
(2014) 05 SHI CK 0167
In the High Court Of Himachal Pradesh
Case No : Cr. A. No. 5 of 2011

Ran Singh and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2014) 05 SHI CK 0167

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

Bench : Division Bench

Advocate : Satyen Vaidya, Advocates for the Appellant; M.A. Khan, Additional Advocate General, Advocates for the Respondent

Judgement

Rajiv Sharma, J.—This appeal is directed against the judgment dated 20.12.2010 passed by learned Additional Sessions Judge, Fast Track Court, Shimla, H.P., in Sessions Trial No. 22-S/7 of 2009, whereby accused/appellants, namely, Ran Singh, Sarita Alias Pingla Devi and Sunita alias Babli (hereinafter referred to as the accused for the sake of convenience), who were charged with and tried for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code, were convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each.

2. The case of the prosecution, in a nutshell, is that deceased Vikram Singh had come to village Charaj, Tehsil Chopal along with his wife, Sarita alias Pingla Devi, Onkar Jaswal his friend, Chakkar Bahadur and his wife Sunita alias Babli and their children to attend the marriage of cousin of wife of deceased Vikram Singh from Moli Jagra, Chandigarh. All of them came together from Chandigarh in a vehicle. They were to return back to Chandigarh on 14.5.2009. The deceased Vikram Singh had requisitioned the vehicle of PW3 Kanhiya Lal in which they had come from Chandigarh.

3. P.W. 1, Kamlesh Devi, complainant, was resident of village Charaj and her house was situated nearby house of Mast Ram, father of accused Sarita and Sunita. According to her, on 14.5.2009, at about 7.00 A.M., she was going to cut grass from her field as the passage of the field was from the back side of house of Mast Ram. She heard cries of a man, "HAI MAA". She rushed to the house of Mast Ram and found that all the accused were beating Vikram Singh with fists and kicks. Vikram Singh was lying on the floor unconscious. Accused Sarita and Sunita told her to go away. Accused Sarita also pushed her and ousted her out of the room and closed the door. P.W. 1 Kamlesh Devi came to the village and disclosed the incident to the villagers. PW2 Sukh Ram and Dula Ram went to the house of accused Sarita Devi, but they were told by the accused not to intervene in the matter. At about 11.00 A.M., accused Sarita Devi and Mast Ram were found carrying Vikram Singh on a chair. His face was covered with chunni. P.W. 12 Virender Singh telephonically informed the Police Station, Chopal. A "nakka" was laid in Chopal Bazaar. A car bearing registration No. CH-02T-1831 came from Nerwa side. It was intercepted and checked by the police party headed by P.W. 14 ASI Sapinder Singh. Vikram Singh was found lying in the lap of his wife accused Sarita motionless and Surtu Devi was sitting with them on the back seat. Chakkar Bahadur, accused Sunita, Onkar Jaswal and Mast Ram were also the occupants of the vehicle along with PW3 Kanhiya Lal, driver. They were taken to hospital at Chopal and it was found that Vikram Singh was already dead. P.W. 14 Sapinder Singh prepared the inquest report. He visited the spot with PW9 HHC Ganga Ram. Statement of P.W. 1 Kamlesh Devi was recorded under Section 154 Cr.P.C., on the basis of which an FIR was registered.

4. On 18.5.2009, accused Sarita Devi made a disclosure statement under Section 27 of the Indian Evidence Act, leading to recovery of a wooden plank (kuman), which was used in inflicting injuries to Vikram Singh in the presence of Kirpa Ram and Param Ram. As per the autopsy report, deceased died immediately due to ante-mortem injuries. The injuries were possible with the help of wooden plank, fist and kick blows. The Investigating Officer found that on 14.5.2009, a quarrel was taking place between Vikram Singh and his wife accused Sarita. Accused Ran Singh, who was sleeping in the adjoining room, went there along with accused Sunita. All of them in furtherance of common intention of each other committed murder of Vikram Singh. The investigation was completed and the challan was put up in the court after completing all the codal formalities.

