



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

**Reserved on : 27.07.2026
CRA-892-DB-2005 (O&M)
Pronounced on : 07.09.2026
Uploaded on : 07.09.2026**

*Whether only operative part of the judgment is
pronounced or the full judgment is pronounced: operative part/full Judgment*

Balwan Singh and others

...Appellant(s)

VERSUS

State of Haryana

...Respondent(s)

**Reserved on : 27.07.2026
CRR-289-2006 (O&M)
Pronounced on : 07.09.2026
Uploaded on : 07.09.2026**

Khajan Singh

...Petitioner(s)

VERSUS

Balwan Singh and others

...Respondent(s)

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present :- Mr. R.S. Cheema, Sr. Advocate with
Mr. Ishan Khetarpal, Advocate,
Mr. Satish Sharma, Advocate,
Mr. Prince Bharol, Advocate,
for the appellants in CRA-892-DB-2005.

Mr. Kapil Aggarwal, Advocate,
for the petitioner in CRR-289-2006.

Mr. Rajat Gautam, Addl. AG Haryana.

VINOD S. BHARDWAJ, J.

By a common judgment, CRA-892-DB-2005 titled as 'Balwan

Singh and others Vs. State of Haryana' as well as CRR-289-2006 titled as 'Khajan Singh Vs. Balwan Singh and others', against the judgment dated 22.11.2005 passed by Additional Sessions Judge, Rewari in Session Case No.11 of 2000/2005 arising out of FIR bearing No. 84 dated 21.05.2000 registered under Sections 148/149/323/324/452/302 of the Indian Penal Code, 1860 at Police Station Kosli, Rewari, are being decided.

Facts in Brief:

2. Briefly summarised, the facts of the present case are that a wireless message regarding admission of injured-Khajan Singh and other persons in General Hospital Rewari was received on 21.05.2000. Sub-Inspector Harpal Singh accompanied by other police officials, rushed to the hospital and after seeking the opinion of the attending doctor, recorded the statement of injured-complainant/Khajan Singh. Khajan Singh alleged therein that there is a well in their village in Nalawala Jungle and the said well is jointly owned by him as well as the accused party. Both parties had installed their different electric motors in the well and irrigate using their different pipes. On 20.05.2000, they were working in their field and their tubewell motor was running. At about 4.00 p.m., the electricity supply went off and as a result, the tubewell motor got switched off. At that time, accused Basti Ram, Dinesh and Ram Avtar (sons of accused-Balwan Singh) brought an electric motor and pipes in a tractor and came to the well. They installed the electric motor and their pipes in the well. After about half an hour, the electricity supply was restored. There was however an electric spark. Resultantly, the electric motor of the complainant stopped working. Accused-Basti Ram, at the time of installation of his electric motor and

pipes, had joined the electric wires of the electric motor in a faulty manner to cause damage to the motor of the complainant. He noticed that the electric wires he had separated were entangled, due to which spark happened and the electric motor was burnt. The complainant narrated the entire incident to his grandfather-Mool Chand. At about 8.30 p.m., when Balwan Singh arrived there, Mool Chand complained about the said incident to him. The same however infuriated Balwan Singh, who went back from the spot stating that he would settle the dispute of the electric motor that day, while abusing the complainant party.

3. After a short while, accused-Balwan Singh armed with an axe, his son Basti Ram armed with *jaily* and his second son Ram Avtar armed with *Dantali* arrived there. Accused- Balwan Singh dragged Mool Chand from the verandah where he was sitting on a cot and threw him in the common passage. Accused-Basti Ram inflicted a *jaily* blow on the right thigh of Mool Chand and accused-Balwan Singh inflicted an *axe* blow on the head of Mool Chand. Due to the impact of the said blow, Mool Chand fell and became unconscious. In the meanwhile, the other accused namely Dinesh, Rajesh, and Raj Kumar (sons of Balwan Singh) also arrived with *lathis* in their hands. Accused-Raj Kumar inflicted 2-3 *lathi* blows on the left arm of Mool Chand and accused-Rajesh inflicted a *lathi* blow on the left eye of Mool Chand. When complainant/injured-Khajan Singh tried to rescue his grandfather, accused-Dinesh inflicted a *lathi* blow on the right thumb and head of the complainant and accused-Raj Kumar inflicted one *lathi* blow on the calf of the left leg of the complainant. The fight attracted Vijay Kumar and Jaibir, uncles of the complainant, to the place of occurrence and when

they tried to save him, Jaibir received a *Dantali* blow on his left arm, left wrist and head from accused-Ram Avtar, while accused-Rajesh inflicted a *lathi* blow on the head of his uncle Jaibir. Accused-Balwan inflicted an *axe* blow on the head of Vijay Kumar. The complainant party also inflicted injuries to the accused in their self-defence.

4. Based on the aforesaid statements, the FIR was registered. All the accused were apprehended and inquest proceedings were also conducted. Statements of the witnesses were recorded under Section 161 Cr.P.C. and the site plan of the place of occurrence was also got prepared. After completion of all the other necessary formalities of the investigation, a final report under Section 173 Cr.P.C was presented in the Court.

5. Since the offences were triable exclusively by the Court of Sessions, the case was committed to the Court of Sessions vide order dated 03.08.2000 passed by the Additional Chief Judicial Magistrate, Rewari.

6. On finding that the accused were *prima facie* guilty for commission of offences triable by the Court of Sessions, charges were framed vide order dated 09.08.2000 to which the accused pleaded not guilty and claimed trial.

7. To prove its case, the prosecution examined the following 13 witnesses:-

PW-1	Dr. Karan Singh.
PW-2	Inspector Tula Ram.
PW-3	Dr. P.D. Mehra.
PW-4	Complainant/injured-Khajan Singh.

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PW-5	Om Parkash (eye witness).
PW-6	HC Bhagat Singh.
PW-7	C. Kaidar.
PW-8	C. Dharampal.
PW-9	Injured-Jaibir.
PW-10	HC Ram Saran
PW-11	SI Harpal
PW-12	Inspector Vidyanand
PW-13	C. Kanwal Singh.

