

Neutral Citation No. - 2025:AHC:115129-DB

Reserved on- 28.04.2025

Delivered on- 17.07.2025

Court No. - 42

Case :- CRIMINAL APPEAL No. - 752 of 1984

Appellant :- Khema And Others

Respondent :- State of U.P.

Counsel for Appellant :- Mohd Shahid Khan,Rajesh Shukla,Shamim Uddin Khan

Counsel for Respondent :- Omkar Singh Malik

Hon'ble Vivek Kumar Birla,J.

Hon'ble Jitendra Kumar Sinha,J.

(Per:- Hon'ble Jitendra Kumar Sinha,J.)

1. Heard Sri Mohitosh Singh, Advocate, holding brief of Sri Rajesh Shukla, learned counsel for the appellants and Sri S.S. Dwivedi, learned A.G.A. for the State.
2. The present appeal has been preferred on behalf of appellant nos. 1 to 12 challenging their conviction passed by learned Special Additional Sessions Judge, Muzaffar Nagar in S.T. No.- 57 of 1979.
3. Vide judgement impugned appellants Khema, Khila, Janeshwar and Jagpal have been convicted under Sections 148, 302 read with Section 149, 307 read with Section 149, 426 read with Section 149 I.P.C. The appellants Roopa, Chandra Pal, Raghubir and Rajbir have been convicted under Sections 147, 302 read with Section 149, 307 read with Section 149 , 426 read with Section 149 of the I.P.C. The appellants Ram Pal, Birbal, Mohkam and Pitamber have been convicted under Sections 147, 302 read with Section 149, 307 read with Section 149, 426 read with Section 149 and 452 of the I.P.C.
4. The appellants Khema, Khila, Janeshwar and Jagpal have been sentenced to undergo one year rigorous imprisonment under Section 148

I.P.C., life imprisonment under Section 302 read with Section 149 I.P.C., four years rigorous imprisonment under Section 307 read with Section 149 I.P.C. and two months rigorous imprisonment under Section 426 read with Section 149 I.P.C. All the sentences were ordered to run concurrently. The appellants Roopa, Chandra Pal, Raghubir and Rajbir have been sentenced to undergo six months rigorous imprisonment under Section 147 I.P.C., life imprisonment under Section 302 read with Section 149 I.P.C., four years rigorous imprisonment under Section 307 read with Section 149 I.P.C., two months rigorous imprisonment under Section 426 read with Section 149 I.P.C. All the sentences were ordered to run concurrently. The appellants Ram Pal, Birbal, Mohkam and Pitamber have been sentenced to undergo six months rigorous imprisonment under Section 147 I.P.C., life imprisonment under Section 302 read with Section 149 I.P.C., four years rigorous imprisonment under Section 307 read with Section 149 I.P.C., two months rigorous imprisonment under Section 426 read with Section 149 I.P.C. and three years rigorous imprisonment under Section 452 I.P.C. All the sentences were ordered to run concurrently.

5. The appeal stood abated with respect to appellant no.1-Khema, appellant no.4-Jagpal, appellant no.5-Roopa, appellant no.6-Chandra Pal, appellant no.7-Ram Pal, appellant no.8-Birbal, appellant no.9-Raghubir, appellant no.10-Mahkam, appellant no.11-Pitamber. The appeal now survives with respect to appellant no.2-Khila, appellant no.3-Janeshwar and appellant no.12-Raj Bir.

6. Prosecution story in brief is that accused persons and one Balbira @ Bira belong to one party. Bira and Jagpal had beaten Shri Chand @ Siriya and fractured his bones on an earlier occasion and a case had been registered against them. On 08.04.1977 at about 12:00 noon Jagpal and Beera asked Shri Chand to withdraw the said case but Shri Chand refused to do so. Soon thereafter all the appellants/accused and Bira entered 'sahan' of Shri Chand. Jagpal was armed with gun while Khema, Khilla, Janeshwar and Bira were armed with spears and rest of the accused