5. The prosecution examined as many as sixteen witnesses in support of its case. The accused were examined under Section 313 Cr.P.C.. The accused admitted that deceased Vikram Singh was husband of accused Sarita, accused Ran Singh was real maternal uncle of accused Sarita and accused Sunita was real sister of accused Sarita. They also admitted that the deceased Vikram Singh had come to village Charaj along with other relatives and his friend Onkar Jaswal to attend marriage in a vehicle of PW3 Kanhiya Lal. They denied that they gave beatings to deceased Vikram Singh in a room, which was witnessed by P.W. 1 Kamlesh Devi. However, they admitted that the deceased Vikram Singh was taken in a vehicle,

which was intercepted by the police at Chopal Bazaar. The accused also produced two witnesses in their defence. Learned Additional Sessions Judge, Fast Track Court, Shimla, convicted and sentenced the accused vide judgment dated 20.12.2010. Hence, the appeal.

6. Mr. Satyen Vaidya, learned Advocate, has vehemently argued that the prosecution has failed to prove its case against the accused. In the alternative, he also argued that since the fight had ensued at the spur of moment, the case would fall within ambit of Section 304-II of the Indian Penal Code and not Section 302 of the Indian Penal Code.

7. Mr. M.A. Khan, learned Additional Advocate General, has supported the impugned judgment dated 20.12.2010.

8. We have heard learned counsel for the parties and have also gone through the impugned judgment and record carefully.

9. P.W. 1, Kamlesh Devi, deposed that on 13.5.2009, at 7.00 A.M., she was going to cut grass. The path for going to her fields was from the back side of the house of Mast Ram. When she reached near the house of Mast Ram, she heard noise. A man was crying "HAI MAA". She went to the house of Mast Ram. A man was being beaten up by the accused Ran Singh, Sarita and Sunita with fist and kick blows. He was lying unconscious on the floor. When she witnessed the incident in the room of house of Mast Ram, accused Sarita asked her to go away from the spot. She was pushed out of the room by accused Sarita. All the accused shut door of the room. She went to the village and narrated the incident to Sukh Ram and Dula Ram that a fight had taken place in the house of Mast Ram. She accompanied Sukh Ram and Dula Ram to the house of Mast Ram. They were not allowed to enter the house of Mast Ram by the accused. In cross-examination, she deposed that houses of Sukh Ram and Dula Ram were near her house.

10. PW2, Sukh Ram, deposed that Dula Ram was his cousin. On 14.5.2009, he and Dula Ram were helping the mason in order to lay the roof of new house. At about 7.00/7.15 A.M., Kamlesh Devi called them and disclosed that a fight was taking place in the house of Mast Ram. She also told that Vikram was being beaten up by the accused Ran Singh, Sarita and Sunita and they should go to save him. He along with Dula Ram went to the house of Mast Ram. All the accused were standing in the verandah of the house. They were not allowed to come inside the room by the accused. Thereafter, they returned to their house. At about 11.00 A.M., he saw that Vikram Singh was being carried on a chair by Surtu and Mangat Ram towards the road side. Vikram was covered with a cloth. In cross-examination, he deposed that there were about 20-25 houses in his village. According to him, no quarrel took place in his presence. He did not know that a quarrel took place between husband and wife. He also did not know that Surtoo was confined to a room by Ramesh Chand finding her alone.

11. PW3, Kanhaiya Lal, deposed that he was driver of Tavera Car No. CH-02T-1831. On 10.5.2009, Vikram Singh came to taxi stand and got a vehicle

booked for going to village Charaj, Tehsil Chopal. He did not know Vikram Singh prior to 10.5.2009. According to him, on 11.5.2009 at about 8.30 A.M., he dropped Vikram Singh, his wife, sister-in-law, her husband, their children and one Onkar Singh, friend of Vikram Singh, at village Charaj. He went back to Chandigarh. On 13.5.2009, at about 2.00 P.M., Vikram telephoned him and asked him to come to Charaj to bring him and his family members back to Panchkula. Thereafter, on 14.5.2009, he left Manimajra for village Charaj. When he reached at Theog, wife of Vikram telephoned him and asked him to reach Charaj at the earliest because Vikram was serious and he was to be taken to Chandigarh for treatment. When he reached village Charaj, Onkar Singh was standing on the road. After seeing him, Onkar Singh telephone someone at Charaj and informed that the vehicle had come. After 15-20 minutes, Vikram Singh was brought on a chair to the road. He inquired from his wife what happened. Accused Sarita told that a quarrel took place between them and they would get Vikram treated at Chandigarh.

