

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.40 of 1995

=====

1. Saddique Mian, son of Moti Jan,
2. Jalim Mian, son of Mian Jan,
3. Kamruddin Mian, son of Md. Yunus,
4. Sajaruddin Mian @ Sadruddin Mian, son of Yunus Mian,
5. Sarfuddin Mian, son of Moti Jan,
6. Nazruddin Mian, son of Yunus,
All residents of Village- Ghat-hulla, P.S.Arrah Muffasil, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

=====

with
Criminal Appeal (DB) No. 70 of 1995

=====

1. Jalaluddin Mian, son of Mahangu Mian,
2. Mahangu Mian, son of Mitizur Mian, Both resident of Village Gethahula,
Police Station- Arrah Muffasil, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

=====

with
Criminal Appeal (DB) No. 90 of 1995

=====

Idrish Mian, son of Unush Mian, resident of Village- Gathahula, P.S. Arrah
(Muffasil), District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

=====

Appearance :
(In Criminal Appeal (DB) Nos. 40 of 1995, 70 of 1995 and 90 of 1995)

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate. Mr. Rakesh Kumar Sinha, Advocate. Mr. Ravi Kumar, Advocate. Mr. Shashi Kumar, Advocate.
For the State	:	Mr. Shivesh Chandra Mishra, A.P.P. Mr. Ashwani Kumar Sinha, A.P.P. Mr. Dilip Kumar Sinha, A.P.P.

=====



**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 19-04-2018

1. All the above stated three appeals arise out of common Judgment of conviction and sentence order dated 28.03.1995 passed by the learned 3rd Additional Sessions Judge, Arrah, in Sessions Trial No. 70 of 1993, by which and whereunder, he convicted all the appellants for the offence punishable under Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one years for the aforesaid offence and furthermore, appellant, Idrish Mian, in Criminal Appeal (DB) No. 90 of 1995, was convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for the aforesaid offence and furthermore, learned trial court convicted the remaining appellants for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the aforesaid offences. The learned trial court convicted the appellant, Mahangu Mian, in Criminal Appeal (DB) No. 70 of 1995 and all the appellants except appellant, Nazruddin Mian, of Criminal Appeal (DB) No. 40 of



1995 for the offence punishable under Section 307 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years and also convicted the appellants in Criminal Appeal (DB) No. 90 of 1995, appellant, Nazruddin Mian, in Criminal Appeal (DB) No. 40 of 1995 and appellant Jalaluddin Mian of Criminal Appeal (DB) No. 70 of 1995 for the offence punishable under Section 307 read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years for the aforesaid offence. However, all the sentences were ordered to run concurrently. Since all the above stated criminal appeals arise out of common Judgment, the above stated criminal appeals are being disposed of by this common Judgment.

2. P.W.6, Ali Hussain, gave his Fradbeyan to P.W.9, Rajbali Choudhary, on 16.08.1992, at about 8 A.M., at Sadar Hospital, Ara, to this effect that on the same day, at about 6 A.M., he had gone to orchard of one Deopujan Dubey on the call of nature. When he reached at the orchard of Deopujan Dubey, he saw appellant, Saddique Mian and Jalim Mian, who had concealed themselves behind the tree. He further stated that both the aforesaid appellants having seen him came near him and took out daggers from their respective waists and started giving daggers



blow to him, as a result whereof, he sustained injury and raised alarm, which attracted Salim Mian (not examined), Md. Shabuddin (P.W.3) and Nizammudin (P.W.4), who came in the orchard, but having seen them, appellants, Idrish Mian, Jalaluddin Mian, Kamruddin Mian, Sajruddin Mian @ Sadruddin Mian, Nazruddin Mian, Sarfuddin Mian and Mahangu Mian having armed with daggers came out of orchard and attacked him and others and in that course, appellants, Idrish Mian and Jalaluddin Mian started assaulting Salim by means of their respective daggers, as a result whereof, he having sustained injury died then and there. Furthermore, appellants, Kamruddin Mian and Sajaruddin Mian @ Sadruddin Mian gave Dagger blow to P.W.3, Md. Shabuddin causing injury on his abdomen and other parts of the body whereas appellants, Safruddin Mian and Mahangu Mian gave dagger blow to Nazruddin Mian (P.W.4) causing injury on his abdomen and other part of his body. However, on noise, several villagers came there and thereafter, aforesaid appellants fled away towards their homes. The reason behind the occurrence was previous enmity.

