

(1998) 09 RAJ CK 0021

In the Rajasthan High Court

Case No : Criminal Appeal No. 423 of 1995

Kesara Ram (since deceased) and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 100, 102, 103, 147, 148
Probation of Offenders Act, 1958 — Section 4(1), 5
Rajasthan Tenancy Act, 1955 — Section 175, 42

Citation : (1999) CriLJ 1451

Hon'ble Judges : R.R. Yadav, J;A.S. Godara, J

Bench : Division Bench

Advocate : P.R. Chaudhary and Sumeet Mehta, for the Appellant; Chandra Lekha, Public Prosecutor, for the Respondent

Judgement

A.S. Godara, J.—This appeal is directed against the judgment and order dated 21-12-95 passed by the learned Addl. Sessions Judge, Phalodi in Sessions Case No. 4/93 (141/88) whereby the accused-appellants have been convicted and sentences as under :

----- (1)
Kesara Ram (since de- (i) u/s 147, I.P.C. One year's R. I. ceased) (ii) Under Sections 302/149 I.P.C. L.I. and a fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I. (iii) u/s 323, I.P.C. 6 months" R.I. and a fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I. (iv) u/s 379/149, I.P.C. 6 months" R.I. and a fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I.

2. Bhura Ram (i) u/s 147, I.P.C. One year's R.I. (ii) u/s 302, I.P.C. L.I. and a fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I. (iii) u/s 323/149, I.P.C. 6 months" R.I. and a fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I. (iv) u/s 379/149, I.P.C. 6 months" R.I. and a

fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I. 3. (a) Mula Ram (i) u/s 147, I.P.C. One years"s R.I. (b) Sohan Lalo @ (ii) u/s 302/149, I.P.C. L.I. and a fine of Hanumana Ram Rs. 1000/- and, in default of payment of fine, 6 months" S.I. (c) Bhanwar Lal (iii) u/s 323/149, I.P.C. 6 months" R.I. and a fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I. (iv) u/s 379, 149, I.P.C. 6 months" R.I. and a fine of Rs. 1000/- and, in default of payment of fine, 6 months" S.I.

----- 2.
Briefly stated the facts giving rise to the prosecution of the appellant and consequential trial resulting in present appeal are that the accused-appellants are residents of village Chimana. Harjinath (P.W. 22), S.H.O., P.S., Jamba, at Phalodi, on 10-7-88, was informed by Kesara Ram (deceased) that Roopa Ram (deceased) had killed Ugrasen who was, admittedly, maternal nephew of Kesara Ram. Harjinath reached the village Chaku in the morning of 10-7-88 itself whereat Smt. Saudi (P.W. 2) wife of Roopa Ram (contd. on col. 2) was present at her "Dhani" situated in her field. Harjinath immediately recorded statement of Smt. Saudi (Ex. P.1) at 6 a.m. She reported that their agricultural land measuring about 148 bighas (exact 148 bighas and 12 biswas) is located within the territory of village Chaku which is under their cultivatory possession since the time of their father-in-law. They had built up a residential "Dhani" in the field. Her husband Roopa Ram"s brother Dana Ram (P.W.I), Dana Ram"s wife Smt. Jugti who is deaf and dumb as well as the children of Roopa Ram resided jointly in the "Dhani". Kesara Ram (accused-appellant) asserted that he had purchased their agricultural land and, therefore, they were being pressurised to leave and vacate the "Dhani" and to go elsewhere. Ugrasen (deceased) who is resident of village Nathusar and was Kesara Ram"s sister"s son, visited their "Dhani" twice in the company of Kesara Ram asking them to vacate their possession of the "Dhani" as well as the field. Dana Ram and her children had gone to the "Dhanis" for collection of grains and it was on 9-7-88 at about 5 p.m. that a Jonga jeep came to their Dhani and the same was parked at a little distance. Kesara Ram, Ugrasen, Bhura Ram, Kesara Ram"s two other sons, Mula Ram, Moti Ram, Sohan Singh residents of village Chimana, Bulidan Singh, Bane Singh, Sukha Ram, jeep driver Ladu Ram and Ummaid Singh who are also residents of village Chimana got down from the jeep and they all entered the "Dhani". Meanwhile, Sohan Singh went towards "Dhani" of Gumana Ram, Barber while Bulidan Singh and Bane Singh headed towards "Dhani" of Bhur Singh (P.W.4). Ugrasen and his associates entered their "Dhani" and enquired about her husband Roopa Ram. She told them that Roopa Ram had gone to the "Dhani" of Bhur Singh. Ugrasen asked that all the household articles lying in the "Dhani" be loaded in the camel-cart being brought by them and they should live elsewhere in the village. Meanwhile, the camel-cart was brought to their "Dhani" which was being driven by Rekha Ram son of the appellant Kesara Ram. The household articles including the beddings, cots, utensils etc. as are detailed in memorandum (Ex. P. 7), were loaded in the camel-cart. The accused-persons attempted to enter the "jhumpa" to fetch out other household articles left inside

while Roopa Ram who was hiding inside the "jhumpa" whispered that she should not allow the accused-persons to enter the "jhumpa" else he would be killed to death. She shouted in front of the accused-persons resisting their entry into the "jhumpa" on which Kesara Ram inflicted lathi blows on her head and left arm. Ugrasen caught her hand and she was thrown aside. Ugrasen was about to enter into the "jhumpa" and, in the meantime, Roopa Ram fired from his gun at Ugrasen and the gun shot fire hit Ugrasen on his abdomen and, consequently, he fell down. Bhura Ram, who is son of Kesara Ram, entered the "jhumpa" and he caught hold of Roopa Ram and dragged him out of the "jhumpa". Accused-persons assaulted Roopa Ram with fists and kicks shouting that he be killed to death. Bhura Ram, who was armed with an axe, gave two or three forceful blows of axe in his possession on the head. These injuries proved fatal and Roopa Ram died on the spot. Kesara Ram, Moti Ram, Mula Ram etc. picked up injured Ugrasen and loaded him in the jonga jeep. Bhura Ram also took away the S.B.B.L. gun of Roopa Ram while retreating in the jeep. Rekha Ram drove his camel-cart along with the household articles loaded on the same. Smt. Jugti had fled away from there. It was also stated that Bhur Singh (P.W. 4) and Khiyaram Jakhar(P.W. 13) whose "Dhanis" were situated in the neighbourhood of their "Dhani", were witnesses to the occurrence.

3. Harjinath (P.W. 22), on the basis of aforesaid statement (Ex. P. 1) of Smt. Saudi got registered FIR No. 22/88 (Ex. P. 27) under Sections 147, 148, 149, 447, 323, 302 and 379, I.P.C. and commenced investigation at the site. He prepared site plan (Ex. P. 25) and memorandum (Ex. P. 26) thereof. Inquest report (Ex. P. 4) and panchanama (Ex. P. 5) of the dead body of Roopa Ram were also prepared. He also seized clothes of the deceased vide Ex. P. 6 and Ex. P. 2. Rekha Ram had removed household articles of Roopa Ram, as above, on the camel-cart and the same having been unloaded on a public way at a little distance from the "Dhani", were seized vide Ex. P. 7 memo.

4. Since the dead body of Roopa Ram was taken to the Government Hospital, Phalodi and hence, on requisition, the dead body of Roopa Ram was subjected to post-mortem by Dr. B. D. Acharya (P.W. 20) who found following external injuries on the dead body;

1. Incised wound 4"x1" x brain deep antero-posteriorly on Rt. parieto-occipital region. Membranes lacerated, brain matter lacerated and avulsing out.
2. Incised wound 3 1/2" x 3/4" x brain deep Rt. parieto-occipital region 1" below injury No. 1 (Antero-posteriorly). Membranes lacerated, brain matter lacerated and avulsing out.

Note : In injury Nos. 1 and 2 the force of weapon used was so much that resulted in six pieces of parieto-occipital bone of skull of Right side. Two pieces are lying loose in the wound.

3. Incised wound 1-1/2" x 1/4" x bone deep Right side occipital Bone 1" below 2nd injury.

4. Incised wound 1" x 1/4" x Bone deep 1" posterior to the outer canthus of Right eye oblique.

5. Abrasion 1" x 1/2" on Right forearm 4" above wrist joint posteriorly.

6. Abrasion 1-1/2" x 1/2" on the left forearm 3" above writ joint anteriorly.

7. Abrasion 1" x 1/2" on left leg 4" below knee joint medially.

8. Bruise 1" x 1/2" postero laterally on mid-thigh of Right side.

5. Dr. Acharya, on examination of condition of the dead body of the deceased-Roopa Ram and so also external and internal examination, on the basis of aforesaid injuries, opined that the death of Roopa Ram had ensued due to head injury resulting in haemorrhage and shock. It was also observed that injuries Nos. 1 and 2, mentioned above, were caused by a sharp weapon and the weapon was so heavy that the same had resulted in six pieces of parieto-occipital bone of right side and brain matter had avulsed out. He prepared Ex. P. 23 post-mortem report thereof.

6. On the same day, Dr. Acharya examined injuries of P.W. 2 Smt. Saudi and found an abrasion on her left parieto-occipital region of head and a bruise with swelling on the postero-medial aspect of left hand caused with a blunt weapon.

7. Harjinath (P.W. 22) during the course of investigation arrested the accused Kesara Ram, Sukha Ram, Bhura Ram vide Ex. P. 8, Ex. P. 9 and Ex. P. 10 respectively.

