

(2018) 05 MP CK 0165

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 139 Of 2000

State Of Madhya Pradesh

APPELLANT

Vs

Latoori Vs. Ors

RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 302, 324, 326
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2018) 05 MP CK 0165

Hon'ble Judges : SHEEL NAGU, J;S.A.DHARMADHIKARI, J

Bench : Division Bench

Advocate : J.M. Sahani, Madhukar Kulshrestha

Judgement

'''

1. The present appeal is preferred u/s 378 Cr.P.C. against the judgment of acquittal dated 5/11/98 rendered in S.T. No. 95/91, S.T. No. 205/91",,,

(supplementary) and S.T. No. 154/93 (supplementary) passed by Additional Sessions Judge, Lahar District Bhind whereby all the respondents have",,,

been acquitted of the charge u/Ss. 147, 148, 302 r/w 149, 326 r/w 149 and Section 324 r/w 149 and in the alternative Section 302/34, 326 r/w 34 and",,,

324 of IPC.,,,

2. Learned counsel for the rival parties are heard.,,,

3. The death of Kaptan Singh on 16/7/90 triggered an investigation u/S. 302 r/w 149 IPC against ten accused/appellants. On 31/7/91 and 17/1/92,,,

charges were framed against nine appellants except Udayveer (deceased) against whom charge was framed as late as on 27/1/94 after his arrest.,,,

Incidentally in the prosecution against nine appellants against whom charge was framed on 31/7/91 and 17/1/92 the court of sessions recorded,,,

testimony of PW-1 to PW-7. In the meantime, the case of deceased Udayveer was also committed to the court of sessions where it was consolidated",,,

with the trial of the nine accused, whereafter the statement of Sobaran Singh (PW-1), Nahar Singh (PW-3), Rajendra Singh (PW-4), Sumresh Singh",,,

(PW-5), Surtan Singh (PW-6) and Baburam (PW-7) (who had been subjected to examination and cross-examination earlier on 17/3/92, 18/3/92",,,

25/5/92, 26/5/92, 27/5/92) was recorded afresh as PW-15 on 14/10/96, PW-5 on 13/9/94, PW-7 on 8/11/94, PW-19 on 10/11/97, PW-12 on 8/8/94 and",,,

PW-16 on 5/8/97 respectively.,,,

3.1 Perusal of Para 14 of the impugned judgment reflects that the learned trial Judge who delivered the impugned judgment took exception to the fact",,,

that his predecessor who had recorded the statement of Nahar Singh, Rajendra Singh and Surtan Singh afresh did not do so on the same deposition",,,

sheet on which the earlier deposition of these witnesses were recorded. The provisions of Rule 188 of the Madhya Pradesh Rules and Orders",,,

(Criminal) and the Single Bench decision of this court in the case of Harbhajan and others Vs. State of M.P. reported in 1989 J.L.J. 217 were relied",,,

upon by the trial court in support of the said objection. However, the learned trial Judge has taken into account all earlier as well as subsequent",,,

versions of the said Pws who had been subjected to examination and cross-examination twice.,,,

3.2 It could be pertinent to mention here that the Single Bench decision in the case of Harbhajan (supra) referred to by the learned trial Judge merely",,,

lays down that recording of deposition of a recalled witness on a new sheet instead of on the same sheet on which his earlier deposition was recorded",,,

is a mere curable irregularity and not an illegality, which is evident from the relevant extract of the said judgment is reproduced below:-",,,

â??U/s. 233, Cr. P.C., 1973 when called upon to enter on his defence, the accused is entitled to apply for issue of process compelling attendance of",,,

witnesses and the Court is bound to issue such process unless for reasons to be recorded, the Court may find the application to be vexatious or",,,

designed to delay or defeat the ends of justice. The trial Court rightly permitted the recall of the two witnesses because it was necessary to do so in",,,

the ends of justice. The only error in which it fell, wittingly or unwittingly, was to have recorded the statements at two places. It should have inserted a",,,

note on the earlier depositions of these witnesses and resumed examination, cross-examination etc. in continuation of the original depositions.",,,

