

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

CRL.A. 851/2001 & CRL. A.01/2002

Reserved on : 23.08.2019

Date of Decision : 18.09.2019

IN THE MATTER OF:

CRL.A. 851/2001

RAJ SINGH & ANR.

..... Appellants

Through: Ms.Rajdipa Behura, Advocate
with appellants in person

Versus

STATE

..... Respondent

Through: Mr. Ravi Nayak, APP for State
with Insp. Pradeep Kumar, P.S.
Naraina.

AND

CRL.A. 1/2002

MAHINDER SINGH & ORS.

..... Appellants

Through: Ms. Rajdipa Behura, Advocate
with appellants in person

Versus

STATE N.C.T. OF DELHI

..... Respondent

Through: Mr. Ravi Nayak, APP for State
with Insp. Pradeep Kumar, P.S.
Naraina.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J.

1. The above appeals are taken up together and disposed of vide this common judgment as both the appeals arise out of a common impugned judgment dated 11.10.2001 and order on sentence dated 31.10.2001

arising out of FIR No.40/88 registered under Sections 302/147/148/149/450/452 IPC at PS Naraina whereby the appellants Chanchal Singh, Gurcharan Singh @ Pappu Singh, Mahender and Shyamlal were convicted for the offence under Sections 452/302/34 IPC as well as Sections 323/34 IPC. Vide above Judgment, the appellant Raj Singh S/o Jeete and accused Raj Singh S/o Karan Singh were convicted under Sections 452/325/34 IPC.

2. Vide order on sentence dated 31.10.2001, the appellants were sentenced as under:

*“Chanchal, Sham Lal, u/s 302/34 To suffer imprisonment for
Mahender Singh and IPC life and to pay a fine of Rs.
Gurcharan Singh 2500/- each in default to
suffer R.I for one month*

*u/s 452/34 To suffer R.I for one year and
IPC to pay a fine of Rs. 1500/- in
default R.I for one month.*

*u/s 323/34 To pay a fine of Rs. 1000/-
IPC each in default to suffer S.I
for one month.*

*Raj Singh s/o Jeete and u/s 452/34 To suffer R.I for one year and
Raj Singh s/o Karan Singh IPC to pay a fine of Rs. 500/-
default to suffer R.I for one
month.*

*u/s 325/34 To suffer R.I for six months
IPC and to pay a fine of Rs.
4500/- in default to suffer R.I
for one month.”*

3. All the sentences were ordered to run concurrently. The benefit of Section 428 Cr.P.C. was granted to the appellants. It was also directed that the amount of fine deposited by accused Raj Singh S/o Jeete and Raj Singh S/o Karan Singh be paid to the injured Bharpai after expiry of the period of limitation of appeal.

4. A perusal of the records reveal that the trial court had earlier passed a Judgment on conviction dated 08.12.2000 whereby the appellants Chanchal, Gurcharan, Mahender and Shyamlal were convicted under Sections 452/302/34 IPC and also under Sections 323/34 IPC. Appellants Raj Singh S/o Jeete and accused Raj Singh S/o Karan Singh were convicted under Sections 452/325/34 IPC. The remaining accused persons were acquitted. In the appeal, this court vide order dated 24.07.2001, set aside the Judgment on conviction and order on sentence passed by the trial court and remanded back the matter for fresh consideration.