Prosecution witnesses Satish and Sheotaj were given up by the Public Prosecutor as having been won over by the accused whereas Vijay Kumar was given up as unnecessary. Thereafter the evidence of the prosecution was closed by the Public Prosecutor.

8. On completion of prosecution evidence, the entire incriminating evidence was put to the accused. They denied the allegations and claimed that they were innocent and had been falsely implicated. In their defence, the accused examined Jeet Ram as DW-1 and closed their evidence.

9. Upon consideration of the respective arguments and examination of the testimonies as well as the evidence on record, the trial Court held that the prosecution was able to prove its case against accused/Balwan Singh and Basti Ram for offences under Sections 452, 302 read with Section 34 of the Indian Penal Code, 1860 and against the remaining accused viz. Dinesh, Ram Avtar, Rajesh and Raj Kumar for the

offences under Sections 452, 324/323 read with Section 34 of the Indian Penal Code, 1860 and convicted them. They were sentenced as under:-

Accused	Sections	Sentence and fine	In default
Balwan Singh	Section 302 read with Section 34 I.P.C. Section 452 I.P.C.	Rigorous Life Imprisonment and fine of Rs.2000/- each. RI for a period of 1 year each	To further undergo RI for a period of 06 months each. ----
Basti Ram			
Dinesh	Sections 323, 324 read with Section 34 I.P.C. and Section 452 of the Indian Penal Code, 1860.	RI for a period of 06 months under Section 323 read with Section 34 I.P.C. AND RI for a period of 01 year under Section 324 read with Section 34 I.P.C. and fine of Rs.500/- each. AND RI for a period of 01 year each under Section 452 I.P.C.	To further undergo RI for a period of two months each.
Ram Avtar			
Rajesh			
Raj Kumar			

10. Aggrieved thereof, the convicts have preferred CRA-892-DB-2005 whereas CRR-289-2006 has been preferred by the complainant impugning the judgment and seeking imposition of higher punishments upon the convicted accused and also for conviction of remaining accused for commission of offence under Section 302 read with 34 of the Indian Penal Code, 1860 as well.

Arguments on behalf of the appellant-accused:.

11. Learned Senior counsel for the appellant contends that the present case reflects a vexatious implication of all the family members. The

complainant has chosen not to give a truthful account of the incident and has instead resorted to making attributions of specific injuries. The incident has thus been exaggerated not only in terms of the mode and manner but also in terms of the implication and attribution to spread the net wide. A trait which is common and widely abused.

12. Learned Senior Counsel for the appellants-accused has argued that the crucial question which needs examination by this Court is as to whether accused/Balwan Singh son of Chiranji Lal and Basti Ram son of Balwan Singh are liable to be convicted for commission of offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 or it would be falling in any of the exceptions. He further contends that the second issue that arises for determination is as to whether the conviction of the appellants/Dinesh, Ram Avtar and Rajesh (all sons of Balwan Singh) and Raj Kumar son of Sultan Singh for commission of offence under Section 324/34 of the Indian Penal Code, 1860 is sustainable considering that no grievous injury has been attributed to the aforesaid accused persons. The third issue which needs determination is as to whether the conviction of the accused/Basti Ram and Balwan Singh for offence under Section 452 of the Indian Penal Code, 1860 is made out against the accused persons since the place of occurrence has not been proved and determined.

13. He contends that the complainant side has not only suppressed the genesis of the occurrence but also shifted the origin of the incident to the residential house of Mool Chand, whereas no incident took place within the precincts of the house of Mool Chand. It is argued that the evidence rather indicates it to be a case of free fight. The injuries on the persons of Balwan

Singh, Dinesh and Basti Ram have not been explained by the prosecution. While Balwan Singh sustained one blunt injury, Dinesh sustained three blunt injuries and Basti Ram also sustained two blunt injuries.

14. It is contended that the flaws in the case of the prosecution can well be gauged from the fact that the motive attributed for commission of the offence is alleged to be arising on account of burning of the electric motor belonging to the complainant party. He contends that if the electric motor of the complainant party sustained damage on account of a perceived faulty connections/wire settings done by the accused-appellants, under such circumstances, the motive would lie with the complainant party to open an attack on the appellants instead of the appellants causing any injury. He submits that no evidence has ever been led by the respondents to prove as to whether the electric motor even sustained any damage in the aforesaid alleged incident or not. Under the given circumstances, the motive has been wrongly assumed against the appellants but the onus has not been discharged by the prosecution.

15. It is submitted that the house of Mool Chand (since deceased) is stated to be the starting point of the aggression by the prosecution and he was allegedly dragged into the street where the injuries were inflicted. The same is incorrect and the incident took place in the street itself. The unscaled site plan Ex. PY and the scaled site plan Ex. PT have been prepared as per the description given by the complainant party. Undisputedly, Nohra of appellant-accused/Balwan Singh is situated right opposite to the house of Mool Chand. It is submitted that the site plan does not demonstrate any signs of any scuffle/drag having taken place from the house of Mool Chand

to the street, hence, apart from a self serving statement, there is no evidence to corroborate the same. It is thus contended that when the prosecution has not been able to refer to any corroborative evidence to establish the occurrence of the event at the place alleged, it cannot be a fact presumed. The appellants having specifically disputed the place of occurrence, the charge for offence under Section 452 of the Indian Penal Code, 1860 cannot be deemed to have been proved by a mere oral testimony.

