

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

% CRL.A. NO. 471/2003

+ Date of Decision: 14th March, 2014

CHARAN SINGH Appellant
! Through: Mr. Ajay Verma, Advocate

versus

\$ STATE Respondent
Through: Mr. Sanjay Lao, APP

AND

% CRL.A.NO. 555/2003

ASHOK @ LALA Appellant
! Through: Ms. Saahila Lamba, Advocate

versus

\$ STATE Respondent
Through: Mr. Sanjay Lao, APP

AND

% CRL.A. NO. 781/2003

RADHEY SHYAM Appellant
! Through: Mr. Aman Nandrajog, Advocate

versus

\$ THE STATE

.....Respondent

Through: Mr. Sanjay Lao, APP

CORAM

*** HON'BLE MR. JUSTICE P.K.BHASIN
HON'BLE MR. JUSTICE V.P. VAISH**

JUDGMENT

P.K. BHASIN, J:

By way of these appeals the three appellants have assailed the judgment dated 22nd April, 2003 passed by the learned Additional Sessions Judge holding all of them guilty of committing murder of one Raj Bansi on 17th May, 1999 as well as the order dated 14th May, 2003 whereby they have been directed to undergo imprisonment for life and also to pay a fine of Rs. 5,000/- each with a default stipulation. Since all these appeals arose out of a common judgment of the trial Court they were heard together and are now being disposed of by way of this common judgment.

2. Briefly stated, facts of the case as per the prosecution version are that on 16th May, 1999 accused-appellant Ashok @ Lala had picked up a quarrel over some trivial matter with the deceased Raj Bansi and one Pawan(PW-2). That dispute was later on settled with the intervention of Harish Sharma(PW-3), who was running a tent house in J.J.Colony, Wazirpur, Delhi and was the employer of the deceased and one Vijay Kumar(PW-1) with whom PW-2

Pawan was employed as a conductor for his bus. On 17th May, 1999 Ashok @ Lala came to the shop of Harish Sharma (PW-3) at around 4.00 p.m. alongwith his brother Vinod. At that time PW-3 Harish Sharma was present at his shop and one cousin of the deceased, PW-10 Ganesh Yadav, was also sitting with him. Pointing out towards his brother Vinod accused Ashok @ Lala said that Raj Bansi had again beaten his brother and that he would not spare him and saying so went towards the park behind Shiv Mandir. PW-10 Ganesh Yadav, who had come to meet Raj Bansi who was not there at that time, asked Harish Sharma as to what was the matter and then Harish Sharma alongwith Ganesh Yadav also followed Ashok @ Lala in order to avoid any kind of fight. When they reached the park which was nearby to the shop of Harish Sharma they saw that Ashok @ Lala and his companions Charan Singh, Radhey Sham and one Chawani, who were all residents of the same mohalla and were having cricket stumps(wickets) in their hands at that time, had caught hold of Raj Bansi. At that time Raj Bansi's friend Pawan Kumar(PW-2) was also present there with him and within no time the three associates of Ashok @ Lala started beating Raj Bansi and Pawan with the wickets. Accused Ashok @ Lala then pulled Raj Bansi and told his companions to catch hold of Raj Bansi and that he would not leave Raj Bansi alive(pakro, aaj is saale ko zinda nahin chorunga).

Then his companions caught hold of Raj Bansi and Ashok @ Lala took out some weapon and gave a blow with that weapon on the chest of Raj Bansi due to which Raj Bansi fell down on the ground. Seeing Harish Sharma and Ganesh coming near Ram Bansi to save him all the four accused fled away from the spot. Harish Sharma informed the police. PCR people came there and removed Raj Bansi to Hindu Rao Hospital but he succumbed to his injuries there within few minutes of his arrival there at about 5 p.m.

3. Upon getting the information about the stabbing incident police officials from Ashok Vihar police station also reached the place of incident and there they came across Harish Sharma who had come back from the hospital by that time and he then narrated the incident to the investigating officer(PW-20) vide statement Ex.PW-3/A. In that statement Harish Sharma narrated the aforesaid facts and then FIR No.358/99 under Section 302/34 IPC was registered at Ashok Vihar police station.

4. During investigation all the four persons named by the informant Harish Sharma in his first information statement were arrested and upon completion of investigation the three appellants were charge-sheeted by the police and in due course their case came to be committed to the Sessions Court while the fourth

accused Shiv Kumar @ Chawani being a juvenile was sent up for trial before the Juvenile Court.

