

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

CRA-67-DB-2010 (O&M)
Reserved on : March 13, 2020
Date of Decision: August 14, 2020

Guddi and others ...Appellants

Versus

State of Haryana ...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Vinod Ghai, Senior Advocate with
Ms.Kanika Ahuja, Advocate for
the appellants.

Ms. Shubhra Singh, Addl. A.G. Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 23/24.12.2009 passed by the Additional Sessions Judge-I, Jind in Sessions Case No.27 of 2009, whereby the appellants, who were charged with and tried for offences punishable under Sections 148, 149, 323, 324, 302 and 452 of the Indian Penal Code (in short 'IPC'), have been convicted and sentenced as under:-

Offence U/S	Sentence of imprisonment	Fine	In default of payment of fine to further undergo
302/149 IPC	RI for life	Rs.10,000/- each	RI for one year each
323/149 IPC	RI for six months		
324/149 IPC	RI for one year		
452/149 IPC	RI for three years	Rs.500/- each	RI for two months each
148 IPC	RI for two years	Rs.500/- each	RI for two months

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The sentences were ordered to run concurrently.

2. The case of the prosecution in a nutshell is that on 31.07.2008 at about 10. 45 PM, a telephonic message was received at P.S. Uchana from P.S. Sadar Narwana that Raj Kumar son of Mangal, Gurdeep son of Tek Ram and Tek Ram son of Mangal residents of Lodhar were admitted in General Hospital, Narwana in an injured condition. They had also brought the dead body of Pala son of Mangal. After collecting ruqqa of the doctor and MLRs from Police Station Sadar, Narwana ASI Ved Parkash along with other police officials reached General Hospital, Narwana. After obtaining opinion of the doctor regarding fitness of injured Raj Kumar to make statement, his statement Ex. PL was recorded. Raj Kumar stated that he was an agriculturist. They were four brothers. Tek Ram was eldest. Next to him was Pala Ram, then Shish Pal. He (Raj Kumar) was the youngest.

3. About 2½ to 3 months earlier a decision with regard to land was taken between them and Lichhu Ram son of Jhanda Ram. But Lichhu Ram bore a grudge on account of that decision. The previous day (i.e., 30.07.2008) at about 8.30/ 9.00 PM he along with his brothers Tek Ram, Pala Ram and nephew Gurdeep son of Tek Ram were sitting in the house after taking their meals. Meanwhile Rohtash, Birbhan, Satyawar, Daya Nand, Mahabir sons of Lichhu Ram, Lichhu Ram, Sunil son of Bir Bhan and Guddi wife of Rohtash reached there. Lichhu Ram raised lalkara that we be taught a lesson for claiming right in the land. Thereafter Rohtash armed with Jaili, Lichhu Ram armed with Jaili, Birbhan armed with Gandasa aimed their weapons on Gurdeep. Rohtash gave a jaili blow on the right

wrist of Gurdeep, Bhirbhan gave gandas blow on the right side of stomach of Gurdeep, When the complainant (Raj Kumar) tried to rescue Gurdeep, Satyawar gave a kasola blow on the right side of his head. Mahabir gave a Kasola blow on his right wrist. Then Lichhu Ram gave a jelly blow on his right shoulder. When the complainant's brother Tek Ram tried to rescue him, Bhirbhan gave a jaili blow on the left thumb of Tek Ram. Rohtash gave a jelly blow to Tek Ram on the back of the palm of his left hand. Satyawar gave kasola blow on the left hip of Tek Ram. Then the complainant's brother Pala Ram started rescuing them. Guddi gave a brick blow on the head of Pala Ram. Dayanand, Mahabir and Sunil gave blows on the head, left side of forehead, left temple, right temple and joint of left foot of Pala Ram with their respective lathis and Kasolas. On alarm being raised many people came there. The assailants ran away with their respective weapons. As the injured were being taken to the Civil Hospital, Narwana by Rameshwar (cousin of the complainant). Pala Ram succumbed to his injuries on the way. The others were admitted in Civil Hospital, Narwana. The cause of the grudge was the partition of land because of which Lichhu Ram bore a grudge against the complainants and he caused injuries to the complainant and his brother Tek Ram and his other brother Pala Ram was murdered. He stated that they(complainant side) had also caused injuries in self defence. On this statement FIR Ex PL/2 was registered. Investigation was commenced. Proceedings under Section 174 Cr. P. C. were initiated. The accused were arrested on 31.07.2008. On their disclosure statements the respective weapons were recovered which were taken into possession. The recovered weapons were sent to FSL for examination. After completion of

investigation report under Section 173 Cr.P.C. was submitted.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded innocence. All the accused stated that they had not attacked the complainant party, but have been falsely implicated in order to grab their land. In defence, they examined DW1 Dr.Sushil Garg and DW2 Dr.Rajesh Gupta.

5. The appellants were convicted and sentenced as referred to above. Hence, this appeal.

6. We have heard learned counsel for the parties and have gone through the judgment and record.

7. PW-1 Kuldeep Gupta, Draftsman, Narwana deposed that on 30.08.2008 after visiting the place of occurrence he prepared the scaled site plan Ex.PA on the demarcation of Raj Kumar s/o Mangal. It bears his signatures. The marginal notes are in his hand.

8. In his cross examination he stated that Point-C was at a distance of 60 feet four inches from the house of complainant. Point C was in the street. Point D was in the street but he could not tell whose houses were there in the western side of Point D. He could not tell the name of the owner of the house. He had not shown in his scaled site plan in whose house this point fell. There was no special mark surrounding point D where brick-bats were not lying. He had not shown in his site plan any bloodstains on the walls of the houses. He denied the suggestion that he had not visited the place of occurrence and had prepared the scaled site plan while sitting in the police station as per the wishes of the I.O.

