

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

Judgment Reserved on: November 11, 2014

% *Judgment Delivered on: November 17, 2014*

+ **CRL.A. 297/2014**

VICKY Appellant
Represented by: Mr.R.S.Malik, Advocate with
Mr.Puneet Mahendru and Mr.Sahil
Malik, Advocates

versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP

CRL.A. 299/2014

MOHAN LAL Appellant
Represented by: Mr.R.S.Malik, Advocate with
Mr.Puneet Mahendru and Mr.Sahil
Malik, Advocates

versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP

CRL.A. 1303/2014

STATE Appellant
Represented by: Ms.Aashaa Tiwari, APP for

versus

BUNTY @ RAJIV & ANR Respondents
Represented by: Mr.R.S.Malik, Advocate with
Mr.Puneet Mahendru and Mr.Sahil
Malik, Advocates for R-1 & 2

CORAM:

HON'BLE MR. JUSTICE PARDEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PARDEEP NANDRAJOG, J.

1. Appellants Mohan Lal and his son Vicky do not dispute that an incident took place at around 10:30 PM on July 30, 2011 involving them, the deceased Meena, her brothers Bittoo PW-11, Balvinder PW-12 and their mother Chand Rani PW-13, but not in the manner as claimed by the prosecution is their case. As per the prosecution, the incident involved not only Mohan Lal and his son Vicky but even Bunty @ Rajiv and Manish the other two sons of Mohan Lal and 'K' the grandson of Mohan Lal. The further variation is : as per Mohan Lal and Vicky the incident was triggered by Meena, Bittoo, Balvinder and their mother Chand Rani, compelling Mohan Lal and Vicky to act in discharge of their right to private defence during which Meena, Bittoo and Balvinder were injured; and as per the prosecution, Mohan Lal and his three sons and one grandson attacked Meena to teach her a lesson and when her brothers Bittoo and Balvinder tried to save her, even they were injured. The defence of the appellants has been culled out by us with reference to the suggestions put to the eye witnesses and we extract the case put up while cross-examining Bittoo PW-11. The same is brought out from the undernoted line of cross-examination of Bittoo:-

“It is correct that house of accused persons is located just in front of our house. Accused Mohan Lal is an old person having the age of about 58 years. It is wrong to suggest that on 30 July, 2011 at about 10/10.30 PM, accused Mohan Lal was strolling in front of his house after taking dinner. It is wrong to suggest that at that time I alongwith my brother Balvinder and mother Chand Rani had dragged Mohan Lal inside our house. It is wrong to suggest that after dragging him inside the house,

we started beating him. It is wrong to suggest that he got rid himself from our clutches and run away outside the house while crying. It is wrong to suggest that we chased him and in the mean time my sister Meena also came out and torn her clothes. It is wrong to suggest that I was carrying knife and my mother was having iron rod while we were chasing to him. It is further wrong to suggest that we apprehended him in the gali and assaulted him by the means of iron rod. It is wrong to suggest that when I was assaulting Mohan Lal by the means of a knife, Mohan Lal bent down in order to save from the said blow and the blow hit my brother Balvinder. It is wrong to suggest that after hearing the noise, accused Vikky came out from his house and tried to save his father Mohan Lal. It is wrong to suggest that when Vikky came out from his house, my brother Balvinder had caught hold him and I assaulted him by the knife and stabbed him.

It is correct that I had made deposition in against accused Karan, who is facing trial in this case before Juvenile Board. It is wrong to suggest that I deposed before the Juvenile Board that I and Balvinder had sustained injury when Vikky was trying to save himself from us. I am not aware about the deposition made by Balvinder before Juvenile Board.

It is wrong to suggest that accused Karan had reached the spot subsequently after hearing the noise (Vol he was one of the assailants). It is correct that I made a deposition before Juvenile Board on 26 March, 2012. It is wrong to suggest that I have deposed before the Juvenile Board that I did not aware whether Karan had reached the spot after hearing noise or not. (Vol. He was one of the assailants). It is wrong to suggest that when Karan reached the spot, Meena had picked up a knife and handed over to me to assault Karan and when Karan tried to stop Meena to hand over the knife, Meena had given the blow of knife to Karan. It is wrong to suggest that when Karan had seen that a life of his grandfather Mohan and uncle Vikky was in danger, Karan had snatched the iron rod from the hands of Chand Rani and assaulted Meena. It is wrong to suggest that at that time Meena rushed to her house and Chand Rani followed her. It is wrong to suggest that thereafter my mother Chand Rani screamed that Meena had fell down from stair case

and became unconscious. It is wrong to suggest that thereafter I and Balvinder also entered the house.”

2. Pithily put, as per Mohan Lal and Vicky, Mohan Lal was strolling in front of his house after dinner. He was dragged inside their house by Chand Rani, Balvinder and Bittoo, and was beaten. Managing to free himself, as he ran outside their house, Balvinder, Bittoo and Chand Rani chased him and at that point of time Meena came out and tore her clothes. Bittoo was armed with a knife and Chand Rani was armed with an iron rod. They managed to catch hold of Mohan Lal and assaulted him with an iron rod and a knife. As Mohan Lal bent, a blow directed towards him by Bittoo, accidentally hit Balvinder. Hearing the noise Vicky came out to save Mohan Lal and was caught by Balvinder and assaulted with a knife by Bittoo. At that time ‘K’ reached the spot. Meena picked up a knife and handed over the same to Bittoo who assaulted ‘K’. Sensing danger to the life of his grandfather Mohan Lal and uncle Vicky, ‘K’ snatched the iron rod from Chand Rani and assaulted Meena, who fell down the staircase and became unconscious.

3. ‘K’ being a juvenile was sent to the Juvenile Justice Board for trial. Mohan Lal and his three sons Vicky, Bunty @ Rajiv and Manish were sent for trial before the Court of Sessions and were charged with the offence of forming an unlawful assembly having common object to kill Meena after trespassing into the house where she lived with her parents and brother, and in furtherance of the common object used iron rods and knives to assault Meena; using criminal force and outraging her modesty, she was stripped and murdered, and in the process injuries were inflicted on Bittoo and Balvinder who intervened to save Meena. The injuries were caused with an intention to kill them. In other words, charges were framed against Mohan Lal and his three sons for offences punishable under Section 148 IPC, Sections 452/149 IPC, 354 and 506-II/149 IPC, Sections 302/149 IPC,

308/149 IPC and 324/149 IPC.

4. The backdrop to the incident which took place at about 10:30 PM on July 30, 2011 in which Meena died, is an FIR Ex.PW-9/A No.119 PS Prashad Nagar dated June 30, 2008 (proved by ASI Puran Chand PW-9) for offences punishable under Section 451/354/323/509/34 IPC lodged by Meena in which she named Mohan Lal and his three sons of entering her house and assaulting her and tearing her clothes with the intention to strip her and during the assault, with a view to further humiliate her, Mohan Lal stripped while making obscene gesticulations directed towards her. Another FIR No.121/2008, Ex.PW-9/B dated July 03, 2008 at PS Prashad Nagar (proved by ASI Puran Chand) was registered at the instance of Pinky S/o Kailash Chand (brother of Meena) as per which Mohan Lal and his three sons had accosted him on July 03, 2008 and had assaulted him. Thus, as per the prosecution the incident which took place on July 30, 2011 was to teach Meena a lesson.