9. However, the question still remains, what is the effect of this error? There is no illegality. At worst, it may be called an irregularity. If the two",,,

depositions would have been recorded at one place, they would have been read together. They can still be read together, though tagged in the record",,,

at two different places. A reference to several observations of the Apex Court in William Slany Vs. State of M.P. shows that a procedural mistake is,,,

always curable unless and until the Court is satisfied that there was prejudice. Section 463 of Cr.P.C, specifically covers such a situation, statutorily",,,

enacting that such errors or irregularities do not have the effect of reversing a competent Court's finding or sentence and the Court while determining,,,

whether it has occasioned a failure of justice, shall have regard to the fact whether an objection could or should have been raised at an earlier stage in",,,

the proceedings. In the present case, not only an objection has not been raised, but partially the accused himself has contributed to the irregularity. No",,,

prejudice can be spelled out from the record and the objection must fail. So must fail the claim for retrial.â??,,,

3.3 Importantly the respondent No.2 Lachchi Singh, respondent No.4 Udayveer Singh and respondent No.9 Suraj Singh expired during pendency of",,,

this appeal. Thus this appeal survives and is being decided in regard to respondents No. 1, 3, 5, 6, 7, 8 and 10.",,,

FACTS,,,

4. Facts in nutshell giving rise to the present case are that about two months before the incident in question, the marriage of Nahar Singh (brother of",,,

complainant Laxman Singh (PW-10) took place on 20/5/90. On 21/5/90 Nahar Singh, his newly wedded wife and his family members including",,,

Sobaran Singh (PW-1) were returning home on the bullock cart belonging to Shiboo, when they saw respondent No.7 Balveer sitting at the way side",,,

who on seeing them started to run away. On being asked why he was running away Balveer retorted by asking them to wait till he comes back with,,,

his gang. Thereafter Nahar Singh and others reached home where on the same day in the evening Suraj Singh (deceased appellant) came to the house,,,

of the complainant Laxman Singh and started complaining about something. Arguments followed and abuses were hurled and in the process Nahar,,,

Singh slapped respondent Suraj Singh. Thereafter Suraj Singh left the place exhorting that he will take revenge. The trial court has treated this incident,,, as the motive behind the crime.,,,

4.1 On the fateful day 16/7/90 in village Chandawali at about 3 P.M. in the afternoon, complainant Laxman Singh alongwith Rajendra Singh, Sobaran",,,,

Singh and deceased Kaptan Singh were tilling their agricultural field when from the direction of village Rohanisingpura, respondents Latoori @",,,,

Ramveer Singh, Dalveer Singh and Pappu @ Vijendra armed with spear (Ballam) alongwith respondents Bharat Singh & Balveer Singh armed with",,,,

Pharsa and alongwith respondent Lachchi Singh, Ravendra Singh @ Ramendra Singh, Indraveer Singh, deceased Suraj Singh and deceased Udayveer",,,,

Singh wielding Lathi forming unlawful assembly came on the spot and asked the complainant and his companions to stop tilling the field. When the",,,,

complainant Laxman Singh refused to oblige, the appellants started assaulting the complainant and his companions with their respective weapons. The",,,,

assault resulted into death of Kaptan Singh and injuries to Laxman Singh (PW-10), Rajendra Singh (PW-4 and PW-7) and Sobaran Singh (PW-1 and",,,,

PW-15). The incident was said to be witnessed by Sarnam Singh Bhadoriya, Surtan Singh, Vinod and Parvat Singh and others. Complainant Laxman",,,,

Singh (PW-10) alongwith his son Vinod Singh (PW-6) while on his way to the police station to lodge the report of the incident, met Sub-inspector",,,,

Raghuveer Singh PW-21 of P.S. Lahar District Bhind alongwith constable Ram Suresh Singh who recorded Dehati Nalisi (EX.P-12) ('DN' for",,,,

brevity). The said Sub-inspector (PW-21) reached the spot and requisitioned witnesses for identification of the dead body which led to preparation of",,,,

dead body panchayatnama Ex. P-5. Spot map Ex.P-7 was prepared on the disclosure and direction of complainant Laxman Singh. Requisite",,,,

formalities of investigation were completed including registration of FIR, postmortem, medical examination of three injured persons and recording of",,,,

statement of witnesses and recovery and seizure of weapons and other articles connected with the crime alleged.,,,,