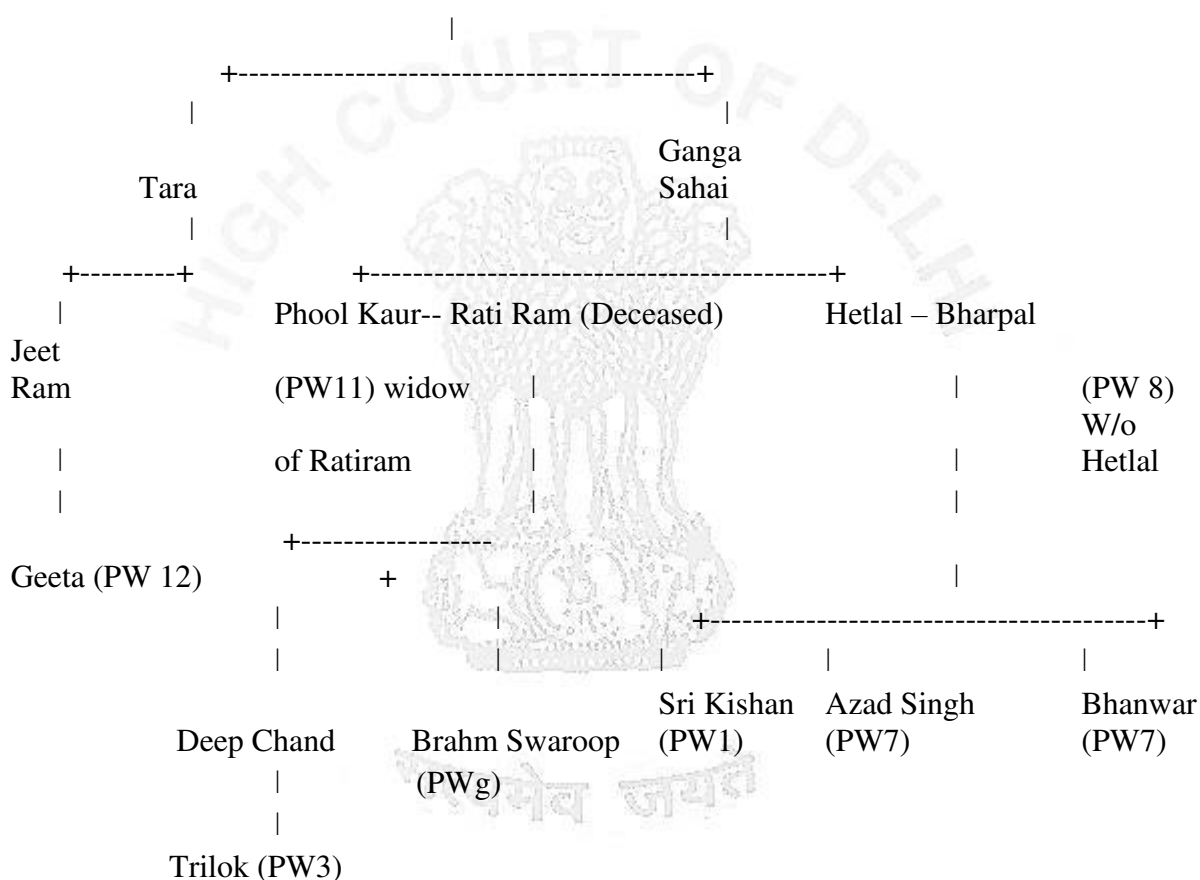
5. During the pendency of these appeals, the appellants Raj Singh @ Dalip s/o Jeete (Appellant No.2) in Criminal Appeal No. 851/2001 & Chanchal in Criminal Appeal No. 1/2002, expired on 08.04.2002 and 22.08.2010 respectively and accordingly, the appeal qua them stood abated vide order dated 16.12.2010.

6. The facts, as noted by the trial court, are reproduced below:-

“2.The complainant party belongs to one of the caste. The accused party belongs to the other caste (Julaha). All of them are R/o Village Naraina. Rati Ram (the deceased in this case) and one Abhay Ram filed a civil suit on 4.12.87 against some of the accused. It was alleged by them that they along with defendant No.7 to 12 were in possession of the vacant land forming part of Khasra No.1791, Bakhai No.282 situated in Village Naraina and the defendants No.1 to 7 (in the suit)were

trying to encroach upon that particular vacant land. As such they be restrained. Defendant No.1 to 8 in that civil suit are in fact accused Mahinder, Sri Ram, Chanchal, Karan Singh and Dhare. The prosecution case is that this vacant plot of land was the bone of contention between the two castes.”

7. In order to appreciate the facts as well as the arguments, it will be worthwhile to mention the pedigree table of the prosecution witnesses as noted by the trial court.



8. During the trial, the prosecution had examined total of 33 witnesses. The prosecution had primarily relied upon the testimony of material witnesses namely Sri Kishan (PW-1), Brahm Swaroop (PW-9) and Phool Kaur @ Phoolwati (hereinafter referred as “*Phool Kaur*”) (PW-11). Additionally, the prosecution also relied upon the testimony of Bharpai (PW-6), Azad Singh (PW-5), Bhanwar Singh (PW-7), Sunder

Lal (PW-8), Sevanand (PW-4) and Geeta (PW-12). An independent witness, Mange Ram Tanwar (PW-17) was examined but he turned hostile.

