
(2010) 01 RAJ CK 0033
In the Rajasthan High Court

Jaswant Singh and Others etc.

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-01-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 304, 323

Citation : (2010) CriLJ 1669 : (2010) 3 RLW 2359

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Judgement

Gopal Krishan Vyas, J.—Both these jail appeals arise from the judgment dated 5-11-2004 passed by the Addl. Sessions Judge (Fast Track) No. 3, Udaipur (Camp Salumbar) in Sessions Case No. 22/2004, whereby, the trial Court convicted the appellants for offences under Sections 148, 341, 302, 149, 323, and 324 I.P.C. and sentenced each of the appellants as under:

(Vernacular matter omitted)

2. Facts of the case indicate that upon oral complaint made on 9-8-2000 by complainant Nawal Singh, P.W.-1 (S/o deceased Anar Singh), an F. I. R., was registered at Police Station Pahara (District Udaipur) against the appellants and one juvenile Manohar Singh u/s 302/149, 341, 323, 324 and 148, I.P.C. In the FIR, it is alleged by the complainant that on 9-8-2000 his whole family members were in their residential house at village Gohawara including his father deceased Anar Singh and mother Lali and two sisters. At about 11.30 a. m., his father Anar Singh went for bringing water from the well and, at the time when he was going towards the well in his agriculture field, the accused party including Kesar Singh (elder brother of deceased Anar Singh), Sajjan Singh, Jaswant Singh, Manohar Singh, Amar Singh and Ragi came on the spot, armed with weapons viz., lathi, kudali and iron pipe, with common intention surrounded his father and assaulted him. At that time, his mother also rushed to the place of the occurrence for rescuing her husband but she was caught hold of by Smt. Ragi and all the accused-appellants started beating his father and mother with the weapons

mentioned above.

3. According to the complainant, Kesar Singh was armed with lathi, Jaswant Singh had kudali and Manohar Singh was armed with iron pipe. Due to severe beating, the father and mother of the complainant fell down and lay at the spot and, at the time when both his father and mother received injuries they shouted for their rescue but nobody came on the spot for their help. His sister Geeta and he also intervened but they were also assaulted by the accused persons.

4. As per the complainant, he immediately went to the house of P.W. 2 Sardar Singh. Sarpanch of the area and Kure Singh who came at the spot and, thereafter, P.W. 2 Sardar Singh gave information by telephone to the Police Station Pahara. At that time, his father and mother were lying in the field of maize. As per the complainant, his father suffered fractures of his right hand and leg and also received injuries on his head and his mother also received severe injuries upon her body which resulted in death of both his father and mother. As per the allegation of the complainant, there was dispute of land between his elder father (his father's elder brother) and father, due to which, the occurrence took place and due to severe beating by the accused appellants his father and mother both died.

5. Upon the said complaint, FIR No. 157/ 2000 was registered at Police Station Pahara (District Udaipur) and investigation commenced. The investigating officer, after completing the investigation and arrest of the appellants, filed challan against all the appellants and one Manohar Singh, juvenile, in the Court of Judl. Magistrate, Kherwada from where the case was committed to the Court of Sessions and, later on, the same was transferred to the Addl. District Judge No. 2, Udaipur where after framing of the charges, the learned trial Court proceeded to try the case.

6. Learned trial Court passed order for separate trial of juvenile Manohar Singh, by which, his case was transferred to the Juvenile Justice Board, Udaipur and separate trial was conducted there. Before the trial Court, to prove the case, the prosecution adduced evidence and, in all, 20 prosecution witnesses were examined by the trial Court. Thereafter, statements of 313, Cr. P. C. were recorded and 3 witnesses were produced in defence. At the trial, number of documents were also exhibited to prove the case from the prosecution side. Following witnesses were produced before the trial Court to prove the prosecution case.

7. P.W. 1, Nawal Singh gave statement that on 9-8-2000, at about 11.30 a. m.. when his father was going towards well for fetching water, he was assaulted by the appellants Kesar Singh, Amar Singh, and Sajjan Singh with lathi, Manohar Singh with iron pipe and Jaswant Singh with kudali. When they were beating his father his mother went on the spot and intervened but she was caught by Smt. Ragi and beaten by the appellants and the said occurrence took place in front of his house and it resulted into death of both his father and mother. At that time,

he and his sisters P.W. 5 Asina and P.W. 6 Geeta went to the spot for protecting their father and mother, and, thereafter, he went to the house of Sarpanch Sardara Singh and Kure Singh. They came on the spot to see the dead bodies of his father and mother and a telephonic message was sent to the police station and, thereafter, the police came to the spot. It is stated by him that there was quarrel between his father and elder father appellant-accused Kesar Singh. When the police came to the spot he gave verbal information, which is Ex. P/I, to P.W. 17 Rajesh Kumar, Sub Inspector, Police Station Pahara. Thereafter, necessary investigation took place on the spot and bodies were brought to the hospital for postmortem and after performing the post mortem the bodies were again brought to the police station. On the next date, i.e. 10-8-2000, the bodies were cremated.