4.2 Autopsy Surgeon Dr. Smt. Santosh Dixit (PW-14) vide Postmortem (Ex. P-17) found six injuries on the dead body out of which fracture on the",,,,

occipital bone and cervical vertebrae caused by hard and blunt object was opined to be cause of death besides shock due to multiple injuries. The",,,,

same PW-14 also prepared MLC of injured Laxman Singh, Rajendra Singh and Sobaran Singh (Ex. P-18, Ex. P-19 and Ex. P-20). Three injuries",,,

including two stab wounds of simple nature were found on non vital part of injured Laxman Singh caused by hard and blunt object out of which one,,,

was discovered to be fracture of lower ulna bone. In regard to injured Rajendra Singh incised wound on the parietal region and one contusion on the,,,

left knee was found both being simple in nature caused by hard and blunt object. In the case of third injured Sobaran Singh eight injuries were,,,

discovered, out of which all except a lacerated wound on left parietal region, were inflicted on non vital part of the body caused by hard and sharp and",,,

also hard and blunt object. Left ulna bone of Sobaran Singh was found fractured on x-ray examination vide Ex. P-25.,,,

4.3 On conclusion of investigation, charge-sheet was filed and the case was committed to the court of sessions where the appellants pleaded",,,

innocence and sought trial. Charges were framed against respondents u/Ss. 147, 148, 302 r/w 149, 326 r/w 149 and 324 r/w 149 in the alternative",,,

Section 302 r/w 34, 326 r/w 34 and 324 r/w 34 of IPC.",,,

4.4 The prosecution in the first round examined as many as 7 witnesses namely Sobaran Singh (PW-1), Panchan Singh (PW-2), Nahar Singh (PW-3)",,,

Rajendra Singh PW-4, Ramsuresh Singh (PW-5), Surtan Singh (PW-6) and Baburam PW-7 whereas in the second round 21 witnesses namely Jitvar",,,

Singh Parihar (PW-1), SarnamSingh (PW-2), Bishambar Dayal (PW-3), Ram Singh (PW-4), Nahar Singh (PW-5), Vinod Singh (PW-6), Rajendra",,,

Singh (PW-7), Bhogiram (PW-8), Dr. J.S. Kushwaha (PW-9), Laxman Singh (PW-10), Ramgovind (PW-11), Surtan Singh (PW-12), Shiboo Singh",,,

(PW-13), Dr. Smt. Santosh Dixit (PW-14), Sobaran Singh (PW-15), Baburam (PW-16), Mangal (PW-17), Radhakrishan (PW-18), Ramsuresh Singh",,,

(PW-19), R.B. Chaudhary (PW-20), Raghuveer Singh (PW-21) were examined.",,,

CONTENTIONS,,,

5. The learned trial judge after marshalling the evidence returned a finding of acquittal qua all the respondents on the following grounds which have,,,

been assailed herein by the State:-,,,

(i) The FIR/DN was prepared by the Investigating Officer (PW-21) at the spot on the dictates of the victims, rendering the same to be doubtful and",,,

the consequential prosecution vitiated. Reliance is placed for this purpose on the

case of Mantran & Three Ors. Vs. The State of M.P. reported in,,,
1997 Cr.L.R. MP 163 (DB).,,,

(ii) In view of above, the trial court presumed that either the FIR was not lodged at all or if lodged the same is being suppressed.",,,

(iii) Failure of the Investigating Officer (PW-21) to promptly arrest the accused/ respondents despite having been informed the names of the accused,,,
and the accused being available within 2 Kms of the place of incident.,,,,

(iv) Failure of Investigating Officer to record any reason of non-availability of the accused who were arrested on different dates ranging between 24,,,
hours to four months of the date of incident (16/7/90). Reliance for this purpose is placed on the case of Mohanlal Gangaran Gehani Vs. State of,,,
Maharashtra reported in AIR 1982 SC 839 and Krishna Sewak Vs. State of M.P. reported in 1988 J.L.J. 321.,,,,

(v) Failure of Investigating Officer to get the injured accused Latoori examined despite arrest memo Ex.P-39 of accused Latoori containing the,,,
remark that the arrested person has sustained head injury on the left side of his head with bandage tied over the same.,,,,

