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

Date of Decision: 08.08.2013

+ **CRL.A. 262/2003**
CHUNI LAL

..... Appellant

Through: Mr. Chander Mohan Sharma,
Advocate.

versus

STATE OF DELHI

..... Respondent

Through: Ms. Fizani Husain, APP for the
State.

+ **CRL.A. 304/2003**
NIHAL SINGH

..... Appellant

Through: Mr. Chander Mohan Sharma,
Advocate.

versus

STATE OF DELHI

..... Respondent

Through: Ms. Fizani Husain, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 8th April, 2003 in Sessions Case 116/2001 arising out of case FIR No. 302/96 under Section 307/34 IPC, PS Anand Parbat vide which the

appellants were convicted for offence under Section 307/34 IPC and order on sentence dated 10th April, 2003, whereby both the convicts were sentenced to undergo rigorous imprisonment for three years and were also sentenced to pay a fine of Rs.1,000/- each, in default of payment of fine to undergo simple imprisonment for one month.

2. Prosecution case emanates from the fact that on receipt of DD No.49B dated 7th October, 1996, Ex.PW3/C, SI Amleshwar Rai (PW9) along with Ct. Dharambir Singh (PW7) and Ct. Vijender Singh (PW4) reached the spot, i.e., public lane near House No.353/2, Gali No. 1, Than Singh Nagar, where it was revealed that injured had been taken to Jeewan Hospital. After leaving Constable Vijender at spot, SI Amleshwar left for Jeewan Hospital along with Constable Dharambir where he collected MLC of injured Kulbhushan @ Kundan who was declared unfit for statement. Nirpaksh Dass, brother of the injured was available who gave a statement Ex.PW-8/A alleging, *inter alia*, that on 7th October, 1996 at about 11.00 p.m. he was present at his house. On hearing some noise in the street, he came out and saw accused Chuni Lal and Nihal Singh @ Kali attacking his younger brother Kulbhushan @ Kundan with sword and knife. Both the accused gave several blows with sword and knife on

the person of his brother as a result of which he fell down. He rushed to the spot to rescue his brother and called remaining members of the family. Both the accused ran away from the spot. He was informed by his brother that when he asked accused persons not to abuse, they became infuriated and attacked him with sword and knife. Kulbhushan became unconscious. He was immediately taken to Jeewan Hospital, New Rohtak Road, Delhi. The occurrence was witnessed by other persons of the locality. The accused persons attempted to kill his brother. On the basis of this statement and the MLC the Investigating Officer recommended registration of the case for the offence under Section 307/34 IPC and 27 of the Arms Act. Accordingly, FIR Ex. PW-3/B was registered. Blood stained clothes of the injured were taken into possession vide memo Ex. PW-7/A. Site Plan Ex. PW-9/A was prepared. Accused Chuni Lal was arrested on 11th October, 1996. He made a disclosure statement Ex. PW-8/C. He was arrested and his personal search was taken vide memo Ex. PW-9/B. Accused Hukmo Devi and Bhupinder @ Poppe were formally arrested as they were on anticipatory bail. Accused Nihal Singh could not be arrested. He was declared proclaimed offender. Although, he moved an application for surrender but he did not

surrender in the Court. Charge sheet was submitted for offence under Section 307/34 IPC and 27 of the Arms Act and appellant Nihal Singh was shown in column No .2. The case was committed to the Court of Sessions as offence under Section 307 of the IPC was exclusively triable by the Court of Sessions. During the pendency of trial, Nihal Singh was also arrested.

3. Charge for offence under Section 307/34 IPC was framed against all the accused persons to which they pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined ten witnesses. All the incriminating evidence was put to accused persons while recording their statements under Section 313 Cr. P.C. wherein they denied the prosecution allegation and alleged false implication in this case. They denied any such incident having taken place. It was alleged that Kulbhushan was not of good character and he used to bring girls and people suspected him to be of bad character dealing in such bad business and when they objected, Kulbhushan got them implicated in this case. However, they did not prefer to lead any evidence.

4. By impugned order dated 8th April, 2003, learned Additional Sessions Judge acquitted accused Hukmo Devi and Bhupinder @

Poppe on the ground that prosecution was not able to prove its case beyond shadow of doubt qua them, however, as regards accused Chuni Lal and Nihal Singh, the prosecution succeeded in proving their guilt. As such, they were convicted under Section 307/34 IPC and sentenced as stated above. Feeling aggrieved by this order, the present appeals have been preferred. No cross appeal has been filed by the State against the acquittal of Hukmo Devi and Poppe.