12. PW4, Kirpa Ram, deposed that he was Pradhan of Gram Panchayat Dhawas. On 18.5.2009, he and Param Singh, Up-Pradhan had gone to Chopal. They went to Police Station in connection with some personal. Accused Sarita Devi was in custody of the police. She made a disclosure statement that the "fatta" used at the time of fight was lying in the house of Mast Ram. The accused put her thumb impression on Ext. PD. The accused Sarita led the police party to village Charaj. The accused Sarita Devi took out a "fatta" from the floor. It was taken into possession by the police vide memo Ext. PE.

13. PW5, Dr. Dev Dutt Sharma, deposed that on 14.5.2009 on the application of police, Ext. PW5/A, Vikram Singh was medically examined. He found that the pulse was absent. Vikram Singh was declared dead and was referred to the Forensic Department, IGMCI, Shimla to ascertain cause of death. On 15.5.2009, an application, Ext. PW5/B was moved by the police for medical examination of all the accused. According to him, no injuries were found on the person of Sarita and Sunita. However, he found following injuries on the person of Ran Singh:--

"1. Deep abrasion in the left hand middle finger in the distal phalanx region. Size was 2 cm x 1 cm.

2. Bruise in the right heel upper medial side, size 3 cm x 1.5 cm. Bluish brown in colour."

He issued MLCs, Exts. PW5/C to Ext. PW5/E relating to accused Ran Singh, Sarita and Sunita respectively. In cross-examination, he deposed that duration of the injuries found on the person of accused Ran Singh was 24 to 48 hours.

14. PW6, Tej Singh Chandel, deposed that he visited the spot and prepared the map, Ext. PW6/A.

15. PW7, HHC Ratti Ram, testified that on 14.5.2009, driver Kanhaiya Lal produced vehicle No. CH-02T-1831 and its documents before ASI Sapinder

Singh. The same were taken into possession vide memo Ext. PB.

16. PW8, Lady Constable Pushpa Devi, deposed that on 14.5.2009 at about 11.45 A.M., a telephonic information was received by the SHO, on the basis of which, Rapat No. 17 was entered by her vide Ext. PW8/A.

17. PW9, Ganga Ram, deposed that after lodging Rapat No. 17, Ext. PW8/A, he and ASI Sapinder Singh etc. went to Chopal Bazaar and intercepted Taxi No. CH-02T-1831. An injured and 7-8 other persons were travelling in the vehicle. The taxi was taken to the hospital. The injured was examined by the doctor and he was declared dead. Thereafter, he and ASI Sapinder Singh visited Village Charaj. The dead body was sent to IGMCI, Shimla with other police officials for postmortem examination. Statement of Kamlesh Devi was recorded in village Charaj. He took the statement to the Police Station for registration of the FIR. After registration of the FIR, file was handed over to him by the MHC.

18. P.W. 10, Constable Jog Ram, deposed that he deposited eight sealed parcels, sample seals and dockets at FSL Junga vide R.C. No. 17/09.

19. P.W. 11, HC Pritam Singh, deposed that on 14.5.2009, HHC Ganga Ram came to Police Station along with Ruqua, Ext. PA, on the basis of which, FIR, Ext. P.W. 11/A, was registered. On the same day, ASI Sapinder Singh deposited a parcel sealed with seal impression "T" and the sample seal with him in the malkhana. Thereafter, on 18.5.2009, ASI Sapinder Singh deposited a wooden plank (Fatta), Ext. P1, with him in the malkhana. Entries to this effect were made in the relevant register. On 21.5.2009, he sent seven sealed parcels, sample seals and docket of FSL, Junga, through Constable Jog Ram vide R.C. No. 17/09.

