



2025:AHC:173433

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 1267 of 1984

Lohar And Others

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s) : Alok Ranjan Mishra, Ashok Kumar
Pandey, G.S. Chaturvedi, Rohit Shukla,
Viveka Nand Rai

Counsel for Respondent(s) :

Court No. - 48

AFR

Reserved on 28.8.2025

Delivered on 25.9.2025

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Vivekanand Rai, learned counsel for the surviving appellant no.3 and Sri Rajesh Kumar Gupta, learned AGA for the State.

2. The instant appeal has been filed by the appellants being aggrieved by judgment and order dated 04.05.1984 passed by the Ist Additional Sessions Judge, Mathura in S.T. No. 272 of 1983 whereby the appellants herein were convicted for the offence under Section 304/34 IPC and were sentenced to undergo seven years rigorous imprisonment with fine of Rs. 1,000/- and in default of payment, six months further imprisonment. They were further convicted and sentenced under Section 452 IPC and were directed to undergo one year rigorous imprisonment. They were also convicted and sentenced for the offence under Section 323/34 IPC and they were directed to undergo six months imprisonment with a fine of Rs. 500/- and in default of payment of fine, they were further directed to undergo three months simple imprisonment.

3. During the pendency of the instant appeal, the appellants no.1 and 2 have died and their appeal was abated on 23.10.2019. The appellant no.4 has also died and his appeal was also abated vide order 28.08.2025. Thus the instant appeal is surviving only on behalf of appellant no.3, who is represented by Sri Vivekanand Rai, Advocate .

4. As per the prosecution story, the brief facts are that the deceased Jeevan was the son of Hukami. Hukami had four sons namely, Nathhi, Lohare, Jeevan and Kishan. All the four brothers were residing together in a joint family. Nathhi died issueless leaving behind his widow Jhanjhaniya. Jhanjhaniya has also died prior to the occurrence of this case. After the death of Nathhi and Jhanjhaniya, all the three brothers namely Lohare, Jeevan and Kishan used to cultivate the land held by Nathhi and Jhanjhaniya. In the instant case, Lohare is the main accused and the other three appellants namely Bhojpal, Bhima and Ram Hari are the sons of Lohare. Injured P.W. 1 and Girraj are the sons of deceased Jeevan.

5. As per the prosecution case, the accused Bhojpal used to look after the cultivation and lands of the family. However, his intentions became bad and he used the ornaments and money belonging to the deceased Jeevan and his sons. The informant Sonpal asked the accused Bhojpal to partition the plot of land held by Jhanjhiniya, then the accused Bhojpal has disclosed that the said plots were in his name and refused to partition the said plots. Thereafter the complainant came to know that the accused Bhojpal had manipulated and got his name mutated over the plots held by Jhanjhiniya. Thereafter, a Panchayat was called. As per the the decision of Panchayat, two bighas of land belonging to Jhanjhiniya came in the share of informant Sonpal and one bigha to his uncle Kishan Singh. The informant Sonpal started cultivating the land of two bighas belonging to Jhanjhiniya w.e.f. July, 1981.

6. Kishan The uncle of informant has also filed a revenue case against Bhojpal. Deceased Jeevan and his son Sonpal used to look after the said case lodged by Kishan. The said case was pending before the Sub-Divisional Officer, Chhata. It is the case of the Prosecution that due to the said case filed by Kishan, there was enmity between the accused-appellants herein with the informant and the other family members. In the aforesaid backdrop, it is stated that on 16.03.1983 at about 8:00 A.M., the informant P.W.1, Sonpal, his brother Girraj and his father Jeevan were present at their house at village-Rehada. They were making preparation for reaping the crops. It is the case of the prosecution that the accused