5. I have heard Sh. Chander Mohan Sharma, Advocate for the appellant and Ms. Fizani Hussain, learned Additional Public Prosecutor for the State and have perused the record.

6. It was submitted by learned counsel for the appellant that there is a material improvements in the statement of injured and other witnesses inasmuch as, as per the initial complaint only two persons were involved in the incident. However, during their deposition, they implicated four persons. Moreover, character of injured himself is not aboveboard, inasmuch as, he was involved in a theft case. Moreover, although, the accused persons were known to him from before but when he was taken to hospital, he did not give their names to the Doctor or to the police. As regards PW1, Sanjay is concerned, he again is involved in criminal cases. Moreover, he was on friendly

terms with the injured. That being so, no reliance can be placed on his testimony. Furthermore, according to Investigating Officer of the case, blood was lying on the spot. However, the same was not seized. Although, the clothes of the injured were seized but same were not sent to FSL for scientific investigation. As per the prosecution witnesses, the incident was witnessed by other persons of the locality but no independent person was examined by the prosecution. Although it was not disputed that there was a fight but it was submitted that there was no intention to kill the injured. Moreover, the doctor has not given depth of injuries. The doctor nowhere says that any operation was conducted for the injuries sustained by Kulbhushan. As such, at best, the offence under Section 324 IPC is made out.

7. Per contra, it was submitted by learned Public Prosecutor for the State that there is no reason to disbelieve the testimony of the injured which finds due corroboration from his own brother Nirpaksh Dass and Sanjay. There is no enmity between the accused persons and these witnesses for which reason they will falsely implicate them in this case. As regards, non-seizure of the blood lying at the spot and not sending the blood stained clothes to FSL, it was submitted that at

best, it is a lapse on the part of the Investigating Officer but for that reason, prosecution case does not suffer from any infirmity. It was submitted that the appellants were rightly convicted under Section 307 IPC inasmuch as successive assault were caused on vital part of the body, the injured had to remain hospitalized for three days. As such, the impugned order does not suffer from any infirmity which calls for interference. As such, the appeals are liable to be dismissed.

8. I have given my thoughtful consideration to the respective submissions of learned counsel for the parties and have perused the record.

9. PW-2, Kulbhushan @ Kundan is the injured. It has come in his testimony that on 7th October, 1996, at about 10:00 p.m. he was eating eggs besides the egg rehri near Bikaner Sweet Corner. At that time Kali and Chuni Lal were tightening the screws of TSR. He was sitting on the stool. Both the accused started passing comments on him to which he objected. Thereupon, they caught hold of him due to which he fell down from the stool and Chuni slapped him. He came to Gali No.1. At about 10.45 to 11.00 pm as he was opening the lock of his scooter in front of House No. 353/2, accused Nihal @ Kali, Chuni and Poppe came. Kali was having a sword with him while

Poppe was having a knife. Chuni Lal was not having anything. Kali stabbed with sword on his head thrice and also stabbed on his face. Poppe stabbed with knife on left side waist portion. In the meantime, mother of accused Kali, namely Hukmo Devi came at the spot and asked all the accused persons to kill him. Thereafter, Hukmo Devi left along with Poppe. Poppe handed over the knife to Chuni Lal then Chuni Lal stabbed on left side hips, legs and waist portion. He continued to raise alarm. On hearing the noise, his brother Nirpaksh Dass reached the spot and Chuni Lal and Kali ran away from the spot. His clothes were soaked in blood and they were also having sword cuts, which he identified as Ex. P-1 to P-3 which were seized by the police. He was removed to Jeewan hospital. Police came to hospital where his statement was recorded.

10. In cross-examination, he denied the suggestion that he used to bring girls of bad character in the area to which Hukmo Devi had objected and due to this reason he was nursing grudge against the accused persons. He went on stating that the street of Hukmo Devi is very narrow and no car can enter that portion of the gali where her house is situated. He also denied the suggestion that he is an accused in FIR No. 350/85 under Section 307, PS DBG Road. He went on

stating that he was never arrested by the police in any case except a false case of theft which was got registered by Hukmo Devi on 4th November, 1996 after registration of this case.