8. In his statement, P.W. 1 Nawal Singh has categorically stated that his father was having two wives, one Sajjan Devi and second deceased Lali. In the cross examination, P.W. 1 Nawal Singh stated that house of Shambhoo Singh is just 100 mtr. distant from his house and other houses situated in the area belong to Meghwal and Salvi community and those persons residing nearby probably did not come to the spot because they were afraid that they will be beaten by the appellants. It is also stated that in the family of Shambhoo Singh there are five other members including his wife, son and two daughters but his family is having enmity with the said family, therefore, they did not come to the spot.

9. Similar type of statements were made by P.W. 5 Asina and P.W. 6 Geeta, both sisters of the complainant and daughters of deceased Anar Singh. In their statements also they deposed similar story and. in all, these three witnesses were produced as eyewitnesses.

10. P.W. 3, Dr. Surendra Kumar who performed the post mortem, Ex. P/10 and Ex. P/11 of the bodies of both the deceased persons and so also he examined Geeta who received as many as 8 injuries vide Ex. P/I2. P.W. 4 Dhan Singh is witness of the site plan (Panchnama) vide Ex. P/7 and P/8 turned hostile before the Court. Similarly, P.W. 12, Fateh Singh and P.W.-13 Thavara are motbir witnesses who turned hostile before the Court. P.W. 14 is the photographer who took the photographs of the scene of occurrence. P.W. 15 Gajendra Singh, Constable and P.W.-16 Bali Ram gave statement that he registered the FIR when it was received by him from Sub Inspector Rajesh Kumar, P.W. 17, who is second officer of the police station Pahara who has performed part of the investigation. P.W. 18 Ramesh Chandra turned hostile before the Court who was witness of the recovery of lathi. P.W. 19 was working as A. S. I. at police station Pahara who made endorsement upon the F. I. R. when it was submitted before him by Bali Ram, Constable, P.W. 16 and P.W. 20 Duleh Singh is S. H. O. who conducted the investigation and filed challan before the Court against the appellants.

11. Learned Counsel appearing on behalf of the appellants in both these appeals argued that prosecution has failed to prove its case beyond reasonable doubt. All the appellants were falsely implicated in this case and, as per the prosecution

story as narrated before the Court, it cannot be said that there is any trustworthy evidence, upon which, appellants can be convicted but the learned trial Court has committed a grave error while convicting all the appellants for alleged offences.

12. Learned Counsel for the appellants submits that as per prosecution evidence, complainant Nawal Singh, P.W.-1; Kumari Asina, P.W.-5, and, Kumari Geeta, P.W. 6 were produced as eye-witnesses and. admittedly, these witnesses are son and daughters of deceased Anar Singh. Therefore, being close relative they can very well be termed as interested witnesses. It is also pointed out that, in fact the above witnesses are son and daughters of deceased Anar Singh and Sajjan Devi, first alive wife of deceased Anar Singh and deceased Lali subsequently got married to Anar Singh, therefore, Lali was stepmother of these witnesses.

13. Learned Counsel for the appellants vehemently argued that as per the prosecution case the occurrence took place at 11.30 a. m. in the open undivided agricultural field of the complainant and accused party and number of houses are situated in the nearby area and the occurrence took place in the morning; but, no investigation was made from the residents of the area nor statement of any independent witness was recorded by the investigating officer; meaning thereby, to prove the prosecution case, statements of the interested witnesses, son and daughters of the deceased were recorded. The learned trial Court has relied upon the testimony of three eye witnesses, P.W.-1 Nawal Singh, P.W.-5 Miss Asina and P.W.-6 Miss Geeta which is not proper because, admittedly, in the life-time of mother of these witnesses their father late Anar Singh contracted second marriage with deceased Smt. Lali and for the social reasons there was quarrel in the family of deceased Anar Singh itself. therefore, on the basis of such type of evidence of interested witnesses it cannot be said that the prosecution has proved its case by leading cogent evidence. The evidence of alleged eye-witnesses is not supported by any independent evidence.

