
(1994) 04 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 205 of 1992

Vijai Singh and Another

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 11-04-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 154, 161, 162
Penal Code, 1860 (IPC) — Section 302, 307, 325, 34

Citation : (1995) CriLJ 881

Hon'ble Judges : L.S. Panta, J; Bhawani Singh, J

Bench : Division Bench

Advocate : T.R. Chandel, for the Appellant; Shyama Dogra, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This appeal is directed against the judgment of Additional Sessions Judge, Bilaspur, dated 26-9-1992. The accused have been convicted for offences under Sections 302/307 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life and to pay a fine of Rs. 2,000/- each under Sections 302/34 of the Indian Penal Code and rigorous imprisonment for 7 years and a fine of Rs. 2,000/- each under Sections 307/34 of the Indian Penal Code. In default of payment of fine, the accused have been ordered to undergo rigorous imprisonment for a period of three months under each count. The sentences have, however, been ordered to run concurrently. Fine, on realisation, has been ordered to be paid to Smt. Veena Devi, wife of the deceased. The essential facts of the case are being narrated hereunder.

2. The prosecution case is that on 17-9-1990, at about 11 p.m. when the deceased and his wife were sleeping in their Gohar along with their minor child, accused Vijay Singh called from the courtyard and asked the deceased to come down. Smt. Veena Devi got up and switched on the light of the room. In the meantime, accused Vijay Singh and Pritam Singh climbed the wooden staircase

and pushed open the door of the room. Accused Vijay Singh asked the deceased as to why he was defaming his wife. He showed a letter but when Gian Singh deceased inquired about the nature of the letter and tried to take it, accused Vijay Singh caught both his hands and accused Pritam Singh, who was holding a chhura in his hands, stabbed the deceased in the abdomen. The deceased, in order to save himself, jumped out of the window. Thereafter accused Pritam Singh gave chhura blow to Smt. Veena Devi and caused injury on her left breast. She fell down and both the accused ran away. Shrimati Veena Devi shouted for help. On hearing her shouts, Des Raj, Kartar Singh, Mehar Chand and Nand Lal came to the spot within a few minutes and inquired from her as to what had happened. The whole incident was narrated to them. They informed her that while coming to her house, they found her husband lying almost dead near the bamboo shrubs at a short distance. She went to the said place and found her husband dead. Kartar Singh and Nand Lal went to lodge the report at Police Station, Bharati and on their information, the police party reached the spot. It recorded the statement of Smt. Veena Devi u/s 154 of the Code of Criminal Procedure, which resulted in the registration of the First Information Report in this case. The report lodged by Nand Lal was recorded in the daily-diary (Ex. PQ). The injured was shifted to the hospital for treatment and the deceased for postmortem examination.

3. Accused Vijay Singh was arrested on 18-9-1990 while accused Pritam Singh was arrested on 28-9-1990 at Ahmedabad. Accused Vijay Singh produced the letter (Ex. P. 13). The police recovered the torch left by the accused in the house of the deceased. Knife was recovered from the shop of Kranti Kumar on the basis of disclosure statement made by accused Pritam Singh. After collecting the necessary evidence and recording the statements of witnesses, the accused were tried before the trial court for killing the deceased and causing injuries to Smt. Veena Devi with common intention. The trial court has found that the offences were committed by the accused in the manner alleged by the prosecution. In order to come to this conclusion, it placed reliance on the testimony of Smt. Veena Devi, corroborated by other witnesses who reached the spot at her instance soon after the incident. On the question of motive, the finding is that in view of the version of the eye witness, motive loses much of its significance that there existed motive for the commission of crime. The contention relating to contradictions and improvements has been rejected and on the question of First Information Report, it has been found that report lodged by Nand Lal (PW 2) should be treated as the First Information Report in the case and the statement of Smt. Veena Kumari is hit by Section 162 of the Code of Criminal Procedure. At the most, it can be treated a statement u/s 161 of the Code of Criminal Procedure. As to the medical evidence, it was found that the medical experts have not outrightly rejected the use of chhura (Ex. P5) in the commission of crime and in this case, the ocular evidence of Smt. Veena Devi as to the use of weapon has to be preferred. In addition to the statement of Dr. Bhardwaj since it accords with the statement of Smt. Veena Devi. All other submissions raised by

the defence have also been rejected.

4. Before dealing with the other points raised by the learned Counsel for the accused appellants, it is necessary to state that the First Information Report in this case is the report lodged by Nand Lal (Ex. PQ). It is the First Information Report disclosing the commission of a cognizable offence by the accused against the deceased. It cannot be held to be cryptic and vague. It was not, in these circumstances, appropriate for the police to record the statement of Smt. Veena Devi u/s 154 of the Code of Criminal Procedure and register the First Information Report on that basis. Section 154 of the Code of Criminal Procedure is clear about the recording of the First Information Report. It does not envisage holding of any kind of inquiry by the Police before registering the First Information Report, unless the report is cryptic and vague (See : Tapinder Singh Vs. State of Punjab and Another, Raberi Karsan Cova and Others Vs. The State of Gujarat, Kamal Kanto Das Vs. The State, 1980 Cri LJ 1397, Randhir Singh v. the State, and 1994 (1) JT SC 33, Dhananjay Chatterjee @ Dhana v. State of West Bengal).

5. In Lachhman and Another Vs. State, it has been held that (at page 1661 of Cri LJ):

...Nor there is any provision in the Code for any preliminary inquiry prior to investigation or prior to the lodging of the information within the meaning of Section 154. The question whether an information given u/s 154 is complete or not is not relevant. So long as it is an information about the commission of a cognizable offence it is all the information that is required to be given u/s 154 and, there cannot arise any question of its being incomplete and the failure of the station officer to reduce the first information to writing does not mean that the information was not an information contemplated by Section 154.