5. July 30, 2011 was the date fixed before Ms.Kiran Gupta, MM, Delhi for recording evidence in FIR No.119/2008, but proceedings were adjourned due to non-availability of the file.

6. The house where Mohan Lal lived with his sons is 16/989E, Khalsa Nagar, Tank Road, Karol Bagh within the jurisdiction of PS Prashad Nagar and the house of Meena where she lived with her parents and brother is 16/984E. The two houses are opposite each other across the public street. The rough site plan Ex.PW-22/C prepared by SI Jai Nath Singh PW-22 and proved by him at the trial and the site plan to scale Ex.PW-18/A proved at the trial by SI Manohar Lal PW-18 evidences said fact.

7. Pooja DW-4, the daughter of Mohan Lal had made the PCR call at around 11:00 PM on July 30, 2011 which was received by Ct.Ravinder Hooda PW-17 who noted the information on the PCR Form Ex.PW-17/A to

the effect that a caller had informed of a stabbing taking place at House No.16/989 Sardar Nagar, Tank Road, Karol Bagh. Said information was conveyed to PS Prashad Nagar and was recorded vide DD No.38A, Ex.PW-8/A that a caller had informed that her brother had been stabbed at House No.16/989, Khalsa Nagar, Tank Road. HC Dhanni Rani PW-8 the author of DD No.38A assigned a copy thereof to SI Jai Nath Singh PW-22 who left the police station in the company of Ct.Murari PW-26. Before the two reached the house disclosed : 16/989, the information given by Pooja to the Police Control Room, being transmitted through the wireless was picked up by HC Rajender Singh PW-21, In-charge of the PCR Van 'Oscar-59' which was stationed in Karol Bagh area at that time. The PCR Van rushed to the spot and learnt that the persons were injured not in House No.16/989E but in house No.16/984E. They were three in number : Meena, who was grievously injured, and her brothers Balvinder and Bittoo. As deposed to by HC Rajender Singh PW-21, he rushed the three to RML Hospital in the PCR Van, where as recorded in the MLC Ex.PW-15/A Meena was declared brought dead at 11:40 PM by Dr.Narender Arya PW-15, who wrote said fact on the MLC. Balvinder and Bittoo were attended to by Dr.Monika PW-14, who authored Balvinder's MLC Ex.PW-14/A and Bittoo's MLC Ex.PW-14/B. She recorded therein that at 11:40 PM the two were brought to the hospital and Balvinder had : (i) a lacerated wound on the right side of his forehead : 5 cm x 0.5 cm, (ii) a lacerated wound on left eyebrow 1 cm x 1 cm, (iii) one lacerated wound on left eyelid 1 cm x 0.5 cm and (iv) two sharp cut wounds on the exterior aspect of the left forearm, one of which was 4 cm x 1 cm and the other 2 cm x 1 cm. She administered him an anti-tetanus injection and a voveran injection as also IV fluid and that Bittoo had : (i) a sharp cut wound on right parietal region 10 cm x 0.5 cm, (ii) another sharp cut wound on right parietal region 4 cm x 0.5 cm, (iii) yet another sharp cut

wound on the left parietal region 5 cm x 0.5 cm and (iv) a sharp cut wound on left parietal region 0.5 cm x 0.2 cm. Even he was administered an injection of voveran, anti-tetanus injection and administered IV fluid. At same time i.e. 11:40 PM on July 30, 2011, Vicky, 'K' and Mohan Lal on their own reached Lady Harding Medical College where Dr.Sabin Sahoo examined Vicky and authored the MLC Ex.DW-1/A recording therein that Vicky had the injuries: (i) laceration wound 2 cm x 2 cm left upper lip, (ii) laceration wound 1 inch x 1 cm left temporal region, (iii) laceration wound 1 inch x 1 cm left shoulder, (iv) laceration wound 1 inch x 1 cm left scapular region, and (v) laceration wound 1 cm posterior region. He was referred to the Surgery Department where Dr.Sorabh gave an opinion on the MLC Ex.DW-1/B that the injuries were simple. Dr.Harvinder Kaur DW-1 who was familiar with the writing of Dr.Sabin Sahoo and Dr.Sorabh proved Ex.DW-1/A and Ex.DW-1/B. 'K' was examined by Dr.Rahul Jaiswal DW-3 at 11:50 PM, who recorded on his MLC Ex.DW-1/D that he had one clear lacerated wound on his right forearm. Mohan Lal was examined by Dr.Ranu Soni who wrote Mohan Lal's MLC Ex.DW-1/C recording thereon that Mohan Lal was complaining of pain in the right hand. Said MLC was proved by Dr.Harvinder Kaur.

8. SI Jai Nath PW-22 left Ct.Murari at House No.16/984E, Khalsa Nagar, Tank Road and over the mobile phone requested the Control Room at the Police Station that a crime team be sent to the place of the occurrence. He reached RML Hospital and collected the MLC's of Meena, Balvinder and Bittoo. Since Balvinder and Bittoo were fit for statement and Meena was dead, he recorded Bittoo's statement Ex.PW-11/A and made an endorsement Ex.PW-11/A beneath the same, and as deposed to by SI Jai Nath Singh he returned to the spot so that he could hand over the rukka to Ct.Murari for FIR to be registered and this was the reason why some delay

took place in registration of the FIR. He had two options. The first was to go to the police station and get the FIR registered and then go back to the place of the occurrence or to go to the place of occurrence and send Ct.Murari to the police station for FIR to be registered. He chose the latter because over the telephone he had requested that the mobile crime detection team be sent to the spot, and in our opinion he was rightly advised to go to the place where the crime took place. Bittoo's statement Ex.PW-11/B was therefore sent from the place of the crime at 4:30 AM on July 31, 2011 i.e. with a gap of about 5½ hours after the incident took place. At the police station, HC Ram Kishan PW-1, as deposed to by him, registered FIR No.133/2011, Ex.PW-1/A at 8:30 AM on July 31, 2011 evidenced by DD No.4A, Ex.PW-1/B in which HC Ram Kishan noted that he had registered the FIR at said time for offence punishable under Section 323, 324, 302, 354, 452, 506/34 IPC. As deposed to by Ct.Raj Kumar PW-4, he delivered copy of the FIR at the residence of Sh.Ajay Garg the learned Metropolitan Magistrate on July 31, 2011. (Time of delivery not proved.)

9. In respect of the registration of the FIR, since an argument was made that as a matter of fact the rukka was sent at 4:30 PM on July 31, 2011, we note and deal with the argument in the context of the fact on which the argument was advanced. The writing 'AM' after '4:30' on the rukka shows that the author first wrote 'PM' and thereafter put a slanting line beneath the loop of the letter 'P' so as to make the letter 'A'.

10. We have perused the writing in original (not the photocopy) and note that the same pen has been used. It is apparent that a mistake of writing 'PM' has been rectified by the author instantly on realizing that the time was just past dawn and thus the 'PM' was converted instantly into 'AM'. We do not find any interpolation.

