



CRA-D-248-DB-2005

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-248-DB-2005

Date of Decision: 10.03.2025

RAM BHAJ & OTHERS

... Appellant(s)

Versus

STATE OF HARYANA

...Respondent

CRA-263-DB-2005

SANJAY & ANOTHER

... Appellant(s)

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Keshav Pratap Singh, Amicus Curiae with
Mr. Tarun Hooda, Advocate and
Mr. Sanskar Dhanda, Advocate
for the appellant Nos.2 and 3 in CRA-D-248-DB-2005.

Mr. Aman Pal, Advocate
for the appellant No.1 in CRA-D-248-2005.

Mr. P.S. Ahluwalia, Advocate
for appellants in CRA-263-DB-2005.

Mr. Munish Sharma, DAG, Haryana.

JASJIT SINGH BEDI, J.

This order shall dispose of two appeals bearing No.CRA-D-248-DB-2005 titled as Ram Bhaj & others versus State of Haryana and CRA-263-DB-2005 titled as Sanjay & Another Versus State of Haryana as the same are

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arising out of the same FIR. However, for the sake of convenience the facts have been taken from CRA-D-248-DB-2005.

2. The present appeals have been filed against the judgment of conviction and order of sentence dated 02.03.2005 passed by the Addl. Sessions Judge, Rohtak.

3. Sanjay (appellant in CRA-D-263-DB-2005) has passed away and therefore, the proceedings qua him stand abated.

4. The FIR was registered on 06.03.2004, the judgment of conviction and order of sentence passed by the Addl. Sessions Judge, Rohtak is dated 02.03.2005, the appeals were filed on 04.04.2005/21.03.2005 and the matter is being taken up for hearing now i.e. after a period of more than 20 ½ years from the date of registration of the FIR.

5. The brief facts of the prosecution case are that on 06.03.2004, at about 9.00 a.m a V.T. Message Ex.P31 was received at Police Post, Kansala, regarding admission of injured Tale Ram, resident of village Pakasma (since deceased), whereupon Incharge HC Ranbir Singh PW 14 reached PGI MS, Rohtak and collected the medical ruqa Ex.P5, sent by the doctor at 8.50 a.m., and also a copy of MLR Ex.P34 of injured Tale Ram. On application Ex.P31 of HC Ranbir Singh, the attending doctor declared Tale Ram as unfit for statement. Om Singh PW4, son of Tale Ram, was found present there, who at 4.30 p.m., got his statement Ex.P7 recorded to the effect that on the previous day dated 05.03.2004, there was some altercation in between the sons of his brother Mohinder and sons of accused Jage Ram, but they were separated. On

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that day i.e. 06.03.2004 at about 7.00 a.m., when he (Om Singh) was coming towards his house after tethering his buffaloes in the plot then when he reached in front of his house, all the accused persons came, encircled him and stated that they would teach him a lesson for the incident of the previous day. Saying so, accused Kanwar Lal, took him in his grip. Accused Rambhaj @ Bittu gave him a jelly blow on his right flank. Accused Shree, gave him a jelly blow on his left flank and accused Sanjay gave him a lathi blow on the left eye lid. Meanwhile, his father Tale Ram (since deceased) who was inside the house asked as to what was going on outside whereupon accused Rajesh, Surat Singh, Dalpat @ Kasu and Jage Ram, with an intention to kill him entered his house. Accused Rajesh gave a lathi blow to Tale Ram on the left side of the head, accused Dalpat @ Kasu gave a push to Tale Ram, accused Surat Singh gave a lathi blow on his face, just below his right eye whereas accused Jage Ram gave a lathi blow on his left hand elbow. Receiving these injuries, Tale Ram fell down and become unconscious and serious. They raised an alarm of "Maar Diya", hearing which, his younger brother Ram Niwas (since given-up as unnecessary) and Raj Singh (PW5) reached there. Seeing them there, all the eight accused persons, ran away with their respective weapons, but while going away, they threatened that on that day they (complainant party) were saved, but in case they (complainant party) tried to quarrel with them (accused party), they would be killed. After arranging a vehicle, he brought his father Tale Ram to the hospital.



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6. HC Ranbir Singh PW14, sent the aforesaid report Ex. P7 to the Police Station, with his endorsement Ex.P7/C thereon and on its basis, formal FIR Ex.P7/A was registered by ASI Shri Kishan PW3 for offences punishable under sections 307, 323, 506, 452, 148 read with section 149 of IPC.

