

(2015) 03 RAJ CK 0207

In the Rajasthan High Court

Case No : Criminal Appeal Nos. 1113/2007 and 617/2008 and Criminal Revision
Petition No. 659 of 2007

Sant Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2015) 03 RAJ CK 0207

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J; Nisha Gupta, J

Bench : Division Bench

Advocate : A.K. Gupta and Chandrakala, for the Appellant; N.S. Dhakad, PP,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

Kanwaljit Singh Ahluwalia, J.—Sant Ram s/o Laxmi Narain, Adisaal s/o Prabhataram, Suresh Kumar son of Adisaal, Lal Chand s/o Bahadur, Raj Kumar s/o Adisaal, Hemraj s/o Bahadur, Mukesh Devi w/o Bhojraj, Mishri Devi w/o Hemraj, Sunita Devi w/o Suresh, Kamla w/o Rajkumar and Rajendra Prasad @ Raju s/o Raghuveer Prasad, were sent for trial in a case arising out of FIR No. 157/03 (15.3.2003) registered at Police Station Kotputali, District Jaipur, for the offences under Sections 147, 148, 149, 302, 307, 341 and 323 IPC.

2. The criminal proceedings in the present case were initiated on the basis of written report (Exhibit-P/34) submitted by Amar Singh (P.W.18) before Phool Mohammad (P.W.35), who was then posted as SHO at Police Station Kotputali.

3. Out of above eleven persons, Adisaal died during the trial and the proceedings were dropped qua him. The learned trial court vide the impugned judgment dated 16.5.2007 acquitted four ladies, namely Mukesh Devi, Mishri Devi, Sunita Devi and Kamla and Rajendra Prasad @ Raju and convicted Sant Ram, Suresh Kumar, Raj Kumar, Lal Chand and Hemraj for the offences under Sections 148,

302/149 and 323/149 IPC. The trial court also substantively convicted Lal Chand for the offence under Section 307 IPC and remaining accused namely Sant Ram, Suresh Kumar, Raj Kumar and Hemraj for the offence under Section 307/149 IPC. The trial court also convicted Sant Ram, Hemraj and Lal Chand for the offence under Section 323/149 and 148 IPC.

4. Having convicted the above five accused, for the aforesaid offences, the trial court vide a separate order of even date sentenced them as under:-

U/s 148 IPC- to undergo one year and six months R.I.

U/s 302/149- to undergo life imprisonment and to pay a fine of Rs. 10,000/-, in default of payment of fine to further undergo three years R.I.

U/s 323/149 IPC- to undergo six months R.I.

Except Lal Chand, all accused appellants:

U/s 307/149 IPC- to undergo life imprisonment and to pay a fine of Rs. 5,000/-, in default of payment of fine, to further undergo one and a half year R.I.

Appellant Lal Chand:

U/s 307 IPC- to undergo life imprisonment and to pay a fine of Rs. 5,000/-, in default of payment of fine, to further undergo one and a half year R.I.

5. In the present case from the side of the complainant, Shiv Kumar s/o Shiv Narayan had died and seven persons namely, Chhaju Singh (P.W.28), Sarti (P.W.22), Rajendra (P.W.8), Amar Singh (P.W.18), Hargyan (P.W.20) and Beg Raj (P.W.19) had suffered injuries.

6. From the side of accused, ten persons namely Adisaal, Mishri Devi, Suresh Kumar, Sant Ram, Raj Kumar, Kamla, Lal Chand, Hemraj, Mukesh Devi and Sunita Devi had suffered injuries.

7. Five accused persons namely, Sant Ram, Suresh Kumar, Raj Kumar, Lal Chand and Hemraj who were convicted and sentenced as mentioned above, have preferred D.B. Criminal Appeal No. 1113/2007 to assail their conviction and sentence. It is urged on their behalf that the accused had exercised complete right of self defence, as accused party had suffered more injuries in the occurrence and the injuries on their persons have not been explained by the prosecution. Rather, the witnesses have denied causing any injury to them. It is also urged that the accused persons had suffered injuries on their vital part of the body i.e. head and two persons from the side of accused had also suffered a grievous injury each. Therefore, non-explanation of injuries is fatal to the prosecution, as they have suppressed the origin and genesis of the occurrence.