6. Thus, the view taken by this Court in this decision is quite apt and in tune with the tenor and spirit of Section 154 of the Code of Criminal Procedure unless, as already recorded above, the information is vague or cryptic or does not disclose the commission of a cognizable case. This question need not detain us any further when the learned Counsel for the parties did not assail the findings of the trial court on this question.

7. The fundamental question to be examined in this case is whether the offences, as alleged by the prosecution, have been committed by the accused. Shri T. R. Chandel, learned Counsel for the accused-appellants contended the whole case against the appellants is concocted and they have been involved in this case without any justification. The evidence is thoroughly weak and shaky. The prosecution case is completely of doubtful nature. Further, the contention of Shri T. R. Chandel was that when the evidence of Smt. Veena Devi is false, it cannot be corroborated or made truthful by the production of other witnesses. These submissions have been vehemently opposed by Ms. Shyama Dogra, learned Deputy Advocate General. According to her. Smt. Veena Devi is a truthful witness, who has given correct account of the incident in a straight forward

manner and there is no reason why she should not be believed. Her statement is corroborated by other witnesses who were called to the place of occurrence by her immediately after the incident.

8. In her statement, Smt. Veena Devi (PW 1) has stated that on 17-9-1990 at about 11 p.m. they were sleeping in the upper storey of their house with their five year old son. She was on the floor while her husband was sleeping on the cot. At about 11 p.m. she heard the voice of accused Vijay Singh. The accused asked her husband to come out and also said that he would finish him on that day. She got up and switched on the light of her house. In the meantime, both the accused climbed the stair and pushed the door of their room. They came inside. Her husband got up at that time. Accused Vijay Singh stated that the deceased was defaming his wife and showed a letter to the deceased, who unsuccessfully tried to stretch his hands to get the letter. Accused Vijay Singh got hold of both the hands of the deceased while accused Pritam Singh, who was holding a chhura in his hands, stabbed the deceased in the abdomen. The deceased got back and then ran towards the door and went outside the room. The knife remained in the hands of accused Pritam Singh. The chhura was blood stained at that time. Her husband went outside in order to save himself from another assault. Accused Pritam Singh gave another blow with chhura on her breast. Blood started oozing out and she fell down. Both the accused ran away when she raised an alarm and shouted for help. On hearing her cries, Des Raj, Kartar Singh, Mehar Chand, Nand Lal etc. came there. They asked her about the incident and she narrated the same to them. They informed her that the deceased was lying in bamboo bushes in an injured condition. She went to see her husband and found that he was lying almost dead near the bamboo shrubs at a short distance from the house. Accused Pritam Singh is her nephew from village relation and about 3/4 days prior to the incident, there was exchange of words between them and his parents about the boundaries of the land. However, accused Pritam Singh was not present on that day. She did not know as to why prior to the occurrence accused Vijay Singh was having ill-will against them. However, at the time of occurrence, he was stating that the deceased was defaming his wife Hoshiari Devi, who was living with her parents on account of divorce. At the time of occurrence, accused Vijay Singh was having a hockey and a torch in his hands. The torch remained in their room when he ran away. Accused Pritam Singh had a chhura and a lathi. while leaving, he took both these articles. She identified the chhura with which injuries were inflicted to her and the deceased. In cross-examination, she has stated that on the day of occurrence, they were living in their Gohar, situated at some distance from the village. The houses of Nand Lal, Bhag Singh, Sant Ram, Gurcharan, Rania, Indar Singh, Kanshi Ram and Jeet Ram are in the village. Though many persons had gathered at the spot after the occurrence, but she could not state the number of such persons. She admits that accused Pritam Singh is serving at Ahmedabad. She had seen him in the village on 16-9-1990. When accused Vijay Singh caught hold of the deceased from his hands, the latter did not say anything to him. At

that time, her husband had got up and was sitting on the cot. His hands were caught from the front side. Accused Pritam Singh was standing at that time by the side of accused Vijay Singh. Both the hands were held together for a minute or so and there was no talk between the accused and the deceased. The stabbing was done when both the hands were being held together. She admits that they had no strained relations with accused Pritam Singh. The deceased had gone to see the Mela at Ladraur. Accused Pritam Singh had come from Ahmedabad for the past nearly one month. The deceased was lying on the cot on a bed-sheet, but she could not say if blood had fallen over it or not. The police did not take the bed-sheet into possession. It was not a moonlight night. She has denied the suggestion that she did not see who had inflicted the knife blow and that she has named accused Pritam Singh, wrongly and that no chhura blow was inflicted on her by accused Pritam Singh and that she sustained the injuries by fall. The deceased had gone to see Mela at about 12 noon on that day. He came back at 9 or 9.30 p.m. He had not sustained injuries when he came back from the Mela. On the day of occurrence, he sustained only one injury, inflicted by accused Pritam Singh with chhura. She has denied the suggestion that the deceased had injuries on his persons when he came back from the Mela. She has also denied that the deceased had injuries over his legs, face, arms, abdomen and chest and that the deceased and accused Pritam Singh had a quarrel 3/4 days prior to the occurrence. Rather, the quarrel had taken place with the parents of accused Pritam Singh. She has disputed her version to the police u/s 161 of the Code of Criminal Procedure that the deceased had a quarrel with accused Pritam Singh 374 days prior to the incident. She has also denied her statement in Ex. PA that accused Vijay Singh was having a hockey stick in his hands and accused Pritam Singh had a danda when they entered their room. She has also denied the statement that both the accused had called her husband from the courtyard. The deceased had jumped from the window after receiving a blow to save himself. This fact was told to Nandlal also. There was no grappling between the deceased and accused Vijay Singh, thus, denying her version to the police where she had stated that there was grappling between the deceased and accused Vijay Singh and the torch was left there. Accused Vijay Singh had never come to their house earlier and was not on visiting terms with them. She had seen him in the village many times in the past but she had no talks with him. She had recognised his voice when he had called from the courtyard. Blood came out of the injuries sustained by them and the same had fallen on the floor of the room. She was not on the dari when blow was given to her, therefore, no blood had fallen on it. She was told by the persons collected at the spot at her instance that her husband was lying near the bamboo shrubs and was already dead. She went to that place and saw her husband dead. She has denied the suggestion that the deceased was given beatings by accused Vijay Singh in the Mela for defaming his wife. She has also denied that her husband had sustained the stab injury while jumping out of the window from the upper storey of the house. She did not try to rescue her husband. She did not get the chance to do so since the blow was given suddenly. There were some kitchen articles in the room, but none except the

torch were taken into possession by the police. She did not know whether accused Vijay Singh was present in the village on that day. Shashi (PW 4), D/o Jeet Ram was residing opposite to their Gohar. She had come to the spot after Des Raj, Nand Lal, Mehar Singh and Kartar Singh.

