

(2015) 10 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal Nos. 22 and 53 of 2011

Harpal Singh Negi and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313

Evidence Act, 1872 — Section 27, 8

Penal Code, 1860 (IPC) — Section 201, 302, 304, 34

Citation : (2016) 1 ShimLC 41

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : Anup Chitkara, for the Appellant; M.A. Khan, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J—Since both the appeals have arisen from a common judgment, the same were taken together for hearing and are being disposed of by a common judgment.

2. These appeals are directed against the common judgment dated 23.12.2010 rendered by the learned Addl. Sessions Judge, Shimla, H.P., in Sessions Trial No. 8-S/7 of 2009, whereby the appellants-accused (hereinafter referred to as "accused"), who were charged with and tried for offences punishable under Sections 302 and 201 IPC read with Section 34 IPC, were convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 25,000/- each for the commission of offence under Section 302 IPC. In default of payment of fine, they were further ordered to undergo simple imprisonment for one year each.

3. The case of the prosecution, in a nut shell, is that deceased Yash Pal was resident of Village Gujandli, PO Tikkar, Tehsil Rohru, Distt. Shimla, H.P. He was an agriculturist. The complainant Dharmender Chauhan (PW-1) is the younger

brother of the deceased and Ravinder Kumar (PW-3) is the cousin of the complainant. On 22.11.2008, at about 10:00 AM, the deceased had gone to Tikkar in connection with some domestic work but he did not return home. Ravinder Kumar is running a shop at Tikkar. On 23.11.2008 at about 7:00 AM, when Ravinder Kumar reached Tikkar from his house in village Gujandli, he saw number of people gathered and on inquiry, he came to know that Yash Pal had been killed and his dead body was lying in the rented room of accused Narender Bhalooni in the building of one Amar Chand Deshta. Ravinder Kumar informed the complainant Dharmender Chauhan on telephone. On receiving this information, the complainant reached at Tikkar and then he alongwith Ravinder went to the room of accused Narender Bhalooni. On reaching, they found that the dead body of Yash Pal was lying on the floor in the room with the blood oozing out of his mouth and nose. The blood was also lying on the floor. By that time, the police had also received information about the murder and rapat Ext. PW-20/A was entered in the Police Station Rohru to this effect. SI/SHO Surinder Pal (PW-28) reached at the spot. He noticed that a broken bottle of Royal Stag, a pressure cooker with damaged lid and some broken glasses were lying scattered in the room. The police recorded the statement of complainant vide Ext. PW-1/A under Section 154 Cr.P.C. On the basis of the statement, FIR Ext. PW-22/A was registered against the accused on 23.11.2008. The police took photographs of the spot and prepared the site plan. The case property was taken into possession. The post mortem was got conducted on the dead body. The post mortem report is Ext. PW-24/B. During investigation, it was found that during the night of 22.11.2008, accused and the deceased had consumed liquor in the room of accused Narender Bhalooni and while consuming liquor, some quarrel had taken place between the accused and the deceased. Accused Vijay Pratap Singh hit the deceased with a bottle and lid of pressure cooker and accused Harpal Singh hit him with the pressure cooker due to which deceased sustained various injuries and ultimately died. Accused Narender Bhalooni was arrested on 23.11.2008. The other two accused were arrested on 25.11.2008. Accused Harpal and Vijay Pratap Singh made a disclosure statement under Section 27 of the Indian Evidence Act that the clothes and shoes which they were wearing at the time of commission of offence were concealed by them in almirahs and show rack in the house of accused Vijay Pratap Singh from where they can get the same recovered vide Ext. PW-4/A and PW-4/B, respectively. The clothes and shoes of the accused were recovered. The investigation was completed and the challan was put up after completing all the codal formalities.

4. The prosecution, in order to prove its case, has examined as many as 28 witnesses. The accused were also examined under Section 313 Cr.P.C. They have denied the prosecution case. According to them, they were falsely implicated. The learned trial Court convicted and sentenced the accused, as noticed hereinabove. Hence, these appeals on behalf of the accused persons.

5. Mr. Anup Chitkara, Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused. On the other hand, Mr. M.A. Khan,

Addl. AG for the State has supported the judgment of the learned trial Court dated 23.12.2010.