16. Adverting to the issue as to whether the appellants ought to be convicted for offences under Section 302/34 of the Indian Penal Code, 1860 (against accused Balwan and Basti Ram) and as to whether the other accused could be punished for offence under Section 324/34 of the Indian Penal Code, 1860 or not, counsel draws attention of the Court to the injuries sustained by the parties. Learned Senior counsel has handed over a chart with the roles and injuries suffered by the victims, as per their respective MLRs. The State counsel as well as the counsel for the complainant-petitioner in CRR-289-2006 have admitted the chart to be correct. The roles of the accused and injuries caused to the victims are tabulated as under:-

Name and weapon	Role	Seat and nature of injuries
Balwan Singh (Axe, Ex.P3)	a) Pulled/dragged Mool Chand from verandah to outside in the street. b) Axe blow on the head of deceased Mool Chand. c) Axe blow on the head of Vijay Kumar.	No injuries Lacerated wound on left parietal region 7 x 1.5 x 4 cm (fatal- to Mool Chand). Incised wound on left parietal region above left ear 4 x 8 x 1.5 cm (to Vijay Kumar).

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Dinesh (Lathi Ex.P1)	a) Lathi blow on the right hand of PW4 Khajan Singh; b) Lathi blow on the head of Khazan Singh;	Swelling and blueness on right thumb (to Khajan Singh). Lacerated wound left parietal region 5 x 1.5 x 2 cm (to Khajan Singh).
Basti Ram (Jaili Ex.P4)	Inflicted jaili blow on the right thigh of deceased Mool Chand.	Penetrating wound with irregular margins on right thigh lower 1/3rd 2 x 1 x 3 cm. (to deceased/Mool Chand).
Ram Avtar (Dantali Ex.P6)	2/3 blows on the left arm, left hand and head of Jaibir.	Contusion over left forearm. Contusion with swelling left forearm proximal below elbow 3 x 3 cm. Lacerated wound - left parieto-occipital region 2 x 2 x 1.5 cm. Abrasion over left fronto-parietal region 1 x 1 cm.
Rajesh (Lathi Ex.P2)	a) Lathi blow on the left eye of Mool Chand.	Left with blueness, eye tissue bulging. Eye swelling out with bleeding (to Mool Chand).
Both PWI (MLR) and PW3 (Autopsy) admitted that injury on left eye of deceased could be by way of impact of head injury		Diffuse blueness over upper lid, lower lid and on left temporomandibular region of face Lacerated wound - left parietooccipital region 2 x 2 x 1.5 cm (to Jaibir)
	b) Lathi blow on the head of Jaibir.	
Rajkumar (Wood Chiran Ex.P5)	a) 2/3 lathi blows on the hands of Mool Chand; b) Lathi blow on the left calf of Khazan Singh	Diffused swelling over left wrist joint upto left forearm (to Mool Chand). Contusion with redness on popliteal region of left leg 10 x 2 cm (to Khajan Singh).

17. It is further submitted that in view of the injuries as above, the offence under Section 302 of the Indian Penal Code, 1860 is not made out. He contends that even though Balwan Singh was stated to be armed with an axe but only a solitary injury from the blunt side of the axe is attributed to him to deceased/Mool Chand. There was no repeat injury caused to the deceased by Balwan Singh. The second injury i.e. an incised wound on Vijay Kumar is even though attributed to him but the said injury is simple. Even otherwise, injured/Vijay Kumar did not step into the witness box. The nature of injury and the manner it was caused dispel existence of any intent to cause death or to cause an injury which was likely to cause death. It is further argued that there has been no reflection of any attributes of cruelty and no undue advantage has also been taken.

18. The trial Court having already held Balwan Singh and Basti Ram liable for offence under Section 302 read with Section 34 of the Indian Penal Code, 1860, accused/Balwan Singh is the only person who is attributed the injury under Section 324 of the Indian Penal Code, 1860. Hence, the remaining accused ought not to be held guilty for the offence under Section 324 with the aid of Section 34 of the Indian Penal Code, 1860 and their conviction would, at best, fall for the offence under Section 323 of the Indian Penal Code, 1860.

19. He contends that as per the MLR, 04 injuries were sustained by deceased-Mool Chand. As per the opinion of the Doctor, the injury viz. swelling of left eye with blueness around, was admitted in the cross-examination, by the Doctor to have been caused as a result of the head injury

viz. a lacerated wound on the left parietal region alongwith diffuse swelling and underlying hematoma, attributed to Balwan. He contends that thus there were only three injuries on the person of the deceased-Mool Chand. The injury of penetrating wound with irregular margins caused by Basti Ram with a *jaili* was found to be simple in nature. The next injury was again a diffuse swelling over the left wrist joint, which too was later determined to be a simple injury. The injury of swelling over the left wrist was opined by the Doctor to have been caused as a result of a fall and it is not as a result of any injury caused by any person.

20. It is further argued that even though appellant/Rajesh was attributed a *lathi* blow on the left eye of Mool Chand, however, the Doctor's opinion demolishes the allegations entirely since there was no such injury on the body of deceased. He contends that there are further discrepancies in the allegations so far as injury attributed to Rajesh is concerned. While Khajan Singh alleged in his statement Ex. PD that Rajesh inflicted a *lathi* blow on the head of Vijay, i.e. uncle of the complainant, in his testimony as PW-4, he stated that the injury was caused by Rajesh on the head of his uncle Jaibir. A similar deposition has also been made by PW-5/Om Parkash son of Prem Singh, to the effect that the aforesaid injury on the head had been caused to Jaibir by Rajesh. The said injury again was found to be simple.

21. Similarly, accused/Raj Kumar is alleged to have inflicted *lathi* blows on the left arm of Mool Chand; however, there is no corresponding injury on the arms of Mool Chand and the sole injury on the wrist was opined by the Doctor to exist as a result of the fall. Hence, the complainant party has deliberated on the allegation to match with the injuries noticed

during the inquest proceedings, and thereafter, specific roles were attributed to implicate the appellants-accused herein.

22. Counsel further contends that there was no premeditation. The incident in question happened at the spur of the moment and lasted for nearly 4-5 minutes, as is evident from the testimony of PW-5/Om Parkash. Hence, there was no occasion for premeditation. The occurrence took place on 20.05.2000 around 8.00 p.m. in the residential area of village Lukhi and the houses were adjacent. Assuming that the aforesaid communication by Mool Chand to Balwan Singh became the trigger event and the latter rushed back to his house to come back armed with an axe to give a blow, there was no occasion for a prior meeting of minds on the part of the accused persons.

