

(2001) 01 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No's. 525 and 549 and C.R.P. No. 150 of 2000

Rattan Chand and Another

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 12-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 148, 149, 302, 304(II), 325

Citation : (2002) CriLJ 1598

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Jagdish Vats, Prakash Thakur and Shyam Dogra, for the Appellant;
Ashok Sharma and Ashok Thakur, Asstt. Advocate, for the Respondent

Judgement

M.R. Verma, J.—Since these two appeals (Cr. A. Nos. 525 and 549 of 1996) and the revision (Cr. Revision No. 150 of 2000) arise out of the same judgment dated 17-8-1996 passed by the learned Sessions Judge, Una, therefore, these are disposed of by this common judgment.

2. Criminal Appeal No. 549 of 1996 has been preferred by the appellants/convicts Som Datt, Balkishan, Raj Kumar and Neel Kanth (hereafter referred to as the "accused") and Criminal Appeal No. 525 of 1996 has been preferred by appellants/accused Rattan Chand and Babu Ram (hereinafter referred to as the "accused") against the judgment dated 17-8-1996 whereby each one of them has been convicted u/s 304(11), Section 325 read with Section 149, Section 452 read with Section 149 and Sections 148 and 149 of the Indian Penal Code and each of them has been sentenced to rigorous imprisonment for a period of five years u/s 304(11) read with Section 149 of the Indian Penal Code, rigorous imprisonment for one year u/s 452 read with Section 149 of the Indian Penal Code, rigorous imprisonment for one year u/s 325 read with Section 149 of the Indian Penal Code and rigorous imprisonment for one year u/s 148 of the Indian Penal Code and to pay fine of Rs. 1000/- each for offence u/s 325 read with

Section 149 of the Indian Penal Code. In default of payment of fine, the accused have been ordered to undergo further rigorous imprisonment for a period of six months each. The sentences imposed have been made to run concurrently.

3. The revision petition has been preferred by Khushi Ram, injured/informant (hereafter referred to as "PW 1") in so far as the accused have been held guilty u/s 304(11) of the Indian Penal Code instead of Section 302 of the Indian Penal Code, the offence which, according to him, was proved and established against the accused persons.

4. Briefly stated, the case of the prosecution as in the charge-sheet is that Khushi Ram (PW1) is a resident of village Harsa and is employed as Cashier in P.N.B., Chandigarh. He has four other brothers, three of whom reside outside their village whereas Mehar Chand used to reside in the village. About one month before the occurrence. PW1 had constructed a house in village Harsa and had deputed PW20 Vinod Kumar, Bihari labourer, to take care of the house and had himself gone to Chandigarh. On 29-4-1995 PW1 returned to his village for removing the shuttering etc. of the house constructed by him. On 30-4-1995 he asked P.W. 20 to remove the shuttering and himself went to Una at 9.00 a.m. to purchase electric material. At about 12.00 noon when P.W. 20 was removing the bricks of the lintel so as to remove the shuttering, a woman came there and asked him to stop the work. PW, 20 told her that he was engaged for the purpose by PW1 and in the event of his stopping the work, he would loose his daily wages. On this, the woman left the place and accused Raj Kumar and Som Datt came on the spot and asked PW. 20 to get down from the roof. When PW. 20 came down from the roof, he was abused, threatened and beaten up with "Danda" by Raj Kumar and Som Datt and out of fear he ran away from the place and went to Police Station, Bangana where he reported the occurrence.

5. PW1 returned to his house on the same day at 4.00 p.m. and found that some bricks had been removed from the window of his house. He also noticed that the accused persons were breaking the bricks of the window of his house. On seeing PW1, accused Som Datt asked the others to catch hold of and kill PW1. On this, accused Neel Kanth, Babu Ram, Som Datt, who were armed with "Lathis" (sticks), accused Rattan Chand, Bal Kishan and Raj Kumar, who were armed with iron pipes, came out of the house and started beating PW-1. Thereafter he was dragged inside. On hearing the cries of PW-1, Saroj Kumari (PW-2) called Mehar Chand (since deceased) brother of PW1 to the spot. When Mehar Chand tried to save PW1, accused Som Datt gave a "Danda" blow on his head and as a consequence of beating Mehar Chand fell unconscious. In the meanwhile, Soma Devi, wife of Mehar Chand also came on the spot and so many other persons had also gathered there. The accused were threatening to kill. Only a few days before the occurrence the accused had beaten up brother of PW1 and the matter was reported to the Police at Police Station, Bangana. Since there was litigation between PW1 and the accused, therefore, as a matter of retaliation the accused had made a murderous assault on him and his brother. In

the assault PW1 sustained injuries over his tooth also. PW1 and Mehar Chand were thereafter removed to District Hospital, Una for treatment. However, Mehar Chand succumbed to his injuries on the way. Statement of PW1 Ext.PA was recorded by the police about the occurrence on the basis of which formal First Information Report Ext.PW-16/A was recorded in Police Station, Bangana.

