

(2015) 08 RAJ CK 0117
In the Rajasthan High Court
Case No : Criminal Appeal No. 25 of 2006

Ram Lal and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 157, 161, 313
Penal Code, 1860 (IPC) — Section 147, 149, 300, 302, 304

Citation : (2015) 08 RAJ CK 0117

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : A.K. Gupta assisted by Chandrakala Sahu and Rajesh Choudhary, for the Appellant; Alladdeen Khan, Public Prosecutor, Advocates for the Respondent

Final Decision : Disposed off

Judgement

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Kanwaljit Singh Ahluwalia, J—Yadram and his four sons namely Ramlal, Pappu @ Laxmi Narayan, Bobby @ Virendra and Pawan, along with Nakul and Naresh both sons of Lalaram and Pappu @ Bucha S/o. Babulal were sent for trial in a case arising out of FIR No. 423/96 registered at Police Station Kotwali Deeg, District Bharatpur. During the course of trial, Yadram, Nakul and Pappu @ Bucha died, therefore, the proceedings were dropped against them. Pawan being delinquent juvenile in conflict with law, was sent for trial before the concerned Juvenile Justice Board. The court of Additional Sessions Judge (Fast Track) No. 5, Bharatpur vide impugned judgment dated 12.12.2005, substantively convicted Ramlal for the offences under Sections 302, 323, 325/149, 147 IPC, whereas, three co-accused namely Pappu @ Laxmi Narayan, Bobby @ Virendra, Naresh were convicted for the offences under Sections 302/149, 325/149, 323, 147 IPC.

2. The trial court having convicted the accused appellants for the aforesaid offences, vide a separate order of even date sentenced them as under:-

"U/s 302 or 302/149 IPC- to undergo life imprisonment and to pay a fine of Rs. 5,000/-, in default of payment of fine to further undergo one year S.I.

U/s 323 IPC- to undergo six months S.I. and to pay a fine of Rs. 5,00/-, in default of payment of fine to further undergo fourty-five days S.I.

U/s 325/149 IPC- to undergo five years R.I. and to pay a fine of Rs. 2,000/-, in default of payment of fine to further undergo six months S.I.

U/s 147 IPC- to undergo one year R.I. and to pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo three months S.I."

3. Aggrieved against their conviction and sentence, the present appellants have preferred the present appeal assailing their conviction pronounced and sentence awarded by the trial court.

4. To secure conviction of the appellants, the prosecution has examined nineteen witnesses and has further proved on record the documents Exhibit-P/1 to Exhibit-P/32. Thereafter, statements of the accused were recorded under Section 313 Cr.P.C. They denied all the incriminating circumstances put to them and in defence produced three witnesses namely Handu Ram (D.W.1), Ramesh Chand (D.W.2) and Girraj Prasad (D.W.3). The defence has also relied upon the documents from Exhibit-D/1 to Exhibit-D/10. Exhibit-D/1 to Exhibit-D/6 are primarily the statements of the witnesses recorded under Section 161 Cr.P.C. by the police. Exhibit-D/7 is the injury report of Pappu @ Laxmi Narayan, Exhibit-D/8 is initial version which has been recorded in Kalandra under Section 107, 151 Cr.P.C. by the Investigation Officer, Exhibit-D/9A is the site plan of the place of occurrence relied by the accused and Exhibit-D/9 is tress map of site place, whereas Exhibit-D/10 is the sanction of prosecution for complainant Gopal Prasad for adulteration of Khoya used for making sweets.

5. Gopal Prasad Jain (P.W.1) and Kistoor Chand (P.W.12) are brothers. In the occurrence, Naresh S/o. Kistoor Chand due to injuries suffered on 11.9.1996 at 9:30 had succumbed to death on 18.9.1996. On the person of the deceased Naresh, two injuries were found. Injury No. 1 was on the head attributed to the appellant Ramlal, who has been substantively convicted for the offence under Section 302 IPC and another injury which is simple wound has not been attributed to any accused. Besides the deceased Naresh, in the occurrence Gopal Prasad Jain (P.W.1), his wife Sushila (P.W.2), Govind Prasad (P.W.3), Dinesh Chand Jain (P.W.4) sons of Kistoor Chand (P.W.12) had also received injuries. In the occurrence, Kistoor Chand (P.W.12) had also received injuries. Prakash Chand (P.W.5) not related to other injured witnesses had also received injuries. Besides these injured witnesses, Gopal Prasad Jain (P.W.1), Sushila (P.W.2), Govind Prasad (P.W.3), Dinesh Chand (P.W.4), Prakash Chand (P.W.5) and Kistoor Chand (P.W.12), Mohan Lal (P.W.6) non-injured has also been cited as witness.