Ballo over heard the talks of complainant and his father with regard to the reaping of the crops. Soon thereafter, the accused Lohare, Bhojpal, Bhima, Ramhari along with other accused persons namely Mahendra, Khema, Lal Chand, Udai Chand Ballo and Moharpal came over the house of the informant. The accused Lohare was armed with Bhala (spear), accused Ballo was armed with a Farsa and rest of the accused persons were armed with lathi. Accused Bhojpal assaulted the deceased Jeevan with lathi. All the other accused persons were armed with lathi and caused injuries to Sonpal, Girraj, Smt. Kashmiri Devi w/o- Jeevan and Smt. Rama Devi w/o- Sonpal and due to the injury, the deceased Jeevan became unconscious. On hearing of noise of scuffle, the witnesses Narain, Chhanno and Bhoji reached on the spot. Thereafter, the accused persons ran away from the spot. The accused Lohare fell down on a log of wood and sustained some injuries. The report of the aforesaid incident was lodged by the informant Sonpal at Police Station-Barsana on 16.03.1983 at 1:30 P.M., on the basis of which the FIR being Case Crime No. 26-A/83 under Sections 147, 148, 452, 307, 149 IPC was registered. Thereafter, the medical examination of the injured persons namely, Jeevan, Kashmiri Devi, Sonpal, Girraj and Rama Devi was conducted on 16.03.1983 at around 6:15 P.M. to 7:00 P.M. The following injuries were found on the injured accused Jeevan:

"(1) Lacerated Wound 6 Cms. X 1 Cm X bone deep on right side of Head, 9 Cms. above the right ear.

(2) Contused Traumatic Swelling on whole right hand.

(3) Abrasion 3 Cms. X 1.5 Cms. out-side of right cheek.

General condition poor, unconscious. Injuries No.s 1 and 2 were kept under observation and were advised X-ray.

Injuries were caused by blunt weapon. Duration half day.

2- Injuries of Smt. Kashmiri Devi, w/o- jeevan:

(1) Contusion 8 Cms. X. 2.5 Cms. on lateral side right arm, middle.

(2) Contusion 10 Cms. X 5 Cms. X 4 Cms. below injury No. 1.

(3) Traumatic Swelling on whole of the lower right fore-arm. Advised X-ray.

Injuries were caused by blunt weapon. Duration half day.

3- Injuries of Sonpal P.W.-13-

- (1) Lacerated Wound 6 Cms. X-1 Cms. X bone deep Lt.Side Head. Advised X-ray.
 - (2) Contused traumatic swelling on left side of whole of neck. X-ray advised.
 - (3) Constusion 3 Cms. x 2 Cms. on back of lower part of left fore-arm.
- Injuries were caused by blunt weapon. Duration Half-day.

4- Injuries of Girraj:-

- (1) Contusion 4 Cms. x 4 Cms. on back of left arm.
- (2) Abraded contusion 6 Cms. x 1.5 Cms. back on the upper left fore-arm.
- (3) Abraded contusion 4 Cms. x 1 Cm. left side chest.
- (4) Contusion 3 Cms. x 1.5 Cms. left scapula. Injuries were caused by blunt object. Dureation half a day.

5- Injuries of Smt. Rama Devi w/o- Sonpal:-

- (1) Contusion 1 Cm. x 1 Cm. on the back of top of left index finger.

Caused by blunt object. Duration half-a-day.

7. The deceased Jeevan was remained admitted in the District Hospital, Mathura for about 3-4 days where the doctors advised him to be taken to Medical College, Agra. However, the deceased was taken to a private hospital at Chhata. He succumbed to his injuries after 5-6 days. It is claimed by the prosecution that the deceased died due to the injuries sustained by him in the aforesaid incident. Subsequent thereto, the offence under Section 304 IPC was also added. With regard to the same incident, another FIR being Case Crime No. 26 of 1983 being cross case was also lodged on behalf of the accused persons as the accused Lohare had also sustained the injuries in the said incident and he was examined on 18.03.1983 by Dr. Shukla. He found one lacerated wound 1.5 cms. x 0.5 cm. on the lower lip in front of right lower teeth of Lohare. The cross case was registered by the accused Lohare on 16.03.1983 at 12:30 P.M. under Section 307 IPC against the informant Sonpal, his brother Girraj and one Happo.