14. Learned Counsel for the appellants raised an important ground that as per provisions of the Criminal Procedure Code as and when any F. I. R. is registered in the Police Station it is mandatory to send copy of the F. I. R. to the concerned Magistrate without any delay having jurisdiction, but, here, in this case, admittedly, on oral statement, the F. I. R. was registered on 9-8-2000 at about 2.00 p. m. but the F. I. R. was sent to the concerned Magistrate on 11-8-2000 at 12 in the noon and. for this delay, there is no explanation on record therefore, it seems that all the appellants were planted by the complainant party with connivance of the investigating officer. In this connection, learned Counsel for the appellant while inviting the attention of the Court towards statement of P.W.-1 Nawal Singh submits that from conduct of this witness it can be gathered that his father and mother both were assaulted and murdered by the appellants but he did not intervene and, later on, instead of going to the police station for filing F. I. R., he went to the house of Sarpanch Sardara Singh, P.W. 2 and Kure Singh. Thereafter, Sardara Singh made telephonic information to the police station, upon which, the police came to the spot of occurrence; meaning thereby, it is

apparently clear that for the offence committed at about 11.30 a. m., neither the complainant went to the police station nor has informed the police directly but it is stated by him in his statement before the Court that he informed Sarpanch Sardara Singh, P.W. 2. Learned Counsel for the appellants vehemently contended that upon the statement of such type of witness it is not safe to convict the appellants because he is hiding correct facts and has framed fabricated story and implicated whole family members of accused Kesar Singh.

15. It is further argued by learned Counsel for the petitioner that there is no explanation for sending the F. I. R. with delay of two days and there is further no explanation why the complainant did not directly go the police station. Similarly, when such type of serious occurrence took place, first of all, any prudent man would immediately shout for rescue. But, here, in this case, as per testimony of this witness, his nighbourers were standing and watching the occurrence but did not come on the spot for protection, in this view of the matter, the evidence of such type of statement is required to be ignored, therefore, the learned trial Court has committed error while relying upon the testimony of Nawal Singh, P.W. 1.

16. In these appeals, following specific grounds have been taken by the appellants upon which it is argued by learned Counsel for the appellants that the prosecution has failed to prove its case beyond reasonable doubt. Further, it is argued that in criminal law, the prosecution is required to explain each and every allegations by way of leading cogent and trustworthy evidence and should fair before the Court. Further, it is argued that it is the duty of the prosecution to prove before the Court that prosecution story is probable and there is material evidence on record to prove the prosecution case. The following points are required to be taken into consideration for adjudicating these appeals:

(1) Whether delay in sending F. I. R. to the concerned Magistrate after two days is fatal to prove the prosecution case.

(2) Whether non-examination of the independent witnesses is material discrepancy and fatal to prove the case.

(3) Whether prosecution has proved its case beyond reasonable doubt by leading independent evidence and has proved the recovery of weapons before the Court by independent witnesses?

(1) Whether delay in sending F. I. R. to the concerned Magistrate after two days is fatal to prove the prosecution case : Upon perusal of the record of the case, it is revealed that occurrence took place on 9-8-2000 admittedly at 11.30 a. m. and at that time, complainant, P.W.-1 Naval Singh, P.W.-5 Anisha and P.W.-6 Gita were present at the scene of occurrence and after incident instead of filing F. I. R. to the nearest police station, the complainant P.W. 1 Naval Singh went to the house of Sarpanch P.W.-2 Sardara Singh and thereafter as per prosecution story Sardara Singh informed the police Station Pahada by telephonic message that an occurrence took place and as per statement of P.W.-2 Sardara Singh, police came

on spot as per his information given on telephone at 2 p.m. on 9-8-2000 and thereafter upon oral statement of P.W.-1 Naval Singh, the F. I. R. was written by the Investigating Officer P.W.-17 Rajesh Kumar on spot. Thereafter, the written F.I.R. duly signed by the complainant was sent to the Police Station for registering the case by hand through P.W.-16 Bali Ram, Constable. P.W.-16 Bali Ram reached the police Station Pahada and handed over the said written F. I. R. Ex. P-13 to P.W.-19 Ishwar Singh who made endorsement upon the F. I. R. and thereafter F. I. R. was registered and constable was sent back upon the place of occurrence. Meaning thereby, F. I. R. was registered in the Police Station Pahada at about 3 p.m. and the said F. I. R. was to be sent to the concerned Magistrate immediately but same was not sent to the concerned Magistrate on 9-8-2000 and 10-8-2000 and subsequently it was received in the Court of Civil Judge (J.D.) on 11-8-2000 at about 12 a.m. Meaning thereby, there was a gross delay in sending the F. I. R. to the concerned Magistrate and it is also one of the important fact of the case that site plan Ex. 2 was prepared on 9-8-2000 at about 2.30 p.m. and all other memos were prepared in between 2 p.m. to 5 p.m., which is evident from Ex. P/3, Ex. P/4, Ex. P/5, Ex. PAS, Ex. P/7, Ex. P/8 and Ex. P/ 9 and thereafter bodies of both the deceased Anar Singh and Mst. Lali were brought to the hospital for post mortem at about 5.45 p.m. and on 9-8-2000 itself, post-mortem was conducted and eye witness Ms. Gita was also medically examined and her injury report was prepared by the Medical Officer of the Primary Health Centre, Kherwada on the same day. Meaning thereby, the investigation took place on 9 & 10 of August, 2000 and most of the investigation of the site was made before sending F. I. R. to the concerned Magistrate on 11-8-2000 and counsel for the appellants is raising voice that with the connivance of the police, a concocted and false story was framed in which all the family members have been indulged in this case whereas P.W.-1 Naval Singh, Gita and Anisha, who are none else but son and daughters of deceased Anar Singh were included as eye witnesses to prove the prosecution case. Therefore, all the above facts clearly reveals that investigation was not conducted in proper manner and prosecution has tried to hide the material evidence from the Court, therefore, the F. I. R. was sent after two days to the concerned Magistrate. The allegation of defence side is that all the appellants have been falsely implicated and no prudent man can accept such type of prosecution story in which it is stated that though occurrence took place in the morning at about 11 a.m. but none of the independent witnesses came forward to give their statements and only interested witnesses, who are son and daughters of deceased Anar Singh, gave their statements to prove the prosecution case.

