

IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : 05.08.2011

DECIDED ON: 09.08.2011

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CRIMINAL APPEAL NO.165/1998

PREM KUMAR & OTHERS

.....APPELLANTS

CRIMINAL APPEAL NO. 58/2002

PREM KUMAR

.....APPELLANT

CRIMINAL APPEAL NO.272/1998

KAMAL SINGH

.....APPELLANT

Vs.

STATE

..... DEFENDANT

Through: Sh. K.B. Andlay, Senior Advocate with Mr. M.L. Yadav, Advocate
Through : Mr. M.N. Dudeja, APP for the State

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

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1. This judgment will dispose of three appeals against the judgment and order dated 21-3-1998 and the order on sentence dated 24-3-1998, holding the appellants guilty – as charged, for committing the offences punishable under Sections 302/34 IPC, and sentencing them to undergo life imprisonment and also pay fine. Two of the original six accused, i.e. Jayanti and Brahmpal, were acquitted. The others, i.e. Prem Kumar, Ashok, Manoj and Kamal, have appealed to the court. They are hereafter referred to by their names.

2. The prosecution case was that Tejpal (hereafter referred to variously by his name, or as “the deceased”), and PW-6 (Pradeep Kumar) went to the house of Prem Kumar, to dine with him, on 28-09-1991. Prem Kumar served them liquor. PW-6 had earlier worked with Prem Kumar –for about 5-6 days; he was carrying on a security service business from his residence. He stopped working for him, and worked with a property broker, in Ghaziabad. Tej Pal too used to formerly work with Prem Kumar; he had left that employment, and had started his own security service agency, near Pawan Cinema, in Ghaziabad. It was alleged that Prem Kumar showed his guests – Tejpal and PW-6 a letter written to his daughter (which apparently contained some abusive, or objectionable content) and alleged that they or either of them had written the letter. Both PW-6 and Tejpal denied this, and volunteered to give their specimen handwriting samples, for comparison with the handwriting on the letter. Thereupon, alleged PW-6, that the accused fell upon them, and rained hockey blows. PW-6 claims to have fallen down, and having been sat upon by Manoj, who attempted to throttle him; the witness lost consciousness. He also stated that Tejpal was similarly beaten, with hockey sticks, by Ashok, Manoj and Kamal. He fell, and Prem Kumar held him, upon which Manoj and Kamal throttled him with a *dori* (string). PW-6 lost consciousness, and regained it in the hospital, where his statement was recorded by the police, under Section 161.

3. The police received information about the incident, at 11:25 PM that night, through wireless; they rushed to the spot, where they found the dead body (of Tejpal). After seeing the body, and securing the premises, the police went to the SDN hospital, where PW-6 had been admitted. His MLC was collected – it was later exhibited as Ex. PW-4/A. The dead body of Tejpal was sent for postmortem, its report was collected, along with other material objects and evidence, which were seized during the investigation. The six accused were arrested, and after investigation, charged by the Trial Court, for the offences mentioned earlier; they stood trial,

after claiming innocence. Two of the accused were acquitted; the Appellants were convicted for committing the offences they were charged with.

4. Counsel for the Appellants urged that the Trial Court could not have convicted them, in view of the inherent contradiction in the prosecution story. Having discounted the involvement of the other two accused, particularly Jayanti, whose role as an active participant in the entire episode was disbelieved, the impugned judgment could not have, on the basis of the same evidence, relying on PW-6's testimony, convicted the others. It was urged that besides this, the prosecution had pleaded a common role and intention of Brahm Prakash, which was completely disbelieved after the trial; that accused was acquitted. In the circumstances, the court could not have, on the basis of the same evidence – which did not distinguish the role played by the accused, proceed to convict the others. The reasons which impelled the Trial Court to acquit one ought to have led it to acquit the others.

5. It was next urged by learned counsel for the Appellants that PW-6's testimony could not be relied on, because he deposed having been served with liquor; the Trial Court had observed that the host (Prem Kumar) had consumed very little, whereas Tejpal and PW-6 had been served several times. In these circumstances, it was highly improbable that PW-6 could have any power of observation or recollection, to coherently recollect the events, which he so clearly deposed to during the trial. The story of the witness consuming liquor with Tejpal was not probable, because it was not corroborated in the post mortem report; the report did not reveal any liquor in the body of the deceased. PW-6 himself harboured a grudge against the accused, since he had been removed from Prem Kumar's employment – a fact admitted to by him, during cross examination. Therefore the version given by him, so readily accepted by the Trial Court, should not have been given credence.