8. Bhuru Ram, while under arrest, gave information (Ex. P.28) that he could get the axe recovered at his instance. Similarly, he gave information (Ex. P. 29) about the S.B.B.L. gun alleged to have been stolen at the time of the occurrence. Harjinath, in presence of motbirs, recovered axe as well as the S.B.B.L. gun vide recovery memos (Ex. P. 12 and Ex. P. 13). The camel-cart along with camel was seized vide Ex. P.3 and Ex. P.4. He also collected revenue record from the Revenue Patwari. Jonga jeep was seized vide Ex. P. 31. All the articles so seized/recovered and found blood stained, were separately packed and sealed at the time of their seizure/recovery and the packets thereof, after having been kept duly packed and sealed and leaving no chance for their tampering with, were forwarded to the Rajasthan State Forensic Science Laboratory, Jaipur (for short the RSFSL, Jaipur) and deposited thereat for chemical examination as evidenced from Ex. P.32 receipt. Rajendra Kumar Joshi (P.W.21), Deputy Superintendent of Police and Prem Singh (P.W.23), Deputy Superintendent of Police also investigated the case. The latter had filed chargesheet against the accused Kesara Ram, Bhura Ram and Sukha Ram only. Subsequently, similar charge sheet was also filed against the accused Bane Singh, Sohan Singh, Moti Ram s/o Nena Ram, Ladu Ram, Moti Ram s/o Megha Ram, Mula Ram, Sohan Lal alias Hadman Ram, Gumana Ram and Bhanwar Lal in the Court of Munsif and Judicial Magistrate, First Class, Phalodi. Both these cases were committed to the Court of Session, Jodhpur where from they were made over to the learned Addl. Sessions

Judge N. 3, Jodhpur which was also a camp Court of Phalodi. Subsequently, on creation of a regular Court of Addl. Sessions Judge at Phalodi, this case came to be tried by the same Court.

9. The trial Court, in the first instance, on filing of charge-sheet against the aforesaid three accused-persons framed charges under Sections 147, 302 read with Section 149 and 323 read with Section 149, I.P.C. against them while, on filing of charge-sheet against rest of the nine accused-persons, in the second phase, framed charges under Sections 147, 302/149, 323/149 and 379, I.P.C. and so also, at the same time, added charge u/s 379, I.P.C. against the remaining three accused persons challaned earlier.

10. All the accused-persons put on trial pleaded not guilty to the charges and hence the trial was completed.

11. The prosecution, in all, examined 23 witnesses and also adduced documentary evidence which is to be discussed at the subsequent relevant stage.

12. The accused-persons were examined u/s 313, Cr. P.C. and all the accused-persons, except Sukha Ram, denied their presence at the place of occurrence and having committed any offence with which they were charged, as above. However, accused Sukha Ram stated that Ugrasen (deceased) hired his jonga jeep, who along with two other persons took his jeep to the Bhil's Dhani and the jeep was parked at a little distance from the "Dhani". He stood by the side of his jeep and, meanwhile, he heard sound of firing from a firearm. Those two persons, who had accompanied Ugrasen, meanwhile, returned with body of Ugrasen and kept the same in the jeep. He brought the body of Ugrasen to the village Chimana where from the village Sarpanch and Kesara Ram (accused) took Ugrasen to Phalodi who had already expired,

13. Accused Kesara Ram further maintained that criminal as well as revenue litigations were going on between Roopa Ram and Kesara Ram in respect of the field whereat the occurrence took place and that Bhur Singh (P.W. 4) was a mastermind behind the police report lodged by Smt. Saudi.

14. The accused-persons examined Ishra Ram (D.W.I), Ram (D.W. 2), Gorkha Ram (D.W.3), Kesu Ram (D.W.4), Kishna Ram (D.W.5) and Keshra Ram (D.W. 6), who is the accused-person, in their defence.

15. After completion of trial, relying on the ocular testimony of P.W. 2 Smt. Saudi as also corroborated by P.W. 4 Bhur Singh and P.W. 1 Dana Ram as well as the circumstantial evidence specially the recoveries of the weapons of offences alleged to have been used in commission of the offences with which the accused-persons have been charged, medical evidence and the revenue record, while holding that the disputed land and "Dhani" which were situated in Khasara No. 701 and 701/1 was of the cultivatory possession of Roopa Ram (deceased) and his family and that the accused-appellants specially Kesara Ram with the aid and abetment of his nephew Ugrasen was bent upon taking forcible possession of the

said field by removing and vacating possession of Roopa Ram and his family and so they had formed an unlawful assembly with the common object of committing offences of criminal trespass and assault, at the same time, having knowledge that murder was likely to be committed resulting in conviction of the accused-appellants as aforementioned. However, vide impugned judgment and order, the learned trial Judge convicting the appellants, acquitted rest of the seven accused-persons named above and there is no challenge against the order of acquittal by the State. Kesara Ram died during the trial and hence his appeal abated.

16. We have heard the learned counsel for the appellants as well as the learned P. P. and have also gone through the record of the trial Court along with the impugned judgment and have perused and considered the same in order to find out illegality or incorrectness in the judgment under appeal.

17. The learned counsel for the appellants vehemently contended that P.W. 2 Smt. Saudi who is wife of the deceased-Roopa Ram, being a close relation and interested in the deceased against the appellants, has falsely represented and examined herself as eye-witness of the occurrence, whereas, she was not present at the place whereat the alleged occurrence took place and, instead, she was at the village Hada in Kolayat Tehsil of Bikaner District where at Roopa Ram and his brother Dana Ram along with their family members had shifted about 8 to 10 years prior to this incident after having disposed of the said field under a registered sale deed in favour of Smt. Veeran by caste Dholi. Thereafter, Smt. Veeran transferred this land to Harchand Meghwal, who had, under a registered deed of power-of-attorney, executed in favour of appellant Kesara Ram, handed over cultivatory possession of the said field to the appellant Kesara Ram who was cultivating the land for the last about 8 to 10 years prior to the incident. Accordingly, his further submission is that Smt. Saudi was brought from Hada to be introduced as an eyewitness after death of Roopa Ram which is apparent because of delay in lodging FIR with the police even after a lapse of period of not less than 12 hours of the alleged time of death of Roopa Ram.

18. Accordingly, his submission is that there was no eyewitness of the occurrence and, instead, P. W.4 Bhur Singh has also falsely deposed against the appellants since he was interested in grabbing the field defeating the right and claim of Kesara Ram. Therefore, he further contended that there is no eye-witness of the occurrence and, at the same time, he submitted that Kesara Ram and his sons were in cultivatory possession of the field whereat the occurrence took place at the time of and prior to the incident and the "Dhani" including the "jhumpa" whereat this incident took place was raised by Kesara Ram himself and none else.

19. He further submitted that just before the occurrence, Roopa Ram at the instigation of P.W. 4 Bhur Singh had returned to the "Dhani" occupying the same illegally and forcibly and it was Ugrasen who accompanied by some other persons, sought indulgence and good offices of P.W. 3 Bhur Singh and others for conciliation and compromise into the matter and, at the time of the occurrence itself, they had also come for the same purpose and that Ugrasen and Mahendra

Singh, identified as Manager, only entered the "Dhani" of Roopa Ram while others were waiting outside near the jonga jeep parked on the way and since Roopa Ram intentionally fired at and killed Ugrasen and so it was Mahendra Singh who snatched away the gun from Roopa Ram and inflicted injuries with the butt of the gun resulting in death of Roopa Ram and so his submission is that none of the accused-appellants is liable for any of the offences with which they were charged and consequent upon trial they were so convicted and sentenced under the impugned order.

20. Besides, it has also been contended that the recoveries of the alleged weapons of offences are not proved and so also it is not proved further that the same weapons were used in commission of offences by any of the convict-appellants.

21. Accordingly, his further submission is that even if it is assumed that the accused-appellants had gone to the "Dhani" of Roopa Ram whereat Ugrasen was killed at the hands of Roopa Ram (deceased), even Bhura Ram was entitled to have acted in exercise of right of private defence of property and person and so also, since Roopa Ram had otherwise killed Ugrasen to death, in such circumstances, there being immediate apprehension of death to Bhura Ram etc., in case Roopa Ram was killed to death and Smt. Saudi was also similarly hurt, none of the accused-appellants can be held liable for commission of any offences.

22. However, the learned P. P., while taking through the prosecution evidence and so also that of the defence, specially on the basis of Ex. P. 17 to Ex. P. 22 revenue records, in an attempt to repel contentions of the learned counsel for the appellants, maintained that the disputed land was, admittedly, of the "khatedari" of Roopa Ram and his brother Dana Ram who, being by caste Bhils, were members of a Scheduled Tribe and, accordingly, in the first instance, they could not have sold this land to Smt. Veeran who is alleged to be Dholi by caste being a member of Scheduled Caste. Clause (b) of Section 42 of the Rajasthan Tenancy Act, clearly forbids any sale, gift or bequest by a member of Scheduled Tribe to a member of Scheduled Caste or vice-versa. Accordingly, Roopa Ram and Dana Ram were not legally permitted to have made any sale of such land and so also Smt. Veeran could not have acquired any right, title or interest in the land and so also she was not vested with any right, title or interest in the land to be further transferred by way of sale in favour of Harchand Meghwal though a member of Schedule Caste. Much less, the accused-appellant could not have acquired any right, title or interest in the disputed land through the alleged general power-of-attorney purporting to have been executed by Harchand Meghwal in favour of Kesara Ram.

23. Accordingly, the learned P. P. has maintained that, since even as per defence version, few days prior to the incident, at the instigation of P. W. 4 Bhur Singh or otherwise, Roopa Ram and his family members had returned to the "Dhani" and they were in its established possession at and before the time of occurrence and, therefore, the accused-persons had no justification or any legal entitlement to

have raided their "Dhani" in order to evict them forcibly from there and, accordingly, when Roopa Ram apprehended immediate danger and grievous injury to his body, he was left with no alternative but to have exercised his private right of defence of person and property by resorting to a fire at the person who was bent upon to effect forceful entry into the "jhumpa" whereat Roopa Ram was hiding himself and accordingly, by firing from his gun, Roopa Ram did not commit any offence and, therefore, since Ugrasen and his associates were aggressors and, therefore, no right of private defence of person or property accrued to the aggressors and, as a result, Bhura Ram and his associates were liable for commission of the offences with which they were charged resulting in their conviction under the impugned judgment. Therefore, the impugned judgment and order warrant no interference by this Court.