6. PW1 Khushi Ram was medically examined by Dr. V.K. Mishra (PW12) in District Hospital, Una on 30-4-1995 at 10.45 a.m. and as many as 11 injuries were found on his person. Injury caused to his tooth was found to be grievous. PW12 issued MLC. Ext.PW- 12/C about the medical examination of PW1. S.I. Sansar Chand (PW21) prepared the inquest report Ext.PN and PO and made application Ext. PM to the Medical Officer for post mortem examination of Mehar Chand which was also conducted by PW12 and Dr. Mrs. Kiran Kanwar and the post mortem report is Ext.PW12/A. Ten injuries were found on the person of the deceased. As per the opinion given in the post mortem report Ext.PW12/A, death of Mehar Chand took place due to asphyxia as a result of aspiration of gastric contents.

7. During the course of the investigation photographs of the dead body of Mehar Chand were taken by Arvind Arora (PW19) and the photographs of the injured were also taken by him, the negatives whereof are Exts.P19 to P24 and the photographs are Exts.P25 to P30. PW21 went to the spot, instead the same and prepared site plan Ext.PW21/B.

8. During the course of investigation accused Babu Ram made a disclosure statement Ext. PG about a "Danda" having been kept concealed in hedge near the place of occurrence in the presence of Rattan Chand and Tilak Raj (PW7). Pursuant to the said statement he got the "Danda" recovered vide memo. Ext. PH in the presence of the aforesaid witnesses. Accused Som Datt also made a disclosure statement Ext. PE in the presence of the aforesaid witnesses and as a consequence thereof got a "Danda" recovered vide memo. Ext.PF. Accused Neel Kanth also made a disclosure statement Ext.PC in the presence of Rasila Ram (PW4) and one Sundarshan Kumar and as a consequence got recovered a "Danda" vide recovery memo. Ext.PD. On 2-5-1995 ASI Harnam Singh (PW23) went to Chandigarh where PW1 produced his tooth which was sealed and taken into possession vide memo. Ext.PB. Accused Balkishan also made a disclosure statement Ext.PJ on 5-5-1995 about the concealment of two "Dandas" in the hedge near the school in the presence of Mehar Chand (PW8) and one Amrit Lal as a consequence of which "Dandas" Exts.P3 and P4 were recovered and taken in possession vide memo. Ext.PK. Some papers were also taken in possession on the basis of disclosure statement of Balkishan vide memo. Ext.PL.

9. The clothes of deceased Ext.P6 and Ext.P7 were also taken in possession. The spot was also got demarcated and the demarcation report is Ext. PW13/A and "Shajra Aks" is Ext.PW14/A and "Misal Hakiat" is Ext.PW14/B. At the time of post mortem of the dead body of Mehar Chand the viscera was preserved and was sent to the State Forensic Science Laboratory for analysis. On analysis, no

poison or liquor was detected in the viscera vide report Ext.PQ.

10. Out of three of the recovered "Dandas" one of which was having brown stains and two some hairs, the clothes of the deceased, namely, a shirt and a underwear taken in possession by the police and the samples of blood and hair of Mehar Chand were also sent for analysis to the State Forensic Science Laboratory. On one of the "Dandas" human blood was detected. Blood sample was also found human blood. However, in either case blood group could not be deciphered. Human blood was detected on the shirt also. The hairs on one of the "Dandas" were found human hairs but were of different persons. The hairs on another "Danda" were found to be animal hairs. The report in this regard is Ext.PP.

11. On completion of the investigation, the officer-in-charge of Police Station, Bangana submitted the charge-sheet against the accused persons against whom the learned Sessions Judge framed a charge under Sections 148, 149, Section 452 read with Section 149, Section 302 read with Section 149 and Section 325 read with Section 149 of the Indian Penal Code to which the accused pleaded not guilty.

12. To prove the charge against the accused, prosecution examined as many as 23 witnesses.

13. Statements of the accused u/s 313 of the Criminal Procedure Code were recorded wherein they denied the case of the prosecution as a whole and claimed that they have been falsely implicated in the case. Accused Som Datt and Raj Kumar have further stated that on the date of occurrence at about 3.30 p.m. they had gone to Kushi Ram (PW1) and Mehar Chand was also present there. They had gone to inform them about the stay granted about the construction. In the meantime Vinod Kumar was opening the shuttering which fell down and material thereof fell on Khushi Ram and Mehar Chand. Sorna Devi, Saroj and other PWs. were not present on the spot and that the accused also suffered injuries because of the fall of the shuttering. They, however, have been falsely implicated for the commission of the offence by the complainant party. Accused Rattan Chand has further stated that his brother Babu Ram had filed a Civil Suit against Mehar Chand, Khushi Ram and others for injunction in which stay has also been granted against the opposite party who had disclosed the stay order and for these reasons he has been falsely implicated in the case. Accused Babu Ram has also stated that he had filed a suit against Mehar Chand, Khushi Ram and others for permanent injunction regarding some other land wherein stay order was granted against them which had been disobeyed by them and he has been falsely implicated in the case.