5. All the three accused-appellants were charged by the learned Additional Sessions Judge under Section 302 read with Section 34 of the India Penal Code(I.P.C.). They pleaded not guilty and claimed trial. The prosecution examined 22 witnesses in order to bring home the guilt of the accused persons. After recording the evidence of the prosecution witnesses statements under Section 313 of the Code of Criminal Procedure (Cr.P.C.) of the three accused-appellant were recorded by the trial Court. All of them claimed false implication. No evidence was adduced in defence by any one of them.

6. The prosecution had sought to establish its case mainly relying upon the evidence of three eye witnesses out of whom PW-2 Pawan Kumar, who was also allegedly beaten up in the incident by the accused persons, did not support the prosecution case as far as the identity of the assailants is concerned. The other eye witnesses were PW-3 Harish Sharma, who was the first informant also of the incident, and PW-10 Ganesh Yadav, cousin brother of the deceased. Accepting their testimonies the learned trial Court came to the conclusion that all the three accused-appellants in furtherance of their common intention had killed the deceased Raj

Bansi and so held them guilty under Section 302 read with Section 34 I.P.C.

7. Aggrieved by the judgment of the trial Court the three convicted accused filed separate appeals which, however, were taken up for hearing together and are now being disposed of by this common judgment.

8. Learned counsel for the three appellants while not disputing the fact that the deceased Raj Bansi had died a homicidal death, which fact even otherwise stands established from the testimony of the autopsy surgeon PW-6 Dr. C. B. Dabbas, had mainly attacked the veracity of the testimonies of the eye witnesses relied upon by the trial Court. So, before proceeding further let us notice what the eye witnesses had stated in their evidence before the trial Court. The relevant part of the testimony of PW-3 Harish Sharma, who is the employer of the deceased, is as under:-

"I am running a Tent House in the name of Janta Tent House at J-3/46, J.J. Colony, Wazirpur. We had employee Bansi as our worker for installation of the tents. He was working with us for the last 2/3 years.

I know all the accused present in Court. Accused Ashok @ Lala resides in the same gali where I am having a tent house. Accused Charan Singh and accused Radhey sham @ Lalla also reside in the jhuggies which are near to our colony.

I do not remember the date, but it was in the month of May, 1999. I was sitting in my shop. My elder brother Satish Sharma and my father were also present with me. Accused Ashok @ Lala came to my shop accompanied with his two brothers whose names are Jagaish and Omi. Accused Ashok @Lala told us that he would kill Bansi. His brother also

Thereafter, he gave another blow of the stump. The stump was not having sharp edged metal.”

9. The relevant part of the deposition of PW-10 Ganesh Yadav, who was also examined by the prosecution as an eye witness of the incident leading to the murder of Raj Bansi, is as under:-

“..... On 17.5.99 I had gone to the shop i.e. Tent House mentioned above in order to meet Raj Bansi and reached at about 4 PM. I did not find deceased Raj Bansi at the Tent House whereas his owner was sitting, he told me that Raj Bansi had gone somewhere. In the meantime, one person came there and told the owner that Raj Bansi had beaten up his brother and so he would finish Raj Bansi. None of the accused persons present in the Court had threatened the owner of the Tent House. Thereafter, that person left the Tent House. He was brother of accused Ashok today present in the Court. He had come alone.

I then enquired the matter from the owner of the Tent House. Then I along with the owner of the Tent House started search for Raj Bansi, and in the process reached a park behind JJ Colony. There I saw all the three accused persons today present in the Court along with one another accused known as Chawani were beating up with a cricket bat and in the meantime accused Charan Singh caught hold of Raj Bansi whereas accused Ashok stabbed him into his chest. At the same time accused Radhe Shyam today present in the Court had given a Rod-blow over the right shoulder of Raj Bansi. At that time deceased Raj Bansi was alone.

*I along with the owner had tried to save Raj Bansi, but after causing this stab wound all the accused persons had fled away from the spot.
.....”*

This witness was permitted by the trial Court to be cross-examined by the public prosecutor and in that cross-examination he stated that:

“.....It is correct that at the time of incident one Pawan Sharma, friend of Raj Bansi was also present there.....It is correct that at the time of incident all the three accused today present in the court

were armed with cricket wickets with which they were beating up Raj Bansi and his friend Pawan. It is correct that somehow Pawan saved himself from the accused persons My earlier version that none of the accused had come to the Tent House or that it was only Vinod who had come the tent house, is mistakenly wrong because I had forgotten this fact because of lapse of time. My latest version that it was accused Ashok alongwith his brother Vinod had come to the tent house and threatened to kill Raj Bansi.”