7. Dr. Ravinder Sahu PW15 at 8.30 p.m., medico-legally examined injured Tale Ram at 08.30 PM and in the MLR Ex.P34 noted that he was semi-conscious, disoriented, his pupils were bilaterally dilated and pulse rate was 78 per minute. The doctor noted the following injury on his person:-

i) There was lacerated wound of size 7cmx.5cm.xsuperficial deep situated over the left parieto-temporal region, with fresh bleeding. Patient was advised for surgeon's opinion and management. Patient was advised for surgeon opinion and management, plus any other injury detected during management and treatment.

The nature of the injury was kept under observation. It was caused by a blunt weapon. After medical examination, the doctor sent medical ruqa Ex.P5 at 8.50 p.m., informing the police regarding his admission in the hospital.

8. Complainant/Om Singh PW4 was having some injuries on his person, received in the occurrence, so HC Ranbir Singh, sent him for his medial examination with HC Ramphal. Dr.Mukesh Chand PW13 medically examined Om Singh and in the MLR Ex.P28, noted the following injuries on his person:-

i) Reddish contusion 4x2.3cm., on left upper lid, pupils were B/L normally reacting normally to light.



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No complaint in vision was found. Adv. Opthealmiel/Eye surgeon opinion.

ii) Lacerated wound .3x.3cm., on left lower chest posterior aspect, posterior to axillary fold. Depth not assessed. Referred to GH, Rohtak for further treatment. Adv. Surgeon's opinion.

iii) Lacerated wound .4cm x .2cm. On right side of abdomen superolateral to anterior axillary fold. Adv. Surgeon's opinion.

All the injuries were caused by a blunt weapon. The nature of the injuries was kept under observation. Duration of the injuries tallied with the time of the occurrence.

9. HC Ranbir Singh (PW14) along with HC Ramphal, then reached the place of occurrence and lifted the blood stained 'Gudad', which was taken into police possession, in a sealed parcel, with seal "T.R'., vide recovery memo Ex.P11, attested by Mahinder Singh PW9. HC Ranbir Singh also prepared rough site plan Ex.P33, showing the place of occurrence. On return to the Police Station, the said sealed parcel was deposited with MHC Ram Parkash PW6. Later on, it was sent to Forensic Science Laboratory, Madhuban, through Constable Karambir (PW7). Subsequently, the FSL report Ex.P10 was received, detecting human blood thereon. Thereafter, investigations of the case were taken over by ASI/Incharge Police Post, Virender Singh PW12.

10. Injured Tale Ram succumbed to his injuries at 3.45 a.m., on the same night. The attending doctor, sent a medical ruqa Ex.P4 at 4.15 p.m.,



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informing the police, regarding the death of Tale Ram. V.T. Message Ex.P20 in this regard was also received in the Police Station, on the basis of which, offence punishable under section 302 of IPC was added.

11. ASI/Incharge Police Post Virender Singh PW12 reached PGIMS, Rohtak. He prepared the inquest report Ex.P3 and sent the dead body for post mortem examination with police application Ex.P1. Dr.S.P.S.Bhatia PWI conducted the post mortem examination and in the post mortem report Ex.P2 noted the following injuries:-

- i) Stitched wound on parieto temporal region 7cm x 5cm., on exploration of the skull, the underline bone was found fractured. Sub dural heamotema was present.*
- ii) Fracture of both the bones of left forearm.*
- iii) Left eye blackened.*

In the opinion of the doctor, the cause of death was shock and cardio respiratory-arrest due to the injuries, which were ante-mortem and sufficient to cause death in the ordinary cause of nature.

12. On the next day of the occurrence i.e. dated 7.3.2004, complainant Om Singh also got recorded his supplementary statement Ex.D1, mentioning that the previous day, he was under shock. In fact, accused Jage Ram, had given a lathi injury on the left side of the head of Tale Ram. Accused Rajesh had given him a lathi injury on his left arm elbow whereas he had earlier attributed these injuries vice-versa.

