

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. Crl. Appeal D-225-DB of 2011
Date of Decision : January 29, 2015

Jag Ram and others

.....Appellants

VERSUS

State of Haryana

.....Respondent

2. **Crl. Appeal D-248-DB of 2011**

Rajbir

.....Appellant

VERSUS

State of Haryana

.....Respondent

3. **Crl. Appeal S-2400-SB of 2013**

Smt. Guddi

.....Appellant

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE DR. JUSTICE SHEKHER DHAWAN**

Present : Mr. T.S.Sangha, Senior Advocate with
Mr. H.S.Sangha, Advocate for the appellants in
CRA-D-225-DB of 2011 and CRA-S-2400-SB of 2013.

Mr. Bijender Dhankhar, Advocate
for the appellant in CRA-D-248-DB of 2011.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. Deepender Singh, Advocate
for the respondents in CRA-S-2400-SB of 2013.

T.P.S. MANN, J.

Jag Ram, Jagan, Kanhiya Lal, Krishan Kumar and Rajbir-accused, all residents of New Krishna Colony, Palwal were tried for committing the offences punishable under Sections 302, 323 and 452 read with Section 34 IPC on the allegations that on 16.4.2007 at about 8.00 p.m. in the area of New Krishna Colony, Palwal they committed trespass by entering into the house of the complainant after making preparation for causing hurt to the complainant and his parents, voluntarily causing hurt to Devender Singh, Sharwan Kumar and Smt. Maya Devi besides causing the death of Sharwan Kumar. Vide judgment and order dated 5/8.1.2011, learned Additional Sessions Judge, Palwal convicted them under Sections 302/34 IPC and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one month. They were further convicted under Sections 323/34 IPC and sentenced to undergo rigorous imprisonment for six months each. Two of them, namely, Jag Ram and Jagan were also convicted under Sections 452/34 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for fifteen days. All the sentences were ordered to run concurrently. The period of

imprisonment which they had already remained in custody was to be set off against the period of imprisonment awarded to them.

Aggrieved of their conviction and sentence, Jag Ram, Jagan, Kanhiya Lal and Krishan Kumar preferred Crl. Appeal D-225-DB of 2011 whereas Rajbir filed Crl. Appeal D-248-DB of 2011. In order to challenge the acquittal of Devender Singh and Smt. Maya Devi in the cross case, Smt. Guddi preferred Crl. Appeal S-2400-SB of 2013. All the three appeals having arisen from the same incident are being disposed of by a common judgment.

According to the prosecution, on 17.4.2007 complainant-Devender Singh son of Sharwan Kumar, resident of Krishna Colony, Meat Market Sohna Road, Palwal got recorded his statement Ex. P3 before ASI Mange Ram of Police Station City, Palwal to the effect that in their neighbourhood, Jagan and Jag Ram, sons of Manohar Lal used to reside with their families. In the month of January 2007, Kavita, daughter of sister-in-law of Jagan came to the house of Jagan and stayed for about 20-25 days. During that period, the complainant fell in love with Kavita. His family members talked with Guddi wife of Jagan in connection with his marriage with Kavita. Guddi told them that she would talk with the parents of Kavita. About 15 days back Kavita again came to the house of Jagan. Jagan came to know about the love

affair of the complainant with Kavita but he refused to marry Kavita with the complainant. On 16.4.2007 at about 8.00 p.m., Jagan abused them in the street in front of their house. At that time he alongwith his father Sharwan Kumar and mother Maya Devi was present at his house. His father told Jagan not to abuse them. On this, Jagan and Jag Ram armed with lathi and iron rod respectively entered his house and inflicted injuries on his father Sharwan Kumar. Krishan Kumar, Rajbir and Kanhiya Lal also reached the spot. Krishan Kumar and Rajbir were armed with lathis. The complainant and his mother Maya Devi tried to save his father but Kanhiya Lal gripped him from behind whereas Krishan Kumar and Rajbir inflicted injuries on his head with lathis. Krishan Kumar and Rajbir also inflicted injuries on the head of his father with lathis. On hearing the commotion, a number of persons gathered at the spot. The assailants managed to escape from the scene of occurrence while carrying their respective weapons. The complainant's brother Bhanu Partap also reached the spot. They both took their parents to Government Hospital, Palwal for treatment from where they were referred to B.K.Hospital, Faridabad and further referred to Safdarjung Hospital, New Delhi where Sharwan Kumar succumbed to his injuries on 17.4.2007. Accordingly, the complainant requested for taking legal again against the accused.