6. The criminal proceedings in the present case were set into motion on the basis of statement (Exhibit-P/1) of Gopal Prasad Jain (P.W.1) recorded by Gordhan

Singh (P.W.19), who was then posted as SHO, Police Station Kotwali Deeg. The said statement (Exhibit-P/1) made by Gopal Prasad Jain (P.W.1) was recorded on 11.9.1996 at 11:00 PM at Government Hospital, Deeg, on the basis of which a formal FIR (Exhibit-P/32) bearing No. 423/96 was registered at Police Station Kotwali Deeg on 11.9.1996 at 11:30 PM. The special report had reached Additional Chief Judicial Magistrate, Deeg on 13.9.1996 at 11:00 AM. The statement (Exhibit-P/1) when translated into English reads as under:-

"Today on 11.9.1996 at about 9:30 PM, I was sitting on my Halwai shop (Sweets maker shop). Yadram came on my shop and asked as to why words were exchanged with Laxmi Narayan . Meanwhile, Naresh, Ramlal, Laxmi Narayan, Virendra, Pappu @ Bucha and Nakul came armed with lathis and Ballam. Ramlal gave injury with Ballam on my head. Others caused injuries with lathi. Naresh, Om Prakash and Kistoor Chand came forward to save me. They were also caused injuries with lathis and ballam. I was dragged and thrown on the road. I became unconscious. My wife Sushila was also given beating.

Sd/-

Gopal Prasad Jain"

7. Dr. P.C. Vyas (P.W.11) on 18.9.1996 at 1:35 PM, conducted autopsy on the dead body of Naresh and as per Post Mortem Report (Exhibit-P/8) had found following two injuries on the person of Naresh:-

"(i) Diffuse swelling at mid-parietal region, upto left parietal region.

(ii) Faint bruise 6 x 2cm, greenish-yellow in colour, present on left side chest antero-laterally middle 1/3rd."

As already stated, injury No. 1 is specifically attributed to Ramlal and author of injury No. 2 is not known, which is a simple injury being a faint bruise.

8. It will be pertinent to mention that doctor who conducted medico-legal examination on the person of Naresh, was not examined by the prosecution in the trial which commenced de novo.

9. Dr. Govind Singh (P.W.18) on 12.9.1996 had examined Gopal Prasad Jain (P.W.1) and as per injury report (Exhibit-P/3), had found following injuries on his person:-

"(i) Lacerated wound with swelling (4cm x 2cm) 2cm x 1/2 cm, deep bone, on the parietal aspect of scalp right side.

(ii) Bruise, 4cm x 4cm, red colour, on the left elbow.

(iii) Bruise, 6cm x 4cm, red colour, on the left forearm upper one-third.

(iv) Bruise, 4cm x 4cm, red colour, in the left wrist.

(v) Bruise, 4cm x 4cm, red colour, on the right forearm, lower third.

- (vi) Bruise, 3cm x 2cm, left upper third, red colour, simple blunt.
- (vii) Bruise, 4cm x 4cm, red colour, on the left ankle.
- (viii) Bruise, 4cm x 4cm, red colour, upper part of interscapular area, right side.
- (ix) Bruise, 4cm x 4cm, red colour, on the right scapular area, simple, blunt.
- (x) Bruise, 4cm x 4cm, red colour, on the left scapular area, simple, blunt."

Injury Nos. 5 and 7 were advised X-ray. Subsequently, injury No. 7 on left hand was declared grievous.

