

\$~R-7 & 8 (Part-B)

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

Reserved on: 19th November, 2015

% **Date of Decision: 04th December, 2015**

+ **CRL.A. 50/2000**

NAIK SATYA NARAIN Appellant

Through Mr. Jai Gupta, Mr. Rakesh
Kumar and Mr. Amit Verma, Advocates.

versus

STATE Respondent

Through Ms. Aashaa Tiwari, APP with SI
Karamvir, PS-Narela.

CRL.REV.P 310/1999

OM PARKASH Petitioner

Through Mr. Aakash Sharma, Advocate.

versus

SATYA NARAIN AND ANR Respondent

Through Mr. Jai Gupta, Mr. Rakesh
Kumar and Mr. Amit Verma, Advocates.

Ms. Aashaa Tiwari, APP with SI Karamvir,
PS-Narela.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. The appellant Naik Satya Narain was held guilty and convicted
by the court of Additional Sessions Judge by judgment dated

15.05.1999 on the charge for an offence punishable under Section 304 Part-II of Indian Penal Code, 1860 (IPC) for causing death of Balbir Singh son of Ramji Lal (“the victim”) on 01.07.1992 as a result of injuries allegedly suffered in an incident that had occurred on 28.06.1992. Naik Satya Narain challenges the said judgment through criminal appeal number 50/2000.

2. By order dated 17.05.1999, the convicted appellant was sentenced to fine of ₹5000/- in default Rigorous imprisonment for six months. Feeling dissatisfied with the said order, criminal revision petition no. 310/1999 has been preferred by Om Prakash son of Mahabir Singh (PW-1), nephew of the victim, praying that the conviction to be converted into one for offence under Section 304 Part-I IPC and punishment commensurate therewith to be awarded.

3. Since the appeal and the revision petition arise out of the same judgment and order, they have been heard together and are being decided through this common judgment.

4. On 28.06.1992, Balbir Singh son of Ramji Lal aged about 33 years resident of house no. 1167, Ishwar Colony, Bawana, Delhi suffered injuries which included fissured fracture of the left parietal bone radiating to the left temporal wound and of the middle cranial fossa alongwith the contusion of right temporal lobe of brain. He was first taken to a private clinic of Dr. Rajiv Aggarwal (PW-13) and administered first aid (vide OPD slip Ex.PW-13/A) and then to Hindu Rao Hospital by his brother Mahabir Singh (PW-12). At the time of arrival in Hindu Rao Hospital at 1:30 PM, he was found by the examining medical officer, per medico legal report (Ex.PW-15/A), to

be conscious and oriented though with history of unconsciousness and vomiting after assault. The MLC (Ex.PW-15/A) took note of the following injuries revealed by the external examination:

- “1. CLW left temporal region of scalp 1” long, stitched.*
- 2. Swelling left side of forehead.*
- 3. CLW ½ long right ear lobule*
- 4. Contusion 2” long over left lower abdomen*
- 5. Multiple abrasion left arm and right lower leg.”*

5. It must be added here that history of the injuries as given to the examining medical officer at the time of the MLC was noted as “assaulted by unknown persons”. Since the victim was conscious and oriented and because his brother Mahabir Singh (PW-12) did not say otherwise, it has to be assumed that the history was given to the medical officer by the victim himself.

6. It is pertinent to further note here that MLC (Ex.PW-15/A) bears two endorsements one dated 28.06.1992 and the other dated 01.07.1992, both purportedly recorded by the medical officer(s) attending on the victim in the hospital stating that he was “unfit for statement”. The exact time of the first certification (28.06.1992) is not spelt out whereas there is reference to 8:30 PM in relation to the second one (01.07.1992). There is, however, an unexplained gap/space between the noting about the time and the certification as to fitness. For the record, it must be added that no witness was adduced to formally prove any of the said two endorsements.