20. P.W. 12, Varinder Singh, deposed that on 12.5.2009, he had gone to house of his in-laws in village Charaj. On 13.5.2009, he went to the house of his relatives in Village Khoun to bring some articles. On 14.5.2009, he returned back to village Charaj. According to him, several persons had assembled there. He enquired from them why they had gathered. He was told that a quarrel took place with Vikram Singh in the house of Mast Ram. A new house was being constructed nearby. He sat there with mason. Vikram Singh was brought on a chair outside the house of Mast Ram. The chair was lifted by all the accused and another man. At 11.45 A.M., he made a telephonic call to the Police Station, Chopal and informed about the incident.

21. P.W. 13, SHO Bhim Singh, deposed that on 14.5.2009, Varinder Singh gave an information in the Police Station, on the basis of which rapat No. 17 was entered, vide Ext. PW8/A. He deputed the police party headed by ASI Sapinder Singh to lay Nakka, intercept the vehicle and take further necessary action in the matter. He visited the spot at about 4.45 A.M.. Chemical examiner reports Ext. P.W. 13/A and Ext. P.W. 13/B were received in the Police Station.

22. P.W. 14, ASI Sapinder Singh, deposed that on 14.5.2009, Inspector/SO Bhim Singh directed him to verify facts of Rapat No. 17, Ext. PW8/A. He along

with HC Rajesh Kumar, HHC Ganga Ram and Constable Laiq Ram was sent to Chopal Bazaar by the SHO. According to him, after some time, car No. CH-02T-1831 came from Nerwa side. It was stopped and checked. One person in injured condition was lying in the lap of a female. The name of the injured was disclosed Vikram Singh. Eight persons including the driver were occupants of the vehicle. Their names were Vikram Singh, Pingla Devi, Babli, Ran Singh Chakar Bahadur, Onkar Singh, driver Kanhiya Lal and Surtoo Devi. They took the injured in the same car to Civil Hospital, Chopal, for treatment. The doctor after examining Vikram Singh in the car declared him dead. Dead body of Vikram Singh was referred by the doctor to IGMCM Shimla for postmortem examination. He inspected the spot and prepared map Ext. P.W. 14/C. On 15.5.2009, he interrogated the accused and arrested them. They were medically examined. On 18.5.2009, accused Sarita Devi alias Pingla made a disclosure statement, Ext. PD in the Police Station in the presence of the witnesses to the effect that she could get the "Fatta" recovered with which the deceased was beaten up. The accused Sarita led the police party to a room and got the "Fatta", Ext. P1 recovered. The same was taken into possession vide memo Ext. PE. The "Fatta" was deposited with the MHC in the Police Station. On 19.5.2009, HHC Ganga Ram produced sealed parcels sealed with seal impression "DKG" and a docket before him. In cross-examination, he deposed that after reaching Village Charaj, they went to the spot. Kamlesh Devi and others met them on the way to the spot. Kamlesh Devi told him that the incident took place in her presence. On 14.5.2009 and 15.5.2009, no witness stated before him that Vikram Singh was beaten up with a "fatta". He volunteered that accused Pingla had disclosed him at the time of interrogation on 15.5.2009 that Vikram Singh was beaten up with a "fatta". The Superintendent of Police visited the spot on 17.5.2009. On that day, he and SHO had also accompanied the Superintendent of Police. All of them went inside the room, where the incident took place. He did not tell the Superintendent of Police on 17.5.2009, that a "fatta" was also recovered from the room. On 14.5.2009, the SHO met him at the spot at about 4.45 P.M.. The SHO remained with him for about 2-2 1/2 hours. From the spot, they returned to the Police Station together. According to him, it had come during the investigation that a scuffle had taken place between husband and wife.