POST MORTEM REPORT

9. PW-10, Dr. S.K Verma conducted the Post-Mortem of the deceased on 05.03.1988 and proved his report as Ex (PW-10/A). As per the Post Mortem report, following observations were made:

“Anti mortem injuries:-

1. *Contused lacerated wound, placed obliquely over right parietal region 10cms above and posterior to right tragus and 7cms. lateral to midline of size 2.5X0 cms (upto bone)*
2. *Circular bruised area of 3X3 cms placed over right forehead 2.5 cms above right eyebrow and 8 cms above and anterior to tragus of right ear.*
3. *Two parallelly placed abraded contusion of size 9X0.5cms each placed 2.5cms apart, placed anteropolsteriorly in right upper arm, outer aspect 17 cms below the right shoulder tip and 12 cms above the right elbow joint.*
4. *Bruised area of size 8X1.5 cms placed on the back of left shoulder, 9cms below left shoulder tip and 6 cms above and posterior to left posterior axillary fold.*
5. *Bruised area of size 6X1.5 cms placed on the outer aspect of left upper arm placed 18 cms below the left shoulder tip and 12 cms above the left elbow.*
6. *Abrasion of size 2.5X1 cms placed on the extensor aspect of forearm 1.5cms above the styloid process.*
7. *Abrasion of size 0.8X0.3 cms placed on the right ankle joint just above the medial malleolus and 6.5 cms above the heel.*
8. *Abrasion of size 1.3X0.3 cms placed on the little finger of right hand on dorsal aspect of middle phalanx.*

Internal injuries:-

Scalp:- *Extravasation of blood under scalp in right temporoparietal region and frontal region along with blood in left temporoparietal region.*

Skull:- Fissureal fracture starting from right temporal bone passing from right parietal bone and terminating in sagittal suture. Fissured fracture in the left temporal region terminating in the left coronal suture.

Brain:- Weight 1360 grams, Edematous subdural hematoma in right temporoparietal region. Patchy subarachnoid hemorrhage over right cerebral hemisphere.

Conclusion:-

- i) Approximate time of death:- about 19 hours
- ii) Cause of death is extensive craniocerebral injury, which is antemortem in nature, following blunt force impact and is sufficient to cause death in ordinary course of nature."

MLC of the Injured Witnesses

10. The following injuries were noted on the person of the injured witnesses: -

Sri Kishan (PW1)

1. C.L.W. Left parietal region
2. C.L.W. right parietal region
3. Minor abrasions

Injuries were simple in nature caused by blunt weapon. The MLC is Ex. X-3.

Phool Kaur (PW11)

1. C.L.W. left parietal region 1/2 . Fracture suspected right forearm.
2. Punctured wound left hypochondrium. (sic)
3. C.L.W. between second and third finger.
4. C.L.W. right small finger
5. Blunt injuries :- bruises back of chest , left and back of abdomen.

Injuries were simple in nature caused by blunt weapon. The MLC is Ex. X-10.

Brahm Swaroop (PW9)

1. C.L.W. on right parietal region.
The injury was simple in nature caused by a blunt weapon.

Bharpai (PW6)

1. Small abrasion lower lip.
2. Small abrasion left foot.
3. Right upper canine loose.

Injuries were grievous in nature caused by blunt weapon. The MLC is Ex. X-8.

Bhanwar Singh (PW7)

1. Injury on second and fifth finger of left hand.
2. Abrasion on left third finger
3. Abrasion on left scapula
4. Blunt injury on hip. Blunt injury on right back of knee.

Injuries were simple in nature caused by blunt object. The MLC is Ex. X-7.

Azad Singh (PW5)

1. C.L.W. left parietal region
2. Soft tissue swelling with abrasion right parietal region.
3. C.L.W. 1/2 behind right ear.
4. Bruises over whole back side.

Injuries were simple in nature caused by blunt weapon. The MLC is Ex. X-9.

Sundelal (PW8)

1. Injury on left index finger.
Injury was simple in nature. The MLC is Ex.X-2.

Sevanand (PW4)

1. Multiple abrasions right hand shoulder
2. C.L.W. scalp
3. Blunt injury (R) wrist.

Injuries were simple in nature caused by blunt weapon. The MLC is Ex. X-4.

11. We have heard arguments from both the sides and also gone through the case records. Ld. Counsel for the appellants has challenged the testimony of the eyewitnesses namely Sri Kishan, Brahm Swaroop and Phool Kaur, being related and interested witnesses. She also challenged the testimony of witnesses Geeta and Sevanand, being the planted witnesses. She argued that the testimonies of the other witnesses also do not inspire confidence as they were both related and planted. It was contended that not only there were material improvements in the testimony of the witnesses but also inter se contradictions, thereby making their presence at the spot, doubtful. Ld. Counsel also argued that both Brahm Swaroop and Phool Kaur contradicted each other as to the seriatim in which the injuries were received by them. In essence, the following arguments were raised by the Ld. Counsel for the appellants during the hearing and in the written submissions: -

“a) the evidence of the eye witnesses is not credible as not only they are related and interested in the outcome of the trial but also there are contradictions in the statements of the witnesses which go to the root of the case;

b) the motive alleged was not immediately preceding the incident

c) the investigation conducted were defective & the FIR was ante timed.

d) the injuries on the appellants have not been explained.

e) the seizures were not made on the day of the incident and that there were marked differences between the site plan and scaled site plan.”