persons were armed with clubs. Jagpal opened fire on the house of Siriya from his gun. All the 12 accused persons tried to overpower Siriya, Rahuva, Shama, Balveera, Chaino, Salek, Risali, Sahi Ram and Bholu. The accused persons were threatening them and asking to open door of the house and when they did not open the door, accused persons entered their house by tearing open the roof of the house and entered into the same. The accused persons beaten the aforesaid persons with their weapons and took away valuable articles from their house. The incident was seen by Chandra Pal, Pyara and several other persons of the village. Balbeera son of Bholu lodged written report Ext. Ka-1 on the same day at 10:20 P.M. at police station Kairana. It was also mentioned in the first information report that telegram had been sent to Superintendent of Police, Muzaffar Nagar that the police of Kairana was not taking down correct report and after that, it was assured by Station Officer and Circle Officer that the report would be written correctly. Shri Chand @ Siriya died on 09.04.1977 and Bholu died on 28.04.1977. The case was investigated by Badan Singh Yadav who filed charge sheet as Ext.Ka-24 against 12 accused person. Balbira @ Beera died in the meantime. The learned trial judge framed charges against accused Roopa, Chandra Pal, Ram Pal, Birbal, Raghubir, Mahkam, Pitambar and Raj Bir under Section 147, 302/149, 307/149, 452/149 I.P.C. Further accused Khema, Khila, Janeshwar and Jagpal were charged under Sections 148, 302/149, 426/149, 452, 307/149, 380 I.P.C.

7. The appellants pleaded not guilty and claimed for trial.

8. The prosecution examined 15 witnesses and various papers were proved. Written report as Ex. Ka.1. X-Ray report of Salekchand as Ex.Ka.4. Injury report of Siria as Ex.Ka.6. Injury report of Sama as Ex.Ka.7. Injury report of Rahuva as Ex.Ka.9. Injury report of Balbir as Ex.Ka.10. Injury report of Salekchand as Ex.Ka.11. Injury report of Sahi Ram as Ex.Ka.12. Injury report of Bholu as Ex.Ka.13. Injury report of Smt. Risali as Ex.Ka.14. Recovery memo of pellets and tickli as

Ex.Ka.16. Recovery memo of blood stained and plain earth as Ex.Ka.17. Recovery memo of blood stained cloth as Ex.Ka.18. F.I.R. as Ex.Ka.19. Charge sheet mool as Ex.Ka.24. Panchayatnama as Ex.Ka.28. Postmortem report as Ex.Ka.32. X-Ray report of Smt. Risali as Ex.Ka.34. X-Ray report of Balvir as Ex.Ka.36. X-Ray report of Sahiram as Ex.Ka.39. Statement of Pyara Singh as Ex.Ka.46. Statement of Soran Singh as Ex.Ka.47.

9. On conclusion of prosecution evidence, appellant nos. 2, 3 and 12 in their statement under Section 313 Cr.P.C. had denied their involvement and stated that they have been falsely implicated in this case.

10. Learned counsel for the appellants submits that the learned trial court has failed to appreciate evidence available on record in the right perspective. Learned counsel for the appellants further submits that the appellants received injuries in the same incident, however, their complaint/information was registered by the police. There was no enmity of the informant side with the surviving appellant and if any enmity there it was Beera, who had already been dead. Learned counsel for the appellant further submits that in the above facts of the case the prosecution has failed to prove motive against the surviving appellants. Learned counsel referred to the deposition of PW-3 in which he has stated that there was not contract regarding fishing between Kantoo and co-accused Khema. He further submits that the prosecution has not been able to prove its case against surviving appellants beyond the shadow of reasonable doubt and they deserve to be acquitted and appeal deserves to be allowd.

11. On the other hand learned A.G.A. for the State submits the the presence of the surviving appellants at the place of occurrence has been fully established by eye-witnesses and injured witnesses and their case is covered by Section 149 of the Indian Penal code. Learned A.G.A. further submits that since the arguments of the surviving appellants is that they also received injuries in the same incidence and they their presence at the

place of occurrence is admitted. He further submits that there is common object for commission of offence than individual role uses its significance. Learned A.G.A. further submits that the judgement and sentence passed by learned trial court is just and proper and does not call for any interference by this Court.

12. PW-1 Balvira and PW-2 Sahi Ram have admitted in testimony that a Cross Case No.-56 of 1979 was lodged by the accused side against the prosecution side since there is a Cross Case No.-56 of 1979 regarding the same incident which has been lodged by the appellants' side against the informant side the incident is admitted. PW-1 Balbira and PW-2 Sahi Ram and PW-3 Rasal have categorically supported the prosecution case and have stated that all the accused persons were armed with 'lathi', 'ballam' and Jagpal was armed with gun and he opened fire but none of the injured received fire arm injuries. The injury caused by 'ballam' on the neck of the deceased Siriya has been attributed to Beera, whereas the role of assaulting by 'ballam' and other weapons on the prosecution side has been assigned to the surviving appellants Khila, Janeshwar and Rajbir. In the incident Siriya, Rahua Balbir, Salek Chand, Sahi Ram, Sama, Bholu, Chaino and Rasali received injuries in which Siriya and Bholu succumbed to their injuries.

