

(1989) 08 MP CK 0020

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 260 of 1985

Motilal and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 09-08-1989

Acts Referred:

Evidence Act, 1872 — Section 3

Citation : (1990) ILR (MP) 436 : (1990) 35 MPLJ 228 : (1990) MPLJ 228

Hon'ble Judges : Y.B. Suryavanshi, J; Faizanuddin, J

Bench : Division Bench

Advocate : S.C. Datt, for the Appellant; B.P. Singh, Government Advocate, for the Respondent

Judgement

Y.B. Suryavanshi, J.

The five appellants, namely, Motilai, Shankar s/o Motilai, Shiv. Kumar s/o Lalji, Ram Kinker s/o Motilai and Lalman s/o Lalji, have preferred this appeal against the convictions and sentences passed in S.T. No. 7/7/84 by; A.S.J., Satna dated 6-3-1985. The convictions and sentences are as follows:

CONVICTION SENTENCE Appellant Ram Kinker under section 2 years R.I. and R.I. 148 and 302/149, Indian Penal Code for life. All others" u/s 147 2 years RT. and R.I. and 302/149, Indian Penal Code for life. All appellants u/s 323/149, 6 months R.I. Indian Penal Code for causing hurt to Jageshwar Appellant Shanker u/s 323/149, 6 months R.I. Indian Penal Code for causing hurt to Ishwardin Appellant Ram Kinker u/s 325, One years" R.I. Indian Penal Code for causing hurt to Kailash

with a direction that the sentences shall concurrent.

It is not in dispute that on 14-3-1984 at village Gunhar, P. S; Nagod, there was some incident with Raghuvar (deceased) and the two appellant Motilai and Ram Kinker, who are respectively father and son. However, the prosecution and the defence versions about the incident are divergent. It is also not disputed that in

spite of both these versions, the genesis is the same, namely on 14-3-1984 there was some wrangling between P. W. 3 Achchelal and Lalta son of appellant Motilai. P.W. 4 Bhajna, aged about 12 years, is son of P.W. 3 Achchelal and he is a grazier-boy. Bhajna had refused to graze the cattle of Lalta and had even complained to his father that the appellant Motilai's son Lalta insists upon grazing their cattle and Bhajna was even beaten when he refused to graze their cattle. In that context, P.W. 3 Achchelal had rebuked Lalta, s/o appellant Motilai.

In the above background, the case for the prosecution is that on Bhajna's refusal to graze cattle, Lalta had beaten Bhajna. On 14-3-1984 at or about 8 p.m., P.W. 3 Achchelal inquired from Lalta as to why he forces Bhajna to graze his cattle and why he beats him when he refuses. That Lalta should desist from forcing Bhajna to take cattle and should also desist from beating him. At that, it is said, Lalta repeatedly said that he would beat Bhajna if he refused to graze cattle. Raghuvar (deceased) also came at the place of incident and tried to pacify Lalta but Lalta was-persistent and gave the same reply. At that Raghuvar said that if he beats Bhajna, he too would be beaten. Lalta got angry, and went away. Soon thereafter all the five appellants arrived. Ram Kinker was armed with a Farsa and other with sticks. Ram Kinker is said to have assaulted Raghuvar with Farsa and the latter fell down. Jageshwar (P.W. 7), Ramjas (P.W. 9), Ishwardin. (P.W. 12) and Kailash (P.W. 13) who were present in the vicinity, intervened and in turn they too were assaulted, by the appellants causing them injuries. Raghuvar died on the spot. The deceased was taken to the police station, Nagod in a DOLI where F.I.R. (Ex.P-8) was lodged by P.W. 7 Jageshwar. The F.L.R. was recorded by P.W. 14 Mishra, S.I. and inquest memo was prepared and the injured were sent for medical examination and the body of Raghuvar was sent for post mortem.

During investigation, P.W. 14 Mishra, I.O., is said to have seized weapons from the appellant, but that aspect is not material in this appeal. Ultimately, the five appellants were charge sheeted under various sections, i.e. 147 148 302/149 323 and 325/149, Indian Penal Code.

