

Neutral Citation No. - 2025:AHC:139316-DB

Court No. - 44

Case :- CRIMINAL APPEAL No. - 280 of 1985

Appellant :- Jaspal Singh

Respondent :- State

Counsel for Appellant :- Anurag Shukla, Pramod Bhardwaj, Sikandar B. Kochar, Vinay Kumar Upadhyay

Counsel for Respondent :- D.G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Tej Pratap Tiwari, J.

1. Heard Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri Sikandar B. Kochar and Sri Anurag Shukla, learned counsel for the appellant and Sri L.D.Rajbhar, learned AGA for the State.

2. Present criminal appeal arises from the judgement and order dated 24.01.1985, passed by Sri U.S.Gupta, Sessions Judge, Bareilly in S.T. No. 290 of 1984, (State versus Jaspal and Amarjeet). Thereby appellant no. 1. Jaspal has been convicted for offence under Section 302 IPC and sentenced for life. Appellant no. 2, Amarjeet has been convicted for the offence under Section 302 read with 34 IPC and sentenced for life. Both the appellants are on bail.

3. The prosecution story emerged on an oral Report submitted by the father of the deceased namely Jagdish Chandra (PW-7) on 24.04.1984 at Police Station C.B. Ganj, District Bareilly, reporting that his son-the deceased Omprakash was a student of I.T.I, Bareilly. On 23.04.1984, the appellants had visited the deceased at the house of first informant. They asked him to serve liquor. The deceased refused to cater to that demand made by the appellants as his father was at home. On that, the appellants started quarrelling with the deceased. Hearing the same, the first informant scolded the appellants and also his son. On that the appellants left, threatening to teach the deceased a lesson, the next day

at I.T.I, Bareilly. Thus on the date of occurrence i.e. 24.04.1984, the first informant went to drop the deceased, Omprakash on his bicycle. As the deceased walked towards the gate of I.T.I, the appellant Amarjeet caught him while the appellant Jaspal drew his knife/ 'Kripan' and stabbed him on the left side of his chest uttering words to the effect-they had taught him a lesson, for the insult suffered by the accused, the previous evening. The deceased fell to the ground, unconscious. The occurrence was witnessed by Chedda Lal Rathore (not examined at the trial) and Anil Kumar (PW-5 at the trial). It was further reported, both appellants were arrested on spot by the public. The first informant snatched the knife/ 'Kripan' from the appellant Jaspal and handed it over to a police Inspector [Om Pal Singh (PW-2)] who was present at I.T.I, Bareilly along-with a Constable. Those police personnel helped the first informant transport the deceased (then injured) to the Police Station along with the present appellants. The transcript of the Oral Report is Ex.Ka-4 at the trial. On that oral report, the FIR was registered at 9:50 AM on 24.04.1984. It is Ex.Ka-1 at the trial. Thereafter, Inquest Report was prepared by the Investigation Officer, Ved Prakash Tyagi (PW-8) on 24.04.1984 between 11:00 AM and 12.30 PM. It is Ex.Ka-8 at the trial. Thereafter, Dr. S.K. Agarwal (PW-3) prepared Autopsy Report of the deceased at about 5:00 PM on 24.04.1984. In that following ante mortem injuries were noticed:-

“punctured wound 2.5cm x 1.5cm x chest cavity deep on left side of chest 3cms away from left nipple at 4 O’ clock position/obliquely towards rightward and upward.”

4. Time of death was estimated to be about half day earlier and the cause of death was opined to be shock and haemorrhage due to ante mortem injuries. The internal injury was noted “*Lt. Heart Ventricle punctured under injury*”. That Autopsy Report is Ex.Ka-2 at the trial.

Upon completion of investigation, charge-sheet was submitted, against both the appellants.

5. Upon the case being committed for trial to the Court of Sessions, following charges came to be framed against the appellants :-

(i) Against appellant no. 1, Jaspal:-

“That you on 24-4-1984 at about 9.15 A.M. in front of the Gate of I.T.I. within the limits of P.S. Clutterbuck-ganj, District Bareilly intentionally or knowingly committed murder of Om Prakash and you thereby committed an offence punishable under section 302 I.P.C. and within the cognizance of this Court of Session.”