9. PW2- E.H.C Balbir Singh tendered into evidence his affidavit Ex.PB regarding deposit of various articles with FSL, Madhuban.

10. PW3-Dr. R.K Singla MO General Hospital, Narwana tendered in evidence his affidavit Ex. PD. He deposed that on 30.07.2008 at 10.00 pm, he medico-legally examined Raj Kumar. Injured was brought by Teka his brother. Injured was conscious. He found the following injuries:

“1. A lacerated wound of size 2 cm x 0.5 cm on right parietal region was present X-ray of skull was advised.

2. Diffuse swelling of right forearm was present. X-ray of right forearm was advised.

3. Diffuse swelling of right Shoulder was present. X-ray of right Shoulder was advised.

4. Weapon for all injury was blunt in nature all the injuries were kept under observation. Duration was within six hours.”

11. On the same date, he examined Gurdeep son of Tek Ram 21 yrs male resident of Lodhar. Injured was brought by Teka. Injured was conscious. He found the following injuries:

“1. An incised wound of size 3 cm x 0.5 cm on anterior lower left forearm was present. X-ray of left forearm was advised.

2. Linear abrasion 3 cm in length on anterior lower part of chest was present.

3. Weapon for injury no.1 was sharp and for injury no.2 was pointed blunt. Both the injuries were kept under observation. Duration was within six hours.”

male resident of Lodhar. Injured was conscious. He found the following injuries:

1. *A lacerated wound of size 2 cm x 0.5 cm on anterior part of left thumb was present.*
2. *A lacerated wound of size 2 cm x 0.5 cm on dorsum of left hand was present.*
3. *Abrasion 2 cm 1 cm on left ilac crest was present.*
4. *X-ray of left hand for injury no.1 & 2 was advised.*

Weapon for all injury was blunt in nature. All the injuries were kept under observation. Duration was within six hours.

He proved the MLRs of Teka, Gurdeep and Raj Kumar Ex.PE, Ex.PF and Ex.PG respectively. He sent Rukka Ex.PH to PS Sadar Narwana to the effect that the dead body of Pala son of Mangal has been brought by Raj Kumar, Gurdeep and Teka. On 31.07.2008, police moved an application Ex.PJ seeking his opinion regarding the fitness of Raj Kumar, Gurdeep and Tek Ram. He declared them fit to make statement vide his report Ex.PJ.

13. In cross examination he stated that he did not remember whether police had obtained any opinion regarding the nature of injuries. He had gone through the judicial file but there was no document which proved the nature of injuries. He admitted that x-ray film on judicial file was not of the above said injured. He also admitted that no weapon was shown to him by the police nor did he give any opinion regarding the nature of weapon. He also admitted that all the injuries on person of Raj Kumar and Teka were caused by blunt weapons. He could not say whether the injuries of Raj Kumar and Teka were simple or not. Police never informed him regarding

the nature of injuries of the injured. He admitted that one injury on person of Gurdeep was incised wound and another was abrasion as per MLR. He could not say whether both injuries were simple or not. Police never informed him regarding the nature of injuries of Gurdeep. Both the injuries of Gurdeep were kept under observation. He had admitted all the above said three injured. He did not remember when the injured were discharged. He did not remember whether the above said injured were discharged by him or not. He also did not remember whether any follow up treatment was given to the above said injured by him. He did not examine the dead body of Pala when he was brought in the hospital on 30.07.2008.

14. PW5-Raj Kumar son of Mangal in his deposition stated that they are four brothers. Eldest one is Tek Ram, next to him was Pala Ram (deceased), then Shishpal. He was the youngest. On 30.07.2008 at about 8.00/9.00 pm, he along with his brother Tek Ram, Pala Ram and nephew Gurdeep was present in his 'Darwaja' after taking dinner. In the meantime Lichhu having jelly, Rohtash having Jelly, Birbhan having Gandasa, Satyawan having Kasola, Dayanand having Lathi, Mahabir having Kasola, Sunil armed with lathi and Guddi armed with brick came there. Lichhu Ram raised a lalkara to the effect that we should be taught a lesson for claiming our share in the land. Rohtash gave a jelly blow on the left hand of Gurdeep. Then they (all the accused) caused injuries to all of them (complainant party). Bhirkhan gave gandasa blow from reverse side to Gurdeep on his stomach. Satyawan gave a kasola blow from reverse side on his (PW 5's) head. Mahabir gave a Kasola blow from reverse side on his (PW 5') hand. Licchhu Ram gave a jelly blow lathi wise on his shoulder.