23. It is also argued that all sons of Balwan Singh have been implicated in the present case and roles have been attributed to them so as to rope in the entire family. He submits that the verbal spat took place between Mool Chand and Balwan Singh and irrespective of who triggered the event, the accused party came to the spot and on coming to know of the same, the complainant party also came to the spot. A free fight thus ensued. In such circumstances, existence of a common intention would not be made out. The individuals could at best be held accountable and liable for the respective attribution against them.

24. Learned Senior counsel contends that in an event of accepting the plea that there is every likelihood of a free fight between the parties and there were no signs of any party having taken any undue advantage or having acted with cruelty, it would fall in exceptions to Section 300 of the Indian Penal Code, 1860. He submits further that there is only one fatal

injury on the person of the deceased-Mool Chand and there is no repetition of any injury and even the other persons sustained simple injuries but for a lacerated wound on the person of Vijay. Besides, even the appellants-accused party also sustained grievous injuries which are on the vital parts. Balwan Singh sustained a lacerated wound horizontal wise in the midline region of the head 4 x .2 x 2 cm in size, while Dinesh sustained swelling on the left hand dorsum with abrasion of 1 x 1 cm on the back of the thumb (swelling size 10 x 1 cm). Dinesh also suffered a contusion with redness on the upper third of the left forearm (7 x 5 cm in size), along with abrasion of 3 x 5 cm in size on the left side of the back in the lumbar region. Basti Ram had sustained contusion with redness of 7 x 5 cm in size externally placed on the left arm and swelling with abrasion on skull in the right parietal region of 1 x 5 cm in size along with fresh bleeding. It is contended that the injuries on the appellants were not only on the vital parts but would also give rise to an exercise of right of private defence. It cannot be said, in the facts of the present case, that the appellant-accused were in any manner more advantageously placed. Since the houses of both the parties were opposite to each other, family members may have joined in the dispute, at that point in time without any premeditation either to separate the parties or to save by counter attack.

25. It is further argued that since the injury in question is stated to have been caused by the blunt side and there was no repetition of injuries which shows that there was no intent to cause murder and that merely because the blow proved to be fatal resulting in death, the liability for commission of offence under Section 302 of the Indian Penal Code, 1860

ought not to be fastened.

26. Counsel further contends that the deceased was nearly 68 years of age at the time of the incident in question and the case would be at best punishable under Section 304-II of the Indian Penal Code, 1860 and not even under Section 304-I of the Indian Penal Code, 1860. It is contended that there was neither any intention of causing death nor intention of causing any injury as is likely to cause death, hence, Section 304-I of the Indian Penal Code, 1860 would not be attracted and instead Section 304 (Part II) of the Indian Penal Code, 1860 would be attracted at best, considering that the accused were required to be aware and to have knowledge that a forceful injury on an elderly person may lead to death.

27. He further contends that, as a matter of fact, on account of the perceived grievance that the motor had burnt as a result of acts/omission on the part of the appellants, hence, the complainant party had itself made a forcible entry into the *Nohra* of the appellants-accused and caused injuries to them. The investigating agency however chose not to collect evidence from the spot and collected the evidence only from the common street. He further contends that it is also evident from the undisputed facts that there was no enmity between the parties and that for the last more than 15 years, they were living amicably and without any dispute.

Arguments by the respondent(s):

28. Responding to the arguments, counsel for the respondents contend that the prosecution witnesses have given a consistent and elaborate account of the incident and the manner in which it took place. The accused persons, aggrieved of the complaint lodged by deceased-Mool Chand about

their electric motor having been burnt as a result of the acts/omissions on the part of the accused, got infuriated and rushed back to his house and came back accompanied by other assailants, duly armed with *axe, lathis, Dantali* and *jailies*. Balwan Singh, along with others, pulled Mool Chand, who was sitting on his cot in the verandah, to the street and started giving indiscriminate beatings, including a fatal injury that was caused on the head of the deceased. The fact that they were armed with weapons and came to the spot shows that they shared a common intention. He contends that there is no necessity of any premeditation and that a common intention can be formed even at the spot. Since their act reflects unison, all the accused are liable to be convicted for commission of offence under Section 302 read with Section 34 of the Indian Penal Code, 1860.

29. It is also contended that the ocular version is duly corroborated by the medical evidence which has been established on record, hence, there is no reason as to why any benefit ought to be extended to the other accused, who have been convicted only for commission of offence under Section 324 read with Section 34 of the Indian Penal Code, 1860. Rather, their conviction should also be recorded for commission for offence under Section 302 read with Section 34 of the Indian Penal Code, 1860.

30. It is also contended that there is no cross version of the incident and it is not the case set up by the appellants herein that the complainant party entered into the *Nohra* and caused any injury to them after entering into their *Nohra*. In case they had any such complaint, there was no impediment on them to file any complaint to the authorities or before the Court of law. It is submitted that since they were the aggressors, they cannot

claim any benefit by trying to bring the case under exception four of Section 300 of the Indian Penal Code, 1860 and claim it to be a case of free fight.

31. Going by the fact that such a large number of persons have received injuries on the side of the complainant party, merely because some injuries have also been received by the accused herein would not dent the case of the prosecution to extend any such benefit as claimed.

32. It is further contended by the learned State counsel that the weapons used in the commission of the offence had been recovered at the disclosure of the respective accused and they were found blood stained. He contends that merely because there was a delay in forensic examination of the stains resulting in disintegration of material, the same should not inure any benefit to the appellants herein. It is submitted that the injuries on the person of appellants were simple in nature, hence, it is apparent that the appellants have taken an undue advantage of the numbers and acted cruelly by inflicting multiple injuries on the victim party.

33. It is further submitted that the aspect of common intention can be gauged from the fact that after the initial incident that took place near the tube-well, they came back to their house and then opened an attack, which shows that there was a common intention and premeditation between the parties. Since Balwan Singh went to the house, on being apprised of the incident by Mool Chand (since deceased), and on his return he was accompanied by Basti Ram and Ram Avtar, the element of common intention and pre-meditation stands revealed.

