
(1990) 12 RAJ CK 0041
In the Rajasthan High Court
Case No : Criminal Appeal No. 231/82

Purkha Ram and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 18-12-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1990) 2 WLN 429

Hon'ble Judges : Y.R. Meena, J; R.S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Verma, J.—Learned Addl. Sessions Judge, Nagaur exercising jurisdiction in the court of Sessions Merta has convicted appellants-Purkha Ram, Mega Ram, Amra Ram, Hema Ram, Moola Ram S/o Dana Ram, Chunna Ram, Rewat Ram, Moola Ram S/o Baga Ram, Bhika Ram, Sona Ram, Anna Ram, Mohan Ram, Dhira Ram, Jeewan Ram and Poosa Ram for offences u/s 302 read with Section 149, 307 read with Section 149, Section 325 read with Section 149 and Section 323.I.P.C. He has further convicted appellants Anna Ram, Bhika Ram and Moola Ram S/o Dana for offence u/s 148, I.P.C. All other appellants have been convicted for offence u/s 147, I.P.C. Appellant Anna Ram has been further convicted of offence u/s 7 of the Civil Rights Protection Act while appellants Jeewan Ram, Poosa Ram, Dhira Ram and Mohan Ram have been convicted for offence u/s 4 of the aforesaid Act. All the appellants have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 100/-for offence u/s 302/149, I.P.C. and in default, to undergo R.I. for three months. Each one of the appellants has been sentenced to undergo R.I. for five years and to pay a fine of Rs. 100/-and in default to undergo further R.I. for three months for offence u/s 307/149, I.P.C. Each one of the appellants has been sentenced to undergo R.I. for three years and to, pay a fine of Rs. 1 00/- and in default to undergo further R.I. for three months for offence u/s 325 read with Section 149, I.P.C. Each one

of the appellants has been sentenced to undergo R.I. for one year for offence u/s 323.I.P.C.

2. Appellants Bhika Ram, Anna Ram and Moola Ram S/o Dana have been sentenced to under go R.I. for one year for offence u/s 148 J.P.C, While rest of the appellants have been sentenced to a similar term for offence u/s 147, I.P.C. Appellant Anna Ram has been sentenced to undergo R.I. for three months and to pay a fine of Rs. 100/- and in default to undergo further R.I. fir 20 days for offence u/s 7 of the Civil Rights Protection Act. Appellants Mohan Ram, Dhira Ram, Jeewan Ram and Poosa Ram have been sentenced to undergo R,I. for three months and to pay a fine of Rs. 100/- and in default to undergo further R.I. for 20 days for offence u/s 4 of the Civil Rights Protection Act. All the substantive sentences have been directed to run concurrently. Aggrieved, all the aforesaid convicts have come in appeal, whereby they challenge the legality and propriety of their convictions recorded by the learned Addl. Sessions Judge vide his judgment dated 28.5.82 recorded in Sessions case No. 38/81.

3. Briefly stated, the prosecution story is that village Jhadisara within the jurisdiction of Police Station, Nagaur has a heterogenous population, consisting of Jats, Meghwals and other communities. There is a public well in the village. Appurtenant to this well area three tanks (haundis), one meant for Meghwals, the other meant for Jats and other upper caste people. These two tanks are seperated by a third one, which is meant for cattle. On 24.6.81 at about 6 p.m. P.W. 3 Kana Ram also called Kani Ram and P.W. 9 Gayad Ram, both meghwals by caste, went to this public well with their camel cart tankers to fetch water. As the well, they found accused Jeewan Ram, Dheera Ram, Mohan Ram and Poosa Ram, who were already working the well. Gayad Ram climbed the platform surrounding the well and filled one canister with water from a tank. At this accused Jeewan Ram shouted MsM us dqvk fHk"V dj fn;k gS A the untouchable has polluted the well and saying this he dealta lathi blow on the head of P.W. 9 Gayad Ram. At this Gayad Ram raised on alarm. In the meanwhile accused Anna ram came there armed with a sela (a sharp pointed weapon also called Barchi or spear) and he exhorted the other accused persons to belabor Kana Ram and Gayad Ram. However, Kana Ram and Gayad Ram left the well and both of them started back with their camel cart tankers for their houses.