The appellants abjured their guilt. The defence plea of appellants Shankar and Shiv Kumar is that they had gone to a different village to bring their sisters and were not present on the day of the alleged incident at the alleged time (alibi). The defence version . about the incident is that the appellant Motilal along with his son Rani Kinker had gone to the house of P.W. 3 Achchelal just for ULHANA, i.e. scolding, since Achchelal had rebuked Lalta. Prosecution witnesses Ramjas, Harishankar, Jageshwaf, Kailash, Ishwardin and Raghuvar were also sitting there, Raghuvar (deceased) abused Ram Kinker, while the latter was returning to his house and also dealt a blow on the head of Ram Kinker. On hearing the alarm raised by Ram Kinker, Motilal went there, but he too was assaulted by the deceased and the above said witnesses. To save themselves, both the appellants Motilal and Ram Kinker went inside the house of Ramkhilavan Brahmin, who lives near the place of incident. Thus, Motilal and Ram Kinker allegedly acted in self-defence. Furthermore, both of them were assaulted and sustained injuries. They

also went to the police station and were sent for medical examination. While denying the prosecution version, stated above, the defence has projected the above version and totally denied the prosecution case about forming any unlawful assembly with common object as alleged by the prosecution. Alternatively, it was also submitted that it is a case of free fight and the appellants Shanker, Shiv Kumar and Lalman have been falsely implicated.

Both counsel heard. Record perused. Since injuries sustained by both sides figured at length during arguments, it will be convenient at this stage to consider the extent and nature of injuries sustained on both sides. P.W. 8 Dr. Sharma performed the post mortem examination on the body of Raghuvar and had deposed as follows:

(A) Raghuvar

External Injury:

One incised wound on the posterior aspect of right arm with defused swelling just above the elbow joint, present on the posterior aspect of right arm with clear cut everted margins spindle in shape oblique in direction, size 2 cm. x 1 1/2 cm. x 1 cm. There was no evidence of fracture of bone.....

Two lacerated wounds:- One was placed on left parietal bone region obliquely placed above and downwards direction, size, 2 x 1 cms. There was fracture of left parietal bone fluidy blood was coming out from fractured area. Second was a lacerated wound present on left parietal bone region which was 4 x 3 x 1 1/2 cm. in size.

Internal examination:

On opening the first wound of the skull I found fracture of left parietal bone in the same area and blood was present below, the wound.....The cause of death was due to fracture of parietal bone and injuries to the vital organ, that is brain leading to shock and death..... The injuries were ante mortem. Injury No. 1, that is on arm was caused by sharp edged weapon and injuries of skull were caused by hard and blunt object. Injuries of skull were grievous and was sufficient to cause death in the ordinary course of nature (Post mortem Report Ex.P-9).

(B) Jageshwar

(1) Lacerated wound on the left parietal bone region just near, the mid line with defused swelling and fresh bleeding from the wound. The size 1 x 1/2 x 1 1/2 cm. in size. It was caused by hard and blunt object.

Lacerated wound on the right arm just above the elbow joint with defused swelling in 4 x 3 cm. area, size of lacerated wound was 1/2 x 1/2 x 1/3 cm. fresh bleeding from the wound was found and dried clotted blood was present on the wound as well as on the front arm produced by hard and blunt object. Simple in nature.

(3) Defused swelling bluish in colour in size 3 x 2 cm. marked tenderness on the area situated on the middle 1/3 of the right forearm posterior aspect. It was caused by blunt and hard object.

(4) Abrasion on the left knee joint 1/4 x 1/2 cm. in size caused by blunt and hard object, simple in nature. (Injury Report Ex.P-10)

(C) Kailash Prasad

Defused swelling on the left hand outer aspect in lateral half part, size 4 1/2 x 3 cm. marked tenderness was present and in the centre of the swelling there was dried clotted blood with small lacerated wound of 1/2 x 1/3 x 1/4 cm. According to Dr. M. P. Singh (P.W. 10) there was fracture of second metacarpal bone of left hand. (Injury Report Ex.P-11).