8. The investigation was carried out and thereupon the charge sheet was filed against the ten accused persons for the offence under 147, 323, 452, 304, 149 IPC. Thereupon the case was committed for trial and the charges were framed against all the accused. They denied the charges and claimed trial. The prosecution in support of its case examined P.W.1 Sonpal who is the informant as well as the eye witness of the occurrence, P.W.2, Sri Narain and P.W.4. All are also eye witnesses of the incident. P.W.3 is the wife of the deceased Jeevan and also an injured witness. P.W. 5 is Dr. A.K.Gautam, who is the radiologist of the District Hospital, Mathura and has conducted the X-ray examination of Smt. Kashmiri Devi and Sonpal. He also conducted the postmortem on the dead body of the deceased on 26.03.1983 and found a stitched wound measuring 6 c.ms. x 1.5 c.ms. on the head of the deceased as also abrasions and contusions. All these injuries were corresponding to the injuries found on the persons of the deceased by Dr. D.R. Sen. On internal examination Dr. Gautam found that the parietal and temporal bone of the left side of the deceased were fractured. Dr. Gautam opined that the deceased died due to coma which is caused by injury no.1. P.W. 6 is Chaukidar Sri Sabhya who had taken the dead body for postmortem. P.W.7, Dr. D.R. Sen stated about the injuries of the deceased Jeevan, Smt. Kashmiri Devi, Sonpal, Girraj, Rama Devi. P.W.8 is S.I. Virendra Kumar Tiwari, the Investigating Officer, who investigated the case and submitted charge sheet against the accused persons.

9. After concluding the same, the trial court has convicted only the four appellants herein for the offences under Sections 323/34, 452 and 304/34 IPC and sentenced them as stated herein in above and rest of the accused persons were acquitted while giving them benefit of doubt.

10. Learned counsel for the appellant submits that since the complainant Sonpal had opened fire and caused gunshot injury to Bhojpal. Therefore, the appellant herein acted in self defence and thereby caused the injuries on the complaint side and during scuffle other injured persons also sustained injuries. Therefore, since the appellant had acted in self defence, they are not liable to be convicted for the offences as alleged against them. It is further submitted by learned counsel for the appellant that since the prosecution has failed to explain the injury sustained by the

accused persons as well. Therefore, the prosecution story as stated is not reliable and the appellant are liable to be acquitted giving benefit of doubt. Learned counsel for the appellant-Bhima has further participated in the incident as alleged and he has been falsely implicated due to the animosity between the parties being the immediate family members due to property dispute. Learned counsel for the appellant further submits that as per the prosecution case, Lohare was armed with bhala and accused Ballo was armed with farsa. However, as per the medical examination report none of the injured had sustained any injury of bhala or farsa. Therefore, the entire story of the prosecution is nothing but a falsity.

11. Per contra, learned AGA submits that it is admitted case of the parties that there was animosity between them for property dispute within the family members, due to which the instant incident has been caused by the accused persons. It is further submitted by learned AGA that the prosecution case is fully supported by the medical examination report. Thus, the manner of incident as alleged is fully corroborated with the medical examination. Though, as per the prosecution, the appellant no.1 was attributed bhala and there is no injury of bhala as such. However, bhala is such a weapon, which can be used as lathi by using blunt side of it. Therefore, prosecution story cannot be doubted on this ground, which is otherwise fully supported by the prosecution witnesses. The appellant no.3 was categorically attributed a lathi and there are corresponding injuries of lathi on the injured persons as well as the deceased person. Thus, the prosecution story qua the appellant no.3 is fully established and the appeal is liable to be dismissed. No interference is called for in the sentence awarded by the trial court to the appellants herein.

12. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case.

13. P.W.1 is the complainant Sonpal. Detailed description has been given by him with regard to the animosity between the parties in relation to the land owned by Jhanjhaniya after her death. According to this witness, the 10 accused persons including the appellants came to the house of the informant. The appellant Lohare was having bhala, Ballo was having farsa and other accused persons have lathis in their hands. The appellant