13. P.W.-6 Dr. R.S. Panwar has medico legally examined the injured persons and has found following injuries on the persons:-

(1). Injuries of Siriya:-

1. Lacerated wound 1" x 1/10" scalp on the posterior aspect of right side head 7/2" above and back to right ear. Placed obliquely.

2. Lacerated wound 1" x 1/10" x scalp on the right side head, 1" from injury no.1, placed vertically.

3. Lacerated wound 1" x 1/10" x scalp on right side head, 1" above right ear placed transversely.

4. Lacerated wound 3/4" x 1/10 x 1/10" over right side head 3" above right eye brow.

5. *Lacerated 1" x 1/10"x scalp over right side head 1" above right eye brow and is 1" below injury no.4.*
6. *Lacerated wound 3/4" x 1/4" x 1/10" over right side forehead 1/4" above the right eyebrow.*
7. *Lacerated wound 1/10" x 1/ 10 " on the left side forehead, just above the outer end of left eye brow.*
8. *Two lacerated wound 1/ 4" x 1/10" each over the nose (Advised X-ray).*
9. *Abrasion 2" x 1/10" over left side face 1/2" below the left eye lid.*
10. *Lacerated wound 1/4" x 1/10" * 1/10" over the right side face 1/2" below right eye lid.*
11. *Lacerated wound 1" in length through and through over the pinns of right ear.*
12. *Lacerated wound 3/4" x 1/10" x 1/4" over the Internal end of left collar bone.*
13. *Abrasion 2/1-4 x 1" over the medial end of left collar bone extending towards right side.*
14. *Lacerated wound 1/10" x 1/10" (round) skin over sternum 1-3/4" below the supra sternal notch.*
15. *Lacerated wound 1" x 1/10" x 1/10" over the ant. aspect neck in the middle line 2" above the sternal notch.*
16. *Lacerated wound 1/2" x 1/4" x skin, on the back aspect of left forearm 4" below the left elbow joint.*
17. *Lacerated wound 1/4" x 1/10" x skin over front aspect of left forearm, 5" above the left wrist joint.*
18. *Lacerated wound 3/4" x 1/10" x 1/10" over the front aspect of left fore arm 1" above the left wrist joint.*
19. *Lacerated wound 1/2" x 1/4" x skin over the front aspect of left fore arm 1" from injury no. 19.*
20. *Two lacerated wound 1/2" apart 1/2" x 1/10" x 1/10" and 1/4" x 1/10" x 1/10" over left palm, front aspect 1-1/2" above the left wrist joint.*
21. *Swelling 4" x 5" on the back of left palm (Advised X-ray left palm).*
22. *Lacerated wound 1/2" x 1/4" x 1/4" (Oval shaped) over right shoulder.*
23. *Contusion 2" x 3/4" over right shoulder 1/2" above injury no.22.*
24. *Contusion 4" x 1" over the back of right upper arm, lower part.*
25. *Contusion 3" x 2" over right elbow joint extending to the upper part of right fore arm back aspect (Advised X-ray) of right elbow joint.*
26. *Clinical fracture of lower end of ulna-right side. Advised X-ray. Right forearm.*

27. Abrasion 1/2" x 1/10" over the back aspect of right forearm 2" below the right wrist joint.
28. Lacerated wound 3/4" x 1/10" over the post aspect of right palm.
29. Lacerated wound 1" x 1/4" skin over the back aspect of proximal phalanx of right index finger.
30. Lacerated wound (wedge shape V) 1" x 1/10" x 1/10" over the right thumb over back aspect extending towards anterior aspect
31. Lacerated wound 1/4" x 1/10" skin over distal phalanx of right index finger back aspect.
32. Contusion 5" x 1-1/2" over right back, placed transversly, 5" below the spin.
33. Contusion 5" x 1-1/2" over right back, over the shoulder bone.
34. Abrasion 5-1/2" x 1-3/4 over the left lower beak.
35. Abrasion 1/4" x 1/4" over the back, mid line in the lower part.
36. Abrasion 1-1/2" x 1/2" over left back ant. aspect (over the lower ribs).
37. Lacerated wound 1/2" x 1/4" muscle, on the back aspect of left thigh.
38. Contusions 2-1/2" x 1/2" on the outer aspect of left thigh, placed vertically 4" below injury no. 37.
39. Two abrasions 1/4" apart, 1/10" x 1/ each on the left medial malleolus.

