

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. A. 275/2001**

% Reserved on: 8<sup>th</sup> December, 2010

Decided on: 21<sup>st</sup> February, 2011

CHAMAN LAL

..... Appellant

Through: Mr. Jitendra Sethi and Mr. Abhishek  
Kumar Singh, Advocates

versus

..... Respondent

STATE

Through: Mr. Manoj Ohri, APP

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

- |                                                                                 |               |
|---------------------------------------------------------------------------------|---------------|
| 1. Whether the Reporters of local papers may<br>be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not?                                           | Yes           |
| 3. Whether the judgment should be reported<br>in the Digest?                    | Yes           |

**MUKTA GUPTA, J.**

1. On 11<sup>th</sup> July, 1987 at about 6:30 a.m. Sgt. Shivji Roy PW9 got recorded an information at Police Station Nazafgarh vide D.D. Entry No. 9A Ex. PW1/A stating that one Kishan Singh has been killed by Chaman Lal, a washer man, in a quarrel and Chaman Lal has been detained by Sergeant

Dahiya in the guard room so police be sent and action be taken. On this information, S.I. Hari Ram reached at the spot and recorded the statement of Mohan Singh PW2, the son of the deceased vide Ex. PW2/A, who was present at the spot. He stated that their neighbour Chaman Lal lives in dhobi quarter no. 27 and a quarrel was going on between them and Chaman Lal and his children from the last 4-5 years. On 10<sup>th</sup> July, 1987 at about 9:30 p.m., Chaman Lal and his children picked up a quarrel with them which was pacified by the neighbours Anand Ballabh Pandey and Dharampal. Thereafter they all went to sleep. He was sleeping outside his house and his parents were sleeping inside. At about 2.00 a.m. in the night, Chaman Lal came holding a danda in his hand and gave danda blow on his right leg and hand. On his raising an alarm, his parents came out of the house. Chaman Lal hurled abuses and stated that he would finish the quarrel by killing him and gave danda blows on the head of his father. Anand Ballabh Pandey, their neighbor tried to intervene and save his father, however, Chaman Lal kept on giving danda blows to his father due to which his father fell down on the road. Thereafter, Chaman Lal tried to escape and while he was running, he fell down in front of his house due to which he sustained injuries. This incident was witnessed by his mother, Anand Bhallabh Pandey, Dharampal and also by other neighbours. Thereafter, Dharampal and Anand Bhallabh Pandey went to

inform the officers and Chaman Lal was apprehended at the spot and was taken by Sergeant Dahiya. The doctor declared his father dead. He further stated that Chaman Lal had killed his father to take revenge and had come with complete preparation. On the statement of Mohan Singh, FIR No. 250/1987 under Section 302 IPC was registered at P.S. Nazafgarh and after completion of investigation, charge-sheet was filed. The learned Trial Judge framed charges under Section 302 IPC r/w Section 323 IPC against the Appellant. After recording the prosecution evidence, statement of the accused under Section 313 Cr. P.C. and the defence evidence, learned Additional Session Judge, convicted the Appellant for offence punishable under Section 304 Part (II) IPC. Keeping in view the age of the Appellant and that he was the only support to his family, the Appellant was awarded a sentence of Rigorous Imprisonment for the period already undergone and to pay a fine of ₹13,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year. In case the fine was realized, ₹10,000/- was directed to be paid to the wife of the deceased as compensation. The judgment of conviction and order on sentence are under challenge in the present appeal.

2. Learned counsel for the Appellant contends that the prosecution had cited allegedly four eye witnesses of the incident PW2 Mohan Singh s/o the

deceased, PW10 Gobindi w/o the deceased, PW5 Dharampal and PW12 Anand Ballabh Pandey, both neighbours living in the vicinity. Though, PW5 appeared for examination-in-chief, but since he did not appear for cross-examination his testimony could not be looked into and thus the prosecution is left with the witnesses PW2, PW10 and PW12. It is urged that even as per the testimony of PW2 in the Court, he could not have witnessed the incident when danda blows were given on the head of his father as in his cross-examination he has deposed that immediately after receiving injury, he ran away and had gone to call Dharampal and Dharampal had reached the place of occurrence prior to PW2. Moreover, as per PW10 Gobindi w/o deceased, Dharampal had reached the spot after Kishan Singh had expired. Therefore, PW2 cannot be an eyewitness of the incident. It is further urged by the learned counsel for the Appellant that PW2 is not a reliable witness as according to Dr. Vijay Laxmi who has been examined as PW6, the injuries suffered by PW2 were superficial in nature and could be self-suffered. PW2 in his testimony has stated that he suffered injuries caused by the danda blows given to him by the Appellant on his left foot however as per the extracts of emergency register, the injury recorded on his person was a blunt injury on the right knee, contusion of 3 cm which could have been caused by friction against a hard substance. Thus PW2's version of the cause of injury on his person is contrary

to the opinion of the medical expert who had examined him on the same day itself.