On the basis of the statement made by complainant-Devender Singh, FIR No. 128 dated 17.4.2007 under Sections 302, 323, 452 read with Section 34 IPC was registered at Police Station City, Palwal. During the investigation of the case, the injured were got medico-legally examined. Inquest was conducted on the dead body of Sharwan Kumar and the dead body, thereafter, sent for post-mortem. Site-plans of the place of occurrence as well as of recovery were prepared. Scaled site-plan of the place of occurrence was got prepared from the Draftsman. Statements of the witnesses under Section 161 Cr.P.C. were recorded. After completion of the investigation, report under Section 173 Cr.P.C. was prepared and presented in the Court. The case was, thereafter, committed to the Court of Sessions where the accused were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined ten witnesses.

PW1 HC Vijay Kumar deposed about interrogation of accused Jag Ram and Jagan by the police as well as about suffering disclosure statements Ex.P-1 by accused Jag Ram and Ex.P-2 by accused Jagan in his presence and in the presence of Constable Jaibir Singh.

PW-2 Devender Singh is the complainant of this case. He stated that on 16.4.2007 he along with his parents was present in his house. At about 8 p.m. Jagan and Jag Ram came in the street. They were armed with iron rod and lathi. They started abusing them. Jagan was proclaiming that how had they dared to think of marrying with Kavita, daughter of his sister-in-law(sali). As per PW-2, his father tried to pacify them by telling that why they were raising this issue time and again though the matter has already been settled once for all. Jagan and Jag Ram then entered into their house. They caught hold of his father and took him to the street. Accused Jag Ram inflicted a saria blow on the head of his father. Accused Jagan inflicted a blow with saria on the head. He and his mother then rushed to rescue his father but in the meanwhile, accused Rajbir, Kanhiya and Krishan also reached there. Rajbir and Krishan were armed with lathis. He further deposed that accused Krishan caught him from behind while accused Krishan and Rajbir dealt one blow each on his head. Rajbir and Krishan then gave one lathi blow each to his father on his head. Rajbir and Krishan accused also gave lathi blows to his mother hitting on her left knee, left shoulder and back. He also deposed that his father fell down on the ground as a result of injuries. Jagan and Jag Ram then gave fist and kick blows to his father while he was lying on the ground. Jagan and

Jag Ram gave blows with lathi pointing towards him but he warded off the blow with his hand resulting into injuries on hand. As per PW-2 his brother Bhanu and residents of the Mohalla then reached there. Accused then tried to run away from the scene. He caused injuries to them after picking up a pipe lying in his house. They shifted their father to Civil Hospital, Palwal where the accused were already present. After the first aid, his father was referred to B.K.Hospital, Faridabad and from there he was referred to Safdarjung Hospital, New Delhi. He got recorded his statement Ex.P-3 before the police at Safdarjung Hospital, New Delhi. He was in love with Kavita, the daughter of sister-in-law (sali) of accused Jagan who got annoyed because of this and that is why he had assaulted them and caused injuries to him and his family members.

PW-2 Devender Singh further deposed that on 23.4.2007 police brought accused Jag Ram and Jagan to their house where accused Jag Ram got recovered one iron rod from beneath the box lying in his house which was seized under memo Ex.P-4. Thereafter, accused Jagan got recovered one lathi lying behind almirah of his house which was seized under memo Ex.P-5. He further stated that his brother was also present at the time of recovery. PW-2 Devender Singh further identified the iron rod as Ex.P-6 and lathi Ex.P-7 by stating that they are the same

which were got recovered by accused Jag Ram and Jagan.