3. On the basis of Fradbeyan of P.W.6, Ara Muffasil P.S. Case No. 106 of 1992 for the offences punishable under Section 302 and other minor Sections of the Indian Penal Code was registered and on the same day formal F.I.R. was drawn up,



which was put up before the learned Chief Judicial Magistrate on 17.08.1992. However, P.W. 9 took the charge of investigation and after completion of the investigation, he submitted the charge sheet. The cognizance of the offence was taken and the case was committed to the court of Sessions.

All the appellants were put on trial and stood charge for the offences punishable under Sections 302/149, 307 and 307/149 of the Indian Penal Code whereas appellants, Idrish Mian and Jalaluddin Mian were, separately, charged for the offence punishable under Section 302 of the Indian Penal Code. Furthermore, all the appellants stood charged for the offence punishable under Section 148 of the Indian Penal code. The appellants denied the charges and claimed to be tried.

In course of trial, prosecution examined, altogether, nine witnesses and also got exhibited the postmortem report and inquest report etc. The statement of the appellants were recorded under Section 313 of the Cr.P.C., in which, they denied the prosecution story. Learned trial court having scrutinized the evidences available on the record passed the Judgment of conviction and sentenced order in the manner as we have already stated.

4. Learned counsel appearing for the appellants assailed the impugned Judgment of conviction and sentence order



arguing that the learned court below failed to appreciate the evidences available on the record in its right perspective, as a result whereof, the learned trial court came to wrong conclusion. Elaborating his submission, learned counsel for the appellants submits that the learned trial court failed to appreciate this fact that there was no prior meeting of minds between the appellants and, therefore, provision of Section 34 of the Indian Penal Code was not applicable.

He placed reliance upon the Judgment of Jai Bhagwan and others versus State of Haryana, reported in (1999) 3 Supreme Court Cases 102, in which, at paragraph 10 of the aforesaid Judgment, the Hon'ble Apex Court held as follows.

“ To apply Section 34 IPC apart from the fact that there should be two or more accused, two factors must be established: (i) common intention and (ii) participation of the accused in the commission of an offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and a common intention is absent, Section 34 cannot be invoked. In



every case, it is not possible to have direct evidence of a common intention. It has to be inferred from the facts and circumstances of each case”.

He also relied upon the Judgment rendered in Devkaran and Others versus State of Rajasthan, reported in (2005) 10 Supreme Court Cases 255. His next contention is that the prosecution failed to prove the place of occurrence, because in Fradbeyan, P.W.6 claimed that the occurrence took place in Orchard of Deopujan Dubey, but in course of trial, the prosecution witnesses shifted the place of occurrence to the field of one Ram Kumar Yadav. He submitted that the prosecution witnesses, in course of trial, made contradictory statements in respect of place of occurrence, because some witnesses stated that the occurrence took place towards East portion of field of Ram Kumar Yadav, whereas some witnesses stated that the occurrence took place in side the orchard of Deopujan Doubey and, therefore, the aforesaid contradiction creates doubt about the place of occurrence, which was fatal to the prosecution case, but the learned trial court failed to take notice of the aforesaid contradiction. He next submitted that no proper question under Section 313 Cr.P.C. was put to the appellants and the learned trial court failed to put the circumstances and materials, which came in



course of trial, before the appellants under Section 313 Cr.P.C. and the aforesaid failure of learned trial court caused serious prejudice to the appellants and due to the aforesaid reason the entire trial was vitiated, but the learned trial court did not take notice of the aforesaid fact and circumstance, while passing the Judgment of conviction and sentence order.

Learned counsel for the appellants relied upon the Judgment of Sukhjit Singh versus State of Pubjab, reported in (2014) 10 Supreme Court Cases 270, in which, the Hon'ble Apex Court held that recording of statements under Section 313 Cr.P.C. is not an empty formality and failure to bring to the notice of the accused- incriminating materials, which has come in course of trial, is fatal to the prosecution case.

