

(2003) 08 AHC CK 0151
In the Allahabad High Court
Case No : Criminal Appeal No. 1850 of 1981

Lokendra and Others (in Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2003) 3 ACR 2980

Hon'ble Judges : U.S. Tripathi, J; D.P. Gupta, J

Bench : Division Bench

Advocate : G.S. Chaturvedi, Sanjai Srivastava, S.K. Chaturvedi, S.S. Chauhan and Lalji Sahai Srivastava, for the Appellant; Mohan Chandra and Ghanshyam Joshi and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

D.P. Gupta, J.—By the judgment and order dated 19th August, 1981, I Xth Additional Sessions Judge, Agra, in Sessions Trial No. 232 of 1980 ; State v. Lokendra and 12 Ors. under Sections 302, 148, 149 and 147, I.P.C., Police Station, Donki district Agra, convicted and sentenced the accused Appellants Jagdish, Nathi, Govind and Radheyshyam, each to undergo one year's R.I. for offence punishable u/s 147, I.P.C. and accused Appellants Lokendra, Charan Singh, Ramesh, Shyam Singh, Ram Babu, Bachchu Singh, Salig Ram, Pyare Lal and Hakim Singh, each to undergo two years' R.I. for offence punishable u/s 148. All the 13 accused-Appellants were further convicted and sentenced to undergo imprisonment for life for offence punishable u/s 302 read with Section 149, I.P.C. All the sentences so awarded were to run concurrently.

2. The facts giving rise to this appeal can be narrated in brief as under:

P.W. 6, Mahabir Singh and his brother deceased Rajvir Singh and all the accused Appellants were residents of the village Gurha, Police Station, Donki, district Agra. In the year 1963 one Devi Singh of village Gurha was murdered. In that

murder case Bhanwar Singh, father of the deceased Rajvir Singh and P.W. 6, Mahabir Singh along with Sarman Singh Mohar Singh, Sobaran Singh and Diwan Singh were the accused. Bhanwar Singh had absconded and could not be tried. The remaining four persons, i.e., Sarnam Singh, Mohar Singh, Sobaran Singh and Diwan Singh were convicted and sentenced to different terms of imprisonment in the year 1966-67. The appeals of Sarnam Singh and Mohar Singh were allowed by the High Court. The conviction of Diwan Singh and Sobaran Singh were maintained and they came out of the jail in the year 1975 after undergoing their sentences. Sarnam Singh was the brother of Harnam Singh, and both were sons of Mohar Singh. Diwan Singh is P.W. 7 in the present case. Sobaran Singh was the real brother of Diwan Singh. Rajvir Singh, deceased, was the real nephew of Diwan Singh and Sobaran Singh. Accused-Appellants were also inter-related. The accused-Appellant Salig Ram and Lokendra were the brothers and sons of Roshan Singh. Bhanwar Singh, father of Appellant Ramesh, Joti Ram, father of Appellant Govind, Pyarelal Appellant, brother of Appellant Hakim were the witnesses in Devi Singh's murder case against Mohar Singh, Sobaran Singh, Sarnam Singh, Diwan Singh and Bhanwar Singh, the father of the deceased. All the accused belonged to one group.

3. In the murder case of Devi Singh, Bhanwar Singh, the father of the deceased Rajvir Singh was declared an absconder and his agricultural land was auctioned which was purchased by the accused-Appellant Salig Ram and his father Roshan Singh. There was some dispute about the crop of this land between Roshan Singh and his sons Salig Ram and Lokendra, on the one hand, and Rajvir Singh, deceased, and his family members, on the other. Prior to the occurrence of this case, this agricultural land was given on "batai" to deceased Rajvir Singh and his brother P.W. 6, Mahabir Singh. The crop sown by the deceased and his brother was forcibly harvested by Roshan Singh about a fortnight from before the date of occurrence. Further, on 30.10.1979 Rajvir Singh, deceased, his brother, Mahabir Singh (P.W. 6), Harnam Singh (P.W. 2) and one Suresh were beaten by the accused-Appellants Lokender, Bachchu Singh, Charan Singh, Shyam Singh, Nathi, Hakim, Ram Babu, Radhey Shyam and Roshan Singh, father of the accused Appellant Lokendra and Salig Ram. A report of this incident was lodged with the police of Police Station, Donki, district Agra.