(D) Ishwardin

(1) Obliquely placed bruise on the left scapular region reddish-bluish in colour and 6 X 1 1/2 cm. in size caused by hard and blunt object, simple in nature, within 1 to 3 hours" duration.

Defused swelling on the anterior aspect of left arm redish bluish in colour and 3 x 3 cm. in size, caused by hard and blunt object, simple in nature. (Injury Report Ex.P-12)

(E) Girdhari, s/o Sukhdep and Kachi and Parvati, w/o Vishwanath were also examined. They complained of pain but no external injury was found on them. (Injury Reports Exs. P-13 and

P-14),

Injuries on appellants: P.W 8 Dr. Sharma on the same day examined appellant Ram Kinker and appellant Motilal and found the following injuries:

(A) Ram Kinker

(1) Lacerated wound on the frontal region on the left side of the head 2 1/2 x 1/2 x 1/3 cm. in size 2 cm. above the fore-head and oblique in direction, dried clotted blood was present in and around the wound caused by hard and blunt object, simple in nature caused within 6 to 8 hours duration.

(2) Reddish-bluish colour skin on the left scapular region on upper part with defused swelling, size 5 x 1 1/2 cm. in above and downward direction with two parallel lines caused by blunt and hard object, simple in nature and 6 to 8 hours duration.

(3) Reddish-bluish skin with swelling on the right shoulder outer aspect, the size 3 x 1 1/2 cm. obliquely above and downward direction, caused by hard and blunt object, simple in nature and within 6 to 8 hours duration. (Injury Report Ex.D-1).

(B) Motilal

(1) Lacerated wound on the parietal bone region right side 5 cm. above the right ear, obliquely placed size 3 x 1/2 x 1/2 cm. Dried clotted blood in and around the wound. X-ray of skull with suspicion of fracture of right and was caused by blunt and hard object.

(2) Lacerated wound on the left parietal region 3 cm. away from the mid line 2 1/2 x 1/4 x 1/4 cm. in size. Dried clotted blood around the wound was present. It was simple in nature caused within 6 to 8 hours duration, caused by hard and blunt object.

(3) Defused swelling on the right hand on dorsal aspect and wrist joint right side. Marked tenderness present with bluish colour of skin, advised X-ray of hand wrist with a suspicion of fracture of metacarpal bone. It was caused by hard and blunt object. Caused 6 to 8 hours of duration.

(4) Defused swelling on the left hand on the medical aspect 3 1/2 x 3 cm. in size bluish colour of the skin in the centre of swelling within 6 to 8 hours of duration and caused by hard and blunt object.

(5) Abrasion on the posterior aspect of forearm right side in the middle part 1 x 1/2 cm. in size, simple in nature within 0 to 8 hours duration caused by hard and blunt object.

(6) Abrasion on the right scapular region obliquely placed 4 x 1/2 cm. in size, simple in nature within 6 to 8 hours of duration and caused by hard and blunt object.

(7) Reddish-bluish coloured skin on the left shoulder posterior aspect with defused swelling 3 x 2 cm. in size caused by hard and blunt object within 6 to 8 hours duration and simple in nature..... Injury No. 1 of Motilal was not dangerous to life, because it did not cause any injury to the brain. (Injury Report Ex.D-2).

For the reason that both sides have sustained injuries, the learned trial Court first posed the question as to which side was the aggressor? The further findings and conclusions are: that the prosecution has proved the genesis of the incident; that for reasons stated in the judgment, the appellants were held aggressors as they had gone to the place of the incident to teach Raghuvar a lesson; that what he has uttered to Lalta, namely, that if you beat Bhajna, you too would meet the same fate; that the presence of eye-witnesses in this case, namely, P.W. 7 Jageshwar, P.W. 9 Ramjas, P.W. 12 Ishwardin and P.W. 13 Kailash could not be disputed because even in the defence version their presence is admitted and, moreover, they are the injured persons whose presence is guaranteed at the time of the incident; that the oral evidence about the assault by the appellants is well-established; that the oral evidence is further corroborated by the F.I.R., which was lodged promptly and there was no time for deliberations and concoction; that there is no inconsistency between the oral and medical evidence; that the defence, for which D.W. 2 Betalal has been examined is false; that the injuries on

the two accused are not grievous and merely for the absence of any explanation about these injuries, the prosecution evidence could not be discarded; that the appellants had constituted unlawful assembly and were armed with weapons alleged and in furtherance of the common object the incident occurred. Thus, the prosecution version was relied and the defence version was disbelieved. Accordingly the appellants have been convicted as stated earlier.