24. On consideration of rival contentions as reiterated hereinbefore, the following questions for determination for the purpose of disposal of this appeal arise:

1. Whether the appellants formed an unlawful assembly with the common object of commission of offences of theft and hurt and also committed rioting.
2. Whether any offence of theft was committed by all or any accused/appellant(s) in prosecution of the common object of the unlawful assembly.
3. Whether Roopa Ram was killed by Bhoora appellant and the same amounts to murder, as defined u/s 300, I.P.C. being covered by any one or more clauses embodied there under.
4. Whether Kesara Ram intentionally caused simple injuries to Smt. Saudi with a lathi.
5. Whether the appellant Bhoora Ram committed aforesaid offences while being member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object fastening his co-appellants vicariously liable with the aid of Section 149, I.P.C.

25. Now, we proceed to dispose of the aforesaid points/questions at seriatim:

Re- : 1 and 2

26. At the out set, it may be stated that this case is out come of dispute in regard to cultivatory possession of field Khasara No. 701 which was subsequently given Khasara Nos. 701 and 701/1 by the revenue authorities.

27. Admittedly, the disputed land, measuring 148 bighas and 12 biswas, falling in village Chaku was of the joint "khatedari" of Rooma Ram (deceased) and his brother Dana Ram. P.W.I Dana Ram denied that they had disposed of land under a registered sale-deed on 18-10-82 in favour of Smt. Veeran and since then, after leaving their field and "Dhani", they moved to village Hada and they had also applied for allotment of land in Kolayat Tehsil of Bikaner District. However, he stated that a forged sale-deed was executed purporting to have been done by

Smt. Veeran in favour of Harchand Meghwal. He also clearly denied that new "jhumpa" was raised by Kesara Ram (deceased-appellant) and, instead, maintained that "jhumpa" existing at the site whereat occurrence took place was raised and built by him and his brother. He did admit that though Kesara Ram claimed to have obtained a general power of attorney in his favour from Harchand Meghwal but Kesara Ram could never cultivate and take over possession of the disputed field. He also admitted that some criminal and revenue disputes were pending in different Courts as also claimed from the defence side.

28. P.W. 2 Smt. Saudi, wife of deceased Roopa Ram, stated that the disputed field was in their cultivatory possession from the time of her father-in-law and before whereat they had built up their "Dhani" and were in cultivatory possession of the field. They had never abandoned or deserted their "Dhani" and the field whereat the occurrence took place. Both Roopa Ram and Dana Ram along with their wives and children were living in the "Dhani" and cultivating the field. She did admit that her parents were living in village Hada but her husband as well as brother-in-law Dana Ram never shifted to Hada permanently. She also denied the alleged fact of execution of sale-deed in the year 1982 by Roopa Ram and Dana Ram in favour of Smt. Veeran and, subsequently, by Smt. Veeran in favour of Harchand Meghwal. P.W. 17 Radha Kishan, Revenue Patwari, Patwar Circle, Chaku has also stated that the land of original Khasra No. 701 was recorded in the "khatedari" of Roopa Ram and Dana Ram and, subsequently, Roopa Ram and Dana Ram having half-half share in the land, executed a sale-deed in favour of Smt. Veeran Dholi and, consequently, mutations No. 875 and 876 being respectively Ex. P. 17 and Ex. P. 18 were opened. Smt. Veeran further sold and transferred this land in favour of Harchand Meghwal under a registered sale-deed and mutation No. 976 was opened and accepted on 15-9-87. However, as also stated by him, as per endorsements on the reverse of Ex. P. 17 to Ex. P. 19 mutation form of registration, a clear note has been given by the Patwari as also stated by him that these mutations were cancelled by the Revenue Tehsildar, Phalodi and this could not be challenged by the defence as well. Besides, Jamabandis (Khatoni) from Smvt. 2039 to Smvt. 2042 and Smvt. 2044 to Smvt. 2047 being Ex. P.20 and Ex. P.21 as well Khasra Girdawari (four years) for the period from Smvt. 2040 to Smvt. 2043 (Ex. P.22) clearly show that the recorded "khatedars" of the land falling in undivided Khasara No. 701 were Roopa Ram and Dana Ram sons of Dhoola.

29. P.W.I Dana Ram and P.W. 2 Smt. Saudi throughout maintained that they are Bhils by caste and this fact that they are Bhils by caste has not been challenged from the defence side. In view of these facts and circumstances, as borne out of the aforesaid statements of P.W. 1 Dana Ram, P.W. .2 Smt. Saudi and P.W. 17 Radha Kishan, though Roopa Ram and Dana Ram were Bhils by caste and hence as per Entry at S. No. 1 of Part XIII (Raj) of the Constitution (Scheduled Tribes) Order, 1950 covering all castes under the classification of Scheduled Tribes, Bhils are notified as a Scheduled Tribe whereas Smt. Veeran, who is alleged to have

purchased the disputed land from Dana Ram and Roopa Ram, being a Bhil is as such a member of Scheduled Tribes, is by caste Dholi and so also Harchand being Meghwal, who is alleged to have subsequently purchased the same land under a registered sale-deed from Smt. Veeran, both are members of Scheduled Caste as per Entry at S. Nos. 23 and 26 of Part XV (Raj) of the Constitution (Scheduled Castes). This leaves no doubt that both Dana Ram and Roopa Ram, being real brothers were, Bhils by caste and as such they were members of Scheduled Tribe whereas both Smt. Veeran as well as Harchand Meghwal were members of Scheduled Caste.

30. As regards transfer of agricultural land, Section 42(b) of the Rajasthan Tenancy Act, provides that sale, gift or bequest by a Khatedar tenant of his interest in the whole or part of his holding shall be void if such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe. Accordingly, admittedly, since this transfer is alleged to have been effected after amendment of 1-5-64 and, hence, the disputed transfers by way of even registered sale-deeds were void and, therefore, neither Smt. Veeran nor Harchand Meghwal who were members of Scheduled Caste could acquire any right, title or interest in the disputed land under the garb of registered sale-deeds alleged to have been executed by Roopa Ram and Dana Ram Bhils who were not vested with legal rights to transfer such rights by way of sale, gift or bequest etc. as they are alleged to have purported.

31. The aforementioned entries of Jamabandi and Khasara Girdawari have been proved by none but P.W. 17 Radha Kishan, Revenue Patwari, who has also stated that he went for the purpose of Girdawari to find out crops standing at the site and recorded the factum of crops sown and standing at the site in the aforesaid revenue record. He has maintained that both Roopa Ram and Dana Ram are recorded as "khatedars" of the land as borne out of the entries of the aforesaid documents. The statements of Radha Kishan clearly shows that there was never a legal transfer of any right, title or interest in the aforesaid agricultural land recorded in the "khatedari" of Roopa Ram and Dana Ram. The mutations so opened in the name of Smt. Veeran and Harchand Meghwal also stood cancelled in view of the aforesaid legal provisions.

32. It may also be mentioned that the persons who managed execution of the aforesaid disputed sale deeds dated 18-10-82, 4-4-84 and 19-8-87 as borne out of Ex. P. 17 to Ex. P. 19, the same further reveal that the caste of Dana Ram and Dana has been shown as Nayakas but they are Bhils by caste as held above. But, for the present purpose, Nayakas are also members of Scheduled Tribe under the aforesaid Order of 1950 and, being Nayakas, both Roopa Ram as well as Dana Ram could not have legally transferred any right, title or interest against the provisions of Section 42(b) of the Rajasthan Tenancy Act.

33. Resultantly, so far as title of the disputed land is concerned, the same vested

and continues to vest in Roopa Ram and after his death in his legal heirs as well as Dana Ram.

34. As regards actual cultivatory possession of the disputed land and so also the "Dhani" whereat the incident took place, though P.W. 17 Radha Kishan admitted that he never knew Roopa Ram by face and so identity of Roopa Ram was not known to him and he had given evidence on the basis of revenue record referred to above. He also admitted that even after initiation of short-lived proceedings regarding opening of mutation in the name of Smt. Veeran after alleged execution of sale-deed by Dana Ram and Roopa Ram, no related entry as regards transfer of "khatedari" rights was made in the name of Smt. Veeran or, lastly, Harchand Meghwal and the mutations so entered in the name of Smt. Veeran and, subsequently, in the name of Harchand Meghwal were also cancelled by the order of Revenue Tehsildar, Phalodi and no other order of any superior revenue authority has been shown contrary to the same.

35. He also admitted in his cross-examination that Kesara Ram (deceased appellant) cultivated this land in the years 1986 and 1987 but he did not recollect whether it was Kesara Ram who had actually cultivated the disputed field in the year 1988 or not.

36. The defence plea is that both Dana Ram and Roopa Ram after transfer of their right, title and interest under the aforesaid sale-deeds executed in favour of Smt. Veeran Dholi have left or abandoned their possession of the field and the "Dhani" situated there on and there after they started living permanently at the village Hada whereat Roopa Ram was married and, thereafter, the land was transferred to Harchand Meghwal and for last about 8 to 10 years, this land was under the cultivatory possession of Kesara Ram peaceably but, subsequently, P.W. 4 Bhur Singh, who is neighbour of the disputed field, with an ulterior motive, instigated Roopa Ram and Dana Ram to revert to their fields to defeat right and claim of Kesara Ram and, therefore, a few days before this incident, surreptitiously, both brothers Roopa Ram and Dana Ram illegally occupied the "Dhani" newly raised by Kesara Ram himself being used for rest and residence temporarily during the cultivatory season.