In cross-examination by the defence counsel this witness had stated that for stabbing accused Ashok @ Lala “brought out a knife from his back.” and that he had seen Raj Bansi being stabbed from a distance of 10-15 feet.

10. PW-2 Pawan Kumar was also examined by the prosecution as an eye witness and in fact he was also beaten up in the incident in which the deceased was stabbed. Relevant portions from his statement are as under:

“ I am a conductor in bus which is attached to Sachdeva Public School. Vijay Kumar is the driver of said bus.

The said bus carries the school children from their houses and drops them after the school is over. I am working as conductor for the last 2/3 years.....

On 16/5/99, I and Bansi had a quarrel with Ashok Lala at the bus stand No. 115 in the night. Said quarrel was got pacified and matter was patched up through the intervention of Vijay Kumar and the owner of Tent House where Bansi worked.

On 17/5/99, I and Bansi were present in the park near mandir near bus stand No. 115, J.J. Colony, Wazir pur. It was about 4 PM. When 8/10 people came in the park where we were sitting. They started giving beating to Bansi and they were having cricket wickets in their hands. I cannot give their description nor I know their names who had attacked upon Bansi with the wickets. I ran away from there. Later on I came to know that Bansi had died in the hospital..... ”

This witness was also cross-examined by the public prosecutor since he had not fully supported the prosecution. However, even in that cross-examination this witness did not admit that the three accused appellants were the assailants.

11. From the evidence of PWs 2 and 3 and the statements of the accused-appellants under Section 313 Cr.P.C. it is established that the accused-appellants and these witnesses were known to each other from prior to the incident of 17th May, 1999 in which Raj Bansi was stabbed. It is also established from the evidence of PW-2 that one day prior to that incident of stabbing accused Ashok @ Lala had a quarrel with him and the deceased. This part of the statement of PW-2, which is being relied upon by the prosecution as a motive for the murder of Raj Bansi, was not challenged in his cross-examination. Even PW-1 Vijay Kumar, who was the driver/owner of the bus for which PW-2 was employed as the conductor, also corroborated PW-2 in respect of the incident of 16th May, 1999. PW-10 Ganesh Yadav, examined as eye witness of the incident, had also stated in cross-examination by the counsel for the accused Ashok @ Lala, that there was some altercation earlier also between Ashok @ Lala and Raj Bansi.

12. Learned counsel for Ashok @ Lala had submitted that the motive aspect of the prosecution case has not been proved by

reliable evidence inasmuch as PW-1 Vijay Kumar had claimed in his examination-in-chief that there was a quarrel a day prior to the murder of Bansi between Ashok @ Lala and PW-2 Pawan Kumar and not with the deceased and that matter was resolved with the intervention of PW-3 Harish Sharma. However, in cross-examination he claimed that the dispute was between Ashok @ Lala and the deceased which he himself had witnessed. Counsel pointed out that PW-3 had, however, claimed that he was not aware of any prior dispute between Ashok @ Lala and the deceased Raj Bansi and also did not claim that he had got any dispute resolved between them. We do not consider that PW-3 Harish Sharma not claiming that he had got resolved some dispute between the deceased and accused Ashok @ Lala will make any serious impact on the motive part of the prosecution case since accused Ashok @ Lala himself did not challenge in the cross-examination of PW-1 his statement that a day prior to the incident of murder of Raj Bansi there a quarrel between him and the deceased. In fact, during his cross-examination by counsel for Ashok @ Lala, PW-3 was put a suggestion that there was no earlier incident and he denied that suggestion and claimed that the earlier incident was compromised orally and so no complaint about that incident was made to the police. So, the position was got clarified in cross-examination itself of this witness by the defence

counsel. Similarly PW-2 Pawan Kumar's statement that on 16th May, 1999 he and the deceased had a quarrel with accused Ashok @ Lala and which was resolved with the intervention of the owner of the tent house where the deceased was working, PW-3 Harish Sharma, was not challenged as an incorrect statement in his cross-examination. Thus, we accept the prosecution case that some quarrel took place on 16th March, 1999 between accused Ashok @ Lala, PW-2 and the deceased because of which this accused must be having some ill will against the deceased and PW-2 Pawan Kumar.

13. It is proved from the evidence of PWs 2, 3 and 10 that there was an incident on 17th May, 1999 in which the deceased Raj Bansi was fatally wounded and further that that incident took place in a park which was near the shop of PW-3 Harish Sharma. That part of the prosecution case was also not questioned before us by any of the appellants' counsel. So, now we have to examine if the prosecution had been able to establish that the accused-appellants were the assailants who had caused the death of Raj Bansi.