34. In rebuttal, learned Senior counsel for the appellant-accused contends that it would be incorrect to suggest that no action was taken, as a

matter of fact, DW-1 Jeet Ram had filed a private complaint against the appellant-accused; however, the outcome of the aforesaid complaint has not come forth on record.

35. No other argument has been advanced by any of the parties.

36. We have heard the learned counsel for the respective parties and have gone through the documents appended with the instant cases.

Consideration and conclusions:

37. The questions which are required to be determined are as to whether the offence took place in the manner as alleged, whether there was an element of common intention between the parties rendering all of them liable to be punished for the offence resulting in death of Mool Chand. It is also required to be determined as to whether any exception to Section 300 of the Indian Penal Code, 1860 is attracted and if so, what would be the offence and liability of the accused.

38. Thus, it would become crucial for the Court to examine evidence and ascertain the role of individuals, the place of occurrence and their liabilities.

39. Undisputedly, deceased/Mool Chand was nearly 70 years of age and had suffered an injury on a vital part of his body consequent where to he died. Injuries were also sustained by other victims, viz. Vijay Kumar, Jaibir and Khajan Singh. It also remains undisputed that Vijay Kumar did not step into the witness box; however, his medico-legal report stands proved and as per the deposition of witnesses, Vijay Kumar suffered an incised wound on the left parietal region, above the left ear was attributed to Balwan Singh, with an Axe. The other two witnesses, viz. Jaibir and Khajan Singh had also

sustained injuries. The medical evidence, however, clearly establishes that all other injuries except for the injury on the parietal region of deceased-Mool Chand were simple in nature. The injury attracting Section 324 of the Indian Penal Code, 1860, caused to Vijay is also attributed to Balwan Singh.

40. It also remains undisputed that PW-1/Dr. Karan Singh had also examined the appellants and he had reported that Balwan Singh suffered a lacerated wound in the midline region, while Dinesh and Basti Ram sons of Balwan Singh, had also sustained injuries. Balwan Singh had alleged that the injury was caused to him by Vijay Kumar by giving a *jaili* blow on the head, while Khajan Singh had given a *lathi* blow on the back of Dinesh and Jaibir also gave a lathi blow on the left hand of Dinesh. The injuries caused to Basti Ram son of Balwan Singh were alleged to have been given by Jaibir and Suresh. A table depicting said injuries is extracted as under:-

<i>Name of the appellant-accused.</i>	<i>Injuries suffered</i>	<i>MLR proved by PW-1/Dr. Karan Singh, MO, GH, Rewari</i>	<i>Injury attributed/ defence version as per Section 313 Cr.P.C.</i>
<i>Balwan Singh s/o Chiranji Lal (A1)</i>	<i>1 lacerated wound in the midline region measuring 4 x 0.2 x 2 c.m.</i> <i>Blunt in nature, probable duration - 6 hours. Adv. X-Ray</i>	<i>Ex DA.</i> <i>Examined at 12:45 a.m. on 21.05.2000</i>	<i>Vijay gave a jaili blow on the head of Balwan Singh.</i>
<i>Dinesh s/o Balwan Singh (A2)</i>	<i>Left hand dorsum, abrasion of 1 x 1 c.m. on back of thumb</i> <i>Contusion with redness on Left forearm upper 1/3rd.</i>	<i>Ex DB.</i> <i>Examined at 12:45 a.m. on 21.05.2000</i>	<i>Khazan Singh gave a lathi blow on the back of Dinesh.</i> <i>Jaibir gave a lathi blow on the left hand of Dinesh</i>

	<i>measuring 7 x 5 c.m.</i> <i>Abrasion of 3 x 0.5 c.m. on left side of the back of lumbar region, redness present.</i> <i>All injuries blunt in nature, probable duration 6 hours.</i>		
<i>Basti Ram s/o Balwan Singh (A3)</i>	<i>Contusion with redness 7 x 5 c.m. on left arm, externally placed.</i> <i>Swelling with abrasion in right parietal region measuring 1 x 0.5 c.m., Fresh Bleeding present.</i> <i>Injuries simple/blunt in nature, probable duration- 6 hours.</i>	<i>Ex DC</i> <i>Examined at 12:45 a.m. on 21.05.2000</i>	<i>Jaibir and Suresh gave lathi blows to Basti Ram on his left arm and head</i>

41. Besides, the ocular site plan (Ex. PY) as well as the scaled site plan (Ex. PT) fairly establishes that the house of the accused persons and the house of the complainant party are opposite to each other.

42. As per the sequence of facts, the attribution of the prosecution is that the appellants-accused/Basti Ram, Dinesh and Ram Avtar had brought an electric motor for installation in the joint well located in the fields of village near Nalawala Jungle and that while doing so, they entangled the wires thereby resulting in a spark and consequently damaging

the motor of Mool Chand, i.e. the complainant party. As per the case of the prosecution, the same became the bone of contention, which led to the sequence of events in the form of reproach given by deceased/Mool Chand to accused/Balwan Singh. An infuriated Balwan Singh rushed inside his *Nohra* announcing to finally settle the dispute and came back armed with a weapon (Axe) along with Basti Ram and allegedly pulled Mool Chand from the verandah where he was sitting on a cot and threw him in the common passage. While the fatal injury on the head is attributed to Balwan Singh, with the reverse side of the axe held by him, the penetrating wound with irregular margins on the right thigh of the deceased has been attributed to Basti Ram. It is on account of hearing of commotion that the other accused persons viz. Ram Avtar, Dinesh, Rajesh and Raj Kumar were attracted to the place of occurrence. Undisputedly, the fatal blow had already been given to deceased/Mool Chand, by then. Even the members of complainant party had reached at the spot and what seemingly ensued was that both the parties inflicted injuries to each other. The prosecution has however been dismissive of the injuries caused on the persons of the accused/appellants and has offered no explanation for the same however the existence of the said injuries stand proved from the testimony of Dr. Karan Singh (PW-1).