6. We have heard learned counsel for both the sides and gone through the judgment and records of the case carefully.

7. PW-1 Dharmender Chauhan deposed that the deceased was his real brother. His brother had gone to Tikkar on 22.11.2008 at about 10:00 AM in connection with some domestic work. He did not return home till night. On the next day at about 7-30 AM, he received a telephone call from his cousin Ravinder who runs a shop at Tikkar to the effect that he should come to Tikkar soon. He went to Tikkar. He came to know that his brother had been killed in the quarter of accused Narender Bhalooni. He went to the quarter of Narender alongwith other persons and saw the dead body of his brother lying on the floor in the room with blood oozing out of his mouth, nose and head. The blood was also lying on the floor. He also noticed a broken bottle of Royal Stag, a pressure cooker with damaged lid and some broken glasses lying there on the floor. His statement was recorded under Section 154 Cr.P.C. vide Ext. PW-1/A. The case property was taken into possession, including pressure cooker alongwith lid and broken bottle. In his cross-examination, he deposed that he reached Tikkar at 8:00 AM and immediately thereafter he went to the spot. At that time police and number of people had gathered there. Ravinder met him at a place 50 meters away from the spot. The building in which the room in question is situated was three storied.

8. PW-2 Pradeep Sharma, is the material witness. According to him, he was posted as Clerk daily wages in H.P. PWD from 1.5.2006. He was residing in the house of Amar Chand Deshta as tenant. Towards left side of his room there was room of accused Narender Bhalooni. Narender Bhalooni was working as Jr. Assistant in the office of BPEO. On 22.11.2008, he came to his room from his office at about 5:30 PM and prepared his food, performed Puja and then he took his meals at about 7:30 PM. Thereafter, at about 7:30 PM, Narender Bhalooni came to his room and asked him to prepare pulao (rice) for three persons and accordingly, he prepared Pulao and at about 9:30 PM. He went to the room of Narender Bhalooni alongwith the Pulao. At that time accused Narender Bhalooni, Harpal Singh and Vijay Pratap Singh were there and they were drinking. They were also eating Salad. As soon as he came out of kitchen of Narender Bhalooni after leaving the pressure cooker of Pulao, the deceased Yash Pal also reached there. Thereafter, he came to his room and went to sleep. On 23.11.2008 at about 6:15 AM, accused Narender Bhalooni knocked at his door and asked him to have a look at his room. He came to the room of Narender Bhalooni and saw that a dead body of Yash Pal was lying in the room. Blood was lying on the floor. He was told by Narender Bhalooni that in the evening there was a quarrel between accused Vijay Pratap and deceased Yash Pal due to which Vijay Pratap picked up a bottle and gave a blow on the head of Yash Pal while Harpal attacked Yash Pal with a pressure cooker on his head. In his cross-examination, he could not depose how many tenants were residing in the building owned by Amar Chand

Deshta. He did not remember the names of tenants residing on the ground floor. His room and room of Narender Bhagooni were separated only by a wall. The police reached the spot at about 7:00 -7:30 AM. At that time, he was called by Narender Bhagooni and he had come out of his room. Till the arrival of police, he did not enter the room of Narender Bhagooni. Police officials were 4-5 in number.

9. PW-3 Ravinder Kumar deposed that he was residing in village. He used to come to his shop at Tikkar in the morning and use to go back in the evening. On 23.11.2008 at about 7:00 AM, when he reached Tikkar, he saw number of people gathered there. He came to know that Yash Pal had been killed. Thereafter, he asked Dharmender the brother of deceased Yash Pal to come to Tikkar immediately. After some time Dharmender reached there and then they went to the room of Narender Bhagooni where the dead body of Yash Pal was lying. Some people were also present there. The articles in the room were lying scattered. Blood was lying on the floor. One broken bottle was lying there. The police took photographs of the spot. In his cross-examination, he deposed that when Dharmender reached at the spot, he had no talk with him and he took him to the spot where dead body was lying. He could not tell the names of the persons who told him about the murder of Yash Pal but people were talking to each other regarding this murder. His shop is about 100 meters away from the room and at same distance is the police post. He has not informed the police.

