
(2018) 06 MP CK 0106

In the Madhya Pradesh High Court

Case No : Criminal Appeal No.656, 959 Of 2009

Shishupal Singh

APPELLANT

Vs

State Of Madhya Pradesh Through Police

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 315, 374(2)
Indian Penal Code, 1860 — Section 34, 294, 300I, 302, 304II, 323, 325, 506B
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(x), 3(2)(v)

Citation : (2018) 06 MP CK 0106

Hon'ble Judges : C.V. SIRPURKAR, J;V.K. SHUKLA, J

Bench : Division Bench

Advocate : Surendra Singh, Abhilash Dey, Vidhya Shanker Mishra

Final Decision : Dismissed

Judgement

C.V. Sirpurkar, J.

1. Since both of these criminal appeals arose from the same judgment, they have been heard analogously and are being disposed of by this common

judgment.

2. These criminal appeals filed under Section 374 (2) of the Cr.P.C. against conviction, are directed against the judgment dated 06.03.2009 passed by

the Court of Special Judge,(SC/ST Prevention of Atrocities Act), Chhatarpur, in S.T.No.164/2005, whereby accused/appellant Hari Pratap Singh @

Nanhu Raja was convicted under Section 302 of the IPC and remaining accused persons/ appellants namely Shishu Pal Singh @ Chhutte Raja, Vishnu

Pratap Singh @ Pappu Raja and Premlal @ Pimmu were convicted under Section 302 read with section 34 of the IPC for having committed murder

of deceased Ranjeet Ahirwar in furtherance of their common intention and have been sentenced to undergo life imprisonment and a fine in the sum of Rs.1,000/-each. In default of payment of fine, they were directed to undergo further rigorous imprisonment for a period of 6 months. However, all of them were acquitted of the offence punishable under Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. In a nutshell, the prosecution case before the trial Court was that deceased Ranjeet Ahirwar was member of a Scheduled Caste. He was Sarpanch of Village- Dalaun. At about 12:00 p.m. on 16.09.2005, he had gone to Village- Dalaun from his home at Village- Gadriyan Purwa to attend the meeting of Gram Panchayat in the Panchayat building. He was followed by his brother, first informant, Durjana (PW-1). The proceedings of the meeting commenced at around 12:00 p.m. Accused Shishupal Singh @ Chhutte Raja (hereinafter referred to in this judgment as accused Chhutte Raja) asked as to how many persons had gathered; whereon, deceased Ranjeet and Secretary Jai Prakash told him that about 30-35 persons have gathered. Chhutte Raja asked them call others and complete the quorum. Deceased Ranjeet replied that one of the halls in the panchayat building has been occupied and locked by accused Vishnu Pratap Singh @ Pappu Raja (hereinafter referred to in this judgment as accused Pappu Raja). If more persons arrived, where would they sit. Pappu Raja and Chhutte Raja started to argue with deceased Ranjeet. Thereafter, the meeting ended and people started to leave. At around 03:00 p.m. accused Chhutte Raja filthily abused deceased Ranjeet and addressed him in a derogatory manner with reference to his caste. They blamed Ranjeet for asking accused Pappu Raja to vacate the room occupied by him and exhorted each others to kill Ranjeet; whereon, accused persons Chhutte Raja and Pappu Raja started to assault deceased Ranjeet with sticks and accused Hari Pratap Singh @ Nanhu Raja (hereinafter referred to in this judgment as accused Nanhu Raja) and Premlal @ Pimmu (hereinafter referred to in this judgment as accused Pimmu) assaulted the deceased with stones. Accused persons Chhutte Raja and Pappu Raja rained blows to the hands and legs of the deceased with sticks with intent to kill. Consequently, deceased Ranjeet fell down. Nanhu Raja struck deceased on head with a stone. As a result,

deceased Ranjeet became unconscious. Accused Pimmu also threw stones upon him, which hit Ranjeet on legs. Deceased Ranjeet sustained multiple

fracture to his legs and hands. He also started to bleed. He became unconscious and was unable to speak. His brother, first informant, Durjana (PW-

1) tried to rescue him; however, nobody listened to him. Thereafter, accused Pappu Raja brought a gun from his house and dared those present, to

help Ranjeet. They threatened that if anybody came to his rescue, they would kill him with the gun. Witnesses Munna Raja (PW-6), Raju Raja (PW-

5), Kilkandi Ahirwar, Shyamsunder, Girja and other persons were present on the spot, who witnessed the incident. Thereafter, Durjana went to

Village-Gadriyan Purwa to make a phone call to P.S.-Chhatarpur; however, his call could not get through; therefore, he returned to the spot.

Incidentally, at the same time, D.S.P., S.C.Dohre (PW-12) had gone to Village-Dalaun for investigation of crime no.181/2005 registered in AJAK,

Chhatarpur, against accused Nanhu Raja. He was told by children that one person is lying in a wounded condition in front of panchayat building;

therefore, he reached the spot along with his force. They picked deceased Ranjeet from the spot and took him in their jeep to Ranjeet's house. They

informed Ranjeet's wife Gadiya Bai (PW-2) about the incident and took the deceased to the hospital along with Gadiya Bai. On the way to

Chhatarpur, deceased made a dying declaration (Ex.P/14) to D.S.P, S.C.Dohre (PW-12), disclosing the names of four accused persons as assailants.