14. The accused in their defence examined Onkar Nath (DW 1) and Mehar Chand (DW 2) to prove the pendency of the suit as claimed by the accused as aforesaid and to prove the execution of sale deed by Balkishan, Roshan Lal and Jagdish Ram in favour of Raj Kumar, Kamaljit, Balkishan and Sheesh Pal. Accused Som

Datt further tendered in evidence copies of orders Exts. DK, DL, DM and a few order documents which have only been marked.

15. Finally, the learned Sessions Judge convicted the accused and sentenced them as stated here-in-above. Feeling aggrieved, the accused have preferred the present appeals and feeling aggrieved by the acquittal of the accused u/s 302 of the Indian Penal Code, the revision petition has been preferred by PW 1.

16. I have heard the learned counsel for the appellants and the petitioner and the learned Assistant Advocate General for the State and have also gone through the records.

17. The learned Sessions Judge has convicted the accused persons on the following evidence :

(i) Eye account of the occurrence as given by PW1 Khushi Ram and PW 2 Saroj Devi;

(ii) Medical evidence and experts opinion, i.e. statement of PW 12 Dr. V.K. Misra read with post mortem report Ext. PW 12/A, MLC Ext.PW12/C and the reports received from the FSL Exts.PP and PQ;

(iii) Evidence regarding recovery of weapons of offence viz. the disclosure statement Ext.PG made by accused Babu Ram and consequential recovery of "Danda" vide memo. Ext.PH, disclosure statement Ext.PE made by accused Som Dutt and consequential recovery of a "Danda" vide memo. Ext.PF, disclosure statement Ext.PC made by accused Neelkanth and consequential recovery of a "Danda" vide memo. Ext.PD, disclosure statement Ext.PJ made by accused Balkishan and consequential recoveries of two "Dandas" vide memo. Ext. PK; and

(iv) Other corroborative evidence consisting of the statements of Vinod Kumar (PW20), Jan Mohammed (PW3), Sita Ram PW 10), taking in possession of tooth Ext.P 8 vide memo Ext.P B and some papers at the instance of accused Balkishan vide memo. Ext.PF by ASI Harnam Singh (PW23) and statement of PW17 read with photographs Exts P16 to P18 and their negatives Exts.P13 to P15 and statement of Arvind Arora (PW19) read with photographs Exts.P25 to P30 and the negatives Ext.P19 to P24.

18. It was contended for the accused persons that the above evidence relied upon by the learned Sessions Judge in convicting them suffers from improbabilities and is not natural and cogent, therefore, it could not have been relied upon to convict the accused. On the contrary, the weight of the evidence of the prosecution makes it out a case of the deceased and the injured having sustained the injuries because of the fall of shuttering on them as is the case of the accused.

19. On the other hand, the learned Assistant Advocate General has contended that the evidence led by the prosecution is trustworthy and reliable and has, therefore, supported the conclusions arrived at by the learned trial Judge

regarding the commission of the offence by the accused persons. The learned counsel for the complainant had, with the permission of the Court, placed on record the written arguments. While addressing the arguments on the revision petition, the learned counsel has relied on the written argument placed on appeal file and has contended that the evidence on record apart from other offences, proves the commission of offences punishable u/s 302 of the Indian Penal Code having been committed by the accused persons.

20. It is not in dispute that Mehar Chand is no more in the land of living. In view of the medical opinion vide postmortem report" Ext.PW12/A and Ext.PW12/A/1 as given by PW12 and as stated in the Court and the report Ext.PQ given by the Director, State Forensic Science Laboratory which rules out the poisoning as a cause of death of Mehar Chand, it is indisputably established that the cause of death of Mehar Chand was asphyxia as a result of aspiration of gastric contents. As per the statement of PW12 read with the postmortem report Ext.PW12/A as many as two lacerated wounds, three incised wounds and five abrasions including an oval abrasion of 2 cm. dimension on the left side of the forehead 4 cm. above glabella and 10 cm. away from the left pinna with overlying lacerated wound were found on the dead body of Mehar Chand and all these injuries were antemortem and the aforesaid oval abrasion injury was capable of causing death in the ordinary course of nature whereas other injuries were incapable of causing death.

21. As per the statement of PW12, who medically examined the injured (PW1) read with MLC Ext.PW12/C, as many as eight abrasions, multiple contusion and one bleeding socket with knocked out tooth were noticed. Therefore, sustaining of these injuries by the injured (PW1) is also established.

22. In fact the real dispute between the parties is as to how the said injuries were sustained by the deceased and the injured. According to the prosecution, accused were the authors of these injuries whereas according to the defence, these injuries were sustained by fall of the shuttering of a house under construction.