(2) Whether non-examination of the independent witnesses is material discrepancy and fatal to prove the case : As per learned Counsel for the appellants, prosecution has failed to proved its case beyond reasonable doubt because as per prosecution story, the occurrence took place at 11.30 a.m. on 9-8-2000 and it is also one of the important fact that occurrence took place in the area where so many houses are in existence so also as per the statement of

prosecution witnesses so many persons were watching the incident but Investigating Officer has not cared to take evidence of independent witnesses and challan has been filed only on the basis of interested witnesses P.W.-1 Naval Singh, P.W.-5 Anisha and P.W.-6 Gita, who are son and daughters of deceased Anar Singh. As per learned Counsel for the appellants Smt. Lali who died on the spot along with Anar Singh is step mother and their own mother Smt. Sajjan Devi is alive but in the life time of Smt. Sajjan Devi, Naval Singh remarried with deceased Lali, who was residing with him, therefore, it is also one of the possibility that these witnesses themselves committed offence and with the intention to sent all the appellants out from the agricultural field, this false case has been registered, that too, without any independent witnesses. It is the duty of the investigating officer to investigate the case in proper manner and to collect the cogent evidence to prove the prosecution case but it appears from whole of the prosecution case and the statement of P.W. 17 and P.W.-20 that in very casual manner, they conducted investigation and filed challan on the basis of two interested witnesses and without leading any evidence of any independent witnesses but though occurrence took place in the thickly populated area and as per the prosecution story, houses of so many persons are situated within the radius of 300 to 500 meters and occurrence took place in the morning at about 11.30 a.m. Further. instead of rushing to the police station as per the prosecution story P.W.-1 Naval Singh went to the house of Sarpanch, who gave information on telephone to the police that occurrence took place but investigating Officer P.W.-17 Rajesh Kumar has given his statement altogether different with regard to receiving information of incident. P.W. -17 Rajesh Kumar stated in his statement that he has received information at bus stand by some unknown person, therefore, he rushed to the place of occurrence whereas P.W.-2 Sarpanch Sardara Singh has made statement that police came on spot as per information given by him on telephone. Meaning thereby, it was the duty of the investigating officer to come out with the correct facts before the Court but neither P.W.-17 nor P.W.-20 Dule Singh disclosed whether any telephone was received at police station Phada which is said to be made by PW. 2 Sarpanch Sardara Singh for giving first information report. Therefore, as per learned Counsel for the appellants the prosecution has failed to prove its case and falsely implicated the innocent persons in this false case and suppressed the correctness of the information, therefore, the judgment impugned deserved to be quashed.

(3) Whether prosecution has proved its case beyond reasonable doubt by leading independent evidence and has proved the recovery of weapons before the Court by independent witnesses?

17. Learned Counsel for the appellant submits that prosecution has failed to prove its case beyond reasonable doubt. It is submitted that there is no independent eye witnesses produced by the prosecution to prove the case. There are three alleged eye witnesses, viz. P.W. 1 Naval Singh (son of deceased), P.W.-5 Asina and P.W. 6 Geeta (both daughters of the deceased). There is none other independent witness produced by the prosecution; whereas, as per

statements of all these witnesses, the occurrence took place at 11.30 a. m., that too, in the area where so many houses are situate and many persons were watching the incident.