12. Mr. Ravi Nayak, learned APP for the state, on the other hand, has supported the impugned judgment. He submitted that the witnesses are reliable and trustworthy being injured in the same incident and naturally

present at the spot. In support of his submissions, he has relied upon the decisions in Rajendra Singh & Others v. State of Bihar reported as (2000) 2 BLJR 1560, State of Rajasthan v. Dhool Singh reported as (2004) 12 SCC 546 and Abdul Sayeed v. State of Madhya Pradesh reported as (2010) 10 SCC 259.

ANALYSIS:

13. The appellants, during the trial, had admitted the date, time & place of the incident. The appellants had also admitted their presence as well as presence of the deceased and the injured witnesses namely, Sri Kishan, Phool Kaur and Brahm Swaroop on the spot at the time of incident. The appellants have also admitted that they had a fight with the complainant side on that day when injuries were inflicted on each other however, they disputed the allegation that the appellants were the aggressors or that any of the present appellants caused injuries to the deceased. The appellants had also admitted that pursuant to the incident, a crowd had gathered which pelted stones at the complainant party. Even in their statements recorded under section 313 Cr.P.C., the date of the incident, presence of deceased, injured witnesses as well as the appellants at the spot has been admitted.

14. As per the prosecution case, the incident had taken place on 04.03.1988 at about 5 pm. It has come on record that on that day, the festival of Holi was being observed. The incident was spread over a period of time and had occurred at many places. For the sake of convenience, the entire incident is divided into four parts.

i) In the first part, the appellants namely Chanchal, Mahender, Shyamlal and Gurcharan, armed with lathis, were

seen by Sri Kishan going towards the house of Rati Ram and who also heard them saying “let Rati Ram rascal be finished”. Rati Ram was Sri Kishan’s uncle. Sri Kishan tried to stop them but the appellants assaulted him with lathis and went towards the house of Rati Ram.

ii) In the second part, the appellants caused injuries to Brahm Swaroop (son of Rati Ram) and Phool Kaur (wife of Rati Ram) at the house of Rati Ram i.e., at WZ 722 with lathis. Chanchal also assaulted Phool Kaur with a screw driver. Rati Ram managed to run away from the side gate.

iii) In the third part, the appellants followed Rati Ram and caught him near the house of one Jeet Ram (cousin of Rati Ram) at WZ 719A, where the appellants assaulted him with lathis resulting in his death. Brahm Swaroop and Phool Kaur reached there and tried to intervene but the appellants Shyamlal & Gurcharan assaulted them with lathi. When the crowd gathered and pelted stones at the appellants, they ran away towards the house of Hetlal.

iv) Lastly, in the fourth part, the appellants reached the house of Hetlal at WZ-899. In the meantime, the appellants were joined by others namely Dhare, Karan Singh, Kamlesh, Suresh, Dhan Singh, Raj Singh, Jagdish and Dalip. Together, they pelted stones and caused injuries to Hetlal, Bharpai Devi (wife of Hetlal), Azad Singh & Bhanwar Singh (sons of Hetlal) and Sunder Lal.

MATERIAL WITNESSES

15. Sri Kishan, the complainant was examined as PW-1. The FIR was recorded on his statement. He was the nephew of the deceased. He deposed that on the day of the incident at about 5 pm, he heard some noise in the street. He went out and saw that Mahinder Singh, Shyamlal, Chanchal and Gurcharan @ Pappu were armed with *lathis* and he heard them saying “let Rati Ram rascal be finished”. He tried to stop them, on which firstly, Mahinder and subsequently the other three assaulted him with *lathi* blows on his head. He fell down and saw the above four appellants going towards the house of Rati Ram. After some time, he saw Rati Ram coming out of his house from the side gate being followed by the appellants. The appellants surrounded Rati Ram near the house of Jeet Ram and assaulted him with *lathis*. In the meanwhile, Brahm Swaroop and Phool Kaur had also reached. While they tried to save Rati Ram, they were also assaulted by the appellants. Rati Ram died at the spot. A crowd gathered there and started pelting stones at the appellants, who after throwing their *lathis* at the spot, fled towards the direction of the house of his father, Hetlal. The appellants, during this time, were joined by Karan Singh, Dhare, Kamlesh, Suresh, Dhan Singh, Raj Singh, Jagdish, Dalip @ Raj Singh and also Sri Ram. The appellants and the other accused on reaching the house of Hetlal started throwing stones at the house of Hetlal and thus caused injuries to Hetlal (father), Bharpai (mother) and his brothers namely, Azad Singh & Bhanwar Singh as well as Sunder. The witness identified all the appellants in the court. He deposed that his statement (Ex.PW1/A) was recorded at the spot. He identified the *lathis* as Ex. P-1 to P-4. On the next day of the incident,

i.e., on 05.03.1988, he handed over his blood stained shirt and pyjama to the police vide Recovery Memo Ex. PW1/B.