11. Loosely translated, the statement Ex.PW-11/A made by Bittoo, is that

he along with his parents was residing at House No.16/984E, Khalsa Nagar, Tank Road, Karol Bagh and that his sister Meena was the complainant of the FIR No.119/2008 in which Mohan Lal and his three sons were accused. In the morning of July 30, 2011 proceedings in said FIR had to be adjourned in the Court of Smt.Kiran Gupta. As he was returning from the Court with his sister Meena, Mohan Lal, his three sons, Vicky, Manish and Bunty and their mother Mohan Dai threatened his sister that she would not be spared. He returned to the house with his sister and around 10:30 PM was watching television in the company of his sister Meena, brother Balvinder and mother Chand Rani when all of a sudden armed with an iron rod Mohan Lal, accompanied by Vicky and Manish who were armed with knives and Rajiv @ Bunty and 'K' armed who were armed with iron rods entered their house and immediately launched an assault using the knives and the iron rods; throwing helter-skelter the goods in the room where they were watching television. Mohan Lal, Rajiv and 'K' dragged Meena outside. Manish and Vicky inflicted injuries on him with a knife. Balvinder tried to rescue Meena who had been stripped naked. As Mohan Lal held her right hand and 'K' held the left hand, before he and Balvinder could rescue Meena, Rajiv @ Bunty repeatedly hit Meena on her face with an iron rod due to which injuries, Meena fell down. As Balvinder tried to rescue Meena, Rajiv, 'K' and Mohan Lal assaulted Balvinder with iron rods and at that time Manish and Vicky had caught him to prevent him from rescuing his brother. Thereafter the five accused ran away. A PCR Van reached and removed him, Balvinder and Meena to the hospital.

12. The crime team which had been summoned to the spot reached House No.16/984E. Ct.Dinesh PW-2, a photographer took 11 photographs Ex.PW-2/1 to Ex.PW-2/11, negatives whereof are collectively exhibited as Ex.PW-2/12 and we note that the photograph Ex.PW-2/11 evinces articles lying

helter-skelter in a room, having a table in the centre which is splattered with blood and on the two sides whereof is a settee each, and on the third side is a double bed. The photograph Ex.PW-2/6 shows articles lying scattered along a passage in the house leading to the main door. Blood is seen splattered. The other photographs show blood splattered on the bed sheets spread on the bed and the settees in the room, on the floor of the room and the passage, we have just referred to.

13. There is a reference to Jai Nath's statement recorded by the Investigating Officer that the photographs were taken by him in House No.16/989E, but as explained by Ct.Dinesh when he appeared as PW-2, this was an error. The photographs were taken by him in House No.16/984E.

14. ASI Pawan Kumar PW-3, a fingerprint expert lifted chance prints from House No.16/984E, one of which lifted from the dressing table of the room, as per report Ex.PW-30/J authored by Dr.N.K.Sharma matched that of Mohan Lal. We note that during cross-examination ASI Pawan Kumar was suggested that he picked up the chance prints from House No.16/989E, which suggestion he denied.

15. SI Dhan Singh PW-20, In-charge of the mobile crime team, wrote the report Ex.PW-20/A in which he noted the name of Bittoo against the column '*Name and address of complainant*' and 'allegedly stabbing after entering the house' against the column '*Modus operandi*'. He recorded the time 2:45 AM to 3:55 AM and the date July 31, 2011 against the column '*Date and time of examination*'.

16. After the FIR was registered, further investigation was taken over by Insp.Jogender Singh PW-30. He seized various exhibits and blood sample from the scene of the crime being House No.16/984E. He ensured that the clothes of the injured Bittoo and Balvinder were seized and sealed. He ensured that all exhibits were lodged in the Malkhana. He ensured that

Meena's dead body was seized and sent to the mortuary for post-mortem.

17. Dr.Sreeniwas PW-16 at Maulana Azad Medical College conducted post-mortem on the dead body of Meena and recorded on the post-mortem report Ex.PW-16/B the state of the clothes which Meena was wearing as under:-

"The dead body was clothed in a pink and white striped top, pair of pink coloured pajamas, a pair pink coloured panties, brassiere and a white coloured clothe (like a napkin) were found lying loose by the side of the body within the body bag.

Multiple longitudinal tears were present in the pajamas. The panties and brassiere were torn and tattered at places."

18. He wrote that the external examination revealed 25 injuries on the person of Meena as under:-

1. Lacerated wound 4.6 cm x 0.5 cm x aponeurosis – bone deep, present on right side of the top of scalp in the parietal region; oriented in the front to back direction, the front end of the wound is situated 10 cm from the middle of right eye brow and is directed backwards and slightly to the right. The edges were irregular and frayed and the margins were contused. On reflection of the scalp extravasated blood was present in the underlying scalp layers and splitting of the pericranium measuring 2 cm x 0.5 cm.

2. Lacerated wound 2.1 cm x 0.3 cm x aponeurosis-bone deep, present on right side of the top of scalp in the parietal region; oriented in the front to back direction, the front end of the wound is situated 8 cm from the middle of right eye brow and 2 cm inner and 1 cm below the front end of injury no.1. It is directed backwards and slightly to the right. The edges were irregular and frayed and the margins were contused. On reflection of the scalp extravasated blood was present in the underlying scalp layers and splitting of the pericranium measuring 1.5 cm x 0.7 cm.

3. *Lacerated wound 2.3 cm x 0.7 cm x bone deep present on the face at junction of the nose and forehead just below the glabella. The edges were irregular and frayed and the margins were contused irregular tissue bridges were present in the wound. Fragmented pieces of fractured bone and cartilage were present in the bed of the wound. There is formation of a pocket in the subcutaneous plane with a radius of 1 cm – 1.5 cm.*
4. *Contusion, reddish brown in colour, 3 cm x 2 cm present over the right side of the forehead just above the outer half of right eyebrow.*
5. *Contusion, reddish in colour, 4.0 cm x 3.0 cm present on the bridge of nose with fracture of underlying nasal bone.*
6. *Swelling in an area of 10 cm x 9 cm with contusion, reddish in colour, 6 cm x 7 cm present, on the right cheek. Extravasated blood was present in the underlying soft tissues.*
7. *Contusion, reddish in colour, 2.5 cm x 2.0 cm present over the right cheek prominence 1.5 cm below the right eye. Extravasated blood was present in the underlying soft tissues.*
8. *Contusion, reddish in colour, 2.5 x 2.0 cm present over the right cheek prominence 1.5 cm outer to the right eye. Extravasated blood was present in the underlying soft tissues.*
9. *Split Lacerated wound, 0.5 cm x 0.5 cm of the upper lip, just to the left of midline with corresponding mucosal laceration 1.5 cm x 0.5 cm x 0.3 cm with the intervening soft tissues pulverized.*
10. *Split Lacerated wound, 1.0 cm x 0.6 cm x 0.3 cm of the upper lip, 1 cm to the right of midline, with corresponding mucosal laceration 1.5 cm x 0.5 cm x 0.3 cm, with the intervening soft tissues pulverized.*
11. *Contusion, reddish in colour, 1.5 cm x 1.0 cm present on the mucosal surface of the middle of upper lip.*