He also relied upon the Judgment of Ranvir Yadav versus State of Bihar, reported in (2009) 6 Supreme Court Cases 595, in which, at paragraph 13 of the aforesaid Judgment, the Apex Court held that “ the object of examination under Section 313 Cr.P.C. is to give the accused an opportunity to explain the case made against him and the statement recorded under Section 313 Cr.P.C. can be taken into consideration in judging his innocence or guilt. Furthermore, at paragraph 14 of the aforesaid Judgment, the Hon'ble Apex Court held as follows:-



“ The word ‘generally’ in sub-section (1) (b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused’s failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence



on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

Learned counsel for the appellants submitted that in the present case general and vague questions were put to all the appellants and, as a matter of fact, the circumstances as well as evidences, which came against the appellants, were not specifically put before them and, therefore, the appellants could not get an opportunity to explain circumstances and evidences, upon which, the prosecution based his case and, therefore, the learned trial court committed error in convicting and sentencing the appellants.

5. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned Judgment of conviction and sentences, arguing that all the eye witnesses including the injured witnesses, specifically, stated that all the appellants having common object committed the murder of Salim Mian by assaulting him with Daggers and also caused injury to P.W.3, P.W.4 and others. He further submitted that the prosecution witnesses, specifically, stated that the occurrence took place in the field of Ram Pukar and, as a



matter of fact, the filed of Ram Pukar was adjacent to the orchard of Deopujan Doubey. He further stated that it is specific case of prosecution that P.W.6 had gone to orchard of Deopujan Doubey on the call of nature and as soon as he reached near the aforesaid orchard, the alleged occurrence took place and, therefore, the aforesaid facts clearly goes to show that the alleged occurrence took place near the orchard not inside the orchard. He further submitted that specific and relevant questions were put to appellants under Section 313 Cr.P.C. and, as a matter of fact, no prejudice was caused to the appellants and, therefore, the Judgment referred by the learned counsel for the appellants are not applicable in the present case.

6. Having heard the rival contentions of both the parties, we went through the record.

7. P.W.8, Rohit Ram Kanaujia, stated that on 16.08.1992, at about 4.15 P.M., he did postmortem examination on the dead body of deceased, Salim Mian and found one incised wound 2" X 1/6" X Chest abdominal cavity deep at the lower part of right side of chest in right mid auxiliary line and apart from the said injury, no any external injury was found on all over the body of the deceased. He opined that cause of death



was due to shock and due to liver damage with sever internal hemorrhage, caused by sharp cutting pointed weapons.

The aforesaid deposition of P.W.8 establishes the fact that the deceased, Salim Mian, had sustained incised wound on his chest said to be caused by sharp cutting pointed weapon. The death of Salim Mian is not in dispute and has not been denied by the appellants.

8. P.W.7, Dr. Sushil Kumar Rungata, stated that on 16.08.1992, at about 6.20 A.M., he examined P.W.6, Ali Hussain, and found following injuries.

Incised wound 1½" X ¾"X Muscle deep on left side of chest interiorly 2½" below left ripe. This witness notice that blood was oozing out and he opined that the aforesaid injury was within six hours and the nature of injury was simple caused by sharp cutting weapons such as Dagger. This witness proved injury of P.W.6, Ali Hussain, as Ext.6. This witness further stated that on the same day at about 6.25 A.M., he examined P.W.3, namely, Md. Shabuddin, and found following injuries.

Incised penetrating wounds 2.1/2"x1"x abdominal cavity deep situated on the lower part of chest on left side interiorly. He noticed that wound portion of liver and large gut



was peeping out. He also found another injury incised wound 2" x 1/2" on left lob of liver and one line each measuring 1/2" x 1/4" x skin deep situated 1/2" apart on the back of left forearm in middle. Lacerated wound 1/4"x1/4" skin deep on front of right shoulder and blood was oozing from the aforesaid wound. This witness opined that the injuries found on the person of P.W.6 was within six hours and the injury nos. 1, 2 and 3 had been caused by sharp cutting weapons such as Dagger, whereas injury no. 4 had been caused by hard and blunt substance such as lathi. He opined that injury no. 1 was grievous in nature whereas the remaining injuries were simple in nature. This witness proved the injury report of P.W.3 as Ext.2/2.

From perusal of the deposition of P.W.7, it is obvious that on 16.08.1992, P.W.3 and P.W.6 had sustained injury and the one of the injuries of P.W.3 was grievous in nature. Therefore, it is established that, on 16.08.1992, P.W.6 and P.W.3 got injury.