10. PW-4 Deep Kumar deposed that on 29.11.2008, he alongwith Surinder Kumar had gone to the Police Station. They reached there at about 12:15 PM. He had gone to the Police Station for his personal work. When they reached the Police Station, the SHO was making inquiries on accused Vijay Pratap Singh. SHO called them. Accused Vijay Pratap Singh in their presence made a statement to the SHO that the clothes which he was wearing on the day of incident were kept in his house in a wooden almirah and the shoes have been kept in a rack near the gate and only he had the knowledge of the clothes and shoes and he can get those recovered. The statement was recorded vide Ext. PW-4/A. Thereafter, accused Harpal vide Ext. PW-4/B made a statement to the SHO that the clothes which he was wearing on the day of incident were kept in the house of Vijay Pratap Singh. The clothes have been kept in a wooden almirah and the shoes have been kept in a rack of the house. Thereafter, the police asked them to accompany for the recovery at about 1:30 PM. The accused and police party went in the police jeep and he alongwith Surinder followed them in the car of Surinder. They reached at Deshta Kainchi, near the house of accused Vijay Pratap. Accused Vijay Pratap led the police party to his house. When they reached near the house, accused Harpal was kept outside and accused Vijay Pratap brought one Jean pant and sweater having chain out of the almirah. Accused Vijay Pratap took out his shoes from the rack and handed over to the police. The police sealed the clothes and shoes in a cloth parcel. The police prepared recovery memo Ext. PW-4/C. Accused Harpal led them to the room inside the house and brought out the clothes i.e. Pant of black colour and shoes. In his cross-examination, he deposed that they had gone to the Police Station in

connection with some personal work. Surinder had no work in the Police Station. He had come to meet Gian Singh. Gian Singh was working in the Police Station. He did not meet Gian Singh on that day. He and Surinder went together inside the Police Station. As they reached the Police Station, the SHO told that accused Vijay Pratap Singh was intending to make statement that the clothes which he was wearing on the date of incident have been kept by him in a rack in his house. Again stated that Vijay Pratap was making the statement in his presence. It took around one hour 15 minutes to go to the house of Vijay Pratap from the Police Station. At that time his parents and his younger brother were present in the house. No statement of the family members of Vijay Pratap was recorded by the police. He signed two papers in the Police Station. He further deposed that almirah out of which the clothes were recovered was not locked. It was closed. No permission was taken by the police from the occupants of the house in question. Volunteered that the occupants i.e. father of Vijay Pratap and his mother etc. did not know when the police went inside the kitchen and when they reached in the verandah. Again stated that they had come themselves on hearing noise of persons entering their house. There were two houses situated at some distance from the house in question. One of the houses belongs to Davinder Deshta and the other belongs to Rajesh. None from these houses was called by the police.

11. PW-5 Surinder Kumar also corroborated the statement of PW-4 Deep Kumar, the manner in which the disclosure statements were made and clothes and shoes were got recovered.

12. PW-10 Dublu Ram deposed that he was sleeping in the office of SDO. Accused Pal and Chintu came to the office during night. Accused went inside the quarter of JE and might have slept there but in the morning they were not there in the quarter.

13. PW-16 Dr. Anil Kumar Verma has examined Vijay Pratap Singh and issued MLC Ext. PW-16/A. He also examined Harpal Singh and issued MLC Ext. PW-16/B.

14. PW-25 Dr. Ranveer Vardhan conducted the post mortem examination and issue report Ext. PW-25/B. The probable duration between injury and death was immediate after head injury i.e. within 2-3 minutes. According to him, the death was caused due to ante mortem head injuries. In his cross-examination, he admitted that pressure cooker Ext. P-4 is blunt weapon but its lid can be considered as sharp edged weapon. He also admitted that unbroken bottle is also a blunt weapon. He also admitted in his cross-examination that the percentage of alcohol as given in Ext. PW-25/C, the person could be termed as heavily drunk.

15. PW-27 Dr. Naresh Maitan has examined Harpal Singh Negi. He noticed following injuries on his person:

"i). Abrasion with underlying bruise with size 5-6 centimeters. Site right side of chest latterly which was healed.

ii). Abrasion on right thigh approximately 10 centimeters which is healed with scab formation.

iii). Abrasion on right leg at knee joint approximately 8-10 centimeters with scab formation and healed.

iv). Wound on left knee joint with overlying scab with size 3 x 1 centimeters.

v) Wound on right leg (Shin) with overlying scab with size 2 x 1 centimeters."

He issued MLC Ext. PW-27/B. He also examined accused Vijay Pratap Singh and noticed following injuries on his person:

"1) Lacerated wound right thumb approximately 5-6 millimeters, margins irregular (7 shaped) with underlying base healed.

2) Lacerated wound right index finger approximately 2-3 in millimeters with on going healing process.

3) Lacerated wound approximately 6-7 millimeters left thumb with underlying base healed.

4) Bruise on left arm lower on 1/3rd medially dark brown in colour."