14. PW-3 had very clearly deposed that one evening in the month of May, 1999, the date he did not remember, accused Ashok @ Lala had come to his shop with a open knife in his hand and had threatened to kill Raj Bansi and when he told Ashok @ Lala to end

the dispute he had run away from the shop and further that after about 10 minutes he had also left the shop to see that the dispute between them(Ashok @ Lala and Raj Bansi) comes to an end and further that when he reached near Shiv Mandir park which was quite near to his shop he saw that accused Radhey Shyam, Charan Singh and one Chawani(juvenile accused) had caught hold of Raj Bansi. Ashok @ Lala, Radhey Shyam and Charan Singh were having cricket stumps. PW-3 had also deposed that accused Ashok @ Lala had stabbed Raj Bansi with some sharp object on his chest. The main thrust of the counsel for accused during the cross-examination PW-3 was to bring on record through his mouth that he had not actually witnessed the incident of stabbing and not that accused Ashok @ Lala had not stabbed Raj Bansi while other accused had caught hold of him. The learned trial Court had found the evidence of this witness trustworthy and which could not be shaken in lengthy cross-examination. We have very carefully examined his examination-in-chief and cross-examination.

15. Ms. Saahila Lamba, learned counsel for accused-appellant Ashok @ Lala had argued that PW-3 could not have witnessed the incident from a distance from where he claimed to have witnessed. It was submitted that this witness claimed to have seen the incident from point 'B' in the scaled site plan Ex.PW-15/A which as per the prosecution case was prepared at the instance of PW-3 though

before the trial Court he did not claim that this plan was prepared at his instance. In our view, there is no merit in this contention of the counsel for the accused-appellants. The witness had stated that that the distance from where he had witnessed the incident on entering the park was only 11 feet which is not a long distance at all and considering the fact the incident took place in the month of May and the time of incident was somewhere around 4 p.m. when the sky is very clear the witness could have easily seen the incident.

16. Another criticism made in respect of the evidence of PW-3 by the learned counsel for the accused-appellants was that even though he claimed that he had also gone to the hospital when the PCR people had removed the deceased from the spot but neither in the MLC of the deceased his name as the person who had brought the deceased to the hospital was mentioned nor any policeman claimed his presence in the hospital which shows that this witness had not gone to the hospital with his injured employee and that unnatural conduct of his creates a doubt about his being an eye witness of the incident.

17. We do not find any substance in this criticism also of the learned counsel for the accused-appellants. PW-3 had claimed that he had also accompanied the deceased to the hospital with the

police. This he stated in his examination-in-chief as well as in his cross-examination. It was not even suggested to him that he had not gone to the hospital. PW-3 had also stated that in the hospital the doctor had told him to get a syringe and when he went to get the same the deceased had died in the meantime. This statement was also not challenged in his cross-examination. Learned APP for the State had rightly submitted that in the MLC the name of the deceased was mentioned which shows that someone known to the deceased was there and since only PW-3 had claimed to have accompanied the deceased to the hospital it is clear that PW-3 only would have given the name of the deceased to the doctor. It is also possible that on the way to the hospital PW-3 might have told the name of the deceased to the PCR van in-charge who in turn might have told the name of the deceased to the doctor when PW-3 had gone to get a syringe. So, just because in the MLC(Ex.PW-7/A) of the deceased the name of this witness was not mentioned as the person who had brought the deceased there and name of PCR person only was mentioned it cannot be said that this witness had not gone to the hospital when the police took him there.

18. PW-3 had no enmity of any kind with Ashok @ Lala which could prompt him to falsely implicate the accused-appellants. Accused-appellant Ashok @ Lala had taken the stand before the trial Court at the time of recording of his statement under Section

313 Cr.P.C. that he had worked with PW-3 for more than two months but was not paid his salary and when he demanded his salary PW-3 got annoyed and threatened that he would be implicated in some criminal case. He further claimed that he was arrested on 16th May, 1999 at the instance of PW-3. This plea however cannot be accepted since no such defence was put to PW-3 in his cross-examination or about his arrest on 16th May to any police witness. Nor any evidence was adduced by this accused to establish this plea of false implication.

19. Evidence of PW-3 in respect of the stabbing of Raj Bansi by accused Ashok @ Lala gets full corroboration from the evidence of the other eye witness PW-10 Ganesh Yadav relevant portions from whose testimony we have already extracted. Nothing favourable for accused Ashok @ Lala could be elicited from him also during his cross-examination.