8. The State of Rajasthan has filed D.B. Criminal Appeal No. 617/2008 to challenge the acquittal of Mukesh Devi, Mishri Devi, Sunita Devi, Kamla, and Rajendra Prasad @ Raju. The complainant has also instituted D.B. Criminal Revision Petition No. 659/2007 praying that the acquittal of aforementioned five

persons be set aside. Since, two appeals, one preferred by the accused and another by the State of Rajasthan and a criminal revision petition instituted by the complainant, assail the same impugned judgment, we shall decide all the three cases by this common judgment.

9. Phool Mohammad (P.W.35) in the court stated that on 15.3.2003, he was posted as SHO at Police Station Kotputali. On the said date, in the evening, he received a telephonic information from the attending Doctor of BDM Hospital, that two factions of Kaluhera village have been admitted in the hospital for treatment in injured condition. Phool Mohammad constituted a police party and reached at BDM Hospital. Amar Singh (P.W.18), brother of the deceased Shiv Kumar presented a written report (Exhibit-P/34) on the basis of which FIR bearing No. 157/03 (Exhibit-P/42) was registered at the Police Station Kotputali, for the various offences.

10. Amar Singh (P.W.18) in the written report (Exhibit-P/34) stated that they are having family joint fields adjoining to the field of accused Hemraj and Lal Chand etc. They are having common boundary. On 15.3.2003, Hemraj etc. were getting weeds (Jhundey) uprooted from the Samlati land of the complainant. The complainant party restrained the accused not to uproot the weeds. The accused had not acceded to their request. In the evening, at about 5:00 PM, Amar Singh (P.W.18) alongwith Hargyan, Shiv Kumar, Subedar, Beg Raj Hawaldar, Chhaju Ram, Rajendra, Man Singh and Sarti Devi were returning from the fields to their house. When they reached opposite the school of Heeramal Babaji, accused stopped them and gave beating to them. Hemraj, Lal Chand, Sant Ram and Suresh Kumar were armed with Farsi. Ashok, Raj Kumar and Adisaal were armed with lathis. Having stopped the complainant party, the accused caused them injuries with Farsi and lathis. Shiv Kumar and Hargyan suffered Farsi injuries on the head and neck. The injuries being serious, they became unconscious. The complainant, Amar Singh (P.W.18) was caused injuries with lathi by Raj Kumar. Chhimali Devi, Sarwan Devi, Mishri Devi, Meera Devi, Mukesh Kumari were also involved in causing injuries. Lekh Ram and Man Singh rescued the injured persons from the complainant side at the spot and brought them in a jeep of Hari Chand to the hospital. The report containing above facts was presented and action was sought against the accused.

11. Before we proceed to examine ocular version, it will be apposite for us to take note of medical evidence.

12. Dr. Birbal Yadav (P.W.15) being member of Medical Board on 16.3.2003 at 10:00 AM, had conducted the autopsy on the dead body of the deceased Shiv Kumar s/o Sheo Narayan. As per Post Mortem Report (Exhibit-P/29), he had noted the following injuries on the person of Shiv Kumar:-

"(i) Incised wound 15 x 1cm, brain deep, elliptical in shape, extending from just above right ear upto top of skull.

(ii) Incised wound 15 x 1cm, brain matter deep elliptical in shape, starting from

napped neck in mid-line extending upward laterally upto right parietal region."

13. On dissection of head, doctor had found fracture of right parietal bone corresponding to the injury No. 1. There was also cut fracture of right side of occipital bone and right parietal bone, corresponding to injury No. 2. On opening of skull, membranes were cut below both fractures. An injury was also caused to brain matter on the right parietal lobe, right occipital lobe below both the fractures. As per opinion of the Medical Board, the cause of death was coma due to head injury.

