
(2015) 05 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : CRA-S-901-SB of 2008 and CRR-1913-2008

Karam Chand and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 313, 428
Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 304

Citation : (2015) 05 P&H CK 0104

Hon'ble Judges : Raj Rahul Garg, J

Bench : Single Bench

Advocate : Chanakya Pandit, for the Appellant; Mahima, AAG, Advocates for the Respondent

Judgement

Raj Rahul Garg, J.—There were in all 17 accused in this case (out of whom Niranjana Singh had died during the course of trial), who faced trial for committing offence punishable under Sections 148/302/323/324/325, 506/149 IPC. Out of these 16 accused, learned trial Court held Sohan, Gian Chand, Karam Chand, Rakma, Chotu and Jagat Ram guilty and convicted them vide judgment dated 31.03.2008 for commission of offence punishable under Sections 304 Part-II, 323, 324, 325 and 148 read with Section 149 of the Indian Penal Code (for short "IPC"). Remaining 10 accused namely Bachna Ram, Vikram Singh, Ishwar Chand, Darshan Lal, Pala Ram, Jaspal, Rishi Pal, Naib Singh, Ramesh Singh and Suresh Pal were acquitted by giving benefit of doubt to them. Vide order on sentence dated 03.04.2008, convicts were sentenced to rigorous imprisonment for six years and to pay a fine of Rs. 1,000/- each with default clause for committing offence punishable under Section 304 Part-II IPC; rigorous imprisonment for two years each for committing offence punishable under Section 325 IPC; rigorous imprisonment for one year each for committing offence punishable under Section 324 IPC; rigorous imprisonment for six months each for committing offence punishable under Section 323 IPC and rigorous imprisonment for one year each for committing offence punishable under Section

148 IPC. All the substantive sentences were ordered to run concurrently against each convict. Against the aforesaid judgment of conviction and order on sentence, accused-appellants Sohan, Gian Chand, Karam Chand, Rakma, Chhotu and Jagat Ram have come up before this Court in appeal. Whereas Mala Ram-complainant of this case, filed criminal revision against the acquittal of aforementioned 10 accused.

2. Briefly, prosecution case is like this; that on 06.06.2001, a telephonic message was sent to police station Shehzadpur from Police Post Urban Estate, Ambala City, to the effect that a fight had taken place on the previous night in the village Dhanana and 11 persons injured in that occurrence were admitted in Civil Hospital, Ambala City. On this, H.C. Kulwant Singh (PW-18) alongwith Constable Sukhbir Singh went to the Police Post, Urban Estate, Ambala City and after collecting the medical ruqa and MLRs from there, he had gone to Civil Hospital Ambala City. Medical opinion about the injured was obtained from the doctor. Doctor on duty told that injured Karam Chand and Ratan were referred to PGI, Chandigarh. Injured Mala Ram, Surmukh, Surinder Kumar, Suresh Kumar, Ramesh Kumar and Bhola were declared fit for making the statement. Thereupon, H.C. Kulwant Singh, recorded statement of Mala Ram as Ex. PA. As per statement of Mala Ram, on 05.06.2001; his brother Ratna was returning home from Shehzadpur at about 10:00 P.M., when he reached in front of his drawing room (baithak) in the street which is a thoroughfare, Jagat Ram son of Dharam Pal armed with gandasi, Chhotu son of Soran Ram armed with gandasi, Karam Chand son of Soran Ram armed with danda, Sohan son of Hari Ram armed with gandasi, Naib Singh son of Hari Ram armed with barchi, Jaspal Singh son of Hari Ram armed with danda, Ramesh Kumar @ Mesha son of Niranjan Singh armed with lathi, Bablu son of Niranjan Singh armed with lathi, Pala Ram son of Karam Chand armed with kirpan, Darshan Lal son of Amar Singh armed with kirpan, Bachna Ram son of Dila Ram armed with danda, Vikram Singh @ Vicky son of Bachan Singh armed with lathi, Suresh armed with barchi, Ishma armed with fawra, Rakam Singh son of Dharam Pal armed with lathi and Gian Chand son of Dharam Pal armed with danda, all residents of Dhanana, were standing there. They caught hold of Ratna whereas Jagat Ram and Chhotu gave gandasi blows on the head of Ratna. On this, Ratna raised alarm by shouting "Mar diya-Mar diya" which attracted complainant-Mala Ram and his brother Karam Chand. When they intervened in order to save Ratna, Sohan gave a gandasi blow on the head of Karam Chand. Rakma gave a lathi blow on the back of Karam Chand. Gian Chand gave a danda blow on the head and legs of Karam Chand. Chhotu attacked with gandasi on his (complainant) head. Karam Chand also gave danda blows on his legs and left shoulder. Complainant raised alarm by shouting "Bachao-Bachao" which attracted Bhola, Ramesh, Suresh, Surinder Kumar and Surmukh Singh. All the aforesaid accused inflicted injuries on their person with lathi, gandasi, kirpan and dandas. Jarnail Singh son of Amra as well many villagers reached the spot. Thereafter, all the aforesaid accused along with their respective weapons and by giving a lalkara, left the spot. While leaving the

spot, they gave threat to the life of complainant party that on that day, they were saved, however, as and when they get an opportunity they shall kill them.