9. P.W.1, Md. Jakir Hussain, claimed himself to be eye witness of the occurrence. He stated that on the alleged date of occurrence, he went to the field of Ram Kumar and witnessed the occurrence. He narrated the manner, in which, the appellants assaulted the deceased and other injured. This



witness stated that entire occurrence took place at the filed of Ram Kumar and this witness has not stated anything regarding the orchard of Deopujan Dubey. This witness specifically stated that Saddique Mian assaulted P.W. 6 by means of Dagger whereas appellant, Jalaluddin Mian, caught the waist of Salim Mian and appellant, Idrish Mian, gave Dagger blow on the chest of the deceased, Salim Mian, as a result of which, he died then and there. He further stated that appellant, Sajaruddin Mian @ Sadruddin Mian caught P.W.3, Md. Shabuddin, whereas appellant, Kamruddin Mian, gave dagger blow on his abdomen, as a result of which, P.W.3 having sustained injury fell down there and become unconscious. This witness further stated that Sarfuddin Mian assaulted Nizamuddin (P.W.4) by means of Chura, whereas appellant Nazruddin Mian assaulted P.W.4 by means of lathi. No doubt, this witness improved the prosecution case to some extent in course of trial but the aforesaid slight improvement does not belie the entire prosecution case nor does sake the credibility of this witness.

10. P.W.2, Khaderan Mian, also claimed himself to be an eye witness of the occurrence and stated that at the time of alleged occurrence, he had gone towards orchard on the call of nature and saw the occurrence. This witness described the



manner, in which, the occurrence took place. This witness stated that appellant, Saddique Mian, gave Dagger blow on the abdomen of P.W.6, Ali Hussain, whereas appellant, Jalaluddin Mian, caught deceased, Salim Mian and appellant, Idrish Mian gave Dagger blow to him, as a result whereof, he having sustained injury fell down on the ground and died then and there. This witness also stated that all the appellants except appellant, Nazruddin Mian, were carrying daggers in their hand and appellant, Sarfuddin Mian gave dagger blow on the abdomen of Nizamuddin. Similarly, appellant, Mahangu Mian, gave Dagger blow on the hand and shoulder of Nizamuddin, whereas appellant, Nazruddin Mian assaulted Nizamuddin by means of lathi. This witness further stated that the inquest report was prepared in his presence. Although, defence tried to shake the credibility of this witness by putting several questions in cross-examination, but we find that except some minor improvements, there is nothing in the entire evidence of this witness to doubt his credibility.

11. P.W.3, Md. Shabudin, claimed himself to be an eye witness of the occurrence. This witness stated that having heard noise, he went towards orchard and saw the appellants carrying Chura in their respective hands except appellant,



Nazruddin Mian, who was carrying lathi. This witness stated that all the appellants came out of the orchard and appellant, Idrish Mian, gave Chura blow on the abdomen of the deceased, Salim Mian, as a result of which, he fell down on the ground and died. This witness does not say this fact that appellant, Jalaluddin Mian, facilitated the appellant, Idrish Mian, by catching the waist of the deceased, Salim Mian. The aforesaid contradiction creates doubt about the role played by appellant, Jalaluddin Mian. This witness further stated that appellant, Sarfuddin Mian, caught him whereas appellant, Kamruddin Mian, gave dagger blow to him whereas appellant Sarfuddin Mian gave dagger blow to Nizamuddin and similarly, appellant, Mahangu Mian, gave dagger blow to Nizamuddin and thereafter, appellant, Nazruddin Mian, assaulted injured, Nizamuddin by means of lathi. This witness further stated that appellant, Saddique Mian, gave dagger blow to injured Ali Hussain (P.W.6). At this juncture, it is not out of place to mention that, in course of hearing, learned counsel for the appellants challenged the credibility of this witness on the ground that he disclosed a different manner of occurrence and, as a matter of fact, this witness had not seen the occurrence, but we are not at all convinced with the aforesaid submission because this



witness specifically stated the name of those persons, who assaulted the deceased as well as others. Although, this witness has been cross-examined at length, but we do not find any ground to disbelieve the testimony of this witness.