16. He also deposed that Geeta, daughter of Jeet Ram, was present in her house and witnessed the assault on Rati Ram. On 29.03.1988, the police prepared the site plan at the instance of Geeta and him.

17. Sri Kishan further deposed that his uncle, Rati Ram had filed a civil suit against the appellants which was the motive for committing the offence.

18. During the cross examination, he was confronted with his earlier statement where he had neither taken the names of Dhan Singh, Kamlesh, Sri Ram and Dalip @ Raj Singh S/o Jeete nor mentioned about the presence of Geeta or Sevanand at the spot. The witness, in his supplementary statement recorded on 05.03.1988 (Ex.PW1/DA), stated that on 04.03.1988, he had told the police verbally about the presence of Geeta and injuries suffered by Sevanand at the time of the incident. He was confronted with the said supplementary statement where it was not so recorded.

19. The witness further stated that the civil suit was filed by Rati Ram as the accused persons namely Chanchal & Mahinder and Karan Singh had grabbed their ancestral land and constructed their houses on it. The witness denied the suggestion that on the day of the incident, Chanchal had a quarrel with Brahm Swaroop over throwing of colour. He denied the suggestion that the body of the deceased was later shifted to the house of Jeet Ram intentionally. He also denied that the FIR was registered after midnight. He further denied the suggestion that the deceased and the injured were the aggressors or that in the scuffle, Karan

Singh had hit the deceased & others with the “leg piece of a *Cot*” or that out of the four *lathis*, one was a ‘*Seru*’, brought by Dhare. At the request of the learned APP for the State, the trial court had examined the four *lathis* (Ex. P1 to P4) to see if any of it was a ‘*Seru*.’ The Counsel for the appellants had argued that Ex. P4 was a ‘*Seru*’ and not a *lathi*. The ‘*Seru*’ was explained as a bamboo stick used on the smaller side of a *Cot*. However, after examining the Ex. P4, it was observed by the trial court that it was about 5 ft in length and the smaller side of a *Cot* cannot ordinarily be that long.

20. Brahm Swaroop, son of the deceased, was examined as PW-9. He deposed that the appellants Mahinder, Chanchal, Shyamlal and Gurcharan armed with *lathis* came to their house. The appellants assaulted him and his mother, Phool Kaur with *lathis*. The appellant Chanchal also inflicted an injury in the abdomen of his mother with a pointed object like a screw driver. His father managed to escape from the side gate. The above appellants followed and surrounded his father near the house of Jeet Ram where he was assaulted with *lathis*. He and his mother also reached there where the appellant Shyamlal assaulted them with a *lathi*. A crowd had gathered which pelted stones at the appellants. The appellants were also joined by the other accused namely Sri Ram, Dhare, Karan Singh Suresh Kamlesh, Raj Singh S/o Jeet Ram and Raj Singh S/o Karan Singh. The witness handed over his blood stained Kurta Pyjama to the police vide memo Ex. PW 9/A.

21. He also deposed that in November 1987, a Civil Suit was filed by his father, Rati Ram against accused persons namely Mahinder,

Chanchal, Dhare, Ram Kishan with regard to his land. The accused persons had to file their written statements in the said suit by 10.03.1988.

22. During the cross examination, the witness stated that after the death of his father, he was pursuing the civil suit. He further stated that the civil suit was filed as Chanchal had trespassed in their land forcefully. He was confronted with his earlier statement where the factum of injury with the screw driver to his mother and the date of 10.03.1988 for filing the reply, were not stated. The witness denied the suggestion that prior to the incident, the appellant Chanchal had a minor scuffle with him on throwing of the colour. He denied the suggestion that the complainant and his family were the aggressors. He also denied that Karan Singh came with a '*Seru*' and hit the deceased with it.

23. Phool Kaur, wife of the deceased, was examined as PW-11. Her testimony was cumulative to the testimony of Sri Kishan and Brahm Swaroop.