18. Further, it is argued that none of the witnesses of recovery of weapons has proved the case of prosecution. More so, all the witnesses of recovery have turned hostile before the Court, therefore, when recovery of alleged weapons is not proved and independent witnesses have not been produced by the prosecution, then, obviously the evidence which is led by the prosecution rests on flimsy footing for arriving at the conclusion of guilt against the accused, therefore, before the Court the prosecution evidence deserves to be discredited because it is not safe to convict innocent persons on the basis of so called evidence which is not even proved by the prosecution before the trial Court.

19. Learned Counsel for the appellants further argued that in this case one iron pipe was recovered from Manohar Singh vide Ex. P/30, whose separate trial was conducted before the Juvenile Justice Board, therefore, nothing is required to be adjudicated upon that in this appeal and his appeal is not before this Court. But, it is pointed out by learned Counsel for the appellants that from Jaswant Singh appellant, as per the prosecution, one lathi (wooden pole or staff as weapon) was recovered in presence of witnesses Nathu Singh and Dhan Singh; but, Nathu Singh was not produced before the court and Dhan Singh, P.W. 4 turned hostile before the Court. Further, it is submitted that as per the prosecution story itself lathi recovered from Jaswant Singh was not stained with any blood.

20. Similarly, lathi recovered from Sajjan Singh vide Ex. P/20, that, too, was not stained with blood and the two witnesses before whom the said lathi was alleged to have been recovered, Ramesh Chandra, P.W.-18 and Thavara, P. W-13, turned hostile before the Court and they did not support the prosecution story of alleged recovery of lathi made from Sajjan Singh. Further, it is contended that no weapon whatsoever was recovered from appellant-accused Smt. Ragi, wife of Kesar Singh. Therefore, obviously these accused have been falsely implicated.

21. With regard to accused appellant Kesar Singh, as per the prosecution story, one lathi was recovered from him vide Ex. P/15 in presence of witnesses Dhan Singh, P.W.-4 and Fateh Singh, P.W.-12 but both these motbir witnesses turned hostile before the Court and they did not prove the recovery of lathi from Kesar Singh; meaning thereby, recovery of lathi alleged to be stained with blood has not been proved by the prosecution before the Court. Though the said lathi was sent for chemical examination and. as per the report of chemical examiner, Ex. P/ 41,. the said lathi was found to be stained with blood, but, when recovery of lathi from Kesar Singh has not been proved, then, trial Court has committed error while convicting Kesar Singh for offence u/s 302, I.P.C.

22. It is, therefore, vehemently contended by learned Counsel for the appellants that it is manifestly clear that conviction of the appellant-accused in this case is based by the trial Court only upon the testimony of P.W.-1 Nawal Singh, P.W.-5

Asina and P.W.-6 Geeta (all three son and daughters of deceased Anar Singh (deceased Smt. Lali was step mother of these witnesses); meaning thereby, on the basis of such type of interested witnesses whose testimony was not corroborated by the prosecution before the trial Court, no conviction can be made but the learned trial Court has committed grave error while convicting all the appellants for offence u/s 302, I.P.C., read with Section 149, I.P.C.

23. It is vehemently argued by learned Counsel for the appellants that there is no evidence on record with regard to motive or intention. In the absence of such important ingredient which is essential to prove offence of murder it cannot be presumed that offence has been committed u/s 302, I.P.C. It is also argued that as per the post mortem report of deceased Anar Singh, Ex. P/10, although there were 15 injuries including lacerated wounds and bruises; but, out of these 15 injuries, 5 are bruises, 6 are lacerated wounds and except injury No. 1, all the injuries are not upon any vital part of the body and these injuries have been inflicted upon leg or forearm or wrist and other non vital parts of the body. Further, as per the opinion of the doctor the cause of death is head injury and multiple injuries all over the body, therefore, upon perusal of the injuries mentioned in the post mortem report, even if it is presumed that occurrence took place, no offence u/s 302, I.P.C. took place.

24. Similarly, vide Ex. P/I 1. postmortem report of Smt. Lali, second wife of deceased Anar Singh, there is mention of 8 injuries and none of the injuries is found to have been inflicted upon vital part of the body and. as per the opinion of the medical board, the deceased died due to shock caused by severe bleeding; meaning thereby, as per the injuries mentioned in the post mortem report, it can be said that no conviction can be made for offence u/s 302, I.P.C. even if it is presumed that the prosecution has proved its case. Therefore, when recovery is not proved and no independent witness is produced before the trial Court to corroborate the version adduced in evidence by P.W.I Naval Singh, P.W.-5 Asina and P.W.-6 Geeta (all children of the deceased) and, further, when there is no evidence with regard to motive or intention on record, then, it can be said that the appellants have been wrongly convicted for offence u/s 302, I.P.C. Therefore, all these appellants are entitled for acquittal because the prosecution failed to prove its case at the trial beyond reasonable doubt.