10. Dr. Govind Singh (P.W.18) had also examined Govind Prasad Jain (P.W.3) and as per injury report (Exhibit-P/4) had found following injuries on his person:-

- "(i) Bruise, 2cm x 2cm, red colour, on the left thigh, simple blunt.
- (ii) Complaint of pain teeth, no external injury."

Injury No. 1 was on the left thigh and injury No. 2 had no external mark of injury.

11. Dr. Govind Singh (P.W.18) vide injury report (Exhibit-P/5) also examined Dinesh Chand (P.W.4) and had found following one injury on the right hand, which was declared as grievous:-

"Swelling with 6cm x 4cm, red colour on the right forearm, lower third."

12. Govind Singh (P.W.18) on the said date and time also examined Sushila (P.W.2) and as per injury report [Exhibit-P/5 (twice numbered)] had found following injuries on her person:-

- "(i) Bruise, 4cm x 2cm, red colour, on the dorsum of right hand.
- (ii) Bruise, 4cm x 4cm, red colour, on the right wrist joint.
- (iii) Bruise, 4cm x 4cm, red colour, on the right shoulder joint.
- (iv) Bruise, 5cm x 2cm, on the left forearm, lower third, red colour.
- (v) Bruise, 6cm x 2cm, red colour, on the left thigh lower third.
- (vi) Bruise, 3cm x 2cm, red colour on the right leg upper third."

Injury No. 1 on right hand was declared grievous.

13. Dr. Govind Singh (P.W.18) had also examined Prakash Chand and as per injury report (Exhibit-P/6) had found following injuries on his person:-

- "(i) Bruise, 2cm x 2cm, red colour, on the forehead left side.
- (ii) Bruise, 2cm x 2cm, red colour on the forehead right side."

14. On 21.9.1996, this witness (P.W.18) also examined Kistoor Chand (P.W.12) and as per injury report (Exhibit-P/7) had found following injuries on his person:-

"(i) Swelling 6cm x 4cm, tenderness on the left foot, Advised X-ray, faint brown colour.

(ii) Lacerated wound in the healing phase, 2cm x 1/4 cm, with mid gliztining scab formation at the corner of the wound, simple, blunt on the back right side."

15. In the cross-examination, Govind Singh (P.W.18) admitted that on 12.9.1996, at 12:40 AM, on the intervening night of 11th and 12th September, 1996, he had examined Laxmi Narayan Yadav @ Pappu Yadav and as per injury report (Exhibit-D/7) had found following injuries on his person:-

16. From a perusal of the above injury report, it is revealed that injury No. 1 is on the head and injury No. 2 is bleeding from the nose due to injury caused. In the statement (Exhibit-P/1) leading to registration of FIR (Exhibit-P/32) nothing has been mentioned regarding the injuries suffered by Pappu @ Laxmi Narayan.

17. Gopal Prasad Jain (P.W.1) in the court deposed that on 11.9.1996 at 9:30 PM, he was sitting on his shop. Yadram came and asked him as to why he had an altercation with Laxmi Narayan. Laxmi Narayan had come in the day time to purchase sweets and due to non-payment a dispute had arisen. Laxmi Narayan left the shop after giving a threat. This witness further stated that all the eight accused came armed with lathis and dandas. Yadram gave an injury on his head and Bobby caused injury with danda on his right hand and thereafter he was dragged towards Nai Sarak. This witness stated that meanwhile Naresh came and Ramlal caused injury on the head of Naresh. Thereafter, all accused caused injuries to Naresh. Pawan caused injury with lathi to Dinesh due to which his hand was fractured. Thereafter, witnesses came to police station and from there to hospital. This witness stated that he has not stated in the statement recorded by the police that due to nonpayment of sweets purchased, a dispute has arisen with Laxmi Narayan @ Pappu. This witness also stated that the occurrence had taken place in front of his residential house, then witness qualified that the dispute had arisen at the shop and had concluded in front of his house. This witness stated that the accused had dragged him from shop towards his house. We will reproduce the following portion of the testimony of witness in vernacular version as under:-