The dying declaration was recorded by D.S.P., S.C. Dohre. They reached the hospital at about 05:00 p.m.. Meanwhile, Durjana returned to the spot

and learnt that the police had taken his brother to Chhatarpur hospital. Thereafter, he went along with his brother Premdas (PW-4) and son Ramu

(PW-3) to Chhatarpur on foot taking care of conceal themselves. They reached the hospital at about 08:00 p.m.. Subsequently, at around 09:00 p.m.,

Durjana lodged the Dehati Nalishi of the incident(Ex.P/1).

4. At about 1:00 a.m. on 17.09.2005, Ranjeet expired during treatment. In medico-legal examination conducted by Dr. R.S. Tripathi (PW-11) at least

13 injuries caused by hard and blunt objects were found on the person of the deceased. He had sustained 13 fractures. He had died a homicidal death

due to coma caused by the fracture of right tempo-parietal bone. During investigation, accused persons were arrested and sticks stained with human

blood, were seized from the possession of accused persons Chhutte Raja and Pappu Raja. Clothes were seized from the spot. After investigation, charge-sheet was filed.

5. The trial Court framed charges for the offences punishable under Section 302 and in the alternative Section 302 read with section 34 of the IPC and

Sections 3 (2)(v) and 3 (1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. The accused persons abjured the guilt and claimed to be tried. They

stated under Section 313 of the Cr.P.C. that they are innocent and have been falsely implicated in the case. They were not present on the spot.

Accused Chhutte Raja had gone to Chhatarpur to get his tractor repaired. Pappu Raja had gone to Village Dargaykala, Tikamgarh, to attend a

function at his brother-in-law's place. Accused Pimmu had gone to Janpad office, Chhatarpur. They examined six witnesses in defence. Accused

Nanhu Raja also examined himself under Section 315 of the Cr.P.C.

6. After the trial, learned Special Judge was of the view that on the basis of ocular testimony of Durjana (PW-1), Raju Raja PW-5) and Munna Raja

(PW-6), which is supported by medical evidence given by Dr. R.S. Tripahi (PW-11) and Dr. V.P. Shesha (Court Witness no.1), the prosecution had

succeeded in proving beyond reasonable doubt that all four accused persons had formed a common intention of committing murder of deceased

Ranjeet. In furtherance of said common intention, accused Hari Pratap Singh @ Nanhu Raja had delivered a blow by a stone to his head and in

support of aforesaid common intention, accused Pimmu also assaulted the deceased with stone. Remaining two accused persons namely Chhutte Raja

and Pappu Raja assaulted deceased with sticks. However, the trial Court refrained from placing reliance upon the dying declaration (Ex.P/14).

Therefore, they were convicted and sentenced as stated above.

7. Learned counsel for the appellants have assailed the findings of the trial Court on following grounds:

(i) The deceased was assaulted at around 01:00 p.m. on the date of the incident; however, it has been falsely claimed by the prosecution that he was

assaulted at 03:00 p.m., in order to cover up the lacunae in prosecution case.

(ii) There was no one present to tend the deceased when the police reached the spot, Durjana (PW-1), brother of the deceased is said to have fled

away from the spot, which appears unnatural.

(iii) The doctors examining the deceased have opined that the fracture of temporo-parietal bone, which led to the death of the deceased, could have been caused by fall as there was no corresponding external injury on his head.

(iv) The stone by which the deceased is said to have been killed weighed 5 kgs. It was pointed, yet no external injury was caused.

(v) D.S.P. had reached the spot at about 03:00 p.m. and the deceased is said to have given the dying declaration to the D.S.P. before 05:00 p.m.;

therefore, Dehati Nalishi allegedly recorded at 09:00 p.m. is not admissible in evidence.

(vi) No details of the accused persons have been given in the dying declaration.

(vii) The motive that has been given by the prosecution is not sufficient to kill a person.

(viii) Even as per the prosecution case, there was a sudden fight and the crime was not premeditated; thus, even if all allegations leveled against the

appellants by the prosecution are taken at their face value and presumed to be true, only accused Nanhu Raja can be convicted under Section 304

(Part-II) of the IPC.

(ix) There is nothing on record to conclude that other accused persons shared common intention with Nanhu Raja; therefore, at worst, they can be

held liable only for the offence punishable under Section 325 of the IPC.

8. In support of aforesaid contentions, learned counsel for the appellants have placed reliance upon the judgments rendered by the Supreme Court in

the cases of Kathi Odhabhai Bhimabhai and others vs State Of Gujarat, AIR 1993 SC 1193, Adu Ram vs. Mukna and others, AIR 2004 SC 5064,

B.K. Channappa vs State Of Karnataka, AIR 2007 SC 432, Sripathi Vs. State of Karnataka, AIR 2010 SC 249 and State of UP. vs Gajadhar Singh,

AIR 2009 SC 1935. Therefore, it has been prayed that the appeal be allowed and the accused persons /appellants be acquitted or their sentences be

suitably reduced.

9. Learned Government Advocate for the respondent/state on the other hand has supported the impugned judgment.

10. After going through the record and taking into account the rival contentions, the Court is of the view that these appeals against conviction, must fail

for the reasons hereinafter stated:

11. The prosecution case is based mainly upon the eye-witness account of three prosecution witnesses namely Durjana (PW-1), Raju Raja (PW-5),

Munna Raja (PW-6) supported by medical evidence (Dr. R.S. Tripathi and Dr. V.P. Shesha) and dying declaration allegedly made by deceased

Ranjeet to Investigating Officer S.C. Dohre (PW-12) in presence of Ranjeet's wife Gadiya Bai (PW-2) in police vehicle on his way from the spot to

the hospital.