Genesis of the incident: This furnishes a satisfactory clue to the incident. On a perusal of the statements of P.W. 3 Achchelal and P.W. 4 Bhajna, we find that the appellant Motilal's son Lalta wanted Bhajna to graze his cattle. On his refusal, Lalta had dealt fist blows. Naturally the grazier-boy complained to his father P.W. 3 Achchelal. There is a water-tap at some short distance from the house of Achchelal and when at about 8 p.m. Lalta had gone there for a wash, Achchelal on that occasion inquired as to why-lie had beaten his son (Bhajna). Lalta said that he would be beaten like that and the cattle will be grazed by him. Raghuvar (deceased) was meanwhile returning from the field and was going towards his house. It has come in evidence that the deceased was not related to P.W. 3 Achchelal or P.W. 4 Bhajna, but he intervened saying that Lalta should not beat Bhajna. Lalta obstinately and adamantly retorted saying that he will beat him like that and get their cattle grazed by him. However, Raghuvar is alleged to have told him that if he beats Bhajna he would be paid in the same coin. Lalta angrily left the place. Thus, the directly affected parties were P.W. 3 Achchelal and P.W. 4 Bhajna on the one hand and Lalta on the other and Raghuvar was merely a mediator. Raghuvar's utterances seemed to have pinched Lalta because close on the heels of that incident, the appellants shortly appeared at the scene of occurrence.

We find no reason to disbelieve the evidence of P.W. 3 Achchelal and P.W. 4 Bhajna, who are not at all related to the deceased. In fact, after the alleged talks, P.W. 3 Achchelal and P.W. 4 Bhajna had gone away and had not seen the subsequent incident of assault. Cross-examination of Achchelal and Bhajna is noteworthy. The only suggestion in para 3 of the cross-examination of Achchelal is that it is Achchelal and Raghuvar who. had gone to the house of Lalta and hurled abuses.

Even P.W. 7 Jageshwar, P.W. 9 Ramjas and P.W. 12 Ishwardin have deposed what P.W. 3 Achchelal and P.W. 4 Bhajna have stated about the conversations between Lalta and Bhajna's father and also between Raghuvar and Lalta. They are not chance witnesses. P.W. 7 Jageshwar, as stated by him, and also others, had his SAAR, i.e. cattle-shed near the place of incident. He says that the above wrangling took place- near the house of P.W. 3 Achchelal. The other witnesses, i.e., P.W. 9 Ramjas and P.W. 12 Ishwardin had their houses at short distance, but at the relevant time both of them along with Harishankar were sitting on the chabutra of one Dadol and were busy making bidis. Their presence is not disputed even otherwise. Therefore, we are of the view that the findings of the trial Court that the genesis has been established by the prosecution is well

merited. Incidentally, as the trial Court had also observed that the crux of the defence version is (so far as Motilal and Ram Kinker are concerned) that they had gone to the house of Achhelal only for U'LHANA, which means to scold him for rebuking Lalta. But there are no such suggestions in the cross-examination of P. W. 3 Achhelal and P. W. 4 Bhajna who were the concerned witnesses. On the other hand, the only solitary question put to P. W. 4 Bhajna is that it is Raghuvar and Achhelal who had gone to Lalta's house. It is belied by the oral evidence discussed above.