7. The clinical notes, in the form of death summary (Ex.PW-15/B), in the hand of Dr. Ajit Deshmukh, duly proved (in his absence and non-availability since he had left the service of the hospital) by Mr. K.B. Singh (PW-15), the medical record clerk, are of crucial import and need to be quoted verbatim as under:-

“Pt. was admitted with h/o assault by unknown person with h/o unconsciousness & vomiting. There was no vomiting & no bleeding ENT. Pt. was conscious when seen in casualty co-operative & well oriented. Vital signs were stable. There were multiple small injuries.

Pt. was alright on 29.06.92 with c/o headache, was conscious and well oriented. Pt. was responding to painful stimuli but not responding to oral commands on 30.06.92.

On 01.07.92 Pt was referred to Ophthalmic surgeon for opinion & further exam & found to have papilledema.

Pt. was put on Mannitol 100 cc sh, Decadron 8mg sh and IV fluids.

Pt. became irritable around 4PM. Other findings remaining the same.

Pt. became drowsy again around 8 PM. He was given milk P.O. & was later found unconscious.

Pt. started gasping around 11:25PM and had cardiovascular arrest later. Pt. was resuscitated but could not be revived and declared dead on 01.07.1992 at 11:55 PM.”

8. The first intimation about the occurrence which was the subject matter of the case at hand reached police post Bawana of police station Narela (herein referred to as the “police station”) vide DD No. 9, reference to which has been made in the *rukka* (Ex.PW-16/B) on the

basis of which FIR (Ex.PW-6/A) was recorded on 01.07.1992. The contents of the said intimation (vide DD No. 9 of 28.06.1992) have not been strictly proved as no evidence was led. We may add that a copy of the said DD entry is available (at page 285) on the trial court record and reveals that the intimation had been received in the police post through Police Control Room (PCR) at 12:10 PM from some unknown person indicating it to be a case of quarrel (*jhagda*).

9. The matter arising out of the first intimation was entrusted to Head Constable Kali Ram (PW-16) who reached the place accompanied by Constable Surrender. For the present, we note from the *rukka* (Ex.PW-16/B) sent by the police official at 5:40 PM on 01.07.1992 that on arrival at H.No.1167, Ishwar Colony, Bawana, he learnt that the victim (Balbir) and the appellant (Satya Narain) had gone to Hindu Rao Hospital and Base hospital, Delhi Cantt., respectively. Head Constable Kali Ram (PW16) first proceeded to Base Hospital, Delhi Cantt. where he found the appellant admitted against MLC No. 202 (Ex.PW-18/DA), and, per the opinion of the medical officer, unfit for giving a statement. He then proceeded to Hindu Rao Hospital where he found the victim admitted against MLC No.4507 (Ex.PW15/A) and, per the opinion of the medical officer, unfit for giving statement.

10. Pertinent to note here that in the endorsement (Ex.PW-16/B), forming the basis of the FIR, Head Constable Kali Ram (PW-16) at the time of his enquiry (into DD No. 9) was unable to come across any eye-witness to the occurrence. He reported in the FIR that, on 01.07.1992, having learnt about the serious condition of the victim, he

had gone again to H.No.1167, Ishwar Colony, Bawana, accompanied by Constable Vishnu Dayal (PW-11) where he met one Chander son of Udhmi resident of H.No.1167, Ishwar Colony, Bawana who had given his statement (Ex.PW-16/A) narrating the sequence of events of 28.06.1992 leading to the injuries. The FIR (Ex.PW-6/A) purports to have been registered at 6:20 PM on 01.07.1992 for an offence under Section 308 IPC. As noted above, the death summary (Ex.PW-15/B) shows that the condition of the victim had started deteriorating around 4:00 PM on 01.07.1992. He turned drowsy around 8:00 PM, fell into unconsciousness and passed away at 11:55 PM on 01.07.1992.