12. The gist of the prosecution evidence as culled out from the depositions of aforesaid three witnesses is that at the time of the incident, deceased

Ranjeet was Sarpanch of village Dalaun. At about 12:00 p.m. on 16.09.2005 a meeting of Gram Panchayat was convened in panchayat building at

Dalaun. In aforesaid meeting, Raju Raja (PW-5), Munna Raja (PW-6), Girja Pathak, Harsevak Pathak (PW-7), S.S. Pathak etc. were present. The

proceeding of the meeting went on till about 02:30 p.m.. At that time, appellant Chhutte Raja arrived and asked deceased Ranjeet as to how many

persons have gathered. Ranjeet and Secretary of the panchayat replied that about 30-35 persons have gathered; whereon, appellant Chhutte Raja

asked them to call all the persons. Ranjeet replied that if all persons came, where would they sit ? There was no space in the panchayat building, as

accused Pappu Raja had locked one hall. As dispute started to flare up Pathak intervened and set them apart. The meeting ended at about 3:00 p.m.

13. Thereafter, when Ranjeet was coming out, accused Chhutte Raja caught hold of him and filthily abused him. He addressed Ranjeet in a

derogatory manner with respect to his Scheduled Caste (Chamar). Appellants Pappu Raja and Chhutte Raja started to beat Ranjeet with sticks.

Appellants Nanhu Raja and Pimmu Dhobi started to beat him with stones. Nanhu Raja hit a stone on Ranjeet's head. Durjana Ahirwar tried to rescue

his brother but he did not succeed and the appellants continued to assault the deceased. Thereafter, appellant Pappu Raja brought a gun on the spot.

He dared those present, to help the deceased. Later, presuming the deceased to be dead, appellants ran away. Ranjeet sustained several injuries to his

hands, legs and head. He was bleeding from his nostrils. Durjana, accompanied by Raju Raja, went to nearby village Gujratapurva to call the police

on telephone. However, since the call did not mature, they returned to the spot. Meanwhile, DSP S.C. Dohre, the Investigating Officer, who had gone

to village Dalaun in connection with investigation of Crime No. 181/2005 under Sections 323, 294 and 506-B of the Indian Penal Code and Section

3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and was looking for accused Nanhu Raja at about 3:30 p.m.,

learnt from small children of the village that a person was lying injured in front of panchayat building; whereon, he went to the spot and found

Sarpanch Ranjeet lying unconscious. He had injuries to his hands and legs. There was no one present with deceased Ranjeet. He was in a perilous

condition; therefore, S.C. Dohre (PW-12) placed Ranjeet in police vehicle and went to his house and informed Gadiya Bai (PW-2), wife of the

deceased. Thereafter, he took deceased and Gadia Bai in his vehicle to Chhatarpur hospital. On his way to the hospital, Ranjeet regained

consciousness for a while and disclosed to S.C. Dohre in presence of Gadiya Bai that he was assaulted by Chhutte Raja, Pappu Raja and Nanhu Raja

and Pimmu Dhobi; whereon he recorded the dying declaration (Ex.P/14). Since Ranjeet's hands were badly injured and he was in severe pain, the

Investigating Officer got the dying declaration thumb marked by Gadiya Bai. However, Gadiya Bai, wife of deceased Ranjeet (PW-2) has stated that

at around 03:00 p.m. on the date of the incident, she was at home. A police constable came and informed her that her husband had been beaten up

was lying in an injured condition in front of panchayat building. Whereon, she went to the spot. Her husband told her that accused persons Pappu Raja,

Chhutte Raja, Nanhu Raja and Pimmu Dhobi had beaten him. His hands and legs were fractured and he was crying for water. She gave him some

water. When her husband Ranjeet was being brought to Chhatarpur for being admitted to the hospital, he again repeated the names of appellants. He

told the police that appellants Chhutte Raja, Pappu Raja, Pimmu Dhobi and Nanhu Raja had beaten him. Thereafter, she put her thumb mark on the

dying declaration because her husband was seriously injured.

14. Learned counsel for the appellants had assailed the dying declaration (Ex.P/14) and statement of Gadiya Bai (PW-2) on several counts. It has

been stated that apart from Gadiya Bai (PW-2), all other eyewitnesses have stated that Ranjeet had become unconscious on the spot. None of the

doctors attending upon and examining deceased Ranjeet in district hospital Chhatarpur [Dr. R.S. Tripathi (PW-11) and Dr. V.P. Shesha (court

witness no.1),] have stated that Ranjeet ever regained consciousness before his death in the hospital. S.C. Dohre (PW-12) has stated that he had sent a requisition (PW-28) to Tehsildar to record dying declaration of deceased Ranjeet; however, it was returned by Tehsildar with a note that the statement of deceased Ranjeet could not be recorded because he was unconscious. This note is supported by report of the attending doctor Ex.P/28 to the effect that the deceased was unable to make any dying declaration. It has further been argued that S.C. Dohre (PW-12) has stated that he had placed the deceased in the back side of pick up van and he was sitting in front. In these circumstances, it appears highly unlikely that when the deceased regained consciousness for a short while, the Investigating Officer S.C. Dohre was with him at that precise moment and he succeeded in recording the dying declaration allegedly made by the deceased. It has also been submitted that there is no signature or thumb impression of the deceased on the dying declaration. It has only been thumb marked by Gadiya Bai, who is wife of the deceased. There are several discrepancies in the statement of Gadiya Bai and therefore no reliance can be placed upon her statements. As per the prosecution story, the deceased was in a critical condition; therefore, he was taken by Investigating Officer S.C. Dohre to the hospital and on the way they informed his wife Gadiya Bai and also took her along in the police vehicle. However, Gadiya Bai has testified to the effect that on receiving information of the incident, she had gone to the spot. At that time, her husband was conscious and had disclosed the names of appellants which is against the prosecution story. Therefore, it has been submitted that the dying declaration is unreliable.