(ii) Against appellant no. 2, Amar Singh:-

“That you on 24-4-1984 at about 9.15 A.M. in front of the Gate of I.T.I. situate within the limits of P.S. Clutterbuckganj, District Bareilly, in furtherance of your common intention, intentionally or knowingly did commit murder of Om Prakash and you thereby committed an offence punishable under section 302 read with section 2 I.P.C. and within the cognizance of this Court of Session.”

6. At the trial, besides relying on the above documentary evidence, the prosecution also relied on oral evidence led through eight witnesses. As to fact occurrence, it relied on the testimony of four witnesses namely Kailash Chandra, a tea stall owner (PW-1); S.I. Ompal Singh (PW-2) who was on duty on that date and time at the I.T.I. campus, Bareilly, in connection with some examination; Anil Kumar (PW-5) - a student of I.T.I, Bareilly and the first informant, Jagdish Chandra (PW-7) - the father of the deceased. The prosecution also relied on the statement of Dr. S.K. Agarwal (PW-3) who proved the ante mortem injuries and cause of death and also the Autopsy Report regarding the deceased. Constable Babu Ram (PW-4) proved the registration of police case while Constable Lalit Mohan Pathak (PW-6) proved the

transportation of the dead body to the mortuary, etc. Last, the Investigation Officer, Ved Prakash Tyagi was examined as PW-8. He proved the steps of investigation and submission of the charge sheet.

7. Kailash Chandra (PW-1) disclosed that he had a tea stall in front of the I.T.I. gate, Bareilly. He established his presence at that tea stall. He narrated, the appellant Amarjeet Singh (described as “chhote sardar”) got involved in a quarrel/fight with Anil Kumar at about 9:30-9:40 AM. In that Anil Kumar pulled out the stick supporting the shutter of his stall. Consequently, the shutter dropped and he got confined inside his stall. He came out after about 5 minutes and saw the deceased had been assaulted with a knife / ‘*Kripan*’. He fell, in a while. The crowd dispersed. By that time, a Police Inspector alongwith Constable arrived. The appellant Jaspal had also arrived at the scene but that he could not recollect if the later was holding any thing in his hands.

8. He narrated, the Inspector arrested the appellants. The father of the deceased namely Jagdish Chandra (PW-7) was also present along-with Anil Kumar and another person Mahendra. The Police Inspector took the injured Omprakash and also the accused Jaspal and Amarjeet to the Police Station in a tempo vehicle alongwith Jagdish Chandra (PW-7). At that stage on the instance of the prosecution, the said witness was declared hostile by the Court.

9. S.I., Ompal Singh was examined as PW-2. He established his presence by narrating, he was on official duty at I.T.I., Bareilly in connection with an examination being conducted there. At the time of the occurrence around 9:00 AM, he was present in the gallery area when he heard some noise arising from the place of occurrence. He ran towards the same and found that a boy was lying injured on the ground. He also saw Jagdish Chandra (PW-7), Kailash Chandra (PW-1), Chedda Lal (not examined at the trial), Anil Kumar (PW-5)

holding the appellant Amarjeet Singh and Jaspal Singh. Jagdish Chandra was holding a blood stained '*Kripan*' in his hands which the said witness took away from him-upon being told by Jagdish Chandra (PW-7), that the said accused had killed his son.

10. Thereafter, he carried the injured Omprakash as also Jagdish Chandra (PW-7) and the accused Amarjeet and Jaspal along with Constable Natthulal (not examined at the trial), to the Police Station, in a tempo vehicle. They reached the Police Station around 10:00AM. Recovery Memo of the '*Kripan*' was prepared first. He also proved that the FIR was registered at the Police Station at that time by Jagdish Chandra (PW-7). Thereafter, he returned to his duty at I.T.I, Bareilly.

