
(1970) 11 DEL CK 0019
In the Delhi High Court
Case No : Criminal Appeal No. 32 of 1969

Pratap Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-11-1970

Acts Referred:

Citation : (1970) ILR Delhi 477

Hon'ble Judges : S.I. Rangarajan, J;H.R. Khanna, J

Bench : Division Bench

Advocate : M.G. Chitkara, S.S. Dehsta and Inder Singh, for the Appellant;

Judgement

S. Rangarajan, J.

(1) This judgment will also dispose of Criminal Appeal No. 36 of 1969, which has been preferred by the State against the acquittal of Kalmi Nand (38) and Karam Chand (40).

(2) The appellants (the reference is to the appellants in Criminal Appeal No. 32 of 1969) Pratap Singh (21) and his younger brother. Bihari Lal (17) have been convicted under sections 302 and 307, Indian Penal Code, respectively, by the learned Sessions Judge, Mahasu and Kinnaur Districts and sentenced as follows :-

PRATAPSingh has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 500.00, in fault to undergo further rigorous imprisonment for six months.

(3) Bihari Lal has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500.00 in default to undergo further rigorous imprisonment for two months.

(4) The prosecution case is that Smt. Gulab Devi (Public Witness . 2) had settled down with Gulab Singh (the deceased in this case) about four years prior to the occurrence, which took place at 2.30 or 3 P.M. on 5-9-1968 in the courtyard of Devta Shalu in village Kulgaon. Previously she had married appellant Pratap

Singh. On 25-5-1966 a Panchayat granted divorce to her, Pratap Singh agreeing to the same and giving her freedom to marry .again. Ex. P. P. is the record of the said decision.

(5) Pratap Singh has been a member of the Air Force. According to P.W. 2, Pratap Singh had held out threats of killing both herself and Gulab Singh deceased saying that since he was an army man, he was immune from punishment for murder.

(6) On 5-9-1968 the annual local fair was celebrated in the compound of Devta Shalu in village Kulgaon. The villagers were dancing in a circle (mala). Gulab Singh deceased was the first dancer in that Mela and he had a Chanwar in his hand. At about 2.30 or 3 P.M. appellants, Pratap Singh and Bihari Lal, came along with the two acquitted accused Kalmi Nand and Karam Chand. Pratap Singh had a Khukri and Bihari Lal had a Chhura. It is stated for the prosecution that when both Pratap Singh and Bihari Lal tried to snatch the Chanwar from Gulab Singh deceased, Kalmi Nand and Karam Chand caught hold of Gulab Singh's arms and Pratap Singh dealt a Khukri blow on the chest of Gulab Singh. Bihari Lal is also stated to have inflicted a Chhura blow on the chest of Gulab Singh. Having regard to the fact, however, that there was only a single injury on the chest of Gulab Singh deceased, which ended fatally, it was stated by the concerned witnesses that the Chhura blow given by Bihari Lal only cut the buttonhole of the waist-coat of Gulab Singh deceased. Gulab Singh, who had hardly taken two or three steps forward after this attack, fell down on the ground. Chet Ram, Smt. Gulab Devi, Moti Lal, Banshi Lal and Inder Mani (P.Ws. 1 to 4 and 7 respectively) carried Gulab Singh deceased to the verandah of the house of Inder Mani which was adjacent to her Khud.

(7) Chet Ram (P.W. 1), who was the cousin of Gulab Singh deceased, proceeded to the police-station Rohru, six miles away from the village, for lodging a report. When he had reached Simoli bridge on the way, Purba Nand (Public Witness . 9) and Kunji Ram came from the village and told him that Gulab Singh had died- All of them reached the police-station where a report was given by Chet Ram (Public Witness . 1). The said report (Ex. PA) was recorded by the S.H.O. Chhaju Ram (Public Witness . 19) at 6.30 P.M.

(8) After sending two constables to the village in order to ensure that Pratap Singh did not abscond, he reached village Kulgaon at 11 P.M. after completing the formalities. He posted a guard over the dead body which was near the house of Smt. Inder Mani and did not proceed further with the investigation that night. It was only next morning that he held the inquest and prepared the report (Ex. P.B.). Public Witness 6 Patwari (Gopu Ram) prepared a plan of scheme of occurrence (Ex. PL),

(9) The post-mortem was conducted by Dr. Satish Kumar Sharma (P.W. 8) in village Kulgaon, as requested by the police, on the evening of 6-9-1968. Public Witness 8 found the following external injuries on the dead body of Gulab

Singh :-

"(I)Vertical clean lacerated wound over first inter coastal space 1.3" medial to mid clavicular line on the left side of the front of the chest. Size of this wound was 1.3" X ""'. The wound was gaping and the edges were clean cut and had pointed ends.