In the opinion of the Doctor all the above injuries were simple in nature except injury no.26 which will be observed after X-Ray.

(II). Injuries of Rahua:-

1. Lacerated wound 2" x 1/4" x 1/2" on the back part of head 3-3/4" from the right ear. Placed obliquely.
2. Lacerated wound 1-1/2" x 1/4" scalp on the back part of head 3/4" away from injury no.1. Placed obliquely.
3. Lacerated wound 1-3/4" x 1/10" x 1/10" on right side head 4-3/4" from the right ear, placed obliquely.
4. Lacerated wound 3/4" x 1/10" skin on the head, 1-1/2" away from (Anterior) to injury no.3.
5. Lacerated wound 1/2" x 1/10" x 1/10" over the medial end of left eyebrow.
6. Contusion 1-1/4" x 1/2" just below the left eye lid.
7. Abrasion 1/4" x 1/10" on the right cheek, 1" below the right lower lid.
8. Contusion 1" x 1/4" over right side face, just below the right lower lid.
9. Fresh bleeding from nose present.
10. Lacerated wound 1/4" x 1/10" x 1/10" on the back aspect of right palm, between right ring and right middle finger.

In the opinion of Doctor all the injuries were simple in nature.

(III). Injuries of Balbir:-

- 1. Lacerated wound 1" x ¼" x ¼" on the back aspect (Posterior) of head 4-1/2" from left ear and 5" from the right ear, placed transversely.*
- 2. Lacerated wound 1" x 1/10" x 1/10" on the post aspect of head 1/2" above the injury no.2.*
- 3. Lacerated wound ¾" x 1/10" x 1/10" over the laceral end of left eyebrow.*
- 4. Swelling 2" x 1-1/4" on the forehead right side 1/2" above right eyebrow.*
- 5. Abrasion ¾" x 1/2" on the left shoulder bone 2-¾" from the flip of left shoulder.*
- 6. Lineer abrasion 1/4" on the lower part of left back 2" from left iliac spine.*
- 7. Swelling 3" x 2-1/2" on the back of right palm.*
- 8. Abrasion ¾" x ½" over the left knee.*

In the opinion of Doctor all the above injuries were simple in nature except injury no.7.

(IV). Injuries of Salek Chand:-

- 1. Lacerated wound 1" x 1/4" x 1/10" on the left side head, 3" above the left ear, placed obliquely.*
- 2. Contusion 3-1/2" x 1" over the back aspect of right shoulder.*
- 3. Traumatic swelling 2" x 1½" on the post aspect of right forearm upper part.*
- 4. Contusion 5" x 3" over left shoulder extending to upper part of left arm.*
- 5. Abrasion 2" x 1/4" on the outer aspect of left forearm 4" above the left wrist joint.*
- 6. Swelling 1-1/2" x 1/4" over the inner aspect of left wrist joint.*
- 7. Contusion 13" x 1" over the back, crossing from left to right side, placed obliquely.*
- 8. Contusion 4" x 1" over the upper part of left back 3½" from the tip of left shoulder.*
- 9. Linear abrasions three in number, in area of 1", just above the left medial malleolus.*
- 10. Lacerated wound 1" x 1" skin over the left big toe nail.*

In the opinion of Doctor all the above injuries were simple in nature, except injury no.6.

(V). Injuries of Sahi Ram:-

- 1. Lacerated wound 1-1/4" x 1/4" on the left side skull 2" from the left ear, placed obliquely.*

2. Abraded contusion three in number, in area of 2" x 1" with swelling 3" x 1-1/2" over the outer end of left collar bone (Advised X-ray).

3. Abrasion 1/4" x 1/10" over the left thumb, back aspect.

In the opinion of Doctor all the above injuries were simple in nature except injury no.2.

