
(2014) 05 SHI CK 0166
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 513 of 2007

Shanti Devi and Others

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313
Penal Code, 1860 (IPC) — Section 100, 300, 302, 304, 323

Citation : (2014) 05 SHI CK 0166

Hon'ble Judges : Sanjay Karol, J; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : M.S. Chandel, Senior Advocate and Dinesh Thakur, Lakshay Thakur and Ajay Thakur, Advocates for the Appellant; Ashok Chaudhary, Additional Advocate General and Vikram Thakur, Deputy Advocate General, Advocates for the Respondent

Judgement

Dharam Chand Chaudhary, J.—The accused in Sessions Trial No. 15-S/7 of 2007 aggrieved by their conviction and sentence under Section 302, 341 and 323 read with Section 34 of Indian Penal Code are in appeal before this Court. Accused No. 1, Shanti Devi is the mother of accused No. 2 Balak Ram and accused No. 3 Surinder Kumar.

2. The accused had been put on trial with the allegations that on 11.3.2007 around 6.00 p.m. at village Badau, Tehsil Theog, District Shimla in furtherance of their common intention firstly wrongfully restrained deceased Prem Lal and prevented him from going to Khargoli Nallah where he was working as Chowkidar and thereafter assaulted him intentionally and knowingly to cause his death and injuries on the person of the members of complainant party, who allegedly came to his rescue. The present, therefore, is an unfortunate case where deceased, Prem Lal had lost his life over a petty and trivial dispute.

3. We need not go in detail with respect to the factual matrix, because, the occurrence has not been dispute and there is no denial to the factum of the

deceased lost his life in this incident.

4. Shri Malkiat Singh Chandel, learned Senior Advocate was fair enough during the course of arguments in submitting that though the occurrence did take place and deceased Prem Lal died on account of gainti blow dealt over his head by accused Balak Ram, as it was necessary to do so in a situation when deceased Prem Lal assaulted them with a lethal weapon, i.e. lathi, he was having with him and had the accused not acted in the manner and exercised the right of private defence, there was apprehension of the deceased and other members of his family would have succeeded in eliminating the accused persons.

5. The land of the accused party is adjoining to the house(s) of the complainant party. The complainant party had been using a portion of the land of the accused as passage. The accused, however, were disputing the existence of path over their land and, as such, had objection qua user of their land as passage by the complainant party. On the fateful day, i.e. 11.3.2007, the accused persons had pitched the poles and fenced their land. The deceased at about 5.00 p.m., during day time came to his house after attending some marriage. It appears that the work of fencing on the land was in progress at that time. At that time, Shri Lachhi Ram, husband of accused Shanti Devi and wife of accused Surinder Kumar were also present and working there. Some altercation between the deceased and the accused party seems to have taken place at that time, because, the deceased and other members of his family were not happy with the fencing of the land over a portion whereof they had been claiming the right of passage. It is in the evening around 6.00 p.m. when accused party on completion of day's work were on the way to their houses alongwith fuel wood/grass loads as well as the agricultural implements such as gainti and drat (sickle) and the deceased was on his way to Khargoli Nallah where he was working as Chowkidar in H.P. State Forest Corporation, they quarreled with each other again nearby the main gate of the house of deceased over the dispute of passage. It appears that while the deceased wanted to use the same passage to have access to his place of duty, at the same time, the accused were not in favour of allowing him to enter in their land. This, to our mind, resulted in broil and as the place of occurrence was nearby to the house of the deceased, other members of his family, namely, Meera Devi PW-3, Kapil Dev PW-2 and complainant Smt. Shashi Sharma PW-1 came to his rescue. Accused Balak Ram dealt a gainti blow over the head of deceased and he died on the spot itself.

6. Although the accused persons in their defence have raised the plea of right of private defence, because, according to them, it is deceased Prem Lal and other members of his family armed with lethal weapons attacked them. This has resulted in causing injury over occipital and parietal region of the body and head of accused Balak Ram and Surinder Kumar. Therefore, on apprehending danger to their lives and acting in their defence had to retaliate and dealt a blow of gainti to deceased Prem Lal. Hence, the justification of the plea of private defence raised by the accused persons and also that it is complainant party-the

assailants, has to be scrutinized and determined in the light of the evidence available on record. The fact, however, remains that in this incident deceased Prem Lal had lost his life.