11. The prosecution referred to DD No. 41 (Ex. PW-18/A) statedly recorded at 6:45 AM on 02.07.1992 in the police post Bawana by Constable Ghanshyam (PW-15), *Rojnamchar Munshi* (PW-18). As per the said record, the information about the death of the victim in Hindu Rao Hospital was conveyed by Mahabir Singh, brother of the victim. Interestingly, another copy (mark Ex.PW-19/A) of the said DD entry (No. 41) was brought on record during the statement of Inspector Manohar Singh (PW-19) who had taken over the investigation on 02.07.1992, this copy (Ex. PW-18/A) proved by the *Roznamcha Munshi* on the basis of daily diary register is not identical to the other one. Be that as it may, upon information regard the death coming to the notice of the police, the case was converted into one for investigation into offence under Section 304 IPC, as revealed by the further endorsement to such effect on the FIR (Ex.PW-6/A).

12. The formal proceedings conducted in the wake of the above development (death of the victim) included preparation of the inquest

papers, namely, death report (Ex. PW-19/C), and brief facts (Ex.PW-19/A) which were submitted with the application for autopsy (Ex.PW-19/F) to the medical superintendent, Civil Hospital, Delhi.

13. The post-mortem examination on the dead body of the victim was conducted in the mortuary of the Civil Hospital by Dr.L.T.Ramani (PW14) on 02.07.1992. The autopsy doctor has proved his report Ex. PW-14/A) which indicates that he had found the following injuries on the dead body :-

- “1. Bruise 2” x 1½ ” on the right side of the forehead.*
- 2. Partly healed up irregular abrasion on the right cheek wound area 1½” x 1” area with soft scab formation.*
- 3. Stitched wound 2½ ” long on the left frontal area.*
- 4. HAEMATOMA 3”x 2” on the left side of forehead.*
- 5. Stitched wound 1½” long placed antero-posteriorly on the left parital region of skull.*
- 6. HAEMATOMA 3”x2” area on the left temporal region.*
- 7. Diffused bruising 3½” x 2” area on the upper outer part of left arm.*
- 8. Abrasion 1” x ½” on the left elbow with soft brown scab formation.”*

14. The autopsy doctor further testified as under :-

On removing the stitches of the stitched wounds the margins of the wounds showed early union and injuries showed gap on the margins being pulled apart.

On internal examination scalp tissues showed massive blood clot all over. There was fissured fracture of the left parietal bone, radiating to the left temporal

wound. There was extra-dural hemorrhage on the left side beneath the fracture and generalized sub-dural haemorrhage. There was contusion of right temporal region of brain. Base of the sculp showed fracture of middle cranial fossa. Neck tissues were normal. Lips were intact. Lungs and heart were normal. Stomach contained two ounces of food and other abdominal organs were normal.

15. In the opinion of the autopsy doctor (PW-14), the injury to the skull was sufficient to cause death in the ordinary course of nature and the death had occurred due to coma resulting from the head injury.

16. Chander son of Udhmi, the first informant, on whose statement (Ex.PW-16/A), recorded on 01.07.1992, the FIR had been registered, described himself as resident of H.No.1167, Ishwar Colony, Bawana, Delhi. He was 62 years old person who had retired from service in the Canal department. The FIR (Ex.PW6/A) mentions that the quarrel had taken place because a small child (of the victim) had defecated in the drain opposite the house, the faeces having floated (in the wash) towards the house of the appellant, who had objected to the same. The first informant stated that his attention had been drawn at about 11:00 AM on 28.06.1992 by the noise created by the appellant and the victim both abusing each other and so he had come out of the house and questioned them as to why they were quarrelling. Statedly, both the appellant and the victim would not pay heed and had started grappling with each other and picked up bricks in their respective hands. As per the version of Chander (the first informant), the appellant had hit on the head of the victim with a brick and the victim, in his defence, had also hit the appellant with a brick. He stated that as a result of this assault, the victim had fallen down on the drain. At that stage, victim's

nephew Om Prakash (PW1) son of Mahabir Singh (PW-12) had come on the scene followed by victim's mother. They had picked up him (the victim) up as he had suffered bleeding injury in his head. They took him to the clinic of Dr.Rajiv Aggarwal (PW-13) from where he was referred to the Hindu Rao Hospital.