43. Even though the prosecution has failed to establish the existence of the prime cause as there is no evidence on record to establish any damage to the electric motor owned by the complainant party, however, even a perception of a loss, though not verified, might yet give rise to a harsh exchange of words between the parties.

44. The appellants-accused have also taken a specific plea of

defence in the statement recorded under Section 313 Cr.P.C. that the complainant party laboured under a perceived belief that damage to their electric motor had been caused as a result of intentional mischief committed by Basti Ram. Hence, the motive lay with them to cause injuries on the person of Balwan Singh, Basti Ram and Dinesh, who instead acted in their right of private defence. They entered the *Nohra* of the appellants and caused injuries to them. The said defence version has although not been proved by the defence and only a private complaint was filed by them against the complainant party but the status thereof has not been made available. Additionally, even though there is no evidence on record as would show that any application had even been moved by the appellant-accused persons for trying the aforesaid complaint as a cross version along with the present FIR, however, a failure to prove a defence taken by the accused in their statements recorded under Section 313 Cr.P.C. does not mean that the version of the prosecution is deemed to be proved by inference. The burden to prove its case is yet to be discharged by the prosecution.

45. Since there is a charge for offence under Section 452 of the Indian Penal Code, 1860, hence, it is necessary to conclusively determine the same. For determining the said offence, it would be apposite to refer to the relevant statutory provisions. The same reads thus:-

“441. Criminal trespass.—

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having

lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

442. House trespass.-

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.

Explanation.—The introduction of any part of the criminal trespasser’s body is entering sufficient to constitute house-trespass.

452. House-trespass after preparation for hurt, assault or wrongful restraint.—

Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

46. It is thus evident from the above that to establish an offence of house trespass, there has to be an entry into or upon property in possession of another with an intent to commit an offence against the person in

possession of the property. The spot inspection thus assumes vital significance. While even though preparation of site plan is not a statutory requirement but as per the official instructions, office memorandums and handbook for investigating officials, a spot inspection ought to be prepared by the Investigation Officer. A spot inspection, to the extent as prepared by the Investigating Officer on the instructions of the complainant or any other third party is in the nature of a hearsay evidence and in terms of provisions of Section 60 of the Indian Evidence Act, 1872, the person on whose instructions the site plan is prepared is to be examined, in support thereof.

47. The same is however a relevant fact as per Section 9 of the Indian Evidence Act, 1872. The said provisions reads thus:-

“9. Facts necessary to explain or introduce relevant facts.

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

60. Oral evidence must be direct.

Oral evidence must, in all cases, whatever, be direct; that is to say,

-If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds :

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.”

48. However, the markings shown by the Investigating Officer, based upon his own observation, can be confronted from the Investigating Officer as the same is a part of the investigation.

49. Despite the preparation of site plan not being mandatory, yet, it is a vital relevant evidence as it provides a near visual map of the crime scene to help the investigating agency as well as the Court to understand

how the event may have occurred. A site plan shows not only the physical lay out and topography of the place of incident but also maps the location of the accused, victims, witnesses and maps the location of vital clues such as bloodstains, cartridge case, shot marks etc. It thus helps a Court to evaluate the evidence and testimonies in the case without a site visit. It also may expose the flaws in the investigation and identify the discrepancies in the deposition of witnesses. It involves not only scanning of the crime scene but also search and secure the evidence, while preparing a detailed sketch of the crime scene.

50. In the afore-referred rules of prudence, the evidence is being evaluated to ascertain whether there was any trespass into the house to cause injury or not.

51. The case set up by the prosecution is that the incident in question took place at around 8.00 p.m. to 8.30 p.m. when the victim/Mool Chand was sitting on a cot and he expressed his grouse to Balwan Singh. The ocular site plan Ex. PY and the scaled site plan Ex. PT have been perused. It is even though stated that the deceased was sitting on a cot; however, the site plans do not show the presence of any cot in the verandah. Further, the site plans also do not reflect the presence of any of the belongings of the deceased/Mool Chand at 'Mark-A', i.e. the place where he was sitting on cot before being dragged into the common passage. Needless to mention that 8.00 p.m. to 8.30 p.m. in the year 2000 was yet a time in rural areas when people would be calling it a day and retiring to their beds. Given that it was the month of May, the elderly people often sleep out in the verandah but despite the same, no other belongings of the

deceased have been indicated in the site plan, such as his clothes or slippers etc. It has also not been indicated in the site plan as to whether the verandah was *pucca* or had a *kucha* base. There are no drag marks of any nature whatsoever. Besides, it would only be natural in the event of forceful dragging a person, that his belongings such as shoes/slippers would slip away. No such scatter or litter is however reflected in the site plan. The verandah in question is also not depicted to be surrounded by any boundary so as to be seen within the compound walls and rather is more of an open area towards the street. The aforesaid missing features in the site plan thus create a doubt as to whether any person could have entered the household. Seemingly, some sort of verbal spat may have taken place between the deceased and Balwan Singh before an enraged Balwan Singh entered his house to come back armed with an Axe and accompanied by Basti Ram armed with *jaili* and allegedly also by Ram Avtar (both armed with *dantali*) sons of Balwan Singh. It is very likely that all members of the family from both the sides would have overheard the verbal spat and exchange of expletives that ensued between Balwan Singh and deceased/Mool Chand. The aforesaid exchange of expletives seemingly took place in the common passage itself and that is why there were no traces of any scuffle or struggle in the alleged verandah. What is further noticeable is that even though the house of Balwan Singh is opposite the house of Mool Chand and the door of the house/Nohra of Balwan Singh has an opening opposite where Mood Chand was stated to be sitting. The injuries are allegedly shown to have been caused about 30 feet away from the door. It is very unlikely that in an event which lasted over a total

duration of 4-5 minutes, accused/Balwan Singh not only dragged Mool Chand to a distance of 30 feet but also opened attack. It is also worthwhile to point out that allegation of dragging out of Mool Chand is only against Balwan Singh who was himself a 60 year old man around that time. The incident is rather at a much shorter distance from the plot of Khajan Singh and may be at a distance of about 5/7 feet approx. There is no description of any electric bulbs or source of light. Khajan Singh himself does not show the place where he was, when the incident took place. Once his own place is not depicted, it becomes suspect as to whether he actually was present at the time when the occurrence triggered. He thus must have come later, to the spot. Demarcation thus given by him becomes incomplete and inadequate. The probability of the incident having taken place at the time when Mool Chand may be going from plot to the house thus becomes more probable. The incident in question, in all likelihood, thus took place in the common passage.