12. P.W.4, Nizamuddin, is also injured witness and this witness also narrated the similar story as stated by P.W.3 as well as other witnesses. Further, this witness stated that he reached over the place of occurrence having heard the noise. Although, learned counsel for the appellants tried to create doubt about the credibility of this witness, but we do not find any ground to disbelieve the testimony of this witness.

13. P.W. 5, Md. Shabuddin, also claimed to be eye witness and stated that he was going to attend the call of nature and reached near orchard of Deopujan Dubey. He stated the manner, in which, the deceased and other injured sustained injuries. This witness stated that appellant, Jalaluddin Mian, had caught waist of the deceased, Salim Mian and appellant, Idrish Mian, gave dagger blow to him, as a result of which, he died then and there and similarly, Sajaruddin Mian caught the waist of P.W.3, Md. Shabuddin, and appellant, Kamruddin Mian gave Chura blow to him. This witness also narrated the



role played by other appellants. Therefore, there is nothing in the deposition of this witness to disbelieve his testimony.

14. P.W.6, Ali Hussain, is informant as well as injured witness. This witness stated that he had gone on the call of nature and reached near the orchard of Deopujan Dubey. This witness further stated that appellant, Saddique Mian and Jalim Mian were sitting behind a tree and both the aforesaid appellants took out dagger from the waist and came near to him. This witness further stated that appellant, Jalim Mian, uttered to kill him, upon which, he raised alarm, but appellant Saddique Mian gave Chura blow in the mid of his chest. This witness further stated that on his alarm deceased, Salim Mian, Md. Shabuddin (P.W.3) and Nizamuddin (P.W.4) came there and similarly, appellants, Idrish Mian, Jalaluddin Mian, Kamruddin Mian, Sajaruddin Mian, Sarfuddin Mian and Mahangu Mian also came there. This witness stated that appellant, Nazruddin Mian, was carrying lathi whereas remaining appellants were carrying Chura. This witness stated that Jalaluddin Mian caught waist of deceased whereas Idrish Mian gave dagger blow to deceased, Salim Mian, as a result whereof, Salim Mian fell down on the ground and died then and there.



Here, we would like to say that this witness had not stated in his Fradbeyan that the deceased was caught by Jalaluddin Mian and, therefore, it appears that in course of trial, he improved the prosecution case. Furthermore, this witness stated that appellant, Sajaruddin Mian, caught the waist of injured, Md. Shabuddin (P.W.3) and appellant, Kamruddin Mian, gave Chura blow on his abdomen. Again we would like to refer that this witness improved the prosecution case by saying that appellant, Sajruddin Mian caught the waist of injured, Md. Shabuddin. This witness stated that Kamruddin Mian and Sajruddin Mian had given dagger blow to injured, Md. Shabuddin. Furthermore, this witness stated that appellant, Sarfuddin Mian, gave dagger blow on the abdomen of injured, Nizamuddin (P.W.4) and appellant, Mahangu Mian gave Chura blow to injured Nizamuddin causing injury to his shoulder and appellant, Nazruddin Mian, gave lathi blow causing injury at the head of injured, Nizamuddin (P.W.4), but we find that this witness had not stated in his Fradbeyan regarding the lathi blow said to be given by appellant, Nazaruddin Mian and it appears that he improved his case in respect of appellant, Nazruddin Mian, in course of trial. This witness in his cross-examination, admitted that he had not entered into orchard of



Deopujan Dubey rather having seen him the appellants came out from the orchard. This witness further stated that he sustained injury in the field of Ram Kumar, which was situated at the distance of 10 yards from the orchard of Deopujan Dubey. This witness further admitted that he had sustained only one dagger blow and after that deceased, Salim Mian, sustained dagger injury. He further stated that deceased, Salim Mian, and Nizamuddin fell down on the ground after sustaining injury. This witness also stated that the occurrence was witnessed by P.W.2, Md. Khaderan Mian, one Sainuddin, Ram Bichar Yadav etc. From perusal of deposition of this witness, we find that this witness has, specifically, stated about manner of occurrence as well as place of occurrence and there is nothing on the basis of which the credibility of this witness could be doubted.