3. Motive for commission of this crime was alleged by complainant which is like this; that about one month ago, on account of storm, electricity pole through which electric wires go to the "Bara" of Niranjana Singh had fallen down. The allegation of falling of pole was levelled against Pawan Kumar by Niranjana Singh. On account of that, both the parties were challaned. Due to that grouse, in furtherance of their common intention, the aforesaid accused persons armed with lathi, danda, gandasi, barchi and kirpan inflicted injuries on the person of complainant party.

4. On this report (Ex. PA), Mala Ram complainant put his thumb impression after admitting the same as correct when the same was read over to him by the police. Kulwant Singh made endorsement Ex. PA/3 and sent ruqa to the police station Shehzadpur for registration of the case whereupon ASI Baljeet Singh registered formal FIR Ex. PA/1 and made his endorsement Ex. PA/2 on the ruqa.

5. Parcel containing clothes of injured Surmukh was handed over by the doctor to H.C. Kulwant Singh which was taken into possession vide memo. Ex. PG. Rough site plan of the spot Ex. PDD was prepared. On 06.06.2001 itself H.C. Kulwant Singh went to PGI Chandigarh and moved an application Ex. PEE before the doctor to obtain the opinion of the doctor regarding injured Rattan Singh, as to if he was fit to make statement, to which doctor opined vide Ex. PEE/1 that he was fit to make statement. Ex. PFF application was moved before the doctor for seeking opinion regarding fitness of injured Karam Chand on which doctor made his endorsement Ex. PFF/1 to the effect that he was unfit to make the statement. Statement of Rattan Singh was recorded.

6. On 07.06.2001, supplementary statement of Mala Ram complainant was recorded which is Ex. DA to the effect that he had forgotten to mention name of Niranjana as accused in the statement Ex. PA. In this statement Mala Ram deposed that Niranjana Singh (since deceased) was also involved in the occurrence. He was armed with lathi. He has caused lathi blow to Surmukh Singh on his back and gave one lathi blow to Suresh on his head. He also stated that complainant party had also caused injuries to accused Niranjana in self defence. An application Ex. PGG was moved to the Medical Officer, Civil Hospital, Ambala City to know the nature of injuries and the weapon by which the injuries were caused to Karam Chand. Doctor gave opinion that weapon used in both the injuries of Karam Chand was blunt and further made endorsement that whether patient could die of these injuries will be given after receiving the report and surgical opinion. The opinion of doctor is Ex. PGG/1.

7. On 09.06.2001, H.C. Kulwant Singh had gone to PGI and moved an application Ex. PH to the doctor for seeking opinion as to if injured Karam Chand was fit to give statement or not to which doctor opined vide endorsement Ex. PH/1 that he was unfit to make statement. However, on 09.06.2001 itself, ASI Satbir Singh

received telephonic message from Police Post PGI Chandigarh through Constable Hari Om that Karam Chand had died. On this information, offence under Section 302 IPC was added and special report was sent to senior police officers as well to Illaqa Magistrate. Thereafter, on reaching PGI Chandigarh, death summary of deceased Karam Chand which is Ex. PBB was received. Inquest report Ex. PK was prepared. An application Ex. PH was moved before SMO PGI. Dead body was referred to General Hospital, Sector-16 Chandigarh for post-mortem vide Ex. PH/1 where post-mortem of dead body was conducted. Post-mortem report is Ex. PJ. As per post-mortem report, cause of death of Karam Chand was reported as cranio-cerebral damage as a result of head injury. All the injuries described are ante-mortem in nature and injury No. 1 is sufficient to cause death in ordinary course of events. Doctor handed over one parcel containing underwear of the deceased which was taken into possession. Thereafter, dead body was handed over to Ajmer Singh, Rai Singh and others. On 10.06.2001, H.C. Kulwant Singh joined the investigation of this case with ASI Satbir Singh who received duly sealed parcel with the seal of "AK" from Sector 16, Hospital, Chandigarh; containing clothes of the deceased Karam Chand and the same was taken into possession vide memo. Ex. PAAA.

8. On 17.07.2001, he moved an application to the doctor of Civil Hospital, Ambala City, seeking his opinion whether the injury could be possible with danda, by moving an application Ex. PV and doctor gave his opinion Ex. PV/1 to the effect that possibility of injury being caused from danda cannot be ruled out. This opinion is dated 20.07.2001 and it is regarding Karam Chand. He also moved an application to the doctor on 17.07.2001 to the effect that injuries on the person of Karam Chand could be possible with gandasi to which doctor gave opinion that possibility of injuries caused (received) from gandasi cannot be ruled out.