PW-3 Dr. Prem Kumar deposed that on 18.4.2007 he conducted postmortem examination on the dead body of deceased Sharwan Kumar vide report Ex.P-8 and there was history of sustaining injuries by lathis and sarias over his body on 16.4.2007 at about 8 p.m. Firstly the deceased was taken to Govt. Hospital, Palwal, then to B.K.Hospital, Faridabad and later on, shifted to Safdarjung Hospital, New Delhi where he died on 17.4.2007 at about 10.15 a. m. He proved the inquest report Ex.P-9, police request Ex.P-10 and also identified the baniyan, kachha and pajama as Ex.P-11 to Ex.P-13. He noticed the following injuries on his person:-

1. A stitched wound over right fronto parietal region of scalp 7 cm long having 7 stitches. It is placed 2.5 cm to right of midline, 9 cm from the right eye brow. On removal of stitches wound were found lacerated one.
2. A stitched wound 4 cm long having five stitches over the back part of top of head. It is situated 4 cm behind injury No.1. On removal of stitches it was found to be lacerated one.
3. Swelling right temporal region, front of right ear 5 x 3 cm.
4. Bruise mid front on left thigh 12 x 5 cm, 7 cm above upper border of patella.

5. Abrasion multiple in an area of 5 x 2 cm over lower inner of left leg, 3 cm above the medial malleolus.
6. Abrasion 0.5 x 0.2 cm over the front of left leg, 12 cm above the ankle joint.

PW-4 ASI Mahesh Chand stated that on 17.4.2007 on receiving intimation regarding death of Sharwan Kumar, he visited Safdarjung Hospital, New Delhi and conducted inquest proceedings. He proved the said information contained in DD register and the extract thereof is Ex.P-14. He proved the death report of Sharwan Kumar with death summary as Ex.P-15 and Ex.P-16.

PW-5 Anoj Kumar draftsman proved the scaled site plan Ex.P-17 prepared by him under the order of SI Amarjit Singh and on the demarcation of Devender Singh complainant.

PW-6 Constable Rajender Singh deposed that on 7.5.2007 on interrogation of accused Krishan Kumar in his presence, he suffered disclosure statement Ex.P-18 and in pursuance thereof, he got recovered a lathi from his house which was taken into possession vide memo Ex.P-19. He also identified the said lathi as Ex.P-20 when produced in Court.

PW-7 Maya is the widow of deceased Sharwan Kumar. She categorically stated that she and her husband Sharwan Kumar and son Devender were present in the house. She and her son were sitting in the court-yard while her husband

was sitting in the baithak. In the meantime, accused Jag Ram and Jagan who are their neighbourers, started using abusing them in front of their house in the gali. Accused Jag Ram was armed with saria and Jagan was armed with a lathi. They said that why their son Devender was talking about Kavita, the sister-in-law's daughter of accused Jagan. She further stated that when the matter has already been patched up, then why he was repeating the same version at present. Thereafter, accused Jagan and Jag Ram entered in her house. They took her husband outside her house by catching hold of his neck. She next stated that she and Devender went outside her house to save her husband. Accused Jag Ram inflicted a saria blow on the head of her husband. Accused Jagan inflicted a lathi blow on the head of her husband. In the meantime, accused Krishan, Kanhiya and Rajbir came there. Kanhiya was empty handed whereas Krishan and Rajbir were having lathis in their hands. Accused Kanhiya caught hold of her son from back side. Accused Krishan inflicted lathi blow on the head of her husband. Accused Rajbir inflicted lathi blow on the head of her husband. She also stated that her husband fell down on the road. Accused Krishan also inflicted lathi blow on her son Devender which hit on his head. Accused Rajbir also inflicted lathi blow on the head of her son Devender. When she tried to save her son and husband, accused Krishan and Rajbir inflicted

lathi blows on her shoulder and back. Accused Rajbir had also inflicted a lathi blow on her left knee and back. Accused Jag Ram and Jagan tried to inflict injury on the head of her son Devender from which he saved himself by his hand and sustained injuries on his hand. She further deposed that accused persons had tried to escape from the spot but in the meanwhile, her son Devender inflicted some injuries to accused Jagan and Jag Ram. They raised alarm, then her son Bhanu and her nephew Narain and some other people gathered there. Accused persons escaped from the spot along with their respective weapons. As per PW-7 they were taken to General Hospital, Palwal where accused were already present. There was a crowd of patients, so they were medically examined after some time whereas her husband was referred to B.K.Hospital, Faridabad due to his serious condition and from there, the attending doctors had also referred her husband to Safdarjung Hospital, Delhi due to his serious condition. As per PW-7, next day her husband succumbed to his injuries in Safdarjung Hospital, New Delhi. She stated that they could not inform the police as they were busy to save her husband. She also identified the accused persons in court. She also stated that her son was in love with Kavita and her husband was favouring their son and that is why the present occurrence took place and accused inflicted injuries to them.