(II)Superficial abrasions :-(a) Right side of the chin,

(B)in the region of the neck in front of thyroid cartilage,

(C)on the right side of neck near medibular angle."

(10) Internal examination revealed a penetrating wound in the first intercostal space on the lower border of the first rib and upper border of the second rib with marks of a sharp cut about 1 millimeter deep on each rib. There is also a penetrating wound on the upper lobe of the left lung in continuation with the previous injury. There was a wound on the left ventricle penetrating through the anterior wall of the size 1" X""'. In the opinion of the doctor, death was a result of internal hemorrhage and shock resulting from the said injury to the heart and left lung and it was sufficient in the ordinary course of nature to cause death.

(11) During the investigation Public Witness 19 examined a number of witnesses. Smt. Radha Mani wife of Kalmi Nand accused took out from a heap of cow dung in her field the Khukri (Ex. P. 5) and the scabbard (Ex P. 16) on 6-9-1968. The same were seized under recovery memo. Ex. P.F.

(12) Pratap Singh was not available for arrest but Bihari Lal was arrested on 8-9-1968. As per his statement (Ex. P.H.) the Chhura. (Ex. P. 4) was recovered from the attic of the door of the kitchen of his house, from where it had been kept concealed. It was seized under Ex. P.J.

(13) The appellant Pratap Singh was arrested in pursuance of a warrant, when the military authorities handed him over to the police at Tejpur on 27-12-1968. Ex. P.T. is the letter handing him over to the. Assistant Sub-Inspector.

(14) In addition to Public Witness s. 1 to 4 and 7, the occurrence was witnessed by Purba Nand (Public Witness . 9), Bhag Chand (Public Witness . 10) and Chain Ram; (P.W. 15). All the above occurrence witnesses have stated in one voice that it was appellant Pratap Singh who gave the Khukri blow on the chest of Gulab Singh deceased.

(15) Appellant Pratap Singh, when examined u/s 342, Criminal Procedure Code, admitted the divorce between himself and P.W. 2 and also the preparation of Ex.P.P. in that connection. He had, however, claimed before the committing Magistrate that he had not released Public Witness 2. When the above statement by him before the Committing Magistrate was brought to his pointed notice by the learned Sessions Judge, he admitted that his statement at the trial was correct.

(16) He denied the threats attributed to him and also his presence in the Mela ground on the morning of the date of occurrence. He returned to his house at about 2 or 2.30 P.M. on the date of occurrence and at about 2.30 P.M. or 2.45 P.M. left for Rohru where he spent the night and left next morning for joining his Unit in the Air Force at Tejpur, which he had to join on 10-9-1968. He denied any knowledge of the Khukri (Ex.P. 5). He further stated that since he had applied for grant of Nautor land, the residents of village Kulgaon, who had raised objection to the same, had deposed against him on account of enmity. Since people dancing at the Mela had weapons like Khukri, sword, dagger and guns and were also drunk, it was possible that Gulab Singh may have been murdered by some one in the confusion.

(17) The appellant Bihari Lal admitted his presence at the Mela but denied that he attacked Gulab Singh with Chhura and the fact that he pointed out or produced the Chhura (Ex. P. 4). Accused Karam Chand also denied his presence at the occurrence-

KALMIN and (the acquitted accused) admitted his presence at the Mela but stated that when Gulab Singh deceased was dancing with a Chanwar in his hand and it was his turn to have the Chanwar, he asked Gulab Singh, who had already done five rounds in the dance with the Chanwar in his hand, to give the Chanwar to him. He refused to do so and when Kalmi Nand tried to get the Chanwar from him, he left the dance without giving the Chanwar and there was a scuffle between Kalmi Nand and Gulab Singh. There was a confusion because many people had collected around them. The drummers had put down their drums in the confusion and he learnt that some one had hit Gulab Singh.