37. D.W.1 Ishra Ram has stated that though the Bhils transferred the disputed land under sale-deeds to Smt. Veeran who had subsequently executed sale-deed in favour of Harchand Meghwal but he also maintained that from the time of Bhils, Kesara Ram was actually cultivating this land and the Bhils had left the village about 10 years prior to the incident. However, it is worthwhile to mention that this witness has clearly stated that the Bhils returned about a month or 20 days prior to this incident and started living in the "jhumpa" and "Dhani" whereat this incident took place. Kesara Ram assembled a "panchayat" representing that the Bhils had returned and occupied the field. Ugrasen had even represented that since Roopa Ram claimed that some amount of consideration of the sale of the disputed land was due from Smt. Veeran and Ugrasen assured that the payment shall be made but the Bhils should vacate the

"jhumpa". He did state in his cross-examination, in the first instance, that when the "panchayat" assembled, Roopa Ram along with his family members was already residing in the "jhumpa" but, subsequently, making an about-turn, he pleaded ignorance in this respect.

38. D.W.2 Ramu Ram also, while supporting defence in respect of sale-deeds so having been executed and, subsequently, as claimed, Roopa Ram's and Dana Ram's having left the village and gone to village Hada, also stated that Smt. Veeran had given cultivatory possession of the field to Kesara Ram and since then he was cultivating the same before Smt. Veeran executed another sale-deed in favour of Harchand Meghwal. He also stated that "panchayat" was assembled in which it was complained as to why did Bhils return to their field and "Dhani" whereas they had already sold the field as above. He also stated that the Bhils had returned to their field after 5 or 6 years after execution of sale deed in favour of Smt. Veeran and that it was Kesara Ram who had raised a "jhumpa" in his field. Kesara Ram represented before the "panchayat" that since Bhils had returned and occupied "jhumpa" and, consequently, the disputed field and, accordingly, Ugrasen was despatched with a jeep to fetch Bhils to "panchayat". He also clearly admitted that he had never seen either Smt. Veeran or Harchand Meghwal cultivating this field. However, he also admitted in his cross-examination that he had learnt that Bhils had occupied the "Dhani" and the village about 27-28 days prior to assemblage of the "panchayat".

39. D.W.3 Gorkah Ram also similarly stated that both Roopa Ram and Dana Ram executed a sale-deed of the disputed field in favour of Smt. Veeran about 10 to 12 years prior to the incident and, thereafter, they left for Hada in Kolayat Tehsil of Bikaner District and they were living there. Thereafter, these Bhils had never cultivated the disputed land. Though Smt. Veeran subsequently transferred this land in favour of Harchand Meghwal of Nathusar but the land was under the actual cultivatory possession of Kesara Ram since long. He has stated that "panchayat" was assembled to settle the dispute since Bhils were being asked to leave the field and "Dhani" whereas Bhils had refused to oblige Kesara Ram. This witness has clearly admitted in his cross-examination that Kesara Ram did not plough or cultivate the disputed field after Bhils had re-occupied the field and "Dhani" and started living thereon.

40. D.W. 4 Kesu Ram also stated that the disputed land was being cultivated by the appellant Kesara Ram for about 6 to 7 years and this was not cultivated by Roopa Ram and Dana Ram.

41. D.W. 5 Kishan Ram also maintained that it was appellant Kesara Ram who was cultivating the land after the same was sold by Dana Ram and Roopa Ram Bhilla to Smt. Veeran and that the Bhils had abandoned and deserted the field and "Dhani" about 14 to 15 years back and the Bhills started living at Hada till they had returned and reoccupied the "jhumpa" and the field. He clearly stated that Bhils had returned and occupied "jhumpa" and the field about a month prior to the incident and, therefore, "panchayat" was being held and the Bhils were

also summoned to appear before "panchayat" who did not oblige and hence this incident took place.

42. He has also stated that Smt. Veeran, after purchase of the field, got the field cultivated through crop-sharers and labourers for about 3 years and, subsequently, on execution of sale deed in favour of Harchand Meghwal by Smt. Veeran, Kesara Ram came into cultivatory possession of the field and about a month prior to assemblage of the "panchayat", the Bhils had reappeared on the scene and occupied the "jhumpa" and the field and hence the dispute arose.

43. D.W. 6 Kesara Ram (accused), with the permission of the Court, volunteered to be examined on oath, stated that the disputed field was so transferred in favour of Smt. Veeran in the first instance by Roopa Ram and Dana Ram and they left for village Hada and, subsequently, Smt. Veeran transferred this land to Harchand Meghwal 7 or 8 years before and under Ex. D-4 and Ex. D-5 general power of attorney, he was actually cultivating the disputed field on behalf of Smt. Veeran and Harchand Meghwal and so he was in cultivatory possession of the land. Roopa Ram and Dana Ram had also filed a criminal complaint with the police claiming that the sale deeds were forged and, on investigation of the same, final report Ex. D-9 was given on the basis of Ex. D-8 report of the Finger Print Bureau, Jaipur falsifying allegations of commission of alleged offences of falsification and forgery. Similarly, a revenue suit vide Ex. D-6 for permanent injunction against Smt. Veeran was filed in the Court of Assistant Collector, Phalodi and same was dismissed on 24-6-83 on the ground of non-prosecution of the same. He also produced amended voters' list of Nokha Assembly Constituency for the year 1985 wherein names of Dana Ram. Roopa Ram and Smt. Jugati W/o Dana Ram are shown in the supplementary voters' list at S. Nos. 1034, 1035 and 1037 which pertains to village Hada. However, Kesara Ram himself maintained that some time prior to the incident, Bhils returned and occupied the "jhumpa" constructed by him in the disputed field while he was in cultivatory possession of the field subsequently by transfer of the same by Smt. Veeran in favour of Harchand Meghwal and since then they were continuing in illegal occupation of the "jhumpa" and the field and so the "panchayat" was assembled and Bhils were also summoned at the time of the incident. In contradiction to the aforesaid statements of his own witnesses, he stated that he had cultivated the field for about 3 years on the basis of general power of attorney so executed and changed from year to year in his favour. This period beginning from 18-10-82, as already stated before, does not coincide with the defence evidence as to whether Kesara Ram had started cultivating the disputed field before 18-10-82 or subsequent thereto after the sale deed was executed in favour of Smt. Veeran or it was after execution of sale deed by Smt. Veeran in favour of Harchand Meghwal. Therefore, the defence evidence in respect of the period during which and since whence the appellant Kesara Ram was cultivating the field is not reconcilable and the evidence so adduced in this respect is materially discrepant and self-contradictory. However, Kesara Ram further stated that Harchand Meghwal had paid Rs. 37,150/- to Smt. Veeran and he did not pay

any amount therefore and, instead, he used to share crop with Harchand Meghwal during the period of his cultivation of the disputed field. He did admit that the field did not belong to him nor had he acquired any right or title in the disputed field and it was Harchand Meghwal who had authorised him to cultivate the field under a general power of attorney so executed by him. He did admit that he did not report against Dana Ram and Roopa Ram who had broken open to lock of the "jhumpa" and forcibly reoccupied the same since it was Harchand Meghwal who could have done so.

44. On the basis of aforesaid evidence of the prosecution and so also the defence, as also evidenced from the record, the disputed field was in the recorded "khatedari" of Roopa Ram and Dana Ram and the same continued to be so. However, as evidenced from Ex. P-17 to Ex. P-19 and contents thereof, it does appear that sale deeds were manipulated in the names of Dana Ram and Roopa Ram showing that they had voluntarily sold and transferred this field to Smt. Veeran, a member of Scheduled Caste and, subsequently, though this transfer was per se void ab initio and no right, title or interest could have conferred upon Smt. Veeran under these sale deeds executed by the Bhils Dana Ram and Roopa Ram, being members of Scheduled Tribe but, any how, Kesara Ram claims that irrespective of title, he was in actual cultivated possession of the land.

45. Be it as it may, the fact remains that the legal title of the disputed field continued to vest in the original "khatedars" Dana Ram and Roopa Ram and the same never terminated. No proceedings for ejectment of illegal transfer or subletting were ever initiated against them u/s 175 of the Rajasthan Tenancy Act. Therefore, the resultant emergence of the aforesaid discussion is that both Roopa Ram as well Dana Ram were the recorded "khatedars" having proprietary rights in the disputed field.

46. For deciding the present controversy, the title of the land is not so important and, instead, this is the real and established possession of the "Dhani" and the field at the time and just before the incident, which is material.

47. As already discussed above, from the evidence of prosecution and so also that of the defence itself, it cannot be denied that even if it is assumed that Dana Ram and Roopa Ram had for quite some time, preceding the incident, had left the village and gone to live at village Hada, they had, because of subsequent change of mind, returned to their village Chaku and occupied the "jhumpa" and the disputed field. This fact was within the knowledge of Kesara Ram and his associates. Roopa Ram and Dana Ram did not oblige Kesara Ram vacating possession of the field and "jhumpa" and asserted their proprietary and occupancy rights in the disputed field and "jhumpa". This was the main cause of grievance for the appellant Kesara Ram and he arranged for assemblage of the "panchayat" but Dana Ram and Roopa Ram did not participate in the same and were not inclined to part with possession and occupation of the field and "jhumpa" in which they had started living. Besides, so far as factum of

possession is concerned, as already stated by P.W. 22 Harjinath, S.H.O., as evidenced from Ex. P-7 seizure memo, household goods, specially the various items described at S. Nos. 1 to 11 in Ex. P-7, were removed from "jhumpa" whereat this incident took place on a camel-cart and were unloaded at a distant place on the public way after the incident. Besides, as also evidenced from Ex. P-25 site plan and connected memorandum Ex. D-2, various household articles including the cooking vessels, beddings etc., were found lying in the "jhumpa" at the time of site inspection. All these incidences of use and occupation further fortifies the prosecution story that at the time of the incident and so also during the period preceding the incident, Roopa Ram and Dana Ram were in use, possession and occupation of the "jhumpa" and so also the field.

48. As regards the documents marked Ex. D-4 dated 23-6-87 and Ex. D-5 dated 8-7-88, the last one having been so executed a day before the actual incident having taken, place on 9-7-87, only show that Kesara Ram was manipulating execution of documents to justify his possession on the disputed land. When previous documents Ex. D-3 dated 23-6-87 was in force as evidenced from Ex. D-5 dated 8-7-88, it is borne out that this very disputed land was further transferred in favour of Harchand Meghwal by Smt. Veeran. The last document Ex. D-5 purporting to be general power of attorney executed on 8-7-88 in favour of Kesara Ram could not have come into effect nor did it give any right to Kesara Ram to eject Dana Ram and Roopa Ram from the field of their "khatedari" whereat they were living even to the admission of Kesara Ram himself.