24. From a bare perusal of the above depositions, it is evident that Sri Kishan was assaulted in the street outside his own house. It was the day of festival of Holi. People are ordinarily present in their own house on days of the festival. Sri Kishan and his family were residents of the same village. He was injured in the incident. His injuries were noted in the MLC recorded on the same day at 10.50 pm. Similarly, Brahm Swaroop and Phool Kaur were first assaulted in their own house and later, at the house of Jeet Ram while they were trying to save the deceased. Their injuries were proved on the record by their MLCs recorded at 10.15 and 9.40 pm respectively. The injuries on the above three material witnesses were further corroborated by the CFSL report.

25. The Post Mortem was conducted by Dr. S. K. Verma (PW-10) on 05.03.1988 at 11.05 am and it was concluded at 12.15 pm. As per the Post Mortem Report (Ex. PW10/A), total of 8 injuries were noted on the body of the deceased. The 'time since death' was opined to be about 19 hours. The 'Cause of Death' was extensive Cranio Cerebral injury which was ante mortem in nature following blunt force impact and was sufficient to cause death in the ordinary course of nature. The Doctor, after examining the *lathis*, gave a subsequent opinion (Ex PW10/B) as per which the fatal injury no.1 could be produced by the *lathis* (Ex. P-1 to P-4).

26. The '*lathis*' were recovered from the spot on the day of the incident. The prosecution had examined Roop Narain (PW-2) and Trilok Chand (PW-3) to prove the recovery of the four *lathis* from the spot. The 'Screw Driver' was recovered at the instance of Chanchal from his house.

27. Learned counsel for the appellants contended that Sri Kishan had not mentioned about the assault caused to Brahm Swaroop & Phool Kaur which had taken place at their house. She also contended that both Brahm Swaoop and Phool Kaur also did not mention about witnessing the assault caused to Sri Kishan. She thus urged that this inconsistency makes the presence of Sri Kishan at the spot, doubtful. Clearly, Sri Kishan had not stated about the first assault on Brahm Swaroop and Phool Kaur which had taken place in their house but had deposed about the second assault which had taken place at the house of Jeet Ram. Indeed, the testimony of these witnesses is silent about the assault caused to one another, however they both were injured at separate time and

separate places. In our view, the presence of Sri Kishan at the spot, cannot be doubted in light of the fact that Sri Kishan himself had received injuries which was duly corroborated by his MLC (Ex. X-3). We rather believe that the factum of Sri Kishan, not claiming to be a witness to the injuries caused to Phool Kaur and Brahm Swaroop, brings a ring of truth to his testimony. In Abdul Sayeed (Supra), it was held:

“30.... that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence...”

28. Learned counsel for the appellants urged that in fact the FIR was registered after considerable delay and later ante timed so that there was sufficient time to plant the witnesses. It was urged that whereas Sri Kishan deposed that his statement was recorded at about 8 pm however, the FIR was registered at 07.45 pm. To buttress her submission, learned counsel has relied upon the decision in Lalita Kumari v. Government of Uttar Pradesh and Others reported as **(2014) 2 SCC 1**. In this regard, it is seen that SI Rajesh (PW-15) prepared the *Rukka* on the basis of the statement of Sri Kishan and handed it over to Ct Ramesh (PW-14) for registration of the FIR. On receipt of the *Rukka*, SI Suranjan Singh (PW-22) registered the FIR. None of the above witnesses were cross examined on the delay or ante timing of the FIR. From a perusal of their depositions, it is apparent that they were examined in the year 1994. The first of such suggestion about ante timing of FIR, came to be given to Insp Raj Singh, the Investigating Officer, in the year 1999 i.e, towards the fag end of the trial. Examining the issue from another angle, as noted above, the witnesses have suffered injuries near their own house. The

incident itself is not denied by the appellants. They have rather admitted their presence as well as the presence of Rati Ram (the deceased), Sri Kishan, Brahm Swaroop and the Phool Kaur at the spot. They have also admitted their involvement in the incident. It was suggested to all the above witnesses that after Chanchal and Brahm Swaroop had a scuffle, Rati Ram (the deceased), Sri Kishan and Phool Kaur came there armed with *lathis*. It was suggested that out of the four *lathis*, that were seized by the police, three were brought by the above three persons and the fourth one, a '*Seru*' was brought by Dhare. It was also suggested that Rati Ram had succumbed to the injuries which were caused by Karan Singh. In light of above discussion, the alleged time difference of 15 minutes in recording statement Sri Kishan and registration of the FIR is inconsequential.