PW-8 Dr. Chander Bhan deposed that on 17.4.2007 he had medico-legally examined Sharwan Kumar son of Shri Sohan Lal, 48 years male, resident of Krishna Colony vide MLR Ex.P-21 and found the following injuries on his person:-

1. Lacerated wound of size 6 cm x 0.8 cm bone deep right fronto temporal region of skull with fresh clotted blood. X-ray skull was advised.
2. Reddish swelling in the right temporal region of skull in front and above the right pinna. X-ray skull was advised.
3. Lacerated wound on the top of skull slightly on the left side size 4 cm x 0.6 cm with fresh clotted blood and oozing was there. X-ray skull was advised.
4. Black right eye is swelling right eye lids. Eye was not visible due to surrounding swelling. X-ray skull was advised.
5. Reddish/bruise on the front of the left thigh in its lower 1/3rd part. Size 18 cm x 3 cm.
6. Linear abrasions 2 cm with fresh clotted blood on the fronto medial side left leg in its lower part.

As per PW-8, injuries no.1 to 4 were kept under observation and rest two injuries were declared simple in nature. The weapon was blunt and the duration was within six hours.

According to the testimony of PW-8, on the same day he had also medico-legally examined Devender Singh son of Sharwan Kumar, 19 years old male and found the following

injuries on his person vide MLR Ex.P-22:-

1. Lacerated wound of size 2 cm x 0.5 cm bone deep with fresh clotted blood oblique in direction on the left side fronto parietal region of skull.
2. Lacerated wound of size 2.4 cm x 0.6 cm deep upto skin with fresh clotted blood on the left side top of his skull. Oozing was there.
3. Linear abrasion 4 to 5 cm within 2.5 cm wide in front of medial side of the left arm in its lower half with dry clotted blood.
4. An abrasion of size 1 x 1 cm with fresh clotted blood on the back of right forearm in lower part above the wrist joint.

All the injuries were simple in nature and caused by blunt weapon within a probable duration of six hours.

On the said date PW-8 Dr. Chander Bhan had also medico-legally examined Maya Devi wife of Sharwan Kumar, 45 years old and found the following injuries on her person:-

1. Reddish bruise with swelling with restricted movements on the medial side of the left shoulder joint size 4 cm x 2 cm. X-ray left shoulder joint was advised.
2. Reddish swelling with bruise on back of left side chest on lower part and the left flank in mid axillary line with painful breathing. X-ray chest was advised.
3. Pea size abrasion with fresh clotted blood on the left knee joint.

As per PW-8, injuries No.1 and 2 were kept under observation for x-ray while injury No.3 was simple in nature. All the injuries were caused by blunt weapon within a probable duration of six hours.

PW-9 ASI Mange Ram is the investigating officer of this case. He has deposed about various steps taken by him during the course of investigation. He stated that on 17.4.2007 MHC had handed over a docket rukka Ex.P-24 along with three MLRs Ex.P-21 to Ex.P-23 upon which he visited B.K.Hospital, Faridabad where he came to know that patient Sharwan Kumar was referred to Safdarjung Hospital, New Delhi. Then he went to Safdarjung Hospital, New Delhi where he moved police request Ex.P-25 for recording statement of above named Sharwan Kumar upon which doctor opined that the patient expired on 17.4.2007 vide his report Ex.P-25/1. Devender Singh, Maya and others also met him in Delhi hospital. He next stated that Devender Singh complainant got recorded his statement Ex.P-3 upon which he made endorsement Ex.P-3/1 and sent the same to the police station for registration of a case, on the basis of which formal FIR Ex. P-1 was registered. He also recorded the statement of Maya Devi under Section 161 Cr.P.C. later on. He also stated that he along with above named persons visited the spot, prepared rough site plan Ex.P-26 of the place of occurrence and recorded