3. It is pointed out by the learned counsel for the Appellant that the statement of PW10 Gobindi gives a totally different version of the whole incident and is full of material contradictions and improvements. Reference is made to *Yudhishtir vs. State of Madhya Pradesh*, (1971) 3 SCC 436. As per the testimony of PW12, Anand Ballabh Pandey, he had not witnessed the alleged incident at 9:30 p.m. He deposed that he had only seen Sergeant Dahiya and M.C. Das as a quarrel had taken place and he did not know between whom the quarrel took place. With regard to the incident which took place at around 2.00 a.m. in the night, the testimony of this witness is full of material improvements and contradictions.

4. It is next contended that the prosecution case falls flat as the Appellant had sustained injuries which according to PW7 Dr. Rajinder Rajan were opined to be caused by danda blows. Also the eye-witnesses have not explained the said injuries and they have all deposed that they had not seen any injury on the person of the accused on the day of the incident. Reliance is placed on *Lakshmi Singh & Others vs. State of Bihar*, AIR 1976 SC 2263 to contend that it is the bounden duty of the prosecution to give a reasonable

explanation for the injuries sustained by the accused in the course of the occurrence. The circumstance of deliberate suppression of the injuries on the person of the accused is a very important circumstance to discredit the entire prosecution case. It is well settled proposition that fouler the crime, higher the proof and hence in a murder case where the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution's case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. It is further urged that the story of PW2, that accused while trying to run from the spot was obstructed by a stone lying on the road due to which he fell down and as a result of the same he sustained the injuries on his head cannot be believed as no stone from the spot has been taken into possession.

5. Learned counsel further contends that though the accused has been allegedly apprehended at the spot, but the recovery of danda at his instance, which was allegedly used by him to hit the deceased was recovered from his residence and there was no occasion for the Appellant to have kept the danda in his house if he was apprehended on the spot. Moreover, no opinion of the

doctor who conducted the post-mortem was sought in regard to the fact that injury on the person of deceased was possible by the said danda. Hence this recovery of danda cannot be co-related with the offence committed which has also been held by the learned Trial Judge. Moreover, PW2 and PW12 in their respective testimonies have not stated about the recovery of danda. Reliance is placed on *Ishwar Singh vs. State of U.P.*, AIR 1976 SC 2423 to contend that it is the duty of the prosecution and no less of the Court to see that the alleged weapon of offence if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so, may sometime cause aberration in the course of justice.

6. The last contention of the learned counsel for the Appellant is that it is unanimously admitted by the witnesses that dog squad was summoned at the spot and the accused as well as witnesses, besides other people were made to line up to identify the accused. The very fact that the dog squad was summoned to identify the accused negates the claim of the prosecution that the incident was witnessed by PW2, PW5, PW 10 and PW 12. Reference is made to *Sarwan Singh Rattan vs. State of Punjab*, AIR 1957 SC 637 to contend that once the investigation is found to be tainted, the whole of the

prosecution case becomes open to serious doubts and challenges. It is for the prosecution to travel the inevitably long distance between “may be true” and “must be true” and whole of this distance must be covered by legal, reliable and unimpeachable evidence.

7. Learned APP for the State on the other hand, contends that there were two incidents which took place on the fateful night, one at about 9:30 p.m. on 10<sup>th</sup> July, 1987 and the other at about 2:30 a.m. on the intervening night of 10<sup>th</sup> and 11<sup>th</sup> July, 1987. The incident at about 9:30 p.m. has been witnessed by PW2, PW8 and PW10. There is no inconsistency in the testimony of PW2, the son of the deceased and PW10, wife of the deceased. Moreover, PW2 was examined on 8<sup>th</sup> March, 1989 i.e. more than one and half year after the occurrence whereas PW10 Gobindi, wife of deceased was examined on 27<sup>th</sup> October, 1998 after more than 11 years of the incident. Thus, there were bound to be certain variations in the testimony of the witnesses. PW2 is an injured witness, who was examined on the same day that is 11<sup>th</sup> July 1987 by PW6 Dr. Vijay Laxmi who has opined PW2 to have received blunt injury i.e. contusion of 3 cm on the right knee. In regard to the suggestion put to the witness that the injury on the person of PW2 could be self-suffered and the witness affirming the same to be possible, learned counsel contends that this