4. On 11.2.1980 at about 2.30 p.m. Rajvir Singh, deceased, was going back to his house from his field after collecting some green fodder. When he reached in front of house of Roshan Singh, all the thirteen accused-Appellants, named above, surrounded him. The accused-Appellant Salig Ram was carrying a country made pistol. Pyare and Hakim were armed with "pharsa". Nathi, Jagdish, Govind and Radhey Shyam were armed with lathis". The rest of the Appellants, namely, Lokendra, Charan Singh, Ramesh, Shyam Singh, Ram Babu and Bachchu Singh were armed with spears. Salig Ram exhorted his companions to kill the deceased Rajvir Singh and fired. Thereupon, the remaining 12 Appellants started beating the deceased with their respective weapons. Hue and cry attracted the attention of P.W. 2, Harnam Singh, P.W. 6, Mahabir Singh, P.W. 7, Diwan Singh, Jaswant

Singh and Sarnam Singh who were sitting at the Chabutara of P.W. 2, Harnam Singh, at a distance of 40 to 50 steps from the place of occurrence. These witnesses rushed towards the place of occurrence and saw the entire incident. Accused-Appellants left the place of occurrence after inflicting injuries on the person of Rajvir.

5. The condition of Rajvir was serious. He was immediately taken on a charpai to the police station, Donki, which was at a distance of 2 kms. from the place of occurrence. A written report, Ext. Ka-3, was lodged by P.W. 6, Mahabir Singh. A case at Crime No. 23 of 1980 was registered under Sections 147, 148, 149 and 307, I.P.C. against the Appellants on 11.2.1980 at 4 p.m. by Head Constable Ram Dayal (P.W. 9). The injured was conscious and was capable of giving statement. The Investigating Officer, S.I., Sobaran Singh (P.W. 11), who was present at the police station, immediately took up the investigation and recorded the statement of the injured, copy of which is Ext. Ka-13. The condition of the injured further deteriorated. So he was sent to Fatehabad Hospital, which was about 8 miles from the police station. On 11.2.1980 at 4.50 p.m. P.W. 1, Dr. G. S. Katara examined the injuries of Rajvir and he found the following injuries on his person:

- (i) Incised wound about 1-3/4" x 1/2" x bone deep on left fore arm above the wrist joint.
- (ii) Incised wound about 3/4" x 1/2" x skin deep on right leg medially about 4" below the right knee joint.
- (iii) Incised wound about 3/4" x 1/2" x skin deep on right leg medially about 4" below the right knee joint. Both Injuries No. 2 and 3 were in front.
- (iv) Incised wound about 3/4" x 1/2" x skin deep on the front side of left leg.
- (v) Contusion 1 "x 2" with swelling on the front side of left knee joint.
- (vi) Lacerated wound about 1" x 1/2" x bone deep on left hand thumb.
- (vii) Contusion about 4" x 2" with swelling on left thigh laterally.
- (viii) Contusion about 2" x 1" with swelling on left wrist joint anteriorly (in front).
- (ix) Contusion about 2" x 1" with swelling on the back of left forearm.
- (x) Lacerated wound about 1" x 1/2" x skin deep on right hand thumb between thumb and index finger.
- (xi) Contusion 2" x 1" with swelling on right thigh front.
- (xii) Lacerated wound about 2" x 1/2" skin deep on right forearm medially.
- (xiii) Contusion 2" x 1" with swelling on the back of right hand.
- (xiv) Lacerated wound about 3/4" x 1/2" x skin deep on right leg front about 12" below the knee joint.