11. It is settled law that testimony of an injured witness stands on a higher pedestal than any other witness, inasmuch as, he sustains injuries in the incident. As such, there is an inbuilt assurance regarding his presence at the scene of the crime and it is unlikely that he will allow the real culprit to go scot free and would falsely implicate any other persons. In *Abdul Sayeed v. State of Madhya Pradesh [(2010) 10 SCC 259]*, the Supreme Court held as under:

“28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. “Convincing evidence is required to discredit an injured witness.” [Vide *Ramlagan Singh v. State of Bihar*, *Malkhan Singh v. State of U.P.*, *Machhi Singh v. State of Punjab*, *Appabhai v. State of Gujarat*, *Bonkya v. State of Maharashtra*, *Bhag Singh, Mohar v. State of U.P.* (SCC p. 606b-c), *Dinesh Kumar v. State of Rajasthan*, *Vishnu v. State of Rajasthan*, *Annareddy Sambasiva Reddy v. State of A.P.* and *Balraje v. State of Maharashtra*.]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab*, where this Court reiterated

the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

“28. ***Darshan Singh*** (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In ***Shivalingappa Kallayanappa v. State of Karnataka*** this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In ***State of U.P. v. Kishan Chand*** a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide ***Krishan v. State of Haryana***). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go

unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

12. To the similar effect is the judgment reported in ***Mano Dutt and Anr. Vs. State of UP***, (2012) 2 SCC (Cri) 226.

13. PW-2 Kulbhshan had given a graphic description of the entire incident. His presence at the spot cannot be doubted as he was injured in the incident. Despite lengthy cross-examination, nothing material could be elicited to discredit his testimony. The defence taken by the accused that he used to bring girls of bad character in the area which was objected to by Hukmo Devi, has been categorically denied by the witness. No other person of the area has been examined by the accused to substantiate this plea. In order to impeach his character, a suggestion was given that he is facing trial in FIR No. 350/85 under Section 307, PS DBG Road which was also denied by him. The accused have not placed on record the certified copy of the FIR in order to prove that the witness was an accused in that case. As regards the involvement of the witness in a theft case, it has come in his deposition that after the registration of this FIR

against the accused persons, Hukmo Devi got registered a case FIR No. 339/96 against him on 4th November, 1996 about the theft in her house. The witness has gone on stating that Hukmo Devi threatened to involve him in a false case that if he does not withdraw this case in which he sustained injuries and on his failure to do so, he was falsely implicated in that case. FIR No. 339/96 is not the subject matter of this case and in any event, the FIR in that case was registered after the registration of this case. As such, same has no bearing on this case. No personal enmity, ill will or grudge has been alleged by any of the accused for which reason the witness will falsely implicate them in this case. In fact during the course of argument, learned counsel for the appellant did not dispute that such an incident did take place in which the witness had sustained injuries. That being so, there was no reason for the witness to falsely implicate the accused person.

14. As regards the submission of learned counsel for the appellant that at the first available opportunity, names of the accused persons were not disclosed to the doctor and, therefore, possibility of falsely roping the appellant cannot be ruled out, same is without any substance. It has come in the statement of PW-9 SI Amleshwar Rai that on receipt of DD No. 49B when he reached the spot, he came to

know that injured has been removed to the hospital. As such, he reached the hospital where he collected MLC of injured Kulbhushan. However, Kulbhushan was declared unfit for statement by doctor and was in operation theatre. Brother of the injured Nirpaksh Dass was present and his statement Ex.PW8/A was recorded wherein he has given the names of Nihal Singh and Chuni Lal who inflicted injuries on the person of his brother Kulbhushan with knife and sword. Nirpaksh Dass while appearing as PW-8 has fully substantiated the version given before the police on which the police machinery was set in motion. Perusal of his statement reveals that this witness had come to the spot only after hearing the noise of quarrel from the gali and when he reached the spot he saw accused Chuni and Nihal inflicting injuries on his person. As seen above, it has come in the testimony of Kulbhushan that initially Chuni Lal, Nihal @ Kali and Poppe had given the injuries which were inflicted upon him by Kali with sword and Poppe with knife. Thereafter, mother of the accused Kali, namely, Hukmo Devi came and exhorted the remaining accused to kill Kulbhushan and then left the spot with Poppe. Therefore, when Nirpaksh Dass reached the spot, he noticed only Chuni Lal and Kali inflicting injuries on the person of Kulbhushan. Since the

injured himself was unfit for statement and was in operation theatre, there was no occasion for him to give the name of the assailants before the doctor. Moreover, a perusal of medical report, Ex. PW5/A prepared by Dr. K.B. Raj (PW-5) of Jeewan Hospital reveals that it was a private hospital and in fact the report is not even on prescribed performa as is normally done in the Govt. Hospital. That being so, neither there is any noting as to who brought the injured to hospital and what was the history. That being so, if the names of the assailants are missing in the report, no adverse inference can be drawn against the prosecution. In fact, when police reached the hospital, Nirpaksh Dass gave his statement naming the appellants.