(18) D.WS. 3 to 6 (Madan Singh, Dhiraj Ram, Finda and Niharu) were examined in support of the above version of Kalmi Nand. D.Ws. 1 and 2 were two doctors who were examined for the purpose of showing that the injury on deceased Gulab Singh could not have been caused with a weapon like Ex. P. 5 (Khukri) in opposition to the evidence of Public Witness 8 who was of the opinion that the injury on the deceased could have been caused with a weapon like Ex.P. 5.

(19) The learned Sessions Judge has acquitted Kalmi Nand and Karam Chand on the ground that they had no common intention to commit the murder of Gulab Singh and that the part attributed to them of holding the hands of Gulab Singh was consistent with their innocence. Regarding appellant Bihari Lal, the learned Sessions Judge found that since he inflicted a blow with a Chhura, which was warded off by the intervention of Chet Ram, he was guilty u/s 307, Indian Penal Code, but acquitted him of the charge under sections 302/34, Indian Penal Code. The State has, as already noticed, preferred an appeal against the acquittal of Kalmi Nand and Karam Chand and of appellant Bihari Lal u/s 302, Indian Penal Code.

(20) We have heard Shri M. G. Chitkara and Shri H. S. Thakur for all the accused and Shri Inder Singh for the State and we have been taken through the evidence.

(21) There can be no doubt that Gulab Singh deceased met with his end as a result of a murderous assault which took place on 5-9-1968 at about 2.30 or 3 P.M. in the courtyard of Devta Shalu where the villagers were celebrating the Mela. There was also the background of enmity between appellant Pratap Singh and Gulab Singh deceased owing to P.W. 2 having divorced him and settled down to live with Gulab Singh. Despite the denial by appellant Pratap Singh of any enmity on "this score, it is significant that he had gone to the extent of stating before the committing Magistrate that he had not released P.W. 2; his own admission before the learned Sessions Judge was that as a result of a divorce effected by the Panchayat, she was free to marry again.

(22) Having regard to the fact that the occurrence took place in broad day light and on a festive day when a number of villagers had gathered, it is not possible to accept the argument for the appellants that the true assailant was given up and that Pratap Singh had been falsely implicated as the actual assailant. The report concerning the occurrence was made without any appreciable delay.

(23) The learned Sessions Judge has observed that, among the occurrence witnesses, Bansi Lal (Public Witness . 4), Bhag Chand (Public Witness . 10) and Chain Ram (Public Witness - 15), were not related to any side and were not interested in falsely implicating any of the accused. It was elicited from Public Witness 10 that Madan Singh, father of the deceased Gulab Singh, has a brother Amar Singh whose daughter is married to Purba Nand (P.W. 9), the relationship which was not admitted by him. But this does not, in any way, show that the evidence of Public Witness 10, or even that Public Witness s- 4 and 15 is interested. Shri Chitkara has drawn our attention to the note made by the learned Sessions Judge while recording the statement of Public Witness 9 that he was not giving straight answers: this was in the context of P.W. 9 being questioned about his relationship to deceased Gulab Singh. In spite of this note, the learned Sessions Judge persuaded himself to accept his testimony also. He denied that he was the son-in-law of Madan Singh. According to the admission of Public Witness 10, he was the son-in-law of Amar Singh, the brother of Madan Singh.

(24) To Public Witness 15 a suggestion was made that either he himself or his brother had filed a suit against Karam Chand accused in the Court of the Subordinate Judge, Rohru. He denied the suggestion but even Karam Chand did not make any reference to the same. Regarding the other occurrence witnesses, their testimony cannot, as the learned Sessions Judge has observed be rejected merely because they are related.

(25) It was strenuously urged by Shri Chitkara that the injury on the deceased could not have been caused with a weapon like Ex.P. 5 and that Ex.P. 5 was stated by the prosecution to have been the weapon used in this case. In spite of the fact that P-W. 1 had specifically stated that he had seen Ex.P. 5 in the hands of the appellant Pratap Singh during the occurrence, that Public Witness 2 had stated that she had seen Ex.P. 5 in the box kept by him and Public Witness 3 had