- (xv) Contusion about 3" x 2" with swelling on right ankle joint medially.
- (xvi) Contusion 3" x 2" with swelling on right ankle joint laterally.
- (xvii) Contusion 3/4" x 1/2" with swelling on left hand back.
- (xviii) Lacerated wound about 3/4" x 1/2" x bone deep on the back of left elbow joint.
- (xix) Contusion about 2" x 1" with swelling on right hand posteriorly.
- (xx) Lacerated wound about 3/4" x 1/2" x skin deep on left hand index finger anteriorly.
- (xxi) Lacerated wound about 3/4" x 1/2" x skin deep on left hand middle finger anteriorly.
- (xxii) Lacerated wound about 3/4" x 1/2" x skin deep on left hand ring finger anteriorly.
- (xxiii) Lacerated wound about 3/4" x 1/2" x skin deep on left hand little finger.
- (xxiv) Lacerated wound about 1" x 1/2" x skin deep on right hand ring finger.
- (xxv) Lacerated wound about 3/4" x 1/2" x skin deep on right hand little finger.
- (xxvi) Lacerated wound about 3/4" x 1/2" x skin deep on right hand index finger.
- (xxvii) Lacerated wound about 1" x 1/2" x skin deep on right hand palm.

6. The injuries were described as fresh. Injury Nos. 1, 2, 3 and 4 were of some sharp edged weapon and the remaining were of blunt weapon. Rajvir complained of pain in the abdominal region but no mark of injury was found there by the doctor. X-ray of abdomen and renal area was advised.

7. Rajvir succumbed to his injuries at about 11.50 p.m. in the same night in Fatehabad P.H.C. His body was sent to the District Hospital for post-mortem examination, which was conducted by Dr. L. N. Sharma, (P.W. 5) on 12.2.1980 at about 3.30 p.m. The age of the deceased was about 22 years. He found the following ante-mortem injuries on the body of the deceased:

- (1) Stitched wound on all the fingers of the left hand, except little finger in the area of 1/2" x 2".
- (2) Stitched wound one and a half inch in length on the backside of the left forearm.
- (3) Stitched wound 1/2" in length on back of left hand.
- (4) Abrasion 1" x 1/2" on back of left elbow.
- (5) Stitched wound on all the fingers of left hand measuring 1/4" to 3/4".
- (6) Stitched wound on the left thigh in the front side.

(7) Stitched wound 1" in left chest below Injury No. 6.

(8) Abrasion 1/2" x 1/2" just below Injury No. 7.

(9) Stitched wound 1/2" in length on the front side of the left leg.

(10) Abrasion 1" x 1/2" on the left patela front side.

8. On internal examination the doctor found fracture of left patela bone and left index finger. Both chambers of the heart were empty. Whole body was pale in colour. Stomach contained four ounce watery fluid. Large and small intestines were empty. In the opinion of the doctor, death was caused due to shock and haemorrhage, as a result of ante-mortem injuries. All the injuries taken together were sufficient to cause death.

9. P.W. 11, Sobaran Singh, Sub-Inspector, Investigating Officer, recorded the statement of eye-witnesses and the injured Rajvir. He visited the place of occurrence and prepared the site plan, which is exhibit Ka-4 and took simple and blood-stained earth from the place of occurrence. After the death of Rajvir injured, the case was converted u/s 302, I.P.C. Thereafter, investigation was taken up by P.W. 10, B. K. Tewari, Station Officer, Police Station, Donki. He sent blood-stained earth and the clothes for chemical examination. The report of the chemical examiner and serologist are Exts. Ka-16 and Ka-17, respectively.

10. Blood-stained earth and clothes were found having human blood. After completing the investigation, charge-sheet was submitted against the Appellants.