9. Nand Lal (PW 2) came to the spot after sometime after hearing the cries of Smt. Veena Devi, "Bachao, Bachao", since his house is located at some distance from the place of occurrence. According to this witness, Mehar Singh and Des Raj had reached prior to him and they were standing near the dead body. At that time, the deceased was still groaning and blood was coming out from his buniyan. He was told by Kartar Singh that the deceased was dead. They went to Smt. Veena Devi, who was weeping in the compound with injury on her left breast from which blood was coming out. She told them that accused Pritam Singh had caused injuries to her as well as to the deceased. Accused Pritam Singh had come along with accused Vijay Singh. She also stated that accused Vijay Singh had caught both the hands of the deceased and accused Pritam Singh had given chhura blow. He went to the Police station to lodge the report along with Kartar Singh, Amar Singh and Sita Ram. Head Constable had accompanied them to the spot followed by SHO. House of accused Pritam Singh was visited but he was not available. His parents said that he had gone to the house of his maternal uncle. The police took into possession torch (Ex. P. 8) vide memo, PF. It was sealed by the police in a parcel. It was taken from the house of Smt. Veena Devi since she stated that the same had been left by accused. The police took three blood stained stones into possession from the spot (Ex. PO to Ex.P 11). Letter (Ex. P. 13) was produced by accused Vijay Singh, who was arrested on the next morning from a distance of 4/5 kms, while Pritam Singh accused was apprehended 8/10 days after the occurrence. Accused Pritam Singh had stated in the presence of Prithi Singh and this witness to the police that he had given chhura and hockey to a shopkeeper at village Kharota and he could get the same recovered. His statement was recorded which was signed by them and the accused. Accordingly, he led them to village Kharota, pointed the shop and the shopkeeper. Then, a bag was produced by the shopkeeper which contained chhura (Ex. P. 5) and the same (was taken into possession. After a few days, in his presence the accused (Pritam Singh) made another statement that he had kept his clothes in his house. It was recorded and then the clothes - a shirt and a pant -- were recovered. The accused was wearing these clothes at the time of incident, which were identified by Smt. Veena Devi.

10. Prior to this incident, there was no dispute between the deceased and accused Pritam Singh to his knowledge nor there was any matter pending in the Panchayat, though there was some dispute of beer banna between the family of accused Pritam Singh and the deceased. When he visited the place of occurrence, he did not visit the room where the occurrence had taken place. He could not say that the occurrence had taken place with the deceased at the place where his dead body was found. Firstly, he came to the place where the deceased was lying. Smt. Veena Devi had stated that both the accused had

called her husband by name from the courtyard and both of them had asked her husband to come down. He was told the whole incident by Smt. Veena Devi. Thereafter, he took her to the place where the deceased was lying dead. He admits that they used the car of Shri Sita Ram forgoing to the police station. Sita Ram is the brother of accused Vijay Singh's first wife Hoshiari Devi and the relation of Sita Ram and Hoshiari Devi with accused Vijay Singh were strained for the last many years. He denies that several criminal cases were pending between Sita Ram and accused Vijay Singh. He states that he had told the whole occurrence to the police official at the police station as was stated to him by Smt. Veena Devi, thus going contrary to the report marked "A". He did not see accused Vijay Singh in the village that day.

11. Prithi Singh (PW 3) also saw the deadbody of the deceased near the bamboo shrubs and he visited this place. He states that when he reached at the place of occurrence, Nand Lal was already there. The police took into possession certain pieces of stones (Ex. P9 to Ex. P. 11). Smt. Veena Devi had stated that the accused had left torch (Ex. P 8) while fleeing from the place of occurrence. Letter (Ex. P. 13) was produced by accused Vijay Singh on 18-9-1990. Smt. Veena Devi had an injury on her breast on the left side. She told them that the accused had called her husband by name from outside the Gohar while they were sleeping on the first floor. She also told that accused Vijay Singh had caught the hands of the deceased while accused Pritam Singh gave chhura blow on the abdomen of the deceased. Her husband had jumped from the window in order to save himself from other blows. When she started crying, accused Pritam Singh gave chhura blow on her breast which pierced her breast and injury was caused. Accused left the place when she started hue and cry, leaving the torch behind in the room. He had gone to the police station along with Nand Lal where accused Pritam Singh made a disclosure statement about chhura and hockey which had been handed over to a shopkeeper at village Kharota. It was recorded and signed by them along with the accused. Then, they went to village Kharota where the shopkeeper was indicated by the accused and shopkeeper Karanti Kumar brought a bag from which chhura (Ex. P 5) was taken out and sealed into a parcel. Another disclosure statement of accused Pritam Singh, relating to the clothes hidden in his Gohar, was recorded, which were ultimately recovered and taken into possession. He admits that Hoshiari Devi is the divorced wife of accused Vijay Singh and Sita Ram is her brother, but could not say whether Sita Ram was present at the spot when he reached there and whether Hoshiari Devi and Sita Ram had any quarrel with accused Vijay Singh. 12. Kumari Shashi (PW 4) is the niece of the deceased and daughter of Jeet Singh, she states that on the day of occurrence, her parents had gone to Bilaspur as her father was ill and her mother was attending him. She was alone and the mother of accused Pritam Singh had come to sleep with her on that night. She heard the cries of Smt. Veena Devi, "Maritya-O-Loko". She got up and heard Smt. Veena Devi, saying that Pritam and Vijay had killed her husband and had given a chhura blow to her. She got up and told the mother of accused Pritam Singh that her son had killed