12. Contusion, reddish in colour, 3.0 cm x 2.0 cm present on the mucosal surface of the middle of lower lip, with linear mucosal laceration 2.5 cm long corresponding to the incisal edges of the lower jaw incisors.
13. Contusion, reddish in colour, 2.5cm x 2 cm present over the left cheek 5 cm below the left eye, and 1 cm outer to the left angle of the mouth.
14. Contusion, reddish brown in colour, 3 cm x 2 cm present on the middle and left side of the chin. Extravasated blood was present in the underlying soft tissues.
15. Contusion, reddish brown in colour, 1.5 cm x 1.0 cm present on the right side of chin, overlying the middle of right jaw bone. Extravasated blood was present in the underlying soft tissues.
16. Contused abrasion, reddish brown in colour, 0.8 cm x 1.0 cm, elliptical in shape present over the left side of neck 2 cm below and 1 cm outer to the angle of the left jaw. Extravasated blood was present in the underlying soft tissues.
17. Abrasion, reddish in colour, 4.0 cm x 2.0 cm, present over the right side of the neck 4.5 cm below the angle of the right jaw, going obliquely downward.
18. Contusion, reddish in colour 6 cm x 4 cm present over the top of right shoulder on the external aspect lying in the front to back direction. Extravasated blood was present in the underlying muscles.
19. Contusion, reddish in colour 5 cm x 3 cm present on the back of right arm at the junction of arm and axilla.
20. Contusion, reddish blue in colour, 11 cm x 9 cm present on the front of middle 1/3rd of left arm, 12 cm below the acromion. Extravasated blood was present in the underlying muscle.

21. *Abrasion, reddish in colour 0.5 cm x 0.5 cm present on the back of left hand 2 cm above the knuckle of middle finger.*

22. *Contusion, reddish in colour 12 cm x 5 cm present on the back of middle 1/3rd right arm. Extravasated blood was present in the underlying soft tissues.*

23. *Abrasions two in number, reddish in colour, 0.5 cm x 0.3 cm present over the outer aspect of back right elbow, just below the lateral epicondyle, with a gap of 0.7 cm between them.*

24. *Abrasion, reddish in colour 1.5 cm x 1.0 cm present on the outer aspect of the left hip overlying the iliac bone.*

25. *Contusion, reddish in colour 9 cm x 9 cm present on the front of upper 1/3rd of right thigh. Extravasated blood was present in the underlying muscles.*

19. He noted that the internal examination of the head, neck and chest revealed as under:-

Head

Scalp: *As described in injuries 1 and 2. Extravasation of blood was present in the scalp layers of left occipital region in an area of 8 cm x 5 cm, and in the scalp layers of right occipital region in an area of 3 cm x 3 cm. Extravasation of blood was present in the temporalis muscles of both sides.*

Skull: *There were fractures of the base of both anterior cranial fossae at the base of the skull. There were multiple fractures involving the bones of the walls of the right orbit. (zygomatic, sphenoid bones), nasal bone, and right maxilla. Extravasation of blood was present at and around the fracture sites. Fluid and clotted blood was present in the maxillary sinus.*

Brain and Meninges: *Subdural haemorrhage was present diffusely over both the cerebral hemispheres.*

Subarachnoid haemorrhages in patches were present over the

convexities of frontal, parietal and temporal lobes of right side; medial aspects of parietal and temporal lobes of both sides; basal aspects of frontal, and temporal lobes of both the sides; and basal aspect of occipital lobe of right side. On cut section petechial haemorrhages were present in the white matter of frontal lobes. Brain stem haemorrhage was present at the level of Pons. The cerebrospinal fluid was blood stained. Brain weight was 1264 gm.

Neck

Subcutaneous tissues were unremarkable. Extravasation of blood was present in the strap muscles of the neck in relation to the thyroid gland.

Fluid blood was present in the naso-pharynx. Mucosa of Pharynx, Larynx and trachea was coated with blood. Esophagus was unremarkable.

There were no fractures of the hyoid bone or the laryngeal cartilages. Thyroid gland was grossly unremarkable, weight-16 grams.

Vessels were grossly normal in appearance.

Chest

Collar Bone, Sternum and Ribs showed no fractures.

Lungs: Multiple patches of sub-pleural haemorrhages were present in the interlobar fissures of right lung and inner aspect of upper lobe of left lung. Weights were 373 grams and 352 grams of the right and left lung respectively. Lungs were grossly unremarkable.

20. As regards the cause of death he opined that:-

Death in this case occurred as a result of Cranio-Cerebral damage, consequent upon blunt force trauma to the head inflicted via injuries 1, 2 and 3; which were produced by forceful impact with heavy blunt object/weapon and are individually and collectively sufficient to cause death in the

ordinary course of nature.

21. On being apprehended Mohan Lal, Vicky and Rajiv made disclosure statements and from under a bed in a room of his house Mohan Lal got recovered an iron rod of 2'4" length having diameter 3" which was seized vide Memo Ex.PW-23/D, proved at the trial by HC Sadhu Ram PW-23 and corroborated by SI Manish PW-25, Vicky got recovered the knife Ex.P-5 from underneath an almirah in his house which was seized vide Memo Ex.PW-24/G, proved at the trial by SI Mangej PW-24 and Bunty @ Rajiv got recovered an iron rod of length 25" and diameter 3" as recorded in the Memo Ex.PW-27/G proved at the trial by Ct.Ajit Singh PW-27.

22. At the trial afore-noted witnesses proved facts which we have noted in the narratives above. But we need to note that in the testimony of Inspector Joginder Singh PW-30 it has been typed that he saw blood inside house No.16/989E and that he seized the various blood-stained articles from said house. It has been typed in his testimony that Mohan Lal got recovered the iron rod from his house No.16/984E, in respect of which an argument was advanced that the testimony of Inspector Joginder Singh would show that the assault took place in Mohan Lal's house. The argument is clutching on to straws. An advantage is being taken of the obvious typing error. The crime team officials to whom we have referred to above while narrating the contemporaneous events relating to the investigation and seizure have clearly deposed that the scene of the crime was the house where the deceased lived with her brothers and parents.

23. Bittoo appeared as PW-11, Balvinder appeared as PW-12 and Chand Rani as PW-13. The three have deposed, assigning roles to Mohan Lal, his three sons and his grandson as per Bittoo's statement Ex.PW-11/A recorded by SI Jai Nath but additionally implicated two ladies of the house, who were

not named neither in the said statement nor in the statements recorded under Section 161 Cr.P.C. Mohan Dai wife of Mohan Lal and Babli wife of Rajiv were also named as a part of the unlawful assembly and roles were assigned to them of catching hold Meena by her hair and kicking her on the face and hitting her on the head. Save and except said improvement qua Mohan Dai and Babli, the three witnesses have deposed in sync and in conformity with the facts disclosed in Ex.PW-11/A; of course with the usual variations which are natural and are to be formed when three persons depose about the same incident involving five accused.