11. Anil Kumar, the next fact witness was examined as PW-5. He was a student of I.T.I., Bareilly, pursuing course in the Trade-Fitter. He claimed, the deceased Omprakash was pursuing his course in the Trade-Motor Mechanic. He identified both the appellants. While, he did not know the exact vocation of the appellant Jaspal Singh, he recollected that appellant Amarjeet Singh was pursuing his course in Trade-Electrician, at I.T.I., Bareilly.

12. He proved the occurrence took place between 8:45 AM-9:00 AM. As to his presence, he disclosed that he reached the place of occurrence after hearing noise upon commotion arising. At that point he reached outside the I.T.I gate. He found that the occurrence had been caused about 20-25 ft to the west from the gate of I.T.I., Bareilly. He saw a quarrel had been caused between the appellants Amarjeet and Jaspal with the deceased Omprakash. Therein Omprakash had suffered a stab wound on his chest and had fallen to the ground. The Police was also present at that time. They arrested the appellants. A crowd had also gathered in the meanwhile. However, he did not see

who took the knife / '*Kripan*' away from the appellant Jaspal Singh. He also could not describe the nature of that knife / '*Kripan*'. The deceased (then injured) and the appellants were carried to the Police Station, on a three wheeler vehicle.

13. The last fact witness, Jagdish Chandra-the father of the deceased was examined as PW-7. He proved that on the date of the occurrence, he dropped his son, the deceased Omprakash to I.T.I, Bareilly. He proved that his son was a student of I.T.I., Bareilly whereas the appellant Amarjeet was also a student of I.T.I, Bareilly. On the date of the occurrence i.e 24.04.1984, he had dropped Omprakash at the gate of I.T.I, Bareilly, on his bicycle. The accused were standing there from before. Amarjeet ran and caught hold of the deceased while other accused Jaspal stabbed him with his '*Kripan*' on the left side of his chest, saying words to the effect that they had taught the deceased a lesson for the insult caused one day earlier.

14. By that time, amongst others, Anil Kumar (PW-5), Cheddalal (not examined at the trial), Kailash Chandra (PW-1) and others arrived at the scene. Anil Kumar and Cheddalal caught hold of Amarjeet while Jagdish snatched the '*Kripan*' from Jaspal. By that time an Inspector alongwith a Constable reached the place of occurrence from inside the I.T.I., Bareilly. They took the appellants in custody. Thereafter, the accused and the injured and others went to the Police Station alongwith the said Police personnel. On way, Omprakash died. Thereafter, the said witnesses proved the registration of the FIR and preparation of the Recovery Memo of the '*Kripan*'.

15. Last, the said witness proved that the appellants had arrived at his residence at about 6:00 PM the previous evening and asked the deceased to serve liquor. On that a quarrel had erupted between the parties. Hearing the same, the witness scolded the accused and also

his son-the deceased. At that, the appellants left the house alleging they had been badly insulted by Jagdish and that they would have revenge the next day at I.T.I., Bareilly.

16. Besides the above fact witnesses, the prosecution relied on the deposition made by Dr. S.K. Agarwal (PW-3). He proved the antemortem injuries and the cause of death. In that, besides a single blow suffered by the deceased, no other injury was proved.

17. Last, the prosecution relied on the deposition made by S.I. Ved Prakash Tyagi, the Investigation Officer who proved the Recovery Memo and also the steps of investigation, besides the charge-sheet .

18. Upon completion of prosecution evidence, statements of the accused persons were recorded under Section 313 Cr.P.C. Accused Jaspal narrated that the deceased, Anil Kumar (PW-5), Vikram and Mahendra alongwith one or two other boys used to extort money from students of I.T.I., Bareilly, to buy liquor. His elder brother Kulwant had asked him to speak to the father of the deceased to dissuade the deceased from engaging in such activities. Since then, he had started accompanying his younger brother Amarjeet to the college. For that reason he was present at the place and time of occurrence. Since the teacher of Amarjeet had not arrived, both brothers were waiting outside I.T.I., Bareilly. At that moment, the deceased, Anil Kumar (PW-5), Vikram, Mahendra and one or two other boys arrived at the scene and encircled them. On the instigation of Omprakash, those boys started assaulting the accused. In that moment Amarjeet fell to the ground. Some others drew sharp edged weapons and started assaulting Jaspal. At that time, to save himself and his brother (co-accused Amarjeet) he drew his '*Kripan*' and hit Omprakash, once. Omprakash fell to the ground and others accompanying him fled. Thereafter, he rushed his brother to the Police Station C.B.Ganj to lodge a report. He