9. On 01.08.2001 scaled site plan of the spot was prepared by Constable Ram Saran which is Ex. PZ. Report FSL Ex. PS was obtained whereby after laboratory examination, it was reported that chadder Ex. 1a and shirt Ex. 1b were stained with blood stain whereas no blood was detected on (gandasi)Ex.2. As per serological analyses of blood report Ex. PS/1 the material on chadder and shirt was found disintegrated. This opinion is regarding Karam Chand. By moving an application Ex. PY on 20.08.2001, opinion of doctor was sought whether injuries on the person of deceased Karam Chand could be possible with gandasi. Doctor gave opinion Ex. PY/1 that possibility of these injuries caused by gandasi cannot be ruled out.

10. Statement of witnesses were recorded. On 15.06.2001 PW-Rai Singh and Ram Pal met SI Baljit Singh on the way when he had gone to the Court for producing some accused. PW Rai Singh produced one parcel containing blood stained kurta and chadder of deceased which were taken into possession vide memo. Ex. PAA. The same were sealed with the seal of "BS". Thereafter, house of accused Sohan Singh raided and he was arrested.

11. Roop Chand, Sub Inspector (PW-16) also partly investigated this case. He

arrested accused. On 13.06.2001, he recorded the disclosure statements of accused Gian Chand, Rakma, Chhotu and Jagta Ex. PBBB to PEEE respectively. Accused Gian Chand in pursuance with the aforesaid disclosure statement got recovered danda shatut and the same was taken into police possession vide memo Ex. PBBB/1 after sealing the same with the seal of RCK. Site plan of the place of recovery of this danda was prepared as Ex. PBBB/2. In pursuance of his disclosure statement Rakma accused got recovered lathi and the same was sealed with the seal of RCK and then taken into police possession vide memo. Ex. PEEE/1. Site plan of the place of recovery was prepared as Ex. PEEE/2. Accused Jagat Ram got recovered gandasi in pursuance of his disclosure statement and the same was sealed with the seal of RCK and was taken into police possession vide memo. Ex. PCCC/1. Site plan of the place of recovery of gandasi was prepared as Ex. PCCC/2. Accused Chhotu in pursuance of his disclosure statement got recovered gandasi which was sealed with the seal of RCK and was taken into police possession vide memo. Ex. PDDD/1. Site plan of the place of recovery is Ex. PDDD/2.

12. On 06.06.2001, Dr. A.K. Garg, Medical Officer, Civil Hospital, Ambala City also medico legally examined Mala Ram son of Tulsi Ram, Surinder son of Des Raj and Surmukh son of Krishan, members of the complainant party. He also sent ruqa Ex. PR to Police Post, Ambala City on 06.06.2001 regarding admission of Sohan Singh, Naib Singh, Ratan Singh, Niranjn, Bhola, Karam Chand, Ramesh, Suresh, Surinder, Surmukh Singh and Mala Ram.

13. Ex. PB is the X-ray report pertaining to Surinder whereby it was reported that fracture right side maxilla was found in the part X-rayed. X-ray films are Ex. PI and Ex. P2. X-ray report Ex. PD shows fracture upper end of the left ulna of Bhola son of Hans Raj. X-ray film is Ex. P3. Ex. PE X-ray report pertaining to Surmukh Singh shows fracture shaft left ulna in the part X-rayed. X-ray films are Ex. P4 to P8. This X-ray report is dated 08.06.2001. Suresh, Ramesh and Bhola were also radiological examined. Ex. PC is the X-ray report regarding Suresh but no fracture was found respecting them.

14. One parcel containing clothes of Surmukh Singh son of Krishan was also taken into police possession vide memo. Ex. PG.

15. After completion of necessary investigations, the challan was put in the Court.

16. Finding prima-facie case against the accused, they were charge-sheeted for committing offence punishable under Sections 148/323/324/325/302/506 read with Section 149 IPC. To the charge, accused did not plead guilty but claimed trial. During the course of trial, accused Niranjn Singh had died.

17. After taking prosecution evidence, the statement of accused under Section 313 Cr.P.C. were recorded in which accused pleaded false implication and claimed that they are innocent. They took the defence that in fact complainant party was the aggressor who attacked the accused party in the baithak of Niranjn Singh (deceased) with common intention and with pre-meditated mind and caused