52. The same now leads this Court to examine the possibility of existence of a common intention.

53. The position in law, to bring home the charge of common intention, has been examined by the Hon'ble Supreme Court in the matter of '*Janak Singh and another Vs. State of Uttar Pradesh*', reported as (2004) 11 SCC 385, wherein it was held that to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or meeting of minds of all the accused persons to commit the offence for which they are charged. Mere presence at the scene of occurrence is not per se proof of the crime being committed in pursuance of a common intention. The prosecution is ordained to establish

that all the accused persons carried the same intention at the time of committing the offence or at any time during the commission of the offence.

54. Even during the incident, there does not seem to be any actual or circumstantial evidence on the basis whereof any meeting of minds between all the assailants could be assumed. The law cuts out a distinction between a common intention and a similar intention. Thus, even if there are several persons who simultaneously attack a man, each having the same intention i.e. to kill the man. Even though each may cause a separate fatal blow, yet, each one is responsible for his own act as it may still fall short of causing blow with a common intention, where the outcome is shared and desired in unison and with prior meeting of minds. The distinction seems fine, but it is real and any disregard to the distinction may result in miscarriage of justice. The action in concert thus become the key point to determine common intention. Reference and reliance in this regard may also be placed on the judgment in the case of '**Chaman and another Vs. State of Uttaranchal**' reported as **AIR 2009 S.C. 1036**.

55. The evidence adduced by the prosecution also does not indicate any exhortation or verbal exchange between the parties as could have been assumed to lead to formation of common intention. The sequence of the events and the short duration for which the entire episode took place leaves no room for formation of a prior meeting of mind or to even assume that the injuries were caused in concert. Rather, the tilt is in favour of an assumption that other accused were attracted to the spot on seeing the fight that had ensued and that the fine distinction between the

participation being preventive or offensive ceased to exist. It is rather indicative that there was no formation of any common intention by accused/Ram Avtar, Rajesh, Dinesh with other accused persons.

56. At this stage, it would be significant to refer to the statement of complainant-Khajan Singh who appeared as PW-4 and is seemingly the first witness to the incident. The attribution of exhortation against accused/Balwan Singh was that he entered his Nohra saying that he would settle the dispute of the electric motor that day and came back armed with an axe along with his sons Basti Ram (armed with *jaili*) and Ram Avtar (armed with *dantali*). However, there is no evidence on record that corresponds to any injury that could have been caused with a *dantali*, which is a multi-pronged agricultural instrument, on the person of the deceased. Instead, Ram Avtar is stated to have caused injury to Jaibir on his left arm and wrist; he thus did not cause any injury to the deceased/Mool Chand. The above allegation against Ram Avtar has to be appreciated in the context that as per the case of complainant/Khajan Singh, after the blow injuries had been exchanged between the parties, he raised an alarm *bachao-bachao*, whereupon his uncles/Vijay Kumar and Jaibir came to the spot to their rescue. Ram Avtar is alleged to have caused injuries to Jaibir. It seems unlikely that if Ram Avtar had been amongst the first persons to arrive at the place of incident, he would not have caused any injury to the persons who were otherwise present at the spot and would have caused injury only to Jaibir, who came to the spot at a later point in time. The sequence thus leads to an inference that Ram Avtar actually did not accompany Balwan Singh and Basti Ram at the first juncture and came

to the spot later in point in time.

57. In the above circumstances, we are of the opinion that no common intention was shared between Ram Avtar, Dinesh, Rajesh, and Raj Kumar with accused-appellant/Balwan Singh and Basti Ram. Hence, while affirming the judgment of the trial Court to the extent whereby the above-said accused persons viz. Ram Avtar, Rajesh, Raj Kumar and Dinesh have been acquitted of the offence of homicide, we are of the opinion that the said accused could not also have been held liable for offence under Section 324 read with Section 34 of the Indian Penal Code, 1860 for the incised injury caused upon the person of Vijay Kumar by Balwan Singh. They are thus liable only for commission of offence under Section 323 of the Indian Penal Code, 1860.

58. The issue which now requires determination of this Court is as to whether the accused are liable for offences under Section 302 of the Indian Penal Code, 1860 or they are liable for the offence of culpable homicide not amounting to murder. Before proceeding further on the said aspect, it would be essential to refer to Section 300 of the Indian Penal Code, 1860, which defines murder:-

“300. Murder.—

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly)— *If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—*

(Thirdly)— *If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—*

(Fourthly)— *If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

Illustrations

(a) *A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.*

(b) *A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.*

(c) *A intentionally gives Z a sword-cut or club-wound*

sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) *A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.*

Exception 1.— *When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—*

(First)— *That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.*

(Secondly)— *That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

(Thirdly)— *That the provocation is not given by anything done in the lawful exercise of the right of private defence.*

Explanation.— *Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.*

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills. Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the

provocation was given by a thing done in the exercise of the right of private defence.

(f) *Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homi-cide, but A is guilty of murder.*

Exception 2.— *Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.— *Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the*

powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.— *Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

Explanation.— *It is immaterial in such cases which party offers the provocation or commits the first assault.*

Exception 5.— *Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.*

Illustration

A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder."