her uncle. However, she told her that it was not Pritam but Vijay. Mother of accused Pritam had woken up before her and was roaming in the paura. She did not go to the place of occurrence nor Pritam Singh's mother went there. After sometime, when she went to the courtyard of her uncle, Smt. Veena Devi told her and other persons present there that accused Vijay had caught hold of the hands of the deceased and accused Pritam gave a chhura blow at his abdomen as well as to her and she also saw a wound on the left side of the breast of Smt. Veena Devi. She had seen accused Pritam Singh in the village on 16-9-1990 but not on 17-9-1990. There is no other house near the place of occurrence except their house.

13. Sita Ram (PW 5) is the brother of Hoshiari, previous divorced wife of accused Vijay Singh. He states that on 17-9-1990 while he was sleeping in the upper storey of his house, accused Vijay Singh and Pritam Singh came to his house at 10/ 10.30 p.m. Accused Pritam Singh called him and he came out. He asked if the deceased had come there and when he replied in the negative, they went away. Accused Vijay Singh was holding a torch and a hockey. He had an envelope in his hand while accused Pritam Singh was having a lathi in his hand. He offered the envelope to him saying that it contained bananas for his children. He declined to accept them and then he left them in the stairs. They both left his house and went towards village Tikri. After sometime, he heard some noise from village Tikri and thereafter Nand Lal, Kartar Singh and Smar Singh came to him and stated that accused Vijay Singh and Pritam Singh had stabbed and killed the deceased, therefore, he should take them to the police station in his car. Accordingly, they went to the police station. The accused did not enter his house. They left from the stairs. Hoshiari Devi was in the lower storey of the house at that time. She had filed a petition u/s 125 of the Code of Criminal Procedure against accused Vijay Singh at Ghumarwin. He had accompanied her to that place, being his sister. He denies that he had initiated a case against accused Vijay Singh u/s 325 of the Indian Penal Code but states that the same should have been initiated by his sister and he used to accompany her. He did not know whether accused Vijay Singh and Hoshiari Devi were still writing letters to each other. He admits that 3/4 year ago, he had a quarrel with accused Vijay Singh who had broken his tooth with fist. This beating was given to him in his compound. He did not tell Nand Lal etc. while going to the police station and coming therefrom that the accused had visited his house about one hour earlier to the occurrence. He did not tell this to the police also. He did not tell the police about his beating by accused Vijay and breaking of his tooth, though this fact finds mention in his statement recorded by the police. Hoshiari Devi had gone with him to the police station 3/4 days after the occurrence, where her statement was recorded. He admits that he still had strained relations with accused Vijay Singh but denies that the accused had not come to his house prior to the occurrence and that he was deposing falsely.

14. Amar Singh (PW 7) states that Nand Lal and Kartar Singh came to him and told him that the deceased had been killed by the accused. They asked him to

accompany them to the police station to lodge a report. Since he could not take three persons on his motor-cycle, he advised them to arrange a car. They went to Sita Ram and took his car. Report was lodged in the police station. He went to the spot. There, Smt. Veena Devi stated in his presence that the accused had come at about 11 p.m. called her husband by name to come out and then they entered her room from the ladder. She also stated that accused Vijay caught hold of her husband from his hands and accused Pritam Singh gave knife blow on his person. Knife blow was also given to her but she did not name the accused who gave blow to her, though she had a wound on the left side of her breast. He did not see Prithi Singh or Sita Ram coming to the spot, though he had remained there till morning. Nand Lal etc. had not stated to him that accused Pritam Singh, and Vijay Singh had killed the deceased. He had not gone inside the police station, though Sita Ram had gone inside the same, Smt. Veena Devi had not stated anything about hathahpai and he had not told the police about this, though this finds mention in his statement to the police. Similarly, he contradicts his statement to the police when he states that Smt. Veena Devi had not stated the name of the accused who gave her the knife blow.

15. Kranti Kumar (PW 10) stated in his testimony that accused Pritam Singh asked him to keep his articles for a short time in his shop since his sister was living in the same village and he would collect his articles in the evening. He put his articles in a diba after wrapping the same in paper, but he did not see these articles. On 30-9-1990, he was called by the police from his house. Accused Pritam Singh and PWs Nand Lal and Prithi Singh were also present with them. The police inquired whether the accused had left any articles to which the accused replied in the affirmative. The diba was produced by him (Kranti Kumar, PW). It was opened. It contained a chhura, wrapped in a paper. Ex. P 5 was the same chhura which was taken from the diba not only in his presence but also in the presence of other witnesses. Recovery memo. (Ex. PM) contains his signatures in addition to accused Pritam Singh and others. In cross-examination, he states that he did not see the accused earlier nor he knew him before the date he left the articles in his shop. The chhura was wrapped in a paper only and there was no bag. Tikri village is at a distance of about 12 km. from his village. Police came to his village twice but did not ask anything from him. He has denied that the chhura was kept by the police earlier and then it was recovered subsequently and that he knew the accused.