17. Chander son of Udhmi, the first informant, was not examined at the trial. It is stated that he had died before his evidence could be taken on board. The prosecution, however, examined a number of other public witnesses, based on whose testimony it expected to piece together the sequence of events leading to the injuries suffered by the victim. These included Om Prakash (PW-1), the neighbour of the deceased; Natho Devi (PW-2), wife of the deceased; Chanda (PW-3), wife of the first informant Chander; Aasha (PW-4), minor daughter of the deceased; Kalawati (PW-5), mother of the deceased; two neighbours viz. Satya Narayan @ Satte (PW-8) and Brahma (PW-9); and, Mahabir Singh (PW-12), brother of the deceased.

18. The evidence of Natho Devi (PW-2), Chanda (PW-3), Satya Narayan @ Satte (PW-8) and Brahma (PW-9) is of no value to the prosecution since these witnesses conceded that they were not present when the incident took place and, therefore, they were not in a position to vouchsafe the prosecution charge as to the role attributed to the appellant.

19. Natho Devi (PW-2) admitted that she had gone away to nearby jungle to fetch fire wood and had learnt about the incident upon return. Chanda (PW-3) claimed to be a witness to a quarrel between the appellant and Om Prakash (PW-1) which, according to the latter (PW-

1), had occurred after the victim had been assaulted and injured. Therefore, her word is of no assistance in proving the charge respecting the injuries of the victim. We may, however, note that PW-3 confirms that the appellant had also suffered bleeding injuries. The testimony of Satya Narayan @ Satee (PW-8) is similar to that of Chanda (PW-3). It is clear that he had not seen the incident involving the deceased as he would also restrict his account to the incident concerning the quarrel between the appellant and Om Prakash (PW-1). Brahma (PW-9) the village chowkidar did speak about a quarrel involving the appellant. But, he refused to identify the victim as the other person. The prosecution had claimed that he was a witness of the quarrel between the appellant and the victim, as shown by his statement (Ex.PW9/A) under Section 161 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”). In spite of being cross-examined by the public prosecutor, and being confronted with his statement under Section 161 Cr.P.C., the witness stuck to his ground and showed ignorance as to the identification of the other person involved. We, however, must note that this witness clearly stated that both parties to the quarrel were “hitting (at) each other” and had “fallen down”.

20. Mahabir Singh (PW-12) fairly conceded that he was on his duty in Azadpur area and had learnt about the injuries suffered by his brother Balbir Singh (the victim) when the latter was brought to him by certain relatives. He had only accompanied the victim to Hindu Rao Hospital.

21. Om Prakash (PW-1) admittedly was also not present when the victim suffered injuries. The narration in his deposition begins with

his arrival at the scene around 11:00 AM on 28.06.1992 when he had come home for lunch. He had seen that his uncle (the victim) was lying in the *nala* (drain) at a place near his house, bleeding from his head. Though he stated that the appellant had hit the victim with the brick, his assertion to the effect is apparently hearsay since he has nowhere claimed to be present at that time of the core incident. He deposed about the appellant having come up to him (PW1), engaging him in a fight, dragging him up to his house by the collar and extending threats with a brick in his hand and he being rescued from the clutches of the appellant by Chanda (PW-3) and Satya Narayan @ Satte (PW-8).