49. Therefore, from whichever angle it is viewed, there is no substance in the contention of the learned counsel for the appellants that the disputed field and the "jhumpa" were in cultivatory possession of Kesara Ram to the exclusion of Roopa Ram and Dana Ram Bhils much prior to the incident and they had trespassed upon the same.

50. Assuming that Kesara Ram had cultivated this land just prior to this incident on the basis of alleged deeds of general power of attorney executed by Smt. Veeran and Harchand Meghwal, at the time and preceding the incident, since both Dana Ram and Roopa Ram had returned to their field and occupied the "jhumpa" existing thereon without any opposition to the same, and started living thereon and even if defence-theory is accepted, they had occupied and possessed the field and "jhumpa" not less than a month prior to the incident. However, Kesara Ram wanted to evict them from the same for which he was bent upon assembling a village "panchayat" and seeking participation of Bhur Singh as well as Dana Ram and Roopa Ram but the latter were not inclined to participate for negotiation for any compromise.

51. As a result, the accused-appellants were not prosecuted for commission of offence of any criminal trespass and there was no charge under trial u/s 447, I.P.C. against the accused-appellants.

52. However, as regards this incident, though the defence has advanced a plea

that Ugrasen and two of his associates who have not been named, went to the "jhumpa" where at this incident took place to fetch Dana Ram and Roopa Ram to appear before the "panchayat" for negotiation of a compromise but, since the incident involving murder of Ugrasen and so also Roopa Ram took place and the dead body of Ugrasen was brought back in the jeep by associates of Ugrasen and that none of the accused-appellants was present at the place of occurrence but, during the course of cross-examination of the prosecution witnesses specially that of P.W. 2 Smt. Saudi and P.W. 4 Bhur Singh, a different story has been suggested and to the defence so advanced is self-contradictory. However, for the present, suffice it to observe that Kesara Ram and his associates specially his maternal nephew Ugrasen who was all through at the forefront from the side of Kesara Ram, just prior to the incident, assembled together and in order to forcibly eject Dana Ram and Roopa Ram along with their family members from the "jhumpa" and the field, arranged for a vehicle and a camel-cart and, lastly, they jointly ventured to enter the "Dhani" where at Roopa Ram and Dana Ram along with family members were living and they started lifting and loading household articles in the camel-cart. On the basis of evidence of P.W. 2 Smt. Saudi and P.W. 4 Bhur Singh and as also supported from the circumstantial evidence, Ex. P-7 seizure memo and Ex. P-25 and Ex. D-2 site inspection memorandum, the evidence of P.W. 22 Harji Nath also lends corroboration to the fact that Kesara Ram, Ugrasen and his associates formed an unlawful assembly and, at the same time, Ugrasen was armed with an axe while Kesara Ram was armed with a lathi and some of their associates had also lathis etc. They had common object to trespass into the "Dhani" which they knew from before that both Roopa Ram and Dana Ram were in the established use and possession of the "Dhani", even if it is so assumed that the Bhils had deserted the same for few years preceding the incident, the same being without animus to abandon permanently, at least for a sufficient time beyond one month preceding the occurrence and hence they thought of a plan to forcibly evict Bhils from the "Dhani" and field since the latter were not obliging by vacating possession of the "Dhani" and the field. There was enough time for Kesara Ram and Ugrasen to have approached public authorities for legal action for eviction of Dana Ram and Roopa Ram in case they had illegally occupied the "Dhani" and the field and refused to vacate the same. They were none but the real recorded "khatedars" of the field whereat the "Dhani" was situated and while asserting their proprietary rights in the field, they were occupying the "Dhani" and refused to remove themselves from there and, therefore, the accused-persons had no business to have acted and attempted to forcibly remove their household goods from there in order to evict Dana Ram and Roopa Ram along with their family members from the "jhumpa" and consequently ejecting from the field.

53. Therefore, the act of the accused-persons who were responsible for commission of this incident, were members of an unlawful assembly since number of known and unknown persons was not, at any cost, less than five and hence there being a common object of committing criminal trespass by forcibly

entering into "Dhani" with intent to cause annoyance and intimidate the occupants of the "Dhani", Dana Ram and Roopa Ram and their family members, to use force and evict them there from and, consequently, by committing trespass in the "Dhani" and field of Dana Ram and Roopa Ram and having committed rioting at the time of removing household articles and so also, on resistance by Smt. Saudi, an assault having been resorted to by injuring her and, lastly, on apprehension of death, having resorted to gun-shot fire by Roopa Ram resulting in instantaneous death of Ugrasen, a rioting having ensued as such and thereafter removal of household articles and loading the same in the camel-cart leaves no doubt that the accused-persons involved in the incident formed an unlawful assembly with the common object to commit criminal trespass by way of removal of household goods of Dana Ram and Roopa Ram, as they actually did and, in doing so, anticipating resistance to cause hurt to the persons resisting their acts and it was in prosecution of the common object of commission of criminal trespass and subsequently the theft, though, howsoever technical it may be alleged to be, with the dishonest intention of depriving its use and possession by Roopa Ram and Dana Ram that the household articles as alleged in Ex. P-7 were loaded in the camel-cart and removed from their house and unloaded at some distant place from where they were recovered on the next day by P.W. 22 Harji Nath, as above, vide Ex. P-7.

54. No contention as raised from the side of the appellants against this conclusion is sustainable and, accordingly, it is held that the offence of criminal trespass as well as theft were committed by the members of unlawful assembly. Non-framing of charge and trial under 5.447, I.P.C. is of no consequence except that the appellants cannot be punished for the same. So far as involvement of the present appellants in commission of these offences is concerned, it is to be concluded in the next consideration. Re. 3 and 4.

55. P.W. 2 Smt. Saudi is the star witness of the prosecution and being injured as evidenced from Ex. P-24 injury report and also corroborated by the evidence of P.W. 20 Dr. B. D. Acharya, she was injured in the incident and so, though unsuccessfully attempted to by the defence, her presence at the time of occurrence at the place of occurrence itself cannot be denied. She is widow of Roopa Ram and also an injured and is most aggrieved and hence interested against the appellants but, merely because she is related and interested and disposed inimically against the appellants, that by itself, cannot be a ground for rejection of her evidence outright and instead the rule of prudence commands that her evidence should be appreciated and evaluated with great care and caution and, as the case in hand demands, some corroboration in material particulars to guarantee truthfulness of statement of Smt. Saudi should be insisted upon. She has stated that she was present at her house at the time of the occurrence and this fact is corroborated by the evidence of P.W. 1 Dana Ram as well as P.W. 4 Bhur Singh, in addition to her statement Ex. P-1 "parcha-bayan" on which Ex. P-27 FIR has been recorded. They have negated the defence version that she was present at the village Hada whereat, as alleged

above, her family had started living prior to the incident and, instead, she maintained her presence alone with her husband at the place of occurrence itself.

56. She has stated that at the time of occurrence, Kesara Ram, Bhura Ram, Hadman Ram, Bhanwar Ram, Sohan Singh, Phool Singh, Banne Singh, Ummaid Singh, Moti S/o Nena, Gumana Nai, Manager (Mahendra), Magha S/o. Moolia, Magha Ram S/o. Moti and the jeep driver Ladu Ram came to her "Dhani", though the identity and presence of other accused-persons to the exclusion of accused-appellants has not been believed by the learned trial Judge. P.W. 1 Dana Ram who learnt of this incident did state that Smt. Saudi told her about involvement of 15 to 16 persons in the incident but he could not recollect and narrate their names except that of Kesara Ram, Sohan Singh and Ugrasen. Thus, Smt. Saudi has not specifically named Moola Ram in her statement, named in FIR but subsequently in her same statement she has clearly stated his presence and involvement specially among the persons who entered the "jhumpa" and dragged out Roopa Ram. Besides, there was no accused under trial named Magha S/o. Moolia but it is the appellant Moola S/o. Magha and hence it is a typing mistake having crept in initially, when her statement is read as a whole, this error is apparent on face and hence of no consequence. They immediately enquired about whereabouts, and presence of Roopa Ram but she represented that Roopa Ram was not present there. Ugrasen ordered that their household goods be immediately loaded in the camel-cart and they should vacate possession of the field and "jhumpa" leaving from there immediately. The household goods were being loaded in the camel-cart. Since she stood in front of the door of the "jhumpa", Ugrasen caught her by hand and threw her away and when she resisted it, Kesara Ram inflicted two blows of lathi on her head and left arm and she was so hurt. Ex. P-1 statement also supports this fact, as evidenced from the medical evidence discussed above. Resultantly, there is no reason to disbelieve her statement that it was Kesara Ram who had caused simple hurt with a lathi to her.

57. She further stated that Ugrasen was attempting to enter the "jhumpa" much to her opposition who kicked open the door and Roopa Ram who was hiding inside the "jhumpa", apprehending real and imminent danger to his life, fired shot from his gun which hit Ugrasen in the abdomen ? who fell down. The Manager (Mahendra) who was neither prosecuted nor tried as an accused, caused injury to the eye of Roopa Ram. On this, Bhura Ram, Manager, Moti, Gumana Nai and Hadman Ram entered the "jhumpa" and caught hold of Roopa Ram and dragged him out of the "jhumpa". After he was brought out of the "jhumpa", he was immobilised and, while he was lying on the ground, Bhura Ram gave repeated blows of "kulhadi" from its sharp side on the head of Roopa Ram as a result of which Roopa Ram died instantaneously. Thereafter, all the assailants loaded their household goods in the camel-cart and left from the "Dhani" and field in the jeep and camel-cart.