18. A pointed question was asked to the witness (P.W.1) regarding injury suffered by the accused Laxmi Narayan @ Pappu. This witness stated that he is not aware who caused injuries to Laxmi Narayan @ Pappu. This witness denied the suggestion that they had caused injuries to Laxmi Narayan @ Pappu in the occurrence and in his defence other co-accused had caused injuries to the complainant party. We will reproduce the exact words of the witness as under:-

19. Sushila (P.W.2) wife of Gopal Prasas Jain (P.W.1) stated in the court that son of elder brother of husband was beaten. Yadram was armed with danda and Ramlal was armed with lathi. At that time, this witness and three sons of elder brother of her husband namely Govind, Dinesh and Naresh came forward to save her husband. This witness in cross-examination stated that beating had started

in front of their shop. Thereafter, further beating was given in front of their house. This witness in cross-examination further stated that she is not aware whether she has narrated the names of assailants who caused injuries to Naresh or not.

20. We need not notice the testimony of other eyewitnesses as suffice it say that no witness had explained injuries on the person of Laxmi Narayan @ Pappu and all the witnesses had attributed injury on the head of Naresh to Ramlal, which had proved fatal.

21. What is material for us to note is contents of Kalandra (Exhibit-D/8) submitted by the Investigating Officer Gordhan Singh (P.W.19) on the date of occurrence against Yadram, Laxmi Narayan @ Pappu, Ramlal and Nakul the accused. In Kalandra (Exhibit-D/8) submitted in security proceedings to prevent breach of peace, it is specifically stated that on information received on 11.9.1996, at 9:30 PM, Investigating Officer had reached at the spot and at that time, four accused namely Yadram, Laxmi Narayan @ Pappu, Ramlal and Nakul were causing injuries to Gopal Prasad Jain (P.W.1), Naresh and their family members. The said Kalandra (Exhibit-D/8) further stated that Gopal Prasad Jain (P.W.1), Naresh deceased, Govind also received injuries and in the occurrence accused Laxmi Narayan @ Pappu, Ramlal and Nakul also had marks of various injuries on their body. To us, Kalandra (Exhibit-D/8) prepared on the date of occurrence is first official document which had preceded reaching of special report to ACJM Deeg. The special report had reached the Illaqa Magistrate on 13.9.1996 at 11:00 AM. It is to be noted that Kotwali Deeg, residence of ACJM, Deeg and his court are situated in close vicinity as Deeg is a small town. Kalandra (Exhibit-D/8) specifically stated that four accused namely Yadram, Laxmi Narayan @ Pappu, Ramlal and Nakul were arrested at the spot to prevent further breach of peace.

22. The Hon"ble Supreme Court in the case of Bijoy Singh and Another Vs. State of Bihar, AIR 2002 SC 1949 : (2002) CriLJ 2623 : (2002) 2 Crimes 437 : (2002) 1 JT 372 Supp : (2002) 3 SCALE 592 : (2002) 9 SCC 147 : (2002) 3 SCR 179 : (2002) 1 UJ 749 : (2002) AIRSCW 1873 : (2002) 4 Supreme 362 , while considering the effect of delay in reaching of special report, has observed as under:-

"6. This Court in Meharaj Singh (L/Nk.) v. State of U.P. held that FIR in a criminal case and particularly in a murder case, is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used as also the names of the eyewitnesses, if known to the informant. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought.

7. Sending the copy of the special report to the Magistrate as required under

Section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. (Emphasis supplied). Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. (Emphasis supplied). It is always for the prosecution to explain such a delay and if tendered, no adverse inference can be drawn against it.

8. In the instant case, the copy of the report referred to in Section 157 CrPC is shown to have been received by the Magistrate on 27-8-1991. Even though there is a mention in the FIR that its copy was sent through special messenger, yet no date or time of sending the said report is mentioned. The Magistrate, receiving the copy of the report, has also not noted the time of its receipt on 27-8-1991. We are of the opinion that the Magistrate receiving reports under Section 157 CrPC, particularly when it relates to the commission of the heinous crime are required to note not only the date but also the time of the receipt of the copy thereof. Mr. B.B. Singh, learned counsel appearing for the State has pointed out the existence of various circumstances which may perhaps be the cause of delay in sending the copy of the report and its receipt by the Magistrate but surely there is a difference between the "may be" and "must be". The prosecution has apparently failed to explain the delay in sending the copy of the said report in terms of Section 157 CrPC to the Magistrate of the area. This aspect has been highlighted by the learned counsel for the appellant to contend that many of the accused were innocent and wrongly roped in the case allegedly on account of enmity existing between the complainant and the accused party. There is some substance in such a submission."