4. The prosecution story is that at a short distance form this public well two gangs of laborers were working in connection with famine relief operations. On hearing the alarm from Gayad Ram, his brother Mani Ram and father Heera Ram since deceased ran towards Gayad Ram and Kana Ram, who were already rushing towards the public square. The aforesaid five accused persons started giving them a chase. In the meanwhile Rewat Ram P.W. 8, Babu Lal P.W. 13 and Nainee P.W. 14 also ran towards these people. It is alleged that rest of the accused persons, variously armed, came to the place. All the accused persons, fifteen in all, surrounded Kana Ram, Gayad Ram, Mani Ram, Heera Ram in the guard i.e. the public square. It is alleged that Poosa Ram and Jeewan Ram

appellants death lathi blows on the head of Heera Ram with the result that he fell down. Anna Ram dealt a sela blow on the right side of the abdomen of Heera Ram. The other accused persons indiscriminately dealt lathi blows to him. Moola Ram gave a sela blow to Heera Ram. Mani Ram caught this sela, which somehow hit Anna Ram. At this Anna Ram shouted that he was hurt upon which all the accused persons started beating Mani Ram with lathis. Muni Ram fell down. Rawat Ram fell over Muni Ram with a view to rescue him, upon which he also received number of injuries. Nainee went near Rewat Ram to rescue him upon which she was also given beating by the appellants. In this assault Kana Ram and Gayad Ram also received injuries. Heera Ram died as a result of the injuries sustained in the assault.

5. The prosecution story is that injured Mani Ram was taken to Government Hospital, Nagaur the same night, where he was admitted to male surgical ward at about 11 p.m. P.W. 12 Kasam Khan, in charge Police Kotwali, Nagaur reached the Government Hospital the same night and recorded the statement of P.W. 3 Kana Ram at 11.45 p.m. Ex.P.5) and recorded a formal F.I.R. Ex.P. 19 on its basis for offences Under Sections 147, 148, 149, 323, 302 I.P.C. P.W. 20 Kushal Singh and P.W. 21 Lal Singh took over the investigation of the case in their hands. It is alleged that injured Mani Ram succumbed to his injuries on the night intervening 24.6.81 and 25.6.81 at 2.15 a.m. Panchayatnamas of dead bodies were prepared. Prior to this, he (Mani Ram) was examined by P.W. 18 Dr. Vijay Singh Ghodawat, who found two injuries on his person both being lacerated wounds, one on the right and the other on the left parietal region. Dr. Ghodawat prepared injury report Ex.P. 22 with regard to these injuries.

6. Kana Ram, Gayad Ram and Rewat Ram were examined the same night by Dr. Ghodawat. He found one lacerated wound on the person of Kana Ram, Kana Ram also complained of pain over the back of left shoulder as also of pain on right foot. In jury report Ex.P. 23 was prepared by Dr. Ghodawat in this regard. On subsequent x-ray examination a fracture of left parietal bone was found on the person of Kana Ram vide Ex.P. 25 Dr. Ghodawat found one lacerated wound on the poster medial aspect of right forearm, another lacerated wound on the poster medial aspect of left forearm, a lacerated wound on left side of forehead, another lacerated wound on right parieto-occipital region an abrasion on the dorsum of middle thumb and a bruise on the distal part of left thumb of Gayad Ram vide injury report Ex.P.26. Upon subsequent x-ray examination, fractures of right ulna and left ulna were detected vide x-ray report Ex.P.28 Rewat Ram had ten injuries in all, out of which five were abrasions and five were bruises as evidenced by injury report Ex.P.30. Upon subsequent x-ray examination, fracture of right ulna bone in its middle part was found vide x-ray report Ex.P.33.

7. Dr. Ghodawat conducted autopsy examination of Heera Ram on 25.6.81. He found following external injuries on his person:

1. A lacerated wound 6cmx0.3cmxmuscle deep on the right side of fore head and frontal region of scalp longitudinally oblique 3 cm. above the Rt. eyebrow, 5 cm.

from midline.

2. A lacerated wound 5 cmx0.4 cm x bone deep on the posterior part of right parietal region of scalp. Transverse.

3. An abrasion 1 cm x 1 cm on the back of middle of right forearm with diffuse swelling with fracture of both bones underneath.

4. Seven abrasions of small sizes on the back of right elbow and 5 cm area above and 5 cm area below the elbow on posterior aspect.

5. A bruise 15 cm x 2 cm on the front of rt, side of chest oblique, in the inframammary area with fracture of 7th, 8th 9th ribs underneath.