15. There is substance in the arguments of learned counsel for the appellants so far as statements of S.C. Dohre (PW-12) and Gadiya Bai (PW-2) regarding dying declarations are concerned. As per the prosecution story, on finding deceased Ranjeet in an injured condition, S. C. Dohre and the police party gave first aid to him and took him in police pick up van to Chhatarpur hospital. On way, they informed his wife Gadiya Bai and took her along in the vehicle; whereas, Gadiya Bai has stated that on receiving information of the incident from a police constable, she went to the spot where her husband disclosed the names of assailants to her, which is not the part of the prosecution story. At any rate, it appears improbable that the police

party would wait for wife of the deceased to arrive on the spot before moving the deceased to the hospital. S.C. Dohre has stated that when he went

to the spot, he found that deceased Ranjeet was unconscious. The doctors, who had attended to and examined the deceased namely Dr. R.S. Tripathi

(PW-11) and Dr. V.P. Shesha (Court Witness) have nowhere stated that the deceased ever regained consciousness before his death; whereas,

Gadiya Bai has maintained in her cross-examination that her husband was conscious till about 2:00 a.m. and was giving statements to the police and

the doctors. Requisition (Ex.P/28) sent by Investigating Officer S.C. Dohre to Tehsildar for the purpose of recording dying declaration of the

deceased, was returned with a note by Tehsildar, which was supported by report of the doctor that the dying declaration could not be recorded

because deceased Ranjeet was unconscious. At that time, the doctor has also clearly opined that Ranjeet was unable to give dying declaration.

However, Gadiya Bai has stated in her cross-examination that the deceased had also disclosed the names of the assailants to the Tehsildar.

Investigating Officer S.C. Dohre has stated in cross-examination that he was sitting in front of the vehicle and the deceased was placed in the back

side of the pick-up van. Thus, it appears highly unlikely that he was able to record the dying declaration at the precise moment the deceased had

regained consciousness.

16. Moreover, the dying declaration has not been thumb marked by the deceased. True it is that his hands were badly injured and fractured in several

places and he was in great pain; however, it should not have been difficult to obtain his thumb impression on a piece of paper. That apart, even if it is

assumed for the sake of argument that the deceased had indeed made such declaration to S. C. Dohre, a perusal of the same reveals that he had only

disclosed the pet names of the appellants. The Supreme Court has held in the case of Gopal Singh and another vs State Of Madhya Pradesh and

another, AIR 1972 SC 1557 that dying declaration which does not contain complete names and particulars of the persons charged with the offence,

even though may help to establish their identity, is not of such a nature, on which conviction can be based. It cannot be accepted without

corroboration.

17. Aforesaid circumstances cumulatively point towards unreliability of the dying

declaration (Ex.P/14). These circumstances also indicate that Gadiya Bai is not a truthful witness and no reliance can be placed upon her statements. The statement of S. C. Dohre so far as recording of dying declaration (Ex.P/14) is concerned, is also not worthy of credence. Therefore, no evidentiary value can be attached to the dying declaration (Ex.P/14). In this view of the matter, the trial Court has rightly declined to place reliance upon the dying declaration.

18. Now we shall proceed to examine the ocular evidence and the medical evidence adduced in support thereof. Learned counsel for the appellants

have assailed the statements of eye-witnesses Durjana (PW-1), Raju Raja (PW-5) and Munna Raja (PW-6) mainly on the ground that they are

related and interested witnesses. It is true that Durjana is brother of the deceased; however, remaining two eye-witnesses Raju Raja (PW-5) and

Munna Raja (PW-6) are not related to the deceased in any manner. Durjana has admitted in his cross-examination that one Ramdas Basor had

contested elections for the post of Sarpanch against deceased Ranjeet. He has also admitted that appellants Pappu Raja etc. had put up Ramdas

Basor as candidate. Ramdas Basor had filed a case for removal of Ranjeet from the post of Sarpanch, as third child was born to him after 26th of

January, 2001. He has also admitted that there is a land dispute between himself and Ramdas pending in Tehsil Court and Civil Court. He has also

admitted that a criminal case is pending against him in the Court on the report lodged by Ramdas's brother. He has claimed that a counter case in this

regard is also pending. He has also admitted that Mahipal Singh, elder brother of appellants Pappu Raja and Chhutte Raja supported Ramdas Basor

against Ranjeet. Therefore, he had lodged several complaints against Mahipal Singh. He has also admitted that appellant Hari Pratap Singh @ Nanhu

Raja had canvassed the candidature of Ramdas against Ranjeet and eye-witnesses Munna Raja and Raju Raja had supported Ranjeet.

Thus, it is clear that there was enmity with regard to panchayat elections between deceased Ranjeet and Durjana on one hand and appellants Chhutte

Raja, Pappu Raja and Nanhu Raja on the other.

19. Durjana (PW-1) also admitted in his cross-examination that Pimmu Dhobi was panchayat secretary before deceased Ranjeet became Sarpanch;

however, after Ranjeet became Sarpanch, he got Pimmu Dhobi removed from the

post of Panchayat Secretary because Pimmu under-performed. He

denied suggestion that Pimmu was removed from the post because he had supported Ramdas Basor against Ranjeet. Whatever be the cause for

removal of Pimmu from the post of Secretary, it is clear that he was not on good terms with deceased Ranjeet. However, as the cliché goes, enmity

is a double edged weapon. Whereas a person can be falsely implicated on the basis of enmity, he can also be assaulted for that reason. Thus, enmity

by itself, is not sufficient to discredit the eye-witnesses.