He has deposed that these injuries on the person of Vijay Pratap Singh were possible in scuffle with lid of pressure cooker.

16. PW-28 Insp. Surinder Pal, is the I.O. He reached the spot alongwith the police party. The statement of PW-1 Dharmender Chauhan was recorded under Section 154 Cr.P.C. vide Ext. PW-1/A. The case property was taken into possession. The disclosure statements were made by the accused Vijay Pratap Singh and Harpal Singh vide Ext. PW-4/A and PW-4/B, respectively. Spot map was also prepared. In his cross-examination, he admitted that many tenants were residing in the building in question but he could not tell the exact number thereof.

17. The case of the prosecution, precisely, is that the accused were present in the house of Narender Bhallowani. Narender Bhallowani has requested PW-2 Pradeep Sharma to cook meals for them. He was occupying tenanted room. PW-2 Pradeep Kumar went to the house of Narender Bhallowani with Pulao. He saw accused consuming liquor. He left the cooker in the kitchen. When he was coming out of the kitchen, he saw deceased Yash Pal coming to the room. The quarrel took place. Vijay Pratap Singh hit deceased with bottle on his head. Accused Harpal attacked the deceased with pressure cooker on his head. Narender Bhallowani in the morning went to the house of PW-2 Pradeep Sharma and told him to visit his room. PW-2 Pradeep Sharma, went to his room and saw the dead body of Yash Pal lying on the floor. PW-3 Ravinder Kumar informed the brother of Yash Pal deceased. Thereafter PW-1 Dharmender Chauhan also reached the spot. His statement was recorded under Section 154 Cr.P.C. vide Ext. PW-1/A and FIR was registered. The post mortem of the dead body was got conducted.

18. PW-2 Pradeep Sharma has categorically deposed in his examination-in-chief that when he went to the house of Narender Bhallowani, he saw Harpal Singh and Vijay Pratap Singh drinking. He was told by Narender Bhallowani that quarrel has taken place between Vijay Pratap Singh and Yash Pal deceased. The house occupied by PW-2 Pradeep Sharma was adjoining the house of Narender Bhallowani. It was separated only by a wall. It is intriguing to note as to why one of the co-accused Narender Bhallowani asked PW-2 Pradeep Sharma to cook meals for them, more particularly when PW-2 Pradeep Sharma has categorically stated in his examination-in-chief that he came from his office at about 5:30 PM and prepared his food, performed Puja and then he took his meals at about 7:30 PM. PW-2 Pradeep Sharma further deposed that he was called by accused Narender Bhallowani to his house. He entered the house and saw the dead body lying on the floor. The police reached the spot at about 7:00-7:30 AM. At that time, he was called by Narender Bhallowani and he had come out of his room. Till the arrival of police, he did not enter the room of Narender Bhallowani. In examination-in-chief, PW-2 Pradeep Kumar deposed that he went with Narender Bhallowani to the room where dead body of deceased was lying at 6:15 AM. However, in his cross-examination, he deposed that he has not entered the house of Narender Bhallowani till the police had come at 7-7:30 AM.

19. The recovery of clothes and shoes were made on the basis of statement made by accused vide Ext. PW-4/A and Ext. PW-4/B. The statements were made before PW-4 Deep Kumar and PW-5 Surinder Kumar.

20. The deceased has died due to ante mortem injuries as per PW-25 Dr. Ranveer Vardhan. The probable duration between injury and death was immediate. The time elapsed between death and post mortem was more than 12 hours but less than 24 hours. In his cross-examination, he admitted that pressure cooker Ext. P-4 was blunt weapon and its lid can be considered as sharp edged weapon. The case of the prosecution, precisely, is that the deceased was hit with the unbroken bottle and lid of the pressure cooker. As per the FSL report Ext. PW-25/C, the quantity of ethyl alcohol in the contents of blood of deceased was 91.88 mg% and in urine was 115.57 mg%. The accused Harpal has received 5 injuries as per MLC Ext. PW-27/B. These injuries were simple in nature caused with blunt weapon and the probable duration of the injuries was 48-72 hours. Accused Vijay Pratap Singh has received 4 injuries as per MLC Ext. PW-27/D. These injuries were also simple in nature and caused with blunt weapon and probable duration of the injuries was 48-72 hours. The prosecution has not explained the injuries received by the accused.