(vi) The entire prosecution story is based on testimony of interested witnesses as they are closely related to the deceased.,,,,

(vii) The prosecution story is not supported by any independent witness.,,,,

(viii) The trial court found the graphic and detailed description of the incident in the DN, statement recorded u/S. 161 Cr.P.C. and the testimony of",,,,
PWs, to be unnatural and thus doubtful.",,,

(ix) The trial Court also noticed variation in the testimonies of PWs as compared to their earlier statement u/S. 161 Cr.P.C.,,,,

5.1 Learned counsel for the appellant/State assailing the verdict of acquittal in respect of respondents No. 1, 3, 5, 6, 7, 8 and 10 submits that DN Ex.",,,,

P-12, FIR Ex. P-30 and the statement of Pws u/S. 161 Cr.P.C. alongwith medical evidence on record proved the charge of murder of deceased",,,,

Kaptan Singh and causing minor and grievous injuries to the injured after forming unlawful assembly and rioting against the said respondents. It is,,,

further submitted that the prosecution story was duly supported by implicative testimonies of eye-witness PWs thereby proving the charges against all,,,

respondents to the hilt.,,,,

5.2 Per contra, learned counsel for the acquitted respondents making the following submissions seeks dismissal of the present appeal :-",,,

(i) All the PWs were interested witnesses being closely related to each other and therefore in the absence of any independent PW, the trial Court",,,

rightly found the charges to be not proved.,,,

(ii) Despite Investigating Officer coming to know of the incident within an hour of the time of incident, DN was lodged as late as 5:00 p.m. as",,,

compared to the time of incident being 3:30 P.M.,,,

(iii) R.S. Chaudhary (Police Personnel) who recorded the DN was not examined by the prosecution. The injuries sustained by respondent No.1,,,

Latoori which were within the knowledge of the Investigating Officer were not examined and neither the said injured/respondent was subjected to,,,

medically examined.,,,

(iv) Despite the presence of independent witnesses on the spot, they were not examined by the prosecution.",,,

(v) The minute, graphic and detailed description of the incident in the DN and by the PWs in their diary statement and as well as testimony indicates",,,

an unnatural conduct giving rise to inference of prosecution case being made up and thus far from reality.,,,

(vi) That the prosecution story becomes doubtful as the Investigating Officer prepared DN and the subsequent statements recorded u/S. 161 Cr.P.C.,,,

of PWs on the dictates of the victims after giving them sufficient opportunity to discuss, meditate and scheme to falsely implicate the respondents with",,,

whom the victims and the deceased had enimical terms.,,,

(vii) Absence of evidence as to who caused the fatal injuries to the deceased.,,,

(viii) Statement of Nahar Singh (PW-3) u/S. 161 Cr.P.C. was recorded after three months of the incident.,,,

6. Before proceeding ahead, it would be appropriate to reiterate that recording of testimony was done by the trial Court in two different spells. The",,,

first spell started from 17/3/82 and lasted till 27/5/92 when Sobaran Singh (PW-1), Pancham Singh (PW-2), Nahar Singh (PW-3), Rajendra Singh",,,

(PW-4) Ramsuresh Singh (PW-5), Surtan Singh (PW-6) and Baburam (PW-7) were examined and cross-examined. In the second spell which lasted",,,

from 14/6/94 to 12/5/98 Jitvar Singh Parihar (PW-1), SarnamSingh (PW-2), Bishambar Dayal (PW-3), Ram Singh (PW-4), Nahar Singh (PW-5)",,,

Vinod Singh (PW-6), Rajendra Singh (PW-7), Bhogiram (PW-8), Dr. J.S. Kushwaha (PW-9), Laxman Singh (PW-10), Ramgovind (PW-11), Surtan",,,

Singh (PW-12), Shiboo Singh (PW-13), Dr. Smt. Santosh Dixit (PW-14), Sobaran Singh (PW-15), Baburam (PW-16), Mangal (PW-17), Radhakrishan",,,

(PW-18), Ramsuresh Singh (PW-19), R.B. Chaudhary (PW-20), Raghuveer Singh (PW-21) were examined and cross-examined.",,,