no.3 was attributed lathi by this witness. First of all appellant no.2, Bhojpal had assaulted with lathi on his father. Thereupon all the other accused persons had assaulted his father, his brother Girraj, his mother Kashmiri Devi and his wife. The accused persons had assaulted his mother and wife also with lathis. Due to the injuries sustained by his father, he became unconscious. Hearing of noise of scuffle, the witnesses Narain Singh, Chhanno and Bhoji had gathered and intervened, thereafter the accused persons ran away from the spot. It is categorically stated by this witness that to save themselves they had not assaulted with the lathis to any of the accused persons and it has been explained that the accused Lahare had fell down on the log of wood lying in their house and due to which he had sustained injuries and he had seen that blood was oozing out from the person of Lohare. After the incident of assault, they called for a tractor and thereupon they had carried the injured to the Police Station Barsana at around 12:00 to 1:00 P.M. After reaching the police station, they had scribed the report. He has proved the written report submitted in the police station. The injured were sent for treatment to the hospital at Mathura where their medical examination as conducted and his father was admitted for 3-4 days in the hospital. However, his condition did not improve. Thereafter, the doctors had suggested to take him to the hospital at Agra. As they were poor persons, they did not carry him to Agra for treatment rather took him to Chhata and got his treatment by a private doctor. After 5-6 days of carrying his father to Chhata, his father had died . Thereafter, he had carried the dead body of his father to the Police Station Barsana and the dead body was inspected by the police officials and the same was sealed and sent to Mathura for postmortem. He has further stated that with regard to this incident, the Investigating Officer has not recorded his statement and he further stated that before the date of deposition before the court, he has not given any statement anywhere. He has told his ignorance with regard to any compromise with Bhojpal for agricultural field of Jhanjhaniya so as Bhojpal would remain the owner of the said agricultural field.

14. P.W.1 has further stated in his cross-examination that the accused persons had come to the house of this witness and entered in the house and assaulted them. The accused had not assaulted near the temple. The

Investigating Officer has tilted the case against them and that no one came to interrogate them. He had not shown the place of incident to the Investigating Officer. It is further stated by P.W.1 that the accused persons who were having the ballam and farsa. This witness has witnessed the use of ballam and farsa. It is further stated by this witness that before lodging report at the police station, the accused persons lodged report against them because they took some time to arrange a tractor and reached the police station along with the injured persons.

15. P.W.2 is Narain Singh son of Johari, who is an independent witness. He states that on the date of incident in the morning at around 8:00 A.M., he was going towards his field. When he passed through the house of the deceased, he heard the noise, thereupon he went there in the house of Jeevan where he saw that all the ten accused persons were present there. Lohare was armed with ballam, Lohare was with farsa and other accused persons were armed with lathis. The accused Bhojpal had assaulted Jeevan on the head by lathi and all the accused persons have assaulted Jeevan and other injured persons. Due to the injury sustained by Jeevan, he became unconscious. He had intervened and thereupon the accused persons had left the place of incident. He admits that there was a dispute with regard to the agricultural land of Jhanjhaniya between the parties. He further states that with regard to this incident, the Investigating Officer had not recorded his statement while his house was about 300 steps away from the place of incident. The incident had taken place in the courtyard of the house of Sonpal. Near the house of Sonpal, there is a temple. However, he had not seen any incident near the temple. The P.W.2 has not given any statement to the Investigating Officer that the accused were assaulting near temple. He is not aware who sustained the injuries with farsa and bhala. After the incident, he had not seen the Investigating Officer in his village. According to him no injury was sustained by Lohare and Bhojpal. No gun shot was fired at the place of incident. After two and half hours of the incident, he had also gone to the police station along with the injured persons. In the courtyard of Sonpal, the blood had oozed out and he had seen the blood stains in the courtyard.

16. P.W.3 is the injured Kashmiri, wife of deceased Jeevan. According to this witness, on the date of incident at around 8:00 A.M., she was cooking