21. Mr. M.A. Khan, learned Addl. Advocate General for the State has argued that the accused with common intention have killed the deceased by striking his head with unbroken bottle and the lid of pressure cooker. The prosecution has not led any evidence that the accused have conspired and the act was pre-mediated or it was pre-arranged plan. The accused were drinking in the house of Narender Bhallowani when the deceased had entered the room. It is apparent from the post

mortem report Ext. PW-25/B and MLCs Ext. PW-27/B and PW-27/D that a drunken brawl has taken place between the accused and deceased. The accused had no intention to kill the deceased but they definitely had the knowledge that the injuries inflicted by them on the head of deceased could result in his death, more particularly when head was struck with unbroken bottle and lid of the pressure cooker. The entire case is based on circumstantial evidence. The motive plays an important role in a case based on circumstantial evidence. The prosecution has not attributed any motive why the accused wanted to kill the deceased who had joined them for drinking in the house of Narender Bhalooni. There was no previous enmity between the accused and the deceased. The very fact that all of them were consuming liquor proves that they were known to each other intimately. The sudden fight has taken place during the drinks consumed by the deceased and the accused.

22. The other circumstance relied upon by the learned trial Court to convict the accused is that they had absconded from the spot and arrested after few days. Their lordships of the Hon^{ble} Supreme Court in the case of Prakash Mahadeo Godse vrs. State of Maharashtra, reported in 1969 (3) SCC 741, have held that the appellant ran away and hid himself when people tried to catch hold of him does not lead to a firm conclusion that he behaved in that manner because he had a guilty mind. The instinct of self-preservation is uppermost in the mind of an ordinary man. The Courts have refused to attach much significance to abscondent evidence. It has been held as follows:

"12. The fact that the appellant ran away and hid himself when people tried to catch hold of him does not lead to a firm conclusion that he behaved in that manner because he had a guilty mind. Even most innocent persons when suspected of grave crimes are likely to evade their arrest. The instinct of self-preservation is uppermost in the mind of an ordinary man. The Courts have refused to attach much significance to abscondent evidence."

23. Their Lordships["] of the Hon^{ble} Supreme Court in the case of Matru alias Girish Chandra Vs. The State of Uttar Pradesh, AIR 1972 SC 1050 : (1971) CriLJ 913 : (1971) 2 SCC 75 : (1971) SCC(Cri) 391 : (1971) 3 SCR 914 , have held that absconding by itself does not necessarily lead to a definite conclusion of guilty mind. It has been held as follows:

"15. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime; such is the instinct of self-Preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis

than that of the guilt of the "accused. In the present case the appellant was with Ram Chandra till the F.I.R. was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence."

24. In the case of Thimma and Thimma Raju Vs. State of Mysore, AIR 1971 SC 1871 : (1971) CriLJ 1314 : (1970) 2 SCC 105 : (1970) 1 SCC(Cri) 320 : (1971) 1 SCR 215 , their Lordships" of the Hon"ble Supreme Court have held that though the conduct of accused in absconding immediately after the occurrence of the offence is relevant evidence, as indicating to some extent his guilty mind, it is not conclusive of that fact because even innocent person when suspected may be tempted to such conduct to avoid arrest. It has been held as follows:

"11. The trial court and the High Court have also been influenced by the fact that the appellant had absconded after September 1, 1967 when the police got suspicious of his complicity in this offence. It is true that the appellant did make himself scarce with effect from September 1, 1967 till he was arrested on September 5, 1967 and this conduct is relevant under s. 8 of the Indian Evidence Act and might well be indicative to some extent of guilty mind. But this is not the only conclusion to which it must lead the court. Even innocent persons may, when suspected of grave crimes, be tempted to, evade arrest: such is the instinct of self- preservation in an average human being. We are, therefore, not inclined to attach much significance to this conduct on the peculiar facts and circumstances of this case."

25. Further, their Lordships" in the case of Raghubir Singh Vs. State of U.P., AIR 1971 SC 2156 : (1971) CriLJ 1468 : (1972) 3 SCC 79 : (1972) SCC(Cri) 399 : (1971) 3 UJ 762 , have held that the act of absconding even if proved, is normally considered a somewhat weak link in the chain of circumstances utilized for establishing the guilt of an accused person. It has been held as follows:

"11. Shri Nuruddin Ahmad has also contended that the appellant had not absconded and the High Court was wrong in taking that into consideration. In our opinion, the act of absconding, even if proved, is normally considered a somewhat weak link in the chain of circumstances utilised for establishing the guilt of an accused person. If the evidence of eye-witnesses is held trustworthy then the act of absconding even if established would serve only to further fortify the satisfaction of the Court with respect to the guilt of the accused concerned, for, even an innocent person may well try to keep out of the way if he learns of his false implication in a serious crime reported to the police. In the present case, however, we also find that the circumstance of absconding was not put to the appellant in his examination so as to enable him to offer explanation. But on the existing material on the record, in our view, even without considering the act of absconding, the evidence seems to be strong and convincing enough to establish the guilt of the accused beyond reasonable doubt."