6. A diffuse swelling of lower part of rt.leg with fracture of bones(both) underneath.

7. A bruise 7 cm x 5 cm on the front of upper part of right thigh.

8. A bruise 3 cm x 2 cm on the front of lower part of right thigh.

9. Three bruises sizes 10cm x 2 cm on the left side of back of chest transversely oblique over scapular and infra scapular area.

10. An abrasion 2 cm x 0.5 cm on the right groin in the middle part. All these injuries are ante-mortem in nature.

8. Necroscopy of the dead body of mani Ram was made by Dr. Ghodawat the same day i.e.25.6.81 and Dr. Ghodawat noticed following external injuries on his person:

1. A lacerated wound 5 cm x 0.4 cm. muscle deep on the right parietal region of scalp, just right to midline 12 cm above and in front of upper border of pinna of right ear Transversely oblique.

2. A lacerated wound 5 cm 0.5 cm x muscle deep on the left parietal region of scalp, 14 cm behind and above the upper border of pinna of left ear. Transversely oblique just left to midline.

On internal examination transverse fractures of both the parietal bones were detected, Brain membranes were congested and subdural space on both sides was full of clotted blood-Roth the injuries were antemortem in nature and in opinion of Dr. Ghodawat deceased died due to cerebral compression because of bulateral subdural haemorrhage. A post-mortem reports Ex.P. 21 was prepared in this regard. According to Dr. Ghodawat both the injuries were caused by blunt weapons and each one of them individually as also both of them cumulatively were sufficient to cause death in the ordinary course of nature.

9. The Investigating Officer recorded statements of relevant witnesses, inspected the site, made certain recoveries and prepared relevant memos. The accused persons were duly arrested and certain weapons arc said to have been recovered

at the instance of some of accused persons. Articles recovered during the course of investigation were sent to Forensic Science Laboratory at Jaipur and report Ex.P. 73 was received in this regard Some of the articles were forwarded to the Serologist and chemical examiner at Calcutta and a report Ex.P. 72 was received in this regard.

10. After completion of due investigation, the accused appellants were challenged and upon due commitment to the court of Sessions, they were tried, convicted and sentenced as stated above. The motive/s for the alleged assault are stated to be

Accused Anaram and some of his companions had assaulted daughter of one Rampyari Dakota and a case was registered in this connection against Anaram and other and it was supposed that deceased Man) Ram and his companions got this case registered and got the accused persons challenged.

(ii) Mani Ram deceased had been appointed "Mate" over the gang of laborers engaged in famine relief operations and members of Jat community could not get fulfilled their undue wishes, and

(iii) On 16.6.81, Mani Ram deceased and his companions went to well to fetch water from the public well. Accused Anaram and his companions obstructed fetching of water by the former and gave beating to them upon which a case was registered against accused Anaram and his companions.

It is alleged that all the accused appellants actuated by previous enmity on the aforesaid grounds formed an unlawful assembly with the common object of murdering Heera Ram and Mani Ram and committed rioting and inflicted injuries on the two deceased and thus committed the double murders and caused various other injuries in furtherance of the common object to Kana Ram, Gayad Ram, Rewat Ram, Babu Lal and Naince. The accused persons denied their complicity in the crimes alleged and pleaded that they had been falsely implicated. The prosecution examined as many as 22 witnesses in support of its case. The defence also examined as many as 11 witnesses in its support.

11. In the present appeal, learned Counsel for the appellants very frankly and fairly concedes that on 24.6.81 at about 6 p.m. at village Jhadisara an incident did take place in which deceased Heera Ram and Mani Ram received the various injuries noticed above and further concedes that both these persons died as a result of assault on them. He also very fairly and frankly concedes that Kana Ram, Gayad Ram, Rewat Ram. Babu Lai and Naince also received injuries in this assault. He, however, contends that prosecution has not put forth the true and correct version of the incident. None of the motives alleged had been proved. It has not been proved-beyond reasonable doubt that the accused appellants had formed as unlawful assembly with common object of committing murder of Heera. Ram and Mani Ram. The prosecutions witnesses have indulged in falsehoods arid have falsely implicated a number of innocent persons. Some of the appellants also received injuries in the incident and these injuries have not

been explained. The incident appears to have taken place because of aggression made by Heera Ram and his companions and the accused appellants repulsed the attack and this acted in exercise of right of private defence of persons. Alternatively, it was a case of free fight and accused persons could be convicted only for their individual acts. He, therefore, submits that accused appellants deserve to be acquitted. In the alternative, their convictions deserve to be suitably altered and sentences deserve to be appropriately modified.