6. Learned senior counsel for the Appellants next urged that PW-1 completely distanced himself from the events, even though he was admittedly a neighbor; he was declared hostile. Therefore, in the facts presented before the Trial Court, the entire prosecution story hinged on the testimony of PW-6, which was not scrutinized by the Trial Court with care. That resulted in the wrongful conviction of the Appellants. It was urged, in this context, that the version of PW-6 of being attacked, and his subsequently falling unconscious, and his further testimony that the same set of assailants attacked Tejpal, who fell, and was sought to be strangled, was in stark

contradiction. Had the witness fallen down, and lost consciousness, urged counsel, his version about seeing Tejpal being felled with hockey blows, and being strangled, could not be believed, as it was impossible for him to observe all that after losing consciousness. The theory of his having lost consciousness was corroborated by the MLC Ex. PW-4/A. This grave discrepancy ought to have alerted the Trial Court to not place utmost reliance on the witnesses' testimony, and on the other hand, should have resulted in the Appellant's acquittal.

7. It was urged that even if PW-6's testimony were to be believed, the court should take it with care, because having fallen down, and being pinned down, by one of the accused, who allegedly sought to strangle him, the witness could have hardly been in a position to observe who was attacking Tejpal. Besides, submitted counsel, PW-6 deposed that Jayanti had pulled him down, facilitating the others' to attack upon him. Yet the Trial Court disbelieved that part of his version. In the circumstances, there was no justification in believing his story as regards the other victim, particularly attributing specific roles to each accused, having regard to the lack of observation capacity of the witness. He was clearly tutored, by the prosecution, to specify roles to each accused.

8. It was submitted that the cause of Tejpal's death was injury No. 1, which was the result of a blow on the head; it was not strangulation. Moreover, PW-6's version was unbelievable, because after Tejpal was felled by hockey stick blows, there could have been no reason or motive for the accused to set upon him, and try to strangle him. The Trial Court completely erred in overlooking this material aspect, and convicting the appellants. Furthermore, urged counsel there was no motive for Kamal to have allegedly attacked either PW-6 or Tejpal.

9. As regards the others, it was submitted that the Trial Court failed to even consider Prem Kumar's injuries, which were established by his MLC, produced during the trial. He was also a victim, having received some blows. Neither he nor Ashok were attributed with any overt role, justifying conviction under Section 302. It was urged that assuming the facts to have been established, the court could not have convicted all the accused under Section 302, on applying Section 34 IPC. It was submitted that even if one accused had the intention of inflicting an injury with the object of killing Tejpal, the others could not be saddled with the same criminal liability, because of the unreliability of PW-6's testimony. Here, urged counsel, the conduct of the accused became relevant. Had they really intended to kill Tejpal and PW-6, nothing prevented

them from proceeding to take the witnesses' (PW-6's) life. Their stopping the attack, clearly reflected their intention to cause injury, and did not reveal the motive to cause death or kill the victims.

10. The learned APP, Mr. Dudeja, urged that the findings in the impugned judgment are based on evidence, and should not be disturbed. He argued that PW-6 was an injured eyewitness, who had no reason to falsely implicate the accused. His statement led to the recovery of the letter which angered the accused. The material on record suggested that even though the fatal injury was the blow which landed on the deceased's head (and was caused by the hockey), the real intention of the Appellants was revealed when Prem Kumar, Manoj and Kamal tried to strangle him (Tejpal). These injuries were clearly visible, and had been mentioned in the postmortem report. That they did not result in death, was irrelevant, because Tejpal had breathed his last breath, before he was strangled.

11. The learned APP refuted the Appellant's submissions and urged the court to accept PW-6's statement in its entirety. It was submitted that Brahm Prakash was acquitted of the charges because PW-6 failed to identify him in court. Similarly, the Trial Court gave good reasons for doubting the role played by Jayanti. However, as far as the others were concerned, the ocular testimony was corroborated by documents such as PW-4/A, the MLC of PW-6, and the autopsy report PW-5/A of the doctor PW-5. The latter was cross examined; and nothing could be elicited by the Appellants. Three hockey sticks, with traces of human blood were seized, and sent for CFSL examination. The motive in this case was the grudge and suspicion nursed by the Appellants against the deceased, who they thought had written a letter containing unacceptable and objectionable material, to Prem Kumar's daughter.