20. Learned counsel for the appellants have laid great stress upon the abnormal behavior of Durjana. It has been contended that though Durjana was

real brother of deceased Ranjeet, he failed to intervene on behalf of his brother while he was being assaulted by the appellants. Even after the

incident, Durjana left his brother Ranjeet to die on the spot and escaped. When Investigating Officer S. C. Dohre reached the spot, he found deceased

Ranjeet lying alone in unconscious condition. This conduct on the part of Durjana is unnatural.

21. It may be noted in this regard that Durjana has stated in his examination-in-chief that he was trying to stop the appellants from assaulting deceased

but they did not pay any heed to him. Thereafter, appellant Pappu Raja brought a gun on the spot. Raju Raja (PW-5) has stated that Pappu Raja dared

those present to help deceased Ranjeet; therefore, they all, including Durjana, fled from the spot. There does not seem to be anything unnatural in the

conduct of Durjana (PW-1) in the face of a murderous assault on his brother and subsequent threat by appellant Pappu Raja who brought a gun on the

spot. It was natural for Durjana to have taken into consideration his own safety.

22. Moreover, Durjana has explained that when Investigating Officer S. C. Dohre reached the spot, he had gone to village Gujratpurva, which was

about one kilometre away, to inform the police on telephone regarding the incident. Admittedly, there were no mobile phones available to the witnesses

in the year 2005. Raju Raja (PW-5) has admitted that there is one telephone installed in front of panchayat building. There was another phone in

village Puchi, which is about half a kilometre from the place of the incident. However, the witnesses have explained that it would have been dangerous

to have attempted to make a call to the police from the telephone installed in front of the panchayat building because the incident had just taken place.

It has also been explained that there was some danger on way to Puchi. Moreover, the telephone installed at Puchi was not reliable; therefore,

Durjana and Raju Raja (PW-5) had gone to Gujratpurva to make a call to the police. This conduct on the part of the witnesses cannot be said to be unnatural or questionable.

23. There is also discrepancy in the statements of witnesses as to who had accompanied Durjana to Gujratpurva. Durjana (PW-1) , Premdas (PW-4),

who is also brother of deceased Ranjeet and Raju Raja (PW-5) have stated that Durjana had gone to Gujratpurva to make a call. Only discrepancy is

with regard to person who had accompanied Durjana to Gujratpurva. Premdas (PW-4) has initially stated that he had gone along with Durjana to

make the call but in cross-examination he has denied this fact and has stated that actually Raju Raja had gone to Gujratpurva along with Durjana but

there is no doubt that Durjana had gone to make the telephone call. It is immaterial whether he was accompanied by Premdas or Raju Raja. In these

circumstances, the absence of Durjana, brother of deceased Ranjeet on the spot, immediately after the incident, is fully explained and does not dent

the prosecution story.

24. It has also been pointed out that Gadiya Bai (PW-2) has stated in paragraph no.7 of her cross-examination that when the police constable had

gone to her residence to inform her about the incident, her brother-in-law Durjana was on the well which is about 2 kilo meters away from the village.

When Durjana learnt about the incident, he went to the spot. When she reached the spot, Durjana was already there. It is true that Gadiya Bai has

made aforesaid statement in her cross-examination. However, it may be noted that Gadiya Bai was not present on the spot; therefore, undue

importance cannot be given to her statement that Durjana was not present at the time of the incident especially where presence of Durjana on the

spot has been confirmed by eye-witnesses namely Raju Raja (PW-5) and Munna Raja (PW-6). Moreover, immediately after making aforesaid

statement, Gadiya Bai (PW-1) has clarified that Durjana was actually on the spot with her husband and she had erroneously stated earlier that

Durjana was at the well. Therefore, this aberration in the statement of Gadiya Bai does not discredit the testimony of Durjana.

25. In this regard, attention of the Court has been invited to the fact that

Jaiprakash Awasthi (defence witness no.6) has stated that Ranjeet had gone in the meeting alone; however, in the cross-examination he has admitted that he is not aware if Ranjeet's brothers etc. had also gone along with him.

He has not specifically denied the presence of Durjana on the spot. In any case, Jaiprakash was not resident of village Dalaun. He had gone to attend the meeting on the direction of Deputy Director Panchayat and Social Justice District Chhatarpur. Raju Raja (PW-5) has stated in his cross-examination that on the date of the incident, the meeting of Gram Panchayat was called with the specific agenda of handing over of charge by appellant Pimmu Dhobi to newly appointed Secretary Jaiprakash Awasthy (DW-6). Thus, it is clear that Jaiprakash was not acquainted with Durjana and he was not in a position to state whether Durjana was actually present on the spot or not.

26. It has also been pointed out by learned counsel for the appellants that there are discrepancies between the statements of prosecution eye-

witnesses regarding the nature of injuries caused to the deceased by different appellants. When four persons assault the deceased together, it is not possible for the witnesses to exactly mark as to which accused was assaulting the deceased with which weapon and on which part of his body.

Therefore, so long as presence and participation of all four appellants in the incident is established, particulars of the assault or any inconsistency in

those particulars are immaterial. In this regard, reliance may be placed upon the judgment rendered by the Supreme Court in the case of B.K.

Channappa vs State Of Karnataka, AIR 2007 SC 432.

27. Learned counsel for the appellants has laid emphasis on the fact that assault had taken place prior to 1:00 p.m. In support of his contention, he has

invited attention of the Court to Ex.P/34-C which is Sanha (Daily Diary) entry regarding departure of Investigating Officer S. C. Dohre from P.S.