12. Learned Public Prosecutor and learned Counsel for the complainant oppose the appeal vehemently and submit that the convictions recorded by the learned trial court as also sentences passed upon the appellants do not call for any interference and the judgment of the trial court is based on sound appreciation of evidence adduced in the case.

13. It has been pointed out that appellants Mohan Ram and Poosa Ram S/o Dhuda Ram have died during the Pendency of this appeal.

14. We have heard the learned Counsel on all sides at great length and have bestowed our earnest careful consideration to the arguments advanced before us and have carefully perused the record. There is no doubt that an incident did take place in village Jhadisara on the evening of 24.6.81 at which Heera Ram, Mani Ram, Kana Ram, Gayad Ram, Rewat Ram, Babu Lal received various injuries already noticed above and in consequence of the assault Heera Ram died the same day while Mani Ram died in the night intervening 24.6.81 and 25.6.81 at Government Hospital, Nagaur. We have to examine if the learned trial court was not right in holding that the accused appellants had formed an unlawful assembly with the common object of committing murder of Heera Ram and Mani Ram and further he was not right in holding that the appellants or any of them inflicted injuries to the deceased and the other injured persons in prosecution of the said common object of the unlawful assembly.

15. P.W. 3 Kana Ram has admitted in his examination-in-chief that when this witness and Gayad Ram reached the well, Jeewan Ram, Dhira Ram, Mohan Ram and Poosa Ram were already working the well. In his own words ^^ge tc dq,a ij ikuh ysus x;s ogka thoujke] /khjkjke] eskgujke] iwlkjke Fks ;s yksx dq,a dks tksr jgs Fks A**

This statement clearly shows that the initial assembly of these accused persons named above was peaceful and these accused persons had primarily assembled at the well, not with any unlawful object, but with a view to work the well. Now, we may examine the genesis of the incident. According to Kana Ram, Gayad Ram went up the platform of the well and filled on can of water and at this Jeewan Ram gave a lathi blow on the head of Gayad Ram and uttered ^^MsMks us dqvk fHk"V dj fn;k gS A^^ He was confronted with his previous police statement Ex.P. 5, wherein this story was not mentioned at all viz. Jiwan Ram gave a lathi blow to Gayad Ram on head and uttered the aforesaid cry. Thus, on this point, the witness has made an improvement and his statement is rendered unreliable. P.W.

9 Gayad Ram has, of course, stated that when he filled one can of water from the well, Jiwan Ram uttered the aforesaid cry and gave a lathi blow to him on his head. He was confronted with his previous police statement Ex. D. 3 Wherein there was no mentions of a lathi blow by Jiwan Ram on his head. It of course mentions that a lathi blow was given to him by Jiwan. The medical report of Gayad Ram shows that he did receive a simple injury on his head. P.W. 8 Rewat Ram has deposed that he heard an alarm from the well and when he reached there, he saw Gayad Ram bleeding on the head. This evidence of the prosecution, though slightly discrepant, does establish that initially an incident did take place at the well, wherein Gayad Ram was injured-on his head. In all probability this injury to him was caused by Jiwan Ram as claimed by Gayad Ram. This is true that he did not specifically attribute the injury on head to Jiwan Ram in his policy statement, yet he had specifically stated that Jiwan Ram assaulted him with lathi at the well. To this extent, we find that it was an individual act on the part of Jiwan Ram and we are of the view that this minor incident must have led to the incident that took place soon after-wards, wherein two lives were lost.

16. At this very juncture, we would like to point out that the prosecution has made an attempt to show that even initially, the aforesaid four accused appellants along with Anna Ram formed an unlawful assembly and Anna Ram had joined them at the well duly armed with a sela. P.W. 9 Gayad Ram has tried to pulforth this story and has stated that when Anna Ram came to the well with a sela, he raised an alarm "^^MsMks us dqvk fHk"V dj fn;k gS A vkSj ;g tkus ugha ik;s A^^ " i.e. the untouchables have defiled the well and they may not escape. Now, this story put forth by Gayad Ram is not supported by Kana Ram, who does not speak of Anna Ram coming with a sela to the well. P.W. 8 Rewat Ram has tried to support Gayad Ram on this aspect of the matter. It may be mentioned that in his cross-examination, the witness could not maintain this theory and admitted ^^bl oDr eqyfteku pkjks ge csjs ds ikl vk;s rks gekjs vkMs fQjs A^^ meaning thereby that when this witness reached the well, the four accused-appellants confronted him. Hence, the theory that

Anna Ram had come to the well armed with sela is not established satisfactorily.