29. Besides above material witnesses, the incident of stone pelting was also stated by other witnesses namely Bharpai, Azad Singh, Bhanwar Singh and Sunderlal. It has come in their deposition that when the appellants had reached the house of the Hetlal, they started throwing stones because of which Hetlal, Bharpai, Azad Singh, Bhanwar singh and Sunder Lal got injured. Bharpai deposed that Raj Singh S/o Jeete and Raj Singh S/o Karan Singh hit her with a *lathi* which resulted in damage to her tooth. The prosecution examined Dr. S. Deshpande to prove the injury of Bharpai. Her MLC was recorded on 04.03.1988. It was observed in her MLC that there was a CLW on the lower lip and her right upper canine was also found to be loose.

INJURIES OF ACCUSED PERSONS

30. The appellants have admitted that a crowd had gathered on the day of the incident and stone pelting had taken place.

31. The stones were pelted by both the sides resulting in injuries to each other. It became a free for all. It has been deposed by the witnesses that seeing the injuries caused to the complainant and the other injured by the accused persons, the crowd had gathered and pelted stones at the appellants and other accused persons. As per their deposition, the injuries suffered by the accused persons occurred because of stone pelting.

32. Learned counsel for the appellants had argued that the injuries of the appellants had not been explained by the prosecution and for this reason alone, the prosecution case should be disbelieved. In support of her submission, she had relied upon the decision rendered in Lakshmi Singh and Others v. State of Bihar reported as (1976) 4 SCC 394 and Kumar v. State reported as (2018) 7 SCC 536.

33. We deem it fit to quote the settled law on this aspect. In the case of Takhaji Hiraji v. Thakore Kubersingh Chmansingh and Ors, reported as (2001) 6 SCC 145, the Supreme Court while referring to the injuries on the accused held that-

“17.....In Rajender Singh v State of Bihar, Ram Sunder Yadav v State of Bihar and Vijayee Singh v State of UP, all three judge bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence ,the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the

existence of two conditions: (i) that the injury on the person of the accused was of a serious nature (ii) that such injuries must have been caused at the time of the occurrence in question. Non explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.”

34. In the case of K Ravichandra v State of Karnataka, reported as **2018 SCC OnLine SC 1462**, the Court held that:

“8. It is fairly settled that it is not always incumbent upon the prosecution to explain the injuries of the accused persons. The prosecution is obliged to explain the injuries of the accused persons only if the injuries sustained by the accused are grievous in nature. In the present case, there is no evidence to show that the injuries on the accused persons are grievous in nature.”

35. Further, in the case of Munishamappa and Ors v State of Karnataka and Ors. reported as **2019 (1) SCALE 721**, the Supreme Court relying upon the judgment of Aman Malla v State of Tripura reported as **(2002) 7 SCC 91**, which was followed in State of M.P v. Ramesh reported as **2005 9 SCC 705** and Raghubir Singh v State of Rajasthan reported as **(2011) 12 SCC 235**, held as follows:

“9.....from the nature of injuries said to have been received by these accused persons, it would appear that the same were simple and minor ones. It is well settled that merely because the prosecution has failed to explain the injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eyewitnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the investigating officer.”

36. In Lakshmi Singh (Supra), there was no explanation offered by the prosecution to the injuries suffered by the accused persons. In the case of Kumar (Supra), neither the injuries of the accused were explained nor their medical record were placed on record, which is not the position in the present case. The injuries in the present case have been sufficiently explained having occurred on account of stone pelting by the crowd. The injuries suffered by the accused persons, as noted by the trial court, were simple in nature except in the case of Dhare, who suffered grievous injury. The trial court vide impugned judgment had acquitted Dhare. Even otherwise, we are of the opinion that the explanation given by the prosecution that the injuries suffered by the accused were caused on account of stone pelting by the crowd, is sufficient and believable.

MOTIVE

37. The motive for the incident has been proved to be the civil suit filed by the deceased against Chanchal. The prosecution had examined Parveen Kumar, an Ahalmad of the court, where the said civil suit was pending. He produced and exhibited photocopies of the plaint as Ex. PW21/A and application under Order 39 Rule 1 & 2 as Ex. PW21/B. He also deposed that the suit was filed on 04.12.1987 by Rati Ram (the deceased) against Mahinder singh Jullah, Chanchal Kumar Jullah, Karan Singh Jullah, Jeewan Jullah, Ram Jullah and Dhare Jullah for permanent prohibitory injunction. This witness was not cross examined.

