
(2014) 07 SHI CK 0129
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 392 of 2009

Pardeep Kumar

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 313
Penal Code, 1860 (IPC) — Section 300, 302, 323, 324, 34

Citation : (2014) 07 SHI CK 0129

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : N.S. Chandel, Advocate for the Appellant; M.A. Khan, Additional Advocate General, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sureshwar Thakur, J.—The instant appeal is directed against the judgment, rendered on 11.9.2009, by the learned Additional Sessions Judge, Una, District Una, H.P., in Sessions Case No. 22 of 2008, whereby, the appellants/accused persons have been convicted and sentenced as under:-

All the substantive sentences were to run concurrently.

2. The brief facts of the case are that the deceased Ram Kumar, followed by his father Sarwan Kumar (PW-3), had been returning home at about 2:30 p.m., on 10.6.2008, from the house of Kishan Kalia, where a Kirtan was being held. When the deceased Ram Kumar had reached near the intersection of the two Gallies, the accused persons, namely, Pardeep Kumar, Sandeep Kumar, Ram Kishan, Neel Kanth, Bhagwanti Devi and Saroj Kumari pounced upon him. They started beating and dragging him towards their house. The prosecution version is that the accused Pardeep was holding Ram Kumar from the arm, accused Bhagwanti had caught hold of him from his waist, accused Ram Kishan was giving beatings to him with a stick (Dhangu) and accused Neel Kanth was exhorting the other accused, to take the deceased inside to teach him a lesson. Thereafter, accused

Sandeep Kumar is said to have come from inside armed with an axe and had given a blow on the right arm of the deceased. The deceased, as such, staggered and the very next moment accused Sandeep had given him another blow on his head with the backside of the axe. The other co-accused, namely, Pardeep Kumar was carrying a Drat and had been brandishing the same to ward off people coming from the opposite direction. He is also alleged to have given one Drat blow to Raman Kumar (PW-1) on his right leg and a blow to Sarwan Kumar (PW-3), on his thigh. The act attributed to other co-accused, namely, Ram Kishan is of his delivering a blow with a Dhangu, to, the grandmother of Ram Kumar (PW-1) near her ears and accused Neel Kanth was attributed with the act of delivering a blow with a stick to Daman Kumar, the brother of the deceased and Kanta Devi, the mother of the deceased. On alarm having been raised by PW-3, Sarwan Kumar, the father of the deceased and one Roshni Devi (PW-5), a neighbour of both the parties, people started flocking at the scene, hence, all the accused persons fled away from the place of occurrence. Ram Kumar (deceased) was immediately rushed to Zonal Hospital, Una, where he was declared brought dead. On the statement of Raman Kumar u/s 154 Cr.P.C., F.I.R. Ext. PW-13/A was registered at Police Station, Una.

3. On conclusion of the investigation into the offence, allegedly committed by the appellants/accused, challan was filed u/s 173 of the Code of Criminal Procedure.

4. The accused was charged for theirs having committed offences punishable under Sections 302, 324, 323 read with Section 34 of the IPC by the learned trial Court to which they pleaded not guilty and claimed trial.

5. In proof of the prosecution case, the prosecution examined as many as 21 witnesses. On closure of the prosecution evidence, statements of appellants/accused u/s 313 Cr.P.C. were recorded by the Court in which the accused claimed false implication and pleaded innocence. In defence, the appellants/accused chose not to enter into any defence.

6. On appraisal of evidence on record, the learned trial Court convicted and sentenced the accused for theirs having committed the offences, aforesaid.

7. The first witness, who stepped into the witness box, in support of the prosecution case, is, PW-1 (Raman Kumar), brother of the deceased. He deposes that, on, 9.6.2008, he and his brother had gone to village Chettran for preparing meals, in, a Bhandara. On the fateful day, he and Daman had returned at about 2.30 p.m. and were taking rest. After about half an hour, he was awoken by his sister-in-law and who told him that deceased Ram Kumar had been assaulted by accused Pardeep Kumar, Sandeep Kumar, Ram Kishan, Neel Kanth, Bhagwati and Saroj Kumari and was required to be rescued. This witness immediately proceeded to the spot, followed by other members of the family, including his brother Daman, grandmother Kaushalya and mother Kanta Devi. When they arrived near the gate, Roshni Devi (PW-5) raised a cry regarding the scuffle which had broken out. He continues to depose that accused Bhagwanti Devi was