7. From the above, it is noticeable that in the second spell of recording of testimony in which 21 PWs were examined, six (6) witnesses were such",,,

who had also been examined in the first spell and were recalled to be subjected to examination afresh due to late arrest of respondent-Udayveer and",,,

his trial having been consolidated with the trial of other respondents.,,,

8. The witnesses whose testimony was recorded twice, were Sobaran Singh as PW-1/ as PW-15, Nahar Singh as PW-3/as PW-5, Rajendra Singh as",,,

PW-4/ as PW-7, Ramsuresh Singh as PW-5/as (PW-19), Surtan Singh as PW-6/as PW-12, Baburam as PW-7/ as PW-16.",,,

ANALYSIS,,,

9. In the aforesaid background, this court proceeds to analyze the evidence produced by the prosecution in the following terms:-",,,

(i) Dehati Nalisi (DN for brevity) :- This is the first information received by the police of the incident in question and was recorded at 5:00 p.m. within",,,

one and a half hours of the incident on 16/7/90 at village Matpura. This was admitted in evidence as Ex.P-12 and was shown to be recorded by Sub-,,,

inspector R.S. Chaudhary on the information received from complainant Laxman Singh who had come along-with his son Vinod Singh and reported",,,

the incident orally that the complainant alongwith Rajendra Singh, Sobaran Singh and Kaptan Singh at about 3:30 p.m. On 16/7/90 were tilling their",,,

agricultural field when all the ten named respondents came armed with Lathi, Pharsa and Spear (Ballam) and asked the complainant and his",,,

companions to stop tilling. When the complainant and his companions refused to oblige, all the ten respondents assaulted them with the weapons. The",,,

complainant in DN informed that respondent Pappu assaulted him with spear (Ballam) on the left hand while respondent Rajendra Singh assaulted",,,

Balveer Singh on the left side of his head with Pharsa. The complainant further informed that respondent Bharat inflicted Pharsa injury on the left",,,

hand of injured Sobaran Singh while respondent Indraveer, Ravendra and

Udayveer assaulted with Lathi. The complainant further informed that",,,
 respondent Dalveer and Latoori each assaulted the deceased Kaptan Singh with
 spear (Ballam) once, which led the deceased to fall down. DN",,,
 further reveals that the deceased Kaptan Singh was also assaulted by respondent
 Suraj Singh, Lachchi Singh and Ravendra Singh with Lathi, and that",,,
 all the ten respondents surrounded the deceased and kept assaulting him with
 their weapons till he was dead. DN also discloses that the incident was,,,
 seen by Sarnam Singh Bhadoriya, Surtan Singh, Vinod, Parvat Singh and some
 other residents of the village. DN also discloses that thereafter the",,,
 respondents fled away from the spot. Lastly, DN reveals that the complainant
 had past enmity with the respondents.",,,
 (ii) Sobaran Singh deposed on 17/3/92 as PW-1 in the first spell- Sobaran Singh
 as PW-1 an eye-witness has supported the story of the prosecution,,,
 and has described the incident essentially in the same lines as detailed in DN and
 the section 161 Cr.P.C. statement of this witness vide Ex. P-25,,,
 which was recorded on the very next day of the incident. In cross-examination,
 this witness could not be discredited or shaken from his earlier stand",,,
 except that he made improvements over his section 161 statement that two
 different set of bullocks were tilling the agricultural field of the victims at,,,
 the time and date of incident whereas in the diary statement vide Ex. P-25 this
 witness merely mentions agricultural field being tilled, without disclosing",,,
 the number of pair of bullocks. In the considered opinion of this court, this
 omission does not adversely affect the credibility of the fact that tilling was",,,
 going on. Further such improvement was found in respect of Lathi blow being
 casued to a particular injured by a particular respondent, was missing in",,,
 the diary statement of this witness. Further improvement noticed in the
 testimony of this witness was that respondent Latoori assaulted the deceased,,,
 Kaptan Singh with spear (Ballam) from the blunt side and not the sharp side.
 Improvement in the testimony was also noticed inasmuch as this witness,,,
 stating that he sustained eight injuries and as to the name of the accused/
 respondent who inflicted the said particular injuries. Further improvement in,,,
 his testimony was noticed as regards the respondents having surrounded this
 witness and the other injured and deceased person from all around.,,,
 Further improvement was noticed as regards this witness stating in his diary
 statement that other eye-witnesses Parvat Singh, Surtan Singh, Sarnam",,,