24. Examined under Section 313 Cr.P.C. accused Mohan Lal claimed that the incident took place in the manner it was suggested to Bittoo, Balvinder and Chand Rani, and as noted by us pithily in paragraph 2 above. Bunty denied everything and claimed that he was in his factory when the incident took place. Manish also denied the incident and claimed to have gone out for his routine after dinner walk. Vicky claimed that the incident took place as stated by Mohan Lal i.e. as per the defence put to the three eye witnesses.

25. It is apparent that since Mohan Lal and Vicky had received injuries, to account for the same, they had to admit their participation at the incident. The third injured in their family i.e. 'K', as noted above faced trial before the Juvenile Justice Board and thus his version is not before us.

26. The defence witnesses to whom we have made a reference in the narratives above regarding the MLCs of Mohan Lal, Vicky and 'K' proved the same MLCs. Pooja DW-4, Mohan Lal's daughter deposed that when she saw Bittoo, Balvinder, Meena and Chand Rani beating her brother mercilessly she made a call to the police. Vide decision dated January 20, 2014 the learned Trial Judge has convicted Mohan Lal and Vicky. Bunty alias Rajiv and Manish have been acquitted. Vide order on sentence dated January 28, 2014 Mohan Lal and Vicky have been sentenced to undergo

imprisonment for life and pay fine in sum of 1 lakh; in default to undergo further simple imprisonment for two years for the offence of murdering Meena. To undergo rigorous imprisonment for five years and pay fine in sum of ₹10,000/- and in default to undergo simple imprisonment for two months concerning the injuries inflicted upon Bittoo and Balvinder, attributing intention or knowledge to the two that by their acts they would have committed an offence of culpable homicide not amounting to murder. The two have been sentenced to undergo rigorous imprisonment for two years and pay fine in sum of ₹2,000/- and in default to undergo simple imprisonment for a period of fifteen day for the offence punishable under Section 354 IPC. To undergo rigorous imprisonment for five years and pay fine in sum of ₹10,000/- and in default to undergo simple imprisonment for two months for the offence punishable under Section 452 IPC. To undergo rigorous imprisonment for five years and pay fine in sum of ₹10,000/- and in default to undergo simple imprisonment for two months for the offence punishable under Section 506-II IPC. Because Bunty and Manish have been acquitted, the learned Judge has opined that the charge of being members of an unlawful assembly having a common object had to fail.

27. Reasoning of the learned Trial Judge to convict Mohan Lal and Vicky is as under:-

“73. Apparently, the contention appears quite forceful, but it is not so. It is not the prosecution case that deceased had sustained only one or two injuries, but prosecution case is that deceased had sustained as many as 25 injuries. From the post-mortem report it is clear that she had sustained as many as 17 injuries on her face i.e. from scalp to neck portion. It only proves the deadly intention of assailants. Had their intention be only to cause some injuries to the deceased, assailants would not cause as many as 17 injuries on the said vital parts of deceased. Mere fact that no injury was inflicted by the means of knife is not sufficient to hold that assailants had no intention

to cause the murder of deceased. Rather, number of injuries found on her face and scalp clearly proves that sole intention of the assailants was to cause her death.

(i) Further, it is also clear from the testimony of eye-witnesses that when assailants entered their house, PW-11 to PW-13 including deceased were in the house. Since, two male members i.e. PW-11 and PW-12 were also found in the house, the assailants i.e. Vicky who was armed with knife might be remained busy with them and caused injuries to them by his knife. This fact is proved from the deposition of PW-11 and PW-12 who categorically deposed that Vicky had also assaulted them by his knife. Their deposition is corroborated by their MLC (Ex.PW-14/A and Ex.PW-14/B) wherein it is recited that they sustained injuries by sharp edged weapon. Their MLCs are proved by PW-14 Dr.Monika. In her cross-examination, she clarified that it is not possible that injured Bittoo could sustain injury due to pelting stones; nor it is feasible that such injuries could be caused by simple fall.

(ii) As accused Vicky also sustained simple injuries on his person by the means of some sharp object, thus it appears that PW-11 and PW-12 might have also assaulted the accused Vicky. Since, Vicky along with his co-accused was assailant, thus PW-11 and PW-12 were justified to cause injury on their assailants in the exercise of their right of private defence. No doubt none of the eye-witnesses uttered even a single word about the injuries inflicted to assailants, but this can be inferred from the facts and circumstances of the case. It is pertinent to state that in India it is unfortunate that generally neither prosecution witnesses come forward to say that they cause any injury to the accused persons nor investigating officers make any attempt to seek any explanation from the witnesses about the injuries on the body of accused persons. And in the instant case also, no such attempt was made by the investigating officer despite the fact that accused Vicky had sustained as many as five injuries and other two assailants were apprehended from hospital itself. Considering the fact

that prosecution witnesses and investigating officers may not be fully truthful and they might be in the habit of concealing some true facts from the Court, it has been held in catena of decisions that the principle of falus in uno falus in omnibus is not applicable in criminal matters and onus is upon the Court to separate grain from chaff; truth from falsehood as far as possible. In the instant case, from the facts and in the manner incident had taken place, there is every possibility that eye-witnesses did not come forward about the injuries caused to assailants under the impression that it may cause damage to their case. Due to their said conduct and other lapses found in the prosecution case, their testimony is scrutinised minutely and benefit of doubt is given to two of the accused persons. But their lapse about the non-explanation of injury to the assailants is not sufficient to discard their entire deposition. In the facts and circumstances of the case, I am of the opinion that there is every likelihood that assailants had sustained injuries by the hands of eye-witnesses while defending themselves from the deadly assault of assailants.

(iii) As already held that it is impossible to sustain as many as 17 injuries on the face by just simple fall from the stair-case as contended by learned defence counsel, thus, the prosecution version that the deceased was assaulted by the above-said assailants appears more trustworthy and reliable and it is also fully corroborated by the autopsy report.

(iv) From the autopsy report Ex.PW16/B it is established that death was caused due to injuries no. 1 to 3 which were individually and collectively sufficient to cause death in the ordinarily course of nature. Injury no. 1 & 2 were inflicted on the top of scalp in the parietal region whereas injury no. 3 was found on the junction of the nose and forehead just below the glabella. Thus, it is proved that injury no. 1 to 3 were caused on the vital parts of the body. Since, injury no. 1 to 3 were individually and collectively sufficient to cause

the death of a person in the ordinarily course of nature, thus it is established that the persons who are liable for the said injuries are liable to be held guilty for the murder as defined under clause 3 of Section 300 of Penal Code.

(v) From the deposition of PW11 and PW12 it is established that two of the assailants i.e. Mohan Lal and Karan were armed with iron pipe. It is also clear from their testimony that the deceased was assaulted repeatedly by the iron pipes. From their deposition, it is also clear that initially deceased was assaulted in the house, thereafter she was dragged out from the house and beaten in the gali. It is further clear from their deposition that while deceased was dragged from the house, PW11 and PW12 were prevented by accused Vicky and he assaulted them by knife so that they could not rescue the deceased, thus there is every possibility that PW11 and PW12 might have not be able to see each and every blow given on the person of deceased, thus mere fact that eye-witnesses failed to state about the approximate number of blows is not sufficient to disbelieve their version particularly when the incident between the parties is not disputed.