holding the deceased from his waist. Accused Pardeep Kumar was holding him from the arm, accused Ram Kishan was giving blows with stick (Dhangu). The role attributed to accused Neel Kanth, is, of his exhorting the accused to take the deceased inside so as to teach him a lesson. One of the accused Saroj has been deposed to be pelting stones on the people who were approaching the site of occurrence. The accused, aforesaid, have been deposed to have been seen by him, to, drag the deceased, who though concerted to cling on to the iron rod fixed to the window in the house of Shiv Kumar. Thereafter, the accused Sandeep Kumar have been deposed to have also arrived at the site of occurrence, armed with an axe. A blow was delivered on the right arm of the deceased with the axe. The deceased was seen staggering because of the blow and the very next moment, accused Sandeep Kumar has been deposed to have delivered another blow on the head of the deceased with the backside of the axe. He testifies that the other co-accused Pardeep Kumar was carrying a Drat, and brandishing the same to ward off the people coming towards the site of occurrence. He threatened the witnesses and had even hit this witness on his right leg with Drat. PW-1 (Raman Kumar) raised alarm "Bachao-Bachao", though his grand mother attempted to intervene to save the deceased, yet, accused Ram Kishan delivered a blow with a Dhangu near her ears. He deposes that his mother had also tried to save the deceased, who was also given beatings with the help of Dandas. Moreover, this witness deposes that his father Sarwan Kumar was hit by accused Ram Kishan with a Dhangu near the eyes. Given the congregation of the people at the site, the accused had proceeded to flee there-from. The persons injured in the assault perpetrated upon them by the accused, picked up the deceased and immediately rushed him for treatment to Zonal Hospital, Una. At Zonal Hospital, Una, the deceased was declared brought dead. During his cross-examination, this witness has admitted that there was some dispute inter-se the scuffling parties regarding passage, through the Galli. He continues to depose that after the occurrence, the police had visited the spot and had lifted the blood stains, present, at, the site of occurrence. The clothes of the complainant party Ext. P-1 to Ext. P-11 have been deposed to have been taken into possession, by the police on 12.06.2008 and those of the accused, including accused Pardeep Kumar, Sandeep Kumar, Ram Kishan and Bhagwati Devi Ext. P-12 to Ext. P-20 had come to be taken into possession on 13.6.2008 in the presence of one Sanjeev and Raman Kumar (PW-1). The recoveries of Drat (Ext. P-21) at the instance of accused Pardeep Kumar was effected from the bushes near a Peepal tree at village Jakhera and that of Dhangu (Ext. P-22) at the instance of accused Ram Kishan from his house in the presence of Raman Kumar (PW-1) and had come to identified by this witness in Court. This witness also identified axe Ext. P-23 shown to him the Court to be the same which the accused assaulted the deceased. He deposes that while recording the F.I.R., he had inadvertently got recorded that accused Pardeep Kumar was carrying an axe and accused Sandeep was carrying a Drat as he was perplexed by the occurrence and had not slept for one day and the night prior to the occurrence. However, he identified both the accused in the Court. During the course of his cross-examination, it is evident

that the parties had a dispute regarding cementing of the Kachi Galli which passes through the land of the complainants. Even on 10.7.2007, some dispute inter-se them had resulted in the filing of an F.I.R., which is pending trial in the Court of learned Chief Judicial Magistrate, Una. This witness further deposes that all his family members had rushed along with the deceased to the hospital and got recorded his statement Ext. PW-1/A, in the presence of his family members. He also admits that the accused had also reached the hospital after 5-10 minutes of their arrival. He denies that he and his family members, including Raman Kumar, Ram Kumar (deceased) and Sarwan Kumar had assaulted accused Pardeep Kumar, Sandeep Kumar and Ram Kishan. He has also denied the suggestion that the deceased Ram Kumar was drunk and had instigated the fight with the accused and that the complainant party had delivered the beatings to accused Sandeep Kumar and Pardeep Kumar and in the scuffle, the deceased had fallen down and sustained injuries on his head.

8. Kanta Devi (PW-2), comprises the deposition of the mother of the deceased. She has corroborated the testimony of PW-1. Even she has not denied that there was prevailing animosity inter-se the accused and the complainant, which had erupted on account of a Galli or passage passing through the land of the complainant.

9. Sarwan Kumar (PW-3), is, the deposition of the father of the deceased. He, too, renders an eye witness account of the occurrence. He corroborates the testimonies of both PW-1 and PW-2.