injuries to Niranjan Singh, Naib Singh and Sohan Singh with sharp and blunt weapons. In fact, they (accused) had acted in self defence. The complainant party attacked on them and caused injuries to them as Nirajan Singh and Bablu had moved an application against them to police for which they were challaned and also for moving application against them to Electricity Board Officials who imposed fine on Pawan Kumar for breaking electricity pole. They were attacked by Ratna, Karam Chand, Mala Ram, Mehar Singh, Surinder, Pawan, Satish, Ramesh, Surmukh, Bhola, Surinder, Ramesh, etc. in batches with sharp and blunt weapons. It was also pleaded that woman folk also threw stones and bricks to save them from the complainant party which hit them, forcing them to leave. In defence, accused examined Amrik Singh from the office of Civil Surgeon, Ambala, who brought the register of deaths so as to prove that Madan Lal son of Balak Ram died on 10.09.1996 and thus proved his death certificated Ex. DI. Another witness examined is Om Parkash, SDC, from the office of SDO, HVPN, Shehzadpur. He proved Ex. D2 letter dated 16.05.2001 bearing No. 861 whereby police was requested to register FIR against Pawan for causing loss of Rs. 2626. Rajinder Singh SDO, proved this letter Ex. D2 stating that he had written the same to police station Shehzadpur for legal action against Pawan Kumar. Doctor S.S. Punia was given up by the accused stating that he has already been cross-examined by the accused when the witness appeared as prosecution witness.

18. After hearing both the sides at length and appreciating the entire evidence and material coming on record, the learned trial Court held only 6 accused namely Sohan, Gian Chand, Jagat Ram, Chhotu, Rakma and Karam Chand guilty for commission of offence punishable under Sections 304 Part-II, 323,324,325 and 148 read with section 149 IPC whereas the remaining accused were acquitted by giving them benefit of doubt as their complicity was not proved beyond reasonable doubt. The aforesaid 6 accused were also sentenced vide order dated 03.04.2008, as mentioned in the earlier part of this judgment.

19. I have heard Mr. Chanakya Pandit, Advocate for the appellants, Mr. Sudhir Sharma, Advocate for the petitioner (revisionist) and learned State counsel and also appraised the entire evidence and material coming on record.

20. It was argued by counsel for the appellants that in fact there was no motive for convicts Karam Chand, Sohan, Chhotu etc. to commit this crime. If at all, there was any grouse against the appellants, that could have been, with the complainant party. There was no dispute about the fact that Pawan was fined by SDO, HVPN Shazadpur, District Ambala (DW-3), for breaking electricity pole of the department. The fine was Rs. 2626/-. Rajinder Singh (DW-3) proved letter Ex. D-2 whereby he wrote to the police of Police Station, Shehzadpur for legal action against Pawan Kumar son of Rattan, resident of Dhanana for registration of FIR for breaking the electricity pole of the department. It is also not disputed that through this electricity pole, electric wires were going to the Bara of Niranjan Singh and further as a result of aforesaid action of Pawan, electricity supply was disturbed to the Bara of Niranjan. Since Pawan was fined and letter

was also written against him for registration of FIR, therefore, it was complainant party who can be said to be nursing grudge against the accused party and as such, it is the complainant party who is the aggressor. Complainant party attacked on the accused party while they were sitting in the baithak of Niranjana Singh. Complainant party with pre-meditated mind came to the baithak of Niranjana Singh and caused injuries to Niranjana Singh, Naib Singh and Sohan Singh with sharp and blunt weapons whereas the accused party acted in self defence.

21. On the other hand Rattan Singh (PW-2) though admitted that one pole was standing in the gohar sare-am in front of accused Niranjana Singh and further that the same had fallen down on account of storm, one month prior to the present occurrence and for that Niranjana Singh gave application against his son Pawan Kumar in police station; yet stated that the police challaned both the parties including Niranjana, Mehra, Bablu, he (Rattan), Suresh and Pawan under Section 107/151 Cr.P.C.

22. Mala Ram (PW-1) and Surinder Kumar (PW-7) also corroborated this fact when appeared as witnesses. Thus learned State counsel contended that enmity is the double edged weapon. Since, the police also challaned Niranjana Singh and others, therefore, they had grudge against the complainant party. Even otherwise, the occurrence had taken place in front of the baithak of Ratana, therefore, it is the accused who were the aggressor. Even, as per Investigating Officer, the place of occurrence was in front of baithak of Ratana and not the baithak of Niranjana.

23. It was also argued by learned State counsel that Niranjana also got recorded his statement Ex. DX with the police, giving his version of the occurrence but that was not believed as no case was registered against the complainant party on the statement of Niranjana Singh after investigation. Even Niranjana Singh did not choose to file any criminal complaint against the accused when the accused were not challaned by the police on the statement of Niranjana. As such defence taken by the accused is not sustainable.

24. The above contention of learned State counsel carries weight. Even otherwise, had complainant party been aggressor, there was no point for them to go to the baithak of Niranjana in batches. In that eventuality, they would have gone collectively to the baithak of Niranjana. This fact also shows that complainant party is not the aggressor.

25. It was next argued by learned counsel for the appellants that in this case there are total 8 injured persons from the side of complainant party and they suffered 27 injuries whereas the accused party suffered more injuries than that of complainant party and the injuries suffered by the accused party are more serious in nature. As such, it is the complainant party who is the aggressor and the accused acted only in self defence. This argument of learned defence counsel is again devoid of any force. As the question, as to who is the aggressor cannot

be determined on the basis of injuries found on the side of the complainant or defence. So has been held in *Pritha Singh and others v. State of Punjab*, 2005 (3) RCR, 225.