stated that it was taken out of the dung heap, it is not always possible to affirm, especially in the course of an incident like the one in question, that exactly the same weapon was used; it would only mean, as the lower Court has rightly observed that a weapon like Ex.P. 5 was used. The other occurrence witnesses did not identify Ex.P. 5 as the weapon which was used. In this view it is even needless to be detained by the evidence of D.Ws. 1 and 2 as to whether the injury on the deceased could have been caused by Ex. P. 5. After going through the evidence of all the three doctors (Public Witness . 8 on the one hand and D.Ws. 1 and 2 on the other), we are not inclined to attach any weight to the testimony of D.Ws. 1 and 2 who did not conduct the post-mortem examination. D.W. 1 himself had stated that the material given in the post-mortem report was not sufficient in as much as it did not give the depth of the wound and its direction and as such it was not possible for him to give an opinion on the point whether the wound in question could be caused by Khukri (Ex.P. 5). Despite the said omission, D.W. 2 swore that it was possible for him to venture the opinion that the said injury could not be caused by the weapon Ex.P. 5. Public Witness 8 had measured the breadth of .Ex.P. 5 at the place where the edges were sharp on both sides; the breadth at the point was 2.4" and the length of the sharp edged side was 2.2". Even though Public Witness 8 did not note the depth of internal injury, he could still give the depth as 2" to 3" from the skin to the heart. Public Witness 8 had conducted this post-mortem alone and advantage has been sought to be taken of the report that it does not give all the necessary details. In the face of the above candid admission of D.W. 1 that on the data given in the post-mortem report, no definite opinion could be given about whether Ex.P. 5 could have caused the injury, we are not willing to place any reliance on the testimony of D.W. 2 that an opinion of the kind given by him is possible. On this question we prefer to rely on the evidence of Public Witness 8 who had the advantage of conducting the post-mortem himself.

(26) Shri Chitkara next relied upon the statement in the first information report (Ex.PA) that both the appellants had attacked Gulab Singh deceased by thrusting the Khukri and Chhura in his chest, whereas later on an Explanation had been given so far as appellant Bihari Lal is concerned, to the effect that the Chhura blow given by him cut the waist-coat button. So far as appellant Pratap Singh is concerned, the testimony being uniform, that it was he who gave the fatal Khukri blow, the above statement in the first information report does not cause any difficulty. Regarding Bihari Lal we shall revert to this aspect again.

(27) The learned Sessions Judge has discussed the evidence of D.Ws. 3 to 6 and has, rightly, declined to accept their evidence. D.W. 3 (Madan Singh), a close relation of appellant Pratap Singh, swore that the acquitted accused Kalmi Nand gave Rs. 5.00 to Devta Shalu and another sum of Rs. 2.00 to the drummers at about 2.30 P.M. on the day of occurrence and claimed his right to have the Chanwar. He tried to snatch the same from deceased Gulab Singh resulting in a scuffle between them. Many people gathered around and a scuffle ensued; D.W. 3 did not see appellant Pratap Singh then. Dhiraj Ram (D.W. 4) also made a

similar statement. He did not see any of the accused other than Kalmi Nand there; he did not even know where Gulab Singh had been hit. It is not possible to accept their evidence, which sounds so artificial, that they did not know who made the murderous assault on Gulab Singh, even though they were present. Apart from D.W. 5, none of them had cared to tell the police anything about the occurrence- Besides, when Kalmi Nand was examined by the Committing Magistrate (vide PZ) Kalmi Nand had not stated that he demanded the Chanwar from Gulab Singh deceased and the resulting scuffle between them. Finda and Niharu (D.Ws. 5 and 6 respectively) are two drummers who gave evidence of a similar, negative, kind. They also referred to the demand by Kalmi Nand for the Chanwar and the scuffle between him and the deceased. Nihara had left the place when the scuffle was in progress. Neither of them was in a position to state who assaulted the deceased even though they were within six or seven steps from him during the occurrence. The evidence of D.Ws. 3 to 6 cannot, Therefore, be accepted,

(28) Shri Chitkara next urged that since, according to the admission of Gulab Devi (Public Witness . 2), a report about the occurrence had been written by Dhanbir (Public Witness . 18), the Secretary of the Panchayat, Kunji Ram and, probably also Kagdi Ram (Public Witness . 5), a member of the Panchayat, the same had been suppressed and that it would show if produced, that the assailant was not known. D.W. 3 (Madan Singh) swore that P.Ws. 5 and 18 came to the house of Inder Mani (Public Witness . 7) and wrote a report, which was read aloud; it stated that a murder had been committed and that the police should come immediately, but no assailant was named therein. Both Public Witness s. 5 and 18 denied that they had sent any report in writing to the police. They denied the suggestion put to them that nobody knew who had stabbed Gulab Singh; per contra, Public Witness - 5 asserted that every one in the courtyard of the temple was saying that Pratap Singh had murdered Gulab Singh, when he reached the scene soon after the occurrence and Public Witness 18 learnt about the assailant being Gulab Singh from Bishan Das (not examined) whom he first met when he reached the scene after hearing the noise emanating from there. It was elicited from Public Witness 2 in cross-examination that Public Witness 1 had taken the report written by Public Witness 18, Kunji Ram and probably also Kagdi Ram. Obviously, this was not correct; Public Witness 5 and Public Witness 18 have denied it. Public Witness 1 also did not take with him any statement written by any of them. No weight can, Therefore, be attached to the said statement incorrectly made by Public Witness 2 who was in obvious grief then.