was a hypothetical answer in response to a hypothetical question. Relying on *D. Sailu vs. State of Andhra Pradesh, 2007(14) SCC 397*, it is contended that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye witness's account which had to be used independently and not treated as the variable keeping the medical evidence as the constant. Where the eye witness's account is found to be credible and trustworthy, the medical opinion pointing to alternative possibilities cannot be accepted as conclusive. It is further contended that the version of PW2 & PW10 that PW12 was present at the time of incident at 2.30 a.m. and had also reached after the incident of 9:30 p.m., is corroborated by the fact that even PW 8 Shri N.C. Das who is an independent officer, in his testimony has stated that at about 9:30 p.m. PW12 Anand Ballabh Pandey informed him about the incident and when he went, everything was pacified and normalized by that time. He further stated about the incident at about 2:30 a.m. that both PW5 and PW12 informed him that Chaman Lal had murdered Kishan Singh. He rushed to the spot with Sergeant Dahiya and found Kishan Singh dead. This fact has been further verified by PW11 P. Padam Nabhan, Warrant Officer who stated that on 1<sup>st</sup> July, 1987 at about 3:00 a.m. he had received the information in the morning that a murder had taken place. It is stated that Shivji Roy PW9 had gone to lodge the complaint to the police station

Najafgarh at 6:30 a.m. which information was recorded in DD No. 9A Ex.PW-1/A where it has been stated that Chaman Lal had murdered Kishan Singh and has been detained in the guardroom. Thus the inference being drawn that the accused was not arrested at the spot and was only apprehended after the dog squad came, does not warrant merit as it is clear from the testimony of PW9 Shivji Roy that the Appellant was detained in the guardroom. The Investigating Officer PW19 S.I. Hari Ram has explained that the dog squad was sent by the SHO and ACP as they did not know that the accused had already been arrested.

8. As regards non-explanation of the injuries on the accused reliance is placed on *State of Gujarat vs. Bai Fatima & Anr.* 1975 (2) SCC 7; *Lakshmi Singh & Others vs. State of Bihar*, AIR 1976 SC 2263; *Hari vs. State of Maharashtra*, J.T. 2009 (4) S.C. 234; *Amar Malla & Ors vs. State of Tripura*, 2002 (7) SCC 91 and *Sikandar Singh & Ors. vs. State of Bihar* J.T. 2010 (7) SC 637, that when the prosecution case is proved by the eye-witnesses, then merely because the prosecution has failed to explain the injuries on the Appellant, does not ipso facto throw away the prosecution case. It is next contended that there are no improvements or contradictions in the testimony of the witnesses and witnesses have been examined after more than 11 years

of the incident hence minor variations are bound to occur in their testimony. The incident is of 2:00/2:30 a.m., in the intervening night of 10<sup>th</sup> and 11<sup>th</sup> July and PW2 the son of the deceased and PW10 wife of the deceased are natural witnesses as their presence at that time of the night is obvious and natural. Replying to the contention that since the Appellant was apprehended on the spot, there was no time for him to have concealed the danda at his residence, learned APP states that this contention of the defence is ill founded as the Appellant and the deceased were next door neighbours and immediately after the incident since he had run away, therefore, there was sufficient time with him to have concealed the danda at his house. It is further contended that the defence has taken inconsistent and false pleas and in view of the decision rendered in *Shankarlal Gyarsilal Dixit v. State of Maharashtra, 1981(2) SCC 35*, though a false plea may not prove the guilt of the accused but the same is an additional circumstance, if other circumstances point unfailingly to the guilt of the Appellant. It is stated that according to the statement of the Appellant under Section 313 Cr.P.C. in reply to question no. 31, he admits that a quarrel took place between him and Kishan Singh deceased at 9:45 p.m. on the 10<sup>th</sup> July, 1987 after which he was detained in the guardroom and he explains his injuries also. DW1 Surya Narain Mishra also admits the incident at 9:30-9:45 p.m. but according to him Kishan had received injuries and was

lying on the ground. In his further statement, he does not admit having witnessed the incident at 2:00 a.m. as he slept till 5:00 a.m. next day. This testimony of DW1 and the statement of the Appellant under Section 313 Cr.P.C. is not only contrary to the testimony of eyewitnesses but also the independent official witness PW8 Sh. N.C. Das who has deposed that he was informed about the incident at 9:30 p.m. and when he reached at the place of the incident, everything had settled and normalized. It is thus prayed that there is no merit in the appeal and the same be dismissed.