food in her house and her... husband and son were present in the house. Her husband was sitting in the kitchen and she was serving food to him. The accused Bhojpal came to her house. Along with the other accused persons including the appellants herein also came there. They were armed with ballam, farsa and lathis. Bhojpal while entering in the house had assaulted on the head of her husband. Thereupon the other accused persons had also assaulted her husband with lathis. The accused persons thereafter had also assaulted her son Sonpal, Girraj and also herself along with her daughter-in-law. Having heard the noise, the witnesses Narain, Singh, Chhanno and Bhoji also gathered there and thereafter the accused persons ran away from the spot. Thereafter she along with her both sons and daughter-in-law went to Barsana Police Station. They were referred to Mathura where their medical examination was conducted and due to such injuries, her husband died after ten days. It is further stated in the cross-examination that no witness was examined by the Investigating Officer nor he visited the village nor they were interrogated. The assault had taken place inside their house and no incident took place near the temple. She has denied any statement having been given to the Investigating Officer. It is further stated by this witness that after sustaining the injuries with lathis, she became unconscious and she did not know who assaulted her son with ballam. She is not aware that any other FIR was lodged with regard to the said incident. She had denied the suggestions that the assault took place near the temple. She came in between and sustained injury.

17. P.W. 4, Chhanno is also an independent witness. He has also supported the prosecution case as stated in the FIR and supported by the other witnesses. In the cross-examination, this witness states that he did not belong to the family of the informant or the accused persons. Though, they are different parties in the village but he did not belong to any party. His house is about 200 steps away from the place of incident. When he heard the noise, at that time he was coming from the house of Mewa and was going towards his house. On the date of incident itself the Investigating Officer has questioned him and had visited the village. He had recorded the statement as well as various other persons of the village. Therefore, he had gone to the house of Sonpal and had also inspected the spot where the incident had taken place. The place of incident was shown

by the informant and his brother. However, he was not aware whether he had gone towards the temple. He further stated that he was not aware that the accused persons were armed with ballam, farsa and lathis. Some of the persons were assaulted with lathis and no injury was sustained by Lohare and Bhojpal with gun shot or lathi. The blood stains were in the house of Sonpal, which were sealed by the Sub-Inspector and the memo of recovery was prepared.

18. P.W.5, Dr. A.K. Gautam is the radiologist at the District Hospital, Mathura and according to him, no abnormality was seen injury sustained by Kashmiri and Bhojpal as per the X ray report. He had conducted the postmortem of the deceased Jeevan on 26.03.1983. This witness has also proved the injuries sustained by the deceased as well as the other injured persons. In the cross-examination, he has also explained the injuries, X ray and postmortem reports of Bhojpal and Lahore and in the radio opaque he has found around 70 round and heavy metal on the lower part of the chest of Bhojpal which appeared like pellets. The fractures on the body of the deceased, which were found by him. The fracture on the head can be caused due to hit with the hard objects.

19. P.W.6, Samya chawkidar is a the formal witness of the sealing of the dead body of the deceased Jeevan after the inquest was conducted. Thereafter the dead body was taken to the hospital for postmortem and then it was handed over to the family members.

20. P.W.7 is Dr. D.R. Sen, who was posted as Emergency Medical Officer at the District Hospital, Mathura on 16.03.1983 when Jeevan, Kashmiri Devi, Sonpal and Girraj and Rama Devi were brought to the police station and he had examined the injuries sustained by them. He had proved the injuries sustained by the aforesaid persons. According to this witness the injuries no.1 and 2 on the dead body of the Jeevan were kept under observation, injury no.3 was simple in nature and injury no.4 was caused by hard and blunt weapon. The injured Kashmiri Devi had also sustained three injuries, the two injuries were simple in nature and injury no.3 was kept under observation. The injured Sonpal had sustained three injuries. The X ray was advised with regard to injury no. 1 and 2. There was a complaint of pain on the back of the chest, however there was no

visible injury. The injured Girraj sustained four injuries. Rama Devi sustained two injuries. As per the opinion of this doctor all the injuries were possible caused by the lathi on 16.03.1983 at about 8:00 A.M. He has proved the aforesaid injury report. He has also admitted in the cross-examination that the said injuries were possibly caused due to fall. He further states that on 16.03.1983 at around 3:00 P.M., he had also examined the accused Bhojpal and three injuries were found on his body. Injury no.3 was a fire arm injury and injury no.1 and 2 were the injuries with lathi. The said injury report was also proved by the witness.