(29) Shri Chitkara commented on the absence of any blood on the clothes of these (Public Witness s. 1, to 4 and 7) who carried Gulab Singh deceased from where he had fallen down to the verandah of Public Witness 7. There is no doubt that Gulab Singh must have bled profusely and that his clothes also became bloodstained. The wound must have continued to bleed for quite some time but the mere absence of bloodstains on the clothes of those, who carried him soon after he was stabbed, would not show that they did not carry him. In this context

stress was also laid upon the absence of recovery of bloodstained earth from the place where he was stabbed. This contention is seen to be without any force whatever because it was not the case of the accused that Gulab Singh was assaulted anywhere else; it is worth recalling that the case of the accused itself was that Gulab Singh was assaulted in the courtyard of the temple but by some unknown assailant-

AFTER giving our earnest consideration to the evidence on both sides we have no doubt that it was appellant Pratap Singh who made the murderous assault on Gulab Singh deceased.

(30) Shri Chitkara raised a legal contention that since appellant Pratap Singh was a member of the Air Force, the procedure laid down by section 549, Criminal Procedure Code, should have been followed and that the conviction and sentence, without following the said procedure, are illegal. No such objection was taken before the committing Magistrate. Before the learned Sessions Judge it was urged that he should make a recommendation to the High Court for quashing the commitment for non-compliance with section 549, Criminal Procedure Code. By an order dated 6-6-1969 the learned Sessions Judge over-ruled the said contention and declined to make the recommendation sought for. We see no force whatever in the said contention.

(31) Section 549, Criminal Procedure Code, reads as follows:-

"549(1). The Central Government may make rules, consistent with this Code and the (Army Act) (The Naval Discipline Act and the Indian Navy (Discipline Act, 1934 and the Air Force Act and) any similar law for the time being in force, as to the cases in which persons subject to (military), (naval) or Air force law shall be tried by a Court to which this Code applies, or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, (to be tried either by a Court to which this Code applies, or by a Court-martial), such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps (ship) or detachment to which he belongs, or to the commanding officer of the nearest (military), (naval) or air-force station, as the case may be, for the purpose of being tried by Court-martial.

(2) Every Magistrate shall, on receiving written application for that purpose by the commanding officer of anybody of (soldiers, sailors or airmen) stationed or employed at any such place, use his utmost endeavors to apprehend and secure any person accused of such offence."

(32) The above provision, and the Martial (Adjustment of Jurisdiction) Rules, 1952, were considered by a Full Bench of this Court in *Joginder Singh v. State* 1969 Del LT 1. S. K. Kapur J. dissented. Dua C.J. (as he then was) speaking for the majority referred to the decision of the Supreme Court in *Major E.G. Barsay Vs. The State of Bombay*, among other cases and observed as follows :-

"HAVING had full knowledge of the charge and the opportunity to come to a decision on the question of the forum of trial, if the Army Authorities voluntarily deliver the accused to the civil authorities for trial, the statutory purpose and object may well ordinarily be held to have been accomplished."

(33) The majority held in that case that even if there was violation of the Rules (3 and 4 in that case) it would not by itself deprive the Magistrate of his inherent jurisdiction, thereby automatically nullifying all subsequent proceedings and that the object of the violation had to be determined on the facts and circumstances of each case keeping in view the nature of the violations and other factors. In the case on hand it is worth recalling that by the order dated 27-12-1968 appellant Pratap Singh, an airman, was handed over to civil custody. In the face of this there is no scope at all for the contention that the procedure u/s 549, Criminal Procedure Code, should have been followed. Subba Rao J. (as he then was) explained the legal position as follows in Major Barsay's case :-