(VI). Injuries of Sama:-

1. Contusion 2-1/2" x 1" over the tip of right shoulder.

2. Contusion 3-1/2" x 3" over the back aspect of right upper arm, (lower part).

3. Swelling 2-1/2" x 2" over the back aspect of right palm.

4. Swelling 2" x 2" over the left shoulder, 1" below the tip of left shoulder.

5. Abrasion 1" x 1/2" over the back aspect of left forearm, 4" from left elbow joint.

6. Abrasion 1/2" x 1/4", 1/4" x 1/4" over the right side back towards mid line, 1-1/2" below the blade of right shoulder bone.

7. Contusion 1" x 1/4" over the right side back lower Part.

8. Lacerated wound 2" x 1/2" x 1/10" on the right lower leg, 3 1/2" below the right patella.

9. Lacerated wound 1" x 1/4" skin on the right lower leg, 3-1/2" below injury no.8.

10. Abrasion 1" x 1/4" over the right foot.

11. Abrasion 1-1/4" x 1/4" on the left lower leg, 3" above the left medial malleolus.

In the opinion of Doctor all the above injuries were simple in nature, caused by some hard and blunt object.

(VII). Injuries of Bholu:-

1. Lacerated wound 1-1/2" in length, through and through on the upper part of right pinnae (ear).

2. Lacerated wound 1-1/4" x 1/4" cartilage over the lobule of right ear.

3. Contusion 3/4" x 1/2" on the lower part of right side abdomen, just above the right iliac spine.

In the opinion of Doctor all the above injuries were simple in nature caused by some hard and blunt object.

(VIII). Injuries of Chaino.

Lacerated wound 1" x 1/4" scalp on the right side head 3" above the right eye.

In the opinion of Doctor the injury was simple in nature caused by some hard and blunt object.

(IX). Injuries of Risali.

1. Abrasion 1/4" x 1/4" over left upper arm, 2-1/2" below the tip of left shoulder.
2. Abrasion 1" x 1/10" over the left elbow, back aspect.
3. Swelling 2" x 1-1/2" over the back aspect of left wrist joint.
2. Clinical fracture of lower end of right radius with swelling of lower one third of right forearm.
5. Abrasion 3/4" x 3/4" over the inner part of left knee joint.
6. Abrasion 1/2" x 1/4" over the right foot 1" below the right little finger.
7. Complaint of pain in right calf region.

In the opinion of Doctor all the above injuries were simple in nature except injury nos. 3 and 4 which were kept under observation (Advised X-ray of left wrist joint and right lower forearm.

14. PW-14 Dr. Bharat Singh conducted postmortem of Siriya and found rigor mortis present all over the body. The deceased had died about 32 hours ago. He found the following ante mortem injuries on the body of deceased:-

1. One stitched wound over the right side of skull on mastoid area, placed horizontally on the sutures injury gaps. There is abrasion on the marginal size 1-1/4" x 1/4" x muscle deep. No evidence of healing.
2. One stitched lacerated wound on the right parietal area. Obliquely placed. Size 1" x 2/10" x muscle deep.
3. One stitched wound over the occipital area right side. Horizontally placed. Size 1-1/4" x 1/4" x 1/10".
4. One abrasion on middle of occipital area 1/2" x 1/4" red in colour.
5. One lacerated wound over the middle of skull. Size 1-1/4" x 2/10" x scalp deep.
6. One incised wound over the right side frontal area having one stitch/size 1/4" x 1/10" x 2/10".
7. One incised wound over the right eyebrow placed horizontally. Size 1/2" x 1/10" x 1/10".
8. One lacerated wound over the left eyebrow size 1" x 1/4" x scalp deep.
9. One stitched wound over the right ear size 1/2" x through and through. Margins regular; clean cut.
10. One stitched wound over the lobule of right ear; size 1/4" x through end through. Margins are cleancut.
11. Bluish Ecchymosis wound right eye lids.