22. No credence can be given to the evidence of Om Prakash (PW1) for several reasons. The assault on the person of Om Prakash (PW-1) was not the subject-matter of the charge on which the appellant was called upon to stand trial. He (PW1) referred to Chanda (PW-3) and Satya Narayan @ Satte (PW-8) as witnesses to the sequence wherein Balbir (the victim) was supposedly lying injured in the drain with bleeding from his head. Both PW-3 and PW-8, however, were categorical in stating that they had not seen Balbir Singh (the victim) present at the scene. Kalawati (PW-5), the mother of the victim, also testified about she having come on the scene during the scuffle between the appellant and the victim followed by Om Prakash (PW-1) being accosted by the appellants and subjected to he being dragged and assaulted. Om Prakash (PW-1) having not referred to the presence of his grandmother at any of these crucial stages, thus, ruled out the possibility of the occurrence having been witnessed by her (PW-5). If Om Prakash (PW-1) indeed had come and helped his uncle (the victim)

in being moved from the drain (where he was lying injured) first to the clinic of private doctor (PW-13) and then to the place of duty of his father (PW-12) on way to Hindu Rao Hospital, and if the incident had actually happened in the manner he narrated, he would have met Head Constable Kali Ram (PW-16) on 28.06.1992 itself for the case to be immediately registered on the basis of his eye-witness account. As noticed earlier, Head Constable Kali Ram (PW-16) was categorical in his *rukka* (Ex.PW-16/B), and also in his court deposition, that he had not met any eye-witness on 28.06.1992 when he had visited the place of occurrence after visits to the two hospitals where the appellant and the victim had been taken. What renders the narration of quarrel by PW-1 between the appellant and Om Prakash (PW1) doubtful is the fact that the former having also suffered multiple injuries had been rushed by his father to far away Base Hospital in Delhi Cantt. immediately after the incident.

23. The prosecution depended heavily on the version of Aasha (PW-4) and Kalawati (PW-5) to prove the allegations against the appellant. Out of these two witnesses, PW-4 is stated to be the witness who saw the incident from the point of its genesis. Though Kalawati (PW-5) and Aasha (PW-4), mother and daughter respectively of the victim, testified as eye-witnesses, their presence is rendered doubtful, *inter alia*, by the version of Om Prakash (PW-1).

24. The above impression is reinforced by the fact that the two witnesses (PW4 and PW5) gave what is apparently a coloured account. Both of them falsely denied the fact that the appellant had also suffered injuries in the process. Their statements suffer from exaggerations, in

that both of them stated that the appellant had given tooth-bites to the victim on his cheek and shoulder. Neither the MLC, nor the post-mortem report, noticed above mentioned any tooth-bite on any part of the body of the victim. All that can be safely gathered from the testimony of PW-4 is the fact that quarrel had taken place because appellant had objected to the younger daughter of the victim defecating in the drain in front of the house, the same version as was mentioned in the FIR founded on the statement (Ex.PW-16/A) of Chander son of Udhmi, the first informant and resident of the same address.

25. In the given circumstances, it cannot be said with conviction that any of the public witnesses examined by the prosecution were present at the stage when the appellant and the deceased had grappled with each other. The first informant Chander (son of Udhmi) later died and his testimony is not available. But his version, as available in the statement (Ex.PW-16/A) being the first such documented account on the subject, may be looked into for the limited purpose of deciding what has been the defence of the appellant and to test, in turn, the credibility of the prosecution charge. As mentioned earlier, in the said statement forming the basis of the FIR, Chander (son of Udhmi) had stated that both the appellant and the victim were engaged in abusive exchange and, thereafter, had started grappling with each other in which course both of them had picked up bricks which they had used for hitting and causing injuries to each other.