58. She stated that she was alone and there was no other family member at her

house and Smt. Jugati W/o Dana Ram, being deaf and dumb, had also fled away from the scene of occurrence and so she could not go elsewhere to report the incident leaving the dead body of her husband unattended in the night and, in the next morning, the police, headed by P.W. 22 Harji Nath, came there and recorded her statement Ex. P-1. Ex. P-1 statement, as also stated by P.W. 22 Harji Nath, given by Smt. Saudi, substantially corroborates her statement in regard to commission of the incident. She also had an opportunity to have identified Kesara Ram, Sukha Ram and Bhura Ram only at the time of her examination by the Court and, out of them, Sukha Ram is not appellant before this Court. But identity of none of the appellants is under dispute. She also clearly stated that Sukha Ram had not come to her "Dhani" and he kept waiting away with his jeep.

59. The learned counsel for the appellants has contended that the conduct of this witness, in case she had witnessed the occurrence, does not appear to be natural and reliable as it was most unnatural on her part to have sat down along with dead body of her husband without informing any body or crying for help and so also in case P.W. 4 Bhur Singh had been eye-witness of the occurrence, it was natural on his part to have reported this incident to the police and other public authorities but neither Smt. Saudi nor P.W. 4 Bhur Singh did so and it again casts a serious doubt about presence of these two witnesses as eyewitnesses to the occurrence.

60. However, as already observed hereinbefore, since Smt. Saudi is injured and the injuries are, as also evidenced from medical evidence, found to have been received in the incident itself and, therefore, there is no substance in the contention of the learned counsel for the appellants that Smt. Saudi was not present at the place of occurrence when the incident took place and, instead, she was at Hada where from she was brought on the next day by Dana Ram. If it were so, Dana Ram would have been the only eye-witness and no better purpose could have been served by introducing or substituting Smt. Saudi as an eye-witness in place of Dana Ram and, instead, Dana Ram could have been the better witness, his presence being natural at his own house and not at Hada but Dana Ram did not try to become eye-witness of the occurrence and so his conduct as well as that of Smt. Saudi inspires full confidence and there is no valid ground to visit evidence of P.W. 2 Smt. Saudi with any suspicion,

61. As a result, even after a grilling cross-examination, the evidence of Smt. Saudi has not been shattered and the same inspires full confidence as regards the involvement of the appellants Kesara Ram, Bhura Ram, Sohan Lal, Bhanwar Lal and Mula Ram. As regards other ? persons alleged to be involved in the incident and prosecuted along with the appellants, having been acquitted by the trial Court while not relying on the wholesome evidence of P.W. 2 Smt. Saudi but since Kesara Ram is father of appellants Bhura Ram, Sohan Lal and Bhanwar Lal, involvement of father and the sons, who were interested in the disputed land and ejectment of Dana Ram and Roopa Ram there from, their presence and

involvement, as also deposed to on oath by Smt. Saudi, as also corroborated by Ex. P-1 statement, is beyond doubt. So also is the case with the appellant Moola Ram as P.W. 2 Smt. Saudi nor P.W. 4 Bhoor Singh had any ulterior motive to falsely implicate Moola Ram. Merely because involvement of other accused was not proved beyond doubt, their acquittal does not make P.W. 2 Smt. Saudi a wholly unreliable witness.

62. The maxim "falsus in uno, falsus in omnibus" is neither a rule of law nor of practice in criminal trials and the Court is required to, as far as justifiably possible, to separate the grains of truth from the chaff, leaving apart falsehood.

63. She has clearly maintained that it was wrong to suggest that Ugrasen and Manager (Mahendra) and the driver alone had come to their house to fetch Roopa Ram and Dana Ram to the "panchayat" to be held and, instead, maintained the persons so alleged were involved in the commission of the incident.

64. P.W. 4 Bhur Singh has stated that on the fateful day at about 11 a.m. Hanuman Ram who is son of Kesara Ram accompanied by Durga Ram, Ummaid Singh came to his "Dhani" in jonga jeep and requested him to accompany him to the "Dhani" of Kesara Ram where at "panchayat" was being assembled in regard to dispute of "khet" (field) belonging to the Bhils but he refused to oblige. It was at about 5 p.m. that 12 persons arrived in the jonga jeep while 4 on camel-cart and so 16 persons came to the "Dhani" of deceased Roopa Ram. After the jeep and the camel-cart were parked at a little distance from "Dhani", the accused-persons started loading household articles from the "Dhani" of Roopa Ram in the camel-cart and in the process though, since as already borne out of Ex. P-25 and Ex. D-2 prepared by P.W. 22 Harji Nath, so minutest details could not have been seen by Bhur Singh while standing, as claimed, on the border of his field situated near the "Dhani" of Roopa Ram but, anyhow, he has stated that the wife of Roopa Ram stood in front of the closed door of "jhumpa" but Kesara Ram inflicted lathi blows and hurt her and she cried. Ugrasen pushed away Smt. Saudi and kicked open the door of the "jhumpa" and hence Roopa Ram fired from his gun towards Ugrasen which hit him in the abdomen who fell down. The Manager (Mahendra) threw a lathi towards Roopa Ram which hit on the eye and 5 or 6 persons entered the "jhumpa" and dragged Roopa Ram out of the same. Bhura Ram inflicted injuries with his axe on the head of Roopa Ram. Thereafter, 4 or 5 persons picked up body of Ugrasen and loaded the same in the jonga jeep and thereafter all the persons retired in the jeep and the camel-cart. He admitted that Banne Singh and Bulidan Singh, at the time of the incident, approached him and enquired about whereabouts of Roopa Ram but he told that he had not come to him and so they had retired. He maintained that he did not go to the place of occurrence till the end and from the border of his field he continued to see the occurrence. He further stated that since looking to the number and aggressive move of the accused-persons, he could not muster enough strength to go nearby. He denied that he was interested in the land and against Kesara Ram

etc. and, therefore, it was at his instigation that Roopa Ram and Dana Ram had returned and occupied the "jhumpa" and the field again. He also partially inspired confidence with the trial Court and rightly too since there has been over-implication and aggravation in the case.

65. P.W. 13 Khinya Ram is yet another eyewitness as per Ex. P-1 lodged by Smt. Saudi but, he has turned hostile to the prosecution and instead corroborated the defence version that only two persons got down from the jonga jeep and went to the "jhumpa". Except Ugrasen, he could not name the second person, as has been the defence version, and stated that he had gone out of his village to graze the cattle and on his return to his village, he found that Roopa Ram and Dana Ram had re-occupied their field and "jhumpa" which further fortifies the aforesaid fact that Roopa Ram and Dana Ram were in established possession of the disputed "jhumpa" and field much before the incident. However, since he has turned hostile and has denied the established facts of prosecution story and so his evidence does not inspire any confidence.

66. Resultantly, as stated above, there is nothing to disbelieve or visit the evidence of P.W. 2 Smt. Saudi with any suspicion vis-a-vis the appellants. She has clearly stated that it was the appellant Bhura Ram who is son of Kesara Ram (since deceased) who had inflicted injuries with an axe resulting in instantaneous death of Roopa Ram. The defence version that it was Manager (Mahendra) who had snatched the gun thereafter and inflicted injuries on deceased Roopa Ram with the butt of the gun has been denied by P.W. 2 Smt. Saudi as well as P.W. 4 Bhur Singh and so also they are negated from the evidence of P.W. 20 Dr. Acharya who had performed postmortem of the dead body of Roopa Ram vide Ex. P-23. He has clearly opined that there were as many as 4 incised wounds in addition to four other injuries including bruises and abrasions found on the parieto occipital region lacerating the brain, and right parieto-occipital region as a result of which parieto occipital bone of skull from its right side had broken into six pieces and two pieces were found lying loose in the wound which had damaged the brain. Rest of the two injuries were on right side of occipital bone as well as on posterior region to the outer canthus of right eye. As a result, all these injuries inflicted with a sharp and heavy weapon like axe found full corroboration from the medical evidence which further fortifies and corroborates the statement of P. W. 2 Smt. Saudi that it was Bhura Ram who gave repeated blows of axe and there having been caused incised wounds on vital part of the head resulting in laceration and damage to the most vital part of the body being the brain causing instantaneous death of Roopa Ram and, as a result, the medical evidence excludes and negatives the defence version that the injuries of Roopa Ram could have been caused in any other manner than the one claimed by the prosecution.

67. As a result of aforesaid discussion, the prosecution has been able to show that it was Bhura Ram appellant and none else, is the author of the fatal injuries of deceased Roopa Ram resulting in his instantaneous death. The manner, nature

and use of an axe being a deadly weapon with force on the vital part of the body which repeatedly received these blows resulting in damaging the vital organ of the body being head and brain causing instantaneous death of Roopa Ram, only leads to the conclusion that it was a case of intentional killing on the part of Bhura Ram and, besides, the repeated injuries so inflicted on the head resulting in causing damage to the brain and described in Ex. P-23 post-mortem report at S. Nos. 1 and 2 were sufficient in the ordinary course of nature to cause death and, resultantly, the act of the appellant Bhura Ram falls within the ambit of clause firstly and thirdly of Section 300 of the Indian Penal Code and hence the act of Bhura Ram amounts to commission of murder of Roopa Ram and, accordingly, he has been rightly held liable therefore by the trial Court and this conclusion does not warrant any interference in this appeal.