11. In the trial court, the prosecution examined Dr. G. S. Katara (P.W. 1), and the eye-witnesses Harnam Singh (P.W. 2), Mahabir Singh (P.W. 6) and Diwan Singh (P.W. 7), and Constable Virendra Sharma (P.W. 3), who took the dead body in sealed condition with necessary papers for post-mortem, P.W. 4 Constable Mahesh Chand, who took the injured Rajvir, to P.H.C., Fatehabad, for medical examination with necessary papers, P.W. 5, Dr. Laxmi Narain Sharma, who conducted the post-mortem examination and submitted his report. P.W. 8 Gurdip Singh Sarna, who prepared the inquest report, on getting information about the death of the injured, Rajvir, P.W. 9, Head Constable Ram Dayal, who prepared chick report, Ext. Ka-7. On the basis of the written report of Mahavir, Ext. Ka-3, he made an entry in the G.D., a true copy of which is Ext. Ka-8. P.W. 10, B. K. Tewari, who was the second Investigating Officer of this case and conducted the investigation from 12.2.1980 and submitted the charge-sheet. P.W. 11 Sobaran Singh, the first Investigating Officer of the case. Affidavit of Constable Behari Singh was filed, who took the sealed bundles containing sample of simple and blood-stained earth and clothes for chemical examination to Agra.

12. The accused Appellants denied their participation and involvement in the crime. They stated that Bhanwar Singh, father of the deceased Rajvir, had been absconding after committing the murder of Devi Singh. The friends of the said Devi Singh were inimical with Bhanwar Singh and finding an opportunity they might have killed Rajvir Singh. They further stated that they have been roped in

this case due to enmity.

13. No evidence in defence was adduced by the Appellants.

14. After analysing the evidence of the prosecution, trial court found all the Appellants guilty of the offences with which they were charged with and convicted and sentenced them as mentioned above.

15. We have heard Sri G. S. Chaturvedi, senior counsel, and Sri Sanjai Srivastava, learned Counsel for the Appellants, learned A.G.A. for the State and Sri Ghanshyam Joshi, learned Counsel for the complainant, and have perused the entire evidence on record.

16. It was contended on behalf of the Appellants that there was no injury caused by the spears and fire-arms. There is no evidence of the involvement of the Appellants, Lokendra, Charan Singh, Ramesh, Shyam Singh, Ram Babu, Bachchu Singh, who were assigned spears and Salig Ram, who was assigned country made pistol. Further, it was contended that the incised wound injuries recorded by the doctor as Injury Nos. 1 to 4 could not be caused by "pharsa" assigned to the Appellants, Harnam Singh and Hakim Singh. Thus, there was no evidence against the Appellants 1 to 6, 8, 9 and 13 regarding their involvement in the said crime. It was further argued that there was no injury on the vital part of the body of the deceased. No injury was sufficient in the ordinary course of nature to cause death and at the most the offence falls u/s 325, I.P.C. It was further contended that there was enmity between the parties. The witnesses were highly inimical, partisan and interested, and, therefore, their evidence could not be relied upon. Further, it was contended that the investigation was not fair and was tainted. Lastly, it was contended that due to enmity the Appellants were roped in the case.

17. Learned A.G.A. supported the findings and the judgment of the trial court and contended that as there was "partibandi" in the village, no independent witness could be available. Dr. Laxmi Narain Sharma, P.W. 5 had stated that the cumulative effect of the injuries was sufficient to cause death of the deceased.

18. The time, date and place of occurrence and cause of death were not seriously disputed by the Appellants. P.W. 2 Harnam Singh, P.W. 6 Mahabir Singh and P.W. 7 Diwan Singh were the eye-witnesses. They stated that near the house of Roshan Singh on the "kachcha" road Rajvir was beaten by the Appellants. It was about 2.30 p.m. on 11.2.1980 Rajvir was taken on a cot to police station which was at a distance of about 2 miles. There at 4 p.m. on the basis of the written report given by P.W. 6, Mahabir, who was the real brother of the deceased Rajvir, P.W. 9 Head Constable Ram Dayal recorded the chick report and made entry in the General Diary. P.W. 11 S.I. Sobaran Singh, the Investigating Officer of the case, reached on the spot and he took sample of simple and blood-stained earth from the kachcha" road near the house of Roshan Singh. P.W. 10 V. K. Tewari, the second Investigating Officer, sent the clothes of the deceased and sample of simple and blood-stained earth for chemical examination. As per the report of

the chemical examiner and serologist, sample of earth and clothes contained human blood.