Singh and Vinod had objected to the respondents assaulting the deceased and the injured, on which the respondents threatened them with dire",,, consequences.,,,

(iii) Sobaran Singh deposed on 14/10/96 as PW-15 in the second spell- Sobaran Singh as PW-15 was declared hostile by the prosecution as though he,,,

admitted that on the day of incident Rajendra Singh, Kaptan Singh and Laxman Singh were tilling their agricultural field but in the same breath stated",,,

that he was not present on the spot. This witness in his second spell of recording of evidence stated that he came on the spot after the assault had,,,

taken place and Kaptan Singh had died. This witness even denied having sustained injuries. This witness even denied having made his earlier,,,

statement u/S. 161 Cr.P.C. vide Ex. P-25. Though this witness admitted having testified earlier before this court as PW-1 on 17/3/92 and also,,,

admitted that he was subjected to x-ray but expressed ignorance of having sustained fracture. This witness also revealed that he had some fight with,,,

somebody in the village which was the cause of injury sustained by him. This witness lastly expressed ignorance about the respondents/accused,,,

having assaulted the deceased.,,,

(iv) PW-2 Pancham Singh examined only once as PW-2 on 18/3/92- This witness was declared hostile by the prosecution because PW-2 first,,,

admitted that the police had come to his village in search of absconding accused but later in the same breath admitted that he had not seen the police,,,

come to his village. He also discloses that he is illiterate but admitted his signature on Ex. P-1. The cross-examination of this witness by the,,,

prosecution did not disclose any relevant aspect.,,,

(v) Nahar Singh examined as PW-3 on 25/5/92 in the first spell- Nahar Singh is the younger brother of deceased Kaptan Singh and is not an eye-,,,

witness. This witness came to know about the death of his elder brother when he was in Gwalior which is evident from his Section 161 Cr.P.C.,,,

statement Ex. D-1 and as well as his testimony. However in the testimony, this witness has described the incident but in view of his admission that he",,,

was not at the scene of crime when it occurred, the said version has no value. However, this witness has supported his earlier statement in regard to",,,

the incident which took place on 21/5/90 when Balveer had threatened the marriage party in which this witness was present and this witness saw,,,

Nahar Singh slapping Suraj Singh the same day in the evening. Thus this witness can at best be relied upon for the purpose of motive behind the,,,

incident and not regarding the incident.,,,

(vi) Nahar Singh deposed as PW-5 again on 13/9/94-Nahar Singh while deposing again has stuck to his earlier stand that he is not an eye-witness and,,,

came to know of the incident of his elder brother Kaptan Singh at about 9:00 pm on 16/7/90. This witness also supports his earlier version Section 161,,,

Cr.P.C., his earlier testimony recorded in 1992 in regard to the incident which took place on 21/5/90 which became the foundation of motive behind",,,

the crime.,,,

(vii) Rajendra Singh examined as PW-4 on 25/5/92 in this first spell- Rajendra Singh is an eye-witness to the incident and has supported his earlier,,,

version u/S. 161 CrP.C. by describing the incident of assault on the injured and deceased in line with the disclosure he made earlier. His testimony that,,,

he was assaulted by Balveer with Pharsa on the left side of his head is corroborated by his MLC Ex. P-19 where one incised wound on the left partial,,,

bone was found. This witness also corroborates his earlier statement of the incident which took place on 21/5/90 which became foundation of motive.,,,

This witness narates the incident, by naming each of the respondents/accused, the weapons wielded and used by them and the injuries inflicted on",,,

different injured persons. This witness has expressed ignorance as to why the police has not written in his diary statement that respondent/accused,,,