23. P.W. 15, Dr. Piyush Kapila, deposed that he along with Dr. Rakesh Dhiman conducted postmortem on the body of the deceased Vikram Singh at about 11.45 A.M. on 15.5.2009 and found the following injuries on his person:--

"1. Head and Neck

a) A linear, abraded contusion, red, measuring 14 cms in length and 4.5 cms in breadth (at the maximum broad area) obliquely from lower eye lid of left side extending medially upto root of nose to post auricular area including lower part of pinna, with crusting present over pinna area on left side.

b) 1.5 cm x 1 cm abrasion with brown colour present on right side of nose, 2 cms above the tip of nose.

- c) 1 cm x 0.5 cm brown crusted abrasion on the root of bridge of nose, 1 cm distal to nasion.
- d) 1.8 cm x 0.2 cm abrasion, brownish present on center of forehead in between two eyebrows placed obliquely.
- e) 1.8 cm x 0.4 cms abrasion, brownish present on right forehead 2.5 cms above lateral aspect of right eyebrow.
- f) Multiple small pinhead size abrasions present on anterior aspect of neck area with 4.5 x 2 cms large area of contusions reddish on right side of neck 5 cms lateral to midline.
- g) After reflecting scalp gross subgaleal haematoma present on right temporal area and in temporalis muscle.

2. Upper Extremity

- a) Multiple abraded contusions on extensor aspect of left forearm 2 cms below the elbow measuring in 10 x 6 cms area directing lateral to medial side, reddish brown.
- b) 1.5 cm x 1 cm abrasion on lateral aspect of back of right elbow, reddish.
- c) 2 Small abrasions 1 cm in diameter present on 11 cm proximal to right wrist joint on ulnar aspect along with 0.5 cm abrasion on medial side of above injury.

3. Lower Extremity

8 x 0.5 cm linear abrasion, reddish on left shin in mid-shaft region was present.

4. Cranium and spinal cord

- a) No fracture of skull was found.
- b) Subdural haemorrhage on right side and diffuse oedema of brain present.

5. Thorax

- a) Fracture of ribs 3, 4, 5, 6, 7, 8 and 9 on left side in midclavicular line with fracture of ribs 3,4, 5,6 and 7 on right side in midclavicular region along with fracture of body of sternum in midline.
- b) Around 1 liter of blood was present on each side of pleural cavity of thorax.
- c) No ligature mark present.
- d) No hyoid bone fracture was found.
- e) Both lungs were lacerated below the fractured ends of ribs.
- f) Heart was normal.

6. Abdomen.

- a) 4 x 3 cm contusion on left lumbar region below the costal margin was present with blue colour.
- b) Around 1.5 liter of blood was present in peritoneal cavity with gross mesenteric haematoma around pancreatic area and rupture of superior mesenteric artery.
- c) No fluid or food was present in stomach and neither any peculiar smell was present nor congestion of the mucosa was present.
- d) Bladder was full and around 10 ml of urine was collected along with other viscera like stomach with contents and parts of liver, spleen and kidney.
- e) There was no injury over the scrotal region."

According to him, the deceased died as a result of multiple ante-mortem injuries leading to combination of haemorrhagic shock and coma. The probable time elapsed between injury and death was immediate and between death and post mortem examination was 24 to 36 hours. He issued post mortem report, Ext. P.W. 15/B. Injuries on head and neck were possible with weapon shown to him in the court, which was wooden plank measuring 22.5 inches x 11 inches x 3.6 cm and other injuries were possible with the blunt force of fist and leg blows.

24. D.W. 1, Surti Devi, testified that in the morning of 14th May, she went out of the house to fetch grass. Her daughter Nisha came to her and told that she should return home since Vikram Singh was beating his wife, Pingla. Nisha also told her that Vikram Singh caught hold Pingla from neck. She and Nisha returned to the house. When she went inside the room, Kewal Ram and accused Ran Singh were standing. Accused Pingla had taken Vikram Singh in her lap. Accused Ran Singh was offering water to Vikram Singh. She also administered tablet of brufen to Vikram Singh. They made Vikram Singh to sit on a chair and took him upto the road. When they were going towards the road from their house, Dula Ram and Sukh Ram spotted them. All of them were taken to the Police Station. In cross-examination, she deposed that accused Ran Singh was her real brother. The other two accused were her daughters. According to her, during night, Vikram Singh, accused Pingla and their children and her mother-in-law slept in one room. The accused Ran Singh and Chakkar Bahadur were sleeping in other room.