26. When the prosecution had rested its case, the incriminating evidence brought on record was put by the trial court to the appellant to seek his explanation under Section 313 Cr.P.C. At that stage, the

appellant disputed the prosecution evidence, referred to his own injuries and stated his defence in the following words :-

“It is a false case. In fact, on hearing altercation I came out on the alleged date of incident. I was on leave from my office on that day, my wife was objecting and protesting and child of Balbir Singh was sitting in front of my house on the drain for easing herself and that Balbir deceased was abusing her. When I tried to reason him that he should not abuse my wife, he pulled out lathi and gave a blow with the same on my head. When I tried to ward off the attack he again gave me a blow on my hand. I then snatched that lathi from his hand and during that scuffle Balbir fell down on the drain. I due to the injury, had become unconscious and regained my consciousness in the Base Hospital, where I remained for about 8 days and thereafter sent to my unit in Punjab. There I got further treatment. The witnesses had deposed falsely against me being close to each other”

27. That the appellant had also suffered extensive injuries was a fact unfairly withheld from the court by the prosecution. In the report under Section 173 Cr.P.C. there was no whisper to this effect. The appellant tried to ascertain facts on the score by questioning the material (prosecution) witnesses during their respective cross-examination. By and large, those related to the victim were reluctant to confirm that the appellant had also been injured. The neighbours, mercifully, were more truthful. Chanda (PW-3) and Satya Narayan @ Satte (PW-8) two material witnesses, conceded that the appellant had also been wounded. Formal confirmation and corroboration, however, came on record only when the IO (PW-19), during his cross-examination, conceded that he had collected the MLC (Ex. PW-19/DA) of the appellant. The documentary proof about the injuries

suffered by the appellant, thus, was brought on record (from police file). It was later confirmed by Subedar Sri Ram (DW-1), an official of Base Hospital, Delhi Cantt. Speaking on the basis of hospital record (Ex.DW-1/A), he proved that the appellant had been admitted, in injured state, in the said hospital on 28.06.1992 and was discharged on 06.07.1992.

28. The MLC (Ex.PW-19/DA) shows that the appellant had been brought to the Base Hospital by his father (Ratan Lal) who had given the history of a fight and the appellant having been beaten by “*local village goondas*”. The appellant was found unfit for statement having suffered multiple injuries on the head, left hand and left thigh by use of *lathi* (wooden stick).

29. In the face of our conclusion that the presence of the witnesses examined by the prosecution at the time of the incident is doubtful, the only substantive material available is the version given by the first informant (Chander), in the FIR and the explanation offered by the appellant himself. The moot questions, in these circumstances are as to whether the prosecution has proved that the appellant was the aggressor or whether his plea of self-defence deserves to be accepted.

30. Section 96 of IPC states that nothing is an offence which is done in the exercise of the right of private defence. Section 97 IPC proclaims that every person has a right, subject to restrictions contained in Section 99, to defend, *inter alia*, “his own body”. Section 99 IPC clarifies that, in order to invoke the right of private defence, it must be shown that there was a reasonable cause for apprehending “death” or “grievous hurt” at the hands of the person against whom the

said right is exercised though the right would not extend to inflicting of more harm than necessary “for the purpose of defence”. The right of private defence of the body commences, per Section 102 of IPC, when reasonable apprehension of danger to the body arises. It continues as long as such apprehension continues. Section 100 IPC enumerates the circumstances in which the right of private defence of the body may extend to causing death.

31. Section 101 of the Indian Evidence Act, 1872 (the Evidence Act) lays down the general rule on the question of burden of proof and declares that it is one who asserts a fact must prove that such fact exists. In criminal cases, the primary onus to prove its case beyond all reasonable doubts is always on the prosecution. The accused is obliged only to raise doubts in the mind of the court or to satisfy it that defence version is the more probable one. Ordinarily, the court shall presume absence of any circumstances as may bring the case under general exceptions. Section 105 of the Evidence Act stipulates that burden of proving that the case of the accused comes within any of the exceptions that include the right of private defence. If the accused seeks to invoke the benefit of general exceptions, it is his burden to prove the existence of the circumstances that would attract the general exception to the case.