the statement of Bhanu Partap. After that he started searching the accused persons. He further deposed that on 22.4.2007 he arrested accused Jag Ram and Jagan present in the Court. On next day on interrogation, both of them in the presence of Jaivir and Vijay Kumar Constable, suffered disclosure statements Ex.P-1 and Ex.P-2 respectively. Accused Jagan got recovered, lathi from the back side of almirah. He then produced both the accused before the Illaqa Magistrate, obtained police remand and accused Jag Ram in pursuance of his disclosure statement got recovered iron rod from underneath the iron box of his house. It was then put into a sealed parcel duly sealed with the seal of 'MR' and was taken into possession vide recovery memo Ex.P-4. He identified the iron rod in the court as Ex.P-6. PW-9 ASI Mange Ram further stated that similarly accused Jagan also got recovered a lathi from behind the steel almirah of his house which was put into a sealed parcel duly sealed with the seal of 'MR' and the same was taken into possession vide memo Ex.P-5. He also identified the lathi in the court as Ex.P-7. He proved the rough site plan Ex.P-27, recorded statements of witnesses under section 161 Cr.P.C., deposited the case property with the MHC and put the accused in the police lock up.

PW-10 SI Amarjit Singh stated that on 7.5.2007 he arrested accused Kanhiya Lal & Krishan Kumar. During

interrogation, accused Krishan Kumar suffered disclosure statement Ex.P-18 on 7.5.2007 and in pursuance of his said disclosure statement, he got recovered a lathi from his house which was taken into possession vide recovery memo Ex.P-19. He proved the site plan Ex.P-28 depicting the place of recovery.

As per testimony of PW-10, on 15.5.2007 Constable Jaibir Singh handed over to him a parcel containing the clothes of the deceased Sharwan Kumar which were taken into possession vide recovery memo Ex.P-29. He also got prepared the scaled site-plan from the draftsman and recorded his statement in this regard.

When examined under Section 313 Cr.P.C., the accused denied the prosecution allegations and pleaded false implication. In defence they examined five witnesses.

DW1 Bharat Ram stated that the incident took place on 16.4.2007 at about 8.30 p.m. at which time accused Rajbir was not present. He further stated that accused Rajbir was working as iron box maker with Raj Industries whose owner was Sonu. As per DW1, Dy Superintendent of Police conducted enquiry of the case in which he found him as innocent and before him, he had also furnished his affidavit Ex.D-1. He further deposed that the contents of the said affidavit were read over to him and after admitting them as correct, he put his signatures.

DW-2 Smt. Gianwati also deposed that accused Rajbir

was not present at the time of occurrence and he had not participated in the occurrence. She further stated that Rajbir was working as a shop boy at the shop of one Sonu in Palwal. As per DW-2, she submitted affidavit Ex.D-2 before the police and she put her thumb impression after understanding & admitting the contents thereof as correct.

DW-3 Phool Chand testified that he knew Rajbir who was working with them in Raj Industries, situated at old G.T. Road, Palwal. He next stated that on 24.5.2007 he furnished the affidavit Ex. DW-3/A before DSP Palwal qua the quarrel took place between the accused and the complainant party. He deposed that on 16.4.2007 Rajbir was working with him upto 10.30 p.m. He stated that he had furnished the above affidavit after going through the contents of the affidavit.

DW-4 Pooran Kumar stated that he is owner of Raj Industries, situated at G.T. Road, Palwal where accused Rabir was working from 9.30 a.m. to 8.00/8.30 p.m. normally. He next stated that along with Rajbir, Phool Chand and Deep Chand were also working in his industry. He categorically stated that the above named persons were working upto 10.00 p.m. for the last fifteen days due to crop season. He further stated that affidavit Ex. DW4/4 was prepared under his own instructions.

DW5 DCP Parveen Kumar deposed that on 5.5.2007 while he was posted as DSP Palwal, complaint no.740-P was

received in his office from the office of Superintendent of Police duly signed by wife of Rajbir, he conducted enquiry and found accused Rajbir as innocent and he was put in column no.2 of the challan.

After hearing learned counsel for the parties and on going through the evidence, learned trial Court convicted and sentenced the aforementioned five appellants, as mentioned above.