15. P.W.9, Rajbali Choudhary, is the Investigating Officer of this case. This witness stated that he got telephonic message from Ara (Town) Police Station that some injured had been brought at Sadar Hospital, Ara and on the basis of the aforesaid telephonic information, he went Ara Sadar Hospital and recorded the Fradbeyan of P.W.6. This witness further stated that he took the charge of investigation and inspected the place of occurrence. This witness specifically stated that the



place of occurrence was *parti* land of Ram Kumar Yadav, which was situated towards East side of orchard of Deopujan Dubey. He also found the blood fallen on the ground. He also claimed that he seized blood stained earth from the place of occurrence and got injury reports of injured and after completion of the investigation submitted the charge sheet. He admitted in his cross-examination that having got telephonic information he entered the aforesaid information in station diary, but he did not mention the aforesaid fact in case diary. He further stated that he got information regarding the death of one person through the aforesaid telephonic message, but even having got the aforesaid telephonic information he did not institute F.I.R. though, the cognizable offense was being made out. He further stated that when he reached at Ara Sadar Hospital, he found P.W.6, Ali Hussain, in conscious state. This witness further stated that the seizure list regarding the seizure of blood stained earth was not produced in the court. He admitted that he had not sent the blood stained earth for chemical examination.

16. On careful perusal of the entire evidences available on the record, we find that the prosecution has successfully proved the manner of occurrence as well as place of occurrence



and there is nothing on the basis of which the prosecution story could be doubted. However, it is to be seen as to whether the appellants had common object to commit the murder of deceased, Salim Mian as well as to cause injury to injured persons or not. It is admitted case of the prosecution that when P.W.6 reached near the orchard, only two appellants, i.e., Saddique Mian and Jalim Mian were sitting behind a tree and firstly, both the aforesaid appellants came and assaulted the informant, P.W.6 and thereafter, appellant, Jalim Mian, instigated and on his instigation, appellant, Sadique Mian, gave Chura blow to P.W.6 and thereafter, P.W.6 raised alarm which attracted the remaining appellants as well as injured persons of this case. Therefore, it is obvious that the appellants except Jalim Mian and Sadique Mian had come over the place of occurrence on the alarm of P.W.6, therefore, it appears that the appellants had no common object to commit the murder of deceased Salim Mian, because it appears to us that after arrival of appellants except Jalim Mian and Sadique Mian, as well as injured persons a quarrel took place and appellant, Idrish Mian gave dagger blow to deceased, Salim Mian causing his death instantly, therefore, for this act except appellant, Idrish Mian, the other appellants cannot be made responsible. Similarly,



each appellants are responsible for their respective individual act and the appellants cannot be held guilty taking the aid of Section 149 of the Indian Penal Code.

17. Therefore, in the aforesaid circumstances, we are of the view that the conviction of appellants, Jalaluddin Mian, Saddique Mian, Jalim Mian, Kamruddin Mian, Sajaruddin Mian, Sarfuddin Mian, Najruddin Mian and Mahangu Mian for the offence punishable under Section 302/149 of the Indian Penal Code is not in accordance with law.

Similarly, the conviction of appellant, Idrish Mian, Jalaluddin Mian and Nazruddin Mian for the offence punishable under Section 307/149 is also not in accordance with law. However, in our view, the conviction of appellant, Idrish Mian, for the offence punishable under Section 302 of the Indian Penal Code was just and proper and accordingly, it is upheld. Learned court below has convicted the appellants, Sadique Mian, Jalim Mian, Kamruddin Mian, Sajaruddin Mian, Sarfuddin Mian and Mahangu Mian for the offence punishable under Section 307 of the Indian Penal Code and it has come in evidence that Saddique Mian gave dagger below to P.W.6 at the instigation of appellant, Jalim Mian and furthermore, the evidence of P.W. 7 goes to show that P.W.6, Ali Hussain, had



sustained simple injury, though said to be caused by dagger. Admittedly, the appellant Saddique Mian did not repeat his blow and, therefore, it is difficult to believe that appellant, Saddique Mian, had any intention to commit the murder of the deceased. Therefore, in our view, the learned trial court committed error in convicting the appellant, Saddique Mian and Jalim Mian for the offence punishable under Section 307 of the Indian Penal Code and in our view, at best, the appellants, Saddique Mian and Jalim Mian could have been convicted for the offence punishable under Section 324 of the Indian Penal Code.