32. It is not an unexceptional rule of law that the prosecution is always or invariably obliged to explain the injuries suffered by the accused. The injuries of the accused assume significance if there is material to show that the same were suffered at the time of occurrence in question and are of serious nature. The failure of the prosecution to

offer explanation on the subject assumes greater significance when its case is founded on the evidence of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Non-explanation of the injuries of the accused need not necessarily lead to the inference that the case against him is false or that it must be discarded for the reason that an aggressor at times may receive more injuries than the defender. But such defence plea cannot be based upon only speculation or mere surmises. The burden on the accused, however, is not as onerous as that which lies on the prosecution. Unlike the prosecution which must prove its case beyond reasonable doubts the accused can discharge his onus by establishing his defence by preponderance of probabilities. The accused taking the plea of private defence need not call evidence in support. He may establish his plea by reference to circumstances transpiring from the prosecution evidence itself. But the defence must undoubtedly show that its plea is based on a reasonable and probable version that the harm caused by the accused was necessary for either warding off or blocking of the attack or for fore-stalling further reasonable apprehension from the side of the accused. [*Vijayee Singh vs. State of U.P.* (1990) 3 SCC 190; *Ram Sunder Yadav vs. State of Bihar* (1998) 7 SCC 365; *Rajender Singh vs. State of Bihar* (2000) 4 SCC 298; *Takhaji Hiraji vs. Thakore Kubersing Chamansing & others*, (2001) 6 SCC 145; *Kashiram & others vs. State of M.P.*, (2002) 1 SCC 71; *Dharminder vs. State of H. P.*, (2002) 7 SCC 488; *Krishnan vs. State of Tamil Nadu*, (2006) 11 SCC 304 and *Surendra & another vs. State of Maharashtra*, (2006) 11 SCC 434].

33. The death summary (Ex.PW15/B), read alongside the MLC (Ex.PW15/A) unmistakably shows that the victim was conscious and well oriented, when brought to Hindu Rao hospital on 28.06.1992. The two endorsements, about he being unfit for statement, have not been substantiated. The clinical note leaves no room for doubt that he remained in good condition, conscious and well oriented till 01.07.1992. In these circumstances, it cannot be said that the victim was not available to the investigating officer for giving his side of the story. From this, it can be inferred that it was either the lapse on the part of the police officer to elicit the information from the victim in time or reluctance on the part of the latter to give his version. The possibility of the second being the more probable state of things, cannot be ruled out for the reason the appellant himself had suffered multiple injuries and had to be treated as an indoor patient in the Base Hospital, from where he was discharged only on 06.07.1992. The omission on the part of the victim, to lodge a police report, though he had the opportunity and the time to do so, would render the delay in lodging of the FIR unexplainable, giving rise to adverse inference.

34. We observed earlier that the witnesses who seek to show the appellant as the aggressor were not only partisan but also not wholly truthful. We are not satisfied about the claim of their presence at the time of incident in which the victim suffered the injuries that led to his death. Such being the position, the prosecution has not been able to muster credible evidence to either show that the injuries suffered by the victim had been voluntarily caused or, even further, that they were inflicted with such intention or knowledge as is requisite to bring home the charge of culpable homicide.

35. The independent version in the FIR renders the defence plea to the right of private defence reasonable and probable. The quarrel had clearly occurred on the spur of the moment. There was no pre-meditation on the part of the appellant. In the midst of the abusive exchange, passions seem to have been aroused on both sides. As they started grappling with each other, both seem to have picked up brick pieces. There is no reason why, in the absence of any positive credible evidence in support of the charge from the prosecution side, the plea of the appellant that he was first hit by *lathi* and about he having snatched the *lathi* and grappled with the victim in the effort to ward off further attack resulting in his fall in the drain should be disbelieved.

36. On the afore-noted facts, and in the circumstances, we find it difficult to uphold the view taken by the trial court in the impugned judgment. Benefit of doubts that consequently inure, will have to be extended to the appellant.

37. In the result, the impugned judgment and order on sentence are set aside. The appeal is allowed. The appellant stands acquitted.

38. The criminal revision, therefore, is rendered infructuous and so dismissed.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

DECEMBER 04, 2015/mr/ss