"SECTION 125 (of the Army Act. 1950") presupposes that in respect of an offence both a criminal Court as well as a Court-martial have each concurrent jurisdiction. Such a situation can arise in a case of an act or omission punishable both under the Army Act as well as under any law in force in India. It may also arise in the case of an offence deemed to be an offence under the Act. Under the scheme of the said two provisions, in the first instance, it is left to the discretion of the officer mentioned in Section 125 to decide before which Court the proceedings shall be instituted and, if the officer decides that they should be instituted before a Court-martial, the accused person is to be detained in military custody; but if a criminal Court is of opinion that the said offence shall be tried before itself, he may issue the requisite notice u/s 126 either to deliver over the offender to the nearest Magistrate or to postpone the proceedings pending a reference to the Central Government. On receipt of the said requisition, the officer may either deliver over the offender to the said Court or refer the question of proper Court for the determination of the Central Government whose order shall be final. These two sections provide a satisfactory machinery to resolve the conflict of jurisdiction, having regard to the exigencies of the situation."

(34) It was further observed-

"THE scheme of the Act Therefore is self-evident. It applies to offences committed by army personnel described in section 2 of the Act; it creates new offences with specified punishments, imposes higher punishments to pre-existing offences, and enables civil offences by a fiction to be treated as offences under the Act; it provides a satisfactory machinery for resolving the conflict of jurisdiction. Further it enables, subject to certain conditions, an accused to be tried successively both by Court-martial and by a criminal Court. It does not expressly bar the jurisdiction of criminal Courts in respect of acts or omissions punishable under the Act, if they are also punishable under any other law in force in India; nor is it possible to infer any prohibition by necessary implication.

Sections 125, 126 and 127 exclude any such inference, for they in express terms provide not only for resolving conflict of jurisdiction between a criminal Court and a Court-martial in respect of a same offence, but also provide for successive trials of an accused in respect of the same offence."

(35) It was also observed-

"THE appellant and the other accused were charged in the present case, among others, for having been parties to a criminal conspiracy to dishonestly

(36) Similar question was also considered in Roshan Lal v. State Criminal Appeal No. 34 of 1968 of the Himachal Bench, decided on 27-6-1969) by one of us, where following Major Barsay's case it was held that if the military authorities decide not to try the offender by a Court-martial the criminal Court was competent to try him. We accordingly over-rule the above said contention of Shri Chitkara.

(37) Regarding appellant Bihari Lal not only do we find that there is no substance in the appeal filed by the State against his acquittal under sections 302/34, Indian Penal Code, but that even his conviction u/s 307, Indian Penal Code, cannot be sustained. The reference to the blow given by him on Gulab Singh deceased with Chhura having been warded off by Public Witness . 1 (Chet Ram) catching hold of his neck has not been recorded in the first information report (Ex. P.A.), despite his assertion that he had made such a statement to P.W. 19 who recorded it. The further case of the prosecution that all the four accused came dancing from Kalmi Nand's house and went back to it after the occurrence has again not been stated in the first information report. These omissions in the first information report do not go to show, as the learned Sessions Judge rightly observed, that the witnesses gave false evidence. But it would be appropriate to give the benefit of the said omissions to the concerned accused to the extent that it becomes necessary to do so. No common intention on the part of all the four accused to commit the murder of Gulab Singh has been proved, beyond reasonable doubt; nor is it inferable. All that is possible to affirm beyond reasonable doubt in this case is that appellant Pratap Singh made the murderous assault on Gulab Singh deceased with the intention of causing his death; the injury which was sufficient in the ordinary course of nature to cause death and was inflicted intentionally, renders him liable for punishment u/s 302, Indian Penal Code. But so far as Kalmi Nand and Karam Chand are concerned, in the absence of any common intention being necessarily inferable on their part, or even of appellant Bihari Lal to cause the death of Gulab Singh, it is not possible to invoke section 34 Indian Penal Code. against any of them. It is significant that no injury was caused by any of these three accused to the deceased. The conviction and the sentence imposed u/s 307, Indian Penal Code, on appellant Bihari Lal are set aside, he is acquitted and his appeal is accepted. The appeal filed by the State (Criminal Appeal No. 36 of 1969) against Bihari Lal as well as against Kalmi Nand and Karam Chand is dismissed. The appeal preferred by Pratap Singh is dismissed, the conviction u/s 302 Indian Penal Code, being

unexceptionable and the sentence of rigorous imprisonment for life being the minimum that could be imposed. The conviction and the sentences imposed on him are accordingly confirmed.