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

In support of the ocular account of the occurrence, the prosecution had examined PW2 Devender Singh and his mother PW7 Smt. Maya Devi whose presence at the place of occurrence was natural and probable. Both of them deposed that on 16.4.2007 at about 8.00 p.m., they were present at their house alongwith Sharwan Kumar deceased. Jagan and Jag Ram-accused came in the street while being duly armed. They started abusing the complainant party when Sharwan Kumar tried to pacify them as to why they were raising the issue, though the matter had already been settled. Jagan and Jag Ram-accused then entered the house of the complainant. They caught hold of Sharwan Kumar and brought him out in the street. Jag Ram and Jagan caused injuries to him. When Devender Singh and his

mother Smt. Maya Devi tried to rescue his father Sharwan Kumar, then Rajbir, Kanhiya Lal and Krishan Kumar while armed with laths also reached the spot. Kanhiya Lal caught hold of Devender Singh from behind while Krishan Kumar and Rajbir gave one blow each on his head. Rajbir and Krishan Kumar also inflicted injuries on the head of Sharwan Kumar with lathis. Rajbir and Krishan Kumar also gave lathi blows to PW7 Maya Devi on her left knee, left shoulder and back. Due to the injuries received by Sharwan Kumar, he fell down on the ground. Jagan and Jag Ram then gave fists and kicks to Sharwan Kumar while he was lying on the ground. After the incident, Sharwan Kumar-deceased, PW7 Maya Devi and PW2 Devender Singh were taken to the hospital. Later on, Sharwan Kumar had succumbed to the injuries received by him. Both PW2 Devender Singh and PW7 Smt. Maya Devi were cross-examined by the defence at length but they failed to bring any material on the record from which it could be inferred that they had not come up with the correct version of the occurrence. Their testimonies were also corroborated by the medical evidence. PW3 Dr. Prem Kumar, who had conducted post-mortem on the dead body of deceased-Sharwan Kumar on 18.4.2007 noticed as many as six injuries. Death in his opinion was due to head injuries caused by blunt force impact. The weapon of offence used to inflict injuries could

possibly be lathi and iron rod. Injury No.1 and corresponding injury to scalp, vault and brain was sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature. In his cross-examination, PW3 Dr. Prem Kumar deposed that there was neither history of alcohol nor there was smell of alcohol from the stomach of the deceased. He further opined that injury No.1 which resulted in the death of Sharwan Kumar could not be caused by falling on the steps of stairs as the injury was placed over the back of the head. Same was his reply with respect to injury No.2.

PW8 Dr. Chander Bhan deposed that on 17.4.2007 at 12.15 a.m., he had medico-legally examined Sharwan Kumar and found six injuries on his body. He further deposed that on the same day, he had medico-legally examined Devender Singh-injured and found four injuries on his body. Similarly, he had medico-legally examined Maya Devi and found three injuries. Thus, no case is made out for rejecting the testimonies of PW2 Devender Singh and PW7 Smt. Maya Devi.

It is true that PW8 Dr. Chander Bhan had also medico-legally examined Jag Ram and Jagan-accused and found four injuries on each of them. However, when cross-examined by the learned Public Prosecutor, the doctor stated that the possibility of injury No.1 on the person of Jag Ram by iron pipe could not be ruled out. Further, injury No.2 could not be caused

by knife whereas injuries No. 3 and 4 could be caused by friendly hand. Similarly, he stated that injury No.1 on the person of Jagan could be caused by iron pipe whereas injuries No.3 and 4 could be caused by a friendly hand. At the same time, he denied the suggestion that injury No.2 could be caused by a friendly hand. As per him, injury No.2 could be caused by iron pipe or any blunt weapon.

The defence has come up with the plea that the prosecution did not explain the injuries on the persons of Jag Ram and Jagan. However, a perusal of the statement made by Devender Singh-complainant on the basis of which FIR was registered, shows that it was specifically mentioned that they had caused injuries to the accused in their defence. Similarly, while deposing before the trial Court as PW2, Devender Singh stated that he had caused injures to the accused after picking a pipe lying in his house. During his cross-examination, he stated that Jag Ram and Jagan had sustained injuries which he had inflicted with a pipe while they were running away from the site of occurrence. Merely because he could not tell the part of the body that was hit by him is no ground to hold that no explanation had been given by the prosecution to explain the injuries on the accused.

The occurrence in question had taken place on 16.4.2007 at about 8.00 p.m. in New Krishna Colony, Palwal.