20. Evidence of PWs 3 and 10, in turn, got corroborated by medical evidence also. PW-6 Dr. C.B. Dabbas had conducted post-mortem examination and he had found the following external injuries on the body of the deceased Raj Bansi:-

“1. Abrasion 4 x 0.5 cm. Semi-circular in shape over left shoulder in front part with a bruise in its centre measuring 2.2 x 1.2 cms.

2. Abrasion 1.5 x 0.5 cms. Over back of left shoulder.

3. Stab wound measuring 1.7 x 0.6 cms. x depth. Situated over left side front of chest 7 cm. below and inner to left nipple and 6 cm. outer to mid-line and 117 cm. above left heel. Wound was placed obliquely. The upper angle was round and lower medial angle was acute.

And the following internal injury was also noticed by the autopsy surgeon:-

“CHEST : there was cut in 6th coastal cartilage on left side of chest. Plural cavity was full of blood.

Track of Injury No. 3 : Injury No. 3 entered the chest cavity after curing through the 6th coastal cartilage and then entered into pericardium and then right ventricle on front part, then cut into interventricular septum. The pericardial sac was full of blood. Total depth of the injury was 6 cm. The direction of injury was from front to back slightly towards left.”

Cause of death was opined to be haemorrhage and shock as a consequence of the injuries sustained by the deceased. Injury no. 3(stab injury) was opined to be sufficient to cause death in the ordinary course of nature and was opined to have been caused by a sharp edged weapon(which could not be recovered by the police). Injuries no. 1 & 2(abrasions) had been opined to have been caused by blunt object/impact with a hard surface.

21. Finally, learned counsel for the appellant Ashok @ Lala submitted that since this is a case of single knife blow on the chest of the deceased the offence committed by this accused could at the

most be one under Section 304(Part II) I.P.C and not under Section 302 I.P.C. In support of this submission learned counsel relied upon one judgment of the Supreme Court reported as AIR 1984 S.C. 759, “Tholan Vs. State of Tamil Nadu” wherein the accused who had given only single knife blow on the right side of the chest of the victim during some altercation was convicted by the trial Court under Section 302 I.P.C. and his conviction was confirmed by the High Court but the Supreme Court altered the offence from Section 302 to one under Section 304(Part II) I.P.C. There is no doubt that in the said case relied upon by the learned counsel for the appellant Ashok @ Lala the Supreme Court while bringing down the offence from Section 302 I.P.C. to Section 304(Part-II) had taken note of the fact that only single knife blow was given by the accused on the right side of the chest of the victim but it was not laid down that whenever there is a single stab injury inflicted by an accused on a vital part of the body of someone Section 304 I.P.C. would get attracted. The Supreme Court had, in fact, also taken note of the fact that the incident leading to giving of a knife injury had happened on the spur of the moment and there was no dispute or quarrel between the accused persons and the deceased. In the present case, there was some quarrel between Ashok @ Lala and Raj Bansi a day prior to the stabbing incident on 17th May, 1999. On the day of the incident accused Ashok @ Lala had come

to the shop where the deceased was employed and had told his employer PW-3 Harish Sharma that he would kill Raj Bansi. Though PW-3 had also deposed that at that time Ashok @ Lala was having an open knife in his hand but we are ignoring that part since he had not claimed so before the police but the fact remains that Ashok @ Lala had threatened to kill Raj Bansi which he actually did. So, this is not a case where stabbing took place on the spur of the moment. The stab injury caused by this accused was according to the autopsy surgeon(PW-6) was sufficient to cause death in the ordinary course of nature. So, it is clearly a case of murder punishable under Section 302 I.P.C.

22. Now, we come to the sustainability of the convictions of accused Radhey Shyam and Charan Singh under Section 302/34 I.P.C. Mr. Sanjay Lao, learned APP for the State had submitted that it was the prosecution case that both PW-3 and PW-10 had left the tent shop together after accused Ashok @ Lala had left from there threatening to kill Raj Bansi and had reached place of incident also together and had witnessed the incident from almost the same point. It was also submitted that though in examination-in-chief PW-3 had not claimed that PW-10 was also with him at the time of the incident but he had said so in cross-examination by the defence counsel. So, keeping in mind these submissions of the learned APP we shall examine if the accused-appellants Radhey

Shyam and Charan Singh also had participated in the crime with Ashok @ Lala and had shared common intention with him to kill Raj Bansi.