12. Abrasion on the nose $\frac{1}{4}$ " x $\frac{1}{4}$ " brown in colour.
13. Abrasion on the front of neck in an area of 4" x 3", brown in colour.
14. Incised wound over the outer end of left clavicle, horizontally placed. Size $\frac{1}{2}$ " x $\frac{2}{10}$ " x $\frac{1}{2}$ " spindle shape.
15. Abrasion on the right side neck outer back side 3" x 2" brown in colour.
16. Contusion on right shoulder top 8" x 2" bluish in colour with blood clots in soft.
17. Lacerated wound on the right deltoid area $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{2}$ " with brown colour abrasion around the margins.
18. Multiple abrasion on the back of right elbow in an area of 4" x 3" brown in colour.
19. Incised wound on the right thumb posterior medial aspect $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ ".
20. One incised wound over the back of right index finger at the proximal phalanx vertically placed. $\frac{1}{2}$ " x $\frac{2}{10}$ " x muscle deep.
21. One incised wound over the back of right hand in mid part obliquely placed size $\frac{1}{2}$ " x $\frac{2}{10}$ " x $\frac{2}{10}$ ".
22. Abrasion top of right index finger on back side $\frac{1}{4}$ " x $\frac{2}{10}$ " x $\frac{1}{10}$ ".
23. Swelling on right wrist joint with abrasion on the back side.
24. Multiple abrasions over the right side iliac crest extending on right thigh in an area of 6"x4" brown in colour.
25. Cut open mark on right ankle.
26. Abrasions on left medial malleolus. Size 2" x 1" brown in colour.
27. Incised punctured wound on left thigh outer middle part. Vertically placed. Size $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{2}$ " spindle shape covered by dried clotted blood.
28. Abrasion on left side chest outer back side 12" x 6" brown in colour.
29. Incised punctured wound on the outer side of left forearm mid part. Size $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " vertically placed.
30. Three small incised wounds on the left forearm joint lower part. Placed 2" apart in different directions. Size $\frac{1}{4}$ " x $\frac{2}{10}$ " x $\frac{1}{10}$ " each covered by dried blood clots.
31. Two incised wounds on the left palm placed vertically $\frac{1}{4}$ " apart and parallel size $\frac{1}{2}$ " x $\frac{1}{10}$ " x $\frac{2}{10}$ ". There is generalised swelling over the left hand.
32. Small scabbed abrasion on the back lower right side in an area of 6" x 5" brown in colour.

15. In the opinion of Doctor injury nos. 1, 2 and 3 are sufficient to cause death in ordinary course of nature.

16. PW-15 Doctor Rakesh Kumar Jain has conducted postmortem of Bholu and found following ante mortem injuries on his body:-

1. Stitched wound of sixe 1-1/2" long on the right ear (Pinna). Thee were five stitches over it.

2. Right temporalbone was fractured under injury no.1. There was extravasation of blood over the brain memberanes.

17. In the opinion of Doctor the death had occurred due to shock and haemorrhage as a result of the above injuries.

18. PW-1, PW-2, PW-3 are injured witnesses and they have supported the prosecution case and it is well settled that credibility of injured witness stands on higher pedestal than any other witness. The enmity due to an earlier case filed by the informant side against the accused/appellant side is said to be one of the motive for commission of the offence.

19. PW-4 is said to be an eye-witness. PW-5 Kantoo is not an eye-witness of the occurrence, he is a hearsay witness. Other witnesses are of formal nature.

20. On appreciation of injured witnesses PW-1, PW-2, PW-3 and eye-witness though there are some minor contradictions in their statement but it is natural that testimony has been recorded before the trial court after lapse of considerable time after the occurrence but they are reliable in material particulars and their evidence has been corroborated by the medical evidence of PW-6, PW-14 and PW-15. From the testimonies of the above witnesses, the prosecution has been able to prove the incident but since there is also a cross case the question is, under what section the appellants are liable to be convicted. It is admitted that there is a cross case no. 56 of 1979 of this case. In this case large number of persons are involved in assaulting the other side in which nine persons have received injuries out of which two persons died and seven persons sustained

injuries. On the perusal of the injury reports of the injured, all the injuries are simple in nature and details of which have been given above.

21. The deceased Siriya received 39 ante mortem injuries and died one day after the incident, whereas Bholu received two injuries and died 19-20 days after the incident. Specific role of causing injuries is blow by 'ballam' on the neck is attributed to co-accused Balbir

22. Hon'ble Supreme Court in the case of **Virsa Singh Vs. State of Punjab 1958 AIR (SC) 465** has held as under:-

"(9) This is a favourite argument in this kind of case but is fallacious. If there is an intention to inflict an injury that is sufficient to cause death in the ordinary course of nature, then the intention is to kill and in that event, the "thirdly " would be unnecessary because the act would fall under the first part of the section, namely-

" If the act by which the death is caused is done with the intention of causing death."

In our opinion, the two clauses are disjunctive and separate. The first is subjective to the offender:

"If it is done with the intention of causing bodily injury to any person."