Immediately after the occurrence, Devender Singh-complainant alongwith his brother Bhanu Partap had removed Sharwan Kumar to Government Hospital, Palwal where Sharwan Kumar was medico-legally examined on 17.4.2007 at about midnight. As the condition of Sharwan Kumar was serious, he was referred to B.K.Hospital, Faridabad for further needful. He was, thereafter, referred to Safdarjung Hospital, New Delhi where he died on 17.4.2007 at 10.15 a.m. The post-mortem on the dead body of deceased Sharwan Kumar was conducted on 17.4.2007 at 2.30 p.m. ASI Mange Ram had received ruqa alongwith MLR of Sharwan Kumar, who had been referred to B.K.Hospital, Faridabad. Accordingly, he went to B.K.Hospital for recording statement but was informed by the doctor that Sharwan Kumar had already been referred to Safdarjung Hospital, New Delhi. He then reached Safdarjung Hospital, New Delhi and submitted application to the doctor for recording statement of the injured. In reply, the doctor stated that Sharwan Kumar had expired. Devender Singh was, however, found present, who made statement Ex.P3 on 17.4.2007 at 6.00 p.m. and on its basis, FIR Ex.P1 came to be recorded at Police Station City, Palwal by ASI Azad Singh on 17.4.2007 at 8.15 p.m. Apparently, instead of rushing to the police, Devender Singh-complainant had been looking after his father, who had serious injuries on his person

and after being examined at Government Hospital, Palwal, he was referred to B.K.Hospital, Faridabad from where he was further referred to Safdarjung Hospital, New Delhi. After the death of Sharwan Kumar in Safdarjung Hospital, New Delhi, Devender Singh-complainant made statement before ASI Mange Ram and on its basis the FIR was registered. There was, thus, no delay in the lodging of the FIR. Whatever delay had occurred has been duly explained. As such, it can safely be held that the FIR had been lodged by the complainant with due promptitude.

The occurrence in question had taken place in two phases, one was inside the house of Sharwan Kumar-deceased while the other outside the house but in the street in front of the house of the deceased. In the first phase, only Jag Ram and Jagan accused had entered the house of the deceased. The other three accused, namely, Kanhiya Lal, Krishan Kumar and Rajbir had not entered the house of the deceased. Rather, they remained present in the street outside the house of the deceased. If they had any intention of committing the murder of Sharwan Kumar, they could have very well entered his house especially when they were armed with lathis. As such, their intention was limited to causing of hurt/grievous hurt to the deceased making them liable for committing the offence under Sections 325/34 IPC instead of Sections 302/34 IPC. At the same time, their

conviction under Sections 323/34 IPC is liable to be maintained. The conviction and sentence of Jag Ram and Jagan-appellants under Sections 302/34, 323/34 and 452/34 IPC also deserves to be upheld.

Coming to the appeal filed by Smt. Guddi, wife of Jagan for challenging the acquittal of Devender Singh and his mother Smt. Maya Devi in the cross case which had arisen on the basis of complaint instituted by Smt. Guddi, no case is made out for any interference. It may be noticed that though the occurrence had taken place on 16.4.2007 at about 8.00 p.m. yet the complaint came to be filed on 31.7.2007 i.e. after a delay of more than 3½ months. Further, the accused therein had caused injuries to Jag Ram and Jagan in their self defence. Under these circumstances, no case is made out for any interference in the judgment dated 5.1.2011 passed by the learned trial Court whereby Devender Singh and Smt. Maya Devi were acquitted of the charges under Sections 452, 323, 324, 506 read with Section 34 IPC.

Resultantly, the conviction of appellants-Kanhiya Lal, Krishan Kumar and Rajbir under Sections 302/34 IPC is set-aside. Instead, they are convicted under Sections 325/34 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo simple imprisonment for one month. Their

conviction and sentence under Sections 323/34 IPC is, however, maintained. The conviction and sentence of Jag Ram and Jagan-appellants under Sections 302/34, 323/34 and 452/34 IPC are also maintained. All the substantive sentences of imprisonment shall run concurrently.

The appeals i.e. Crl. Appeal D-225-DB of 2011 and Crl. Appeal D-248-DB of 2011 are partly allowed to the extent indicated above whereas Crl. Appeal S-2400-SB of 2013 is dismissed.

(T.P.S. MANN)
JUDGE

January 29, 2015
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(SHEKHER DHAWAN)
JUDGE