16. Mehar Singh (PW 11) states that he went to the place of occurrence on hearing some noise from village Tikri along with his cousin De's Raj followed by Kartar Singh. The deceased was lying at a distance from his house and was uttering "Hoon, Hoon". Nand Lal had also reached there. Despite their calling the deceased, he did not reply. Then they went to his house where his wife was crying for help. There, Kanshi Ram Kishore Chand and one another persons had already reached and on their inquiry Smt. Veena Devi told them that accused Vijay Singh and Pritam Singh had given knife blows to them. They were also told by Kumari Shashi (PW 4) that mother of accused Pritam Singh was staying with

her, who had run away claiming that the deceased was killed by accused Vijay Singh, Smt. Veena Devi had also bleeding cut mark on her breast which she was pressing with her hands. The deadbody of the deceased was lying at a distance from Gohar which could be 150 yards. He did not see blood in between the house of the deceased and the place where the deceased was lying on account of darkness, but next morning the police could see blood on some pebbles. His house is at a distance of 200/300 yards from the house of the deceased and there is no house in between. He did not enter the room where the deceased was given chhura blow. He did not tell the police that Smt. Veena Devi had told that accused Vijay Singh had caught her husband from hands nor did he remember if Smt. Veena Devi had told such a thing at that time. He was denied that Smt. Veena Devi had not told anything but the villagers had conspired to implicate the accused falsely. He has admitted that the relations between accused Vijay Singh and Sita Ram were not normal on account of a quarrel that had taken place between them and also because of the relation between accused Vijay Singh and Hoshiari Devi. The deceased was wearing buniyan and kachha at that time and he had one injury near his eye with chepi over it. He did not notice any injury on his person. Smt. Veena Devi did not tell in his presenee about any quarrel between her husband and accused Vijay Singh in the Mela.

17. Inder Singh (P.W.12) simply states that both the accused visited his power loom mill and demanded water from his worker which was provided. On being asked, accused Vijay Singh stated that he was going to meet his ailing sister. He had no talk with accused Pritam Singh, though he knew him. According to this witness, village Tikri is at a distance of 11/2 kms. from his village. He did not know his sister nor that she was living nearby. He also did not ask the accused wherefrom they were coming. He had told the police that the accused had stated that he was going to see his ailing sister, a fact which is not recorded in his statement. He came to know the next day that the accused had killed the deceased but he did not tell the police about his meeting the accused the previous night though, on being asked whether the accused had taken water from him the previous night, he answered the query in the affirmative.

18. Kartar Singh (P.W. 13) also heard the cries of Smt. Veena Devi and went to the spot. He also saw Mehar Singh and Des Raj going towards the cow-shed of the deceased from where the cries of Smt. Veena Devi were coming. The distance was about 100 yards from the cow-shed of Smt. Veena Devi and the deceased was lying there near the bamboo shrubs. Nand Lal, Mehar Singh and Des Raj had reached there. The deceased had an injury on his chest and blood was oozing from it. His clothes, Buniyan and Kachha, were stained with blood. Then they went to the cow-shed of the deceased where Smt. Veena Devi was crying. She had bleeding injury on the left side of her breast. The incident was narrated to them by her. On account of Chhura blow, she became unconscious for a while and when she regained consciousness, she did not notice her husband there. Sita Ram (P.W.5) did not tell him in the car that the accused had come to his house in the night. He could not say whether his statement was recorded by

the police on 15-11-1990, but it was recorded after sufficient time. The deceased had one injury on his eye also, but he did not notice any injury on his legs and arms etc.

19. Head Constable Sarwan Kumar (P.W. 14) states that he was on duty during the night of 17/18-9-90 when Nand Lal, Sita Ram and Amar Singh had visited the police station and reported the matter recorded in Rojnamcha, Serial No. 29 (Ex. PQ). He deputed Head Constable Om Chand and Balbir Singh along with Constable Narpat Ram, Parkash Chand, Kashmir Singh and Tilak Raj to the spot. He also informed the officers at Bilaspur telephonically as well as through VHF (Very High Frequency) Wireless set. He recorded this report at 1.10 AM. He also received requisition Ex.PA through Constable Tilak Raj from the spot and recorded formal report (Ex.PW) at 3.10 AM on the same day. There was no SI or ASI in the police station. Copy of the First Information Report was sent to the court through special messenger on the next day for lack of Constables in the police station being deployed in the illaqua. For this reason, the copy of the First Information Report could not be sent immediately after recording it. The court of Sub-Divisional Judicial Magistrate, Ghumarwin, is at a distance of 15 Kms. from the police station, though the residence of SDJM, Ghumarwin, is at a distance of 13 Kms. He has stated that the police registers a case after obtaining medical opinion. Police Station, Bharari, had one SHO, one ASI, 3 Head Constables and 12 Constables. SHO Karam Singh had come after 2/3 days of the occurrence, probably he may have gone to attend some court case. The copy of the First Information Report was sent to the Court on the same day but he could not say about the time as there was shortage of Constables due to Anti-Reservation agitation. It was sent to the Court at 8/9 AM.

20. Head Constable Om Chad (PW 15) has stated that he was deputed to visit the spot and he reached there at about 2 AM. Visited the house of accused Pritam Singh in the presence of his father but could not find him there. He asked for the photograph of accused Pritam Singh, which was given by his father. The deadbody of the deceased was lying near the bamboo shrubs at a distance of 100-150 yards from the cow-shed of the deceased. He did not go inside the room of the deceased. He put a Constable on guard duty till the arrival of the SHO. Four persons, namely, Nand Lal Kartar Singh, Sita Ram and Amar Singh had come to the police station. They had stated to him that Smt. Veena Devi had told them that knife blows have been given to the deceased and complete facts could only be ascertained at the spot.

21. Prem Chand (PW 16) is a Police Photographer. He took 13 photographs, negative of which are on file (Ex.P.16 to Ex. P.28). Developed photographs (Ex. P.30 to Ex. P.43) are those of the deceased taken at the place where the deadbody was lying. Photographs (Ex. P.38 to Ex. P.4) are of the house of deceased where the occurrence had taken place and these were taken from outside. Photographs (Ex. P.41 to Ex. P.43) are of the room of the deceased where the incident had taken place.