Bhirbhan gave a gandasa blow from reverse side to his brother Tek Ram on his thumb. Rohtash gave a jelly blow to Tek Ram on the back of the palm. Satyawan gave kasola blow from reverse side to his brother Tek Ram on his hip. Guddi gave a brick blow on the head of his brother Pala. Sunil gave a lathi blow on the head of his brother Pala. Dayanand also gave lathi blow on the head of his brother Pala. Mahabir also gave kasola blow from reverse side on the forehead of his brother Pala. Many persons gathered there and accused persons fled away from the spot. Thereafter they made preparation to shift his brother to the doctor. Then they arranged a vehicle from the village which arrived at the spot after five minutes. Then he along with Kuldeep, Pala, Rameshwar, Teka and Satpal, who are sons of his uncle went to hospital in the vehicle. On the way Pala Ram succumbed to his injuries near village Dhakal. Then they took him to hospital at Narwana. The doctor informed the police. He, Gurdeep and Teka were medico-legally examined. Police came there at about 12.00/1.00 p.m and recorded his statement Ex.PL. The reason for causing the injuries was that a settlement regarding the partition of land had taken place in the Panchayat 2½- 3 months earlier. The accused persons were not satisfied with that settlement. The next day, postmortem on the dead body of Pala was conducted. Thereafter at about 10.00/10.30 they received the dead body of Pala Ram. They went to their village and cremated the dead body. Then police arrived. The police had inspected the spot where blood of his deceased brother was lying. The police took blood with the help of thread from his 'Nohra' and from the wall of Bhira and from the bricks lying in front of the house of Mesha. The blood on the thread was put into plastic container and sealed. Memos

Ex.PM, Ex.PN and Ex.PO were prepared. Nothing more was recovered from there.

15. In his cross examination he stated that in his statement to the police he had stated that Birbhan caused a gandasa blow on the thumb of Tek Ram from reverse side. He was confronted with his statement Ex.PL, wherein it not so recorded. It was recorded that Birbhan had given a jelly blow to Tek Ram. He had stated to the police that Birbhan used his gandasa blow from its reverse side. He was confronted with statement Ex.PL, wherein the word 'reverse' was not mentioned. He had stated to the police that Satwayan gave a Kasola blow with reverse side. He was confronted with his statement Ex.PL, wherein word reverse was not mentioned. Although it has not been specifically mentioned in the statement that Guddi had brought a brick when she entered the house but it was mentioned that she gave a brick blow to Pala deceased.

16. His father had one brother Lachhman. There was no previous partition. They were cultivating the land without any partition. They were cultivating the land since their childhood. His father and his brother Lachhman were the owners of 10/1-2 Killas agricultural land each. He did not know about the entries in the Khasra Girdawari and who had been shown to be in cultivation of the land. Only his brother who died knew about this. They (complainant party) had desired that the partition should take place again. He did not know why the necessity of repartition arose. Sarpanch of the village namely Ramphal was also present in the Panchayat held in 2008. As held by the Panchayat 6/1-2 acres of agricultural land which was under the cultivation of Licchu was given to them and 6/1-2 acres

of agricultural land which was under their cultivation was given to Licchu. The parties had cultivated the land according to the compromise. Writing was effected in the Panchayat.

17. The land which they (complainant party) were cultivating now was situated at a distance of 1 km from their Village. The land which Licchu was cultivating after the compromise was near the Village. A tubewell has been installed in this land. Lichhu Ram had five sons. All were accused in this case. One grandson of Lichhu Ram was also facing trial in this case. They had taken their food prior to the present occurrence. There is a nohra and baithak on the ground floor and their family resides on the first floor. All four brothers used to reside in this house. Teka and Pala were married whereas he and his brother Shishpal were unmarried. All four brothers were present on the ground floor whereas other family members were on the first floor. There were two cots in the nohra where they were sitting. They had taken their meals on the first floor and then had come on the ground floor. Daries were spread on the cots. They were to sleep there.

All the accused had entered their nohra. Tek Ram, Pala Ram, he and his nephew Gurdeep were present in the nohra at the time of incident and were sitting on the cots. Lichhu raised the lalkara after entering into the nohra. He received injuries on his person when he was in a standing position as they got up from the cots after seeing the accused. He received all the injuries when he was in a standing position. First of all, Gurdeep received the injuries when he was standing. They did not try to run away from the place or to climb the staircase to save their lives. Gurdeep received three-four injuries. He (complainant) received three injuries. He remained

standing even after receipt of injuries. Tek Ram also remained standing. Pala received three-four injuries on his head. He, Gurdeep and Teka had very small stains of blood whereas sufficient blood had oozed from the injury of Pala Ram. Pala Ram had fallen down in the nohra. They had raised noise bachao bachao when the accused started causing injuries to them. The lady folk of their family were coming down through the staircase, but in the meantime the accused had fled away after causing injuries to them. Only the clothes of Pala had bloodstains. Whereas his clothes and those of Teka and Gurdeep were not stained with blood. Pala had not tried to catch hold the hand of Guddi or brick when she was inflicting injury with the brick. The occurrence continued only for 5-7 minutes. All of them except Tek Ram were empty handed. Tek Ram had picked up a danda which was used for the buffalo. The length of that danda might be 2 feet. He did not see Teka causing injury to any of the accused. He did not see any injury on the person of Veer Bhan, Daya Nand and Rohtash. On hearing their noise, sufficient number of the people had gathered but he could not tell their names. He, Teka and Gurdeep had not gone outside their Darwaja after receipt of injuries. Immediately, after the receipt of injuries, they had proceeded towards the hospital. Therefore, they had not sent any information to the Sarpanch of village regarding this incident. He, Teka and Gurdeep were conscious after the receipt of the injuries. Rameshwar his cousin had come from his house. He had brought a Bolero vehicle to shift them to the hospital. They had reached in G.H. Narwana at about 10 p.m. Police came to the hospital at 12.00 midnight or 1:00 am. The police officials first recorded his statement which took about ½ hour and thereafter