AJK Chhatarpur for arresting appellant Nanhu Singh in Crime no.181/2005. It may be noted in this regard that Chhatarpur is about 12-13 kilometers

from village Dalaun where appellant Nanhu Singh lived. S.C. Dohre is said to have reached the spot at about 3:30 p.m. In between he traveled from

Chhatarpur to Dalaun and looked for Nanhu Singh. At that time, he was informed by small children of the village that one person is lying injured in

front of Panchayat Bhawan. So he reached the spot at 3:30 p.m. that is within an

hour and 40 minutes of his departure from P.S. AJK Chhatarpur. In these circumstances, it cannot be said that the deceased was actually assaulted at about 1:00 p.m. Eye-witnesses have clearly stated that he was assaulted at about 3:00 p.m. Therefore, this argument has no substance.

28. Next argument advanced on behalf of learned counsel for the appellants is that the incident is said to have taken place at around 3:00 p.m. on

16.09.2005. The intimation of the incident was received by police at 3:30 p.m. and the first information report (Dehati Naleshi) was lodged by Durjana

(PW-1) at 9:00 p.m. There is overwriting in the time of receipt of intimation (3:30 p.m.) and time of recording of Dehati Naleshi (21:00 p.m.). It has

also been contended that as per the prosecution case, the first information of the incident was given by deceased Ranjeet himself to police between

3:30 p.m and 5:00 p.m., in the form of dying declaration. Therefore, the first information report recorded at the instance of Durjana at 9:00 p.m. is

inadmissible.

29. It is true that there is overwriting in figure 3 and figure 1 in the Dehati Naleshi; however, Investigating Officer has explained that this overwriting

had occurred because of defect in flow of his pen. In any case the sequence of events is clear from the prosecution evidence. The deceased was

assaulted at about 3:00 p.m. Investigating Officer S. C. Dohre received information that a person is lying injured in front of Panchayat building and

reached the spot at around 3:30 p.m. Deceased Ranjeet was brought in police vehicle to the hospital at Chhatarpur at around 5:00 p.m.. Durjana, his

brother and nephew reached the hospital at Chhatarpur on foot at about 8:00 p.m. and the first information report was lodged by Durjana at 9:00 p.m.

At any rate, the trial Court and this Court have held that the dying declaration allegedly recorded by S.C. Dohre is not a reliable piece of evidence. In

these circumstances, the defence cannot be allowed to take advantage of these technicalities which do not affect the merits of the prosecution case.

30. The main argument of learned counsel for the appellants is that as per Dr. R.S. Tripathi (PW-11), who had conducted post-mortem examination

upon the dead body of the deceased, he had died as a result of the injuries sustained by him on head resulting in fracture of right temporo-parietal bone

and leading to coma. However, when Dr. Tripathi had initially conducted medico legal examination upon the deceased. He had not found any external

injury on his head. He has admitted as much in paragraph no.25 of his cross-examination. All other injuries sustained by the deceased are on legs and hands which are non-vital parts of the body. The motive supplied by the prosecution is not grave enough to prompt the appellants to commit murder of the deceased. In these circumstances, it cannot be said that the appellants intended to cause the death of the deceased or to cause such bodily injury was is sufficient in the ordinary course of nature to cause death. Therefore, the appellants could not have been convicted under Section 302 of the Indian Penal Code. At worst, the offence would fall under Section 325 thereof for having caused grievous hurt to the deceased.

31. This argument deserves serious consideration; therefore, it would be apposite to take a concerted look at the statements of Dr. R.S. Tripathi (PW-11) and Dr. V.P. Shesha (Court witness). Dr. R.S. Tripathi (PW-11) has stated that he examined deceased Ranjeet at about 5:15 p.m. on 16.09.2005

at District Hospital, Chhatarpur. At that time, his condition was serious. He was in a state of shock and blood pressure had fallen down to 90/60. His

pulse was feeble and the rate was 98 per minute. There were following injuries on his body:

- (1) A crushed injury admeasuring 3x1x1/2cm in right leg below knee.
- (2) A crushed injury admeasuring 5x1x1/2cm, 5cm below injury no.1.
- (3) A crushed injury admeasuring 3x1x1cm in the right thigh above knee.
- (4) A painful injury with swelling in the ankle joint of right leg.
- (5) A crushed injury admeasuring 1x1x1/2cm on left leg below knee.
- (6) An injury on left ankle joint with diffused swelling.
- (7) Deformity in left wrist with diffused swelling.
- (8) A crushed wound admeasuring 2x1/2x1/2cm in right palm.
- (9) Deformity in left wrist joint with diffused swelling.
- (10) Diffused swelling below left knee.
- (11) Blood clots in both nostrils.

Dr. Tripathi has further stated that on X-ray examination he detected fractures at:

- (1) distal end of right radius and ulna bone;
- (2) proximal phalanx of third right metacarpal bone;
- (3) proximal phalanx of fifth right metacarpal bone;

- (4) distal end of left radius and ulna bone;
- (5) fifth metacarpal bone of left hand;
- (6) distal end of right tibia and fibula bone;
- (7) proximal end of right tibia and fibula bone;
- (8) distal end of left tibia and fibula bone;
- (9) proximal end of left and fibula bone;
- (10) patella bone and
- (11) right temporo-parietal bone.

32. In the post-mortem examination conducted later, Dr. Tripathi had found that there were blood clots (hematoma) on the soft tissue of the head.