19. As per the statement of P.W. 5 Dr. Laxmi Narain Sharma, the cause of death of Rajvir was due to shock and haemorrhage caused by the ante-mortem injuries received by the deceased. P.W. 1, Dr. Ghanshyam Katara, who examined the injured (deceased) on 11.2.1980 at 4.50 p.m. stated that the injuries on the person of deceased could be caused on 11.2.1980 at about 2.30 p.m. by lathi and "pharsa". He stated that Rajvir died in the hospital on 11.2.1980 at about 11.50 p.m.

20. In the cross-examination of these witnesses, nothing could be extracted by defence which could affect their veracity on the above aspects. Thus, from the evidence on record it stood proved beyond doubt that on 11.2.1980 at about 2.30 p.m. in village Gurha, Police Station, Donki, district Agra, near the house of Roshan Singh on "kachcha rasta" Rajvir Singh got injuries by lathies and weapons like pharsa and he died of the said injuries at about 11.50 p.m.

21. P.W. 6, Mahabir Singh stated that the occurrence took place at about 2.30 p.m. and he prepared the F.I.R. and took the injured Rajvir on a cot immediately to the police station at 4 p.m. where the F.I.R. was handed over. This was corroborated by P.W. 9 Ram Dayal, Head Constable, who recorded the chick report on the basis of written report given by P.W. 6, Mahabir Singh and made entry in the General Diary the same day at 4 p.m. The condition of the injured was deteriorating. He was sent for treatment and medical examination with P.W. 4 Constable Mahesh Chandra to the Fatehabad Primary Health Center where Dr. G. S. Katara, P.W. 1, examined him at 4.50 p.m. Nothing could be brought in cross-examination of the witness which could indicate that chick F.I.R. was not recorded at the police station on 11.2.1980 at 4 p.m. From the statements of the aforesaid witnesses, it stood proved that the chick F.I.R. was recorded at the police station at 4 p.m. on 11.2.1980. Thus, the F.I.R. was prompt.

22. In the F.I.R., there was mention that due to old enmity this crime was committed by the Appellants. In the F.I.R., the nature of enmity was not disclosed. P.W. 2 Harnam Singh, P.W. 7 Diwan Singh and to some extent P.W. 6, Mahabir Singh, had given the details of the enmity. In 1963, one Devi Singh was murdered. In that murder case, Sarnam Singh, brother of P.W. 2, Harnam Singh and their father Mohar Singh, P.W. 7, Diwan Singh, Sobaran Singh and Bhanwar Singh, the father of P.W. 6, Mahabir Singh and the deceased Rajvir Singh were the accused. Against them, Bhanwar Singh, Pyare and Jyoti gave evidence and Bhanwar Singh, father of P.W. 6, Mahabir Singh and the deceased Rajvir Singh absconded and could not be brought to trial till today. Sarnam Singh, Mohar Singh, Sobaran Singh and Diwan Singh were convicted but on appeal Sarnam Singh and Mohar Singh were acquitted while conviction of P.W. 7, Diwan Singh and Sobaran Singh were maintained and they came out of the jail in the year 1975 after serving out the sentences. P.W. 7, Diwan Singh was the real brother of Bhanwar Singh. The deceased Rajvir Singh and P.W. 6, Mahabir Singh were

the real nephews of P.W. 7, Diwan Singh.