17. Now, there is an important factor to be borne in mind. Initially, only four accused-appellants were at the well viz. Jiwan Ram, Dhira Ram, Mohan Ram and Poosa Ram, They were peaceably working the well. Jiwan Ram in all probability hits Gayad Ram on the head and this must have caused Gayad Ram and Kana Ram to retreat from the well. But it appears that close relatives of Kana Ram and Gayad Ram were working nearby in two gangs and on the showing of the prosecution itself Mani Ram, Rewat Ram, Heera Ram, Naini, Babu immediately rushed to the spot. It appears that Gayad Ram and his companions rushed to the Guwar nearby and it was there that the four accused-appellants and their other companions assembled there on the spur of the moment.

18. Here, we would like to observe that there has been some attempt at over

implication of accused-appellants by the prosecution witnesses and hence we shall have to examine in some depth if participation of all the accused-appellants in the later incident at Guwad has been established beyond doubt. In this connection, we would like to mention the case of accused appellant Anna Ram, to whom we have already referred to earlier. P.W. 9 Gayad Ram has categorically mentioned that Anna Ram was armed with a sela and he gave sela blow to Heera Ram on right chest and buttock. We may here state that sela is a sharp edged and pointed weapon. The post-mortem report of Heera does not show any injury on chest or buttock with such a weapon. Gayad Ram was confronted with his police statement Ex. D. 3 wherein there was no mention of Anna Ram causing sela blows to Heera. It may here be stated that the prosecution's witness Kana Ram does not speak of such specific sela blows by Anna Ram to Heera but has made an omnibus statement that Anna Ram, Bhikha Ram and Moola Ram gave sela blows to Heera. P.W. 8 Rewat Ram in his examination deposed about Anna Ram giving a Sela blow to Heera. He was confronted by his police statement Ex.D.2, where this part of the story is missing. P.W. 11 Khinya Ram claims to have reached the "guwad" when the assault had already begun. He speaks of the presence of Anna Ram with a sela but does not speak of any assault by Anna Ram on Heera by a sela. P.W. 13 Babu Lal has made an omnibus statement about Bhikha Ram, Anna Ram, Moola having selas in their hands. He speaks of Anna Ram assaulting his father Heera Lal with a sela but does not state that Anna Ram gave any sela blow to Heera Lal. P.W. 14 Naini also deposes about Moola hitting Heera with a sela but she is silent about sela assault by Anna Ram on Heera Lal. P.W. 17 Anni is widow of Heera Lal and has deposed that Anna Ram gave a sela blow on the leg of her husband and the blade got embedded in (the flesh) and the handle gave way but this story is missing from her police statement Ex. D. 7 with which she was duly confronted. Thus we find that all the eye-witnesses have tried to implicate Anna Ram for a sela blow on Heera, which does not find any corroboration from the medical evidence. The witnesses have improved upon their police statements and hence are clearly unreliable. We, therefore, find that the story of sela blow by Anna Ram on Heera has not been established and it clearly appears to be a case of false implication. The same holds good regarding Moola S/o Dana and Bhikha, who have been attributed, sela blows having been caused to Heera but the story does not find corroboration from the medical evidence. We have, therefore, no hesitation in stating that participation of Moola S/o Dana and Bhikha also has not been established beyond reasonable doubt and it appears that they too have been falsely implicated.

19. The fact that the aforesaid prosecution witnesses have tried to implicate Anna Ram, Bhikha and Moola S/o Dana falsely goes to show that they are not wholly reliable witnesses and hence no implicit reliance can be placed upon their statements.