they inspected the dead body of his brother Pala. On the next morning, all three of them were discharged from the hospital. They had reached in the village with the dead body of Pala at 12:00 Noon. The cremation was done at about 1:30 p.m. The police came to the village after the cremation. When they came to their house after the cremation blood was lying on the ground. The blood might be on the dari also. The police had lifted the blood from one place from their nohra. The wall of the house of Bhira was in front of their nohra. There were blood stains on the wall of the house of Bheera. The width of the lane in front of their nohra was 15 feet. The lane was paved. The house of Mahesha was situated after four-five houses from their house where the blood stained bricks were lying. Blood stained bricks were lifted by the police from near the house of Mahesha. Police had not made any inquiry regarding the presence of blood on the wall of Bheera and the blood stained bricks lying in front of house of Mahesha. Separate parcels of the blood lifted from different places were prepared. Teka and Gurdeep were present when the police was conducting proceedings. No enquiry was made in the village by the police from Teka and Gurdeep. Police had obtained his signatures on three papers in the village. His statement was also recorded in the village but his signatures were not obtained by the police underneath his statement. It never came to his knowledge that Dayanand, Veerbhan and Rohtash received injuries and were admitted in the hospital. His father expired at the age of 65 or 70. Lichhu was younger to his father but he could not tell the difference between the ages of Lichhu and his father. Lichhu was about 75 years of age.

18. In cross examination it was suggested to him by Counsel for the

accused that on 30.07.2008 at about 8.30 or 9.00 p.m Veerbhan, Rohtash and Dayanand were going towards the cattle shed where Lichhu Ram sleeps and when they reached in front of their house, he (PW 5) was under the influence of liquor and he started abusing them upon which Veerbhan protested at why he was abusing them. He (PW 5) brought a kasola and gave a blow on the head of Veerbhan and another blow which landed on the finger of right hand of Veerbhan. Dayanand and Rohtash tried to rescue Veerbhan. In the meantime Gurdeep, Tek Ram and Pala armed with Jellies and Lathies also arrived there and they started causing injuries to Rohtash, Dayanand and Veerbhan. He denied these suggestions. He also denied the suggestion that except Dayanand, Rohtash and Veerbhan, none of the other accused were present at the spot. He further denied the suggestion that Rohtash etc. and the villagers threw brick bats on them (complainant party) to save Dayanand, Rohtash and Veerbhan from the complainant party's clutches. He further denied the suggestion that no occurrence took place inside his house and the occurrence took place in between the house of Mesha and wall of Bheera and later on to save themselves the complainant party created a false version to implicate the whole family of Licchu Ram in this case on false and concocted allegations. He also denied the suggestion that his statement was made after due deliberation and consultations and that Guddi did not cause any injury to Pala Ram.

19. PW6 Gurdeep son of Tek Ram stated that on 30.07.2008 he, his father Tek Ram, his uncle Pala and his uncle Raj Kumar were sitting in their nohra. It was 8.30/9.00 pm. Lachhman armed with a jelli, Veerbhan armed with a gandas, Rohtash armed with jelli, Satyawan and Mahabir armed with

kasola, Dayanand armed with a brick came there. First of all Lichhu gave a lalkara that they (complainant party) should be taught a lesson for claiming share in the land. In the meantime Rohtash gave a jelli blow on his left hand from the prong side, Veerbhan gave a gandasas blow on his abdomen from reverse side, Satyawar gave a kasola blow on the head of Raj Kumar from reverse side. Mahabir gave a kasola blow on the hand of Raj Kumar from reverse side. Lichhman gave a jelli blow lathiwise to Raj Kumar on his shoulder. Rohtash gave a jelli blow to Tek Ram. Veerbhan gave a gandasas blow from the reverse side on the thumb of the hand. Satyawar gave a kasola blow to Tek Ram from the reverse side of his hip. Guddi gave a brick blow on the head of Pala Ram. Mahavir gave a kasola blow to Pala Ram from the reverse side. Sunil gave a lathi blow on the head of Pala Ram. Dayanand gave a lathi blow to Pala on his ankle. On raising noise by the complainant party many persons came there. The accused fled away from the spot with their respective weapons. His father Teka gave dandas blows to Rohtash, Veerbhan and Dayanand in self defence. This danda was lying in their nohra as it is kept for minding the buffalo. A panchayat was held regarding the partition of the land and the decision of the panchayat was not to the liking of Lichhu. Therefore he had grudge against them. Lichhu caused injuries to them on that account. His uncle Rameshwar arranged a vehicle, took all the injured to GH Narwana. Pala Ram succumbed to the injuries on the way.

20. In cross examination he stated that the factum of the use of weapon from the reverse side had not been disclosed by him to the police.

He had not stated to the police that Teka lifted a danda from the nohra and

caused injuries to Rohtash, Veerbhan and Dayanand. He was confronted with his statement Ex. D-1 where it was not recorded that they (complainant party) had caused injuries to the aforesaid accused in self defence. He had stated to the police that Lichhu was not happy with the decision. He was confronted with his statement where it was not so recorded. Pala had received 4-5 injuries on his head and one on his ankle and blood had oozed from his injuries. There were 14-15 houses in between their house and the house of the accused. Lichhu Ram had a cattle shed and used to sleep there. Total nine members of the complainant party were present in their house on that day. Lichhu Ram raised lalkara on the door step of their nohra. He (PW 6) did not raise any noise when Lichhu Ram raised lalkara. They (complainant party) did not run towards the inner house to save themselves. Similar suggestions as to PW 5 were made to him by the counsel for the accused. He denied those suggestions.

21. PW7 Darshan Kumar Jain stated that he is a proprietor of Shubham Studio at village Lodhar. On 31.07.2008 he visited the place of occurrence and took photos Ex.P1 to Ex.P4 and the negatives are Ex.P5 to Ex.P8. On the back of the photos name of his studio is mentioned.