14. On the same day, i.e. 15.3.2003, at 6:40 PM, Dr. Birbal Yadav (P.W.15) had examined Chhaju Singh (P.W.28). As per Injury Report (Exhibit-P/30), this witness had found the following one injury on his person caused by blunt weapon and simple in nature:-

"Lacerated wound 5 x 2cm, scalp deep on occipital region."

15. On the same day, i.e. 15.3.2003 at 6:30 PM, this witness had examined Sarti (P.W.22) and as per Injury Report (Exhibit-P/31), he had found following three simple injuries on her person:-

"(i) Lacerated wound, 3 x 1cm, skin deep on the forehead.

(ii) Diffused swelling with pain and tenderness on left parietal region with bleeding left ear.

(iii) Bruise 10 x 2cm on right thigh."

16. On the same day, at 7:00 PM, this witness had also examined Rajendra (P.W.8) and as per Injury Report (Exhibit-P/32) he had found following one injury on his person:-

"Lacerated wound, 2 x 1cm, skin deep on left side of forehead."

17. On the same day at 6:50 PM, this witness examined Amar Singh (P.W.18) and as per Injury Report (Exhibit-P/33) had found the following two injuries on his person:-

"(i) Abrasion, 2 x 1cm, on left cheek.

(ii) Bruise 5 x 2cm, on left arm anterior."

18. Since injuries suffered by Hargyan (P.W.20) and Beg Raj (P.W.19) were serious, they were referred to SMS Hospital, Jaipur.

19. Dr. Sumant Dutta (P.W.21) on 16.3.2003, being posted as Medical Jurist at SMS Hospital, Jaipur, at 12:20 AM, had examined Hargyan (P.W.20) and as per Injury Report (Exhibit-P/35) had found the following injuries on his person:-

"(i) Incised wound, 11cm left occipital region, oblique, 0.5cm x brain deep to bone deep with clean cut edge. Obliquely placed with reddish clotted blood hair length, hair area underlying sharply cut.

(ii) Incised wound 5cm on back of neck with clean cut regular well defined edge reddish colour with 0.5 cm, muscle deep oblique placed.

(iii) Abrasion 5cm x 1/4 cm, left scapular, reddish colour.

(iv) Abrasion, 11cm x 1/2 cm, right inferior scapular oblique downward reddish colour."

20. Similarly, Beg Raj (P.W.19) was also admitted at SMS Hospital, Jaipur, and examined on 15.3.2003 at 11:30 PM and as per Injury Report (Exhibit-P/36), following injuries were found on his person:-

"(i) Stitched wound, 1.5cm (Rt) 2nd finger kindel laterally with reddish clotted blood.

(ii) Stitched wound, 11cm long, mid fronto parietal (Rt) side verticle with six stitches, reddish clotted blood, 4cm for surface 2cm for mid-line with edge, on removal of stitch clean cut regular well defined.

(iii) Diffuse swelling left dorsum foot with tender."

21. Dr. Birbal Yadav (P.W.15) on the same day i.e. 15.3.2003, at about 8:10 PM, had examined Adisaal, accused who died during the trial and as per Injury Report (Exhibit-D/8A) had found the following injuries on his person:-

"(i) Incised wound 7 x 1cm, bone deep on occipital region.

(ii) Lacerated wound 1 1/2 x 1 1/2 cm, scalp deep on frontal region.

(iii) Lacerated wound 1 x 1/2 cm, skin deep on left elbow.

(iv) Linear abrasion 10cm long on right scapular region."

Injury No. 4 which was on the scapular region on the person of Adisaal was declared grievous in nature.

22. This witness had examined accused respondent to State appeal, Mishri on 15.3.2003 at 9:10 PM, and as per Injury Report (Exhibit-D/9A), had found following injuries on her person:-

"(i) Incised wound, 2 x 1/4 cm, skin deep on nose.