25. Learned Counsel for the appellants invited attention of the Court towards following judgments of the apex Court in support of his submission:

(1) Delay in sending FIR to Magistrate and non-examination of independent witnesses:

- i. Bijoy Singh and Another Vs. State of Bihar,
- ii. Jang Singh and Others Vs. State of Rajasthan,
- iii. Ishwar Singh Vs. State of U.P.,
- iv. 1994 SCC (Cri) 1551.

(2) Suppression of First Information:

i. Sheikh Meheboob @ Hetak and Others Vs. State of Maharashtra,

(3) When discrediting testimony of witnesses:

i. State of M.P. Vs. Makhan @ Madan and Others,

ii. Ramasray Pandey and Others Vs. State of Bihar,

26. After giving thoughtful consideration to the material on record and arguments advanced by learned Counsel for the appellants, it is abundantly clear that to prove the case, 3 eye witnesses have been produced before the Court by the prosecution, namely P.W. -1 Naval Singh, P.W.-5 Kumari Asina and P.W. 6 Kumari Geeta. Upon perusal of their statements before the Court, it is obvious that all these three witnesses are stating altogether different story with regard to the occurrence which took place at the site and they are admittedly son and daughters of the deceased persons. Naval Singh, P.W.-1, in his examination in chief, stated that Kesar Singh, Sajjan Singh, Amar Singh, Jaswant Singh, and Manohar Singh, they all belaboured his father with lathi, kudali and iron pipe and accused Ragi caught hold of his mother and gave fist and kick blows upon her. According to this witness, all these accused inflicted injuries upon the bodies of his father and mother. It is specifically stated by Nawal Singh, P.W. 1 that (Vernacular matter omitted) meaning thereby, there is no specific allegation against any of the persons for inflicting any specific injury.

27. With regard to statement of P.W.-5 Kumari Asina, she has stated in her statement that Kesar Singh, Jaswant Singh. Sajjan Singh, Manohar Singh, Amar Singh and Smt. Ragi inflicted injuries to her father and mother which resulted into their death. It is specifically stated by her that Kesar Singh has inflicted injury upon the head of her father and Manohar Singh inflicted injury upon his left hand and Jaswant Singh inflicted injury upon the right hand of her father and Sajjan Singh and Amar Singh inflicted injury upon the back of her father and Ragi caught hold of her mother and all these persons collectively gave blows to her father and mother and due to the injuries they died.

28. Kumari Geeta, P.W.-6 stated that Kesar Singh, Jaswant Singh, Amar Singh, Sajjan Singh and Smt. Ragi, they all caused injuries to her father and mother and specifically stated that all these persons inflicted injury upon the head of her father and mother. Geeta, P.W.-6 specifically stated that Kesar Singh inflicted head injury to her mother.

29. Before perusing their cross-examination, it is worthwhile to observe that none of the alleged three eye-witnesses Nawal Singh. P.W.-1 Asina. P.W.-5 and Geeta P.W. -6 is corroborating their statements and all these persons are giving different version before the Court. On this basis only it can be said that to rely wholly upon the testimony of these witnesses it is not proper to convict the appellants for offence u/s 302, I.P.C.

30. One important fact in the case is that on the record there is statement of D. W.-1 Babulal and D. W.-2 Ramesh as well as D. W.-3 Kawa. These 3 witnesses were produced before the Court from the defence side and, out of these three witnesses, Babulal, D. W. 1 and Ramesh, D. W.-2 are independent eye witnesses. As per their statements, on the date of occurrence, they heard noise of quarrel in the agricultural field of Kesar Singh and they rushed to the field and saw that deceased Anar Singh and his wife were standing there and quarrel was going on between Anar Singh, his wife and appellant Jaswant Singh and Manohar Singh. At that time, they heard that Manohar Singh asked Anar Singh why he had let loose his animals in their field to destroy their crop. At that time, Anar Singh (deceased) became angry and quarrel took place. These witnesses further stated that they rushed to the house of Kesar Singh which is just nearby the place of occurrence where nobody was in the house and, at that time, Ramesh, D. W. 2 was also present there. It is stated by D. W. 1 Babulal that Kesar Singh, Sajjan Singh and Smt. Ragi were not present at the scene of occurrence. Similar statement is also made by Ramesh Lohar, D. W.-2. Kawa, D. W.-3 stated that on the date of occurrence his elder father's daughter Ragi was in his village Katarwas. In this view of the matter, it appears that as per the independent witnesses produced by the defence they are not denying the occurrence which took place on 11.30 a. m. on 9-8-2000; but, their clear statement is that only 2 accused persons viz., Jaswant Singh and Manohar Singh were at the spot and quarrel took place in between accused Jaswant Singh and Manohar Singh on the one side and deceased Anar Singh and his wife Smt. Leela on the other. It is also stated that Geeta. P.W.-6 intervened in the quarrel and she also received certain injuries. Thereby meaning that the defence is also not disputing the occurrence; but, as per statements of Babulal, D. W.-1, and Ramesh, D. W.-2, only Jaswant Singh and Manohar Singh were present at the spot. In their cross examination also, they made specific statement that not only these witness but many other persons saw Jaswant Singh, Manohar Singh, deceased Anar Singh and deceased Smt. Lali when they were quarreling and it is specifically stated that no other accused than Jaswant Singh and Manohar Singh was at the spot. These witnesses were thoroughly cross-examined by the prosecution but nothing could be elicited to disbelieve their testimony; meaning thereby, in this case, occurrence is not disputed but how it took place and whether it is proved or not is the precise question.