23. Therefore, taking into consideration delay in reaching of special report and the fact that Kalandra (Exhibit-D/8) was prepared on 11.9.1996 around the time of occurrence, i.e. 9:30 PM, we will take into consideration Kalandra (Exhibit-D/8) so far presence of four accused Yadram, Ramlal, Laxmi Narayan @ Pappu and Nakul is concerned. Therefore, by implied inference we hold that Bobby @ Virendra and Naresh now convicted by the trial court were later introduced as accused by widening the net and we have no hesitation to hold Bobby @ Virendra and Naresh appellants are victims of over implication. Thus, placing reliance upon Kalandra (Exhibit-D/8) and delay in reaching of special report, we shall extend benefit of doubt to them as a matter of abundant caution.

24. Now, we are left with the case of two appellants Ramlal and Laxmi Narayan @ Pappu.

25. With due assistance rendered by Mr. A.K. Gupta assisted by Ms. Chandrakala Sahu, the learned counsel appearing for the appellants, Mr. Alladdeen Khan, the learned Public Prosecutor and Mr. Rajesh Choudhary learned counsel appearing for the complainant, we have analyzed the case of prosecution and the defence.

26. Admittedly, as per prosecution on 11.9.1996 at 9:30 PM, Laxmi Narayan @ Pappu was sitting at his Halwai shop. Then Yadram came and raised a protest as to why an altercation had taken place with Laxmi Narayan @ Pappu. A perusal of the site plan (Exhibit-D/9) relied by the defence reveals that the residential house of Gopal Prasad Jain (P.W.1) and accused are situated nearby. In court Gopal Prasad Jain (P.W.1) stated that the occurrence had also taken place in front of his house. To explain departure regarding the place of occurrence in the FIR, both Gopal Prasad Jain (P.W.1) and Sushila (P.W.2) have stated that the occurrence started at the shop and continued opposite their house. The accused in defence have stated that Gopal Prasad Jain (P.W.1) who is running a Halwai Shop (Sweets making shop) was being prosecuted for selling adulterated sweets. To lend corroboration to the defence version, our attention has been drawn to the document Exhibit-D/10.

27. What is material for us to be noted is the admission made by Investigating Officer, Gordhan Singh (P.W.19) in his cross-examination. The cross-examination of Gordhan Singh (P.W.19) in the court reads as under:-

28. Gordhan Singh (P.W.19) had identified the signatures of S.I. Sri Ram Yadav, who had prepared Kalandra (Exhibit-D/8). He had admitted that it is noted in the Kalandra (Exhibit-D/8) that in the occurrence Laxmi Narayan @ Pappu, Ramlal and Nakul had suffered injuries. No medical report qua Ramlal and Nakul has been brought on record. Further as per Exhibit-D/7, Laxmi Narayan @ Pappu had suffered eleven injuries, out of which Injury No. 1 was a head injury and injury No. 2 was bleeding from the nose. Injuries on the person of Laxmi Narayan @ Pappu have not been explained by the prosecution.

29. The learned counsel for the appellants has rightly relied upon the case of Lakshmi Singh and Others Vs. State of Bihar, AIR 1976 SC 2263 : (1976) CriLJ 1736 : (1976) 4 SCC 394 : (1976) SCC(Cri) 671, wherein the Hon'ble Apex Court has held that if the injuries on the person of accused are not explained, it is to be assumed that prosecution has suppressed genesis and origin of the occurrence and, thus, it is urged before us that, we should record the acquittal of the accused appellants.