12. It was submitted that when the accused were party to a murderous attack, that resulted in the death of Tejpal, and infliction of near fatal injuries on the other injured, PW-6, the Court, having regard to the facts proved, was entitled to conclude – on an application of Section 34, that each of them shared the common intention to do, or be party to the acts, of the other. When hockey blows were rained on the deceased, or the attack was focused on PW-6, unless there was evidence that some accused distanced themselves from the attack, and even sought to restrain it, their participation, as facilitators, was sufficient to infer common object and intention. In such a case, it was immaterial as to who actually inflicted the fatal blow. If the others had played a

lesser role, and that was spoken to or corroborated by objective material, the court would then have had to conclude that Section 34 could not have applied. But here, the unshaken testimony of PW-6 was that all the Appellants played an active part in the attack upon the deceased. Therefore, the conviction and sentence under Section 302 and 34, IPC was justified. The court should not, submitted the APP, seek to distinguish the role of each accused, with the objective of convicting some for a lesser offence.

13. It is evident, from the above discussion that the attack took place in the evening of 28-09-1991. PW-6, the injured eyewitness, spoke about what he saw. According to him, Prem Kumar was his previous employer; he had worked for him, for about 5-6 days in his security firm. He also knew the deceased Tejpal, who too had worked for Prem Kumar. It was suggested that there was some bad blood between PW-6 and Prem Kumar, resulting in the former's termination of employment. However, at one place in the statement under Section 313, Prem Kumar admitted that the deceased and PW-6 used to work with him about two months prior to the incident, before they left his services. Later, in reply to the last question, however, he alleged false implication, due to enmity with PW-6 on account of his being terminated from his (Prem Kumar's) employment. The relevant portion of this witnesses' testimony reads as follows:

“ On 28-9-1991 I and Tejpal had come to Shahdara Railway Station by train and got down there and we went to house of Prem Kumar accused present in court. It was in the evening time. Prem Kumar served me and Tej Pal with liquor. At about 9 PM. Then Prem Kumar, his wife, sons Manoj and Ashok and one, other boy Kamal, started beating us.

I and Tej Pal were being beaten there with hockeys, which were in the hands of Ashok, Manoj and Kamal, present in court. I sustained injuries with hockeys on my feet and on the chest. I still have the scars of the injuries on my body. Tej Pal also received injuries on his body.

Prem Kuamr accused had shown us a letter which was written in the name of his daughter and said they were alleging that either I or Tej Pal had written the letter. We denied it to have written the said letter and offered that our handwriting be taken and compared with the letter. I was caught hold by accused Jayanti present in court and Accused Ashok gave me beatings with hockey. I rescued myself from their hands and started running, then Smt. Jayanti caught hold of my feet, and Prem Kumar accused caught hold of my hands and I fell down. In the meanwhile Manoj accused present in court sat on my chest and started strangulating my neck. In the meantime, Manoj also procured one string

(dori) and started strangulating my neck with the said string (dori). Thereafter I became unconscious.

Accused Prem Kumar present in court caught hold of Tej Pal, and accused Manoj and Kamal gave him beatings with hockey. He also became unconscious. Prem Kumar caught hold of Tej Pal and Manoj and Kamal strangulating him with a string (dori). Shri. Tej Pal died at the spot. Tej Pal was taken to another after strangulation with the string..”

14. The postmortem report (Ex. PW-5/A) listed three obliquely placed bruised areas on the arms (Nos 2 and 3); two lacerated wounds, on middle parts of right leg (Injury No. 4); bruised area on the left side on the back of the chest (Injury No. 5) and a horizontally placed ligature abrasion mark, on the front of the neck over thyroid cartilage passing to the back of the neck (Injury No. 6). This injury did not indicate damage to the bone, or thyroid, tricoïd, cartilages which were normal. Injury No.1 which, according to PW-5, the post-mortem doctor, was fatal, read as follows:

“One lacerated wound was seen on left side of the forehead placed vertically of size 5.5 cm X 1.5 cm muscle deep.”

15. The prosecution forcefully argued that the fatal injury, and the ligature mark, i.e Injury No. 6, clearly indicated that the accused intended to kill a helpless Tejpāl, who had fallen immediately on being attacked. It was urged that having regard to the concerted nature of the attack, where the accused co-operated and facilitated the murderous assault, the court should uphold the application of Section 34 IPC and affirm culpability of all the accused, who are in appeal in these proceedings. The Appellants, on the other hand, urged that the acquittal of two accused, especially in the light of Jayanti’s role attributed in the incident, ought to be considered in their favour, to disbelieve PW-6’s testimony. It is urged that two of the accused, Prem Kumar and Ashok are not said to have participated in the attack, and it is not discernable how they shared any intention, much less a common intention to kill. At best, say the Appellants, some of them might be held guilty *individually* for the offence punishable under Section 326 IPC, or 304-II IPC.