7. Since the accused persons pleaded not guilty to the charge framed under Sections 341, 323 and 302 read with Section 34 of Indian Penal Code framed against each of them, therefore, the prosecution in order to sustain the charge against them, has examined 13 witnesses in all.

8. The material prosecution witnesses are Smt. Shashi Sharma, PW-1, who is the complainant and also sister-in-law of the deceased being wife of one of his cousin, PW-2 Kapil Dev is nephew of deceased and Meera Devi his sister-in-law (Bhabi). The other material witness is PW-13, Mr. T.D. Sharma, the then Inspector-SHO, Police Station, Theog, who has conducted the investigation. The remaining witnesses are formal as their evidence can only be used as link evidence.

9. On the other hand, the accused in their statements recorded under Section 313 Cr.P.C. have only admitted the blood stained clothes of Surinder Kumar and Balak Ram having been taken in possession by the police and denied the remaining incriminating circumstances put to them being wrong. In defence, they all have come forward with the version that while returning to home after finishing day's work, the complainant party, i.e. deceased Prem Lal and Kapil Dev armed with dandas attacked them and deceased Prem Lal inflicted danda blows over the body of accused Surinder Kumar and Balak Ram. PW Meera Devi etc. also gave them beatings and they tried to save their lives. Besides examining Shri Kundan Lal, D.W.-1, Ahlmad in the Court of Sub Divisional Magistrate, Theog and D.W.-2, Dr. Babu Ram to prove the M.L.Cs. in respect of the injuries on the person of accused Sureinder Kumar and Balak Ram, learned defence counsel has also tendered in evidence Exts. D-1 to D-4 copies of Pariwar Register, Ext. D-5 copy of pedigree table, Ext. D-6 copy of voters list, Ext. D-7 copy of order, Ext. D-8 copy of judgment, Ext. D-9 copy of decree sheet and Ext. D-10 copy of written statement in defence.

10. As already noticed at the very outset, learned trial Court on analyzing the evidence available on record and also hearing learned Public Prosecutor as well as learned defence counsel has convicted the accused and sentenced them in the following manner:--

11. The challenge to the impugned judgment is on the grounds, inter alia, that the story propounded against the accused is highly improbable and false. Accused Shanti Devi and Surinder Kumar have erroneously been held liable for the murder of Prem Lal because no injury either of them has inflicted to the deceased. As per prosecution case itself, accused Surinder was having drat with him whereas accused Shanti Devi stick and jhabbal in her hand. It is no body's case that the deceased was given any blow with draw, sickle or jhabbal. On the other hand, there were injuries inflicted by the deceased and complainant party

on the vital parts of the body, i.e. occipital and parietal region of accused Surinder Kumar and Balak Ram. Therefore, such injuries on their persons could have been proved to be disastrous and, as such, it has been submitted that the trial Court has wrongly rejected the plea of private defence, the accused persons raised. On the other hand, in the case in hand, the accused rather had a right of private defence even to the extent of causing death within the meaning of Section 100 of Indian Penal Code. It is deceased who was duly armed with danda and inflicted injuries on the parietal and occipital region of accused Surinder Kumar and Balak Ram. Therefore, the accused could have not been convicted for the commission of offence under Sections 302, 341 and 323 read with Section 34 of Indian Penal Code. The plea of defence raised by the accused is probabilised even from the prosecution evidence itself. The agricultural instruments carried by the appellants on their way to home after finishing day's work was a natural event and not a case going armed with the same to kill the deceased. The police allegedly sided with the effluent complainant party having approach in the political circles and withheld the real genesis of the occurrence. The factum of the accused had to leave the grass and fuel wood loads at the place of occurrence when assaulted by the complainant party, has not been investigated. Accused Surinder Kumar and Balak Ram appeared before the police in injured conditions having blood stained clothes, but their M.L.Cs. were withheld deliberately and intentionally. Learned lower Court has allegedly misconstrued the factual position and ignored the fundamentals of criminal jurisprudence, which has resulted in gross miscarriage of justice.

12. We have heard Mr. Malkiat Singh Chandel, learned Senior Advocate and Mr. Ashok Chaudhary, learned Additional Advocate General.