15. PW-1 Sanjay is another eye-witness of the incident who has testified that injured Kulbhushan is his friend. On the fateful day, after taking dinner, he was going to meet his friend Kulbhushan at his house. He found accused Kali, Chuni and Poppe quarrelling with Kulbhushan in front of house No. 353. Kali was having sword while Poppe was having knife. Both Kali and Poppe were threatening Kulbhushan with sword and knife. In the meantime, mother of Kali reached the spot and exhorted the other accused persons to kill Kulbhushan. Accused Poppe handed over the knife to accused Chuni

and then Chuni stabbed Kulbhushan with knife. After seeing the incident, he returned back to his home due to fear. Police met him in the hospital when he had gone to see Kulbhushan and then his statement was recorded. This witness was also subjected to cross-examination, however, nothing material could be elicited to discredit the testimony. The mere fact that he is on friendly relation with Kulbhushan is not sufficient to disbelieve his testimony. The character of this witness was also tried to be impeached on the ground that he was involved in a case under Section 324 IPC of PS Anand Parbat, bearing FIR No. 231/92. The witness denied the suggestion that this case was registered when he hit somebody with a knife. He went on stating that it was a case with his cousin brother which was later on compromised. He, however, admitted that he was involved in a case under Section 27 of the Arms Act, PS Anand Parbat. Even if that is so, that itself is not sufficient to discard his testimony, moreover, he is not the solitary witness. As stated above, the injured himself has proved the case of prosecution. His testimony is cogent, coherent and reliable and conviction of the appellant could have been based upon his solitary testimony but in the instant case his testimony finds substantial corroboration from PW-8 Nirpaksh Dass as well as

PW-1 Sanjay. Furthermore, the same also finds corroboration from the medical evidence which reveals that on 7th October, 1996, injured Kulbhushan was brought to Jeewan Hospital where he was examined by Dr. K.B. Raj, PW-5, who found the injuries on his person and gave report Ex. PW-5/A. According to him, the nature of injuries was sharp in nature and caused by sharp object. The injuries were possible by stabbing by knife and sword. As such, the ocular testimony of the witnesses found due corroboration from the medical evidence.

16. As regards the other limb of argument that no independent person of the locality has been examined, it has come on record that some neighbours were watching the incident. Injured Kulbhushan has even named the persons who were watching the incident. Ram Kumar, landlord of house No. 353/2 and one Billo residing just opposite the house of Ram Kumar were those neighbours who were watching the incident. However, none came forward to save the injured. It is common experience that there is general apathy on the part of the public persons to come to the rescue of the injured or to participate in police proceedings. While Ram Kumar and Billo were mute spectators to the incident even Sanjay, who was on friendly terms with the injured got scared on seeing the incident and became

frightened and rushed to his house. It was only next day that he went to the hospital and then his statement was recorded by the Police. Under these circumstances, even if there is no independent witness that is hardly of any significance. Substantially, similar plea was taken in *Appabhai and Anr. Vs. State of Gujarat*, AIR 1998 SC 696, where it was held as under:-

“10. It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused.”

17. It has come on record that the clothes of the injured were stained with blood and the same were taken into possession by the Investigating Officer of the case vide memo Ex.PW-7/A. Although, IO of the case admitted that blood was lying at the spot, however, for

reasons best known to him, he did not lift the same from the spot and therefore, neither the blood stained clothes nor the blood available on the spot was sent to FSL for opinion. It is, however, a lapse on the part of the Investigating Officer which does not cast any dent on the prosecution case. There are catena of decisions to the effect that defects in investigation by itself cannot be a ground for acquittal. In ***Ram Bihari Yadav Vs. State of Bihar***, AIR 1998 SC 1850, it was held by Hon'ble Supreme Court that if primacy is given to the omissions or lapses by perfunctory investigation by the investigating agency, the faith and confidence of people would be shaken not only in law enforcing agency, but also in the administration of justice. It is true if on account of any lapse doubts are created in prosecution case, the accused would be entitled to the benefit of that doubt. But, if the prosecution is able to establish its case beyond reasonable doubt against the accused, in spite of lapses, the accused cannot be acquitted because of the lapse on the part of investigating officer. Substantially similar view was taken in ***C. Muniappan and others vs. State of Tamilnadu***, 2010 IX AD (SC) 317, where it was held that there has been negligence on the part of investigating agency or omissions etc which resulted in defective investigation, there is a legal obligation on the part of the

Court to examine the prosecution evidence de hors such lapses carefully to find out whether said evidence is reliable or not or to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of trial in the case cannot be allowed to depend solely on the probity of investigation.