16. PW-6 deposed that Prem Kumar after serving liquor to him and Tejpāl, accused them of having written a letter to his daughter; they denied, and even volunteered to have their handwriting samples compared with the one in the letter. PW-6 first stated generally about an attack by Prem Kumar, his wife and sons. The next time he spoke about it, in the examination in

chief, he stated that Ashok, Manoj and Kamal, who were identified in court, used hockey sticks to beat the deceased, and him. The deceased's post-mortem revealed six injuries; the first one, on his head, proved fatal. PW-6 claims to have attempted to run away, but was tripped by Jayanti and then sought to be strangled by Manoj. The Trial Court acquitted Jayanti. PW-6 claims to have sat upon Manoj, who tried to strangle him consequently; the witness lost consciousness. He also mentioned about Tejpal similarly falling down, due to the attack, and Prem Kumar holding him, while Manoj and Kamal sought to strangle him. The post-mortem revealed a ligature mark; however the concerned injury, No. 6, was not the cause of death. The doctor also stated that the injury was not so deep as to sever cartilage or bone.

17. The principle of joint liability contained in Section 34 IPC postulates the existence of a common intention with the accused leading to the criminal act in furtherance of such intention. The pre-arranged plan need not be elaborate or concrete to be established by positive evidence, for intention can be inferred from the conduct and its consequence. However, a given duration of time should not intervene between such a plan and the actual commission of the crime. Common intention as just stated can and often is a matter of inference from the act and the conduct of the accused and other relevant circumstances of the case. In *Mahbub Shah v. Emperor*, AIR 1945 PC 118, the Privy Council stated the law as to joint liability, under Section 34, IPC, as follows:

“the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case.”

In *Pandurang and Others v. State of Hyderabad*, AIR 1955 SC 216, the Supreme Court, discussed the applicability and scope of Section 34 IPC and the nature of evidence of prior concert, which had to be adduced, in the following terms:

“Now in the case of Section 34 we think it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all: Mahbub Shah v. King Emperor AIR 1945 PC 118. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted

of the murder however clearly an intention to kill could be proved in his case: *Barendra Kumar Ghosh v. King- Emperor* 72 IA 148 and *Mahbub Shah v. King-Emperor*³. As Their Lordships say in the latter case, “the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice”.

34. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the intention to rescue another and, if necessary, to kill those who oppose.

35. In the present case, there is no evidence of any prior meeting. We know nothing of what they said or did before the attack, not even immediately before. Pandurang is not even of the same caste as the others Bhilia, Tukia and Nilia are Lambadas, Pandurang is a Hatkar and Tukaram a Maratha. It is true prior concert and arrangement can, and indeed often must, be determined from subsequent conduct as, for example, by a systematic plan of campaign unfolding itself during the course of the action which could only be referable to prior concert and pre-arrangement, or a running away together in a body or a meeting together subsequently. But, to quote the Privy Council again, “the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case”.

The decision in *A. Mohnam v. State of Kerala*, 1990 Supp SCC 66 has held that common intention has to be gathered from their overt acts and not from what one of the accused did subsequently. The need for the court to sift the role of each accused, to see whether the common intention or object extended to cause or inflict the same kind of injury, would have to be seen, was emphasized by the Supreme Court, in *Rajagopalswamy Konar v. State of T.N.*, 1995 SCC (Cri) 184 where it was held that:

“So far as A-3 is concerned the overt act attributed to her is that she along with A-2 caught hold of Ramaswamy and fell him down. The High Court held that she would not have shared the common intention. In our view the same reasoning applies to A-2 so far as the murder charge is concerned. It is only A-1 who inflicted the two fatal blows one on each of the deceased and, therefore, a clear case of murder is made out against him. So far as A-2 is concerned he inflicted simple injuries with the stick on PW 2 and one on the deceased Ramaswamy. Therefore, common intention to kill the two deceased cannot be made out against him.

8. In the result the conviction of A-2 under Section 302 read with Section 34 IPC and the sentence of imprisonment for life awarded thereunder in respect of the murder of both the deceased are set aside. A-2 inflicted only one simple injury on the deceased Ramaswamy. We convict him under Section 324 IPC and sentence him to one year's rigorous imprisonment. His conviction under Section 323 IPC for causing hurt to PW 2 and sentence of three months'

rigorous imprisonment are confirmed. A-2's conviction under Section 307 read with Section 34 IPC for causing injuries to PW 1 is also confirmed but the sentence of five years' rigorous imprisonment is reduced to one year's rigorous imprisonment. Sentences are directed to run concurrently. From the record it appears that A-2 was in jail for sometime. If he has served out the sentence of one year's rigorous imprisonment he shall not be arrested. This is subject to verification."