There was blood clot in the scalp tissue of right temporo-parietal bone which had led to coma and death. Dr. Tripathi has categorically stated that

injuries caused to the deceased were sufficient in the ordinary course of nature to cause death.

33. Dr. V. P. Shesha (Court Witness) has stated that he had examined and treated deceased Ranjeet at about 8:15 p.m. on 16. 09.2005. He has

suspected that the deceased had sustained head injury. He was in a state of shock. He had difficulty in breathing and was pale and irritable. His pulse

and blood pressure was not recordable. There was blood in right temporal region of the head. There was fracture in right parietal bone and there was

slight contusion in right side of his head . Apart from irritability, no signs of head injury were found.

34. In the light of aforesaid evidence, learned counsel for the appellants have contended that the prosecution has produced before the trial Court only

one stone weighing about 5 kilograms. If a person is hit by such a stone, he would receive severe injury to head which would be visible externally but

there was no such injury found by the doctor on head. Therefore, the prosecution story becomes doubtful. It has also been argued that there was floor

on the spot was cemented; therefore, the deceased may have sustained head injury due to fall. Since, he had fallen on a flat and smooth yet hard

surface, the pressure of the impact would have been spread evenly over a large area of head, leaving no injury marks externally but causing internal

damage. This theory explains absence of external visible injury on head.

35. In the opinion of this Court, aforesaid theory is fallacious for the reasons

hereinafter stated: Dr. R. S. Tripathi (PW-11) had clearly found blood oozing from the nostrils which indicated internal injury to head. He also found blood in the hair. Dr. Tripathi examined him. The condition of the deceased was precarious. There were large number of grievous injuries present on the hands and legs. Therefore, it was quite likely that he may have missed any injury to the head of the deceased covered as it was by hair. Moreover, Dr. V. P. Shesha had found a slight contusion on the right side of head of the deceased. Thus, it cannot be said that there was no external injury present on the head of the deceased.

36. It is true that only one stone weighing 5 kilograms was produced before the trial Court. However, that stone was not seized at the instance of an accused person. Investigating Officer S.C. Dohre had picked up several stones from the spot. Thus, it cannot be said with certainty that the deceased was actually hit by the stone produced in the Court.

37. Another point to be taken note of is that as per the spot map (Ex.P/21) the spot where the deceased had fallen, did not have any cemented floor.

Moreover, Dr. Tripathi has categorically stated that ordinarily if a person falls down on a stone from standing position he would not receive the kind of

fracture in the head that was received by the deceased. If he is hit by a stone he would receive external injury only if the stone is pointed. If the stone

is not pointed, it may cause internal injury and also fracture but not necessarily, externally visible injury. Dr. V. P. Shesha (Court Witness) has stated

that he had given Fortwin injection to the deceased because he was slipping into shock due to excessive pain. He had brushed aside the suggestion

that the deceased had died because he was administered Fortwin injection. He has admitted that morphine is not given in the cases of head injury;

however, morphine derivatives like pentazocine electricate can be given in head injury because it does not affect the central nervous system and

works as a highly effective analgesic. Though, Dr. Shesha has admitted that the contusion found in the head of Ranjeet could have been caused at the

time of making him lie in a vehicle due to impact of a hard surface but no such suggestion was given to Investigating Officer S. C. Dohre.

38. All three eye witnesses have clearly stated that appellant Nanhu Raja had caused an injury to head of the deceased by a stone. It is settled

position of law that where there is conflict between the ocular evidence and

medical evidence, the ocular evidence has to be preferred unless medical evidence is of such a nature as makes the ocular evidence highly improbable.

39. On the basis of foregoing discussion, it is clear that the injury to head received by the deceased could not have been received due to fall on the ground on which he had fallen from a standing position. It could have been caused by a stone with a flat surface which was not necessarily the stone produced in the Court. Moreover, though the injuries caused to the deceased by stones (crushed injuries) and sticks were on non-vital parts of the body, had caused fractures in as many as 13 places resulting in unbearable pain due to which the deceased had started to slip into a shock. In the opinion of Dr. Tripathi, these injuries were sufficient in the ordinary course of nature to cause death. It is clear that the appellants had brutally beaten the deceased with sticks and stones with intention of causing his death. Therefore, it cannot be said that they had no intention of causing his death. 40.

The Supreme Court has held in the case of Virsa Singh vs State Of Punjab, AIR 1958 SC 465 as follows:

8. It was argued with much circumlocution that the facts set out above do not disclose an offence of murder because the prosecution has not proved that there was an intention to inflict a bodily injury that was sufficient to cause death in the ordinary course of nature. Section 300 "thirdly" was quoted

:

If it is done with the intention of causing bodily injury to any person and the bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

It was said that the intention that the section requires must be related, not only to the bodily injury inflicted, but also to the clause, "and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

9. This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly" would be unnecessary because the act would fall under the first part of the section, namely -

If the act by which the death is caused is done with the intention of causing death.

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender :

If it is done with the intention of causing bodily injury to any person.

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on

the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave

no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the

offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

10. Once that is found, the enquiry shifts to the next clause :-

and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death.

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it that is to say, if

the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be

shown that the blow landed in the region of the heart by accident, then, though an injury to the heart by accident, then, though an injury to the heart is

shown to be present, the intention to inflict an injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not

come into play. But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we

are now examining -

and the bodily injury intended to be inflicted

is merely descriptive. All the means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary

course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present

was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference of

deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

11. In considering whether the intention was to inflict the injury found to have

been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.

12. To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly";

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

13. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder

under S. 300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an

injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not

even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found

to be present is proved, the rest of the enquiry is purely objective and the only

question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.