13. Mr. Malkiat Singh Chandel, learned defence counsel has very fairly conceded the occurrence having taken place on the spot and death of deceased Prem Lal in this incident, however, according to him, the assailant was the complainant party and not the accused. In order to strengthen the arguments so addressed, our attention has been drawn to the evidence which reveals that there were injuries on the persons of accused Surinder Kumar and Balak Ram. Our attention is also drawn to the admitted case of the parties that the accused were fencing their land on that day and the agricultural implements like gainti and jhabbal are required for pitching the poles. Therefore, the present was not a case of attack in a planned manner by the accused on the deceased and rather the incident allegedly sparked at the spur of moment when on their way to home after day's work with their agricultural implements and grass/fuel wood loads over their heads were assaulted by deceased Prem Lal and other members of complainant party. The place of occurrence is in front of the house of complainant. They all were present there. Also that the assailant was the complainant party and the defence of the accused persons in this behalf is probabilised from the testimony of defence witnesses. The injuries on the persons of accused Surinder Kumar and Balak Ram as per the statements of Dr. Pawan Sharma, PW-5 could be caused simultaneously. Admittedly, both the accused fled away and surrendered on the

3rd day of the occurrence, i.e. 13.3.2007 as well as examined on that day, however, the injuries according to learned defence counsel were sustained by them only in the same occurrence. Therefore, when the injuries on the persons of the accused remain unexplained, the same is fatal to the case of the prosecution. The injuries were grievous in nature and had the accused not exercised their right of private defence, they would have been eliminated by the complainant party. The denial of such injuries on the person of accused by PWs. 1 to 3 contrary to the statement of the Investigating Officer and the medical evidence on record is stated to be fatal to the prosecution case. As per the evidence only one blow was inflicted over the head of the deceased. There is no cogent and reliable evidence to show that accused Shanti Devi also inflicted stone blow on his head. Learned defence counsel admits the long standing enmity and litigation between the accused and complainant party and drawn our attention to an assault made by the complainant party on accused Shanti Devi while going to her house after being released on bail.

14. On the other hand, learned Additional Advocate General has strenuously contended that cogent and reliable evidence available on record leads to the only conclusion that accused Balak Ram dealt a blow of gainti on the head of deceased and accused Shanti Devi inflicted a stone blow and as a result thereof the deceased died on the spot itself. The prosecution in this behalf allegedly was not obliged to explain the injuries on the person of the accused for the reasons that they absconded and surrendered to the police on the 3rd day. The possibility of the injuries they have sustained on their persons in the interregnum, therefore, according to learned Additional Advocate General cannot be ruled out. The plea of private defence is also said to be not available to the accused because the deceased was unarmed and on the way to attend his duty when assaulted by the accused and, as such, there was no apprehension of inflicting any bodily injuries to them at his hands.

15. We need not discuss the entire evidence for the reason that the facts such as the land of the accused party is adjoining to the house(s) of complainant party, the use of a portion of the land of accused party as passage by the complainant party, the fencing of the said land by the accused party on the fateful day with barbed wire, the annoyance of the complainant party against the fencing of the land and blockade of the passage and it is the fencing of the land resulted in the occurrence, leading to death of deceased Prem Lal outside the gate of his house, are not in any controversy. The only dispute as remains, therefore, is as to which of the party was aggressor and responsible for the incident and that the plea of private defence raised by the accused in their defence is legally sustainable or not.

16. The evidence, as has come on record, of course, is by way of the testimony of witnesses who were closely related to the deceased because the complainant, PW-1 Shashi Sharma being the wife of the cousin of the deceased is his sister-in-law, whereas, PW-2 Kapil Dev being son of his brother Dhani Ram, nephew and

PW-3 Meera Devi wife of Dhani Ram, sister-in-law (Bhabi). It is well settled at this stage that the evidence of the witnesses closely related to the victim can be relied upon against the accused if it inspires confidence and is cogent and reliable. The scrutiny of the evidence as has come on record by way of the testimony of the aforesaid witnesses reveals that they have supported the prosecution case on all material aspects. It has come on record by way of their statements that the deceased when assaulted by the accused, was on way to attend his duty at Khargoli Nallah. The trial Court has observed that a person going to attend his duty cannot be said to be armed with any lethal weapon like danda. However, in our opinion, the deceased who was working as Chowkidar and had to perform duties during night hours may be going with stick to attend his duty. But, there is nothing on record to show that he was aggressor and assaulted the accused party first. In a situation when there was annoyance amongst the complainant party against the fencing of land by the accused, the possibility of the deceased having been adamant to enter over that portion of the land of the accused which was being used as passage, whereas, the accused party was not in favour of allowing him to use that land as passage, resulted in broil and the accused party, admittedly having gainti, jhabbal and sticks also (being obviously required for pitching the poles to fence the land) have prevented him from entering into the land and it is in this process both parties scuffled with each other because the place of occurrence was none else, but a place in front of and nearby the house of the deceased and it is in this process accused Balak Ram had dealt the blow of gainti on the head of deceased which turned as fatal, cannot be ruled out. PW-1 Shashi Sharma, no doubt, tells us about accused Shanti Devi also pelted a stone on the head of the deceased when he fell down, however, is an improvement for the reason that she has not stated so in her statement Ex. P-A recorded under Section 154 Cr.P.C. Otherwise also, the medical evidence reveals that there was only one blow found to have been inflicted on the head of the deceased as noticed at the time of his postmortem.