9. I have heard the learned counsel for the parties and perused the records. PW2 Mohan Singh, the Complainant, the son of the deceased is a natural and an injured eye witness in this case. PW2 also proves the fact of frequent quarrels between the families of the deceased and the Appellant over trivial issues. According to him on 10<sup>th</sup> July, 1987, at about 9:30 p.m., there was a quarrel between his father and Chaman Lal who was under the influence of liquor and at about 9:45 p.m. their neighbours Dharampal and Anand Ballabh Pandey reached and got the matter settled. This version of PW2 stands corroborated by his mother PW10 Gobindi, PW12 Anand Ballabh Pandey and also by PW8, Sh. N.C. Dass, Master Warrant Officer who deposed that there was a quarrel between Chaman Lal and one Kishan Singh which was

informed to him by Dharampal and Anand Ballabh Pandey at about 9:30 p.m. and he along with Sergeant Dahiya went there at about 10.00 p.m. and found everything normal. This witness has not been cross-examined on this aspect and this part of his testimony has gone unchallenged. PW 10 states that after the incident, they made their son Mohan Singh sleep outside and she and her husband went inside to sleep. PW2 Mohan Singh has stated that when he was sleeping outside the house at about 2:00 a.m., the Appellant attacked him with the danda on the left foot. Thereafter, Chaman Lal gave a danda blow on the door whereupon his father came out and the accused attacked his father with the danda. Learned counsel for the Appellant has sought to impeach the testimony of this witness on the ground that immediately on receiving the danda blow, he ran away to call Dharampal and as per the testimony of the witnesses he came only after Dharampal had come and when Dharampal came his father had already died. This contention loses ground in view of the testimony of PW2 wherein he has stated that after the Appellant hit him and gave danda blow on the door, his father came out and the Appellant attacked his father as a result of which he fell down. This testimony of PW2 is duly corroborated by PW10 who states that at about 3.00 a.m., the Appellant gave danda blow to her son who was sleeping outside, who raised an alarm she and her husband got up, and when she opened the door the Appellant followed her

son in the house and was holding a danda. She further stated that her husband asked him to go out and not to quarrel with the children, on which he dragged her husband out of the house on the road and gave danda blows on his head. Both these witnesses have clearly stated that Anand Ballabh Pandey who is living in the neighbourhood had come at the spot and tried to intervene. Only Dharampal came after her husband had died. She further stated that thereafter Anand Ballabh Pandey along with her daughter went to the guardroom to inform the officers and then accused Chaman Lal was apprehended. PW12 has stated that at about 2:00/2:30 a.m. he was sleeping in his courtyard he heard noises which appeared to be that of Appellant Chaman Lal quarrelling with his wife and then Chaman Lal came out of the house. He was holding a danda in his hand and was under the influence of liquor. Despite his wife requesting him to stop, he went to the house of Kishan Singh where Mohan Singh was sleeping outside the house. When the Appellant struck Mohan Singh he reached there. Mohan Singh got up, raised the alarm and went towards the door of his house. The door was opened and Kishan Singh came out. Appellant rushed towards Kishan Singh and gave danda blow on his head. Kishan Singh went towards the road and tried to lift a stone to hit back but before he could get up, accused gave another Danda blow to Kishan Singh on his head and he fell down. The fact that PW2 had gone to call Dharampal

and Dharampal reached only after his father was dead does not warrant that PW2 did not witness the incident. He is an injured natural witness and his testimony is duly corroborated by that of PW10 and PW12 and thus, cannot be discarded.

10. It is for the prosecution to prove its case beyond reasonable doubt, which the prosecution has done by the testimony of PW2, PW10 and PW12. However it is settled law that if the defence takes false pleas then the same can be used as an additional link in the chain of circumstances if the other circumstances prove the guilt of the accused. According to the Appellant, he received injuries in the incident dated 10<sup>th</sup> July, 1987 at 9:45 p.m. when Kishan Singh hit him with a danda on his head and fingers. Kishan Singh and Dharam Pal ran away from the spot. Somebody informed Sergeant Dahiya who then took him to the guardroom and gave him first aid and confined him in the guardroom till 9:30 a.m. of the next morning. Later he was handed over to the police and nothing was recovered from him and the said danda was planted on him. Thus, the Appellant stated that he received injuries in the incident at 9:30 p.m. and was detained in the guardroom thereafter till the next day morning and thus was not connected with the incident at 2.30 a.m. This defence is totally contrary to the version of the independent witness PW8 N.C.