13. On 11.3.2004, accused Jage Ram and Surat Singh were produced before SI Rajbir Singh (PW11) by village Sarpanch Ram Kishan DW4, when

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both them were arrested. On the basis of the disclosure statement Ex.P14 of accused Jage Ram, lathi Ex.P18 was recovered from him, kept concealed in the fodder Kotha of his house. Its sketch Ex.P18/A was prepared, showing the place of recovery in rough site plan Ex. P18/B and it was taken into police possession, vide recovery memo Ex.P15. Similarly, on the basis of the disclosure statement Ex.P16 of accused Surat Singh, lathi Ex.P19 was recovered from him. Its sketch Ex.P19/A was prepared, showing the place of recovery in rough site plan Ex.P19/B and it was taken into police possession vide recovery memo Ex.P17. Both these recoveries were witnessed and attested by Hari Chand PW10 and PW Satyawan (since given-up as unnecessary).

14. Accused Shree and Ram Bhaj were arrested by ASI Virender Singh PW12 on 14.3.2004. On the basis of the disclosure statement Ex.P21 of accused Shree, jelly Ex.P22 was recovered from him. Its sketch Ex.P21/B was prepared, showing the place of recovery in rough site plan Ex.P21/C and was taken in police possession, vide recovery memo Ex.P21/A. Similarly, on the basis of disclosure statement Ex.P23 of accused Ram Bhaj, jelly Ex.P24 was also recovered from him. Its sketch Ex.P23/B was prepared, showing the place of recovery in rough site plan Ex.P23/A and was taken into police possession, vide recovery memo Ex.P23/C. These recoveries were witnessed and attested by Hari Chand PW10 and PW Satywan.

15. Accused Sanjay was arrested on 21.4.2004 by ASI Virender Singh PW12. On the basis of his disclosure statement Ex.P25, lathi Ex.P13

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was recovered from him. Its sketch Ex.P25/B was prepared, showing the place of recovery in the rough site plan Ex.P25/C. It was taken into police possession, vide recovery memo Ex.P25/A. This recovery was witnessed and attested by Mahinder Singh PW9.

16. Accused Rajesh was arrested on 23.4.2004 by ASI Virender Singh PW12. On the basis of his disclosure statement Ex.P26, one lathi Ex.P12 was recovered from him. It was taken into police possession in a sealed parcel, vide recovery memo Ex.P10, showing the place of recovery in the rough site plan Ex.P26/A. This recovery was witnessed and attested by EHC Dharambir and Mahinder Singh PW9.

17. On 31.3.2004, recovered jellies from accused Shree and Ram Bhaj were produced by ASI Virender Singh before Dr. Mukesh Chand PW13 to ascertain as to whether or not, the injuries on the person of Om Singh could have been caused by these jellies. The doctor gave his respective opinions Ex.D5 and Ex.D6 that since those injuries were inflicted by blunt weapon, so, it cannot be opined that these were inflicted by these weapons or not, but possibility thereof out could not be ruled out.

18. Similarly, on 11.05.2004, the recovered lathies from accused Sanjay, Rajesh and Jage Ram were produced by ASI Virender Singh before the doctor to ascertain as to whether or not, the injuries on the person of Tale Ram could have been caused by the lathies; whereupon the doctor gave his opinion mark-A in the affirmative.

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19. After getting the scaled site plan Ex.P6, prepared from the official Draftsman Sumit Kumar PW2 and after completion of other necessary investigations, only six accused persons viz. Ram Bhaj, Shree, Surat Singh, Sanjay, Rajesh and Jage Ram were challaned by SI/SIHO Rajbir Singh PW11 for offences punishable under sections 302,452,506,148 read with section 149 of IPC. Accused Kanwar Lal and Dalpat were innocent, so, their names were placed in column no.2 of the challan.

20. On commitment, the aforesaid six accused persons were charged for offences punishable under section 148 IPC and under sections 323, 302, 506, read with section 149 of IPC. Accused Rajesh, Surat, Dalpat and Jage were also duly charged for offences punishable under section 449 of IPC. The accused persons did not plead guilty to the charges and claimed trial.

21. After the evidence of complainant/Om Singh was recorded as PW1, on the application of the prosecution under section 319 of Cr.P.C., accused Kanwar Lal, and Dalpat, were also summoned by the Court, vide order dated 22.9.2004, to face trial along with other six accused persons. After their appearance, they were also duly charged for the same offences, to which they also did not plead guilty and claimed trial.