23. It may also be pointed out here that it is also not in dispute that PW1 had constructed a house in village Harsa about a month before the occurrence and on the morning of 30-4-1995 PW1 had deputed Vinod Kumar (PW20) to remove the shuttering of the said house. It is also not in dispute that the deceased and the injured were restrained by a Civil Court from raising any construction on the land on which the said house was constructed and status quo qua that land was ordered to be maintained. PW1 had admittedly received the stay order in 18-4-1995. The said suit in which the stay as aforesaid was granted, was instituted by Balkishan accused and others. PW1 had also instituted a suit against accused Neelkanth and others in his individual capacity and also as Power of Attorney of one Anant Ram. Thus, the place of occurrence was a house under construction having shuttering fixed to sustain the lintel which were to be removed by PW20 on the fateful day and stay order about any construction and

to maintain status quo was operative against the injured and the deceased and some other litigation was also going on between them. One of the most probable inference which can be drawn from this admitted position is that a party in whose favour a stay is granted by a Civil Court may not be an aggressor but the party against whom such stay is operative may be an aggressor. Another most probable inference which is possible against the aforesaid admitted position is that if the shuttering of a house under construction is partially removed and is struck against with some force, it is likely to fall. PW20 had already started to work for removal of the shuttering as is clearly made out by his report Ext.PW16/A and statement Ext.DC. In view of these admitted facts and inferences, the prosecution evidence is required to be read with great care and caution.

24. Now, first of all the eye account of the occurrence as given by Khushi Ram (PW1) and Saroj Devi (PW2) may be examined. As per the contents of the first information given about the occurrence by PW1 Khushi Ram vide his statement u/s 154 of the Code of Criminal Procedure Ext.PA on 30-4-1995 at about 4.30 p.m. when he reached home, he saw the accused persons breaking the bricks of the window of his house and on noticing him, accused Som Datt declared that PW1 be caught hold of and done to death. Thereupon accused Neelkanth, Babu Ram and Som Datt, who were armed with "Lathis" and accused Rattan Chand, Bal Kishan and Raj Kumar, who were armed with iron pipes, came out and gave beatings to him with the "Lathis" and the pipes. Then they dragged him inside the house and he started crying "Bachao Bachao". On this, the daughter-in-law of Anant Ram (PW2) called the deceased to the spot. As soon as the deceased tried to save PW1, Som Datt gave a "Danda" blow on the head of Mehar Chand and started beating him as a result whereof he fell unconscious on the ground. Wife of Mehar Chand had also come to the spot with him and so many persons had gathered on the road by the side whereof the house under construction is. In his statement in the Court, PW1 has not given the identical version about the sequence of events as in Ext. PA. His statement in the Court is that when he reached at his house, he found that some bricks had been removed from the window of his house, whereas the initial version is that the accused at that time were breaking the bricks of the window. He further goes on to state that the accused were inside the house and were armed with "Lathis". When he reached inside the house, Som Datt gave a "Danda" blow on his shoulder and some of the blows struck his hands in the process of protecting himself. Thereafter, all the five accused persons gave "Danda" blows to him. Thus, as per his statement in the Court, he was beaten up by the accused inside the house whereas according to the initial version vide Ext. PA, he was beaten up by the accused outside the house after the accused, armed with "Lathis" and iron pipes, had come out of the house.-In his statement in the Court after having been beaten up by the accused inside the room, he was dragged and brought to the courtyard of the house whereas as per his initial version after having been beaten outside the house, he was dragged inside the house. As per his statement in the Court, his version is that he was given "Danda" blows whereas as per the initial version

vide Ext. PA, he was beaten up with "Lathis" and iron pipes. Thus, his version regarding sequence of events as given in the Court is contrary to the version as given at the time of making statement Ext.PA whereby even the scene of occurrence has changed and even the weapons of offence have also partially changed. Further, in his statement in the Court PW1 has stated that he received the injuries on his shoulder, hands and his tooth was broken with the blow of Lathi. He has further stated that on arrival of Mehar Chand, deceased, Som Datt gave "Lalkara" to give him beatings and to kill him and that when Mehar Chand had fallen on the ground unconscious, even then he was given beating. However, all these facts have not, admittedly, been stated by him in the statement Ext.PA. Knocking of a tooth is not an injury which could not be stated while making statement Ext.PA. In view of these contradictions/improvements, the statement of this witness cannot be relied upon as a gospel truth.