(ii) Incised wound (chop wound), 8cm semi circular, 4cm bone deep on dorsum of left foot."

Injury No. 2 was found to be grievous in nature.

23. This witness had also examined accused appellant, Suresh Kumar on the same day at 8:50 PM and as per Injury Report (Exhibit-D/10A) had found following injuries on his person:-

"(i) Lacerated wound, 2 x 1 1/2 cm, scalp deep, on occipital region.

(ii) Lacerated wound, 2 x 1 1/2 cm, scalp deep, on occipital region, near injury

No. 1.

(iii) Lacerated wound, 2 x 1/2 cm, scalp deep, on left parietal region.

(iv) Abrasion, 8 x 1 1/2 cm on inter scapular region.

(v) Bruise, 10 x 2cm, on inter scapular region.

(vi) Bruise 3 x 2cm, on right cheek.

(vii) Abrasion 1 x 1cm, on right ring finger."

24. This witness had also examined accused-appellant Sant Ram on 15.3.2003 at 9:00 PM, and as per Injury Report (Exhibit-D/11A) he had found following injuries on his person:-

"(i) Incised wound, 5 x 1/2 cm, skin deep on left side of chest.

(ii) Lacerated wound 8 x 1cm, scalp deep on occipital region.

(iii) Diffused swelling with pain and tenderness on right forearm.

(iv) Lacerated wound, 2 x 1cm, scalp deep on left parietal region."

25. This witness on 15.3.2003 at 8:30 PM, examined Raj Kumar, accused-respondent to the State appeal, and as per Injury Report (Exhibit-D/12A), he had found following injuries on his person:-

"(i) Lacerated wound, 5 x 1cm, scalp deep on right parietal region.

(ii) Bruise 10 x 6cm, on left side of back.

(iii) Incised wound, 2 x 1/2 cm, skin deep on index finger of right hand."

26. This witness also examined accused-appellant Kamla on 15.3.2003 at 9:20 PM, and as per Injury Report (Exhibit-D/13A) he had found following injuries on her person:-

"(i) Incised wound, 4 x 1 1/2 cm, bone deep on forehead.

(ii) Lacerated wound, 2 x 1cm, skin deep on right forearm."

27. This witness also examined Lal Chand accused-appellant, on 15.3.2003 at 8:40 PM, and as per Injury Report (Exhibit-D/14A) he had found following injuries on his person:-

"(i) Lacerated wound, 1 x 1cm, skin deep on thumb of right hand.

(ii) Lacerated wound, 2 x 1cm, scalp deep on top of head."

28. As per Injury Report (Exhibit-D/15A) this witness had found following one injury on the person of accused-appellant, Hemraj:-

"Lacerated wound, 1 x 1 1/2 cm, skin deep on right hand."

29. As per Injury Report (Exhibit-D/16A) this witness had found following one

injury on the person of accused-respondent to State appeal, Mukesh Devi:-

"Lacerated wound, 3 x 1cm, scalp deep on right parietal region"

30. As per Injury Report (Exhibit-D/17A) this witness had found following injuries on the person of accused-respondent to State appeal, Sunita:-

"Lacerated wound 2 x 1cm, scalp deep on frontal region of forehead."

31. Thus, it is apparent that ten accused persons had suffered 27 injuries, out of which the accused Adisaal and Mishri Devi had suffered grievous injury each. Injuries suffered by accused were also on the vital part of their body i.e. head.