30. The relevant Paras of the aforesaid judgment are as under:-

"This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabalise the plea

taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In *Puran Singh v. The State of Punjab* Criminal Appeal No. 266 of 1971 decided on April 25, 1975 : which was also a murder case, this Court, while following an earlier case, observed as follows:

In *State of Gujarat v. Bai Fatima* Criminal Appeal No. 67 of 1971 decided on March 19, 1975 :) one of us (Untwalia, J., speaking for the Court, observed as follows:

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

- (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

31. In the present case, Ramlal is substantively convicted for the offence under Section 302 IPC and Laxmi Narayan @ Pappu who had suffered injuries in the

occurrence have offered no defence version. It is true that the prosecution has suppressed the origin and genesis of the occurrence. Due to lack of any defence version projected by the accused, we can only say that both the sides have minimized their role and have exaggerated the role of other side. Both the sides have scant regard for truth and they have not come to the court with clean hands.

32. Therefore, at best, we can say that due to initiation of prosecution for adulteration of Khoya, Gopal Prasad Jain (P.W.1) was having a grudge against the accused party. Similarly, due to the earlier incident, in which an altercation had taken place between Gopal Prasad Jain (P.W.1) and Laxmi Narayan @ Pappu, accused party was also brooding. Thus, we cannot determine as to which party was aggressor. However, we can safely say that when the parties came in front of each other, a mutual conflict had developed and a sudden fight had erupted without any pre-mediation. It is a different matter that the accused party came better of the complainant party and had caused more injuries. But needless to say that the accused party had not taken undue advantage and have also not acted in a cruel manner. Thus, on the spur of a moment, sudden fight had ensued.

33. It was held by the Hon"ble Supreme Court in the case of Jumman and Others Vs. The State of Punjab, AIR 1957 SC 469 : (1957) CriLJ 586 as under:-

"(24). In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under S.300, I.P.C., Exception 4.

(25). The matter has to be viewed in this way. It is clear that there was no pre-meditation and therefore when the contending factions met accidentally and attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence Exception 4 to S.300, I.P.C., applies with the result that the offence is under S.304 (Part I), I.P.C."

34. A Division Bench of this Court in Buddhi and Others Vs. State of Rajasthan, (2006) 3 RLW 1950 : (2006) 3 WLC 217 , relying upon Dharman Vs. State of Punjab, AIR 1957 SC 324 : (1957) CriLJ 420 held as under:-

"13. Coming to the incident that occurred with deceased Saltu we find that he sustained injuries in the course of sudden fight ensued in the field of accused party. The complainant party was also armed with deadly weapons and as many as eight accused persons received lacerated and incised wounds on the vital parts. In Dharman Vs. State of Punjab, AIR 1957 SC 324 : (1957) CriLJ 420 the

Supreme Court held that when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner and that the case against the accused falls within Exception 4 of Section 300 of the Indian Penal Code and the accused who caused the injury was guilty under Part I of Section 304 and not under Section 302 of the Indian Penal Code."

35. Having held that it was a sudden fight, in which parties came to blows, considering that Ramlal had caused only a solitary blow on the head of Naresh, and a simple injury on the chest of Naresh has not been attributed to him out of two injuries suffered by the deceased Naresh, we are of the view that offence qua Ramlal will fall under Section 304-I IPC and not under Section 302 IPC. None of the grievous injury suffered by the injured falling within the ambit of Section 325 IPC is attributed to Laxmi Narayan @ Pappu, thus, he is liable for his individual role, which will fall under Section 323 IPC.

36. Consequently, we set aside the conviction of the appellant Ramlal for the offence under Section 302 IPC and convict him for the offence under Section 304-I IPC. As a result thereof, we set aside the life imprisonment awarded upon the appellant Ramlal and sentence him to undergo ten years R.I and to pay a fine of Rs. 10,000/-, in default of payment of fine to further undergo one year R.I.

37. We maintain the conviction and sentence of the appellant Laxmi Narayan @ Pappu for the offence under Section 323 IPC, however, we acquit him of other offences.

38. As recorded earlier that it cannot be ruled out that appellants Bobby @ Virendra and Naresh can be victims of over implication, for reasons divulged by us, we accept appeal on their behalf by setting aside their conviction and sentence, by acquitting them of the charges.

39. In the above terms, present appeal is disposed of qua Ramlal and Laxmi Narayan @ Pappu.