26. Of course, motive is a relevant factor of criminal cases, when based on testimonies of eye witnesses or circumstantial evidence. It is generally difficult area for any prosecution to bring on record what was the mind of accused. No doubt, it is a settled principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed, if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability would swelled up in the mind of the offender such degree as to impel him to commit the offence, cannot be construed as a fact, weakness of the prosecution. It is almost an impossible fact the prosecution to unravel full dimension of the mental disposition of offender towards the person whom he offended. This principle of law is incorporated in *Nathuni Yadav and others Vs. State of Bihar* and another, AIR 1997 SC 1808 : (1997) 1 JT 406 : (1997) 1 SCALE 56 : (1998) 9 SCC 238 : (1996) 10 SCR 905 Supp . In *State of Himachal Pardesh v. Jeet Singh*, 1992, (2), RCR (Criminal). 167. *State of U.P. v. Babu Ram*, RCR, 2000, (2), 618, DB, Supreme Court, are also on the point

27. In view of the aforecited settled principle of law and further in view of the above discussion, the arguments of learned defence counsel that complainant party was aggressor, is devoid of any force and not acceptable.

28. It was next argued by learned counsel for the appellants that in this case, there is delay in lodging the FIR. As per prosecution case, the occurrence took place on 05.06.2001 at about 10:00 P.M. whereas statement of Mala Ram (PW-1), which is Ex. PA, was recorded by the police at 11:00 A.M on 06.06.2001. This delay in lodging the FIR is fatal for the prosecution as during this period, there was sufficient time for the complainant party to make consultations and concoct throughout stories and giving coloured version of the incidence.

29. Of course, delay in lodging the FIR is a material fact. Inspite of cognizable offence, it is required that FIR should be lodged as soon as possible. Where the lodging of report is delayed, it not only gets bereft of this spontaneity, danger also creeps in of the introduction of coloured version, twisting of facts and throughout stories. Thus, some innocent persons can be roped in and mentioned as culprits, as a result of much thought, consultations and discussion. Now, the question arises as to if there is a delay in lodging the FIR in this case or not. From Ex. PA and even from the statements of eye witnesses i.e PW-1, PW-2 and PW-7, it is evident that occurrence took place on 05.06.2001 at 10:00 P.M. Just after the occurrence, injured were taken to Civil Hospital, Ambala City. Dr. Kaliash Chaudhary (PW-11), medico legally examined Ramesh Kumar son of Karam Chand, that very night at about 11:35 P.M vide MLR Ex. PS. He also medico legally examined Suresh Kumar son of Ratan Lal vide Ex. PT; Karam

Chand vide MLR Ex. PU at about 11:55 PM. He also medico legally examined Sohan Singh son of Hari Singh, accused at 00:15 hours. Ruqa Ex. PR was sent by the doctor to the in-charge police post, Ambala City regarding assault and admission of injured, 11 in number. Ruqa was received in the police station at 5:00 A.M. H.C. Kulwant Singh (PW-18) deposed that he received a telephonic message from PP Urban Estate, Ambala City that a fight took place in village Dhanana during the night and 11 persons were injured in that fight and admitted in Civil Hospital, Ambala City. He then obtained MLR from PP, Urban Estate, Ambala City, along with ruqa and had gone to Civil Hospital, Ambala City. During the course of his cross-examination, he deposed that he started from police station at 5:10 A.M for PP Urban Estate and reached there at 6:45 A.M. He further deposed that on reaching Civil Hospital, Ambala City, he moved an application Ex. PCC for seeking opinion of the doctor regarding Mala Ram, Surmukh, Surinder Kumar, Suresh Kumar, Ramesh Kumar, Bhola Ram, Karam Chand and Ratna as to if they were fit to give statement or not. On this, doctor opined that Karam Chand and Ratna were referred to PGI Chandigarh and others were fit to give statement. This opinion of the doctor is Ex. PCC/1. H.C. Kulwant Singh (PW-18) further stated during the course of his cross-examination that when he reached the ward, 8 persons of Mala Ram's party were lying admitted in one ward whereas 3 persons of Niranjana Singh's party were lying admitted in another ward. He sought opinion of the doctor by moving an application regarding fitness of injured belonging to Niranjana Singh's party. This application is Ex. DX and on this application vide opinion Ex. DX/1 doctor opined that the injured were fit to give statement. This opinion was given by the doctor at 10:30 A.M. Under these circumstances, if the statement of Mala Ram (PW-1) be recorded by H.C. Kulwant Singh (PW-18) at 11:00 A.M, by no stretch of imagination, it can be said that the FIR is delayed one. In fact, there is no delay in lodging the FIR. FIR was recorded on the statement of Mala Ram. The occurrence is of 10: 00 PM. Time taken in removing the injured to hospital; their medico legal examination by the doctor; sending of information regarding admission of injured to the police; obtaining of opinion of the doctor regarding fitness of the injured of both the parties, as to if they were fit to give statement or not; cannot be said to be unreasonable in any manner. In undertaking proceedings as mentioned above, the police had taken reasonable time and thus recording of FIR in this case on the statement of Mala Ram at 11:00 A.M. is not delayed. As such giving benefit to the accused on account of delay in lodging the FIR, is devoid of any force.