17. PW-2 Kapil Dev and his mother PW-3 Smt. Meera Devi are also eye witnesses to the occurrence. As a matter of fact, they also received injuries at the hands of accused in this incident. The M.L.C. of PW-3 Meera Devi is Ex. PW-6/B, whereas, that of PW-2 Kapil Dev is Ex. PW-6/C. The nature of injuries on their persons was simple. They were examined during the night intervening 11/12.3.2007, i.e. 2.20 a.m. and 2.40 a.m. respectively. Therefore, they being injured witnesses, the evidence as has come on record by way of their respective statements, has rightly been appreciated by learned trial Court. All of them have stated in one voice that the assailants were the accused and not the deceased. Further evidence that during day time when around 4.00/5.00 p.m. the deceased came to home after attending some marriage, hot exchanges took place between him and the accused at that time also and the accused made the utterances that they will not spare him as and when an occasion to do arises, as has been stated by PWs-1 to 3. Such evidence also leads to the only conclusion that the assailants were the accused. Admittedly, there is enmity between both parties and past

litigation also, as is apparent from the perusal of the statement of D.W.-1 Kundan Lal as well as the copies of judgment and decree Ex. D-8 and Ex. D-9 tendered in evidence by learned defence counsel. Of course, the enmity is a doubled edged weapon. However, in the case in hand, the possibility of the accused party being the aggressor cannot be ruled out for the reason that it is they who fenced their land by barbed wire and blocked the so called path allegedly being used by the complainant party to have access to their houses. However, since as per the evidence as has come on record that it was the only passage to have access to the place of his duty and he was adamant to take same path by entering into the land of the accused, therefore, the accused party while preventing him from doing so had scuffled with him and also dealt the fatal blow on his head. They also seem to have inflicted injuries on the persons of PW-2 Kapil Dev and PW-3 Smt. Meera Devi with reverse side of drat and the stick. In case it is the complainant party the aggressor and assaulted accused Shanti Devi and Balak Ram with sticks, why they absconded and surrendered before the police on the 3rd day of the occurrence and did not lodge report on the same day and got themselves medically checked up. No explanation in this behalf is forthcoming. Above all, on the day when they surrendered, the Investigating Officer, PW-13 asked them as to whether they intend to lodge any report with respect to the injuries on their person, however, they failed to do so nor anyone from their family came forward to register the case. Therefore, in our considered opinion, the aggressors were the accused and not the deceased.

18. The judgment of the Hon"ble Apex Court in S. Velayudhan Vs. Krishnan and Others, is not attracted to the facts of this case for the reason that here the evidence goes to show that the aggressor were the accused and not the complainant and also that accused Surinder Kumar and Balak Ram absconded after the commission of the offence and surrendered themselves on the 3rd day before the police. Therefore, in such a situation, the present is not a case where the prosecution was under an obligation to explain as to how the said accused sustained injuries on their persons. The ratio of the judgment supra, therefore, is hardly of any help to the case of the accused.

19. Be it stated that accused Surinder Kumar and Balak Ram when surrendered before the police on the 3rd day, there were injuries on their person. Therefore, they were taken to the hospital in custody. They were got medically examined by the police. The M.L.Cs. in respect of accused Surinder Kumar is Ex. D-D, whereas that of accused Balak Ram Ex. D-E. The injuries though were on vital part of their bodies, however, simple in nature. No doubt, in an occurrence, the prosecution is obliged to explain the injuries received by the accused persons, however, there should be medical examination of the person accused of an offence immediately after the occurrence and not on his surrender after some lapse of time. In Mohar Rai and Bharath Rai Vs. The State of Bihar, the Hon"ble Apex Court has held as under (para 6):--

"The trial court as well as the High Court wholly ignored the significance of the

injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabalised. Under these circumstances the prosecution had a duty to explain those injuries. The evidence of Dr. Bishun Prasad Sinha (P.W. 18) clearly shows that those injuries could not have been self-inflicted and further, according to him, it was most unlikely that they would have been caused at the instance of the appellants themselves. Under these circumstances we are unable to agree with the High Court that the prosecution had no duty to offer any explanation as regards those injuries. In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabalise the plea taken by the appellants."