22. PW8 Dr. Rajesh Gupta, M.O. General Hospital, Narwana tendered in evidence Ex PW 7/ A deposing that on 31.07.2008 he was posted as Medical Officer, General Hospital, Narwana. On that day, he had conducted post mortem examination on dead body of Pala Ram son of Mangle. On examination no ligature mark was present on the neck. Rigor mortis was present on the limbs. A reddish contusion was present on left side of forehead of size 2 inch x 1 inch. Underlying frontal bone was fractured.

Blood was present in cranial cavity left lobe of brain.

Cause of death in his opinion was injury to brain which was ante mortem in nature and sufficient to cause death. He proved the carbon copy of the post mortem report Ex.PW7/B. The duration between the death and post mortem was between 6 to 24 hours and between injury and death was immediate.

23. In cross examination he stated that before conducting the post mortem examination he had thoroughly checked the dead body and found only two injuries as mentioned in the post mortem report. He admitted that the reddish contusion on the interior side of the left knee was a superficial injury and could be the result of falling on a hard surface. Possibility of causing a lacerated wound by a blunt weapon on the forehead cannot be ruled out. The injury mentioned on the forehead could be received by falling on a hard surface while running. It is possible that when the edge of a brick is struck on a bony portion with force then laceration may appear.

24. PW9 ASI Hawa Singh deposed that on 31.07.2008 he was posted at PS Uchana. On that day he received a ruqa through Anil Kumar upon which he recorded formal FIR Ex.PL/2 and made endorsement Ex.PL/3.

25. PW10 SI Ved Parkash deposed that on 30.07.2008, he was posted as ASI in PS Uchana. On that day, at 10.45 pm a telephonic message was received from PS Sadar Narwana in PS Uchana that Raj Kumar, Teka and Gurdip were admitted in General Hospital, Narwana and dead body of Pala Ram was also brought by them. Thereafter, he along with other police officials reached General Hospital Narwana. On his application Ex.PJ to the

doctor, the doctor gave opinion Ex.PJ/1 vide which all the injured were

declared fit to make statements. He recorded the statement of PW Raj Kumar injured as Ex.PH who appended his signatures on the same in Hindi. Thereafter, he made his endorsement Ex.PL/1 on Ex.PH and sent the same to police station upon which formal FIR Ex.PL/2 was registered. Thereafter he prepared the inquest report in the presence of Tek Ram, Gurdip Singh and numbers of other persons. He got the post mortem of the dead body of Pala Ram conducted. Thereafter, EHC Dharampal arrived there and produced three copies of MLR of Bir Bhan etc. He enquired in the hospital about the admission of injured but they were not found admitted there. He reached the place of occurrence alongwith police official witnesses where Raj Kumar and other public persons met him. A team of scene of crime headed by Dr. Joginder Singh was also met him at the spot. Photographer was also summoned who took the photographs of the place of occurrence. Dr. Joginder Singh inspected the place of occurrence and lifted the blood from the place of occurrence i.e. gate of house of the deceased with the help of thread and handed over the blood stained thread to him (PW10). He made a parcel of same took it into possession vide recovery memo Ex.PO. Dr. Joginder Singh also lifted blood with the help of a thread from the wall of house of Bheera from a brick. The thread was converted into a parcel and sealed and taken into possession vide recovery memo Ex.PA. Thereafter, Dr. Joginder Singh also lifted blood from bricks in front of house of Mahesha and with the help of thread and handed over same to him (PW 10) which was sealed and taken into possession vide recovery memo Ex.PO. Thereafter, he removed the two bricks duly blood stained from the street in front of the house of Mahesha which were taken into possession vide

recovery memo Ex.PR. He also recorded the statements under Section 161 Cr. P.C. of PW Raj Kumar and ASI Hari Vallabh. Upon opening of a sealed parcel bearing the seal of FSL he identified the two bricks Ex.PR/1 and Ex.PR/2 found therein as being the same which he had taken into possession on 31.07.2008. He also prepared rough site plan Ex.PS of the place of occurrence on the pointing of PW Raj Kumar. Thereafter Inspector/SHO Kulwant Singh came at the spot. He handed over the investigation of case to him alongwith case property with seals intact. Thereafter he joined with investigation headed by Inspector Kulwant Singh.

26. On same day i.e. 30.07.2009 he alongwith Inspector Kulwant Singh reached at bus adda Uchana where one Rajinder s/o Telu Ram r/o village Kotha met them. Rajinder Singh produced accused Lachhu Ram, Bir Bhan, Rohtash, Daya Nand, Satyawar, Mahabir and Sunil before them. Inspector s Kulwant Singh interrogated accused persons who were having respective weapons. During interrogation accused Lachhman produced one jeli short prones which was taken into possession vide recovery memo Ex.PT. Accused Vir Bhan produced one gandasa which was taken into possession vide recovery memo Ex.PU. Accused Rohtash produced a jeli which was taken into possession vide recovery memo Ex.PV. Accused Daya Nand produced a mussle made of wood which was taken into possession vide recovery memo Ex.PW. Accused Satyawar produced kasola which was taken into possession vide recovery memo Ex.PX. Accused Mahabir produced kasola which was taken into possession vide recovery memo Ex.PY. Accused Sunil produced wooden kutka (a small danda) which was taken into possession vide recovery memo Ex.PAA/1. He identified the said

articles in Court.