Das, Warrant Officer who stated that when on being informed about Chaman Lal murdering Kishan Singh, he along with Shri Dahiya rushed to the spot and found Kishan Singh dead and when he went to Chaman Lal, who confessed having murdered Kishan Singh because he could not control his anger which was unbearable. He then sent Chaman Lal through Sh. Dahiya to the main guard room to be handed over to the police on duty.

11. I also did not find any merit in the contention of the learned counsel for the Appellant that as the injuries on the Appellant have not been explained, the case of the prosecution falls foul and the Appellant is entitled to the benefit of doubt. As per DW1 Surya Narain Mishra on the date of incident, after returning from the Rum-Punch Party, he went to his quarter and at about 9:30–9:45 p.m. on hearing some noise he reached near the quarter of deceased Kishan where he saw the Appellant Chaman Lal had sustained injuries on his forehead, right elbow and fingers also. Injuries on the person of the deceased Kishan were also seen who was lying on the ground. He questioned the accused Chaman Lal as to how he got injured to which he answered that a quarrel was going on between Dharampal and the deceased and he intervened and separated them. Thereafter, he was beaten by Kishan. This witness has also deposed that accused Chaman informed him that deceased Kishan was

beaten up either by Dharampal or Pandey with Dandas. Thereafter, Sergeant Dahiya reached at the spot and took the Appellant to the guardroom where he was given first aid and he also followed them to the guardroom. In his cross-examination, this witness has deposed that on the date of incident he went to sleep at 10:00 p.m. and woke up only at 5:00 a.m. the next day and thus had not seen what had happened after he was asleep. Thus as per the defence version itself the injuries to the Appellant were inflicted in the incident at 9:30 p.m. and not at 2:30 a.m. The version of prosecution is that no injury was caused to the Appellant except PW2 who has stated that the Appellant received injuries when he was escaping from the spot, he tripped on the stone at the time of the incident

12. In *Lakshmi Singh (supra)* relied upon by the learned counsel for the Appellant, the Hon'ble Supreme Court while considering *State of Gujarat vs. Bai Fatima (supra)* held that:

*“11.It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:*

*(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:*

*(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;*

*(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.*

*The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”*

In view of the law laid down, it is thus to be seen that whether the version of the defence which explains the injuries on the person of the accused renders probable so as to throw out the prosecution. In the present case, as per the defence of the Appellant, he received injuries at the incident about 9:30 p.m. It is not the defence of the Appellant that he received injuries at the incident which happened at 2:30 a.m. in the night. According to him and DW1, he was not on the spot and was detained in the guardroom after the 9:30 p.m. incident. Thus, the defence version does not throw doubt on the veracity of the prosecution version with regard to the incident at 2:30 a.m. which resulted in the death of the deceased. Thus, the prosecution version that no injuries were seen or inflicted on him at about 2:30 a.m. is not shrouded with the clouds of mystery. Though the prosecution witnesses have not stated about the injuries received by the Appellant in the incident at 9:30 p.m., but in

view of the law laid down by the Hon'ble Supreme Court it would be improper to discard the entire prosecution case on this ground. It is the duty of the Court to separate the grain from the chaff and find out the truth as held by the Hon'ble Supreme Court in *State represented by Inspector of Police vs. Sarvanam & Another*, AIR 2009 SC 152.

13. There is yet another aspect, that is the alleged incident is of 11<sup>th</sup> July, 1987, whereas PW2 was examined on 8<sup>th</sup> March, 1989 and the wife of the deceased PW10 was examined in the Court on 28<sup>th</sup> October, 1998 that is after more than one and a half years and 11 years respectively after the incident and thus there are bound to be minor abrasions in their testimonies. As regards opinion of PW6 Dr. Vijay Laxmi that the injury of PW2 may be self suffered, I find force in the contention of the learned APP that the reply of the witness that the injury on the person of PW2 could be self suffered injury is a hypothetical answer to the hypothetical question. In *D. Sailu* (supra), the Hon'ble Supreme Court has categorically held that it is erroneous to accord undue primacy to the hypothetical answers of medical witnesses. The Hon'ble Supreme Court held where eye-witnesses can be believed, then the medical opinion pointing to alternative possibilities cannot be accepted as conclusive.