22. In order to prove the charges against the accused persons, the prosecution examined fifteen witnesses i.e. Dr. S.P.S. Bhatia PW1; Draftsman Sumit Kumar PW2; ASI Shri Kishan PW3 Complainant Om Singh PW4; eye witness Raj Singh PW5; MEHC Ram Parkash PW6; Constable Karambir PW7; HC Ramphal PW8; Mahinder PW9; Hari Chand PW10; SI Rajbir

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PW11; ASI Virender Singh PW12; Dr.Mukesh Chand PW13; HC Ranbir Singh PW14 and Dr. Ravinder Sahu PW15.

The gist of the statements of the prosecution witnesses are as under:-

PW2-Sumit Kumar prepared the site plan.

PW3-ASI Ram Krishan recorded the formal FIR (Ex.P7/A) and endorsed the same vide Ex.P7/B. In his cross-examination, he stated that the formal FIR was recorded exactly on the wordings of Ex.P7, the ruqa but clarified that by way of a clerical mistake both the injuries had been attributed to Ram Bhaj @ Bittu and not Shree.

PW4-Om Singh was the complainant of the case. His statement has already been referred to above. In his cross-examination, he stated that in the FIR, he had stated that Rajesh had given an injury with a lathi on the head of his father but on the next day he had changed his version and stated that Jage Ram had been given the lathi injury on the head of his father and not Rajesh.

PW5-Raj Singh stated that on 06.03.2004 at about 07.00 AM, he had come to the house of Om Singh (complainant) and he was standing on the roof of the house with Ram Niwas. He heard the words “Maar Diya” raised by by Om Singh (PW4). From inside the house his uncle Tale Ram (deceased) said “Kisna Maar Diya”. Then they saw four persons grappling and assaulting Om Singh (complainant). Kanwar Lal had taken Om Singh in his grip. Billu @ Ram Bhaj gave a jelly blow on the right side flank of Om Singh. Shree

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gave a jelly blow on the left side flank of Om Singh whereas Sanjay @ Raja gave a lathi blow on the left eye of Om Singh. Jage Ram gave a lathi blow on the left side of head of Tale Ram, Dalpat @ Kasu gave a push to Tale Ram, Surat Singh gave a lathi blow below the right eye on the mouth of Tale Ram and Rajesh gave a lathi blow on the left elbow of Tale Ram. Then he along with Ram Niwas came down from the roof and arranged for the deceased to be taken to hospital. In his cross-examination, he stated that he had not gone to PGI, Rohtak or to the police to lodge the report.

PW6-MHC Ram Parkash and PW7-Constable Karambir furnished affidavits regarding different facets of the investigations.

PW8-HC Ramphal stated that he had come to PGI, Rohtak with HC Ranbir Singh. Tale Ram was declared unfit for statement. Om Singh S/o Tale Ram was taken by him to CHC, Sampla for his medical examination.

PW9-Mahinder Singh son of Tale Ram was examined with respect to the recovery of a lathis from Sanjay and Rajesh. He also referred to the recovery of a Guddar and turban of the deceased.

Hari Chand was examined as PW10 and is the witness of the recovery of lathis from Jage Ram and Surat Singh.

PW11-SI Rajbir Singh was examined wherein he stated that Jage Ram and Surat Singh had been produced before him by Ram Kishan, Sarpanch. Both Jage Ram and Surat Singh got recovered lathis.

PW12-ASI Virender Singh was examined and he stated that on the receipt of a V.T. message on 07.03.2004, he went to PGI Rohtak for

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conducting the inquest of Tale Ram (deceased). Shree and Ram Bhaj @ Bittu both got recovered respective jellies. Sanjay and Rajesh got recovered their respective lathis.

HC Ranbir Singh was examined as PW14. He got recorded his testimony to the effect that the complainant/Om Singh had got recorded his statement Ex.P7 on the basis of which the formal FIR Ex.P7/A was recorded.

23. The prosecution gave up PWs Ram Niwas, Rajesh, Satywan as unnecessary and closed its evidence.

24. All the accused persons, in their respective statement under section 313 Cr.P.C., denied almost every circumstance appearing against them in the evidence and pleaded innocence.