27. In cross examination he stated that he reached the spot at 9.00 AM on 31.07.2008. No lathi, danda or brick was found inside the darwaja where the alleged occurrence took place. It had come to his knowledge that three of the accused also received injuries. Raj Kumar had not disclosed to him as to whose blood had fallen on the wall of Bhira and on the bricks near the house of Mahesha. At 7.00 PM the accused were taken to general hospital / CHC Uchana where they were medically examined. However, they were not got admitted.

28. PW11 Inspector Kulwant Singh stated that on 31.07.2008, he was posted as Inspector/SHO PS Uchana. On that day, he alongwith police officials reached at place of occurrence in village Lodhar. ASI Ved Parkash alongwith police officials met him. He handed over investigation file of this case alongwith case property with seals intact, along with post mortem report and inquest report. He verified the facts from the persons who were already present at the spot and found them as correct. Thereafter, he raided the house of accused for search but accused were not found present in their houses. Thereafter he reached bus stand Uchana, where Rajinder son of Telu Ram met him and produced accused Laxman, Bir Bhan, Rohtash, Daya Nand, Satyawar, Mahabir and Sunil who were having their respective weapons in their hands. He interrogated them one by one and they produced their respective weapons which were taken into possession. On 10.09.2008 he arrested accused Guddi from the house of Rohtash with the help of a lady constable.

affidavit Ex. DW1/A wherein he deposed that on 30.07.2008 at about 10.30 PM he medico- legally examined Rohtash. His clothes were found stained with blood. Vitals were normal. He found the following injuries.

- *“A laceration of size 1.0 x 0.4 x 0.6 cm deep on posterior aspect of right arm. On examination bleeding present from the wound. He advised for x-ray right arm anterior-posterior and lateral view and ortho surgeon's opinion.*
 - *An abrasion-contusion of size 2.0 x 2.0 cm on scalp in left frontal region. On examination mild bleeding present. He advised for x-ray skull anterior-posterior and lateral view.*
 - *An abrasion-contusion of size 3.0 x 0.3 cm on anterior aspect of left leg below the knee. He advised for x-ray left knee.*
 - *A bruise of size 6.0 x 1.0 cm on left forearm in the middle portion. On examination red in colour. He advised x-ray of left forearm anterior-posterior and lateral view and ortho-surgeon's opinion.*
 - *Complaints of dental injury on lower jaw. On examination mobile tooth present. He advised dental surgeon's opinion.*
- Nature of injury: 1 to 5 kept under observation.*

Weapon: 1 blunt pointed.

2 to 4 blunt

5 cannot be assessed.

Duration: All within 24 hours.”

30. Same day he medico-legally examined Dayanand at 10.45 PM. His clothes were stained with blood. Vitals were normal. He found the following injuries:

- *“A laceration of size 3.0 x 0.3 cm on scalp in left parietal region of scalp in the middle. On examination bleeding present. He advised for x-ray skull anterior-posterior and lateral view and surgeon's opinion.*
- *A laceration of size 3.0 x 0.3 cm on scalp in left parietal region. On*

examination bleeding present. Wound is placed 3 cm lateral and posterior to injury no. 1. He advised for x-ray skull anterior-posterior and lateral view.

Nature of injury: 1 & 2 kept under observation.

Duration: All within 24 hours.”

31. Same day at 10.50 PM he medico-legally examined Beerbhan. His clothes were stained with blood. Vitals were normal. He found the following injuries on his person.

- *“A laceration of size 10.0 x 0.4 x 0.4 cm deep on scalp obliquely in both parietal region of scalp. On examination bleeding present. Bone is exposed. He advised for x-ray of skull anterior-posterior and lateral view and surgeon's opinion.*
- *A bruise of size 4.0 x 1.0 cm on dorsal aspect of left hand near to thumb. He advised for x-ray left hand anterior-posterior and lateral view and ortho-surgeon's opinion.*
- *A laceration of size 2.0 x 1.0 cm on dorsal aspect of right hand on medial side. He advised for x-ray right hand anterior-posterior and lateral view.*

Nature of injury: 1 to 3 kept under observation.

Duration : All within 24 hours.”

32. In cross examination he stated that in the history given by the patients they had mentioned that they received injuries with jelly, kasola and gandasas. Injuries on the person of Rohtash, Birbhan and Dayanand could not be caused by Kasola and Gandasi. However injury No. 1 on Rohtash was possible with a blunt pointed weapon.

33. DW 2 Dr. Rajesh Gupta Medical Officer, G.H. Narwana deposed that on 01.08.2008 he reported the x-rays of Rohtash. In the x-rays there was

fracture of left ulna.

34. As per FSL report Ex. PC/1 blood was detected on Ex. 2 (thread piece), exhibit-3 (thread piece), exhibit-4 (thread piece) and exhibit-5 (bricks). Blood was detected on exhibit-6 (Jelly), exhibit-7 (Jelly), exhibit-8 (Gandasa), exhibit-9 (kasola), exhibit-10 (kasola), exhibit-11 (Musal) and exhibit-12 (kutka/musal).

35. Further as per serological analysis of the blood, the blood on exhibit-2, exhibit-4, exhibit-6, exhibit-7, exhibits-10, 11 and 12 was of human origin. The report regarding the Group however was inconclusive.

36. Ld. Counsel for the appellants has raised the following contentions:

- (i) The injuries were not caused at the house of the complainant as alleged.
- (ii) In fact, it was the complainant party which was the aggressor and initiated the fight.
- (iii) The accused party has been inflicted more serious injuries by the complainant side.
- (iv) Section 149 is not attracted as it was a case of free fight between the parties and every member is liable for his individual act.