25. D.W. 2, Nisha Kumari, testified that on 11/12.5.2009, there was marriage in the village. Her sisters, Sarita and Sunita and their husbands had come to attend marriage from Chandigarh. In the morning of 14th May, 2009, when she went to room of Sarita and Vikram Singh to serve tea, she heard noise coming from the room. It appeared that they were quarrelling with each other. She also saw that Vikram Singh had caught hold of her sister from neck. She rushed to call her mother, who had gone to cut grass in the fields. She narrated the incident to her mother. Thereafter, she along with her mother returned to the house. When they entered the room, they saw that Vikram Singh was lying in the lap of Sarita and

Ran Singh was offering water to Vikram Singh.

26. According to the prosecution case, deceased Vikram Singh had come to village Charaj to attend a marriage along with his wife, Sarita, Onkar Jaswal his friend, Chakkar Bahadur, his wife Sunita and their children in taxi No. CH-02T-1831 driven by PW3 Kanhaiya Lal.

27. On 13.5.2009, the deceased and his wife, accused Sarita, were sleeping in one room and accused Ran Singh was sleeping with Chakkar Bahadur in the adjoining room. P.W. 1 Kamlesh Devi deposed that the incident took place on 13.5.2009 at 7.00 A.M., but it is apparent from the record that the incident took place on 14.5.2009 and not on 13.5.2009 as stated by P.W. 1 Kamlesh Devi. According to P.W. 1 Kamlesh Devi, when she was going to cut grass, she heard that a man was crying "HAI MAA". She reached the house of Mast Ram. She witnessed accused Ran Singh, Sarita and Sunita giving beatings to Vikram Singh. He was lying on the floor and was unconscious. She was pushed out of room by accused Sarita. She went back to village and informed PW2 Sukh Ram and Dula Ram. Dula Ram was not examined by the prosecution. PW2 Sukh Ram supported version of P.W. 1 Kamlesh Devi to the extent that she had informed them about the incident and he along with Dula Ram went to the house of Mast Ram. However, they were not permitted to enter the room. PW3 Kanhaiya Lal also deposed the manner in which he brought the deceased Vikram Singh and his family members to Village Charaj from Manimajra and was again called by Vikram Singh to come back on 14.5.2009. According to him, he left Manimajra at 4.00 A.M., for village Charaj. When he crossed Theog, accused Sarita, wife of deceased, telephoned him and told that Vikram Singh was serious. He was to be taken to PGI, Chandigarh. PW4, Kirpa Ram, signed the disclosure statement, Ext. PD, made by the accused Sarita Devi. PW5, Dr. Dev Dutt Sharma examined accused Ran Singh. He noticed on the person of accused Ran Singh deep abrasion in the left hand middle finger in the distal phalanx region, 2 cm x 1 cm in size and bruise in the right heel upper medial side size 3 cm x 1.5 cm, bluish brown in colour. He issued MLC, Ext. PW5/C to Ext. PW5/E relating to accused Ran Singh, Sarita and Sunita. P.W. 12, Varinder Singh testified the manner in which the deceased was carried on chair and he informed the police at about 11.45 A.M.. P.W. 14 ASI Sapinder Singh carried out the investigation. He arrested the accused. He categorically admitted that it had come to his knowledge during investigation that a scuffle had taken place between husband and wife. P.W. 15, Dr. Piyush Kapila conducted post-mortem on the body of the deceased and gave details of ante-mortem injuries received by the deceased. According to him, injuries on head and neck were possible with the weapon, i.e. wooden plank, Ext. P1.