20. In the case in hand, admittedly, the accused absconded after the occurrence and surrendered before the police on 13.3.2007, i.e. on 3rd day of the occurrence. Therefore, whereas in Mohar Rai's case supra, the injured were taken to hospital immediately after the occurrence, the law laid down in this judgment is not applicable in this case nor the non-explanation of the injuries on the persons of the accused is fatal to the prosecution case. The law laid down in this judgment, therefore, is also of no help to the accused.

21. In Lakshmi Singh and Others Vs. State of Bihar, it has been held that non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is an important circumstance from which the inference that the prosecution has suppressed the real genesis of the origin of the occurrence as well as the evidence of a witness having denied the presence of injuries on the person of the accused is unreliable, can be drawn. When there is plausible explanation given by the defence qua such injuries on the person of the accused, such explanation coupled with the inferences hereinabove renders the prosecution story doubtful. It has further been held in the judgment cited supra that in a case where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, independent and disinterested, probable, consistent and creditworthy, the prosecution in a case of this nature is not obliged to explain the injuries nor the non-explanation of the injuries is fatal to its case. The present is a case where it is established through cogent and reliable evidence that the aggressor were the accused persons and rather the deceased lost his life on the spot itself on account of the head injury caused with gainti blow by accused Balak Ram. The injuries though were found to be on occipital and parietal region of the body of accused Surinder Kumar and Balak Ram, however, simple in nature. When they absconded after the occurrence and surrendered on the 3rd day, it cannot be said beyond reasonable doubt that such injuries were received by them simultaneously in the same occurrence. Therefore, the judgment in Lakshmi

Singh's case, *supra*, is also of no help to the case of the accused.

22. As already stated, the present is also not a case of exercise of right of private defence by the accused for the reason that the deceased as per the evidence on record being unarmed was on the way to the place of his work to attend to night duty. Although in defence an effort is made to persuade us that the complainant party attacked the accused on their way to the house after finishing day's work and, as such, they had to retaliate and exercise their right of private defence as had it not been done by them, the complainant party would have eliminated them, however, unsuccessfully for the reason that the cogent and reliable evidence as discussed hereinabove leads to the only conclusion that the assailants were the accused and not the complainant party. Even if it is believed that the deceased was carrying a stick with him, the danger if any to the lives of the accused could have been prevented by using the sticks which, admittedly, were available with them and not a deadly weapon like gainti, that too, in assaulting the deceased over his head, a vital part of the body. Such a ghastly act attributed to the accused therefore cannot be said to have been done in the name of exercise of right of private defence and rather committed intentionally and knowing fully well that such an act would have caused the death of the deceased. The right of private defence, therefore, cannot be extended in favour of the accused in the case in hand. The law laid down by the Apex Court in Lakshmi Singh's case referred *supra* being distinguishable on facts, is not applicable in this case. The ratio of the judgment rendered by a Co-ordinate Bench of this Court in Babu Din and Others Vs. State of H.P., is also not attracted in this case because that was a case where the FIR was found to be registered against the accused after due deliberation and consultation and also material contradictions in the statements of the prosecution witnesses and that the complainant party being armed with sharp edged weapons, there was reasonable apprehension of causing grievous hurt on the persons of the accused by the complainant party. This, however, is not the situation in the case in hand, as discussed hereinabove.

23. Therefore, in our considered opinion, the present is a case where accused Balak Ram dealt a blow of gainti on the head of the deceased intentionally and knowing fully well that the same would have caused death of the deceased. The present therefore is not a case where there was any apprehension to the accused of being caused bodily injuries by the deceased. Otherwise also, force used by them to prevent such danger at the hands of the deceased does not commensurate with the so called apprehension for the reason that even if the defence of the accused is taken as it is, the deceased was only having a stick with him. There is no iota of evidence to suggest that the complainant party including the deceased were waiting for the arrival of the accused nearby the house of the accused and it is they who attacked them. The fuel wood/grass loads even if believed to be there on the place of occurrence, the same is not a circumstance lending any support to the case of the accused for the reason that the evidence available on record leads to the only conclusion that the occurrence

took place at such a stage when deceased was on the way to attend to his duty and prevented by the accused from using the passage through their land at such a stage when the accused were on the way to their house with grass/fuel wood loads on their heads. The spot map Ex. PW-13/A reveals that the place of occurrence mark "A" though is in front of the house of deceased Prem Lal, however, below the path called "Kufta to Badau path".