10. Roshni Devi (PW-5), is, the deposition of an independent witness to the occurrence. She, too, has deposed an ocular version qua the occurrence in corroboration to the testimonies of the injured eye-witnesses, who, however, are relatives to the deceased. She has testified, that, on 10.6.2008 at about 3:15 p.m. while she was giving water to buffalos, she had noticed Ram Kumar coming towards his house, followed by his father Sarwan Kumar. She, proceeds to depose that, she saw accused Pardeep and Sandeep coming from their house on a scooter. She deposes that they parked the same near the intersection of the two Gallies and turned towards their house. She proceeds to depose that in the meantime, she had taken one of the buffaloes inside for tethering it and that when she was in the process of tethering the other buffalo, she saw accused Pardeep, Sandeep and Bhagwanti to be engaged, in, an intense scuffle, with deceased Ram Kumar and his father Sarwan Kumar (PW-3), who was trying to save him from their clutches. All the aforesaid three accused, have been deposed by her to have been seen by her, dragging the deceased towards their house and the younger son Sandeep Kumar was loudly beckoning for the summoning of an axe. She proceeds, to, depose that when she reached the Galli to see the occurrence, she witnessed that the deceased was holding an iron rod fixed to the window and accused Sandeep Kumar delivered a blow with an axe on the arm of Ram Kumar so as to make him loosen his grip on the iron rod/grill, which he was clenching. The delivery of an axe blow on the arm of the deceased has been

deposed to have sequelled the deceased to stagger, whereupon the accused Sandeep Kumar had hit him on the back of the head with the backside of the axe. The blow on the back of the head of the deceased with the backside of the axe by accused Sandeep Kumar sequelled oozing out blood from the head of the deceased, whereupon she raised an alarm. She deposes that thereafter she became unconscious. This witness has denied that Sarwan Kumar and family had given beatings to Sandeep Kumar and Pardeep Kumar. However, she has also deposed that accused and deceased were engaged in a scuffle, prior to her fainting on the spot.

11. PW-8, is, the testimony of Dr. P.S. Rana, who has conducted the autopsy on the body of deceased Ram Kumar. During his deposition, he, has proved post mortem report Ext. PW-8/E. On examination of the body of the deceased, this witness deposes that in Ext. PW-8/E, he recorded the following observations:-

Stout body of male 5 feet 9" moustache. Eye right closed and left open. Post mortem staining on dependent parts. Body in rigor mortis.

Cloths: Torn white coloured Banyan with clotted blood, Grey underwear with clotted blood. White Pyzama with clotted blood. Injuries:-

1. Clean lacerated wound scalp on hairline 2.5 cm in length x 1/2 cm deep with blood oozing out gaping in the middle.

2. Deep clean lacerated wound on right arm vertically placed, spindal shape 5" length x 2" width tapering towards ends exposing muscles, fibers, bones with blood present.

Cranium and Spinal Cord:

Injury on the scalp also has extra dural hematoma present on right frontal and right temporal regions.

Opinion:

In the opinion of the Board, the deceased died due to head injury subsequent to clean lacerated wound scalp leading to extra dural hametoma and cerebrovascular bleed and shock. After receiving the Chemical Examiner's report Ext. PW-8/B the same opinion was reiterated by the Board.

The probable time opined by the Board between injury and death was within 12 hours and between death and post mortem was within 24 hours.

He has proceeded to depose that he had handed over the copy of the PMR, viscera, blood sample and clothes worn by the deceased along with sample seal, to the police. On opening of the parcel, a Pyjama white in colour and blood stained torn vest, light blue, rather, grey was found. The parcel has been deposed to be bearing his signatures. The Pyjama Ext. P-30, vest Ext. P-31 and underwear Ext. P-32 have been deposed by this witness to be the same as were sealed by him. During his cross-examination, he has deposed that the injuries on

the head of the deceased could possibly be gained by fall, only, if the person strikes against some sharp object with great force. Even, during his cross-examination, he further deposes that report of the FSL, divulged that the deceased had consumed alcohol in as much as 103.43 MG% alcohol was found in his blood. He has also admitted the suggestion that if a person consumes alcohol 80 to 100 MG %, he, is under the influence of liquor.