41. In view of the authoritative pronouncement of the Supreme Court as reproduced above, there is no scope for doubt that where the intention of the appellants was to cause such bodily injury or injuries as are sufficient in the ordinary course of nature to cause death, the act would fall within the purview of "thirdly" of Section 300 of the Indian Penal Code defining 'murder', regardless of the fact as to whether or not he intended to cause the death of the deceased.

42. In the case at hand, there was a meeting of Gram Panchayat. The deceased was Sarpanch thereof. About 30-35 persons had gathered for the meeting. On being asked by appellant Chhutte Raja to call other persons, he merely replied that even if other persons came, where would they sit because appellant Pappu Raja had locked away one hall of panchayat, which was a fact. Appellants Chhutte Raja, Pappu Raja and Nanhu Raja who belonged to a forward caste; and had previous enmity with the deceased, took it as an affront by a scheduled caste person to their domination and started to beat him mercilessly until he was almost dead causing as many as 13 fractures. Thus, there was no provocation offered by the deceased.

There was no fight or quarrel. The appellants were simply enraged by the fact that the deceased being a person belonging to a scheduled caste, had dared to question their authority. Appellant Pimmu Dhobi on the other hand, was piqued by the fact that he was being removed from the post of Panchayat Secretary by the deceased; therefore, he also joined hands with the appellants. Thus, there was no scope for believing that the offence was committed as a result of any grave or sudden provocation given by the deceased. The appellants had apparently gone to the spot to pick a quarrel.

Therefore, it cannot be said that the death was caused in a sudden fight in the heat of passion upon a sudden quarrel. The number and nature of injuries caused to the deceased testifies to the fact that they acted in a cruel and

unusual manner. Therefore, their act would not fall under the purview of Exception No. 1 or 4 to Section 300 of the Indian Penal Code. Therefore, Section 300 (Part-I) would also not come into play.

43. Last argument that has been advanced on behalf of learned counsel for the appellants is that appellants other than appellant Nanhu Raja, who had caused injury to the head of the deceased, had no common intention to cause death of the deceased as otherwise they would have delivered blows to his head; therefore, they cannot be held guilty for the offence of committing murder along with appellant Nanhu Raja with the aid of Section 34 of the Indian Penal Code.

44. This argument is also not acceptable. The appellants started beating the deceased with sticks and stones in unison.

There were five crushed injuries caused by the stones and seven injuries caused by the sticks on hands and legs of the deceased, which were grievous in nature. These injuries were caused by four appellants together. Therefore, it is clear that the remaining appellants not only participated actively in the offence but it is also obvious that they did not have intention merely to punish the deceased but to kill him. Ergo, the conclusion is inescapable that the intention to kill the deceased, was shared by all the appellants and the trial Court was justified in convicting remaining three appellants as well, for the offence punishable under Section 302 of the Indian Penal Code with the aid of Section 34 thereof.

45. Learned counsel for the appellants has invited attention of the Court to judgments rendered by the Supreme Court in the cases of Kathi Odhabhai

Bhimabhai and others vs State Of Gujarat, AIR 1993 SC 1193, Adu Ram vs. Mukna and others, AIR 2004 SC 5064, B.K. Channappa vs State Of

Karnataka, AIR 2007 SC 432, Sripathi Vs. State of Karnataka, AIR 2010 SC 249 and State of UP. vs Gajadhar Singh, AIR 2009 SC 1935. However,

since all of aforesaid authorities are distinguishable on facts, the appellants do not derive any benefit therefrom. In the case of Kathi Odhabhai

Bhimabhai (supra) the case of the prosecution rested on testimony of solitary eye-witness, who was not found to be wholly reliable and the

corresponding external injuries to the fracture of rib was absent. Therefore, the Court had held that the fracture of rib could have been caused due to

a violent fall. Such is not the case here. Moreover, aforesaid appeal was an

appeal against acquittal. In the case of Adu Ram (supra) the conviction was altered from one under Section 302 to Section 304(Part I) of the Indian Penal Code because no grievous injury was found on the head; whereas, in the present case there was fracture of right temporo-parietal bone to the head of the deceased and it has been held that it was not caused by a fall. Likewise in the case of B.K. Channappa (supra) intention to cause death was not established even when the deceased had sustained 18 injuries because none of the injuries was found to be on any vital part of the body. In the present case, one grievous injury was found on the head of the deceased and there were at least 13 fractures pushing the deceased in a shock due to excessive pain. In the case of Sripathi (supra) also, appellants had caught hold of the deceased at the instance of the main accused and the main accused had suddenly pulled out a knife from his pocket and stabbed the deceased. Therefore, it was found that three accused persons who had caught the deceased had no common intention with the main accused and were acquitted of the charge of murder but in the present case, all four appellants had played active role and all of them caused grievous injuries to the deceased.

46. On the basis of foregoing discussion, the Court is of the view that the trial Court committed no error or infirmity in convicting appellant Nanhu Raja

@ Hari Pratap Singh under Section 302 of the Indian Penal Code and appellants Shishupal Singh @ Chhutte Raja, Vishnu Pratap Singh @ Pappu Raja

and Premlal @ Pimmu Dhobi under Section 302 read with Section 34 of the Indian Penal Code. Therefore, no interference with the conviction or sentence is warranted.

47. Consequently, these criminal appeals fail and are hereby dismissed. The conviction of appellant Hari Pratap Singh @ Nanhu Raja under Section

302 of the Indian Penal Code and appellants Shishupal Singh @ Chhutte Raja and Premlal @ Pimmu under Section 302 read with Section 34 of the

Indian Penal Code, is affirmed.