25. The defence version, as put to the prosecution witnesses and as stated in statements under section 313 Cr.P.C., by accused Ram Bhaj and Dalpat is that due to the occurrence of 05.03.2004, regarding quarrel between the children of Mahinder Singh and Jage, which was already compromised, the complainant party was nursing a grudge against them. On 6.3.2004, at about 6.30 a.m. complainant Om Singh and Tale Ram (since deceased) caught hold of Ram Bhaj in front of the house of Jagdish and started beating him. In the struggle and in order to save himself, Ram Bhaj gave a kick blow to complainant Om Singh. Meanwhile Jage Ram, while returning from the fields, intervened and tried to separate them. In the process, complainant Om Singh fell down. In the scuffle between Tale Ram (since deceased) and Jage, Tale Ram also fell down on a 'Buggi', parked in front of the house of Jagdish.

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None of the other persons including the two eye-witnesses namely Raj Singh PW5 or Ram Niwas, were present at that time and place. It is further stated by them that DSP Balwan Singh is a near collateral of the complainant party, who misused his official position in influencing the local police, against them. They (accused Rambhaj and Dalpat) were taken into police custody on 06.03.2004. Their signatures were obtained on blank papers. Nothing was recovered from them. The alleged recoveries were planted.

26. Accused Shree pleaded that he was a permanent resident of Qutubgarh (Delhi). He had no concern with the occurrence. At the time of alleged occurrence, he was present in his village Qutubgarh. He had been falsely roped being the son of Jage Ram and it was at the instance of their collateral DSP Balwan Singh, whereas nothing was recovered from him.

27. Accused Kanwar Lal pleaded that he had no concern with the occurrence in question. He was not present in the village on the said date, time and place. DSP Ram Kanwar Singh had conducted an enquiry and had found him innocent. He further stated that his father's name was Jage Ram and not Bhim Singh.

28. The other accused persons also pleaded innocence. They pleaded that their signatures were obtained on blank papers in order to plant the recoveries.

29. The gist of the defence evidence is as under:-

DW1-Rajesh Kataria, an official of CBSE, Chandigarh has brought in evidence Ex.D7-copy of matriculation certificate of accused

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Kanwar Lal, showing the name of his father as Jage Ram. This evidence is to support the statement of Kanwar Lal that name of his father was not Bhim Singh but Jage Ram. Accused Kanwar Lal has also placed on record Ex.D10 and Ex.D11 copies of his own Ration Card, as well as, previous Ration card of his father, showing the name of his father as Jage Ram.

DW2-Amar Singh Madaan, Malaria Inspector, Kutubgarh, Delhi was examined with respect to the plea of alibi raised by Kanwar Lal.

DW3-Krishan was examined with respect to the plea of alibi of Kanwar Lal.

DW4-Ram Kishan stated that he was a Sarpanch of Village Paksama and knew Tale Ram and Jage Ram being residents of his village. On 16.03.2004 at about 06.37 AM, he heard the noise of fighting in front of the house of Jagdish which was 50 yards from his house. Fighting was going on between Ram Bhaj alias Bittu and Om Parkash. Tale Ram and Jage Ram both came out from the respective houses carrying lathis which they carried for support due to their old age. Tale Ram tried to give a lathi blow to Jage Ram who avoided the same. Then Jage Ram gave a lathi blow which hit on the head of Tale Ram. He fell on the Buggi (cart) in front of the house of Ramdhan. On account of this injury, Tale Ram became unconscious and he was taken away by his son.

DW5-Ramdhan gave a statement similar to that of DW4-Ram Kishan.



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DW6-DSP Ram Kumar, Meham was examined. He stated that as per his investigation, Kanwar Lal was not present at the place of occurrence in village Paksama but was present in village Gutubgarh.

DW7-Diwan Singh was examined with respect to the plea of alibi of Shree.

30. Based on the evidence led, the Trial Court came to the conclusion that the recoveries of the weapons could not be convicted with the offence in question. PW5-Raj Singh could only have witnessed the assault on the complainant and not the assault on the deceased which had taken place inside the house of the deceased but otherwise he could be treated as a prosecution witness of ‘res gestae’. The injury attributed to Surat Singh on the eye of the deceased was not an independent injury but an outcome of the injury on the head already attributed to a co-accused and therefore, acquitted him. Kanwar Lal was acquitted on the grounds that he had been stated to have grappled with Om Singh and had been placed in Column No.2. Dalpat @ Kasu was acquitted on the ground that he was stated to have only pushed the deceased and had been found to be innocent.