Latoori had assaulted the deceased with spear (Ballam) on the temple. This witness has expressed ignorance as to whether the assault was made,,,

with spear from the blunt or sharp side. This witness categorically testifies that two injuries were caused on the head of deceased Kaptan Singh. He,,,

has also expressed ignorance of any injuries besides the five injuries inflicted on the body of deceased which he disclosed in his testimony. This,,,

witness has further shown ignorance as to why the police did not record in his earlier diary statement that injured Sobaran Singh has sustained two,,,

injuries instead of one disclosed by him earlier.,,,

(viii) Rajendra Singh deposed again as PW-7 on 8/11/94 in second spell. PW-7 further testifies that at around 3:30 pm when he was in the agricultural,,,

field alongwith Sobaran Singh, Laxman Singh, deceased and Rajendra Singh, all the appellants except Lachhi Singh came to the spot. This witness",,,

further disclosed that Dalveer, Pappu and Latoori were armed with Ballam (spear) and appellant Bharat and Balveer were armed with Pharsa," ,,,

appellant Udayveer, Ravindra, Lachhi and Suraj Singh with Lathi. PW-7 further discloses that the appellants told deceased and his companions to stop" ,,,

tilling the field and when deceased and his companions refused to oblige, the said respondents ran towards deceased and injured to assault them. PW-" ,,,

7 also disclosed that Bharat Singh assaulted PW-7 with Pharsa causing injury on the left side of the head and someone assaulted PW-7 with Lathi in ,,,

the back. PW-7 also reveals that Dalveer Singh inflicted spear injury to the wrist of both Laxman Singh and Latoori. PW-7 also discloses that ,,,

respondent Ravindra gave Lathi blow on the back of Laxman Singh. PW-7 further discloses that Dalveer Singh inflicted spear injury to deceased on ,,,

the left side of the head while respondent Latoori gave Lathi blow to the deceased on the head. PW-7 further discloses that thereafter all the ,,,

appellants kept assaulting the deceased till he was dead. PW-7 also reveals that respondent Bharat Singh gave Pharsa blow to Sobaran Singh on the ,,,

head and all the respondents assaulted Sobaran Singh with Lathi and thereafter all the respondents fled away from the spot. This witness also testifies ,,,

that Parvat Singh, Sultan Singh and Vinod Singh came to the spot and thereafter Laxman Singh reported the matter to the police and the police" ,,,

personnel (Thanedaar) had come down at the spot to pen down the report whereafter PW-7 visited the hospital for getting treatment. This witness ,,,

also discloses the incident which took place on 21/5/90 creating the motive behind the crime. PW-7 saw and heard Balveer threatening them and ,,,

thereafter Nahar Singh slapping Surat Singh on the said day in the evening. In the cross-examination PW-7 has disclosed about certain omissions in his ,,,

section 161 statement as regards Surat Singh being with Balveer Singh and Bharat and that Laxman Singh immediately prior to the incident was ,,,

mixing fertilizer in the agricultural field. Further omission is disclosed by PW-7 in the testimony regarding Latoori assaulting with Lathi on specific ,,,

parts of the body where Lathi injuries were sustained. Thus from the overall reading of testimony of Rajendra Singh recorded in second spell on ,,,

8/11/94, the same reveals that this witness has more or less corroborated his earlier version before the police and has narrated the incident in detail" ,,,

and with clarity notwithstanding the minor omissions here and there, which thus deserves credibility and inspires confidence." ,,,

(ix) As regards medical evidence on record, it is seen that Dr. Smt. Santosh Dixit PW-4 who deposed on 14/10/96 proved the postmortem report",,,

(Ex.P-17) prepared by her after autopsy and three MLCs Ex. P-18, Ex.P-19 and Ex.P-20. Close scrutiny of the testimony of PW-14 discloses that the",,,

opinion expressed in all the MLCs and the postmortem report is supported by the said medical expert.,,,

(x) As regards other corroborative evidence in shape of seizures made on disclosure of appellants, the same have been proved by the respective",,,

witnesses, and thus support the direct evidence in shape of ocular evidence." ,,,

10. It would now be appropriate to deal with the grounds on which findings of acquittal are based in the impugned judgment.,,,