32. Hargyan (P.W.20) had suffered injuries falling within the ambit of Section 307 IPC. In the court he stated that on the day of occurrence, Adisaal etc were cutting weeds from their field. Then he restrained them to do so but they did not accede to the request. Therefore, this witness told Banjara to call Bahadur. Bahadur had not responded and Banjara continued to uproot the weeds. This witness further stated that at about 4:00 - 4:30 PM, he along with Shiv Kumar, Beg Raj, Sarti and Amar Singh were returning from their field to their house, opposite the place of Heeramal's School, then accused came armed and attacked. Hemraj caused Farsi blow on the head of Shiv Kumar. Suresh Kumar gave Farsi blow on the neck of Shiv Kumar. Lal Chand caused injury to Hargyan with Farsi on head. Mukhram gave Farsi blow on the head of Hargyan. Rajendra resident of Padma Ki Dhani, caused him injury with Kulhari. Raju caused injury to Beg Raj with Farsi. This witness had given description of injuries caused by each accused. However, this witness in cross-examination stated that earlier thereto, there was no dispute pending between the accused and the complainant party and accused party had a cordial relationship. This witness stated in the court as under:-

33. This witness further stated that the house of the accused is at a distance from the house of Heeramal and their houses are adjoin each other's house. This witness further stated that fight had continued for 10-15 minutes. As an answer to the pointed cross-examination, this witness stated that they have not caused any injury to any accused.

34. The complainant, Amar Singh (P.W.18) in the court stated that when they reached the hospital, accused also reached the hospital. But he is not aware whether the accused had suffered any injury or not? To be precise, this witness stated as under:-

35. We need not notice the statement of injured witnesses, namely Rajendra (P.W.8), Beg Raj (P.W.19), Sarti (P.W.22), Chhaju Singh (P.W.28) and Mishri (P.W.26) to save repetition of same facts. Besides these witnesses, Man Singh (P.W.7) has also deposed before the court in categorical terms that when they were returning from their field to their house, and had reached opposite the building of Heeramal, accused came armed and caused them injuries. All the witnesses have disowned having caused any injury to any accused.

36. Mr. A.K. Gupta with Ms. Chandrakala Sahu, the learned counsel for the appellants, has contended that except injury on the person of Hargyan (P.W.20) and Beg Raj (P.W.19), other persons namely, Chhaju Singh (P.W.28), Sarti (P.W.22), Rajendra (P.W.8) and Amar Singh (P.W.18) had suffered simple superficial injuries. It is further contended that Hargyan (P.W.20) and Beg Raj (P.W.19) had also suffered one injury each and the deceased, Shiv Kumar had suffered only two injuries. He further contended that compared to the injuries suffered by the complainant party, number of injuries on the person of the accused are more than the injuries received by the complainant party. It is further contended that the accused party had suffered injuries on head, which is vital part of the body and two injuries suffered by Adisaal and Mishri Devi were declared grievous in nature. Thus, it is also contended that the accused has got complete right of self defence. The learned counsel for the appellants, has also referred to the site plan (Exhibit-P/1) and the site plan (Exhibit-D/35), which was relied by the accused in a cross case to contend that the occurrence had taken place in front of the house of the accused. The learned counsel for the appellants has placed reliance upon 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 Supreme Court has been held 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 probabilise the plea taken by the appellants. The High Court in the pre-sent 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."

37. Curiously enough, even though the accused party had initiated a cross case against the complainant party, no accused in the statement under Section 313 Cr.P.C. had stated that he had caused injuries in the self defence. We cannot become oblivious of the fact that the occurrence had taken place at 5:00 PM, when the parties were returning from their fields. As per site plan (Exhibit-D/35), the occurrence had taken place at a little distance from the house of Bahadur, father of the accused Lal Chand and Hemraj. Thus, it is apparent that both the complainant party and the accused party are not coming before the court with clean hands. Both sides have made an effort to minimize their role. The witnesses have not only concealed their role but have also suppressed the origin and genesis of the occurrence. At the same time, the accused party has also not taken definite defence and even they are not revealing truth to the court. Thus, it can safely be assumed that when the complainant party was returning from the fields, they came in conflict with the accused party and there was a free fight. Thus, due to accidental meeting, a mutual conflict had developed and there is no reliable and acceptable evidence to find as to how the occurrence had started and as to which party was aggressor.

38. 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."

39. A Division Bench of this Court in *Buddhi Lal and Others Vs. State of Rajasthan*, (2004) CriLJ 4420 : (2004) 2 RLW 1338 : (2004) 2 WLC 405 , 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."