25. PW2 Saroj Devi stated that on hearing the cries of "Bachao Bachao" from the house of PW1, she went there and saw Khushi Ram lying on the ground in the "Sehan" near the door and the accused were giving him "Lathi" blows. She left the place and went to the house of Mehar Chand to call him and returned to the spot along with Mehar Chand and Soma Devi and when they reached back on the spot, the accused were still beating PW1. When Mehar Chand tried to save PW1, Som Datt accused gave a "Lathi" blow over his head and other accused also continued to give him "Lathi" blows and were abusing PW2 and Soma Devi and were proclaiming that Mehar Chand and PW1 would be killed. She has further stated that though Khushi Ram had suffered injuries all over his body, yet the blood had not come out from such injuries. She has also made certain improvements over her statement Ext.DA which improvements in the ordinary course may not be enough to disbelieve her version. However, what renders her version highly doubtful and unbelievable, are her admissions that PW1 is prosecuting civil case against accused Neelkanth and others on behalf of her father-in-law Anant Ram and that Anant Ram had told her on that day the statement to be made by her to the police. These admissions make it amply clear that she had made a statement against the accused persons at the behest of said Anant Ram in the manner as he had told her to make it. Thus, it is highly doubtful whether this witness was present on the spot and has stated the truth.

26. As seen above, eye count of the occurrence as given by PW1 and PW2 is of highly suspicious and unreliable nature and cannot be accepted unless corroborated by cogent, trustworthy and reliable corroborative evidence.

27. It may also be pointed out here that it is admitted version of PW1 that Soma Devi had come on the spot and so many other persons had also gathered there at the time of occurrence. Said Soma Devi has not been examined by the prosecution. None from other persons who had gathered on the spot and could be disinterested and independent witnesses, has been examined. From this lapse an inference adverse to the version of the prosecution can be legitimately drawn.

28. To seek corroboration to the statements of the eye witnesses, the learned

Sessions Judge, apart from medical evidence and the evidence regarding recovery of weapons, has relied upon the statements of PW20, PW3, PW10, recovery of tooth Ext. P8 and some papers by PW23 and statements of PW17 and PW19.

29. PW20 is not the witness of the occurrence but has stated that when he was removing the bricks of the lintel of the house of PW1, he was not permitted to do so by accused Som Datt and Raj Kumar and was beaten up with "Dandas". This matter was also reported to the police. It is not known as to what had finally happened in the matter. Thus, the statement of PW20 which concerns a different incident, does not lend any corroboration to the statements of PW1 and PW2.

30. Statements of PW3 Jan Mohammad and PW10 Sita Ram could also not have been relied upon to corroborate the statements of PW1 and PW2 regarding the alleged beating and causing of injuries to PW1 and the deceased by the accused. PW3 Jan Mohammad claims to have been informed of such beating by Soma Devi and PW10 Sita Ram claims to have been informed by Jan Mohammad about such beatings. Thus, they have not seen the occurrence and what they are stating is on the basis of what Soma Devi had told PW3 and PW3 further narrated to PW10 and is, therefore, hearsay. Said Soma Devi being an eye-witness of the alleged occurrence, has not been examined by the prosecution. Had she been examined, what PW3 and PW10 have stated, could lend corroboration to her statement but in the absence of her examination as a witness, the statements of these witnesses will be rendered hearsay and will not lend any corroboration to the statements of PW1 and PW2 and, therefore, have been wrongly relied upon as a corroborative piece of evidence by the learned Sessions Judge.

31. The alleged recovery of tooth Ext.P8 vide memo. Ext. PB by PW23 is also of highly suspicious and unreliable nature. This tooth has been taken in possession on 3-5-1995, i.e. on the fourth day of the occurrence. As per the contents of Ext.PB, the tooth was handed over to PW23 by Khushi Ram (PW1) in the presence of Anil Sharma and Sarabjit Singh. PW23 has in his statement stated so and PW1 has also stated so. PW6 Anil Kumar has also supported the contents of Ext.PB. Thus, according to this evidence, the tooth Ext.P8 was produced by PW1 and was taken in possession by the Investigating Officer (PW23) at Chandigarh on 3-5-1995 vide memo. Ext.PB. However, the MLC Ext.PW12/C read with statement of PW12 has different story to tell. As per the contents of MLC Ext.PW12/C, PW1 was medically examined by PW12 in District Hospital, Una on 30-4-1995 and he had noted in the said MLC that upper central incisor tooth of right side was produced before him and the said tooth tallied with other teeth and fitted in the socket of fallen tooth of PW1. PW12 has specifically stated in his statement that the tooth was given to him by the injured and after seeing it, he had given it to the police. Thus, in view of the statement of PW12, a Medical Officer not interested in either of the parties, the tooth was produced before him by PW1 at the time of his medical examination on 30-4-1995 and he handed it

over to the police. However, it is not explained as to how a tooth having been handed over to the police by PW12 on 30-4-1995 in District Hospital, Una came to be produced by PW1 to the police on 3-5-1995 at Chandigarh. Evidently, this recovery is unreliable and untrustworthy and does not lend any corroboration to the case of the prosecution.