12. Dr. A.K. Sharma (PW-9) in his deposition has proved MLCs Ext. PW-9/A, Ext. PW-9/B, Ext. PW-9/C, Ext. PW-9/D, Ext. PW-9/E, Ext. PW-9/G and Ext. PW-9/H which portray the injuries, noticed by the medical practitioner, sustained by the persons examined, who are both accused and the complainant, in sequel to theirs having come to be delivered with Danda blows by accused Pardeep Kumar and by the accused respectively.

13. The deposition of PW-10 to PW-20 need not be discussed in detail, they being formal witnesses.

14. Sub Inspector Kushal Chand, SHO, Police Station, Bangana, District Una (PW-21) in his testimony has deposed that he received a telephonic message that certain people had been brought to Zonal Hospital, Una in an injured state from village Jakhera and on reaching there, recorded the statement of Raman Kumar u/s 154 Cr.P.C. comprised in Ext. PW-1/A. He further deposes that the deceased Ram Kumar was declared dead by the doctor. Pardeep Kumar, one of the accused had also got his statement recorded which was sent to Police Station through C. Chanan Singh. He continued to depose that he visited the spot along with other police officials and took the photographs of the spot. He had also collected the blood stained soil from the spot as also collected the blood stains existing on the wall of the house of Shiv Kumar. The samples were put in three different containers and sealed with cloth parcel bearing seal impression K. Spot map Ex. PW21/B has been deposed to be prepared by him. The chappals and slippers recovered from the spot were stated to be identified by accused Pardeep Kumar and Bhagwanti Devi to be theirs. He deposed that he collected the postmortem report of the deceased and the final opinion was given by the doctor on 27.1.2009 All the accused were arrested on 10.6.2008. On 12.6.2008, during the course of investigation accused Sandeep Kumar made disclosure statement, Ex. PW6/A, pursuant to which he got recovered the axe from the bushes near the site of occurrence, which was taken into possession vide recovery memo Ex. PW6/C, in presence of the witnesses. Spot map, Ex. PW21/G, showing the place of recovery of the axe was prepared. He deposes that on 12.6.2008 the complainant party handed over the clothes to the police, which were taken into possession vide Ex. PW1/B and they were sealed in a cloth parcel. On 14.6.2008, he deposed, that the scooter No. HP-21A-1416 was taken into possession vide recovery memo Ex. PW10/A. On 15.6.2008, accused Pardeep Kumar had produced a Darat Ex. P-21 which was taken into possession vide memo Ex. PW1/G which was sealed in a cloth parcel. Site of occurrence Ex. PW21/J has been deposed to be prepared by this witness. He deposed that on the receipt of the

report of the FSL, Ex. PW21/L, it had been placed on record by way of supplementary challan. After completion of the investigation, he deposed that the SHO prepared the challan and submitted the same in the Court. In cross-examination, he has denied the suggestion that the axe had been falsely planted on the accused and tampering had been done by him in this behalf. He has also denied the suggestion that he had soiled the clothes of the accused with the blood of the deceased on 13.6.2008. He has denied the suggestion that the recovery of Darat and Dhangu have not been made on the basis of the disclosure made by the accused. He has admitted that axe, Darat and Dhangu are generally available in the village. He has denied the suggestion that there was no injury on the back of the head of the deceased. However, he has admitted the suggestion that the supplementary statements of the witnesses were to the extent that the accused had given a blow with the backside of the axe on the back of the head of the deceased. He deposed that He had not taken any opinion from the doctor with regard to the weapon of the offence.

15. Axe Ext. P-23, is, the weapon of offence, with which the alleged offence has been committed. Ocular witnesses, inclusive of an independent and disinterested witnesses, to, the occurrence PW-5 (Roshni Devi), have deposed in unanimity that the accused Sandeep Kumar, with the backside of the axe, had delivered a fatal blow on the back of the head of the deceased. Axe Ext. P-23, recovered under recovery memo Ext. PW-6/C, is, in pursuance to the disclosure statement, made by accused Sandeep Kumar. The recovery of axe Ext. P-23 has not been proved to be recovered in a legally inefficacious manner, so as, to render its recovery to be tainted. Hence, it comprises a probative piece of evidence. Moreover, "Darat" Ext. P-21, too, recovered under recovery memo Ext. PW-1/G, has not been proved by the defence to be recovered in a legally and inefficacious manner, nor has it been proved to be not acquiring any probative worth. It too comprises, hence, potent evidence connecting the accused with the commission of offence, alleged against the accused. Furthermore, even "Dhangu" Ext. P-22, recovered at the instance of accused Ram Kishan, in pursuance to the disclosure statement, made by him, to the police, stands proved in a legally efficacious manner, hence, it, too, acquires probative worth and value in connecting each of the accused aforesaid with the commission of offence, alleged to have been committed by them. The oral ocular evidence especially in the testimony of an disinterested independent witness PW-5 (Roshni Devi) acquires, hence, an overwhelming probative worth vis-?-vis the testimony of injured relatives of the deceased, it, construed, in, conjunction with the effectuation of recovery of weapons of offence, used by the accused, in inflicting injuries, on each of the complainant party, firmly as well as formidably connect the accused with the murder of the deceased Ram Kumar and, also, connect them with infliction of injuries on the person of the injured witnesses, whose depositions have been elucidated herein-above. However, the learned counsel for the accused/appellants, has, made the following submissions before this Court in his concerted endeavour to tear apart and to persuade this Court, that the findings