68. As regards the contention of the learned counsel for the appellants that since Roopa Ram had killed Ugrasen without any justification or defence therefore and this act resulted in giving grave and sudden provocation to Bhura Ram, in case it is so proved that it was none but Bhura Ram alone who was author of the fatal injuries of deceased Roopa Ram and hence causing of death of Roopa Ram giving provocation brings the case of the appellant Bhura Ram within Exception 1 of Section 300, I.P.C. and hence he can, at the most, be held liable for commission of culpable homicide not amounting to murder. However, it may be noted that this exception is also subject to the provisions that provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person. In the instant case, as evidenced from the overwhelming evidence of the prosecution as well as the defence itself, Kesara Ram was sent upon ejecting Roopa Ram and Dana Ram from their "Dhani" and the field and since they were in established possession thereof and did not oblige Kesara Ram and also did not appear before the village panchayat assembled at the instance of Kesara Ram, Ugrasen etc. and P. W. 4 Bhur Singh also refused to oblige by prevailing upon the Bhils to participate in the reconciliatory proceedings and this enraged and annoyed Kesara Ram, Ugrasen as well as sons of Kesara Ram who are co-appellants of Kesara Ram in this appeal and, all of them, in the company of others, who might not have shared their common object to kill Roopa Ram or any body else or other members of his family, being beyond their visualisation that such an eventuality might occur but, on the spot, much to the surprise of Bhura Ram since Ugrasen while insisting on breaking open the door of the "jhuma" wherein Roopa Ram apprehending to be "killed", was hiding himself who was likely to resist his eviction and dispossession from the "Dhani" and field and, at the same time, since the accused-persons were aggressive and were greater in number and, at the same time, even armed with deadly weapons, they came prepared with jonga jeep and camel cart to forcibly throw out, at any cost, from the "Dhani" and the field and Roopa Ram, while having reasonable apprehension of being killed or subjected to a grievous injuries, on pushing open the door of the "jhumpa" by Ugrasen, immediately fired a single shot from his gun which resulted in killing of Ugrasen. Ugrasen was none but an aggressor and a

trespasser and, at his hands apprehending his imminent death or even grievous hurt otherwise, Roopa Ram was left with no option but to have fired which he did resulting in unfortunate death of Ugrasen instantaneously. In case this act of Roopa Ram provided any grave or sudden provocation to Bhura Ram being armed with an axe, to have inflicted repeated fatal injuries on the vital parts of the body of Roopa Ram, this provocation being a self-sought and the act of Roopa Ram having been committed in exercise of private right of defence of person and property. Roopa Ram had committed no offence and his act was completely exempted by the provisions of Sections 96, 100 and 102, I.P.C. Since right of private defence arises to those who in the face of imminent peril and in good faith and in no case this right be conceded to a person who state-manages a situation wherein the right can be used as a shield to justify an act of aggression. When the accused-persons specially Ugrasen and Bhura Ram along with their associates went to the "Dhani" of Roopa Ram and Dana Ram to forcibly evict them from there, knowing fully well that their act is likely to be met with possible resistance otherwise it was bound to result in defeating their claim on the "Dhani" and field and, therefore. Ugrasen and Kesara Ram had prepared themselves for the eventuality and when a reasonable apprehension was caused in the mind of Roopa Ram at the time when Smt. Saudi was assaulted and pushed aside from the front of door of the "jhumpa" wherein Roopa Ram, for his protection was hiding himself, kicked and pushed open by Ugrasen during the course of commission of theft as well as trespass, that in these circumstances death or grievous hurt will be the consequence of the act being committed by the accused-persons and hence this left Roopa Ram further with no alternative but to have fired at Ugrasen as he did and, in view of these circumstances, his act also fell within the private right of defence of property covered by Section 103, I.P.C.

69. Consequently, whatever act was committed by Roopa Ram, that was in exercise of private right of defence of property and, besides, Ugrasen as well as Bhura Ram were aggressors and, therefore, by no stretch of imagination, Bhura Ram could have justified his act of committing murder of Roopa Ram and so-called provocation, if any, it was self-sought and not provided or caused by any act of Roopa Ram since none of the appellants was an invitee to the "Dhani" and field of Roopa Ram and their act amounted to an act of criminal trespass.

70. Resultantly, since as concluded hereinbefore, the accused-persons involved in the incident were aggressors and, therefore, at the same time, they cannot claim any defence by way of exercise of private right of defence of person or property as well.

71. On the basis of aforesaid discussion, there is no doubt left out that Ugrasen accompanied by appellants Kesara Ram, Bhanwar Lal, Sohan Lal, Moola Ram and Bhura Ram, trespassed in to the field and "Dhani" of Roopa Ram and, in the aforesaid circumstances, Ugrasen was killed at the hands of Roopa Ram with a fire arm injury. Subsequently, being more aggressive, Bhura Ram, was dragged out Roopa Ram and he was fatally hurt repeatedly by Bhura Ram with axe

causing his death instantaneously. Ex. P. 1, being the first version of the incident given by P. W. 2 Smt. Saudi herself, her subsequent version that Hanuman Ram, Bhanwar Lal and Kesara Ram also entered the "jhumpa" and dragged put Roopa Ram is clearly an improvement inspiring no credibility.

72. The factum of death of Roopa Ram at the hands of Bhura Ram is further fortified from the evidence of P. W. 22 Harji Nath. Harji Nath stated that Bhura Ram was arrested on 13-7-88 vide Ex. P. 10 arrest memo and subsequently he gave information Ex. P. 28 regarding keeping/hiding of axe and, subsequently, pursuant to this disclosure statement, a blood stained axe was recovered vide Ex. P. 12 at the instance of Bhura Ram by Harji Nath on 13-7-88 itself. However, this factum of recovery pursuant to statement of Bhura Ram is not fully supported by the motbirs P.W.8 Bhura Ram and P. W. 11 Ummaid Singh but they could not deny their presence at the time of preparation of Ex. P. 12 and so also their signatures on the recovery memo. There is nothing to disbelieve the statement of Harji Nath. Accordingly, while relying on the evidence of Harji Nath as supported by Ex. P. 12 recovery memo, as stated by Harji Nath and so also borne out of Ex. P. 32 receipted Ex. P. 33 report of the RSFSL Jaipur, the axe recovered pursuant to disclosure statement made by Bhura Ram, was found to be stained with human blood and there is nothing against Ex. P. 33 result nor there are circumstances to find that this axe so found stained with human blood was at all tampered with at any stage after its recovery and before chemical examination at the said laboratory. Consequently, this factum of recovery of axe and that too stained with human blood at the instance and from the possession of Bhura Ram further fortifies the authorship of Bhura Ram in the causation of fatal injuries of deceased Roopa Ram.

73. Accordingly, the aforesaid evidence when considered cumulatively and so also relied upon by the trial court and rightly too, leads to irresistible conclusion that it was Bhura Ram who intentionally killed Roopa Ram to death and, therefore, he is liable for commission of murder. Similarly, so far as Kesara Ram is concerned, from the aforesaid evidence, specially that of injured P. W. 2 Smt. Saudi herself, as corroborated by Ex. P. 1 statement and so also the medical evidence, it was Kesara Ram who caused her simple injuries with a lathi. He is dead. His appeal has abated but his liability, as to be observed hereinafter, did not fall under the purview of Section 149, I.P.C., u/s 302, I.P.C.

74. Both these accused did not establish any plausible defence against the same by preponderance of probabilities of defence, if any.

75. Resultantly, so far as direct liabilities of Bhura Ram for commission of murder of Roopa Ram and Kesara Ram for causing simple injuries of Smt. Saudi are concerned, the same are found to have been proved beyond reasonable manner of doubt and no objection from the said of the appellants merits any consideration. Re. 5.

76. In view of our findings on question No. 3 positively in favour of the

prosecution, since Bhura Ram has already been held guilty for commission of murder of Roopa Ram and the next consideration, as regards his co-appellants, is whether Bhura Ram committed the aforesaid offence of murder in prosecution of common object of the unlawful assembly so formed and hence all of his co-appellants are also vicariously liable u/s 149, I.P.C. for commission of murder or not.

77. It is worthwhile to mention that P.W. 2 Smt. Saudi alleged in Ex. P. 1 statement, on which FIR is based, that it was Bhura Ram who entered the "jhumpa" and dragged out Roopa Ram in the open chowk whereat he was inflicted fatal injuries with his axe resulting in his instantaneous death. Though, in a general way, it was stated that all other accused-persons gave fists and kicks to Bhura Ram while being lying on the ground but looking to uncertain number of persons involved in the incident specially on the ground of part non-credibility and reliability of P.W. 2 Smt. Saudi, when out of 15 or 16 persons alleged to have been involved in the incident, in two rounds of filing of charge-sheet, only 12 persons were charge-sheeted by the investigating agency resulting in taking cognizance of the aforesaid offences against those who have been challaned and tried. The trial, as above, resulted in acquittal of seven accused-persons whereas only 5 accused, who preferred this appeal resulting in their conviction and order of sentences under appeal, were found guilty of commission of offences charged with. In view of these circumstances, when some discrepancies and contradictions are found in the statements of P.W. 2 Smt. Saudi and P. W. 4 Bhur Singh whose interestedness in the complainant-party is also evident, no wholesome reliance on their statements has been possible but, since in regard to commission of the aforesaid offences by the accused-appellants u/s 147 as well as under Sections 379/ 149 and 323/149, I.P.C. have been held to have been committed and, on the statement of aforesaid two eye-witnesses and also alleged in Ex. P. 1, besides, the medical evidence, so far as involvement of the five accused-persons in commission of the aforesaid offences is concerned, the finding of the lower Court in respect of their involvement in the incident calls for no interference and this finding of fact is duly supported by the evidence adduced by the prosecution in support of the charges.

78. As regards the vicarious liability of co-accused-appellants of Bhura Ram accused-appellant, for commission of murder of Roopa Ram, as stated above, as per version of Ex. P. 1 FIR, Smt. Saudi only stated that it was Bhura Ram who dragged out Roopa Ram and now, instead, she has changed her version by involving besides Bhura Ram, Manager (Mahendra), Moti s/o Megha, Gumana Ram Nai, Hanuman Ram who also went inside the "jhumpa" and dragged out Roopa Ram but it may be stated that so far as the Manager is concerned, he was not found guilty and involved in commission of the offences and he was let off by the investigating agency. Moti and Gumana Ram Nai have not been found guilty by the trial Court and have been acquitted. Therefore, involvement of Hanuman Ram also becomes equally doubtful.