23. The other enmity which was disclosed by the witness in their statement was that Bhanwar Singh, the father of P.W. 6, Mahabir Singh and the deceased Rajvir Singh was absconding in the Devi Singh's murder case. His land was auctioned and that land was purchased by Roshan Lal. The land was given on batai to P.W. 6, Mahabir Singh and the deceased Rajvir Singh. When crop was ready for harvesting, Roshan Lal, Lokendra and Salig Ram took forcible possession of the crop and did not pay a single paisa to the deceased Rajvir Singh and P.W. 6, Mahabir Singh. The another enmity, which was disclosed by these witnesses, was that on 30.10.1979 Lokendra, Bachchu Singh, Charan Singh, Shyam Singh, Natthi, Hakim, Ram Babu, Radhey, Shyam and Roshan committed "marpeet" with P.W. 6, Mahabir Singh, deceased Rajvir, Suresh and P.W. 2, Harnam Singh. The report of the incident was lodged at Police Station, Donki, district Agra, A cross-case regarding this incident was also filed by the Appellants. The Appellant Lokendra and Salig Ram are the sons of Roshan. Appellant Charan Singh and Jagdish are the sons of Hisabi, Kanchan Singh is the real brother of Roshan and Appellant Bachchu Singh is the son of Kanchan Singh. Appellant Shyam Singh, Charan Singh and Natthi belonged to the family of Roshan. The rest of the Appellants belongs to their party. Thus, all the Appellants were having enmity and "partibandi" against the witnesses and the deceased Rajvir of the present case. Thus, there was enmity between the parties and in these circumstances, the argument of the learned Counsel for the Appellant has some weight that witness P.W. 2, Harnam Singh, P.W. 6, Mahabir Singh and P.W. 7, Diwan Singh could not be said to be independent witnesses and they were highly interested and partisan ones. It is well-settled proposition that enmity cuts both ways. This may be a motive to commit the crime and also a motive for false implication. Therefore, in these circumstances, when witnesses are highly interested and partisan, a duty is cast upon the Court to scrutinise the evidence of such witnesses very cautiously and with greater care.

24. Now we have to see whether the Appellants were involved in the murder of Rajvir. For that, we have to analyse very carefully the statement of P.W. 2, Harnam Singh, P.W. 6, Mahabir Singh and P.W. 7, Diwan Singh, who were the eye-witnesses of the occurrence.

25. The house of Diwan Singh and Mahabir Singh were in the north-eastern corner of the village while the place of occurrence was in the south-western corner of the village. The distance between them was about 200 yards. As per the F.I.R., deceased Rajvir went from his house to the fields for taking green fodder (rijka) for the cattle. At the Chabutara of the house of Harnam Singh, P.W. 2, Harnam Singh himself, Sarnam Singh, his brother and P.W. 7, Diwan Singh and Jaswant Singh were sitting and were talking to each other. It was about 2.30 p.m. They heard the sound of a gunfire. They rushed towards the house of Roshan Singh and saw the Appellants causing injuries on the deceased by their respective weapons on the exhortation of Salig Ram, who also fired. The