20. Now, it appears extremely doubtful to us that the accused-appellants had assembled at the guwad with the common object of committing murders of Heera Lal and Mani Ram. It appears that when Jiwan Ram, Dheera Ram, Mohan

Ram and poosa Ram did not allow Kana Ram and Gayad Ram to take water and Jiwan Ram gave a lathi blow to Gayad Ram, Gayad Ram and kana Ram must have raised alarm which must have attracted Heera Lal, Moni Ram, Rewat Ram, Khinya Ram, Babu Lal, Naini and Anni. All these persons must have rushed towards guwad towards which Gayad Ram and Kana Ram were running. This commotion must have attracted the various other accused-appellants from different directions and they they must have engaged in beating the complainant party. P.W. 3 Kana Ram has admitted in his statement ^^[ksr] iwlk] thou] eksgu] /khjk] ewUuk iq= ctkk] equk iq= ckxk] gsek iq= ckxk o vejk xkao es ugh jgrs ijUrq vkidh kf.k;ks es jgrs gS ijUrq ?kVuk ds le; dq, ij ikuh ysus vk;s Fks A^^ He further admits ^^bg ckr lgh gS fd iqj[kk] Hkh[kk] pwuk] vUuk] xksxk o lksuk ds pkj xkao es vkcknh es ,d txg ugh gS ijarq vyx vyx txg gS A ;s N% vkneh dqa, ij ikuh Hkjus ugh vk;s Fks ijUrq gkdk lqudj vk;s FksA^^

In these circumstances, the common object of the assembly could at best be said to cause simple and grievous hurt to the complainant party and not to cause death of Heera Lal and Mani Ram. It is to be remembered that Heera Lal and Mani Ram were not present when the quarrel began and hence it cannot be said with any amount of certainty that such accused-appellants, who participated in the assault had a mammon object to commit murder of Heera Lal & Mani Ram. In such a situation, if any particular accused-appellant caused fatal injuries to the two deceased persons, it would be his own individual act and other members of the assembly cannot be said to be vicariously liable for such individual acts of particular assailants. Hence, we shall have to examine as to which of the accused-appellants caused which particular injury to the deceased or to the companions of the deceased.

21. Now, we may examine the evidence of the prosecution with a view to see, what actual part, if any, has been established against the accused appellants vis-a-vis the two deceased persons and the various injured persons. First of all, we may taken up the assault made on Mani Ram deceased. As stated already, he had only two injuries on his person and both had been caused by blunt objects. The F.I.R. contains an omnibus statement that all the accused-persons gave beating to him. This statement is obviously false since he had only two injuries. Had he be assaulted by ail the accused-appellants; he would have received a larger number of injuries. The statement of P.W. 3 Kana Ram is also of an omnibus nature and does not advance the prosecution case very much. P.W. 9 Rewat Ram has deposed that Chuna Ram gave a blow to Mani Ram. However, he does not state which of the two injuries had been caused by Chuna Ram to Mani Ram. In his police statement Ex. D. 2, he did not state about this assault and in porti on C to D of that statement stated that he did not know which of the accused caused injury to which person. P.W. 9 Gayad Ram, P.W. 11 Khinaya ram, P.W. 13 Babulal and P.W. 14 Naini have made omnibus statements that all the accused-appellants gave indiscriminate beating to Mani Ram. P.W. 17 Anni has deposed that Purkha Ram, Hama Ram and Chuna Ram assaulted "Anna Ram" with lathis: Most probably, she meant that these three accused-appellants

assaulted Mani Ram with lathis which landed on his head. However, in Ex. D. 7, she did not state that lathi blows hit Mani Ram on head.

Therein, she did speak of assault by these three accused-appellants on Mani Ram on being confronted with Ex.D.7; she could not explain the discrepancy. Hence, from this evidence, it cannot be predicated with any amount of any certainty as to which of the accused-appellants caused the two blows to Mani Ram.

22. This takes us to the consideration of assault on Heera, the other deceased. We have already described his injuries elsewhere. He received as many as ten injuries. Out of these, injury No. 5 was fatal. This injury had been caused on right side of the chest and had resulted in fractures of 7th, 8th and 9th ribs of the right side. Besides this injury, injury No. 3 on right arm and injury No. 6 on right leg were grievous while rests were simple. All the injuries on his person had been caused by blunt objects. None of the prosecution witnesses say as to who caused the fatal injury on the chest of this deceased, hence the author of the sole fatal injury on the person of Heera Lal is not known.

23. We may now examine the evidence regarding participation of accused-appellants on the person of Heera regarding other injuries we may state at once at cost of repetition of Anna Ram, Mools S/o Dana and Bhikha, who are said to have been armed with-solas has not been established at all. There was not a single sharp weapon injury on the person of this deceased.