in *Velu Pillai Padakalingam v. Paramandam* AIR 1954 SC 152, it was observed: every cross-examiner should and can if he is careful indicate in cross-examination, whichever part of the evidence given in examination-in-chief is challenged and an omission to do so would lead to the inference that the evidence is accepted subject of course to its being assailed as inherently improbable. Again in *Syed Aleem alias Syed Baba Vs. State of Karnataka*, it was observed that non-cross examination of prosecution witnesses of certain facts leads to admission of that fact that circumstances could be taken for consideration. Thus, non-cross examination, particularly P. W. 3 Achhelal and P. W. 4 Bhajna, on what is being projected in the defence, has been rightly held by the trial Court as sheer afterthought. It stands to reason that so far as Lalta is concerned, he was rebuked by father of Bhajna, i.e. Achhelal, and nothing more was necessary. It is the utterances of Raghuvar which raised the ire of the other side, since he must have gone and complained what Raghuvar had uttered.

Then turning to the evidence of eye-witnesses, we find that according to P.W. 7 Jageshwar, all the five appellants were seen assaulting Raghuvar. He specifically asserts that the appellant Ram Kinker dealt blows with the Farsa on the head of Raghuvar and others assaulted with sticks. Raghuvar had fallen down. Ishwardin, Kailash and Ramjas intervened in the assault and they too sustained injuries which have already been described. The statements of Ramjas, Kailash and Ishwardin are to the same effect. The learned counsel Shri Datt strenuously urged that all the four witnesses have spoken about two Farsa blows attributed to the appellant Ram Kinker, but the medical evidence shows that the deceased had only one incised wound which was on the right arm and the two lacerated wounds on the skull were obviously by hard and blunt object. *Awadhesh and Anr Vs. State of Madhya Pradesh*, was relied on to show that there is inconsistency between the ocular evidence vis-a-vis medical evidence. We find that it was a case in which the accused were initially acquitted, but convicted by the High Court. There is discussion about the scope and ambit of section 378, Criminal Procedure Code and many other infirmities were found in the oral and circumstantial evidence. The inconsistencies between the medical and ocular evidence related to the opinion of the doctor that the person who caused injuries to deceased was at a higher level than the deceased and in view of other circumstances, the eye-witnesses were held not reliable, i.e., they had not seen the incident. The inconsistency in the case before us does not belie the eye-witnesses because the incident occurred during the night, though there is

evidence that as electric bulb was on near the house of Achchelal. In the assault in which five appellants participated and many others intervened, there was bound to be some confusion about the movement and though the witnesses have spoken about assault i.e. two blows by Farsa they seem to have mistaken to notice whether the assault was by the sharp side or the blunt side of the Farsa. But then Farsa is only a stick having an iron blade on the top of it. If the blunt part of the Farsa is used such injuries on the head as have been found are possible. That is why the discrepancy between the ocular evidence does not lead to the inference that ocular evidence is false and the discrepancies are reconcilable,

The next submission is that looking to the injuries on both sides, it is a case of sudden free fight and therefore there is no question of vicarious liability u/s 149, Indian Penal Code. It is true, as has been laid down in *Puran Vs. State of Rajasthan*, that: "in case of a sudden mutual fight between the two parties, there can be no question of invoking the aid of section 149 for the purpose of imposing constructive criminal liability on an accused. The accused in such a case could be convicted only for the injuries caused by him for his individual acts." On facts of that case it seems that there was an internecine fight between two brothers and their respective families over their adjoining fields with a small mud-wall constructed on the boundary line dividing the fields. There was exchange of abuses between the two groups. The altercation soon developed into an usual fight. *Jumman and Others Vs. The State of Punjab*, was also referred. In that it was found that on the date of the incident both the warring factions were going to attend the proceedings u/s 107/151, Criminal Procedure Code. Both the parties had to go in the direction of the Court and each one of the parties anticipated meeting the rival faction on the road and on such an eventuality each one apprehended some trouble. Both the parties were armed to protect themselves. Each one of the parties was not animated by any pre-concerted intention to commit an offence or bring about a riot, and to constitute an unlawful assembly with the common object of committing the Crime. On the finding that there was no premeditated intention, it was further held that it is difficult to find that there was any unlawful assembly with common object. In *Indian Statistical Institute Vs. Associated Builders and Others*, the complainant as well as the appellant were having cycle stands near a ground and there was trade rivalry between them in the matter of charging cycle stand fees. The findings were that the Marpeet was not pre-planned; it developed suddenly as a result of some abuses and that the Marpeet took place near the second gate of the accused and not in front of the cycle stand of the complainant. It was further found that accepting the defence version that it was the complainant's party which started abusing the appellant's party as a result of which a sudden fight developed in front of the second gate of the appellant's cycle stand. On these facts it was further found that there was a mutual fight between the parties and the trial Court was not justified in convicting any of the accused by having recourse to section 149, Indian Penal Code. In a mutual fight there is no