32. The paper Ext.PIO, exercise book Ext.PI 1 and other paper Ext.P12 are stated to have been recovered pursuant to the statement of accused Balkishan Ext.PJ made in the presence of PW8 Mehar Chand and one Amrit Lal vide memo. Ext.PL in the presence of PW9 Bharat Bhushan and Jamaldin. The statement Ext.PA about the occurrence was made by Khushi Ram (PW1) on 30-4-1995. In the said statement he had not stated anything about the missing of the aforesaid papers. It is doubtful that a person will keep his papers in a building in which the lintel has been put and the shuttering is fixed and is required to be watered frequently. Secondly, according to PW1, his note book consisted of 21 pages whereas the note book Ext.PII contains 66 pages. Out of the witnesses of the disclosure statement PW8 Mehar Chand only has been examined. Admittedly, accused Balkishan was not known to him. At the time of making of the statement, he has not identified accused Balkishan as the maker of the said statement. Similarly, out of the witnesses of recovery memo. Ext.PL, only Bharat Bhushan PW9 has been examined. In fact, this witness is a chance witness who, admittedly, reached on the spot when the police was standing near the place of recovery. The other witness Jamaldin was also accompanying him. It is unnatural that the police will after recording a disclosure statement visit the spot then wait for the witness and effect recovery as and when the person in whose presence the recovery is to be effected, appears on the spot. There is yet another aspect of the matter that is that this recovery had been effected on 5-5-1995 and the recovered papers were made into a parcel which was sealed with seal "RS" after taking it from Bharat Bhushan (PW9) to whom it was handed over at the time of recovery of "Dandas" vide memo. Ext.PK. However, the seal "RS" had earlier been used by the Investigating Officer to seal the tooth Ext. P8 at Chandigarh on 3-5-1995 and was handed over to PW Anil Sharma. On the same day, i.e. 3-5-1995, seal "RS" was used for sealing a "Danda" vide memo. Ext.PD and was handed over to Dharampal. There is no explanation as to how the seal "RS" came to be used and handed over to different witnesses at different stages. This, coupled with the fact that none of the witnesses had produced the seal in the Court, this recovery is further rendered to be of doubtful nature and cannot be accepted as a corroborated piece of evidence.

33. The statements of PW17 read with photographs Exts.P16 to P18 and the negatives thereof and the statement of Arvind Arora (PW19) read with photographs Exts.P25 to P30 and negatives Ext.P19 to Ext.P24 at the most show that the injuries were sustained by the deceased and the injured but do not in any manner lend corroboration to the prosecution version that the injuries were caused by the accused persons.

34. Now, reverting to the medical evidence and the reports received from FSL, it may be re-stated that on the basis of this evidence the permissible conclusions are that the injured and the deceased had sustained injuries and the deceased might have died as a result of the oval abrasion. It is pertinent to point out here that as per the contents of Ext.PA, the injuries were caused by the accused with "Dandas" and iron pipes. The version given to PW12 about the cause of injuries as stated by him and as mentioned in the MLC Ext.PW12/C is fight between two parties on 30-4-1995 around 5.00 p.m. wherein the injured was beaten by iron rods and sticks, meaning thereby that the initial version is that the injuries were caused to the deceased and the injured not only with the sticks ("Dandas") but also with iron pipes/iron rods. However, no iron pipe or iron rod has been recovered either from the spot or at the instance of the accused persons. Otherwise, five of the "Dandas" have been recovered during the investigation at the instance of different accused persons allegedly used by them. In case five of the accused were armed with "Dandas" and the injured and the deceased were beaten up with those "Dandas", the version that three of the accused were armed with iron pipes/iron rods, is rendered false and the recovery of "Dandas" at the instance of those two accused who were armed with iron pipes/iron rods, is rendered fake. In either case, it creates doubt about the prosecution case instead of lending any help to it. What makes the matter worse for the prosecution is the very medical evidence, i.e. statement of PW12 Dr. V.K. Misra. There is no doubt that three antemortem incised wounds were found on the dead body of Mehar Chand at the time of his postmortem examination. Admittedly, such injuries, i.e. incised wounds, cannot be caused by blunt weapon. Such wounds can be caused only by a sharp-edged weapon. It is not the case of the prosecution throughout that any sharp-edged weapon was used by the accused persons to cause these injuries to the deceased. Thus, there is no explanation what-so-ever, by the prosecution nor there being any thing in the statements of the eye-witnesses to find out as to how such injuries were found on the person of the deceased which are capable of being caused only by a sharp-edged weapon. It is virtually impossible to believe that the injuries were sustained by the deceased because of the beating given to him with blunt weapons, i.e. "Dandas" Exts.PI to P5. There must be a cause for sustaining these incised wounds by the deceased. Since these injuries cannot be caused by beating with blunt weapon, therefore, definitely there was some other cause which led to the sustaining of the injuries by the deceased.