31. The appellants, however, came to be convicted and sentenced by the Court of Addl. Sessions Judge, Rohtak vide judgments and order of sentence dated 02.03.2005 as under:-

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
302 IPC R/w 149 IPC	RI for life	Rs.10,000/- each	RI for 02 years
323 IPC R/o 149 IPC	RI for 06 months	Rs.500/- each	RI for 01 month



506 IPC R/w 149	RI for 06 months	Rs.500/- each	RI for 01 month
148 IPC R/w 149 IPC	RI for 01 year	Rs.1000/- each	RI for 02 months
Accused Jage Ram and Rajesh were additionally sentenced is as under			
449 IPC	RI for 08 months	Rs.5000/- each	RI for 01 year

All the sentences were ordered to run concurrently.

32. Thereafter, Ram Bhaj, Jage Ram and Shree filed Appeal No.CRA-D-248-2005 and Sanjay and Rajesh filed Appeal No.CRA-263-DB-2005.

33. It is the aforementioned judgment, which is under challenge, in the present appeals.

34. The learned counsel for the accused/appellant Jage Ram and Shree S/o Jage Ram along with the counsel for Ram Bhaj contend that the accused had been falsely implicated in the present case. As per the version in the FIR got registered at the instance of complainant/Om @ Om Parkash, it was Rajesh who had given an injury on the head of the deceased whereas Jage Ram had given the injury on the left elbow of the deceased. Two statements were made under Section 175 Cr.P.C. during the course of inquest one Ram Niwas (not examined as a prosecution witness) and the second by the complainant reiterating the version of the FIR that Rajesh had given an injury on the head of the deceased and Jage Ram on the left elbow. Another statement of Rajesh S/o Om Parkash was also recorded under Section 175 Cr.P.C. without any specific attribution to any accused. However, the

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supplementary statement of the complainant was got recorded on 07.03.2004 wherein Jage Ram was attributed a lathi blow on the left side of the head of Tale Ram whereas Rajesh was attributed a lathi blow on his left elbow. This switching of roles completely demolishes the prosecution version and makes the presence of this witness doubtful. As regards Shree S/o Jage Ram, it is contended that in the original complaint, no role had been attributed to him because of which the FIR (Ex.PW7/A) does not disclose any injury caused by this accused. However, in the ruqa (Ex.P7) brought on record, this accused is stated to have caused an injury on the left armpit of the complainant. Apparently, Ex.P7, has been switched later on. Be that as it may, taking the allegations to be correct, only a simple injury has been attributed to Shree. With respect to Ram Bhaj, it is contended that taking the allegations to be correct, only a simple injury has been attributed to him. The consistent stand of the counsel are that if the allegations were to be taken to be correct, then the occurrence took place suddenly, on the spur of the moment and only a single injury had been caused on the head of the deceased. Therefore, Jage Ram could be liable under Section 304 IPC read with Section 449 IPC at best whereas Shree and Ram Bhaj would be liable for their individual acts for having caused suffice injuries to the complainant and thereby could be convicted under Section 323 IPC alone.

35. The learned counsel for Rajesh contends that as per the FIR Rajesh was attributed an injury on the left side of the head of the deceased whereas Jage Ram had been attributed an injury on the elbow of the deceased.

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The statement of Om Parkash (complainant) was recorded during the course of the inquest proceedings with similar allegations. A similar statement was made by Ram Niwas during inquest proceedings. Both the statements were made on 06.03.2004 i.e. the date of registration of the FIR. However, on 07.03.2004, the supplementary statement of the complainant was recorded to the effect that it was Jage Ram who had caused an injury on the head and Rajesh who had caused the injury on the arm. This was the version reiterated during the course of the trial when Om Singh (complainant) was examined as PW4. He contends that this change in attribution is fatal to the prosecution case and makes the presence of the complainant at the spot doubtful. He further contends that PW5-Raj Singh saw the occurrence from the roof top. He attributed various injuries to the accused on the person of the complainant as also the deceased. However, the Trial Court rightly came to the conclusion that though this witness could have seen the occurrence outside when the complainant was being assaulted, he could possibly not have seen the occurrence inside the house of the deceased when he was allegedly being assaulted. Therefore, qua the injuries on the deceased there was only one witness and that was the complainant who had been partially disbelieved as two co-accused namely Dalpat @ Kasu and Surat Singh had been acquitted despite the allegations that both Dalpat @ Kasu and Surat Singh accompanied by Rajesh and Jage Ram had entered the house of the deceased and assaulted him. Once, the complainant had been partially disbelieved, it was essential to have corroboration of his statement with other evidence which was missing in