22. Kashmir Singh (P.W. 17), Shankar Singh (P.W. 18) and Roop Lal (P.W.19) are formal witnesses.

23. Inspector Dalip Singh (P.W.20) was SHO of Police Station, Ghumarwin, at that time. On receiving information, he visited village Tikri at about 1.45/2 AM. He noticed Head Constable Om Chand, Balbir Singh and some other Constables near the dead body with many other people. The incident was narrated by Smt. Veena Devi and he recorded her statement (Ex. PA). It was read over to her and she signed it. The statement was sent to the police station for the registration of a case at about 2.20 AM Smt. Veena Devi Was sent to the hospital for treatment. He made search of the accused and was able to arrest accused Vijay Singh on the morning of 18-9-1990. Accused Pritam Singh was not traceable. From the spot, there pieces of stone (Ex.P. 9 to Ex.P. 11) stained with blood, were taken into possession vide recovery memo (Ex.PG) in the presence of Prithi Singh and Nand Lal. He also inspected the place of occurrence, got photographs and took torch (Ex. P. 8) into possession vide memo. Ex.PF. He also prepared site plans (Ex.PX/1 and Ex. PX/2). Accused Vijay Singh had produced letter (Ex. P. 13) which was taken into possession vide memo. (Ex. P. J.) in the presence of Prithi Singh and Nand Lal. He took into possession other articles like shirt, dupatta, produced by Smt. Veena Devi, shirt and pant of accused Vijay Singh, identified by Smt. Veena Devi. He recorded the statements of other witnesses also. He did not notice any blood between Gohar and the place where the deadbody was lying. The stones were in between the Gohar and the deadbody at some distance from the deadbody. The window, through which the deceased had jumped, was at a height of 5/6 feet. He has denied that accused Vijay Singh was sleeping in his house when he went there. He had inspected the room where the injury was inflicted. He did not notice any blood in that room nor took any blood stained article from there since there was none nor could he find any blood at the place from where the deceased had jumped the window.

24. Balbir Singh (PW 21) was deputed to the spot and he conducted the inquest proceedings in this case in the presence of Nand Lal and Prithi Singh. According to him, the deadbody of the deceased was lying in the bamboo shrubs at some distance from his house. After taking photographs of the deadbody on the spot, he sent it to District Hospital along with inquest report through Constable Kashmir Singh. He noticed an injury on the chest and also an old injury on the forehead of the deceased. He denies that the injury above the eye was bleeding. He mentioned injuries 3 and 4 in column 10 (Ex. PE) correctly as noticed by him. He mentioned about injuries 2 to 4 being old one as per his observations. It had come in the investigation that these old injuries had been sustained by the deceased by a fall on the previous day in the mela.

25. Nardev Singh (P.W.22) investigated this case partly and accused Pritam Singh was arrested by him.

26. S. I. Karam Singh (P.W.23) has also investigated this case and recorded the statements of certain witnesses.

27. So far as the medical evidence is concerned. Dr. Mohinder Singh (PW 8) conducted the postmortem examination of the deceased on 18-9-1990. He noticed that:

It was a stout body, rigormortis present. Clothing-vest and underwear.

Injuries. There was a sharp cut wound over the left 5th intercostal space 4 cm from mid sternal line. It is 1 cm x 1 cm. Clotted blood was present over the chest wall. It was antemortem. Besides the above, there were other injuries also. Abrasion over right knee sealed with Benzoin co. Wound over the right elbow and it was stitched. Another wound over the right infra or bital region. It was sealed with Benzoin co. All injuries except injury No. 1 were old and already treated.

There was a tear over the vest corresponding to the chest wound.

On exploring the wound, after piercing the skin, it had passed through the intercostal space cutting the intercostal muscles, pericardium and the left ventricle. The coronary vessels were also cut. All other organs were normal except the heart, the injury of which has been explained above.

The victim died of injury to the heart. This injury was sufficient to cause death in the ordinary course of nature. The probable time elapsed between the injury to the heart and death may be 5 to 10 minutes and between death and postmortem within 24 hours. All other injuries except injury No. 1 were treated and these were probably caused 3/4 days prior to death.

I issued postmortem report Ex. PU which is in my hand and bears my signatures. After reconstituting the deadbody, the same was handed over along with the clothing and sample of blood to the police. Injury No. 1 is not possible with Chhura Ex. P. 5 shown to me today in Court. I have given this opinion that injury is not possible because of the dimension of the injury as mentioned by 1 cm long and 1 cm broad in Ex. PU. I had measured the injury at the time of examination. It is correct to suggest that blood clotting was present at the time I measured the injury. Self stated I cleaned the blood clotting. I measured the injury after having removed the blood clots.... The weapon of offence had pierced the skin and then caused injury to the heart. I have not given the dimension of the injury to the heart. I did not perform postmortem in a causal manner. Injury is also not possible with Ex. P. 5 if after giving a blow the weapon is twisted and pulled out from the body. I had measured the injury with a tape. The said tape is available in the postmortem room.... It is incorrect to suggest that the dimension of the injury was not measured and was incorrectly mentioned by me in Ex. PU. The weapon of offence had gone inside the body to the extent of 5 to 6 cm... I have not mentioned the period of 2/3 days or 4 in regard to other injury in Ex. PU.

28. Dr. Krishna Nand Bhardwaj (PW9) examined Smt. Veena Devi on 18-9-1990 at 5.50 AM. His observations are as under :

Spindle shaped incised wound 3 cm x 1 cm covered with red clotted blood and having serious discharge over the lateral side of mid region of left side of chest.

Nature of injury simple.

Weapon used sharp.

Probable duration of injuries about six hours.

I issued MIC Ex. PV. which is in my hand and bears my signatures. Injury in question is possible with chhura Ex. P. 5.

In case the victim had been inflicted blow by assailants with a chhura, while taking it out the length of the injury can be increased and it may not necessarily correspond with the dimension of the chhura exactly. In case the victim and assailant move while injuries caused it is possible with chhura Ex. P. 5 otherwise not.... It was a stab wound. I cannot say about the length and breadth of the injury if chhura Ex. P.5 had gone inside to the extent of 1 cm only. If the persons are motionless and does not move in then the injury will not correspond to the dimension mentioned in my report. I have not mentioned about the clothes worn by the injured.