35. It may also be pointed out that the fatal injury had been sustained by the deceased on his forehead. According to the eye witnesses, the "Lathi" blow was given by accused Som Datt over the head of the deceased. Though it may not be taken into account that this injury is not on the head but is on the forehead because some people may describe the forehead also as head, but the injury is of the nature and so located that it could not have been caused with a "Danda" blow on the head of a standing person. Even if such person was bending, still this injury-could not have been caused. It is stated even by PW -12 that the said

injury could be possible if the "Danda" blow is in the form of a thrust and not otherwise. This is not the case here that the "Danda" was poked/thrusted into the forehead of the deceased by accused Som Datt or any one of the accused. This also renders the prosecution version doubtful regarding the fatal injury having been caused to the deceased by accused Som Datt. This discussion and conclusion will have material bearing on the cause of injuries sustained by the injured (PW-1) also. Moreover, one of the injuries which is of grievous nature sustained by the injured is the knocking of his tooth. However, no corresponding injury on the outer portion of his lip was found whereas the opinion of PW-12 is that in case injuries are inflicted with a blunt weapon, positively there will be contusion and in some cases laceration may be present. However, no such corresponding injury was found on the outer portion of the lip of the injured.

36. Thus, even the medical evidence does not corroborate the version of the prosecution that all the injuries sustained by the deceased and the injured were caused with "Danda" Exts. P-1 to P-5. On the contrary, it suggests that there were other causes present whereby the deceased and the injured sustained the injuries.

37. The evidence led by the prosecution about the disclosure statements Exts. PG, PE, PC and PJ and the consequential recoveries of "Danda" Exts. P-1 to P-5 vide memos. Exts. PH, PF, PD and PK is also of doubtful nature.

38. The disclosure statement Ext. PG is stated to have been made by accused Babu Ram in the presence of Rattan Chand and Tilak Raj and the consequential recovery of "Danda" has also been effected in the presence of Rattan Chand and Tilak Raj (PW -7). Out of these witnesses Rattan Chand has not been produced. Tilak Raj has been examined as PW-7. This witness, however, has denied making of the disclosure statement by accused Babu Ram and further he has denied that accused Babu Ram got any "Danda" recovered. Thus, he has not supported the prosecution version about the alleged disclosure statement and the consequential recovery of "Danda" at the instance of accused Babu Ram as is the case of the prosecution.

39. The disclosure statement Ext. PE is stated to have been made by accused Som Datt in the presence of same set of witnesses, namely, Rattan Chand and Tilak Raj and the consequential recovery of "Danda" is also stated to have been made in their presence vide memo. Ext. PF. The only witness of this disclosure statement and recovery PW-7 Tilak Raj has denied making of the disclosure statement Ext. PE by accused Som Datt. However, he has admitted that the "Danda" Ext. P2 is similar to a "Danda" which was produced by accused Som Datt to the police in his presence. Unless the disclosure statement is proved, the consequential recovery at the instance of the accused is not covered within the frame work of Section 27 of the Indian Evidence Act. To be admissible, the discovery of the fact must be preceded by a disclosure statement or information given by the accused which has not been proved in view of the statement of PW-7 Tilak Raj who has denied making of any disclosure statement by accused

Som Datt to the police as claimed by the prosecution.

40. The disclosure statement Ext. PC by accused Neelkanth is stated to have been made in the presence of Rasila Ram (PW-4) and one Sudarshan and the recovery of the "Danda" has been effected vide memo. Exdt. PB in the presence of Rajesh Sharma (PW 5) and one Dharampal. The disclosure statement in this case has been, admittedly, made on 2-5-1995 but the recovery had been effected on 3-5-1995 from a heap of sticks (Bailies) stacked at the place where the house of Khushi Ram (PW-1) was under construction. It has not been explained why there was one day's delay in effecting this recovery. Out of the recovery witnesses, Dharampal has not been examined. Rajesh Sharma (PW 5) who is son of PW 1 Khushi Ram, has been examined about this recovery. What he states is that he joined the investigation on 3-5-1995 and in his presence accused Neelkanth made the disclosure statement about the "Danda" and thereafter got it recovered in his presence. This statement of PW-5 contradicts PW-4 Rasila Ram and the contents of Ext. PC as the case of the prosecution is that the disclosure statement was made by accused Neelkanth on 2-5-1995. It may also be pointed out that PW-5 and Dharampal had come to the place of recovery on 3-5-1995 from Chandigarh where PW 1 is employed and they were selected for effecting this recovery. This also casts shadow of doubt on the truthfulness of the prosecution version regarding the alleged disclosure statement and the recovery. It may also be noticed that the "Danda" recovered vide memo. Ext. PD was sealed with seal "RS" and it was handed over to Dharampal. This recovery was effected in village Harsa, whereas while effecting recovery of the tooth Ext. P-8 seal "RS" was used for sealing the tooth at Chandigarh and was handed over to one Anil Kumar. Again, this seal had been used for sealing two "Dandas" alleged to have been recovered pursuant to the disclosure statement Ext. PJ, made by accused Balkishan on 5-5-1995 and it was handed over to PW 9 Bharat Bhushan. There is no explanation as to how this seal has repeatedly been used on different days without there being any mention that it was taken back either from Anil Sharma or Dharampal. The recovery of two "Dandas" on the basis of disclosure statement of Balkishan Ext. PJ vide memo Ext. PK is also, thus, rendered suspicious for want of explanation as to how the seal has been repeatedly used without taking it back from the witnesses for sealing different case properties on different dates. More over, the recovery witnesses vide memo. Ext. PK are just chance witnesses who met the police when the police after having recorded the statement of Balksihan was standing at the place of recovery.