of conviction, recorded against the accused, by the learned trial Court are infirm:-

(a) There being discrepancy in the testimonies of ocular witnesses and medical evidence, in, as much, as, the ocular witnesses depose that accused Sandeep Kumar had struck a fatal blow from the backside of the axe Ext. P-23, on the back of the head of the deceased, whereas, the doctor, who conducted the postmortem on the body of the deceased and issued PMR, has deposed that the injury, as observed by him, on examination of the person of the deceased and which, in his opinion, led to the demise or sequelled the demise of the deceased, was discerned by him to be existing on the right frontal region near the hairline, hence, in a region of the head different from the region of the head deposed by ocular witnesses. The above submission, addressed before this Court, by the learned counsel for the appellants, is, rendered rudderless in the face of their being an unequivocal communication, in the testimonies of the ocular witnesses, qua the accused Sandeep Kumar, having struck, a, blow from the backside of the axe on the back of the head of the deceased, as such, when each of the witnesses were rustic, obviously, then, it would be an unnatural expectation from them, to render a version with exactitude and piercing precision, qua the exact location of the blow on the head of the deceased, as such, minimal deviation in their testimonies qua the exact location of the head where the fatal blow was struck with back side of the axe, vis-?-vis the testimony of medical expert is in consequential. Even if assuming, for reiteration that they may have rendered, a, deposition which may be in minimal variation with the deposition of the medical practitioner, who issued PMR Ext. PW-8/E, who, in it, recorded the fact, that, the deceased, rather, received the injury on the right frontal region near the hairline. However, such a minimal variation, obviously, would not, hence, detract from the probative worth of the ocular version qua the incident, which forthrightly displays the fact of a fatal blow having been delivered from the backside of axe Ext. P-23 on the back of the head of the deceased by accused Sandeep Kumar, especially when there is, hence, unanimity inter-se the medical and ocular version qua the injury on the head having begotten the demise of the deceased, as also, when the doctor does not over-rule the factum of axe blow being the cause of the fatal injury. Besides, hence, when there does not exist any stark or blatant contradictions inter-se the testimonies of ocular witness and medical version qua the region of the head where the fatal blow was struck by accused Sandeep Kumar, by his using backside of the axe Ext. P-23, therefore, for non-existence of such blatant and stark contradictions inter se the ocular version and medical version qua the precise location, of, the injuries on the head of the deceased, which sequelled, his, demise, besides, when given the reason attributed by this Court to such inaccuracy emanating from their rusticity, which, hence, precluded them to depose with immaculate accuracy, qua, the region of the head of the deceased, which sustained the fatal blow theirs, hence, minimally digressed from medical evidence, qua, the exact location of the injury, would not for reiteration obviously render them, to be untruthful witnesses. Moreso, when they have been subjected to an incisive and rigorous cross-examination during whose ordeal they have come out unscathed; (b) The prosecution case, is, torpedoed by the fact of