14. I also do not find any merit in the contention of learned counsel for the Appellant that PW2, PW10 and PW12 were introduced as eye-witnesses subsequently as it is the admitted case of all the witnesses that at about 10.a.m., the dog squad was called which searched for the accused and if the Appellant was already in their custody then there was no need to call the dog squad and it was only on the dog squad smelling the Appellant that he was implicated in this case. This contention of the learned counsel for the Appellant is to be rejected as in the information received at the police station at 6:30 a.m. on 11<sup>th</sup> July, 1987 vide D.D. 9/A at P.S. Nazafgarh Ex. PW1/A itself it is recorded that Kishan Singh has been killed by Chaman Lal in a quarrel and Chaman Lal has been detained by Sergeant Dahiya in the guardroom. The witness PW9 who reported the matter stating these facts has not been cross-examined and thus his testimony has gone unchallenged. Also, PW2 in his statement Ex. PW 2/A on which the FIR was registered, has also named the Appellant, who killed his father. Moreover, PW 19 S.I. Hari Ram, Investigating Officer has given an explanation that the dog squad was summoned by him as per the instruction of SHO and ACP and he had not told the SHO & ACP that the accused was already identified so there was no need to call the dog squad. He gave his further statement that he could not argue

with the seniors. This statement on the part of PW19 gives the explanation for the dog squad being pressed into service.

15. The contention of learned counsel for the Appellant that if the Appellant was apprehended on the spot, then there was no way that he could have concealed the danda in his house and thus, the recovery of the danda from the house of the Appellant is planted upon him also deserves to be rejected. PW10, wife of the deceased has stated that after injuring her husband the Appellant escaped from the spot. The Appellant and the deceased were neighbours, thus, it would have taken no time for the Appellant to conceal the danda in his house behind the door. As per the CFSL report Ex. PWA and PW B, it was opined that the blood on the danda matched with the blood of the deceased. Thus, this opinion admissible under Section 293 CrPC clearly connects the danda recovered from the house of the Appellant to the injuries caused. Moreover, the contention of the learned counsel relying on *Ishwar Singh v. State of U.P.*, AIR 1976 SC 2423 that since the danda has not been shown to the doctor and his opinion is not sought as to whether the injury was possible by the danda, the recovery of the danda is not connected with the crime and hence this recovery is to be ignored is erroneous. In *Ishwar Singh* (Supra), their Lordships were dealing with a case of multiple injuries with

multiple weapons. In the said case the testimony of the post mortem doctor was that the punctured wound was caused by “some sharp edged pointed weapon”. He further stated that the wound “might have been caused with a ballam”. Their Lordships held that implicit reliance cannot be placed on the testimony of the witnesses as to who stuck the deceased with the ballam and were thus looking for independent corroboration. It was also observed that ballam and bhala are similar types of weapon and had the doctor seen the weapons seized from the houses of the Appellants therein it might have been possible for him to say which of them caused the injury. In Criminal Appeal No. 151/2001 in *Nanko Devi vs. State* this court, held that in case eye-witness identifies the recovered weapon to be the one by which the injury was caused, then there is no need for a separate opinion to be sought from the doctor to connect the weapon of offence with the injury caused. This is an essential factor in a case of circumstantial evidence. In the present case, the eye-witness PW12 has identified that the Appellant had caused the injury by the danda Ex.PW-1 which was like an arm of the cot and also the CFSL report proves that the blood on the danda matched with the blood of the deceased. Thus there is sufficient evidence to connect the danda recovered at the instance of the Appellant from his house with the injury caused on the person of deceased.

16. From the evidence on record and the testimony of the eye witnesses including the injured eye witness, in my opinion, the prosecution has proved its case beyond reasonable doubt against the Appellant for commission of offence punishable under Section 304 Part (II) IPC. I find no reason to interfere with the impugned judgment. The appeal is accordingly dismissed. Since the Appellant has been awarded a sentence of imprisonment for the period already undergone and to pay a fine of ₹13,000/- out of which if realized, ₹10,000/- is to be awarded to the wife of the deceased, the learned Trial Court would ensure that the amount so recovered is paid to her and in case of default of payment of fine the Appellant undergoes Rigorous Imprisonment for one year as awarded by it.

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 21, 2010**  
**dk**