41. It may also be pointed out here that the two "Dandas" allegedly recovered at the instance of accused Balkishan are stated to be one used by accused Balkishan and another by his brother. The recovery of the other "Danda" on the basis of statement of Balkishan is inadmissible because this recovery has not been effected on the basis of the information given or disclosure made by the person who might have used it.

42. Out of the recovered "Dandas" those allegedly containing blood and hairs, were sent for chemical analysis. One of the "Dandas" human blood was found but blood group could not be deciphered. On other two "Dandas" no blood was detected. However, on one "Danda" human hairs of two different persons were found and in the third "Danda" the hairs were found to be of some animal. According to the prosecution version, the head injury was caused to the deceased by accused Som Datt and the "Danda" which was recovered at his instance, did not contain the blood. The blood was found in the "Danda" allegedly recovered at the instance of accused Neelkanth. Finding of the animal hairs on one of the "Danda" also creates grave doubt about the recoveries of the "Dandas" effected by the Investigating Officer because there is no explanation as to how the animal hairs were found on one of the "Dandas". Thus, these recoveries are also not cogent, reliable and firmly established and appears to be fake and could not be relied upon as corroborative piece of evidence.

43. The defence of the accused as in their statements u/s 313 of the Code of Criminal Procedure and as suggested to the witnesses is that the deceased and the injured sustained injuries because of the falling of the shuttering of the house of PW-1 Khushi Ram which was under construction. It has already been pointed out that it is not disputed that there was shuttering in the house of PW 1 Khushi Ram to support a lintel put thereon. PW 20 Vinod Kumar though states that he had only removed a few bricks when he was beaten up and made to run away from the place by accused Som Datt and one of his accomplice, however. PW-20 was stranger to the accused and even unaware of the names of the said accused. No test identification parade had been conducted, therefore, the naming of Som Datt and other accused by this witness as persons who beat him up and made him to run away from place is doubtful. The First Information Report Ext. PW-16-/B lodged by him in this regard though has been brought on record, yet what happened in this case finally, is not known. So far his initial version is concerned, that is contained in his statement u/s 161 of the Code of Criminal Procedure which, according to the Investigating Officer, has been correctly recorded and is Ext. DC. Therein the witness has stated that after having climbed upto the roof, he was opening the shuttering and was also removing the bricks from the sides. The inference from these improvements will be that by removal of some of shuttering and the bricks, it had been loosened and was likely to fall even at the slightest stroke or push. There is no cogent and reliable evidence on record that even after the injuries had been sustained by the deceased and the injured, the shuttering was intact. The photographs of the place after occurrence had been taken in such a manner that it cannot be gathered therefrom whether at the time of taking of such photographs the shuttering was intact or not. In none of the site plans prepared after the occurrence this shuttering has been shown intact. On the contrary, PW-21 Sansar Chand, S.I. had admittedly reached on the spot at about 2.00 or 2.30 a.m. on the intervening night of 30-4/1-5-1995. In the morning he prepared the site plan Ext. PW-21/B which, according to him depicts the spot position correctly. In this site plan he has not shown there was any

shuttering in existence at that time. On the contrary, there was a heap of "Bailies" which has been shown in the site plan Ext. PW-J21/B. It is not the case of the prosecution that during the intervening night of 30-4/1-5-1995 somebody had removed the shuttering and stacked it at the place where it is shown. Thus, the site plan clearly goes to show that the "Bailies" were lying on the spot when the Investigation Officer visited the spot in the morning of 1-5-1995. It may also be pointed out here that it is a matter of common knowledge that shuttering when it is fixed contains some iron material including the sharp edged pegs. Therefore, it cannot be ruled out that injuries sustained by the injured and the deceased were caused by falling of the shuttering on them. In fact such a situation explains even the three incised on the body of the deceased.

44. The above discussion leads to the irresistible conclusion that the evidence led by the prosecution to prove the charge against the accused persons and relied upon by the learned Sessions Judge to convict and sentence them is not cogent, reliable and trustworthy but is of doubtful nature. In these circumstances, the accused could not have been convicted and sentenced but were entitled to benefit of doubt.

45. As a result, both these appeals are allowed and the impugned conviction of and sentence awarded to the accused are set aside and they are accordingly acquitted of the offence for which they have been convicted. Fine if deposited, shall be refunded to them.

46. As a consequence, the revision petition merits dismissal and is accordingly dismissed.

47. The bail bonds furnished by the accused persons are discharged.