Chabutara of P.W. 2, Harnam Singh was about 50 steps away from the kachcha rasta where this occurrence took place and there was no obstruction in between. It was admitted by P.W. 7, Diwan Singh, P.W. 2, Harnam Singh and P.W. 6, Mahabir Singh that the houses of Sarnam Singh, Kishan Lal, Radhey Shyam, Charan Singh were there. Besides, there were "nohra" of Kanchan Singh, Shiv Sinha, Eidan Singh, Roshan Singh and Shyam Singh. P.W. 2, Harnam Singh and P.W. 6, Mahabir Singh, P.W. 7, Diwan Singh had supported the prosecution case on all the material points. P.W. 6, Mahabir Singh had given evasive reply regarding the murder case of Devi Singh, which took place in the year 1963. Age of this witness in 1963 would have been 7 or 8 years. It appears that due to this fact P.W. 6, Mahabir Singh did not give straight replies to the questions of the defence. P.W. 7, Diwan Singh replied all questions put to him on behalf of the defence regarding the murder of Diwan Singh and other enmities. P.W. 2, Harnam Singh also replied all the questions regarding the murder case of Devi Singh. They did not hide anything. Harnam Singh admitted that against him the case u/s 324, I.P.C. was pending. Harnam Singh, was A.S.I. in Bharatpur and he retired from service in the year 1977. A suggestion was given to this witness that he fabricated a case u/s 363, I.P.C. against Salig Ram, Hakim Singh and one Raghuvir when he was A.S.I. and on complaint he was suspended and was compulsorily retired. In support of this suggestion, no evidence, oral or documentary, was given by the Appellants. Thus, the attempt made on behalf of the Appellants to show that even this witness was highly interested to get Salig Ram and Hakim Singh falsely implicated had failed. P.W. 7, Diwan Singh, was convicted in that murder case of Devi Singh. Diwan Singh is the uncle of the deceased Rajvir and P.W. 6, Mahabir. In the cross-examination, of the witness, nothing could be brought on record, which could show that he was not present on the spot or he did not see the occurrence. Certain statements given by this witness to the Investigating Officer u/s 161, Cr. P.C. were confronted. We have considered those contradictions and on marshalling it, we find that those were not improvements made by the witness. The variation regarding the place from where the witnesses saw the incident is not material as the spot position, which had been given by the witness had not been challenged. The distance of the house of P.W. 2, Harnam Singh from the spot and the existence of chabutara had not been challenged. The fact that from the chabutara, the place of occurrence was visible had also not been challenged. The presence of witnesses was also natural. P.W. 2, Harnam Singh, had stated that as usual, these witnesses were sitting on the chabutara. It was but natural as they belonged to one group. P.W. 7, Diwan Singh, had stated in the village generally most of the people used to take their meals in the day before going to their field. After taking meals, they were sitting at the chabutara of Harnam Singh and they were talking about the problems relating to diesel and other things. Thus, these witnesses had given the reason for their sitting at the chabutara. These witnesses stated that they heard the sound of fire and exhortation made by Salig Ram, and also the cry of Rajvir Singh while they were sitting on the chabutara. They rushed to the place of occurrence and by the time they reached to the spot, all the Appellants were

beating. It was argued that it was not clarified whether these witnesses saw exhortation and firing by Salig Ram and also the Appellants causing injuries by their respective weapons to Rajvir from the chabutara or on reaching the place of occurrence. At one time, these witnesses had said that they saw the incident from the chabutara. At other time, they said that they saw it when they reached the place of occurrence. We have carefully examined and analysed the statements of these witnesses. Absolutely, there is no variation or difference in their statements. As we had already discussed above, there was no obstruction between the place of occurrence and the chabutara and the distance was only about 50 steps. Therefore, both the statements taken together will show that on hearing the sound of fire and cry they started witnessing the occurrence from the chabutara itself and in the process of running towards the place of occurrence, they continued to see the occurrence.

26. The number of injuries on the persons of the deceased were very relevant. There were as many as 27 injuries on the person of the deceased. All the injuries were below the neck portion. This clearly indicates that when the deceased was attacked, he tried to save himself by taking blows on his hands, arms and he tried to save his head. P.W. 6, Mahabir Singh, had stated that they rushed from the chabutara shouting that they were coming. This is the reason why the Appellants had to run away in haste and could not cause the injuries on the vital parts. The duration of occurrence was very short.

27. The question is whether all the 13 Appellants were involved or not in the crime. P.W. 1, Dr. G. S. Katara, stated that there was no injury of spear on the person of deceased. If the spear was used as a lathi, then, blunt injuries could be caused, but if spear was used as a spear from the edged side, then the injuries, which were found on the person of the injured, could not be caused. As far as the Injury Nos. 1 to 4, were concerned, P.W. 1 had stated that out of these four injuries, injury Nos. 2 and 4 were superficial, but all the four injuries could be caused by pharsa.