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the present case, moreso when the weapons of offence allegedly recovered have not been connected with the offence in question. On the other hand, he contends that the role attributed to Jage Ram in the FIR and reiterated by the complainant in Court of having caused an injury on the head of the deceased is supported by the deposition of DW4-Ram Kishan Sarpanch who have stated that Jage Ram had given the lathi blow on the head of the deceased. Reliance is placed on the judgment in the case of **Mehatar Versus The State of Maharashtra, 2025 INSC 216** to contend that in a case of a partially reliable witness corroboration of his evidence is a must.

36. On the other hand, the learned State counsel contends that the case of the prosecution stands established beyond reasonable doubt. PW4-Om Singh and PW5-Raj Singh have deposed in detailed as to how and in what manner the occurrence took place. Though, there was some change in the role attributed to Rajesh and Jage Ram, the said fact itself was not sufficient to doubt the prosecution case in its entirety. In fact, the medical evidence is totally in consonance with the ocular account. He, therefore prays that the present appeals were liable to be dismissed.

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

38. As regards accused Rajesh, a perusal of the evidence on record would reveal that as per the FIR registered at the instance of PW4-Om Parkash, Rajesh was attributed a lathi blow on the head of the deceased. On the same day i.e. 06.03.2004, the statement under Section 175 Cr.P.C. during

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inquest proceedings was recorded of the complainant/Om Parkash again wherein he reiterated the version that Rajesh had given a lathi blow to his father on the left side of his head whereas Jage Ram had given a lathi blow on the left elbow of his father. A more or less identical statement was made by Ram Niwas S/o Tale Ram, the other son of the deceased during inquest proceedings. However, Ram Niwas was not examined as a prosecution witness. On the very next day i.e. 07.03.2004, the supplementary statement of the complainant was recorded wherein he changed his version stating that it was Jage Ram who had given the injury on the head of his father whereas Rajesh had given an injury on the elbow. A similar statement was given during the course of the trial.

It may be relevant to mention here that as per the prosecution case, Rajesh, Jage Ram, Dalpat @ Kasu and Surat Singh are stated to have entered the house of the deceased and caused injuries on the person. Dalpat @ Kasu and Surat Singh have since been acquitted. Therefore, apparently, the statement of this witness has been only partially believed.

PW5-Raj Singh who is stated to have witnessed the occurrence from the roof top has only been believed to the extent that he witnessed the assault on the complainant because the rest of the occurrence took place inside the house of the deceased.

A perusal of the aforementioned facts show that other than the statement of the complainant/Om Singh (PW4), there is no other



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corroborative evidence against Rajesh. Even this statement, as has been discussed above is discrepant inasmuch as the role attributed to this accused has been changed. Therefore, a doubt is certainly created regarding the involvement of this accused in the occurrence.

On the other hand, as regards, Jage Ram, there is the testimony of the complainant PW4-Om Singh which is further corroborated by the deposition of DW4-Ram Kishan to the effect that it was Jage Ram who had caused the injury on the head. However, there is no reference in the statement of DW4-Ram Kishan as to who had caused the injury on the elbow of the deceased though he states that the deceased had fallen at the spot on a Buggi (cart).

39. The Hon'ble Supreme Court in the case of **Mehatar** (supra), has held as under:-

18. It could thus be seen that this Court has held that when the witness is found to be wholly reliable, then there is no difficulty, inasmuch as the conviction could be based on the testimony of such a witness. The Court has further found that equally when the testimony of a witness is found to be wholly unreliable again the difficulty would not arise because such an evidence will have to be discarded. The difficulty arises when a witness is found to be partly reliable and partly unreliable. In such a case, the conviction could not be maintained unless there is some corroboration to the testimony of such a witness. The law laid down in the case of Vedivelu Thevar (supra) is consistently followed by this Court in a catena of judgments.