29. From the narration of evidence, the prosecution case is that the incident took place in the Gohar of the deceased in the matter stated by Smt. Veena Devi, an eye witness to the occurrence. Is it so? If this version is found to be correct, the prosecution story may gain some credibility or else it may receive a serious setback. The whole case of the prosecution is depends upon the testimony of Smt. Veena Devi. If it falls, the case goes. There are, in our considered opinion, many serious chunks in the case of the prosecution, as rightly emphasized by Shri T. R. Chandel, learned Counsel for the appellants. We proceed to record them now.

30. Taking place of the incident in the Gohar and the same being witnessed by Smt. Veena Devi is unacceptable. There is no evidence about the past associationship of the accused. Assuming that accused Vijay Singh had some animus against the deceased, but accused Pritam Singh had none; it is admitted by Smt. Veena Devi herself. There is no evidence of their prior meeting and settling of the future course. Again, assuming that they came to the spot, narration of prosecution witnesses is not same whether only accused Vijay Singh called the deceased or both of them. Some witnesses say that Smt. Veena Devi told them that both the accused had called the deceased, while others say that only accused Vijay Singh had called the deceased. In these circumstances, it is difficult to come to a definite conclusion about the exact version. The deceased was sleeping along with Smt. Veena Devi in the Gohar at the relevant time. Normally, the door should have been bolted from inside since it was night time and the Gohar is located at a distance of 100 to 200 yards from the village. There is no evidence that it did not have arrangement for bolting. It has a window. Smt. Veena Devi switched on the light when the couple was called by the accused. Obviously, she should have opened the windows for looking at the accused who were threatening them. Difficult it is to accept that they entered the room, soon after threatening them, through the ladder. Let us examine the actual incident. Smt. Veena Devi points out that accused Vijay Singh had a hockey and

a torch in his hands while accused Pritam Singh had a chhura and a lathi. Instead of holding the hands of the deceased, accused Vijay Singh should have used hockey to hit the deceased and accused Pritam Singh lathi since they could finish the deceased with them also in case they had intended to kill him. It has not been pointed out by Smt. Veena Devi that accused Vijay Singh kept aside the hockey and torch and then started showing the letter (Ex. P. 13) to the deceased. Assuming that he had kept the hockey and the torch aside and started holding the hands of the deceased from the front side, it was not possible that accused Pritam Singh would give chhura blow on the chest instead of using the lathi. Giving of chhura blow in that situation was not possible. This means that this incident is totally fabricated. This conclusion is further strengthened by the fact that after receiving such a serious injury, it was not possible for the deceased to have jumped through 5/6 feet high window and run to a distance of 150/200 yards, where he was ultimately found. Further, non-availability of blood in the room; in the clothes, on the floor, on the window and then between Gohar and the bamboo shrubs further makes the prosecution story highly improbable. It has been admitted by the Investigating Officer that blood was not found, What is the consequence? Obviously, the occurrence had not taken place in the Gohar and in the manner narrated by Smt. Veena Devi.

31. In para 18 of *Bir Singh and Others Vs. State of Uttar Pradesh*, Fazal Ali, J., observed that (at page 185 of Cri LJ) :--

"18. Another important argument advanced by Counsel for the appellants is that there is absolutely no evidence to show that there was any blood at the place where PW 2 fell down. It was contended that according to the Doctor's version having regard to the injury, blood must have been oozing out. If the blood was there then the Investigating Officer could not have failed to notice the same. The fact that blood at that place was not indicated in the sketch map it clearly shows that PW2 did not receive injuries at the place. This is undoubtedly an important aspect which merits serious consideration. The Sessions Judge seems to have commented on the fact that PW 2 did not accompany the dead body but in our opinion nothing much turns on that because PW 1 must have been in a hurry to rush to the Police Station and as PW 2 was seriously injured, he may not have thought: it advisable to carry him. But the fact remains that the prosecution has not been able to show that there was any blood at the place where PW2 fell down which raises a reasonable inference that PW2 may have been assaulted elsewhere and once that is so then the case regarding the assault of the deceased at the place of occurrence also automatically fails because the two incidents are parts of the same transaction.

32. In *Buta Singh Vs. The State of Punjab*, , Ahmadi, J., speaking for the Bench, observed in para-9 that (at page 1467 of Cri LJ):

"9. From the above state of evidence, it appears that the defence version regarding the incident is a probable one and is supported by the finding of blood from near the tubewell Which is adjacent to the "dera" of the appellant. When

two versions are before the Court, the version which is supported by objective evidence cannot be brushed aside lightly unless it has been properly explained. As stated earlier, the prosecution has not explained how blood was found from near the tubewell and no blood was found from the spot where according to them the incident occurred. In addition to this, the factum regarding the delay in lodging of the First Information Report and the suspicion that it was delayed with a view to concocting the prosecution case and further the, delay in forwarding the special report to the Magistrate as well as the case papers to the hospital shows that the investigation was not above board. In these circumstances, we think that the approach adopted by the courts below cannot be justified.

33. Similarly 1986 (2) Crimes, 667 : 1987 Cri L 101 Kadir v. the State, a Division Bench of the High Court of Delhi observed in para 5 that (at page 103 of Cri LJ):--

"5. The crucial question that arises for determination in this case is whether the occurrence took place at Sastri lane as alleged by the prosecution or in the Mosque lane in front of the house of the accused as pleaded by the accused.

Again in para-7, the Court recorded that:

"7. The non-finding of the blood at the spot where Kalu is alleged to have been given the knife blows, in our view, falsifies the prosecution case that the occurrence had originated in Sastri lane. The scene of crime was photographed and the photographs show big patches of blood outside the house and inside the house of the accused Kadir. The injuries found on the body of Kadir were opined to have been caused with a blunt weapon. The medico legal report of Kadir does not show that the injuries were found bleeding. From the nature of the injuries received by Kadir it could reasonably be said that there could not be much bleeding from his injuries.