It must, of course, first be found that bodily injury was caused and the nature of the injury must be established, that is to say, whether the injury is on the leg or the arm or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. These are purely objective facts and leave no room for inference or deduction: to that extent the enquiry is objective; but when it comes to the question of intention, that is subjective to the offender and it must be proved that he had an intention to cause the bodily injury that is found to be present.

(10) Once that is found, the enquiry shifts to the next clause-

" and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The first part of this is descriptive of the earlier part of the section, namely, the infliction of bodily injury with the intention to inflict it, that is to say, if the circumstances justify an inference that a man's intention was only to inflict a blow on the lower part of the leg, or some lesser blow, and it can be shown that the blow landed in the region of the heart by accident, then, though all injury to the heart is shown to be present, the intention to inflict ail injury in that region, or of that nature, is not proved. In that case, the first part of the clause does not come into play.

But once it is proved that there was an intention to inflict the injury that is found to be present, then the earlier part of the clause we are now examining-

"and the bodily injury intended to be inflicted "

is merely descriptive. All it means is that it is not enough to prove that the injury found to be present is sufficient to cause death in the ordinary course of nature; it must in addition be shown that the injury is of the kind that falls within the earlier clause, namely, that the injury found to be present was the injury that was intended to be inflicted. Whether it was sufficient to cause death in the ordinary course of nature is a matter of inference or deduction from the proved facts about the nature of the injury and has nothing to do with the question of intention.

(11) In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broadbased and simple and based on common sense: the kind of enquiry that " twelve good men and true could readily appreciate and understand.

(12) To put it shortly, the prosecution must prove the following facts before it can bring a case under S. 300 "thirdly " ;

First, it must establish, quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved; These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely

objective and inferential and has nothing to do with the intention of the offender.

(13) Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under S,300 "thirdly". It does not matter that there was no intention to cause death. It does not matter that there was Do intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

23. It is settled that the intention of the accused is gathered by facts and circumstances of the case. In this case 12 persons have caused injured on the informant side, in which 9 persons received injuries out of which two persons died. The injuries of seven persons are simple in nature.

24. Considering the above facts and circumstances of the case and the fact that cross case of present case was also lodged which means that there was a free fight in which both the side received injuries and it cannot be said with certainty that which accused inflicted the blow on which injured, therefore, in view of law laid down by Hon'ble Supreme Court in the case of **Virsa Singh (supra)** the appellants are liable to be convicted under Section 304 Part I read with Section 149 of I.P.C. instead of Section 302/149 I.P.C.

25. In above view of the matter, the appeal deserves to be partly allowed and the conviction of the appellant deserves to be modified from Section 302 read with Section 149 I.P.C. to Section 304 Part-I read with Section 149 of I.P.C.

26. Considering the age of the appellants and facts that the incident took place some more than 45 years ago and the appellants have been sentenced and as per the custody certificate they have undergone sentence of 15 days only, their sentences are modified as under:-

The appellants are sentenced to undergo rigorous imprisonment for three years and fine of Rs. 20,000/- each for the offence under Section 304 Part-I read with Section 149 of the I.P.C. and in default of payment of fine they will further undergo six months imprisonment in lieu thereof. Further they are sentenced to undergo one year rigorous imprisonment under Section 307 read with Section 149 of the I.P.C. and pay fine of Rs. 5,000/- each. The period of incarceration during the pendency of appeal shall be set off under Section 428 Cr.P.C.

All the sentences shall run concurrently. Rest of the sentences with regard to appellant Khila and Janeshwar under Section 148 I.P.C. and that of appellant Rajbir under Section 147 I.P.C. shall remain upheld and shall remain the same as imposed by learned trial court.

Out of the total fine imposed Rs. 30,000/- each shall be paid to the legal heirs of the deceased Siriya and Bholu.

27. With the above modification, the appeal stands partly allowed. The appellants Khila, Janeshwar and Rajbir are directed to surrender within two weeks before the learned trial court to serve the remaining sentence.

28. Let a copy of this order be communicated by the Registrar (Compliance) to the Chief Judicial Magistrate, Muzaffar Nagar. for compliance forthwith.

29. The Chief Judicial Magistrate, Muzaffar Nagar is also directed to send his compliance report within two months to Court from the date of receipt of this order.

Order Date :- 17.07.2025

Virendra