common object. In *Gajanand and Others Vs. State of Uttar Pradesh*, there were two rival groups of pandas at the Ghat, one led by A and the other by G. A riot took place and therein G's group lost one of their members and the other party as a whole received as many as 31 injuries, including four injuries on the deceased. The injuries received by A group were less numerous and less dangerous and all together A's group received 10 injuries. Both sides were admittedly armed with sharp edged weapons. It was further observed that: "when both sides mean to fight from the start, go out to fight and there is a pitched battle, the question of who attacks and who defends in such a fight is wholly immaterial and depends on the tactics adopted by the rival commanders." On facts, it was found that there could be no question of a free fight when there be a clear finding of the High Court that A's party were the aggressors.

In the instant case we have already mentioned the genesis and after wrangling P.W. 4 Bhajna and P.VY. 3 Achchelal went away, whereas, Laita seems to have gone angrily nursing a grievance. It is in this context that the five appellants came together armed with Farsa (by appellant Ram Kinker) and four others with sticks and mounted a joint assault which was near the SAAR, i.e. cattleshed of Raghuvar, who is brother of Jageshwar (P.W. 7). The facts and circumstances clearly pointed out that they came with premeditation and preparation to settle scores with Raghuvar. Therefore, we agree with the findings of the trial Court, that the appellants were the "aggressors". To recapitulate, when Raghuvar was initially attacked, three others had intervened and they too sustained injuries. The presence of these three injured witnesses is not disputed. P.W. 7 Jageshwar had four injuries, Kailash had one fracture of second metacarpel, and Ishwardin had had two simple injuries, as referred in para 6 supra. It was, comparatively, stated (para 7 supra), that the two appellants had also a total number of 10 injuries which are indicative of the fact that they have been caused by the other side. All injuries on the other side were caused in self-defence. That the finding that the appellants were the aggressors leads us to the further inference, that the aggressors have no right of self-defence. In the totality of circumstances, the injuries on the two appellants could be by friendly hands, or may be caused by the other side in self-defence, since five of them were involved in the attack and four of them were armed with lathis. The number of injuries, in itself, is not always the sole criteria.

It was also urged that injury No. 1 on appellant Ram Kinker and injuries 1 and 2 on appellant Motilal were intended on vital parts. But then, all these injuries were simple. Thus, the finding that the appellants were the aggressors, who went together and mounted a joint attack on Raghuvar and also attacked those who came to intervene, and then went away together after the assault, leads to the inevitable conclusion that they had constituted an unlawful assembly whose common object was to assault Raghuvar. The learned Government Advocate urged that one of their associates, i.e., Ram Kinker, was armed with a deadly weapon and other members of the unlawful assembly knew it to be likely that a deadly weapon would be used and the offence of murder by Ram Kinker appears

to have been committed in prosecution of the common object and therefore, they are also vicariously liable u/s 302/149, Indian Penal Code. But the rival contention viz., that the other FOUR appellants only knew it to be likely that Ram Kinker's FARSA would cause grievous hurt cannot be said to be without force. Therefore, their convictions u/s 326/149, Indian Penal Code would be proper.

Injuries on accused: The next limb of argument is that the prosecution evidence should be discarded, since injuries on the two appellants have not been explained. Lakshmi Singh and Others Vs. State of Bihar, and Bhaba Nanda Sarma and Others Vs. State of Assam, , were referred. Both these decisions cited for the appellants and Ors., viz., Mohar Rai and Bharath Rai Vs. The State of Bihar, , Onkarnath Singh and Others Vs. The State of U.P., , Jagdish Vs. State of Rajasthan, , were considered in Hare Krishna Singh and Others Vs. State of Bihar, . Having discussed and distinguished the earlier decisions on the subject, their Lordships, in para 20, at page 869, observed.