the prosecution, prevaricating qua the genesis of the prosecution case, recorded in the F.I.R., in, as much, as, in it, it was recorded that the accused Pardeep Kumar and not Sandeep Kumar was holding the axe, as also, its conveying that the blow with the axe was delivered, not by Sandeep Kumar but by accused Pardeep Kumar. Consequently, the depositions of the ocular witnesses, attributing the fatal axe blow to accused Sandeep Kumar, are smeared with the taint of prevarication as well, as are untruthful. However, even the above submission, addressed before this Court by the learned counsel for the appellants/accused, staggers given the fact existing in the statement recorded by PW-1, wherein he, while coming to rectify the mistake, as recited in the F.I.R., had attributed his inadvertence to attribute initially the fatal axe blow to Sandeep Kumar to be arising from the fact of his being perplexed, his not having slept for one day and night, prior to the occurrence. The supplementary statement by PW-1, comprising the truth qua the version was got recorded in Ext. PW-1/A. However, it, does not gather any cloud or an aura of untruth, as it, has not been concerted, by, the learned defence counsel, during the course of cross-examination of each of the ocular witnesses, to, the occurrence, that the rectified attribution, qua the genesis of the incident comprised, in, the supplementary statement of PW-1, wherein, he tenably rectified his initial ocular version attributing the fatal axe blow to accused Pardeep Kumar, to, rather, the fatal axe blow having been delivered by accused Sandeep Kumar on the head of the deceased, is, seeped in falsity. Therefore, the sequelling conclusion, is, that, hence, the plausible explanation of PW-1, emanating, in, the supplementary statement, whose contents for reasons aforesaid, unconcerted to be have remained unshared of any purported prevarication tingeing it during the course of his inexorable cross-examination by the learned defence counsel, it, hence, acquires truthfulness. Consequently, the contention of the learned counsel for the appellants/accused, that, the deposition of the ocular witnesses to the occurrence, does not hold sway or persuasive value, in as much, as theirs having deposed, in, contradiction to the genesis of the incident comprised in F.I.R. which submission stands, too, ousted for the succinct reason, that dehors the tenable and plausible explanation given by PW-1, for, his inadvertence in attributing the fatal blow on the head of the deceased initially, to, accused Pardeep Kumar, the testimonies of each of the ocular witnesses especially of PW-5 and independent witnesses to the occurrence, does display, in, the face of theirs having come out unscathed, during the ordeal of theirs rigorous cross-examination, to which each were subjected, of, accused Sandeep Kumar having delivered the fatal blow with axe Ext. P-23 on the back of the head of the deceased. The said fact has come to be corroborated by medical evidence. Besides, has come to be proved by effectuation of efficacious recovery of each of the weapons of offence, used by each of the accused to deliver respective blows with them on each of the complainants/witnesses at their respective instances; (c) The fact of the blood stained clothes of the accused, having been taken into possession on 13.6.2008, renders the prosecution version to be shrouded with doubt. The said argument, too, is to be construed to be lacking in legal vigour and potency, in as much, as,

it is evident on a reading of the evidence, that, one of the accused remained admitted in hospital, till, 15.6.2008. Besides, the fact that the Investigating Officer has also proceeded to communicate in his deposition that on 10.6.2008, the accused had, no, clothes to change and there was none in his house, which fact, as deposed by the Investigating Officer, has not been shattered by any cogent material existing in the cross-examination of the Investigating Officer, rather, when the said fact has been corroborated by PW-6 (Vijay Nahar), the deposition of the Investigating Officer, while comprising a truthful explanation for the delay in collection of the clothes of the accused, hence, makes it acquire credibility. Furthermore, it is also unlikely and unnatural that given the fact that the demise of the deceased took place on 10.6.2008, the Investigating Officer had preserved his blood and with it and had smeared or soiled the clothes of the accused, collected by him on 13.6.2008. Moreso, when there is no existence of any evidence comprised in the deposition of PW-8 (Dr. P.S. Rana), who conducted the autopsy on the dead body of the deceased and issued post mortem report Ext. PW-8/E that he had, at the instance of the Investigating Officer, preserved the blood of the deceased. Consequently, when the blood present on the clothes of the accused tallies with the blood group of the deceased, as pronounced by the report of the FSL, it does constitute an evidence of probative worth in connecting the accused with the commission of the offence alleged against them; and (d) The appraisal of the entire evidence, on record by the learned trial Court, in connecting the accused with the commission of offence, alleged against them, does not suffer from any infirmity of non-appreciation or mis-appreciation of the material evidence on record. The learned trial Court had connected the accused in the commission of the offence, alleged against them, and has come to an appropriate conclusion. Moreover, a firm substantiated connectivity is lent to the factum of the commission of offence alleged against the accused by the factum of axe Ext. P-23 having been concluded by the report of the Chemical Examiner to be bearing the human blood group of "A" which was compatible with the blood group of the deceased. Even though, the learned counsel for the accused/appellants has contended that given the fact that the recovery of axe Ext. P-23 was effected on 12.6.2008, hence, subsequent to the occurrence, which had taken place on 10.6.2008, as such, there is possibility of the Investigating Officer having smeared on axe Ext. P-23 the blood of the deceased so as to falsely implicate the accused. However, the said argument is to be dispelled given the fact that there is no material and cogent evidence on record to sustain it. Rather, the testimony of Dr. P.S. Rana (PW-8), who issued post mortem report, does omit to portray the factum of his having preserved the blood of the deceased so as to make it handy for the Investigating Officer after his having handed it over to him, to smear axe Ext. P-23 with such preserved blood of the deceased, axe Ext. P-23.