30. It was next argued by learned counsel for the appellants that as per prosecution case, Surmukh Singh was given danda blow whereas, as per Dr. A.K. Garg (PW-10), he received injuries No. 1 and 3 with sharp weapon; injuries No. 2, 4 and 5 with blunt weapon. If accused gave only danda blow to Surmukh Singh, it is not known as to how he received injuries with sharp edged weapon, as such the prosecution case is inconsistent with the medical evidence and thus not believable.

31. The above argument of learned defence counsel is again not sustainable as it is not borne out from the record. Surinder Kumar (PW-7) categorically stated that accused Isham Singh gave fawda blow on the back of Surmukh Singh. None of the prosecution witnesses deposed that accused gave only danda blow to Surmukh Singh. Even as per FIR which is supported by PW-1, PW-2 and PW-3 when complainant Mala Ram raised alarm by shouting "bachao bachao," at that juncture, Bhola, Ramesh, Suresh, Surinder and Surmukh Singh reached the spot in order to save them. At that time, accused of this case named in the FIR specifically inflicted injuries on the aforesaid persons with lathi, gandasi, kirpan and dandas. As such, as per FIR itself, the sharp edged weapon like gandasi and kirpan were used by the accused in inflicting the injuries on the person of Surmukh Singh, Suresh, Ramesh, Surinder etc. Under these circumstances, it cannot be said that in any way the prosecution case or any of the prosecution witnesses deposed that only danda blows were given to Surmukh Singh.

32. It was next argued by learned defence counsel that place of occurrence is not fixed in this case. All the three alleged eye witnesses gave three different places of occurrence. Mala Ram (PW-1) deposed that when Ratna reached in the street shaream in front of his baithak, the accused persons attacked him whereas Ratna (PW-2) gave the place of occurrence as street, near the house of Bachan Singh. Surinder Kumar (PW-7) gave the place of occurrence as that of street leading to his house. As such when place of occurrence is not proved, the defence version becomes probable and the accused are entitled to be acquitted.

33. The above contention of learned defence counsel is again not sustainable as Constable Ram Saran (PW-12) prepared the scaled site plan of the spot as Ex. PZ. H.C. Kulwant Singh (PW-18) prepared the rough site plan as Ex. PDD. The occurrence is shown as that of street. There are houses of several persons in this street. As such, if the witnesses had taken different names that would not matter as the street leads to the house of several persons. In this eventuality, it was important for the defence to put question to H.C. Kulwant Singh (PW-18) and Constable Ram Saran (PW-12) as to if the house of the person named by the witness is or is not situated in the street. In the absence of the same, it cannot be said that the place of occurrence is not proved in this case. The houses of Karam Chand and Mala Ram have been shown in the aforesaid site plans. There is kacha rasta/open space leading to their houses from the street in question.

34. It was next argued by learned defence counsel that Dr. Kaliash Chaudhary (PW-11), medico legally examined Karam Chand on the day of occurrence and he reported only two injuries on the person of Karam Chand. MLR of Karam Chand is Ex. PU but Dr. Adarsh Kumar, Senior Lecturer, Forensic Medicine, Government College and Hospital, Sector 32 Chandigarh (PW-9) reported 9 injuries on the person of Karam Chand. Doctor who medico legally examined Karam Chand in the first instance if did not notice the other injuries on the person of Karam Chand that would become relevant and makes the prosecution case doubtful on account of inconsistency in the medical evidence. Had there been any material

inconsistency in the medical evidence or in the ocular evidence, that would have certainly made difference but in this case so is not the position. Nine injuries mentioned by PW-9 are partially healed abrasion. These type of injuries can occur on the person of deceased during the course of handling of body of Karam Chand, when he was shifted from Civil Hospital Ambala City to PGI Chandigarh. Dr. Kaliash Chaudhary (PW-11) who medico legally examined Karam Chand vide MLR Ex. PU and noticed two injuries on his person, clearly stated during the course of his cross-examination that if any other abrasion was noticed later on, the same could have been caused in the handling of transportation of the injured to the referral hospital. Karam Chand suffered head injury. PW-11 gave his opinion Ex. PV/1 to the effect that the possibility of injury on the person of Karam Chand caused by danda could not be ruled out. He also gave his opinion Ex. PX/1 stating that the possibility of injury on the person of Karam Chand caused by gandasi could not be ruled out.