"All the decisions of this Court which have been referred -to and discussed above, show that when the Court has believed the prosecution witnesses as convincing and trustworthy, the Court overruled the contention of the accused that as the prosecution had failed to explain the injuries sustained by the accused in the same occurrence, the prosecution case should be disbelieved and the accused should be acquitted. Thus, it is not the law or invariable rule that whenever the accused sustains an injury in the same occurrence, the prosecution has to explain the injuries failure of which will mean that the prosecution has suppressed the truth and also the origin and genesis of the occurrence.....We may assume that he (Hare Krishna Singh) sustained a bullet injury in the same occurrence. But, even then, in the facts and circumstances of the case, the prosecution, in our opinion, is not obliged to account for the injury and that the failure of the prosecution to give a reasonable explanation of the injury would not go against or throw any doubt on the prosecution case."

In the instant case, two appellants sustained injuries described earlier. But so far as the "origin and genesis" of the occurrence is concerned, it has already been mentioned earlier. We further find that in the context of that genesis and as a sequel to the challenging utterances by the deceased, these appellants formed an unlawful assembly and mounted an attack with the common object, and in prosecution of that common object one person died and three others were injured. To reiterate, the injuries on the two appellants could be even by friendly hands, and in probability, even by those who had intervened, in self-defence. It is not a case of "sudden free fight" nor a "mutual fight". The appellants Shankar and Ram Kinker, according to the evidence, have inflicted injuries on Ishwardin and Kailash, respectively. The two fatal blows on deceased are clearly attributable to Ram Kinker, though by the blunt side of the Farsa. Witnesses do not say that they have caused injuries on the appellants nor do they say that these were in self-defence, and yet, in the totality of circumstances this seems to be a reasonable inference. The prosecution has been fair enough and not one-

sided because the injured appellants, when they went to the police station, were sent for medical examination, and were examined by Dr. Sharma. Therefore, on the ground of non-explanation of the injuries, we are not inclined to reject the prosecution case as its substratum has been proved otherwise satisfactorily.

For the aforesaid reasons, this appeal is partly allowed. Adverting to the convictions and sentences already referred in para 1 of this judgment, the appellants are convicted and sentenced as under:

(a) The conviction of appellant Ram Kinker under sections 148 and 325, Indian Penal Code (for causing hurt to Kailash) and the sentences awarded, namely, two years" R.I. and one year"s R.I. respectively, are maintained. Conviction u/s 302/149, Indian Penal Code is ALTERED to the u/s 302, Indian Penal Code and the sentence of R.I. for life is maintained;

(b) The conviction of the remaining appellants, i.e. Shankar, Shiv Kumar, Motilal and Lalman u/s 147, Indian Penal Code and the sentences of two years" R.I. each are also maintained. But their convictions u/s 302/149, Indian Penal Code and the sentence of R.I. for life are set aside. Instead, they are convicted u/s 326 read with section 149, Indian Penal Code. Motilal was released on bail on ground of old age and he was in detention approximately for about a year or so. The ends of justice would meet by awarding R.I. for five years for an offence u/s 326/149, Indian Penal Code. But the appellants Shiv Kumar, Lalman and Shankar for convictions u/s 326/149, Indian Penal Code are sentenced to R.I. for seven years each;

(c) The conviction of all of five appellants u/s 323/149, Indian Penal Code for causing hurt to Jageshwar and six months" R.I. each are also maintained.

(d) The conviction of the appellant Shankar u/s 323/149, Indian Penal Code for causing hurt to Ishwardin and the sentence of six months" R.I. is also maintained.

The substantive sentences awarded to the appellants shall be concurrent. In view of section 428, Criminal Procedure Code the period of detention of the appellants in custody shall be set off against the sentences awarded. The bail bonds of appellant Motilal are cancelled.