37. The case was initiated on the statement Ex.PL of PW5 Raj Kumar recorded by ASI Ved Parkash at General Hospital, Narwana. Raj Kumar stated that he was an agriculturist. They were four brothers. Tek Ram, Pala Ram, Shish Pal. He (Raj Kumar) was the youngest. About 2 ½ to 3 months earlier a decision with regard to land was taken between them and Lichhu

Ram. But Lichhu Ram bore a grudge on account of that decision. The previous day (i.e., 30.07.2008) at about 8.30/ 9.00 PM he along with his brothers Tek Ram, Pala Ram and nephew Gurdeep son of Tek Ram were sitting in the house after taking their meals. Meanwhile Rohtash, Birbhan, Satyawar, Daya Nand, Mahabir sons of Lichhu Ram, Lichhu Ram, Sunil son of Bir Bhan and Guddi wife of Rohtash reached there. Lichhu Ram raised lalkara that we be taught a lesson for claiming right in the land. Thereafter Rohtash armed with Jelly, Lichhu Ram armed with Jelly, Birbhan armed with Gandasa aimed their weapons on Gurdeep. Rohtash gave a Jelly blow on the right wrist of Gurdeep, Bhirbhan gave gandasa blow on the right side of stomach of Gurdeep, When the complainant (Raj Kumar) tried to rescue Gurdeep, Satyawar gave a kasola blow on the right side of his head. Mahabir gave a Kasola blow on his right wrist. Then Lichhu Ram gave a jelly blow on his right shoulder. When the complainant's brother Tek Ram tried to rescue him, Bhirbhan gave a Jelly blow on the left thumb of Tek Ram. Rohtash gave a jelly blow to Tek Ram on the back of the palm of his left hand. Satyawar gave kasola blow on the left hip of Tek Ram. Then the complainant's brother Pala Ram started rescuing them. Guddi gave a brick blow on the head of Pala Ram. Dayanand, Mahabir and Sunil gave blows on the head, left side of forehead, left temple, right temple and joint of left foot of Pala Ram with their respective lathis and Kasolas. On alarm being raised many people came there. The assailants ran away with their respective weapons. As the injured were being taken to the Civil Hospital, Narwana by Rameshwar (cousin of the complainant). Pala Ram succumbed to his injuries on the

way. The others were admitted in Civil Hospital, Narwana. The cause of the grudge was the partition of land, because of which Lichhu Ram bore a grudge against the complainants and he caused injuries to the complainant and his brother and his brother Pala Ram was murdered. He stated that they (complainant side) had also caused injuries in self defence. While deposing in Court as PW 5 he broadly reiterated the same allegations. A significant shift however was that he stated that Bhirbhan gave gandasa blow from reverse side to Gurdeep on his stomach. Satyawar gave a kasola blow from reverse side on his (PW 5's) head. Mahabir gave a Kasola blow from reverse side on his (PW 5's) hand. Licchhu Ram gave a jelly blow lathi wise on his shoulder. Bhirbhan gave a gandasa blow from reverse side to his brother Tek Ram on his thumb. Rohtash gave a jelly blow to Tek Ram on the back of the palm. Satyawar gave kasola blow from reverse side to his brother Tek Ram on his hip. In his statement Ex. PL the word 'reverse side' was not mentioned.

38. Broadly, to the same effect was the deposition of PW6 Gurdeep who was also injured in the incident.

39. PW10 SI Ved Parkash deposed that other than the gate of the house of the deceased, blood was also lifted with the help of a thread from the wall of house of Bheera and from a brick in front of house of Mahesha. Two bricks duly blood stained were recovered from the street in front of the house of Mahesha which were taken into possession. PW5 Raj Kumar also corroborated this. PW5 specifically stated that nothing more was recovered from there. PW10 also stated that no lathi, danda or brick was found inside the darwaja where the alleged occurrence took place.

40. In cross examination PW5 stated that the wall of the house of Bhira was in front of their nohra. The width of the lane in front of their nohra was 15 feet. The lane was paved. The house of Mahesha was situated after four-five houses from their house where the blood stained bricks were lying.

41. This indicates that the entire incident did not occur inside the gate of the house of the complainant as is the case of the prosecution. The complainant in his statement Ex. PL had stated that the complainant side also caused injuries to the accused in self defence. While deposing as PW 5 he stated that all of them except Tek Ram were empty handed. Tek Ram had picked up a danda which was used for minding the buffalo. The length of that danda might be 2 feet. He stated that he did not see Tek Ram causing injury to any of the accused nor did he see any injury on the person of Veer Bhan, Daya Nand and Rohtash. But PW 6 Gurdeep deposed that his father Tek Ram gave danda blows to Rohtash, Veerbhan and Dayanand in self defence. This danda was lying in their nohra as it was kept for minding the buffalo. Thus it is that the complainant party has admitted causing injuries to the accused in self defence. But their version that injuries were caused only by Tek Ram by wielding a danda cannot be accepted. On the side of the accused Rohtash has suffered 5 injuries, Dayanand 2 injuries and Beerbhan 3 injuries. When they were medico-legally examined their clothes were stained with blood. It is difficult to believe that only one person from the complainant side wielding a danda could cause these number of injuries to the accused who as per the prosecution case were armed with dandas, gandasi and kasolas. Thus the prosecution version cannot be accepted as an

absolutely truthful version of the occurrence.