35. On 20.8.2001, on police application Ex. PY, he gave opinion to the effect that possibility of injury on the persons of Karam Chand with gandasi could not be ruled out. This opinion is Ex. PY/1. With this medical evidence on the file, it is proved that on account of head injury, Karam Chand had died and the possibility of causing of this injury with gandasi cannot be ruled out. As such, if the complainant (PW-1) says that Sohan Singh gave gandasi blow on the head of Karam Chand and further that Gian Chand accused gave danda blow on the head and legs of Karam Chand, that is inconsonance with the medical evidence. Thus it cannot be said that medical evidence is in no way inconsistent with the ocular evidence or inconsistent with the statement of Dr. Adarsh Kumar (PW-9) who conducted the postmortem examination of the dead body of Karam Chand.

36. The next argument raised by learned defence counsel is that as per complainant party, accused had caused injuries with sharp edged weapon whereas none of the injuries on the person of complainant party was reported to have been caused by sharp edged weapon. This makes the prosecution story highly doubtful.

37. Again this contention of learned defence counsel is devoid of any force. Dr. A.K. Garg (PW-10) categorically stated that injuries No. 1 and 3 on the person of Surmukh Singh were caused by sharp weapon. Even Dr. Kaliash Chaudhary (PW-11), who medico legally examined Karam Chand gave his opinion that the possibility of injury on the person of Karam Chand by gandasi cannot be ruled out. Dr. Adarsh Kumar, Senior Lecturer, Forensic Medicine, Government College and Hospital, Sector 32 Chandigarh (PW-9) deposed that:--

"On internal examination, after opening the cranial cavity, comminuted fracture involving left parietal, left temporal and occipital bones with two burr holes over left parieto occipital region was found with extra vacation of blood under scalp. Extra dural and sub dural haematoma of 13X12 cm involving left temporo-parieto occipital region. Brain substance was lacerated at left occipital region with edema of brain all over. Fissured fracture involving anterior cranial fossa of left side was

found. No significant findings were observed in other organs. "

38. Thus with this evidence on the file, it cannot be said that on account of nature of injuries on the persons of complainant party, the prosecution case is in any way doubtful.

39. It was further contended that there is no evidence to show that the accused persons had the knowledge of movements of Ratna. Even otherwise, Ratna received simple injuries. Had the accused party intended to kill him, could easily do so when Ratna was way laid.

40. This contention of learned defence counsel is devoid of any force as it is established on the file that Pawan had broken the electricity pole through which electric wires were going to the Bara of Niranjn Singh and further that Pawan was fined by the department to the extent of Rs. 2626/- and on account of fall of electricity pole, the matter also went up to the police in which both the parties were challaned under Sections 107/151 Cr.P.C. Under these circumstances, when the accused party armed with deadly weapons, who were also present in the street and way laid Ratna, when he was in front of his baithak, it is quite obvious that the accused party were well aware of the fact that Ratna would reach his house at that juncture. The occurrence is admitted. Both the parties received injuries in this occurrence. Ratna also received injuries. Under these circumstances, the contention of learned defence counsel that for want of evidence on the file to the effect as to how the accused persons were having knowledge of movements of Ratna, is not sustainable.

41. It was further contended by learned defence counsel that there is no explanation on the file as to how Sohan Singh, Niab Singh and Niranjn (since deceased) received injuries. Dr. Kaliash Chaudhary (PW-11), also medico legally examined Sohan Singh and four injuries on his person were found. Injury No. 1 was reported to have been caused by sharp edged weapon whereas the other injuries by blunt weapon. As per Dr. S.S. Punia (PW-3), who radiologically examined Sohan Singh, fracture of shaft of left radius in part x-rayed, was found on the person of Sohan Singh. X-ray report of Sohan Singh is Ex. DI. Dr. A.K. Garg (PW-10), medico legally examined Niab Singh and proved his MLR Ex. DC in which two injuries on the person of Niab Singh were mentioned. Like wise, he proved the MLR of Niranjn Singh i.e. Ex. DD.

42. The present case is the one which is based on the testimonies of the eye witnesses. The accused even do not deny the occurrence. The injured of both the parties were admitted in Civil Hospital, Ambala City, just after the occurrence. Niranjn Singh reported the matter to the police in his own way but after investigation police did not find the truth and as such no action was taken against the complainant party. The complainant party has received more than 24 injuries whereas the injuries suffered by the accused party is comparatively much less in number. The statement of eye witnesses of this case are consistent which led to the conviction of accused, as such, it cannot be said that merely

because complainant party has failed to explain the injuries on the person of accused, therefore, the entire prosecution case can be discarded. Since, the police did not take any action on the complaint of Niranjana Singh, it cannot be said that the police acted in partisan. In fact, both the versions were with the police, it investigated the case and after investigation finding a case against the accused, the challan was filed against them.