met Inspector Ved Prakash Tyagi and another police personnel described as Ghanshyam. However, their report was not registered. Later, they were arrested upon false case registered against them.

19. Thereafter, defence led evidence through Dr. Vinod Sehgal (DW-1). He was the Medical Officer posted at Bareilly jail, on 25.04.1984. He proved the injury reports of the accused Amarjeet Singh and Jaspal Singh. We consider it proper to extract the entire injury report of the accused Amarjeet Singh and Jaspal Singh. Thus the injury report of Amarjeet dated 25.04.1984 prepared by Dr. Vinod Sehgal (DW-1) reads as below :

“Examined Amar Jeet aged about 20 year s/o Trilok Singh R/o 503-B, Indira Nagar, P.S Prem Nagar, Bareilly on 25/4/84 at about 17-00 Hrs

MI L.A black mole over Lt. Shoulder 2. An attested LTI.

Injuries: 1 Bluish Contusion 6cm x 2cm over the Rt side of back. Contusion running horizontally just at the level of lower most rib.

2-Marked swelling over Lt hand, Lt wrist, Lt feet, marked tenderness.

Opinion: Injuries are caused by friction against hard & blunt object.

Injury no. 1 is simple while no. 2 kept u.o. adv. X-Ray.

Duration about 1-2 days.”

20. The injury report of accused Jaspal Singh also dated 25.05.1984 reads as below :

“ Examined Jas Pal Singh aged about 22 years s/o Trilok Singh R/o 503-B, Indra Nagar P/s Prem a Nagar P.S Prem Nagar on 25/4/84 at abmt 17-10 hr..

MI 1. An attested LTI. 2. A black mole over the front of the neck on Rt side.

Injuries: 1. Incised mound 5.5m x 0.2cm x fascia deep over the lateral aspect of Rt upper arm, 9cm away from Rt. Elbow. Margins Sharp, red & edges are gaped, un-united.

2. Incised wound 4cmx0.1cm x Skin deep over the front of chest Lt. Side, 8 am away from Lt. Nipple at 12 ‘O’ clock position. Margins Sharp and reddish in Color; clotted blood present.

3. Two abrasions running Vertically and parallel over the front of chest on Lt. Side, on the medial aspect of injury no. 2, Scab formation started but not formed Completely (Dimention 4cm x linear).

4. Incised wound 4.5 x 0.4cm x muscle deep over the Rt side of back (margins sharp) just below the lower end of Rt. Scapula well formed & edges un-united.

5. Multiple abrasions 3 in No. (each 3cm in length & linear in width.) over the back of Lt shoulder, scab formation started but not formed completely.

6. Incised wound 2cmx0.3cm x muscle deep over the palmar aspect of Lt. hand on the thenar region. Gap in between edges present & margins sharp.

7. Abrasion 1cm x 0.3cm semilunar in shape over the front of Rt forearm 8cm away from (Rt) wrist. Scab partially found.

8. Abrasion (oval in shape) 0.5cm x 0.4cm over the dorsum of Lt middle finger in its middle part, scab partially formed.

9. Bluish Contusion 2.4cm x 8cm over the dossum of Lt hand. Tenderness.

10. Swelling over dorssum of Lt. Hand, Lt. Wrist.

Opinion: Injury no. 1,2,4,6 are caused by friction against some sharp object;

Injury no. 3, 5,7,8,9,10 are caused by friction against hard and blunt object (while no. 3 & 5 can also be caused by pointed object).