(vi) Since, all the assailants had common intention while entering the house of complainant party, thus, the assailants who assaulted the deceased by the means of iron pipe shall also be liable for the acts of assailant who assaulted PW11 and PW12 by knife and similarly the assailant who assaulted both the injured by knife shall also be liable for the acts of his companions who assaulted the deceased by iron pipes. In the present facts and circumstances of the case, prosecution is not supposed to prove which assault was given by which accused. It is sufficient to prove that two of the assailants including Mohan Lal were armed with iron pipe and another assailant i.e. Vicky was armed with knife while they committed house trespass and assaulted the complainant party and thereafter they caused injuries to the deceased and both the eyewitnesses.

(vii) Admittedly, the iron pipe allegedly got recovered by accused Mohan Lal was neither sent to FSL nor to the doctor who conducted post-mortem to seek clarification as to whether injuries found on the dead body could be caused by the recovered iron pipe or not. But to my mind, in the facts and circumstances of the case, said lapse is not fatal to the prosecution case in any manner because in the instant case there is overwhelming evidence that accused Mohan Lal had participated in the incident and from the testimony of eye-witnesses it is also proved that Mohan Lal was one of the assailants and he was armed with an iron pipe. Mere fact that prosecution failed to connect the recovered pipe with the incident is not sufficient to discard the prosecution case.

(viii) Though as per prosecution version, one knife having blood stains was recovered at the pointing out of accused Vicky, yet during examination, FSL failed to ascertain the grouping of blood detected on the said knife. Since, accused Vicky had also sustained multiple injuries in the incident, it was argued that there is every possibility that blood found on the said knife was of accused Vicky. Besides Vicky, PW11 and PW12 also sustained injuries by sharp edged weapon, thus, the blood found on the said knife could either be of Vicky or of either of injured persons. In the absence of any cogent evidence, it is difficult to hold that the blood found on the knife was any of the injured persons. But the said defect is not sufficient to disbelieve the prosecution version because in the instant case participation of accused Vicky is not in dispute and from the deposition of eye-witnesses it is established that he was armed with a knife and it is also established that PW11 and PW12 sustained injuries by sharp edged weapon and it is also established that Vicky was one of the aggressors. Thus, the testimony of both the eye-witnesses is fully corroborated by the medical evidence available on record.

74. In the light of the above discussion, I am of the considered opinion that prosecution has succeeded to bring home the guilt of accused Mohan Lal and Vickey beyond reasonable doubt for the offence punishable under Section 302 read with 34 IPC, thus, I hereby hold them guilty thereunder.”

28. Reasons given to acquit Rajiv and Manish are firstly : (i) No call being made by family member of Meena to the police and neither Balvinder nor Bittoo disclosing the names of the accused to the PCR personnel. (ii) Delay in registering the FIR. (iii) With reference to the post-mortem report of Meena and the injuries suffered by Balvinder and Bittoo the learned Trial Judge has opined, and we use the language used by the learned Trial Judge : *“it can safely be culled out that a big fight had taken place in which both parties had used weapon of offence particularly iron-pipes and sharp edged weapon. In the incident, all persons except Rajeev @ Bunty and Manish sustained injuries. It is improbable that when all persons sustained injuries, these two accused would not have sustained any injury. Absence of injuries or their body prima-facie indicate that either they were not present at the spot or they did not participate in the alleged incident. The possibility that they might have been impleaded in the incident being the family members of accused Mohan Lal and the fact that they had inimical relations with complainant party cannot be ruled out.”*

29. It is trite that where an incident is admitted and there are two versions of the same, it is the duty of the Court to find out as to whose version is correct.

30. In the instant case version of the accused is that when Mohan Lal was strolling in front of his house after dinner, Chand Rani, Balvinder and Bittoo started beating him and dragged him insider their house. Managing to free himself, as Mohan Lal ran out, Balvinder, Bittoo and Chand Rani chased

him and Meena came out. She tore her clothes. Armed with a knife and an iron rod, Bittoo and Chand Rani respectively, assaulted Mohan Lal who bent and the blow by Bittoo accidentally hit Balvinder. Hearing the shrieks of his father, Vicky came out and was assaulted Bittoo. 'K' reached the spot. Meena picked up a knife and handed over the same to Bittoo who assaulted 'K'. Sensing danger to the life of his grandfather and uncles, 'K' snatched the iron rod from Chand Rani and assaulted Meena who fell down the staircase and got injured. Per contra, the case of the prosecution i.e. Bittoo, Balvinder and Chand Rani is as per Bittoo's statement Ex.PW-11/A noted by us in paragraph 11 above.

31. The learned Trial Judge has believed that Mohan Lal and Vicky were the aggressors. The learned Judge has opined that they were the only two aggressors and has disbelieved the eye witnesses testimony qua Bunty and Manish on the reasoning that in India there was a tendency to rope in all family members of the accused. From the fact that Mohan Lal, Vicky and 'K' were injured and there were no injuries on Rajiv and Manish coupled with the fact that Meena and her brothers Balvinder and Bittoo had received injuries, as noted in paragraph 29 above, the learned Trial Judge has held that it could be safely culled out that a '*big fight*' had taken place in which both parties had used weapons of offence. The learned Judge has reasoned that if both sides were armed it was improbable that two persons of one group would not be injured.

32. To the reasoning of the learned Single Judge qua acquitted accused Rajiv and Manish, learned counsel Sh.R.S.Malik added on the reasoning during arguments, that as held in the decisions reported as 1996 (1) SVLR (Cr.) SC 418 Rehmat Vs. State of Haryana, 2003 (1) JCC 280 Cherlopalli Cheliminabi Sahib & Anr. Vs. State of A.P., 1 (2008) DLT (Cr.) 848 Babu Ram & Ors. Vs. State of Punjab and 2010 AD (CrL.) SC 197 Eknath Ganpat

Aher & Ors. Vs. State of Maharashtra & Ors. since the prosecution failed to establish the injuries on Mohan Lal, Vicky and 'K', the benefit of doubt granted by the learned Single Judge to Rajiv and Manish needs to be affirmed qua them and extended to Mohan Lal and Vicky and thus the two should be acquitted.