40. Consequently, we are of the view that sudden mutual conflict had developed between the parties and thus, it is a case of individual liability and Section 149 IPC cannot be invoked and accused also cannot be convicted for unlawful assembly. It has come in the evidence of Hargyan (P.W.20) that two injuries, which had proved fatal on the person of Shiv Kumar are attributed to Hemraj and Suresh Kumar. Lal Chand had caused injuries falling within the ambit of Section 307 IPC on the person of Hargyan. Hence, we set aside the conviction of Hemraj and Suresh Kumar for the offence under Section 302/149 IPC and convict them individually for the offence under Section 304-I IPC and sentence them to ten years R.I. Resultantly, due to conviction of appellants, Hemraj and Suresh Kumar for the offence under Section 304-I IPC, their conviction on other counts is set aside.

41. We uphold the substantive conviction of the appellant Lal Chand for the offence under Section 307 IPC. The trial court for the offence under Section 307 IPC has awarded life imprisonment to the appellant Lal Chand. We are of the view that for the offence under Section 307 IPC, sentence of life imprisonment is

highly excessive and is not called for. Therefore, we reduce the sentence of the appellant, Lal Chand for the offence under Section 307 IPC to five years R.I. However, we maintain the sentence of fine and default clause.

42. The sentence of the appellants, Sant Ram, Suresh Kumar, Raj Kumar, Lal Chand and Hemraj for the offence under Section 323/149 is upheld.

43. A perusal of the order dated 31st May, 2007 passed by the co-ordinate Bench of this Court in D.B. Criminal Misc. (Suspension of Sentence) Application No. 332/2007, reveals that these appellants had already undergone two years actual sentence. Therefore, we reduce the sentence of appellants, Sant Ram and Raj Kumar to the period already undergone.

44. The trial court has acquitted Rajendra @ Raju respondent to State appeal on the ground that ten accused had received injuries and he has not received any injury in the occurrence and his presence is not stamped. He is entitled to the benefit of doubt. The trial court held that had this accused been present at the spot, he would have also suffered injuries in the occurrence. The court further held that in the FIR, this witness was assigned lathi, but in the court weapon was changed and he was assigned Kulhari. The court also gave benefit of contradiction between weapons to Rajendra Prasad @ Raju. We are of the view that the finding given by the trial court suffers from no infirmity. We affirm the finding recorded regarding acquittal of Rajendra Prasad @ Raju returned by the trial court and dismiss the Appeal No. 617/2008 preferred by the State, being devoid of any merit.

45. The trial court has further held that Lekhram (P.W.10) admitted that four ladies were present in their house and have arrived at the spot after the injuries were caused to Shiv Kumar, Hargyan and Beg Raj. The trial court came to the conclusion that these four ladies arrived at the spot after major part of the occurrence had taken place. We also find no infirmity in the finding recorded by the trial court to acquit the four ladies. The view formulated by the trial court is the one view which is possible in the facts and circumstances of the case. Hence, the State appeal qua acquitted accused four ladies is also dismissed.

46. Consequently, the appeal preferred by the State of Rajasthan, is dismissed and no further orders are called for in Revision Petition No. 659/2007, as we have already affirmed the finding given by the trial court. Hence, the revision petition is disposed of.

47. As a result of above discussion, the appellants, namely Hemraj and Suresh Kumar stand convicted for the offence under Section 304-I IPC and sentenced to ten years R.I. They are acquitted of all other counts.

48. Substantive conviction of the appellant, Lal Chand for the offence under Section 307 IPC is affirmed. However, the sentence of life imprisonment awarded by the trial court on this count is reduced to five years. The appellant Lal Chand, except for the offence under Section 307 IPC, is acquitted of all other charges.

49. The appellants, Sant Ram and Raj Kumar stand convicted only for the offence under Section 323/149 IPC. The trial court has sentenced them for six month R.I. They had already undergone a period of two years and thus, their sentence is reduced to the period already undergone.