All Injuries except injury no. 10 are simple while no.10 kept under observation. Adv. X-Ray.

Duration about 1-2 days”

21. The Instructor (of I.T.I, Bareilly), Surendra Kumar Kapoor was examined as D.W.-2, he proved the attendance register of I.T.I, Bareilly to indicate that the deceased Omprakash had ceased to be a student of that institute, on the date of the occurrence.

22. In such state of evidence, the learned court below has convicted the appellant and sentenced them as noted above.

23. Submission of learned Senior Counsel for the appellants is, in the first place there is no reliable eye witness account of the occurrence. Kailash Chandra (PW-1), (on his own showing), and Anil Kumar (PW-5), (also on his own showing), reached the place of occurrence

after it had been caused. Though, Anil Kumar (PW-5) tried to maintain that he had seen the occurrence wherein the deceased was assaulted by Jaspal Singh, at the same time his absence at the time of the exact occurrence is established from the further fact proven by the said witness he had got trapped inside his stall upon Anil Kumar (PW-5) pulling the wooden stick on which the shutter of his stall was resting. That occurrence took place before the deceased was stabbed. He came out after about five minutes. By that time S.I. Om Pal Singh had reached the place of occurrence. The latter being a government official has proven that at the relevant time he was standing in the gallery area of I.T.I, Bareilly. There he heard some noise. It led him to run in the direction of that noise. Upon reaching the place of occurrence, he found the deceased was lying on the ground and that, amongst others Jagdish Chandra (PW-7), Kailash Chandra (PW-1), Chheda Lal and Anil Kumar (PW-5) had restrained the appellants. In so far as Jagdish Chandra (PW-7) is concerned, it has been stressed that he is a pure chance witness. Neither, he used to drop the deceased at I.T.I., Bareilly nor he had any occasion to be present there as the name of Omprakash had been struck off from the list of scholars at that institution.

24. Second, it has been stressed that the appellants were arrested from the spot. Their injuries are clearly proven on the strength of evidence led by Dr. Vinod Sehgal (PW-1). Absolutely no explanation was offered by the prosecution, how those injuries came to be suffered by the accused persons, when they were spot arrested by the public and no other occurrence of any nature is described after the single stab injury was caused to the deceased. From the place of occurrence, the appellants were taken to Police Station, where they were arrested and sent to jail. The fact that the jail doctor examined them the next day, may be of no relevance in face of the undisputed fact that the

appellants had no occasion or opportunity to fabricate any injury, while in custody. Relying on the statement made by Dr. Vinod Sehgal, it has been stressed, all injuries were one or two days old. Clearly, they had been caused in the occurrence itself. To the extent the prosecution has failed to explain those injuries, relying on the decision of the Supreme Court in the case of **Lakshmi Singh vs. State of Bihar (1976) 4 SCC 394** as followed in the case of **Nand Lal and others vs. State of Chhatisgarh (2023) 10 SCC 470**. For ready reference the relevant discussion made in **Nand Lal (supra)** is quoted below:

“25. In Lakshmi Singh v. State of Bihar, which case also arose out of a conviction under Section 302 read with Section 149 IPC, this Court had an occasion to consider the issue of non-explanation of injuries sustained by the accused. This Court, after referring to the earlier judgments on the issue, observed thus: (SCC pp. 401-402, para 12)

"12. 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 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 creditworthy, 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.”.

25. Thus a vital aspect of the occurrence has been concealed by the prosecution. To the extent the prosecution has withheld full disclosure of the actual occurrence, a reasonable doubt exists as may never allow the Court to offer an order of conviction of the accused.

26. On the other hand, Sri L.D. Rajbhar, learned AGA would submit, the F.I.R. narration is fully proved. It was lodged promptly without delay. With respect to occurrence that may have taken place around 9:15 A.M., the F.I.R. was lodged almost within half an hour at 9:50 A.M. The occurrence was witnessed, amongst others by a government servant/police official, namely, S.I. Om Pal Singh (PW-2). He has clearly established the presence not only of the present appellants but of the other witnesses Kailash Chandra (PW-1), Anil Kumar (PW-5) and Jagdish Chandra (PW-7). Therefore, no reason exists to doubt the depositions made by those witnesses.