18. In this case, the only eyewitness was also injured during the incident. The court has no reason to doubt his testimony, though the Appellants urged that he harboured a grudge against them, for being terminated from Prem Kumar's employment. This in our opinion is not sufficient motive for false implication. However, his testimony has to be seen carefully for more than one reason. One, Jayanti's role was spoke about by him; yet she was acquitted by the Trial Court. Two, his narrative discloses distinct observations, regarding the sequence of events. The first was a general mention about an attack; the second was attack by Ashok, Kamal and Manoj, with hockey sticks. This observation or deposition is corroborated by the recovery of the three hockey sticks, and the post-mortem report. The third observation is about the attack, when he (PW-6) himself fell down, and was sat upon by Manoj, who tried to strangle him. The attempt to strangle is corroborated by Ex. PW-4/A, his MLC, which mentions about abrasion on the neck. The last observation is that similarly, Tejpal fell down, and Prem Kumar held him, while Manoj and Kamal, tried to strangle him. The strangulation attempt is corroborated by Ex. PW-5/A, which speaks about a ligature mark, Injury No. 6 (though it was not fatal).

19. If one sees the totality of injuries on both the victims, only one proved to be of a very serious kind, ie. Injury No. 1 on the deceased. The others were not on vital parts of the body – except Injury No. 6, on the deceased. The nature of the narrative by PW-6 would disclose that it was not possible to pin point who actually inflicted the fatal injury No. 1. While the motive of the accused – stemming from their suspecting the victims of writing the letter to Prem Kumar's daughter may have existed, the suddenness with which the attack took place reveals that there was no pre-meditation. In *Arumugam v. State*, (2008) 15 SCC 590, the Supreme Court, quoting from its previous decision in *Babulal Bhagwan Khandare v. State of Maharashtra*, (2005) 10 SCC 404 held that:

"17. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of prosecution (sic provocation) not covered by the First Exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case

of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1.

There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.

18. The help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'.

19. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken..."

20. In this case, the surrounding circumstances proved, reveal that the attack was preceded by accusations from the accused party, and denial by the victims. In all probability the latter infuriated the Appellants, who then set about hitting the two guests; later Ashok, Manoj and Kamal brought out hockey sticks and beat the two unarmed persons. These have the elements of an assault which fit the description under the Fourth Exception to Section 300 IPC. When the two, i.e. PW-6 and Tejpal- fell down, Manoj tried to strangle PW-6; he lost consciousness.

Interestingly, after this, the attack on him apparently ceased. This is important, because if the intention of the accused had been to kill both PW-6 and the deceased, they would not have spared either of them. Nevertheless, PW-6 was spared. He survived to tell the tale. The deceased, however, was similarly sought to be strangled. At this point, the narrative becomes confusing, because if PW-6 had lost consciousness, he could not have witnessed the subsequent strangulation attempt. Even if he had merely fallen down, it is highly improbable that he could have seen the role of all the three accused: Prem Kumar, Manoj and Kamal, so clearly as to mention it in his deposition. At the same time, the court cannot overlook Injury No. 6, on the deceased. This gives an insight into the mind of the assailant, who inflicted it. PW-6 is consistent in stating, however, that Manoj tried to strangle him as well as the deceased. Yet, there is insufficient evidence to establish conclusively that it was Manoj who delivered the fatal Injury No. 1 which led to the death of Tejpal. Taking the totality of the circumstances into consideration, this Court is of the opinion that the prosecution was able to establish that the accused acted further to a common intention of causing bodily injury which was likely to cause death. They are accordingly liable to be convicted under Section 304-I IPC, read with Section 34 IPC. Their conviction in regard to other offences is however, not liable to be disturbed.

21. In view of the above reasoning, the appeals have to partially succeed. The conviction under Sections 302/34 IPC is altered to one under Section 304-I/34 IPC. The sentence is modified, in respect of each Appellant, to imprisonment for a term of seven years. The Appellants shall surrender before the Trial Court, on 11th September, 2011, and serve the remainder of their sentence. Their bail bonds stand cancelled. The Trial Court records shall be forthwith transmitted to it, with this Court's judgment, to enable compliance with the present directions. The Appeals are partly allowed, but in terms of the above directions.

**S. RAVINDRA BHAT
(JUDGE)**

**G.P.MITTAL
(JUDGE)**

AUGUST 09, 2011