16. A circumspect analysis of and scrutiny of the entire evidence on record, reveals the fact of PW-9 (Dr. A.K. Sharma) having deposed that on the fateful day, he had issued MLCs Ext. PW-9/F, Ext. PW-9/G and Ext. PW-9/H in respect of

the examination on the persons of the accused, who had come to hospital for examination of their injuries, sustained by them. A perusal of Ext. PW-9/F discloses that the accused Bhagwanti Devi sustained no injury on her person and Ext. PW-9/G discloses that the accused Sandeep Kumar sustained one clean lacerated wound on forehead. Bleeding was present. The injuries were found to be simple caused by blunt weapon with a probable duration of less than six hours. Ext. PW-9/H discloses that accused Pardeep Kumar sustained two injuries, one being lacerated wound on the frontal region and a lacerated wound on the occipital region. Both the injuries were simple in nature caused by a blunt weapon within a probable duration of less than six hours. The above evidence does demonstrably portray that, hence, the injuries noticed on the head of the deceased by PW-9 were gained in the occurrence. Consequently, they are attributable to penal acts of the complainant in the scuffle which had ensued inter-se them. Now, given the fact that the testimony of the independent witness to the occurrence PW-5 (Roshni Devi) discloses the fact of an intense scuffle having ensued inter-se the accused and the complainant party, obviously, then the injuries, as existing on the person of the accused, comprised in Ext. PW-9/G and Ext. PW-9/H, are to be attributed to certain penal acts, committed by the complainant as well. Moreover, when the injuries, as observed by Dr. A.K. Sharma (PW-9) to be existing on the body of the accused persons, are attributable to no other fact than to the scuffle which ensued inter-se the accused and the deceased. In face whereof and given the fact that an F.I.R. was also lodged qua the occurrence, by the accused attributing commission of certain offences, at the instance of the complainant. In addition, when evidence, comprised in the testimonies of ocular witnesses, unveils an admission by the ocular witnesses of theirs being animosity inter-se the accused and the complainant, arising from a dispute inter-se them over a Galli passing through the land of the complainant, it appears that, hence, given the existing inimicality inter-se them, when on the fateful day, the site of occurrence, being also the contentious Galli/path, that, hence, the scuffle qua, its, user arose inter-se the scuffling parties. Resultantly, when there was a sudden fight and scuffle between the complainant and the accused, the commission of the offence at the instance of the accused cannot be said to be carrying any trait of pre-meditation or theirs having intentionally committed the offence, alleged against them. Rather, the fact of theirs having sustained injuries, theirs having lodged F.I.R. qua the occurrence, hence, when the injuries on the persons, too, are attributable to certain acts, committed by the complainant, sequelled by a scuffle. In acts committed by the accused, during the heat of the moment, arising from, hence, sudden and grave provocation, actuated them to concomitantly perpetrate or inflict injuries on the person of the complainants. Furthermore, in aftermath, if, the acts or commission of offences attributable to the accused, are to be construed to be, unintentional, in the face of theirs being no communication in the testimony of ocular witnesses qua the genesis of occurrence or qua the fact as to who initiated the occurrence that, hence, no conclusion other than of theirs having erupted a sudden fight inter-se the scuffling parties, in course whereof

prompted by provocation, which arose during its course, fomented the accused to commit the offences alleged. Resultantly, in the commission of offence, there was no deliberateness. As a sequel, the offences committed by the accused persons falls within the ambit and scope of exception to Section 300 IPC. The appeal is partly allowed. The judgment of the learned trial Court in sentencing the accused u/s 302 IPC is modified to the one punishable u/s 304(I) IPC. This Court convicts the appellants/accused for theirs having committed the offence punishable u/s 304(I) IPC. To be heard on the quantum of sentence on 4th August, 2014.