27. As to the injuries suffered by the appellants, it has been submitted

that the medical examination is wholly belated, being of the next day. In light of strong ocular evidence led, existence of those simple injuries may be of no benefit to the defence.

28. Having heard learned counsel for the parties and having perused the records, in the first place the objection raised by the learned AGA that there is no delay in lodging of F.I.R. has to be accepted as correct. There is also no doubt about the place of occurrence. Further, there may be no doubt that the appellants were spot arrested from the place of occurrence. That arrest was made by the public including Jagdish Chandra (PW-7), Anil Kumar (PW-5) and Kailash Chandra (PW-1). That fact has been specifically proven by S.I. Om Pal Singh (PW-2). Therefore, there is no reason to doubt that such an occurrence took place outside the gate of I.T.I., Bareilly.

29. As to the exact nature of occurrence, in the first place, the F.I.R. narration is of a pre-meditated attack wherein as the deceased got down outside the gate of I.T.I. Bareilly (to attend his classes), the appellant Amarjeet Singh ran and caught hold of him while the accused Jaspal stabbed him with his '*Kripan*', once. Neither prior to that occurrence nor following the same any other occurrence was disclosed in the F.I.R. At the trial, first informant Jagdish Chandra (PW-7) maintained the same narration of the occurrence.

30. At the same time, we may note here itself that doubt exists if the deceased Omprakash had the occasion to attend I.T.I. Bareilly in connection with any study or course that he may have been pursuing. That doubt has been established on the strength of evidence led by Instructor Surendra Kumar Kapoor (DW-2), who clearly proved on the strength of attendance register of I.T.I. Bareilly that the deceased Omprakash had stopped attending his classes and a report had been made in that regard on 11.04.1984. The attendance register was

produced in Court. No fact was proven by the prosecution to establish that the deceased had recommenced his studies or course at I.T.I., Bareilly. Second, Jagdish Chandra (PW-7) himself proved, it was not his daily routine to drop the deceased to I.T.I., Bareilly. He happened to drop the deceased at that college as he had perchance decided to visit the in-laws of his son, that date. Third, as to the college time itself, it was suggested to be around 6:00 A.M., while the occurrence is of 9:15 AM. Therefore, it is doubtful if the deceased had reached I.T.I Bareilly, in connection with his studies/any course being pursued by him.

31. That apart, Kailash Chandra (PW-1) did not prove how the occurrence came to be caused. He was declared hostile. Even if his testimony is to be read, to any extent, his narration of the assault on the deceased is based on knowledge derived from others. He denied having made statement under Section 161 Cr.P.C., It was read out to him, during the course of his cross-examination by the prosecution. He denied having made that statement. Then, he also stated that in the occurrence of a quarrel, others had got involved, inasmuch as, Anil Kumar (PW-5) was participating in that quarrel on the side of the deceased. He had pulled the wooden stick on which the shutter of his stall rested. On that the shutter fell and closed, trapping him inside. When he came out of the of stall, after some time, saw that the occurrence was over. Therefore, no reliance may be placed on the statement of that (hostile) witness, in support of the prosecution story.

32. Then, S.I. Om Pal Singh had arrived later to the occurrence. Effectively, he proved the fact that the appellants had been arrested by the public including Kailash Chandra (PW-1), Anil Kumar (PW-5) and Jagdish (PW-7), before he arrived. At the same time, he did not offer any ocular evidence as to the occurrence.