21. P.W.8 is the Investigating Officer of the instant case who stated that on 16.03.1983 at around 1:30 P.M. the informant Sonpal came to the police station and lodged the report, which was recorded by the Head Moharrir Shiv Karan Singh and relevant entries were made in the general Diary. After making investigation in the matter he recorded the statements of Sonpal. He went for the spot inspection in the village and in the village he has recorded the statements of Chhano and Bhoji and also inspected the house of the accused persons. However, from none of the accused person, any incriminating material was recovered. He had taken the sample of the blood stained and plain soil from near the temple. Memo of the same was prepared and spot memo was also prepared. The houses of the accused persons were also inspected, inquest report was prepared and the documents were received after postmortem. Thereafter, the charge sheet was submitted on 30.04.1983 against the accused persons. The sample of blood stained soil and plain soil was not sent by him for chemical examination. He came to know regarding the property dispute between the parties and during the investigation, he came to know that the mother of the accused Bhojpal and Jhanjhaniya were the real sisters. According to the witnesses, the incident started at the house of Jeevan and had continued up to the temple. The present case and the case and the case crime no.26 were related to the same incident. In case crime no. 26, the informant Lohare told that the incident had taken place near the temple and during the investigation, he came to know that Bhojpal, who is an accused in the said incident had sustained gun shot injury. He has not taken the sample of blood stains and plan soil from the house of Jeevan and he has denied the suggestion that on the indication of Bhojpal, he had

collected the blood stained and plain soil from near the temple.

22. D.W.1 is Dr. Rama Shankar Shukla, who was posted as Medical Officer at Primary Health Centre, Barsana. He had conducted the medical examination of Lohare at 9:00 A.M. in the morning. He has submitted the medical report in the Court and opined that the injuries were caused due to assault by lathi. These injuries could have been caused on 16.03.1983 at around 8:00 A.M. The injury no.1 was inside the mouth and there was no injury outside. Those injuries could not be of five days old. With regard to the same injury, he opined in the Court that these injuries were five days old and subsequently studying the books, he came to the conclusion that these injuries were of 3-5 days old, and could be caused due to fall and the injury sustained on the tooth.

23. D.W.2 is the Head Constable Shivdas who was posted at P.S. Barsana. He stated that on 16.03.1983, he was posted as Head Moharrir at the police station and at around 12:30 P.M., a report was lodged by Lohare on the basis of which an FIR was registered and entries were made in the General Diary.

24. From the aforesaid evidence as available on record, so far as the injuries sustained by the accused Lohare is concerned, it is categorically admitted by D.W.1 himself that the said injury was 3-5 days old prior to the date of incident. Therefore, the injuries sustained by Lohare has no connection with the incident. From the depositions of witnesses P.W.1, P.W. 2, P.W.3 and P.W.4, out of which two are the independent witnesses, the incident had taken place inside the house of the informant and where the accused persons allegedly armed with ballam, farsa and lathis had assaulted the deceased and other injured. There is no corresponding injury, which can be attributed to ballam and farsa. However, all the injured persons had sustained injuries with hard and blunt weapon. There is a possibility that ballam and farsa would have been used from the other side i.e. the hard and blunt side and indisputably all the injuries were sustained by the injured persons with hard and blunt weapon and the appellant no.3 had been categorically attributed with lathi in the instant case. Though he has tried to dispute its presence on the spot and has claimed false implication.

25. However, all the prosecution witnesses in categorical terms had attributed the presence of the appellant no.3 on the spot armed with lathi. There is an explanation given by the prosecution that while running back, he fell down on the log of wood and sustained injuries.

26. There is an explanation given by the prosecution that while running back, accused Lohare fell down on the log of wood and sustained injuries. However, a per medical opinion, the injuries sustained by Lohare were 3-5 days old, those were not caused in the incident. However, there is no iota of explanation on behalf of prosecution for the injuries sustained by one of the accused persons namely, Bhojpal who had also sustained not by the lathis but by a gun shot injury. The prosecution is totally silent with regard to the injury sustained by the accused Bhojpal and the injury sustained by Bhojpal is fully proved by P.W.5 himself who was produced on behalf of the prosecution according to which the firearm injury was sustained by the accused Bhojpal on the left side of lower chest and the pellets were also found on the body of Bhojpal in the X ray report. P.W. 5 had conducted the X ray of Bhojpal on 17.03.1983 i.e. one day after the the incident. However, there was no material available to suggest how and in which manner, Bhojpal had sustained the injury.