24. P. W. 3 Kana Ram has deposed that Poosa Ram and Jeewan Ram dealt lathi blows to Heera Lal, which landed on his head. Purkha Ram dealt a lathi blow on the leg of Heera Lal. Thereafter all the accused-appellants started beating him with lathis, stones and Ballams (selas). Learned Counsel for the appellants criticized the testimony of this witness regarding overt act assigned to Purkha Ram and has pointed out that in Ex.D.7 his police statement Ex.D, 1, he did not specifically say that Purkha Ram dealt a blow on the leg of Heera Lal and Poosa Ram and Jeewan Ram dealt lathi blows on the head of Heera Lal. May be that P.W. 3 Kana Ram might not have noticed with precession on what parts of body blows of Poosa Ram, Jeewan Ram and Purkha Ram landed but their participation in the assault on Heera Lal is satisfactorily established and we accept this part of the testimony of Kana Ram as reliable that Poosa Ram, Jiwan and Purkha Ram participated in the assault on Heera Lal and gave him lathi blows. This part of his testimony is corroborated by the testimony of P.W. 8 Rewat Ram. A similar flow was pointed out in the evidence of Rewat Ram as in the testimony of Kana Ram. Participation of Poosa Ram and Jiwan Ram is further established by the testimony of Gayad Ram, Khinya Ram, Babu Lal and Anni. The evidence regarding participation of other appellants is of an omnibus nature and no particular injury to Heera has been established to have been caused by any particular accused.

25. Now, we may deal with the participation of the accused-appellants on the assault made on Kana Ram, Gayad Ram, Rewat Ram and Naini. Naini had only one external injury on her person but she complained of pain in her back also, as

stated by Dr. Ghodawat. The injury found on her body was simple. Besides omnibus participation of all the appellants, she does not state as to who caused her injuries. Her statement is to the effect that when she tried to rescue Rewat Ram, she also received injuries. She has deposed about assault by selas on Heera Ram but that statement is hardly reliable. Kana Ram had only one injury on his person viz. On the left parietal. He was unable to state who caused the injury to him. P.W. 8 Rewat Ram has ascribed this injury to accused Sona but admitted that this does not find mention in his previous police statement Ex. D.2. P.W. 9 Gayad Ram has stated that Kana Ram was beaten by all the accused-appellants. This statement can be hardly true looking to the fact that there was only one injury on the person of Kana Ram. The testimony of other witnesses is no better and does not advance the prosecution story any further.

26. P.W. 8 Rewat Ram and P.W. 9 Gayad Ram did receive six and ten injuries each respectively as noticed above. They are the best witnesses to speak regarding assault upon themselves. Rewat Ram speaks of an omnibus assault by all the accused-appellants on Mani Ram and says that when he went to rescue Mani Ram, he was also given beating but he does not state which of the appellants gave actual beating to him.

27. P.W. 9 Gayad Ram speaks of a lathi blow on his head at the well. This part of the story has not been shaken. He has ascribed this blow to Jiwan. He deposes that at the Guwad, he and Kana Ram kept standing and shouting upon which they were also beaten. He does not state which of the appellants participated in the actual assault upon him though he does name all the appellants in an omnibus manner to be assailants.

28. From what we have stated, we find that initially Rewat, Poosa, Jeewan, Mohan, Dheera, Moola S/o Dana, Moola S/o Baga, Hema S/o Baga and Amara had assembled at the well to fetch water. Out of them, Jeewan Ram, Dheera Ram, Mohan Ram and Poosa Ram were working the well. When Gayad Ram and Kana Ram reached the well and Gayad Ram filled one can, Jeewan Ram gave a lathi blow on his head crying that untouchable had defiled the well. It appears that at this Gayad and Kana must have raised some alarm at which Heera Lal, Mani Ram, Rewat Ram, Bairn, Naini and Anni came rushing. Both the parties assembled in the guwad. The other accused appellants must have been attracted by the, commotion and must have reached the spot. In the quarrel that ensued, Heera, Mani Ram, Kana, Gayad, Rewat Ram and Naini were assaulted and unfortunately Heera Lal and Mani Ram died due to this assault.

29. It appears that accused appellants Anna Ram, Bhikha Ram and Moola Ram S/o Dana Ram must not have participated in the assault at all. It is doubtful if they were at all members of the alleged unlawful assembly. They are alleged to have carried selas or Ballams. It is not the prosecution case that these accused used the selas from blunt sides. There was not a single injury on the persons of the two deceased or the injured persons from a sharp edged weapon. Hence, these three accused-appellants deserve to be acquitted of all the charges of which they

have been convicted by the learned trial court.