24. We, however, are in agreement with learned defence counsel that the present is not a case where the accused party having lashed with lethal weapon came to the place of deceased and complainant party, assaulted them to do away with his/their lives. The incident, rather sparked at a spur of moment on the dispute of passage which the accused blocked by putting barbed wire on that day. The weapon of offence, i.e. gainti Ex. P-1 and for that matter drat Ex. P-2 and danda Ex. P-3 were certainly required for pitching the poles. The accused therefore had not come with any preparation to commit the crime. However, the occurrence took place at the spur of moment on the spot. The present, therefore, is a case where each of the accused is to be held responsible for his/her individual act done towards the commission of the offence.

25. As per the evidence available on record, the gainti blow which has resulted in the death of deceased, Prem Lal, has been dealt with on the head of the deceased by accused Balak Ram. No doubt, PW-1 Shashi Sharma has stated about accused Shanti Devi also dealt one blow of stone on his head when he fell down, however, the same is an improvement in her previous statement because she never stated so in her statement Ex. P-A recorded under Section 154 Cr.P.C. Nothing to this effect even has been stated in Ex. D-G, her supplementary statement. Therefore, it cannot be said that accused Shanti Devi also inflicted stone blow on the head of the deceased. It is, therefore, accused Balak Ram, who alone has inflicted the fatal blow on the head of the deceased. The evidence as has come on record by way of the testimony of the complainant, PW-1 Shashi Sharma and injured witnesses, PW-2 Kapil Dev and PW-3 Meera Devi, it is accused Surinder Kumar who inflicted a blow from reverse side of the drat Ex. P-2 on the head of PW-2, Kapil Dev, whereas, accused Shanti Devi gave beating to PW-3 Meera Devi with sticks. They both were got medically examined vide M.L.Cs. Ex. PW6/C and Ex. PW-6/B. The nature of injuries on their persons was found simple.

26. Therefore, taking the present a case where there was no planning or meeting of mind before the commission of the offence by the accused persons nor the intention was to kill the deceased, however, in the manner the gainti blow was inflicted over the head of the deceased by Accused Balak Ram, the present is a case which falls under 4th Explanation below Section 300 of Indian Penal Code because the manner in which the blow was inflicted by the accused, leads to the only conclusion that he was in the knowledge that giving such blow will endanger and in all probabilities cause death or such bodily injuries likely to cause death of deceased Prem Lal. Therefore, the present is not a case punishable under Section

302 of Indian Penal Code nor all the accused should have been convicted and punished under Section 302 with the help of Section 34 of Indian Penal Code. Since the commission of an offence under Section 341 of Indian Penal Code also stands proved against each of the accused person, therefore, while accused Balak Ram should have been convicted and sentenced under Section 304, Part I and 341 of Indian Penal Code, his co-accused Shanti Devi and Surinder Kumar under Sections 341 and 323 of Indian Penal Code.

27. Therefore, in our considered opinion, the impugned judgment to the extent of holding all the accused guilty for the commission of the offence punishable under Section 302 read with Section 34 of Indian Penal Code is erroneous being not legally and factually sustainable, needs to be modified accordingly.

28. We, therefore, convict accused Balak Ram for the commission of an offence punishable under Section 304, Part I of Indian Penal Code, whereas his co-accused Shanti Devi and Suriender Kumar under Sections 341 and 323 of Indian Penal Code. In the matter of sentence, accused Balak Ram is sentenced to undergo rigorous imprisonment for a period of 10 years under Section 304, Part I of Indian Penal Code. The sentence of fine awarded against him is however maintained. So far as accused Shanti Devi and Surinder Kumar, each of them is convicted and sentenced to the imprisonment already undergone. The sentence of fine awarded against them, however, is reduced to Rs. 500/- each under Section 341 of Indian Penal Code and Rs. 1000/- each under Section 323 of Indian Penal Code.

29. We therefore modify the impugned judgment accordingly and dispose of the appeal in the above terms. The personal bonds furnished by the accused stand cancelled and surety bonds discharged.