33. We need to once again note and thereafter re-emphasize the injuries suffered by Mohan Lal, his son Vicky and his grandson 'K'. We have noted the same in paragraph 7 above and would highlight that as regards Mohan Lal, the MLC Ex.DW-1/C does not record any physical manifestation of any injury on the body. He complained of pain in his right hand and was thus administered a voveran injection. 'K', as per his MLC Ex.DW-1/D, had only one clean lacerated wound on his right forearm. Vicky as per MLC Ex.DW-1/A, had five injuries being : (i) laceration wound 2 cm x 2 cm left upper lip, (ii) laceration wound 1 inch x 1 cm left temporal region, (iii) laceration wound 1 inch x 1 cm left shoulder, (iv) laceration wound 1 inch x 1 cm left scapular region, and (v) laceration wound 1 cm posterior region. Whereas Mohan Lal has received, at best a slap or two or a fist blow or two, and 'K' has been hit on his right forearm only once with a blunt object, only Vicky has been hit by a blunt object five times, twice the blow being directed towards his head (injury No.ii and iv), the other three towards the lip (injury No.i), shoulder (injury No.iii) and the back (injury No.v). The assault on the three is very weak and as would be explained by us hereinafter is the result of Meena being rescued by her brothers Balvinder and Bittoo, who had received as many as 6 and 5 injuries respectively. Balvinder's head was the object of the assault evidenced by injuries No.i, ii and iii as per his MLC Ex.PW-14/A. He received sharp cut wounds on the exterior aspect of his left forearm (injury No.iv collectively). These injuries are most likely to be received when the outstretched arm of a person is rescuing somebody. As

regards Bittoo, injuries No.i to iv show that a knife was directed towards his face four times. Meena had received 25 injuries which we have noted in paragraph 18 above and in respect of which injuries we need to highlight that injuries No.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 show that her face and all regions of the head were repeatedly hit with a blunt object. Injuries No.18, 19, 20, 21, 22 and 23 show that she was hit on the arm and the back of the hand. This shows that both arms of Meena were held by two persons; one holding on to her left arm and the other the right. Even if one hand was free and Meena was being hit 17 times on her face and the head, the natural instinctive reaction would be to ward off the assault using the palm as the shield. As noted in paragraph 17 above, Meena's clothes were ripped right down to the panty and brassiere which she was wearing, both of which were torn and were in tatters. Obviously, she was the target of the assault. The intention was to humiliate her and kill her. It is in this context that the testimony of the three eye witnesses assumes importance. All of them have said that as Mohan Lal, his three sons Vicky, Manish and Bunty along with his grandson 'K' entered the house, they threw the household articles helter-skelter. Mohan Lal, Rajiv and 'K' dragged Meena outside. Manish and Vicky ensured that Balvinder and Bittoo could not rescue their sister by attacking Balvinder and Bittoo. Seeing their sister bring stripped and beaten, it would be the natural instinct of Balvinder and Bittoo to rush towards their sister rather than to save themselves. They did so. But Manish and Vicky delayed the two reaching out to their sister. In the process as Mohan Lal held Meena's right hand and 'K' held Meena's left hand, Rajiv managed to repeatedly hit Meena on her face with an iron rod. Thus, injuries on Meena have completely been explained by the three eye witnesses who have also explained injuries on themselves. It may be true that the three witnesses have not said that while rescuing Meena they were able to hit three

out of the five assailants, but that does not mean that the eye witnesses are discredited, in that, malice of falsely implicating all male members of the family of Mohan Lal can be attributed to them.

34. The error committed by the learned Trial Judge is to hold that '*a big fight*' had taken place. A malicious big assault had taken place as established by the evidence. Meena was the target. Her brothers were injured when they tried to rescue her. Since Meena and her brothers were caught unaware and they were not armed and on the other hand Mohan Lal, his three sons and grandson were armed, it is apparent that not all five assailants but only three would receive injuries and that too of a minor nature when Balvinder and Bittoo used force to defend Meena.

35. Besides, the mere inability on the part of the prosecution witnesses to explain the injuries suffered by the accused does not result in the testimony of the prosecution witnesses to be outrightly rejected. If the court finds it probable that the accused might have acted in exercise of right of self-defence, the Court ought to proceed to consider whether they have exceeded the same. [(1994) 2 SCC 191 *State of U.P. v. Mukunde Singh & Ors.*]. Similarly in the decision reported as 2001 Cri LJ 2602 *Thakhaji Hiraji v. Thakore Kubersing Chamansing & Ors.* it was held as under:-

"The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajendra Singh & Ors. Vs State of Bihar, 2000 Cri LJ 2199, Ram Sunder Yadav & Ors. Vs State of Bihar, 1998 Cri LJ 4558 and Vijayee Singh & Ors. V. State of U.P. : 1990 Cri LJ 1510, all 3-Judges Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the

prosecution case, the court has to be satisfied of the existence of two conditions : (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear cogent and credit worthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.”

36. The court after taking into account the evidence rendered by the prosecution witnesses and having regard to the nature of the injuries sustained by the accused need to ascertain whether the absence of any explanation on the part of the prosecution with respect to the injuries suffered by the accused would affect the core of the charges levelled against the accused or not. [(2013) 2 SCC 71 Ram Vishwambar & Ors. v. State of U.P.]. The same view was summarized by the Allahabad High Court in the decision reported as 2001 Cri LJ 2838 (All) Gajey Singh v. State of U.P. wherein it was held:-

“It is well settled that before an adverse inference is drawn against the prosecution for its suppression or failure to explain the injuries on the person of an accused, it must be reasonably shown that, in all probability, the injuries were caused to him in the same occurrence or as a part of same transaction in which the victim on the side of prosecution was injured. It is not the law that prosecution is obliged to explain injuries of accused in all cases and in all circumstances. How far the prosecution case will be affected for its failure to explain injuries on the accused, the question will have to be answered on the basis of facts and circumstances of each case. Non-explanation of injuries of accused is

certainly a factor which is to be taken into account in judging the veracity of the prosecution case and in such a situation the Court is under a duty to scrutinize the evidence of witnesses with great care and caution.”

37. The omission on the part of the prosecution to explain the injuries on the person of the accused assumes greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution. In the decision reported as (2006) 9 SCC 57 Nagarathinam & Ors vs. State, the Supreme Court held:-

“20. The genesis of the occurrence is, therefore, shrouded in mystery. This occurrence, admittedly, took place, but who were thus initial aggressors i.e. the prosecution witnesses or the appellants, is difficult to say. The High Court has found that the prosecution had not been able to prove the charge of rioting. The appellants and others did not have any common object to cause death of the accused of (sic) the prosecution witnesses. We have noticed hereinbefore the nature of injuries on the persons of the appellants. The first appellant received two stab wounds and also an incised wound over the scalp at frontal region. Appellant 2 received deep-cut wound and an incised wound over the scalp left side parietal region. Appellant 3 also received an incised scalp wound over frontal parietal region. It is not denied and disputed that they were in the hospital as indoor patients for a few days. We have furthermore noticed hereinbefore that they were also arrested after a few days.”

38. Thus, consequences of failure on part of the prosecution to explain injuries on the accused will vary according to the facts and circumstances of each case. In cases where the genesis of an incident is dubious, if the prosecution witnesses fully explain as to how the accused sustained injuries then the prosecution need not to probe further into the matter. However, no strait jacket formula can be laid down and each case has to be

considered on its own facts and circumstances. [2013 Cri LJ 2426 (Del) Radhey Shyam v. State of NCT of Delhi].

39. The learned Judge has found something of relevance in the fact that the incident took place at 10:30 PM and information was available with the police when the Police Control Room was informed at 11:00 PM but the rukka was sent at 4:30 AM the next day. There from the learned Judge has formed an opinion of time being available with Bittoo to make a thought over statement.