28. As we have detailed above, there was enmity between the parties. The possibility of exaggeration cannot be ruled out in the light of the evidence on the record. There was no injury caused by the spears. All the witnesses had said that all the Appellants were causing injuries by their respective weapons, i.e., lathi pharsa and ballam. It was a day-light occurrence. If the ballam was used as a lathi, it could have been explained by witnesses. None of the witnesses had stated that ballam was used as a lathi. If we take the statement of P.W. 2, Harnam Singh, to be true that all the Appellants were attacking the deceased with full force, certainly some injuries from ballam must have been caused. Therefore, if we view the statements of these three witnesses, that will show that due to enmity this probability could not be ruled out that the names of some of the Appellants would have been wrongly added as assailants. Therefore, after careful scrutiny of the statements of these three witnesses, we find that the involvement of the Appellants Lokendra, Charan Singh, Ramesh, Shyam Singh,

Ram Babu and Bachchu Singh, who were shown to be armed with spears, is doubtful.

29. As far as the involvement of the Appellant Salig Ram is concerned, it was argued that no pellets or cartridge was found on the site. It was stated by the witnesses that Salig Ram fired from the country-made pistol from a distance of about 2 yards, and on the exhortation of Salig Ram, the other Appellants started beating Rajvir. We have given our careful consideration. In kachcha rasta, recovery of pellets was impossible. It was not the case of the prosecution or there is no evidence on record that the second cartridge was loaded or fired. Therefore, if no empty cartridge was found, it will not show that Salig Ram was not involved. It is true that there is no injury caused by fire-arm. The case of Salig Ram differs from other Appellants whose involvement is found doubtful by us and benefit of doubt has been extended to them. The attention of the witnesses was attracted on hearing the exhortation and fire made by Salig Ram and cries of the deceased Rajvir. No other Appellants shouted or exhorted. The presence and involvement of Salig Ram cannot be doubted.

30. In this case, it was argued that investigation was not fair and was tainted. It was argued that the statement of injured Rajvir was said to have been recorded by the Investigating Officer at the police station on 11.2.1980 when the F.I.R. was lodged at 4 p.m. The statement, which is very detailed one, containing minute details of the occurrence, could not be given by the deceased.

31. Therefore, such a detailed statement could not have been given by such seriously injured witnesses at the police station at about 4 p.m. and this goes to show that the statement might have been prepared by Investigating Officer in detail at some later stage and it cannot be relied on as a dying declaration.

32. The evidence of the doctor was that the cumulative effect of the injuries was sufficient to cause death in the ordinary course of nature. Therefore, the argument that this could be a case u/s 325, I.P.C. has no substance. If all the injuries are viewed collectively in the light of the statement of P.W. 5, it is clear that they were sufficient in the ordinary course of nature to cause death. The mere fact that the injuries were not caused on vital parts of the body and no injury was individually sufficient in the ordinary course of nature to cause death, would not exclude the application of Clause (3) of Section 300, I.P.C. Therefore, the argument that the offence falls u/s 325, I.P.C. and not u/s 302, I.P.C. has no substance.

33. After careful scrutiny of the evidence of the eye-witnesses, we find that the prosecution has proved involvement of the Appellants Jagdish, Pyare, Hakim, Nathi, Govind, Radhey Shyam and Salig Ram in the murder of the deceased in prosecution of common object of their unlawful assembly.

34. From above discussion, we find that the conviction recorded and sentences awarded by the trial court against the Appellants, Lokendra, Charan Singh, Ramesh, Shyam Singh, Ram Babu and Bachchu Singh cannot be upheld.

35. In the result, the appeal is partly allowed. The appeal of Jagdish, Pyare, Hakim, Nathi, Govind, Radhey Shyam and Salig Ram is dismissed and the conviction and sentences awarded by the trial court against them are confirmed. They are on bail. Their bail bonds are cancelled. They shall surrender before the C.J.M. concerned to serve out the sentence. Learned C.J.M. shall issue a warrant of arrest and will sent them to jail to serve out the sentences.

36. The appeal of Lokendra, Charan Singh, Ramesh, Shyam Singh, Ram Babu and Bachchu Singh is allowed. Their conviction and sentences are set aside. They are on bail. They need not surrender. Their bail bonds are cancelled and surety discharged.