33. Though, besides Kailash Chandra (PW-1) the hostile witness and S.I. Om Pal Singh (PW-2) did establish the presence of Anil Kumar (PW-5) at the place of occurrence, he too did not describe, either the manner of the assault on the deceased or how Amarjeet and Jaspal may have received the injuries noted on their person by Dr. Vinod Sehgal (DW-1). Anil Kumar (PW-5), as per his statement, was inside the I.T.I, Bareilly campus when occurrence arose. In the context of single knife/ '*Kripan*' injury caused to the deceased, he reacted upon hearing noise. He ran to the entrance gate of I.T.I, Bareilly even after the police personnel had reached. Thus, he reached well after the occurrence was over. He did not speak of any occurrence witnessed by him either prior to or during the quarrel between the parties as may remotely suggest to the Court the manner in which two injuries may have been caused by hard blunt objects to the appellant Amarjeet and/ or 10 injuries including four incised wounds and more than three abrasion injuries suffered by the other appellant Jaspal Singh.

34. Last, the presence of Jagdish Chandra (PW-7), the father of the deceased may not be disbelieved. Though a chance witness, his presence at the place of occurrence was established by S.I. Om Pal Singh (PW-2). We have no reason to doubt the same.

35. As to the existence of those injuries, we have no reason to doubt. The prosecution has itself proven, both accused were arrested from the spot and taken to the Police Station, directly, by none other than a police official namely, S.I. Om Pal Singh, on a three wheeler vehicle. Prompt nature of the F.I.R. lodged on 09:50 AM also corroborates such facts. At the police station the appellants came to be arrested and were confined in jail. Therefore, from the time of the occurrence to the time of their medical examination by Dr. Vinod Sehgal, on 25.05.1984, they had absolutely no opportunity to fabricate their injuries. They remained in the custody of the State throughout. Also,

there can be no reason to doubt the authenticity of the injury reports prepared by Dr. Vinod Sehgal. Besides the fact that he is a Government doctor posted at the jail and besides the fact that he examined the accused inside the jail premises, he further proved by production of register that the injured were first examined on 25.04.1984 and not earlier. No doubt emerged during his cross-examination as to those facts. Once, such facts had been proven, all that may have survived for consideration is, if the injuries were such as may not require any explanation by the prosecution.

36. Here in the first place, we take note of the injuries suffered by the appellants. The appellant Amarjeet suffered two injuries, one described as bluish contusion 6 cm x 2 cm on right side of his back, running horizontally below the lowest rib. The second injury was described as swelling over his left hand, left wrist and left foot with marked tenderness. According to the examining doctor, those injuries may have been caused by friction against hard and blunt object. The other appellant Jaspal Singh suffered four incised injuries. The first described as 5.5 cm x 0.2 cm, over right upper arm, 9 cm above the elbow. Second incised wound about 4 cm x 0.5 cm, skin deep in front of the chest, on the left side. The third incised wound 4.5 cm x 0.4 cm, on the right side of back, while the fourth incised wound about 2 cm x 0.3 cm, on the palmar aspect of left hand. Besides those four incised injuries, the said appellant also suffered two abrasion injuries running parallel, vertically on the front left side of his chest. He also suffered multiple (3) abrasion injuries 3 cm in length and linear in width, over the back of his left shoulder as also two abrasion injuries, one on the front of his right forearm and the other on the left middle finger. Besides those, contusion on left hand and swelling over the left hand, left wrist with tenderness was also noticed. Though, those injuries were not noted to be grievous in nature, X-ray advised was conducted.

Since, the appellants were lodged in jail, no adverse inference may be drawn for reason of no X-ray examination of the injured, despite their injuries being discovered or noted by the Medical Officer, District Jail, Bareilly. The burden to get the X-ray examination was on the State authorities and no other. Because the State authority failed to discharge that burden, no adverse inference may be drawn against the defence, on that count. Effectively, through their inaction, the State functionaries prevented the defence from leading evidence in that regard. Therefore, the benefit of that doubt may go to the accused.