40. The learned Trial Judge has overlooked the fact that Bittoo and Balvinder were traumatized having seen their sister Meena being stripped nude and assaulted. The trauma of brothers seeing their sister being stripped would take time to settle down. The trauma was accentuated by she being killed in front of them. The trauma got deepened by the fact that two brothers could not save their sister. The feeling of guilt with trauma needed time for the two to regain their composer. Besides, even the two were injured and had to be given medical aid including anti-tetanus and voveran injections. Besides, SI Jainath had a good reason, which we have noted in paragraph 8 above to return to the spot after recording Bittoo's statement Ex.PW-11/A and thereafter sending Ct.Murari to the police station for FIR to be registered.

41. It was argued that the fact that Pooja, the daughter of Mohan Lal rang up the police is a fact which needs to be taken into account for the innocence of the accused.

42. Not necessarily. What did Pooja know as to what was happening. Surely, her father, her brothers and her nephew would not tell her that they would go and strip Meena to humiliate her and kill her. As she heard commotion and saw her father, brothers and nephew as a part of a group which was engaged in what even a common person would perceive as an

offence, she rang up the police.

43. It was argued that the PCR official, HC Rajinder Singh PW-21 the fact that Bittoo and Balvinder did not disclose the name of the assailants and HC Rajinder Singh being the first police person to be in touch with Bittoo and Balvinder requires an inference to be drawn that Bittoo made a thought over statement and the family members spoke in sync.

44. Now, a person would answer such questions as are put to him. The only questions put to HC Rajinder Singh were as to what did he do after he received the information over the wireless of a quarrel taking place at a house in Sardar Nagar, Tank Road, Karol Bagh, and he answered the same. Nobody asked him the question whether he asked Balvinder and Bittoo as to who had injured them and their sister. He thus gave no answer. In this connection we would be failing not to record that in the PCR form Ex.PW17/A, only first entry whereof has been proved, in a recording that the PCR van has conveyed that as told by Bittoo the neighbours had injured them.

45. Picking on the site plan, both rough and to scale, Ex.PW-22/C and Ex.PW-18/A, and citing the decisions reported as 2005 CrI.L.J. 299 Vijay Singh vs. State of M.P. it was urged that the two site plans do not mark the spot from where the witnesses saw the crime being committed.

46. It is no doubt true that a site plan is a material piece of evidence and normally the spots from where the witnesses saw the incident, the spot from where the assailants launched the attack and the spot where the victim was stationed need to be highlighted; but not mechanically. As in Vijay Singh's case where the witnesses claim to have seen the assailants standing at a place and shooting at the victim who was a few meters away, it would be important to identify on the site plan the spots where the witnesses were standing, the assailants were standing and the victim was standing for the

reason it may be relevant to ascertain whether at the same point of time the assailants and the victim was in the constant gaze of the eye witnesses. But in a case at hand where nobody is static and the victims and the assailants are changing position, it would be irrelevant that in the site plan the spots are not marked.

47. The defence version is belied from the fact that Mohan Lal, who as per the defence was beaten and dragged inside their house by Balvinder and Bittoo and their mother, has suffered no manifest injury. He only complained of pain in his right hand; and was administered a voveran injection. If he was assaulted he would have suffered injuries which would have left a physical manifestation on his body. Besides, Meena could not have suffered the injuries as a result of a fall. So tell-tale are the injuries on Meena and so tell-tale are the description of the clothes on her person when her dead body was received in the mortuary, that there is no scope for any contra-argument, but the sole argument that there have to be at least two persons disabling Meena, one catching hold of her right arm and the other the left. One more person is required for causing injuries to Meena. Since Balvinder and Bittoo, the two brothers of Meena were present, two more persons are required to engage Balvinder and Bittoo so that the two could not rescue their sister. The nature of the injuries on Meena, Bittoo and Balvinder and the physical conditions of the clothes of Meena, who was stripped till her undergarments, themselves establish that the assailants had to be at least five in number if not more.

48. The past incidents of two FIRs being registered against Mohan Lal and his son, one at the instance of Meena and the other at the instance of her brother would establish the motive. The FIR Ex.PW-9/A lodged by Meena concerns an incident dated June 30, 2008. She claims that she was molested by Mohan Lal and his three sons. She claims that to humiliate her, Mohan

Lal did not hesitate to strip and make obscene gestures towards her. It is apparent that Mohan Lal, his three sons and his grandsons were wanting to teach Meena the last lesson of her life, being that, before they would kill her they would humiliate her, which they did.

49. The reasoning of the learned Trial Judge to hold that the two eye witnesses may have given exaggerated versions is thus overruled by us and as a result we hold that the prosecution has successfully established that Mohan Lal, his three sons Vicky, Bunty and Manish and his grandson 'K' formed an unlawful assembly, the object whereof was to humiliate Meena by stripping her and killing her. With that object in mind the five came armed with knives and iron rods. They targeted Meena. Mohan Lal, Rajiv and 'K' dragged Meena outside. Mohan Lal held her right hand, 'K' the left. Rajiv hit her. Balvinder and Bittoo were prevented by Vicky and Manish who engaged one each, the two brothers, to facilitate the common object of the unlawful assembly. The object of the common assembly was therefore to overcome any resistance to give effect to the main object i.e. to humiliate and kill Meena.

50. The acquittal of the four accused for the offence of forming an unlawful assembly (along with juvenile accused 'K') is thus set aside. The acquittal of Bunty @ Rajiv and Manish is set aside.

51. Vicky, Mohan Lal, Bunty @ Rajiv and Manish are convicted for the offence of forming an unlawful assembly (the fifth being 'K', the juvenile accused) having common object to commit mischief of criminal trespass and use criminal force against Meena and cause her death and to overcome any rescue attempt by anybody to save Meena i.e. the offence punishable under Section 143 IPC, and since in furtherance of the common object the five were armed with deadly weapons and used force we convict Vicky, Mohan Lal, Bunty @ Rajiv and Manish for the offence punishable under Section

148 IPC. We convict the four for trespassing into the house of Meena where she lived with her parents and brothers after making preparation for causing hurt to her i.e. the offence punishable under Section 452/149 IPC. We also convict the four for using criminal force intending to outrage Meena's modesty and in fact outraging her modesty by stripping her clothes i.e. the offence punishable under Section 506-II and 354/149 IPC. We also convict the four for the offence of murdering Meena i.e. the offence punishable under Section 302/149 IPC. Holding that the assault on Bittoo and Balvinder was not intended, nor were any injury caused which could possibly be of the kind that likelihood of Bittoo and Balvinder being killed was in the realm of reality, we set aside Mohan Lal and Vicky's conviction for the offence punishable under Section 308/34 IPC and we acquit them of the charge for offence punishable under Section 308/149 IPC. We convict all four accused for the offence punishable under Section 324/149 IPC for the injuries caused to Bittoo and Balvinder.

52. CrI.A.No.297/2014 and CrI.A.No.299/2014 are disposed of in terms of para 51 above.

53. CrI.A.No.1303/2014 shall be listed for arguments on sentence on November 21, 2014 on which date Mohan Lal and Vicky who are in custody shall be produced in Court by the Superintendent Central Jail Tihar and Bunty @ Rajiv and Manish shall be present in Court.

(PARDEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 17, 2014

mamta