27. In his statement under Section 313 Cr.P.C. it was explained by the accused Bhojpal that on the date of incident, he was coming from the agricultural field, then he saw that near the temple Girraj and Jeevan were assaulting his father near temple. Sonpal and one other person were also present there and Sonpal was assaulting him with a gun and therefore, to save him Ballo and Mahendra had assaulted with lathi and therefore, his father lodged a report and medical examination was also conducted.

28. It is also an admitted fact in the instant case that the appellant no.1 had also lodged an FIR against the informant and other persons prior to the instant FIR lodged by the informant. With regard to this injury sustained Bhojpal, there was no explanation given by the prosecution and the defence has categorically proved the fact that the accused Bhojpal has sustained the injury in the incident. Thus it was the duty of the prosecution to explain the injury sustained by the accused Bhojpal with regard to which, the prosecution is totally silent, meaning thereby that the

prosecution is not coming with true facts of the case and trying to conceal something. Therefore, the entire story on behalf of the prosecution becomes doubtful.

29. In **Mohar Rai vs. State of Bihar, (1968) 3 SCR 525**, the Apex Court has observed as follows:

*"The trial court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probalised. Under these circumstances **the prosecution had a duty to explain those injuries.***

..... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probalise the plea taken by the appellants."

30. In **State of Gujarat vs. Bai Fatima, (1975) 2 SCC 7**, the Apex Court has observed as under:

"In a situation like this when the prosecution fails to explain the injuries on the person of an accused depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self - defence.

(2) It makes the proseution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It dos not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

31. In *Lakshmi Singh and others vs. State of Bihar*, (1976) 4 SCC 394, the following observations have been made by the Apex Court :

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

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

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

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

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult

*for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 : Reported in there may be cases where the **non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.***

32. In **Nand Lal and others vs. State of Chhattisgarh, (2023) 10 SCC 470**, the Apex Court has relied upon the above observations made in **Lakshmi Singh and others vs. State of Bihar, (1976) 4 SCC 394**, the Apex Court has further placed reliance in State of **Rajasthan vs. Madho (1991) Supp (2) SCC 396**, **State of M.P. vs. Mishri Lal (2003) 9 SCC 426** and **Nagarathinam vs. State (2006) 9 SCC 57**, while acquitting the accused persons due to non explanation of injuries of accused by the prosecution.

33. Thus from the aforesaid judgments of the Apex Court, it can be safely concluded that non explanation of injuries sustained by the accused person by the prosecution, makes the prosecution story doubtful. That means the prosecution is not coming with clean hands and there is an attempt to suppress the real facts. Therefore, the prosecution witnesses becomes unreliable, and in case, the defence has given the explanation of

the entire incident that becomes more reliable. Therefore, the benefit of doubt is to be accorded to the accused persons.

34. In the instant case, the prosecution has completely failed to explain the injury sustained by the injured Bhojpal, which has been sufficiently proved in the instant case by the defence. Thus it can be safely concluded that the prosecution is not coming with any explanation with regard to the injury sustained by accused Bhojpal. Thus the prosecution story is not reliable and benefit of doubt is to be given to the accused.

35. Accordingly, the instant appeal on behalf of the appellant no.3, Bhima is **allowed**. The impugned judgment and order dated 04.05.1984 passed by the trial court convicting and sentencing the appellant no.3 herein is hereby set aside. The appellant no.3, Bhima is hereby acquitted of the charges leveled against him.

36. The appellants no.1, 2 and 4 have already died and the appeal on their behalf was abated by previous orders. The appellant no.3 is on bail. He need not surrender. His bail bonds are cancelled and Sureties are discharged.

37. Office is directed to send a copy of this judgment along with the record to the trial court to be consigned as no further action is required in the instant case.

(Anish Kumar Gupta,J.)

September 25, 2025

Ashish Pd.