31. In this case, challan was not filed against Amar Singh whose name was specifically mentioned in the FIR by Nawal Singh, P.W.-1 and Asina, P.W.-5 and Geeta. P.W.-6. Challan was filed against Kesar Singh, Jaswant Singh, Sajjan Singh, Manohar Singh and Smt. Ragi. Separate trial took place before the Juvenile Justice Board so far as accused Manohar Singh.

32. Upon scanning the entire evidence available on record, it emerges that from the prosecution side there are three eye-witnesses P.W.-1 Nawal Singh, upon whose statement the FIR was registered, P.W.-5 Kumari Asina and injured eye-witness P.W.-6 Geeta (both daughters of deceased Anar Singh), so also, from the

defence side, statements of 2 independent witnesses Babulal, D. W. -1 and Ramesh Lohar, D. W.-2 are on record. All these prosecution and defence witnesses are supporting the fact that the incident took place but the prosecution witnesses Nawal Singh, P.W. 1, Kumari Asina, P.W.-5 and Kumari Geeta, P.W.-6 allege that there were five accused namely, Kesar Singh, Amar Singh, Sajjan Singh, Manohar Singh and Smt. Ragi, but, with regard to their role there is material contradiction for inflicting injuries, so also, with regard to using weapons. Likewise, police did not file any challan against Amar Singh whose name was specifically mentioned in the FIR. so also, in the statements of these three witnesses, Nawal Singh, P.W.-1, Asina, P.W.-5 and Geeta. P.W.-6. Further, in the statements of these three prosecution eye-witnesses, there is no allegation with regard to inflicting any injury with weapon against Smt. Ragi and only her presence has been shown by these witnesses.

33. In the statements of Babulal, D. W. -1 and Ramesh, D. W.-2, it is specifically stated by these witnesses that occurrence took place due to letting loose of the animals of deceased Anar Singh and he became angry; at that time, quarrel took place in between accused Jaswant Singh (and Manohar Singh, who is not before this Court in these appeals) and Anar Singh and Smt. Lali but, at that time, the other accused were not present at the scene of occurrence. These two defence witnesses do not deny the incident but they stated that only two accused Jaswant Singh and Manohar Singh were present and the occurrence took place at the spur of moment in the heat of anger. Therefore, motive or intention cannot be gathered nor it can be said that there was collective conspiracy for the purpose of committing offence u/s 302, I.P.C.

34. After assessing the evidentiary value of statements of these two defence witnesses, D. W.-1 Babulal and D. W.-2 Ramesh Lohar, we are of the opinion that the occurrence took place and, as per statement of injured witness Geeta. P.W. 6, it is abundantly clear that injuries were sustained to deceased Anar Singh and Smt. Lali by all appellants except Smt. Ragi; but, there is no evidence on record to prove motive. The enmity with regard to land was not with the accused party but with one Shambhoo Singh whose house is said to be near the place of occurrence. In the circumstances, we are unable to discredit the testimony of injured eye-witness Kumari Geeta, P.W.-6 who is daughter of deceased Anar Singh but, upon her statement, it is not established that there was any motive or intention of murder.