79. There are no specific allegations of possession of deadly weapons by co-appellants of Bhura Ram except Kesara Ram (deceased) who is alleged to have been armed with a lathi. Bhura Ram alone had an axe. It has also not been alleged that Bhura Ram was armed with an axe right from the time when he had left for the place of incident and that he had not picked up axe from the "Dhani" of Roopa Ram himself. Besides, axe is also an agricultural implement used for cutting bushes, plants, weeds etc. and, therefore, this is, by necessary implication not an instrument of a weapon in all the cases. No other weapon has been attributed to any of the other co-accused persons including co-appellants of Bhura Ram except Kesara Ram. Besides, no other co-accused of Bhura Ram is alleged to have used any other weapon in inflicting injuries to the deceased with any weapon and, on the contrary, it is stated that other accused persons hurt the deceased who was lying on the ground with fists and kicks which is most unnatural and improbable part and conduct attributed to the other accused persons by PW.2 Smt. Saudi. Bhur Singh, while standing on the boundary of his field, could not have seen all these minutest details of the alleged incident from such a distant place specially when there was a thorn-fencing in between by the side of "Dhani" and, therefore, when except accused Bhura Ram, no other accused person is proved to have inflicted injuries to the deceased and, accordingly, there was no common object on the part of unlawful assembly so formed by the accused-appellants before they drove in jonga jeep and on camel-cart to the place of occurrence to commit murder of Roopa Ram or any other occupant of the "Dhani" or coming to his rescue and the common object of the unlawful assembly was to forcibly take possession of the "Dhani" and field by throwing out luggage of Roopa Ram and his family and to evict them from the "Dhani" and field and, at the same time, to remove household goods and property on a camel-cart and, members of that assembly had every reason to know that it was likely to commit offence of hurt to those resisting the acts of the accused persons who were members of the unlawful assembly while attempting to lift and transport luggage from the "Dhani" and, besides, in forcibly evicting Roopa Ram and his family members from there "Dhani" and field. As a result, the common object of the unlawful assembly can be inferred to cause simple hurt or the members of the assembly knew that offences of hurt besides criminal trespass and theft were likely to be committed in prosecution of common object of the unlawful assembly and not beyond.

80. As a result, the vicarious liability of the members of unlawful assembly which constituted of the accused-appellants, since offences of rioting and theft, as above and so also injuries were caused to Smt. Saudi and a few minor injuries with blunt object were found on the person of deceased Roopa Ram did not travel beyond the ambit of Sections 147, 379 and 323, I.P.C. However, so far as vicarious liability as envisaged by Section 149, I.P.C. for murder of Roopa Ram is concerned, there was no common object of the unlawful assembly to commit murder of Roopa Ram or any other person nor did the members of such assembly know that the offence of murder was likely to be committed. As a

result, none else, except Bhura Ram, caused any grievous or fatal injury to the deceased Roopa Ram. It was Bhura Ram who gave fatal blows with a deadly weapon like axe causing instantaneous death of Roopa Ram. He was also actuated and motivated to kill Roopa Ram instantaneously since he got surprisingly provoked as a result of sudden and unanticipated act of Roopa Ram who, while hiding himself inside "jhumpa", though apprehending imminent danger to his life, in exercise of private right of defence of persons and property, discharged a single fire from his gun which fatally hurt Ugrasen and, as a result, it was Bhura Ram who immediately inflicted blows on the body of Roopa Ram killing him instantaneously. It was not premeditated but, however, it was intentional act on his part and since he has not been given benefit of having acted in exercise of private right of defence and person nor for any grave and sudden provocation holding him an aggressor but the fact remains that it was the act of Bhura Ram alone, there being no evidence to show that the same was shared by his co-appellants or that he was acting in prosecution of common object of the co-appellants that resulted in killing of Roopa Ram.

81. As a result, so far as offence of murder is concerned, Bhura Ram alone is liable therefore and there is no evidence to prove beyond reasonable manner of doubt that Bhura Ram acted in prosecution of common object of the unlawful assembly to commit murder of Roopa Ram and, accordingly, other co-appellants are not liable vicariously for commission of murder of Roopa Ram and, therefore, the findings of the learned trial Judge in regard to vicarious liability of co-appellants of Bhura Ram u/s 149 read with Section 302, I.P.C. is not sustainable and the view so taken by the trial Court is not sustainable and calls for interference by this Court.

82. Accordingly, so far as Bhura Ram is concerned, he has been held rightly guilty for commission of offences under Sections 147, 302, 323/149 and 379/149, I.P.C. by the trial Court and the same warrants no interference.

83. As regards Kesara Ram, since he is dead and his appeal has abated, the same warrants no consideration.

84. However, as regards accused-appellants Mula Ram, Sohan Lal alias Hanumana Ram and Bhanwar Lal, their conviction under Sections 147, 323/149 and 379/149, I.P.C. is well merited as borne out of the impugned judgment and the same warrants no interference. However, on the basis of aforesaid discussion, their conviction u/s 302 read with Section 149, I.P.C., cannot be sustained and the same is liable to be set aside.

85. As regards the order of sentences under appeal, so far as Bhura Ram-appellant is concerned, his substantive sentences which have been made to run concurrently and the sentence of fines and, imprisonment in default of payment thereof, the same do not warrant any interference and the same are affirmed.

86. As regards the appellants Mula Ram, Sohan Lal alias Hanumana Ram and Bhanwar Lal, both Sohan Lal alias Hanumana Ram and Bhanwar Lal are sons of

Kesara Ram (deceased). They are brothers of Bhura Ram. They are all members of one family. Ugrasen, from the side of the appellant, was killed to death. Mula Ram is also their relation. This incident dates back to 9-8-88 and the accused-appellants withstood a prolonged trial resulting in decision of their case as late as on 21-12-95. Besides, from the Jail commitment warrants of the accused-appellants Mula Ram, Sohan Lal alias Hanumana Ram and Bhanwar Lal it is borne out, that simultaneously with the pronouncement of the impugned judgment on 12-9-95, they were taken into custody by the trial Court and were committed to jail to undergo sentences imposed on them and it was on 11-10-95 that, pursuant to suspension order of their sentences by this Court, they were released on bail. All the three appellants suffered a substantive sentence of imprisonment of exactly one month.

87. The learned Counsel for the appellants submitted that, besides, facing a prolonged trial, the members of family of Kesara Ram have suffered a lot and, besides, looking to the background of the incident, though conviction of Bhura Ram for even murder has been sustained, but so far as these three appellants are concerned, they were granted anticipatory bail and they have not committed any crime either during or after the period of their release on bail during the pendency of this appeal as well. None of the offences for which these three appellants have been convicted and the conviction is upheld, are punishable with life imprisonment or death sentence. The maximum punishment provided thereunder is of 3 years' imprisonment and a fine. They are agriculturists and there are peculiar circumstances of the case that erupted in the unfortunate serious incident and, accordingly, when no previous conviction of any of these accused-appellants is proved, regard being had to the age, character, antecedents of the offenders and to the circumstances in which the offences of which they were convicted, it is expedient that the appellants be released on probation of good conduct as also envisaged by the provisions of Section 4(1) of the Probation of Offenders Act, 1958 instead of being sentenced immediately specially when each of them has already undergone one month's rigorous imprisonment.

88. We have given our considerate thought to this submission of the learned Counsel for the appellants and we do not find cogent reasons to reject this submission of the learned Counsel for the appellants and, instead, we find that it is expedient in the interest of justice that these three accused-appellants, not found guilty of commission of murder simpliciter or being vicariously liable therefore, they be released on probation of good conduct instead of being immediately sentenced. However, we also feel it expedient to order for payment of compensation under the provisions of Section 5 of the Probation of Offenders Act and, accordingly, each of these three appellants be required to pay a sum of Rs. 4,000/- as compensation to the widow and children of the deceased Roopa Ram.

89. On the basis of aforesaid discussion, so far as appeal of Bhura Ram-appellant

is concerned, the same is liable to be dismissed warranting no interference with the findings of his eviction and order of sentences under appeal.

90. As regards appellant Mula Ram, Sohan Lal alias Hanumana Ram and Bhanwar Lal, their appeal, in the aforesaid terms, deserves to be accepted in part and we allow the same accordingly.

91. Consequently, the appeal of Bhura Ram is hereby dismissed and the impugned judgment of his conviction and order of sentences are hereby affirmed.

92. So far as appellant Mula Ram, Sohan Lal alias Hanumana Ram and Bhanwar Lal are concerned, their conviction u/s 302/149, I.P.C. is hereby set aside and, resultantly, their sentences are also set aside resulting in their acquittal thereunder.

93. As regards their conviction under Sections 147, 323/149 and 379, 149, I.P.C., their appeal against this order of their conviction is sustained and their appeal to this extent against their conviction under these offences is dismissed but, as regards the order of sentences under the aforesaid sections by the learned trial Judge, the same is set aside and, instead, it is ordered that in case Mula Ram, Sohan Lal alias Hanumana Ram and Bhanwar Lal, in the aforesaid circumstances, enter into a personal bond in the sum of Rs. 10,000/- with a surety in the like amount to appear and receive sentences so imposed on them when called upon by the trial Court during the period of three years from the date of their execution of these bonds and, in the meantime, to keep peace and be of good behaviour, they shall be released on probation of good conduct and shall not be required to undergo any sentence thereunder.

94. They are allowed one month's time to furnish bonds, as above, before the trial Court. It is further ordered that each of these three appellants being given benefit of release on probation of good conduct, shall pay a sum of Rs. 4,000/- by way of compensation payable to Smt. Saudi and her children within a period of one month from the date of this order by depositing with the trial Court. In case they fail to deposit this amount, as ordered, the trial Court shall initiate proceedings to realise the same as amount of fine. Besides, it is ordered that the amount of fines imposed on the appellant Bhura Ram by the trial Court and so also affirmed by this Court on being realised/ deposited by/in the trial Court, shall also be payable to Smt. Saudi and her children.

95. This appeal, with the aforesaid modification, having been accepted in part, stands disposed of in the aforesaid terms.