23. Learned counsel for accused Radhey Shyam, and Charan Singh had submitted that even if this Court accepts the testimony of PWs 3 and 10 to be sufficient to confirm the conviction of accused Ashok @ Lala their evidence still cannot be considered trustworthy enough to uphold the conviction of these two accused because of many discrepancies in their statements regarding their involvement in the incident of stabbing. Learned counsel placed reliance on a judgment of the Supreme Court in “Ravulapalli Kondaiah & others Vs. State of A.P.”, AIR 1975 S.C. 216 wherein even after accepting the evidence of eye witnesses in respect of the involvement of two out of five accused, all of whom were related to each other, convicted by the High Court in appeal against their acquittal by the Sessions Court the Supreme Court had disbelieved their evidence in respect of the remaining three accused. It was observed that though evidence of interested witnesses cannot be rejected on the ground that they are interested witnesses but it should be kept in mind that interested witnesses have the tendency of roping in some innocent persons also besides the real culprits in the commission of some crime. Another judgment of the Supreme Court in “Badrudin Rukonddim Karpude & Ors. Vs State of

Maharashtra”, AIR 1981 S.C. 1223 was also cited as in that case also the evidence of the same set of eye witnesses was accepted in respect of some of the accused while for others’ participation in the incident of murder was not accepted because of inter-se inconsistencies and discrepancies in respect of the roles of some of the accused. Learned counsel for accused Radhey Shyam and Charan Singh also cited a judgment of the Supreme Court in the case of “Ramashish Yadav & others vs State of Bihar, (1999) 8 Supreme Court Cases 555 in support of the submission that even if we come to the conclusion that these two accused had caught hold of the deceased when Ashok @ Lala had stabbed Raj Bansi still these two accused-appellants deserve to be acquitted since the Supreme Court had also in the said case acquitted two accused against whom the only evidence was that they had caught hold of the victim when he was assaulted by their co-accused persons with deadly weapons.

24. Keeping in mind the facts of the judgments cited by the counsel for accused Radhey Shyam and Charan Singh in which eye witnesses were believed in respect of some accused and disbelieved qua others we have examined the evidence of the two eye witnesses to find out if their evidence is free from doubts regarding the involvement of these two accused. We find that both the eye witnesses, PWs 3 and 10, gave different versions regarding

the roles of accused Radhey Shyam and Charan Singh. PW-3 had deposed that when he had reached the park where the incident took place he had seen that three accused, namely, Charan Singh, Radhey Shyam and Chawanni(juvenile) had caught hold of the deceased and Ashok @ Lala hit PW-2 Pawan on his head with the stump. This witness did not claim that accused Radhy Shyam and Charan Singh had beaten Raj Bansi. PW-10 Ganesh Yadav, the other eye witness, however, had claimed before the trial Court that when he alongwith PW-3 had reached the park he had seen that all the three accused-appellants and Chawanni “ *were beating up with cricket bat and in the meantime accused Charan Singh caught hold of Raj Bansi whereas accused Ashok stabbed him into his chest. At the same time accused Radhey Shyam today present in the Court had given a Rod-blow over the right shoulder of Raj Bansi*”. PW-10 did not claim that accused Radhey Shyam, Charan Singh and Chawanni had all caught hold of Raj Bansi as was deposed to by PW-3. PW-3 did not claim that Radhy Shyam had hit Raj Bansi with a rod on his shoulder as was claimed by PW-10. PW-3 had also claimed that accused Radhey Shyam, Charan Singh and Chawanni were saying to Raj Bansi at the time of the incident that they would not leave him alive while PW-10 did not say so. In our view, these discrepancies in the testimonies of the two eye witnesses make the prosecution case against accused Radhey

Shyam and Charan Singh doubtful considering the fact that they had undisputedly no enmity with the deceased. So, benefit of doubt has to be given to these two accused-appellants.

25. The appeal of accused Ashok @ Lala is accordingly dismissed and he stands convicted under Section 302 I.P.C. for the murder of Raj Bansi. The appeals of accused Radhey Shyam and Charan Singh, however, are allowed and they are acquitted of the charge of murder of Raj Bansi.

During the pendency of the appeals sentences of imprisonment awarded to the three appellants were suspended and now that appeal of accused Ashok @ Lala has been rejected his bail bonds shall stand cancelled and he shall be taken into custody forthwith. Other two appellants, however, need not surrender and their bail bonds would stand discharged.

P.K.BHASIN, J

V.P. VAISH, J

MARCH 14, 2014