26. The Apex Court in the case of Rahman Vs. The State of U.P. , have held that absconding by itself is not conclusive either of guilt or of guilty conscience. It has been held as follows:

"21. It is true that the appellant was concealing himself for nearly a month though he must have known that he was wanted by the Police and that he left his wife to face the situation alone. But absconding by itself is not conclusive either of guilt or of a guilty conscience. For, a person may abscond on account of fear of being involved in the offence or for any other allied reason."

27. In the case of Datar Singh Vs. The State of Punjab, AIR 1974 SC 1193 : (1974) CriLJ 908 : (1975) 4 SCC 272 : (1974) 2 SCR 808 , their Lordships" of the Hon"ble Supreme Court have held that prosecution cannot benefit from merely suspicious circumstances that the accused did not surrender or was not traceable for nearly one year. At paragraph 30, it has been held as follows:

"30. We do not think that the appellant needs the support of any presumption from non-production of any of these witnesses. We also do not think that the prosecution can benefit from the merely suspicious circumstance that the appellant did not surrender or was not traceable for nearly a year. Reliance was placed by the appellant's Counsel on Prakash Mahadeo Godse v. State of Maharashtra(1), to contend that conduct of the accused such as hiding after the offence, by itself, does not conclude matters. Even though the acts there were somewhat different, the same principle would apply here. In any case the super-structure of the prosecution case, based on the testimony of two alleged eye witnesses, having crumbled in the case before us, we find it impossible not to give the appellant the benefit of doubt because of circumstances which could only raise suspicion against him. Sufficient number of very significant features of evidence on record, dealt with by us above, were ignored by the High Court and the Trial Court. Hence, we were compelled to reassess the evidence for ourselves."

28. In the instant case, there was no pre-meditation or pre-arranged plan, as discussed hereinabove. It was a sudden fight and the heat of passion which resulted into quarrel after consuming liquor by accused and deceased and accused have not acted in a cruel or unusual manner. Their lordships of the Hon"ble Supreme Court in the case of Ram Nath Madhoprasad and Others Vs. State of Madhya Pradesh, AIR 1953 SC 420 , have held that when there was no evidence whatsoever of any pre-meditation or of pre-arranged plan by the assailants of murdering the deceased the mere fact that all the accused were seen at the spot at the time of firing, could not be held sufficient to prove or even to infer a common intention. Their lordships have held as follows:

"18. The further contention of Dr. Tek Chand that the High Court was in error in holding that the provisions of Section 34 were attracted to the facts of the case is also well founded. There is no evidence whatsoever of any premeditation or of a prearranged plan by the assailants of murdering Sunder. The conclusions of the

High Court in para. 53 of its judgment seem to be based more on conjectures than on admissible material. No act or conduct on the part of the accused has been proved from which an inference of a prearranged plan to murder Sunder could be raised.

Even if it is held proved that all the appellants were seen at that spot at the time of firing this fact by itself could not be held enough to prove a common intention of the appellants to murder Sunder. It can well be that these four persons were standing together and one of them suddenly seeing Sunder fired at him. This possibility has not been eliminated by any evidence on the record. In such a situation when it would not be known who fired the fatal shot, none of such persons could be convicted of murder under Section 302, I. P.C. It seems to us that in this case the High Court failed to appreciate the true effect of the decision of the Privy Council in--"Mahbub Shah vs. EmperorAIR 1945 118 (Privy Council) , and its judgment in regard to the applicability of Section 34, I. P. C. has to be reversed."

29. In view of the observations and analysis made hereinabove, the appeals are partly allowed. The accused are convicted under Section 304 (part II) read with Section 34 IPC instead of Section 302 IPC read with Section 34 IPC. The accused be heard on the quantum of sentence for offence under Section 304 (part II) read with Section 34 IPC on 9.10.2015. The Registry is directed to prepare the production warrants and send the same to the concerned Superintendent of Jail for production of the accused on 9.10.2015.