa was used from its blunt side. Pharsa is a heavy weapon,

(30) Though Hazari, Ram Niwas and Mahinder are said to be armed with lathis and axe surprisingly Ram Phal received no injury. Another surprising aspect is how Chalti, an unarmed 65 year. old woman happened to receive so many injuries. We are inclined to believe Public Witness -1 and Public Witness -7 that Ram Kishan had received the injuries at the hands of his companions.

(31) The medical evidence establishes that the defense version that injuries to Hazari, Chalti and Ram Niwas were caused with a lathi alone in self defense is not true and further that injuries to Hazari, Chalti and Ram Niwas were caused with weapons of more than one type. Medical evidence also show that more than two or three persons had participated in the assault. During investigation lathis were received from Silak Ram (since acquitted). Sri Kishan, Om Parkash and Shish Ram. The lathis recovered from Silak Ram and Sri Kishan were found to be stained with blood. On Chemical analysis the blood found was human blood. The presence of Sri Kishan in the assault can be fixed safely. Motive:

(32) There can be no manner of doubt that there was a very strong motive on the part of the accused party particularly Ganga Ram to commit the crime. We have in the opening part of the judgment briefly noticed the relationship between the parties and the cause of "the dispute. Mange Ram husband of Public Witness -4 had died sometime back .and Hazari had got the lands belonging to Mange mutated in his favor on the basis of a will. The accused party had contested the mutation and alleged that the will is false and fabricated. The Naib Tehsildar had mutated the land in favor of the deceased. On appeal the order of the Naib Tehsildar was set aside and the Revenue Assistant had ordered that the land be mutated in the name of all the heirs. An appeal was filed by Hazari and he

obtained a stay order. On 19th November the stay order was extended till 3rd December. Another sad event that took place was that on 14th November the only son of Ganga Ram was abducted and his dead body was found in Tehsil Jhajjar District, Rohtak. Ganga Ram, his brother Shish Ram and the other accused suspected the hand of Hazari, Ram Niwas and the son-in-law of Hazari, who is a resident of Tehsil Jhajjar in the commission of the crime. All the accused in their statement u/s 313 have stated that they suspected that Hazari, his son Ram Niwas and his son-in-law had murdered the son of Ganga Ram. On the above evidence, could there be a doubt that Ganga Ram and his co-accused must be burning with a desire to avenge the murder of Hoshiar Singh.

(33) The first report was recorded within about 2 hours of the occurrence. The names of all the appellants are mentioned in the first report. PW-1 in court has fully supported the statement made by her before the police. When the statement Ex. Public Witness -1/A was recorded there was no adult member of the family of the deceased in the house. The only persons who could be present at the said time were Ram Kumar aged 10 or 11 years. and Risale. Ram Niwas, Chalti and Mahinder were in the hospital. There was hardly any opportunity for any one to tutor Public Witness -1. We find that the report Ex. Public Witness -1/A finds corroboration from the medical evidence. We have earlier found that the number of injuries found on the body of the deceased and Chalti show that there were more than two or three assailants and more than one type of weapon was used.

(34) Sarvashri D.R. Sethi and D.C. Mathur contended that the evidence given by the witnesses regarding the infliction of the injuries by the accused individually is conflicting and does not find support from the medical evidence. They contended that Chalti gave evidence that Ram Phal had given pharsa blow on her head but there is no injury with a pharsa on her head. We may say that in an attack where about 6 persons participated, to expect a witness to give the sequence of the blows by each accused and the part of the body where the blows landed is not possible. Public Witnesses 1, 3, 4, 6 and 7 have given a fair account of the occurrence and we find no reason to disbelieve their testimony. The deceased was assaulted just in front of his house. The spot of crime shows that Hazari was on his way to his house and he was suddenly attacked by the accused.

(35) On a careful consideration of the entire evidence we believe Public Witness -1 that all the appellants had participated in the assault on the deceased- Hazari, Chalti and Ram Niwas.

(36) The crucial question that arises in this case is as to what offence has been committed by the appellants.