18. As regards the submission that the weapon of offence has not been recovered, record reveals that accused Chuni Lal was arrested on 11th May 1996 and as per his disclosure statement, he had thrown away the weapon of offence in a running tempo. Nihal Singh was evading arrest and, as such, was declared proclaimed offender. He could be arrested only on 3rd November, 1997. As such, after a lapse of such considerable period, there was hardly any possibility of recovery of weapon of offence at his instance. Moreover, mere non-recovery of weapon of offence is not a factor from which the appellants can get any benefit. In *Mohinder Vs. State*, 2010 VII AD (Delhi) 645, it was held that non-recovery of weapon of offence during investigation is not such an important factor to neutralise the direct evidence of complicity of accused in the murder of deceased.

19. It is next required to be seen whether the offence under Section 307 IPC is made out or not, inasmuch as, it is the submission of learned counsel for the appellant that there is no intention on the part of the appellants to kill. Moreover, depth of injuries has not been given by the doctor. There is nothing in the testimony of doctor that the injuries were sufficient in ordinary course of nature to cause death. As such, at the most, offence under Section 324 IPC is made out.

20. Section 307 relates to attempt to murder. It reads as follows:

"307. Attempt of murder. - Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned."

21. In *State of Madhya Pradesh Vs. Kedar Yadav*, (2009) 17 SCC 280, it was held that to justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other

circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

22. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.

Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

23. This position was highlighted in *State of M.P. v. Saleem @ Chaman and Anr*, (2005) 5 SCC 554. In *Sarju Prasad v. State of Bihar*, AIR 1965 SC 843, it was observed that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

24. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury.

25. It has come on record that accused Kali and Chuni abused the injured which was objected by him, thereupon they caught hold of him, as a result of which he fell down and Chuni Lal slapped him. Thereafter, both these accused along with Poppe armed with sword and knife came and stabbed on the head of injured three times and

also on his face. Poppe also stabbed with knife on left side waist portion. Thereafter, Hukmo Devi, mother of accused Kali came and exhorted all the three accused persons to kill Kulbhushan. Thereafter, although Hukmo Devi left with Poppe but while leaving, Poppe handed over knife to Chuni Lal and then Chuni Lal gave stab blows on the hips, legs and waist portion of the injured. It was only after Nirpaksh Dass, brother of the injured reached the spot, that they ran away from the spot. The injured was removed to Jeewan Hospital by his brother Nirpaksh Dass and his medical report Ex. PW5/A was prepared by Dr. K.B. Raj, who found following injuries on his person:-

Multiple stab lacerated wound over:-

- Right side Forehead 3” long
- Left side scalp- 6” long upto parietal area
- Deep cut injury over chin 3” long upto bone.
- Deep cut over 10th rib area left side 1” long
- Deep cut back right side 1” two in number
- Deep cut 1” to 2” over left gluteal area- 3 in number
- Deep cut over left thigh lateral side 2” long
- Cut injury deep over right and left leg shin area-1” long -5 to 6 in number.

-Cut injury with Nail avulsion of left hand 3rd ray.

Nature of injuries was opined by the doctor as sharp in nature and caused by sharp objects and these injuries are possible by stabbing by knife and sword.

26. It is also a matter of record that when the Investigating Officer of the case reached the hospital, the injured was in operation theatre. He was discharged only on 9th October, 1996. Under the circumstances, the mere fact that the doctor has not opined that the injuries sustained by Kulbhushan were sufficient in ordinary course of nature to cause death is not sufficient to take out the case from the ambit of Section 307 IPC, inasmuch as, as discussed above, the nature of injuries simplicitor is not sufficient to rule out application of Section 307 IPC. The determinative question is the intention or the knowledge and not the nature of injuries. The nature of injuries sustained which were also on vital part of the body, the weapon used are sufficient to attract the provisions of Section 307 IPC. As such, the appellants were rightly convicted for offence under Section 307/34 IPC.

27. As regards, the quantum of sentence, the appellants have been sentenced to undergo rigorous imprisonment for three years and were

also directed to pay a fine of Rs.1000/- each, in default of payment of same to undergo simple imprisonment for one month. Although, it was submitted by learned counsel for the appellant that appellant Chuni Lal remained in jail for a period of 5 months and Nihal Singh remained in custody for about 15 to 20 days and they be released on the period already undergone. However, so much leniency is not warranted. But keeping in view the fact that the case pertains to the year 1996 and the appellants are suffering the rigors of trial for the last about 17 years, the sentence is reduced to two years while maintaining the quantum of fine. Needless to say, the appellants will be entitled to the benefit of Section 428 of the Code of Criminal Procedure.

28. With these observations, both the appeals are disposed of.

29. Trial Court record be sent back.

SUNITA GUPTA, J

AUGUST 08, 2013

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