19. In the present case, even accepting the view of the High Court that Sindhubai (PW-1) would fall within the category of partly reliable and partly unreliable, in such an event the High Court should have insisted upon some corroboration to the testimony of such a witness. However, the High Court has itself found that the prosecution has not examined Sitabai and as such, there was no corroboration to her testimony. Apart from that, another witness who could have corroborated the prosecution version is Tekaram Rahagadale. Admittedly, he has also not been examined. Another witness, i.e. the Sarpanch (Vasanta Tarte) of the village has also not been examined. Insofar as Police Patil/PW-4 (Narendra Katre) is concerned, he has turned hostile. In his cross examination at the behest of the accused he has given the following admission:

"...I did not state in my statement that when I returned after informing the police on telephone about the incident Sindhubai was present at my home and that she informed me about the incident. I cannot assign any reason as to why this has not been recorded in my statement....."

20. As such, there is no corroboration to the testimony of Sindhubai (PW-1) from any other witness.

21. It is further to be noted that though Sindhubai (PW-1) stated that she had lodged a complaint at the Police Station about her apprehension with regard to Rajkumar's threat, no such complaint was placed on record.

22. We are, therefore, of the considered view that the High Court was not justified in resting the conviction of the appellants herein solely on the basis of the evidence of Sindhubai (PW-1) when her testimony was found to be largely unreliable. For doing so, the High Court should have insisted upon some corroboration.



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23. In our considered view, there is no corroboration to the testimony of Sindhubai (PW-1). As such, the conviction would not be sustainable. The appellants would be entitled to benefit of doubt.

24. In the result, we pass the following order:

(i) The appeals are allowed;

(ii) The judgments and orders of conviction and sentence passed by the High Court and the trial court are quashed and set aside;

(iii) The appellants are acquitted of all the charges charged with;

(iv) Insofar as appellant Mehatar is concerned, who is on bail, his bail bonds shall stand discharged; and

(v) Insofar as appellant Rajkumar is concerned, he is directed to be released forthwith, if his detention is not required in any other case.

25. Pending application(s), if any, shall stand disposed of.”

(Emphasis supplied)

40. In view of the above discussion, we find that complainant/PW4-Om Singh has given conflicting versions as to the injury caused by Rajesh. Further, there is no corroboration to the statement of this witness. Therefore, we find that the prosecution has not established its case against this accused beyond reasonable doubt and therefore, accused Rajesh is ordered to be acquitted of the charges framed against him.

41. As regards, accused Jage Ram, there is corroboration to the statement of PW4 as regards the injury caused by him from the deposition of DW4-Ram Kishan who also stated that Jage Ram had given a lathi blow on the head of the deceased. Therefore, the allegations against him stand established beyond doubt.

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42. The question that there arises for consideration is as to what offence is made out against Jage Ram. Admittedly, he was of the age of 77 years at the time of occurrence. He was using a lathi to support himself. The same is not a weapon of offence as such and is usually carried in villages by aged persons. He has caused only a single injury with the said lathi on the person of the deceased without repeating the blow. In fact, as per the prosecution case, the occurrence started with the assault on the complainant outside the house of the deceased. Only when the deceased asked in a loud voice as to who was being assaulted outside his house did the accused enter the house and cause the fatal injury to him. In this situation, it cannot be said that the accused had an intention to commit the offence of murder but it could be said that he was having the knowledge that by causing such an injury, the deceased was likely to die. Therefore, we deem it appropriate to alter his conviction from Section 302 IPC to 304 Part II of IPC. As regards sentence to be imposed having regard to the advanced aged, being above the age of 100 years, a lenient view is warranted and we deem it appropriate to impose a sentence of rigorous imprisonment for 05 years. The sentence of fine and sentence in default of payment of fine shall remain intact. However, as he entered the house of the deceased, his conviction and sentence under Section 449 IPC is maintained. Both these sentences would run concurrently.

43. As regards, Shree S/o Jage Ram and Ram Bhaj S/o Mohinder, they have only been attributed simple injuries on the person of the complainant. They did not enter the house to assault the deceased. Therefore,

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we set aside their conviction under Section 302 read with 149 IPC and convict them for the offence under Section 323 IPC alone. They have undergone 01 year, 08 months and 29 days and 02 years and 04 days respectively. Therefore, their sentences are reduced to the period already undergone by them.

44. The present appeals stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

10.03.2025

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No