(37) The first question that arises is whether the appellants formed an unlawful assembly. The prosecution evidence is that when Hazari was passing in front of the house of Ganga Ram, Public Witness -1 heard a lalkara from the house of accused Ganga Ram "Hazari should be caught and he should not be spared and

they would see how he can grab the land of Mange Ram" and immediately thereafter Rohtas, Om Parkash and Sri Kishan armed with lathis and Ganga Ram armed with a jelly came out of the house of Ganga Ram and attacked Hazari with their respective weapons and simultaneously Chandre, Sri Kishan and Ram Kishan armed with lathis and Ram Phal armed with a pharsa came out of the house of Chandgi and started beating Hazari. The prosecution case further is that Ram Niwas. and Chalti rushed out to save Hazari and they were also beaten.

(38) We have believed the prosecution case qua the appellants. On the evidence produced and believed by us there can be no doubt that an unlawful assembly was formed when the two groups of the accused party attacked and caused injuries to Hazari, Chalti and Ram Niwas.

(39) Section 148 Indian Penal Code provides for a punishment for rioting when member of the unlawful assembly are armed with deadly weapons or with anything which used as a weapon of offence is likely to cause death. In the present case the appellants who have been proved to have taken part in the crime were armed with pharsa, jelly and lathis. The weapons with which the appellants are alleged to have been armed are deadly weapons. We find that the appellants were rightly convicted and sentenced for an offence u/s 148 IPC.

(40) The next important question that arises is whether the common object of the unlawful assembly was to cause death of Hazari. Although Ram Phal was armed with a Pharsa. but he did not use the Pharsa from its sharp side. We have earlier while discussing the medical evidence found that a number of injuries were caused to Hazari and all the injuries found on the body of Hazari were caused with a blunt object. Chaki also had a number of injuries both caused with a blunt weapon and a sharp weapon. Except one injury on the head and one injury on the face, the rest of the injuries on the body of Chalti are not on the vital portions of the body. Most of the injuries are on the arms and the legs. If the common object was to murder Hazari or whoever happened to come to the spot, the appellants who were armed with Pharsa and jelly would not have hesitated to use the said weapons from their sharp side. It may be that one or two members of the unlawful assembly had the intention to kill Hazari, but it will not be legal to fasten that intention or object on the remaining members of the unlawful assembly.

(41) Our above view finds support from a judgment of the Supreme Court in Shambhu Nath Singh and Others Vs. State of Bihar, in which the following observations were made.

"BUT member of an unlawful assembly may have a community-of object up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may very not only according to the information at his command, but also according to the extent to which he shares the community of object and as a consequence of this the effect of Section 149 of the Indian Penal

Code may be different and different members of the same unlawful assembly." *Jahiruddin v. Queen Empress*, 2nd 22 Cal. 306. Therefore a conviction for an offence u/s 326 read with Section 149 of the Indian Penal Code may be recorded against the members of an unlawful assembly even if it be established that an offence of murder was committed by a member of that assembly. The offence u/s 326 of the Indian Penal Code is in its relation to the offence of murder a minor offence and the language used in Section 149 of the Indian Penal Code does not prevent the court from convicting for that minor offence merely because an aggravated offence is committed."

(42) Since, on the evidence produced, it is not possible to say with certainty as to who gave the injuries to Hazari which proved fatal we hold all the appellants guilty of the offence u/s 326 read with Section 149 Indian Penal Code. The injuries found on the person of Ram Niwas were simple.

(43) In the result we make the following order regarding the conviction and sentence: (i) all the appellants are convicted of the offence punishable u/s 326 read with Section 149 Indian Penal Code and each one of them sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs. 200.00 in default to undergo rigorous imprisonment for three months. (ii) the conviction and sentence of the appellants on the charges under Sections 148 and 323 read with Section 149 Indian Penal Code are maintained. We feel] no need of passing any separate sentence regarding the injuries caused to Smt. Chalti. The sentences, aforesaid, shall run concurrently. Ganga Ram and Shish Ram accused are now aged more than 70 years. They were admitted to bail on March 30, 1982 they have been in jail for about 2 years and 4 months. Looking to their ages we feel it may not be proper to sent them back to the Jail. As regards the said two appellants we order that in lieu of the unexpired period of sentence of imprisonment awarded to them each one of them shall pay a fine of Rs. 3,000.00 within four weeks. On their failure to deposit the fine, they shall be taken into custody to undergo the sentence of imprisonment imposed on them. In case the fine is realized. Rs. 3,000.00 shall be paid to Smt. Chalti and Rs. 3,000.00 to the heirs of the deceased-Hazari. The appeal is allowed to the extent indicated above. We direct that the judgment be brought to the attention of Shri S. M. Aggarwal, Additional Sessions Judge.