30. Now, we may state that accused-appellants Mohan Ram and Poosa Ram have died during the pendency of this appeal. We have before us a letter of S.H.O. Nagaur No. 402/16.1.90 dated 15.1.90 stating that Mohan Ram died about 2 years prior to the issue of the letter, which was addressed to Shri Niyazuddin Khan, Addl. Govt. Advocate, Jodhpur. There is another letter of Superintendent, Central Jail, Jodhpur No; Jud/J/Ex/1784 dated 10.1.90 addressed to Shri Niyazuddin Khan Addl. Govt. Advocate staffing that convicts poosa Ram died in jail on 14.12.89. In view of these fact, appeal in respect of aforesaid Mohan Ram and Poosa Ram abates and we need not pass any orders with regard to these two appellants.

31. Appellants Anna Ram, Bhikha and Moola Ram S/o Baga Ram appear to have been falsely implicated. When we have found that Anna Ram was falsely implicated, it would be difficult for us to accept the prosecution story that he committed any offence u/s 7 of the Civil Rights Protection Act. Hence, their convictions and sentences for all the charges deserve to be set aside. We accept this appeal altogether so far as these three appellants are concerned and we acquit them of all the charges for which they were convicted.

32. This leaves us with accused-appellants Magha Ram, Moola Ram S/o Baga Ram, Rewat Ram, Amrra Ram, Dheera Ram, Chuna Ram, Hema Rani, Jeewan Ram and Purkha Ram, Jeewan Ram, Poosa Ram, Dheera Ram and Mohan Ram have been convicted for offence u/s 4 of the Civil Rights Protection Act. It does not appear that any accused-appellant other than Jeewan Ram can be convicted for this charge. It was Jeewan Ram alone, who started the Trouble by saying that the untouchable has defiled the well. It does not appear that Poosa Ram, Dheera Ram and Mohan Ram joined him in this Hence their convictions on this charge were not proper. Poosa Ram and Mohan Ram having died no orders are required with regard to them. Dheera Ram is acquitted of offence u/s 4 of the Civil Rights Protection Act. However, conviction of Jeewan Ram on this count is affirmed.

33. Conviction of Magha Ram, Moola Ram S/o Baga Ram, Sona Ram, Rewat Ram, Amara Ram, Dheera Ram, Chuna Ram, Hema Ram, Jeewan Ram and Purkha Ram for offence u/s 147.I.P.C. is justified and calls for no interference. However, conviction of these appellants for offence u/s 302 read with Section 149.I.P.C. and 307 read with Section 149.I.P.C. cannot be sustained and each one of them is acquitted of the two charges and sentences passed on them on these charges are set aside. But the conviction of all these appellants for offence u/s 325 read with Section 149 I.P.C. is correct and calls for no interference. Conviction of all these appellants for offence u/s 323, I.P.C. is, however, not correct and only appellants Jeewan Ram and Purkha Ram can be convicted for offence u/s 323, I.P.C. However, for the rest of the appellants conviction for offence u/s 328, I.P.C. deserves to be altered for offence u/s 323/149, I.P.C. and we do alter the same as such.

34. Now comes the question of sentence: Magha Ram, Moola ram s/o Baga Ram, Sona Ram, Rewat Ram, Amara Ram, Dheera Ram, Chuna Ram, Hema Ram, Jeewan Ram, and Purkha Ram were arrested in June, 1981. Magha Ram, Moola Ram S/o Baga ram and Sona Ram were released on bail on 26.8.81 and were taken back in custody on 28.5.82. They were again released on bail on suspension of their sentences on 5.8.82. Rewat ram, Amara Ram, Dheera Ram were also arrested in June 1981 and were released on bail on 26.8.81. They were taken back in custody on 28.5.82. But were again released on bail on 9.1.84. Chuna Ram was also arrested in June 1981 but was released on bail on 5.8.82. Hema Raj, Jeewan Ram and Purkha Ram were also arrested on 27.6.81 and are still behind bars. In our opinion, the sentences of each one of the appellants deserve to be reduced to the terms already undergone by them. However, Hema Ram, Jeewan Ram and Purkha Ram have undergone imprisonment for more than five years, the maximum term for which they could have been sentenced for offence u/s 325 read with Section 149, I.P.C. Hence, their sentences on this count are reduced to the aforesaid term of five years and they shall be released forthwith, if not required in any other case. The other appellants, who are on bail, need not surrender and their bail bonds are discharged.