Similarly, it has come in evidence that appellant, Sajaruddin Miann caught injured, P.W.3, whereas appellant, Kamruddin Mian. gave dagger blow on his abdomen, but as we have stated that the prosecution witnesses improved this fact in course of trial that the appellant, Sajruddin Mian caught P.W.3 when P.W.3 had sustained injury. Furthermore, we find that P.W.7 had found, altogether, four injuries on the person of P.W.3 and he found that one of the injuries, which was found on the chest of injured, P.W.3, was grievous in nature and, therefore, the injury found on the person of P.W.3, Md. Shabuddin, also supports the story of assault and, therefore,



nature of injury found on the person of P.W.3, Md. Shabuddin goes to show that much force was used in causing the aforesaid injury. Therefore, in our view, the learned court below rightly convicted the appellant, Kamruddin Mian, for the offence punishable under Section 307 of the Indian Penal Code. The learned trial court has convicted the appellants, Sajaruddin Mian, Sarfuddin Mian and Mahangu Mian for the offence punishable under Section 307 of the Indian Penal Code. It has come in evidence that Sarfuddin Mian gave dagger blow on the abdomen of P.W.4, Nizamuddin, and thereafter, appellant, Mahangu Mian, gave dagger blow causing injury on his shoulder whereas appellant, Nazruddin Mian, gave lathi blow causing injury on his head and shoulder. P.W.7 found, altogether, four injuries on the person of injured, Nizamuddin, and one injury, which was on the chest of injured, Nizamuddin was found grievous in nature and the nature of injuries goes to show that much force was used in giving dagger blow on the chest of injured, Nizamuddin, and, therefore, in our view, the learned trial court rightly convicted the appellants, Sajaruddin Mian, Sarfuddin Mian and Mahangu Mian for the offence punishable under Section 307 of the Indian Penal Code. Furthermore, it has come in evidence that all the appellants



were carrying dagger except appellant, Nazruddin Mian, who was carrying lathi at the time of alleged occurrence and, therefore, in our view, the learned trial court rightly convicted the appellants for the offence punishable under Section 148 of the Indian Penal Code.

Since, we have already acquitted all the appellants except appellant, Idrish Mian, for the offence punishable under Sections 302/149 of the Indian Penal Code, therefore, the sentence imposed to appellants for the offence punishable under Section 302 read with Section 149 of the Indian Penal Code cannot sustain in the eye of law and accordingly, the sentence imposed upon the appellants for the offence punishable under Section 302/149 of the Indian Penal Code is, hereby, set aside.

So far as the appellants, Kamruddin Mian, Sajaruddin Mian @ Sadruddin Mian, Sarfuddin Mian and Mahangu Mian are concerned, they have been convicted under Section 307 of the Indian Penal Code, but admittedly, the alleged occurrence took place in the year 1992 and the aforesaid appellants had already remained in jail custody for considerable period and, therefore, we think it proper to sentence them for the offence under Section 307 of the Indian Penal Code to period already



undergone by them. Similarly, since the conviction of appellant, Saddique Mian, has been modified and he has been convicted under Section 324 of the Indian Penal Code instead of under Section 307 of the Indian Penal Code and he had also remained in jail custody for considerable period during course of trial and, therefore, he is also sentenced to the period already undergone by him for the offence under Section 324 of the Indian Penal Code. Similarly, all the appellants have been convicted under Section 148 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year, but they have already remained in jail custody for considerable period and, therefore, they are sentenced to have already been undergone for the offence under Section 148 of the Indian Penal Code.

18. So far as appellant, Idrish Mian, is concerned, we do not find any ground to interfere into his conviction and sentence order and accordingly, his conviction and sentence order for the offence punishable under Section 302 of the Indian Penal Code is, hereby, confirmed.

19. On the basis of the aforesaid discussions, Criminal Appeal (DB) No. 90 of 1995 stands dismissed whereas



remaining two appeals stand disposed of with modification in conviction and sentence order in the manner as stated above.

20. The bail bond of appellant, Idrish Mian, stands cancelled and he is directed to surrender before the trial court within three weeks from the date of receipt of copy of this Judgment before the court below, failing which, the learned trial court shall take appropriate steps to procure the arrest of appellant, Idrish Mian, so that he could serve out his sentence.

So far as remaining appellants are concerned, they are on bail, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16.05.2018
Transmission Date	16.05.2018