38. Learned counsel for the appellants next contended that there had been material improvements in the scaled site plan in as much as the rooms which were shown to be existing near the house of Sri Kishan in the unscaled site plan, were deleted in the scaled site plan. This,

according to the learned counsel, was done deliberately so that it could be shown that Sevanand (PW-4) had an uninterrupted '*line of vision*' to the house of Jeet Ram, where the deceased was assaulted. During his cross examination, Sevanand denied that he was not present at the Chabutra at the time of occurrence. We find that no such suggestion was given to the witness that from the Chabutra, he could see the house of Jeet Ram. On the contrary, two suggestions were given to him that from the Chabutra, the house of Rati Ram was not visible and that the place of occurrence was not visible from door of the house of Jeet Ram. None of the above two suggestions were related to the testimony of this witness. Sevanand was injured in the incident and his MLC was recorded at 9.55 pm. Even otherwise, the scaled site plan was prepared and exhibited by Insp Devinder Singh as Ex PW13/A. We find that no question or suggestion was put to this witness on the above aspect. It was also contended that there is inconsistency in the testimony of Ct Ramesh Kumar (PW14) and SI Rajesh Kumar (PW15) as to the place where body of deceased was lying, whether it was inside the gate or outside. The incident itself was not disputed and rather it was suggested to the witnesses and stated at the time of recording of their statements under Section 313 Cr.P.C., that the assault on Rati Ram took place in the street outside the house of Jeet Ram. As such, the said inconsistency, if any, is insignificant. Another argument was raised that though the incident happened on 04.03.1988 and the *lathis* were found at the spot however, the *lathis* were seized only on 05.03.1988. A reference was made to the testimony of Sri Kishan in this regard. It is seen that Ct Sunder Singh deposed that he came back to the spot from the hospital at about 12.30 am (midnight) and thereafter seized the *lathis*. Sri Kishan has nowhere

stated the time of seizure of the *lathis*. So far as non-mentioning of the FIR No. on the MLCs is concerned, it is relevant that it was HC Subhash Chand who had gone to the hospital and not SI Rajesh Kumar, who got the FIR registered.

39. Leaned Counsel for the appellants next contended that the testimony of Geeta, who claimed to have witnessed the assault on the deceased, was not reliable as his name did not find mention in the *Rukka* and during her cross examination, she had admitted that she was inside the room. It is further argued that Geeta, in her cross examination had deposed that body of Rati Ram was taken by the police in about 15-20 minutes after the assault, whereas Insp. Rai Singh deposed that the body of the deceased was removed after he had inspected the spot. It was also argued that there was a delay of one day in recording the statement of Geeta during the investigation. Geeta deposed that she was at the roof of her house from where she had witnessed the assault on Rati Ram. Insp. Rai Singh had deposed that from the spot he had gone to the hospital where he remained till 12:30 midnight where after, he again went to the spot meaning thereby that the investigations were carried throughout the night which provides the explanation for the delay in recording the statement of Geeta.

40. Even, if we ignore the testimony of Sevanand and Geeta, as done by the trial court, the evidence of Sri Kishan, Brahm Swaroop and Phool Kaur sufficiently proves the prosecution case. As stated above, the testimony of above three witnesses is cogent, credible & trustworthy. The witnesses were naturally present in their house on the day of the festival of Holi and have suffered injuries themselves. Their MLCs were

prepared on that very night. The prosecution has successfully proved that the appellants after committing criminal trespass and in pursuance to their common intention, assaulted Rati Ram, resulting in his death. It also stands proved that Raj Singh s/o Karan Singh and Raj Singh@ Dalip s/o Jeete (now deceased), after committing criminal trespass assaulted Bharpai resulting in grievous injury to her. We do not find any reason to interfere with the impugned judgment and order on sentence. Resultantly, the appeals filed by the appellants are dismissed.

41. Ms Behura has argued, in the alternative, that the conviction of the appellants be modified and converted from Section 302 IPC to Section 304 (Part II) and in this regard has relied upon the decision in State of Karnataka Vs. Yenkareddy reported as **(2018) SCC Online SC 1463**. Per contra, Id. APP for the state submitted that the appellants do not deserve any leniency and has referred to the decision in Dhool Singh (Supra). The Appellants first caused injury to Sri Kishan when he tried to stop them while they were going to the house of the deceased. The appellants were armed with *lathis* which indicate that they had come to the spot with a pre-meditated mind. Then they had gone to the house of the deceased where they caused injuries to his son and wife. As the deceased tried to escape, they chased him and then assaulted him with *lathis*. From the records, it stands proved that the appellants had the intention to cause death of Rati Ram and with a premeditated plan assaulted him resulting in his death. The case, therefore, clearly falls in clause Thirdly of Section 300 IPC.

42. Consequently, the appellants' bail bonds are cancelled. The appellants are directed to surrender before the concerned trial court within a period of two weeks from the date of passing of this judgement.

43. A certified copy of this judgment be also sent to the trial court along with the trial court record.

(MANOJ KUMAR OHRI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 18th, 2019
'dc'

सत्यमेव जयते