37. We are conscious, ocular evidence may not be discarded if simple injuries remain unexplained and the exception to the rule, namely, discarding of ocular evidence in face of unexplained injuries is primarily to be applied by Courts where the injuries suffered by the accused side are grievous or serious in nature. At the same time, being a rule of evidence, the courts must remain vigilant to examine the entirety of the facts brought before them before reaching any conclusion. Here 12 injuries have been caused to the two appellants as have remained completely unexplained both as to the person who may have caused such injuries, as also the manner in which those may have been caused. Plainly, it does appear that the main occurrence narrated by the prosecution of a single stab wound caused by the appellant Jaspal to the deceased was preceded by another occurrence involving not just a verbal quarrel but a physical assault situation. That was also suggested by the hostile witness as also it was suggested by the appellant in his statement under Section 313 Cr.P.C. While the prosecution did not bring forth any explanation for those injuries suffered either by the deceased and did not examine any other person who may have been present as an eye witnesses, clearly the appellant side had been physically assaulted. Though none of the injuries may be accepted as grievous at the same time 12 injuries

suffered (in all) by two appellants may not have been caused in a single or few blows (in the course of any resistance that may have been offered by the victim side). That may have lasted for some time. It would explain the commotion and noise that is claimed to have been heard by S.I. Om Pal Singh (PW-2) and Anil Kumar (PW-5). It may also be consistent to the version of the hostile witness Kailash Chandra (PW-1) that in the fight that had preceded the occurrence, he got trapped inside his stall for some time. When he came out, he saw the occurrence was over and the appellants were arrested.

38. Keeping in mind the injuries suffered by two persons on their different body parts and injuries being varied as clearly indicate to the court that they may have been caused by different weapons/ implements in a plural assault, the first inference that we draw is that the occurrence may not have been caused upon a single blow caused by Jaspal, as narrated by the prosecution. Second, keeping in mind the nature of evidence led by the prosecution, all 12 injuries suffered by the appellants were not caused after the occurrence, as the appellants were arrested and handed over to the police, immediately upon their spot arrest.

39. Hardly any time passed between the occurrence and the public arrest of the appellants around 9:15 AM and the F.I.R. being lodged at 9:50 AM. Even as to that short time gap of barely 35 minutes (in all), the appellants remained in the custody of S.I. Om Pal Singh (P.W.-2) who had taken the appellants to the police station in a three wheeler vehicle. No manner of assault may have arisen in such narration as may either explain the injuries suffered by the appellants or as may explain to the court (free from reasonable doubt) the manner of the occurrence itself.

40. Considering the above, we find that reasonable doubt has persisted

in the prosecution story from beginning to end. Whether, as to the presence of Jagdish Chandra (P.W-7) or as to the basic theme of the prosecution that the deceased had gone to I.T.I., Bareilly to attend classes or as to the manner of the assault or the injuries suffered by the appellants, we are unable to give credence (free from reasonable doubt), to the prosecution story.

41. What may have been i.e. whether the occurrence may involve ingredients of offence under Section 304 I.P.C. is, therefore, not for us to examine or speculate in the present facts. If the prosecution narration had been reliable and evidence has been led to the full as may have also explained the injuries received by the appellants side, we may have examined that issue. Once, the prosecution concealed the material part of the occurrence/transaction, it may not be open to the Court to record any speculative finding as to the occurrence on the generality of the facts proven by the prosecution. We may hasten to add, such an effort may be attractive but dangerous to the basic tenets of criminal jurisprudence. Here rule of strict proof applies for good reason and sound purpose. We are, therefore, not inclined to dilute the test only on a surmise or a conjecture or a general impression of the facts of this case. However, we make it clear that we are not laying down any proposition of law, in that regard. Our observation is confined to the facts of this case only.

42. In view of the above discussion, the appeal is allowed. The judgment and order dated 24.01.1985 is hereby set aside.

43. The appellants are on bail. They need not to surrender. Their bail bonds are cancelled and sureties discharged. However, appellants are directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the satisfaction of the Court concerned, within two months from today.

[20]

44. Copy of this judgment along-with original records of Court below be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court at the earliest. Office is directed to keep the compliance report on record.

Order Date :- 14.8.2025

PS/Manoj

(Tej Pratap Tiwari, J.) (S.D.Singh, J.)