And then in para-9, it has been held that:

9. We have carefully gone through the record and we are of the view that the occurrence had not taken place in Sastri lane as alleged by the prosecution and in all probability the occurrence took place in front of the house of the accused....

34. There is evidence suggesting that the villagers came to the bamboo shrubs where the deceased was lying. Thereafter, they went to the Gohar and met Smt. Veena Devi and apprised her about the deceased lying near the bamboo shrubs and Smt. Veena Devi narrating them the incident on their inquiry, who told these people that the deceased was lying near the bamboo shrubs? At least Smt. Veena Devi did not tell them. As stated above, she was told by them about it. It appears that the incident had not at all taken place in the Gohar, as alleged by the prosecution. This part of the story is false. If this story is false, the statement of Smt. Veena Devi is totally undependable. She is not an eye witness to the occurrence or she has suppressed the material facts, including the circumstances in which she received breast injury. In these circumstances, it is

not only hazardous but dangerous to "connect it with the appellants and the recovery of chhura (Ex. P.5) and the statement of Dr. Krishna Nand Bhardwaj is not" only unsatisfactory but also vague, inapt and inconsequential. It appears that the incident had taken place near the bamboo shrubs. Who has committed it, has not been established. We have rejected the testimony of Smt. Veena Devi. We have rejected the prosecution story that the incident had taken place in the Gohar of the deceased. The police was also groping in the dark as to the actual incident. The accused have been picked up to answer for it. Though it is not essential for the prosecution to allege and prove motive in a criminal case, more particularly where the incident is seen by eye witness(s) and their testimony is cogent and convincing, however, where motive is pressed into service, it can be examined by the court in order to test the truthfulness of the prosecution case against the accused. Here the evidence goes in favour of the accused-appellants. Letter (Ex.P. 13) is of no use to the prosecution. It does not prove existence of inimical relations between accused Vijay Singh and Hoshiari Devi. However, Sita Ram had clear animosity against accused Vijay Singh for the past many years. His use by the prosecution to prove that the accused had visited his house during night and offered bananas to his children, is hardly acceptable. Looking to the past relationship, accused Vijay Singh was not expected to offer bananas to his children and visit the house of his enemy on way to the Gohar of the deceased for the purpose of killing him. Sita Ram has played a role in this case against accused Vijay Singh due to their strained relations.

35. We go to the items of recovery. Why Vijay Singh accused leave the torch at the place of occurrence? When he had taken away the hockey, there was no reason for him to leave the torch there. Accused Vijay Singh had denied the ownership of this torch. Further, hockey has not been used in the commission of the crime even according to the prosecution. Recovery of chhura at the instance of Pritam Singh creates further doubts about the prosecution case. Pritam Singh was not known to Kranti Kumar (P. W. 10). Kranti Kumar did not know Pritam Singh's sister. Therefore, accused Pritam Singh would not have kept the weapon of offence with blood stains on it in the shop of this person. Rather, he would have disposed it of soon after the occurrence before travelling to this ship about 12 Kms. It is also a case of padding by the police. Dr. Mohinder Singh (PW 8) has ruled out the commission of crime by this chhura. There is no reason why the testimony of this medical expert should be discarded. The exclusion of this weapon of offence from the commission of crime by Dr. Mohinder Singh (PW 8) and finding of injury on the person of Smt. Veena Devi (PW 1) by Dr. Krishna Nand Bhardwaj (PW 9) make the prosecution case all the more doubtful. The statements of the other prosecution witnesses cannot be accepted since they are based upon the information given to them by Smt. Veena Devi (P.W. 1) and on other aspects they have made massive improvements and contradictions as pointed out in the narration of their evidence.

36. We examine the next contention urged by Shri T. R. Chandel that the First Information Report is a vital document in a criminal case. Delay in recording it

and despatching it to the illaqua Magistrate create serious doubts about its credibility. Unless the delay and the transmission of its copy to the illaqua Magistrate is satisfactorily explained, untrustworthiness of the prosecution story can be easily inferred. Mr. Shyama Dogra, learned Deputy Advocate General, made strenuous efforts to explain the delay. According to her, the copy of the First Information Report was transmitted to the illaqua Magistrate with greatest promptitude and whatever delay has happened in the case, the same was on account of anti-reservation agitation. We are not convinced by this explanation. Though we have taken ruqua (Ex.PQ) to be the First Information Report in this case, however, counting the time even from the recording of Ex. PW (First Information Report according to the prosecution), we notice that it was recorded on 18-9-1990 at 3.10 AM and the copy was sent to the illaqua Magistrate at 8/9 AM and the distance of illaqua Magistrate's court is 15 Kms and of the residence is 13 Kms from the police station. The copy has been received on 18-9-1990 at 6 PM. The explanation that there was anti-reservation agitation during that time and the Constables were not available, is not satisfactory. It is not possible to accept the explanation. It was not sent on foot. There should not have been delay of 8/9 hours. It appears that the time, of despatch to the illaqua Magistrate has been manipulated for the purpose of making embellishments to the prosecution story.

37. Finally, we examine the point urged by the learned Counsel for the respondent that accused Pritam Singh ran away from his village and was ultimately arrested on 28-9-1990 at Ahmedabad. This demonstrates his guilty conduct. We are not impressed by this submission. Apart from his explanation, he has produced Narainu Ram (DW1) in defence stating that he had left the place before the day of occurrence. Simply because he was not found in the village, is no ground to hold that he had fled away to avoid the arrest concerning this crime.

38. After giving our serious consideration to all the facts and circumstances of this case, we are of the opinion that the trial court has not appreciated the matter correctly. On the basis of the available evidence, it cannot be said that the offence was committed by none else except the accused. The prosecution case has thus remained completely unsubstantiated. The accused cannot be held guilty on this kind of evidence. Accordingly, the appeal is accepted, their conviction is set aside and they are acquitted of the charge. A direction for their forthwith release is issued.