43. Learned counsel for Mala Ram (revisionist) contended that there were in all 17 assailants out of whom Niranjana Singh had died. The learned trial Court convicted only six accused i.e. Karam Chand, Rakma, Sohan, Chottu, Jagat Ram and Gian Chand. The remaining accused have been acquitted by the learned trial Court by giving them benefit of doubt. The judgment of learned trial Court on this aspect is not sustainable. Niab Singh son of Hari Ram, also received injuries in this incident besides Sohan Singh and Niranjana Singh but Naib Singh has been acquitted along with other accused.

44. It was further contended by learned counsel for the revisionist that the conviction of accused Sohan Singh, Karam Chand etc. under Section 304 Part-II is also wrong whereas they should have been convicted under Section 304 Part-I IPC. While causing injuries on the person of Karam Chand, it was well within the knowledge of the accused party that by causing injuries with deadly weapon, they may cause the death of Karam Chand. As such offence committed is one under Section 304 Part-I and not under Section 304 Part-II IPC. It was also contended that all the accused were members of unlawful assembly as such for the act of convicted accused, even the remaining accused Bachna etc. who have been acquitted in this case, are also liable to be convicted along with Karam chand, Rakma, Sohan, Chottu, Jagat Ram and Gian Chand.

45. On this aspect, the reasoning given by the learned trial Court is well considered. Both the aforesaid points raised by the learned counsel for the revisionist have been dealt with in detail by the learned trial Court. The reasoning given by the learned trial Court in this regard does not warrant any interference by this Court.

46. Accused Bachna etc. who have been acquitted, did not cause any injury on any vital part of the complainant party. Of course, they have been named in the FIR but no role or overt act is attributed to them. Of course, Niab Singh had suffered injuries but that would not be sufficient to hold his involvement in this crime. Since, no overt act or infliction of injury by him, is attributed to him.

47. Though, it is in evidence that Suresh hit Surinder with barchi but no sharp injury is found on the person of Surinder. As such, I find no illegality in the impugned judgment whereby the learned trial Court had acquitted 10 accused namely Bachna etc.

48. In *Shery and others v. State of U.P.* RCR, 287, there were 25 persons named as accused. Overt act was attributed to only 9 persons. Consistently their names were mentioned as having participated in the attack. On those facts, it was held

by Hon"ble Supreme Court of India that it was unsafe to apply Section 149 IPC and make every one constructively liable. It was also held in that judgment it was safe to convict 9 accused only whose presence were not only consistently mentioned in the FIR but also to whom, overt acts are attributed. It was further held in that very judgment that general allegations against the large number of persons would make the Court hesitate to convict all of them on vague evidence. In this case as well, although acquitted persons were allegedly armed, but no overt act has been attributed to them. Even, there is nothing on record to show that they held out any lalkara to kill the complainant party. As such, the possibility of anxiety of complainant party to rope as many persons in this case as accused, cannot be ruled out.

49. Short of repetition, it is established on the file that the accused party ever intended to kill Karam Chand. They way laid Ratna. Ratna received only simple injuries. When Karam Chand came to rescue Ratna, on hearing shouts, accused Sohan Singh gave gandasi blow on his head whereas accused Gian Chand gave danda blow on the head and legs of Ratna and accused Rakma gave lathi blow to Karam Chand on his back. On account of head injury, Karam Chand had died. Dr. Kaliash Chaudhary (PW-11) gave his opinion as discussed above that possibility of injuries on the person of Karam Chand caused by gandasi and danda cannot be ruled out. As such, it cannot be said that accused ever intended to cause death of Karam Chand. Only one injury was caused on the person of Karam Chand. Other injured had not suffered serious injuries. As such, it cannot be said that the assailants had the intention to kill anybody when the assailants were armed with deadly weapons. They could well cause serious injuries to Ratna in the first instance and to the other members of the complainant party. Had they intended to kill them. Even it is not the prosecution case that accused intended to cause injuries on the head of Karam Chand. The finding of learned trial Court that giving of single blow on the head of deceased which proved fatal, could not make the case fall under Clauses I and II of Section 300 IPC, do not suffer from any illegality. Likewise, finding recorded by the learned trial Court that at best it is the case which falls under Section 304 Part-II IPC, is sustainable.

50. In the case in hand, targeted person was Ratna. The enmity of accused was with Pawan. Karam Chand received fatal injuries only when he intervened to rescue Ratna. As such the case falls under Section 304 Part-II IPC.

51. No other point was urged before me.

52. For the reasons recorded above, finding no merit in the appeal filed by Karam Chand and others and further finding no merit in the revision filed by Mala Ram complainant of the case, both the appeal and revision are dismissed. Judgment of conviction dated 31.03.2008 and order on sentence dated 03.04.2008, are maintained. If the appellants are on bail, their bail bonds, shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convicts arrested and commit them to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude,

keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

53. The District and Sessions Judge, Ambala shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

54. The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.