28. As noticed above, the deceased had come with his wife and other relatives to village Charaj to attend a marriage. They stayed in the house of Mast Ram. The motive assigned by the prosecution for quarrel taken place between the accused and deceased was that the deceased insisted for a woman to be taken to

Chandigarh. This proposal was opposed by accused Sarita Devi, which led to fight. In order to save Sarita Devi, Ran Singh and Sunita also reached the spot and they gave beatings to Vikram Singh, who died on the same day, i.e. 14.5.2009. Vikram Singh and Sarita Devi were sleeping in a separate room. Accused Ran Singh and Chakkar Bahadur were sleeping in the adjoining room.

29. It is clear from the evidence led by the prosecution that scuffle took place initially between Vikram Singh and his wife Sarita and on commotion, accused Ran Singh came to the room. Ran Singh was bound to lose his temper when he found deceased Vikram Singh criminally intimidating Sarita Devi. The disclosure statement made by the accused Sarita Devi, Ext. PD has rightly not been relied upon by the prosecution. There is no pre-meditation amongst the accused since they were sleeping in separate rooms. The involvement of accused Ran Singh and Sarita Devi cannot be ruled out at all on the basis of evidence led by the prosecution. However, involvement of Sunita in the alleged offence is not proved on the basis of evidence led by the prosecution. The deceased and his wife accused Sarita were sleeping in one room and accused Chakkar Bahadur and Ran Singh were sleeping in the adjoining room. How accused Sunita came on the spot has not been proved by the prosecution. The plea of the accused that the deceased was only pushed to the furniture, which resulted into the injuries, cannot be accepted. The deceased received injuries due to beatings given by the accused. However, fight had erupted on the spur of the moment when Vikram Singh was insisting to take another woman to Chandigarh, which proposal was rightly resisted by his wife, Sarita. Thus, it can be safely inferred that the accused had no common intention to commit murder of Vikram Singh.

30. The deceased Vikram Singh was closely related to all the accused. Vikram Singh was husband of accused Sarita Devi. Accused Ran Singh was maternal uncle of accused Sarita Devi. Accused Sunita was real sister of accused Sarita Devi. Accused Ran Singh would not have ever intended to kill husband of his niece that too, when there was no premeditation. It has also come in statements of D.W. 1 Surti Devi and D.W. 2 Nisha Kumari that the deceased Vikram Singh picked up quarrel with his wife. The accused Ran Singh and Sarita had given beatings to deceased Vikram Singh when he insisted to take another woman to Chandigarh. However, the accused had no intention that beatings given by them to Vikram Singh would result in his death, but they definitely had the knowledge that the injuries inflicted upon Vikram Singh may lead to his death. PW5, Dr. Dev Dutt Sharma medically examined the accused. According to him, no injury was found on the person of accused Sarita. He found deep abrasion and bruises on the person of accused Ran Singh. Admittedly, a quarrel took place between husband and wife. However, the prosecution has failed to establish on record that it is accused Sarita or deceased Vikram Singh, who ensued the fight or it was accused Sarita or accused Ran Singh, who gave the first blow to the deceased. Genesis of the occurrence is also not clear from the evidence of the prosecution. The incident has occurred in the heat of moment. The Court is of the considered view that the crime committed by the accused Ran Singh and Sarita would come

within ambit of Section 304-II read with Section 34 of the Indian Penal Code and not under Section 302 read with Section 34 of the Indian Penal Code.

31. The learned Additional Sessions Judge has erred in law by convicting and sentencing the accused under Section 302 read with Section 34 of the Indian Penal Code.

32. Accordingly, in view of the observations and analysis, made here-in-above, the appeal is partly allowed. The judgment, dated 20.12.2010, passed by learned Additional Sessions Judge, Fast Track Court, Shimla, H.P., in Sessions Trial No. 22-S/7 of 2009 is set aside. The accused Sarita and Ran Singh are convicted for having committed an offence punishable under Section 304-II read with Section 34 of the Indian Penal Code, while accused Sunita is acquitted of the charge framed against her. The accused Ran Singh and Sarita Devi be produced before us for being heard on quantum of sentence on 3.6.2014. The Registry is directed to take further necessary action.