42. The Ld. Counsel for the accused in his cross examination had suggested both to PW 5 and PW 6 that the fight was initiated by the complainant party as PW 5 Raj Kumar who was under the influence of liquor abused Veerbhan, Rohtash and Dayanand when they happened to pass in front of the house of the complainant on their way towards the cattle shed where Lichhu Ram sleeps. On being remonstrated (PW 5) brought a kasola and gave a blow on the head of Veerbhan and another blow which landed on the finger of right hand of Veerbhan. Dayanand and Rohtash tried to rescue Veerbhan. In the meantime Gurdeep, Tek Ram and Pala armed with Jellies and Lathies also arrived there and they started causing injuries to Rohtash, Dayanand and Veerbhan. Not only were these suggestions denied by PW 5 and PW 6, but this also stands contradicted by the medical evidence. DW1-Dr. Sushil Garg who conducted the medico-legal examination of accused Rohtash, Dayanand and Veerbhan in his cross examination stated that though in the history given by the patients they had mentioned that they received injuries with jelly, kasola and gandasas. However the injuries on the person of Rohtash, Birbhan and Dayanand could not be caused by Kasola and Gandasi. Only injury No. 1 on Rohtash was possible with a blunt pointed weapon.

43. Thus it appears that the true manner in which the occurrence initiated has not been brought forth by the parties. But in whatever manner the occurrence initiated/ developed it appears that it eventually evolved into a free fight between both the groups. Further even if the accused are to be

taken to the aggressors, from the evidence of the prosecution it is clear that

the intention of the accused appears to be only to inflict minor injuries to the complainant party as is evident both from the deposition of PW 5 and PW 6 that the injuries were inflicted from the reverse side of their respective weapons namely gandasi, kasola and jelly. The blows were also aimed at non-vital parts of the body. As per PW 5 Bhirbhan gave gandas blow from reverse side to Gurdeep on his stomach. Satyawan gave a kasola blow from reverse side on his (PW 5's) head. Mahabir gave a Kasola blow from reverse side on his (PW 5') hand. Licchhu Ram gave a jelly blow lathi wise on his shoulder. Bhirbhan gave a gandas blow from reverse side to his brother Tek Ram on his thumb. Rohtash gave a jelly blow to Tek Ram on the back of the palm. Satyawan gave kasola blow from reverse side to his brother Tek Ram on his hip. It is only Guddi who is alleged to have given hit deceased Pala Ram on his head with a brick. Thus Ld. Counsel for the appellants is right in his contention that Section 149 of the IPC is not attracted. Each of the accused can be held liable only for the specific injuries caused by him/ her.

44. But the prosecution version is consistent that Guddi gave a brick blow on the head of Pala Ram.

45. PW8 Dr. Rajesh Gupta, who had conducted post mortem examination on dead body of Pala Ram deposed that a reddish contusion was present on left side of forehead of size 2 inch x 1 inch of the deceased. Underlying frontal bone was fractured. Blood was present in cranial cavity left lobe of brain.

Cause of death in his opinion was injury to brain which was ante

mortem in nature and sufficient to cause death. The duration between injury

and death was immediate. In cross examination he stated that before conducting the post mortem examination he had thoroughly checked the dead body and found only two injuries. The other injury being a reddish contusion on the interior side of the left knee which was a superficial injury and could be the result of falling on a hard surface. Thus the medical evidence has corroborated the version of the prosecution regarding the brick injury on the head of Pala Ram which resulted in his death. PW 5 had deposed that Sunil gave a lathi blow on the head of his brother Pala. Dayanand also gave lathi blow on the head of his brother Pala. Mahabir also gave kasola blow from reverse side on the forehead of his brother Pala. This aspect is disproved as there was only one injury on the head of the deceased as mentioned above.

46. In inflicting a blow with a brick on the forehead of deceased Pala Ram which resulted in his immediate death, accused Guddi is guilty of the offence under Section 304 Part I of the IPC.

47. The other accused have all inflicted injuries to the members of the complainant party. The weapons used by them have been recovered. As per FSL report blood was detected on exhibit-6 (Jelly), exhibit-7 (Jelly), exhibit-8 (Gandasa), exhibit-9 (kasola), exhibit-10 (kasola), exhibit-11 (Musal) and exhibit-12 (kutka/musal). The blood on exhibit-2, exhibit-4, exhibit-6, exhibit-7, exhibits-10, 11 and 12 was of human origin. They are also found to have entered the house of the complainant. Thus they are also guilty of the offence under Section 452 IPC.

48. Accordingly this appeal is partly allowed.

49. The conviction of accused under Section 302/149 IPC, 323/149

IPC, 324/149 IPC, 452/149 IPC and 148 IPC is set aside.

50. All the accused-appellants are convicted for the offences under Section 452 IPC and sentenced to undergo RI for two years, each.

51. Accused Sunil, Mahabir, Satyawar, Dayanand, Rohtash, Birbhan and Lichhu Ram are also convicted of the offences under Section 323 and 324 IPC. Each of them is sentenced to undergo imprisonment of six months under Section 323 IPC and one year each under Section 324 IPC.

52. Accused Sunil, Mahabir, Satyawar, Dayanand, Rohtash, Birbhan and Lichhu Ram are on bail as their sentence has been suspended. They have already undergone actual sentence of more than awarded above. Accordingly, their bail bonds stand discharged.

53. Accused-appellant Guddi is also convicted of the offence under Section 304 Part-I IPC. Sentence of Guddi was suspended vide order dated 08.09.2011, wherein, it has been recorded that she had already undergone actual sentence of 02 years 11 months.

54. List the matter on 20.08.2020 to hear the accused - appellant Guddi /her counsel on the quantum of sentence.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 14, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No