35. As indicated above, there was gross delay in registration of the F. I. R. Therefore, it is obvious that the F. I. R. was registered after discussion with family members. It is also worthwhile to observe here that as per facts of the case Nawal Singh, P.W.-1, author of the F. I. R., did not choose straight away to approach the police and, rather, he first went to the house of Saipanch Sardara Singh, P.W. -2. In his statement, it is stated by Sardara Singh, P.W.-2, that Nawal Singh did not name any other person except his elder father Kesar Singh. In this view of the matter, we are of the opinion, that quarrel took place at the spur of

the moment and there was no motive or conspiracy for committing murder. Our conclusion is supported by the fact that none of the witnesses of recovery has proved the recovery of alleged weapons from all the accused. Fact however remains that the occurrence took place and number of injuries were inflicted in the scuffle that ensued the quarrel. As per the post mortem report of deceased Anar Singh out of all other injuries only one injury was inflicted upon head with blunt weapon which resulted into his death; and, as per post mortem report of deceased Lali, none of the injuries was inflicted upon vital part of the body and she died due to shock caused by severe bleeding:

36. In this view of the matter, while assessing the testimony of the prosecution as well as defence witnesses, we are of the opinion that the incident occurred at the spur of the moment and there was no motive or intention to commit murder on the part of the accused. Therefore, as per the principle laid down by the Hon'ble Supreme Court in various pronouncements, the accused appellants are not guilty of committing offence u/s 302, I.P.C. but, at the most, they can be held liable for committing offence u/s 304, Part -I.P.C. because Smt. Lali died due to profuse bleeding resulting from multiple injuries which were inflicted upon non-vital parts of her body and deceased Anar Singh died due to head injury; but, none of the witnesses has proved as to which injury was caused by which accused and who caused the head injury upon deceased Anar Singh. Therefore, it is unsafe to convict the appellants for commission of offence u/s 302, I.P.C.

37. While arriving at the aforesaid conclusion, we are fortified by our view taken in the recent judgment rendered in D. B. Criminal Jail Appeal No. 1293/2003. decided on 5-1-2010, wherein, while following the principle laid down by Hon'ble Supreme Court in the judgments delivered in the case of Lachman Singh Vs. State of Haryana, and Harendra Nath Borah v. State of Assam AIR 2007 SCW 4631, in which, Hon'ble apex Court has clearly set out the difference between murder and culpable homicide not amounting to murder. While applying the principle laid down by the apex Court in this case also, we are of the opinion that on the basis of the fact that recovery of any weapon is not proved, so also, independent defence witnesses Babulal, D. W.-1, and Ramesh Lohar, D. W.-2 gave their statements that though the occurrence took place but it was due to the reason that some animals were let loose in the field of deceased Anar Singh and he became angry coupled with the fact that none of the prosecution witnesses has indicated any previous enmity in between the parties, therefore, the prosecution has not adduced cogent evidence to prove the commission of offence of murder to inflict punishment u/s 302, I.P.C.

38. Of course, upon re-appreciation and examination of the entire evidence on record, it is revealed that though offence is not made out u/s 302, I.P.C. but the appellant accused are, however, liable for culpable homicide not amounting to murder u/s 304, Part-I, I.P.C. for the death of deceased Anar Singh and Smt. Lali. In this view of the matter we are of the view that finding of the trial Court with regard to guilt u/s 302, I.P.C. is not sustainable in the eye of law. Appellant-

accused, however, deserve to be held responsible and liable for commission of offence u/s 304, Part-I, I.P.C.

39. As a result of the foregoing discussion, both these appeals partly succeed and the same are partly allowed. In D. B. Criminal (Jail) Appeal No. 1119/2004. filed by Jaswant Singh, Kesar Singh and Sajjan Singh, conviction of the appellants for offence u/s 302, I.P.C. is altered to offence u/s 304, Part-I, I.P.C. while maintaining rest of the order of punishment passed by the trial Court including fine. To this extent, sentence of life imprisonment imposed upon each of the appellants is set aside. Appellant accused Kesar Singh is in custody since 16-8-2000, Jaswant Singh since 10-8-2000, Sajjan Singh since 7-9-2000 and all of them are still in custody and they have served the sentence for more than nine years, therefore, each of these appellants is sentenced to the period of imprisonment already undergone by them. These appellants are in Jail, therefore, they shall be released forthwith provided each of them has satisfied the penalty of fine as imposed by the trial Court, if not required in any other case.

40. So far as appellant-accused Smt. Ragi in D. B. Criminal (Jail) Appeal No. 1180/ 2004 is concerned, upon examination and re-appreciation of the entire evidence on record, we are of the opinion that there is no specific allegation by any of the witnesses for inflicting any specific injury against her. At the most, her physical participation in the occurrence is liable to be found on the basis of the evidence coming on record. Therefore, while maintaining conviction for offences under Sections 323/149 and 341, I.P.C. passed by the trial Court, her conviction under Sections 302, 324/149 and 148, I.P.C. is set aside. Accordingly, her appeal is partly allowed. Sentence of life imprisonment passed against her by the trial Court is set aside. Sentences passed against her for offence under Sections 341 and 323/149, I.P.C. stand altered to the period of imprisonment already undergone by her. She is on bail. Her bail bonds accordingly stand discharged.