(i) The trial court has doubted the very existence of the FIR/DN for having been prepared on the spot at the dictates of the victim. It is come on",,,

record that immediately after the incident when the assault took place and two of the PWs Laxman Singh and Vinod Singh proceeded towards the",,,

police station to report the matter, they met sub-inspector R.S. Chauhan on the way. The said two PWs disclosed about the incident to the sub-",,,

inspector who then visited the spot and prepared DN EX.P-12 on the narration of complainant Laxman Singh. Bare perusal of Ex.P-12 indicates that",,,

the same was recorded at 1700 hrs. as against time of incident being 1530 hrs and contains details of the incident inasmuch as mentioning the name of",,,

respondents, their overt acts, weapons wielded by them and the specific injuries sustained by the injured on the specific parts of the body including the",,,

deceased. DN also discloses that the rival parties were on enimical terms. The said DN has been proved by PW-10 Laxman Singh (complainant),,,

Though it seems from Annexure P-30 that an FIR was registered u/S. 164 Cr.P.C. bearing Crime No. 115/90 alleging offences punishable u/S. 147," ,,,

148, 149 and 302 IPC based on DN Ex.P-12 but it seems that the said FIR Annexure P/30 was not admitted in evidence as it was not proved by its",,,

maker. Just because FIR Annexure P-30 was not proved does not render the DN unreliable especially when DN assumes the character of FIR and",,,

which alone can trigger an investigation. There is no legal impediment that an FIR which is not numbered cannot initiate an investigation. FIR can very",,,

well be registered later which was done in the present case but apparently due to inadvertent mistake on the part of the prosecution, the said FIR was",,,

never proved and thus could not be admitted in evidence. That by itself in the considered opinion of this court cannot render the entire investigation,,,

otiose. These are only procedural aspects meant to subserve the cause of justice and thus cannot be allowed to subvert justice by jeopardising a,,,

conviction which otherwise is sustainable by ocular evidence.,,,

(ii) Another ground taken by the trial court to disbelieve the prosecution story is the failure of the IO to promptly arrest the accused despite having,,,

information about their whereabouts. This shortcoming in the discharge of duty by the investigating officer cannot be successfully raised as a ground,,,

to assail on the prosecution story. A delayed arrest of an accused may be a ground for proceeding against the investigative agency but does not render,,,

the case of the prosecution before the trial court unreliable especially when the same is supported by cogent and trustworthy evidence of direct and,,,

corroborative nature.,,,

(iii) Further ground taken by the trial court is the failure of investigating officer to explain the injuries sustained by accused Latoori reflected from Ex.,,,

P-39 (the arrest memo of this respondent) which disclosed that appellant Latoori sustained injury in the head where bandage was tied when the said,,,

appellant was arrested. This ground need not detain this court at all in view of the Apex Court decision in the case of Takhaji Hiraji Vs. Thakore,,,

Kubersing Chamansing (2001) 6 SCC 145 holding that mere non-explanation of injuries to accused is alone not fatal to prosecution, Para 17 of this",,,

judgment is reproduced below for ready reference and convenience:-,,,

â??17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In,,,

Rajendra Singh & Ors. Vs. State of Bihar, (2000) 4 SCC 298, Ram Sunder Yadav & Ors. Vs. State of Bihar, (1998) 7 SCC 365 and Vijayee Singh & ",,,

Ors. Vs. State of U.P., (1990) 3 SCC 190, all 3-Judges Bench decisions, the view taken consistently is that it cannot be held as a matter of law or",,,

invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of",,,

the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the person of the accused persons by the,,,

prosecution witnesses may affect the prosecution case, the court has to be

satisfied of the existence of two conditions : (i) that the injury on the person",,,
of the accused was of a serious nature; and (ii) that such injuries must have
been caused at the time of the occurrence in question. Non-explanation of,,,
injuries assumes greater significance when the evidence consists of interested or
partisan witnesses or where the defence gives a version which,,,
competes in probability with that of the prosecution. Where the evidence is clear
cogent and credit worthy and where the Court can distinguish the,,,

Section,Imprisonment,Fine,"Default

Stipulation

147 of IPC,2 years R.I.,Rs.500/-,1 month

148 of IPC,3 years R.I.,Rs. 500/-,1 month

324/149 of IPC,2 years R.I.,Rs.500/-,1 month

302/149 of IPC,"Life

Imprisonment","Rs. 10,000/-",1 year

326/149 of IPC,5 years R.I.,Rs.1000/-,2 months