59. Exception 4 to Section 300 of the Indian Penal Code, 1860 prescribes that where culpable homicide is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual

manner, the culpable homicide would not amount to murder. The explanation thereto makes the concept clear when it explains that in such an eventuality it is immaterial as to which party offers the provocation or commits the first assault. A bare reading of the provision suggests that when culpable homicide is not premeditated but committed in a heat of passion and on a sudden quarrel, the element of who gave the provocation or who committed the first assault pales into insignificance. There are thus no aggressors or defenders. The concept of a free fight inherently presupposes a sudden turn of events and a continued state of rage or passion, arising in the course of a sudden quarrel. The turn of events as relied upon by the prosecution asserts that the fight broke out between the parties on a reproach by Mool Chand (since deceased). There were thus no prior signs of any unrest or commotion between the parties even though they are housed opposite to each other. This Court could not go behind the rationality behind the conduct of the parties but noticeably the suppressed aggression or feelings were brought out when the complaint was lodged by Mool Chand. Still, soaring passion consequent upon the sudden quarrel led to a sudden fight. The usage of the word “sudden fight” follows “a sudden quarrel”. The evidence of the prosecution in the present case follows the aforesaid sequence where the quarrel took place before the fight commenced.

60. The expression ‘quarrel’ has been defined in Black’s Law Dictionary, 8th Edition (South Asian Edition) to mean “**an altercation or angry dispute; an exchange of recriminations, taunts, threats or accusation between the parties to archaic. a complaint; a legal action**”.

Invariably, the quarrel commenced as a result of accusation by Mool Chand

and is not attributable to an act of Balwan Singh. Thus, there was an element of suddenness insofar as the reaction of Balwan Singh and other accused is concerned. It was an impromptu reaction and the chain reaction which followed when the incident reached to a proportion where it was not anticipated or desired.

61. The legislature, being cognizant of erratic conduct or behaviour by the parties, under such circumstances, thus conceived the explanation, where it recorded that in an event of free fight, it would be immaterial as to which party offered the provocation and which party was the aggressor. It goes on the presumption that both the parties are equally responsible for aggravating the circumstances and that individual roles and attribution or provocation or aggression become thinly demarcated lines, as each party offers some provocation or aggression in its own way.

62. The legislature has however put a caveat and defence of free fight, i.e. that a party should not have taken undue advantage or acted in a cruel or unusual manner to avail such benefit. The facts of the case show that there is one injury each attributed to the deceased/Mool Chand by Balwan Singh and Basti Ram. There is no repeat injury caused by them on the person of the deceased. In fact, Basti Ram did not cause any other injury to any other person as well. The manner in which the injury was caused cannot be said to be brutal or cruel. Besides, it is also evident that there were injuries sustained by Balwan Singh on his head and even the other accused sustained injuries. Thus, both sides did wield the weapons and it may not be severally assumed that any undue or unbecoming advantage had been drawn by the assailants.

63. Further, the deposition of Khajan Singh/complainant and injured witness specifically is that initially only Balwan Singh and Basti Ram had come armed with weapons. Balwan Singh gave an axe blow from its reverse side on the head of deceased/Mool Chand, followed by a jaili blow on his thighs by Basti Ram. The fatal injuries were thus already caused by the time the other accused were attracted to the spot. There was thus no intention on the part of the other accused persons to cause any injury to deceased/Mool Chand or to cause his death. Although an attempt was made by the prosecution to allege that a *lathi* blow had been given on the left eye by Rajesh and 2/3 *lathi* blows were given on the left arm of Mool Chand by accused/Raj Kumar, however, the medical evidence of deceased dispels the said allegations while the injury over the left eye attributed to Rajesh with a *lathi* was opined by the Doctor to be as an effect of the blunt injury caused on the head, the swelling in the wrist joint of the forearm attributed to Raj Kumar was opined by the Doctor to be as a result of fall. Seemingly, the assignment of the aforesaid injuries to the appellant-accused persons is based upon the ocular injuries recorded by the investigating officer at the time of conducting inquest proceedings. The version, however, lost its support when the medical evidence was proved; thus, the entire account of the incident, as given by the prosecution, cannot be accepted without a careful scrutiny and appreciation of the evidence. In an event where the prosecution evidence shows that it may not be reflective of the true genesis of the occurrence and there is a possibility of manipulation of facts and attribution of injuries to implicate all members of the family, it would be prudent for a Court of law to examine the evidence

in totality before it is held credible and reliable to return a finding of conviction. It however transpires that the injuries caused on the head of Vijay Kumar by Balwan Singh were inflicted after the other accused reached at the spot. In the said circumstances, it cannot be said that accused/Dinesh, Rajesh, Ram Avtar or Raj Kumar shared an intention to commit murder of Mool Chand (since deceased). The injuries having already been caused much before the other accused were attracted to the spot, hence, the vicarious liability with the aid of Section 34 of the Indian Penal Code, 1860 and assuming a common intention cannot be drawn. At this juncture, it would also be apposite to keep in mind that the entire incident, i.e. from the complaint espoused by Mool Chand to the break out of brawl and injuries sustained by both the parties, lasted for a period of 4/5 minutes. Thus, the sequence of events was fast-paced, and the event took a turn in a fit of rage instead of a premeditated act. The prosecution has made an attempt to invoke Section 34 of the Indian Penal Code, 1860 and the existence of a common intention by relating it to the incident of the burning of the motor that took place during the day; however, the explanation put forth does not appear satisfactory. Firstly, the complainant party was the party which nurtured a grouse on account of a perception of loss to the electric motor consequent upon a perceived intentional mischief on the part of Basti Ram. Hence, there was otherwise no motive for the appellant-accused to open an attack. Hence, the reference to the incident of burning of the motor becoming the basis for forming a common intention does not appear to be reasonable. Assuming for the sake of argument that the said aspect is examined to test its possibility, if the appellants actually

perceived a grudge for the said reason, there would be no occasion for them to be out in the street empty-handed and instead, they would have come to the spot fully armed. It is the case of the prosecution that Balwan Singh entered the house to fetch the weapons after a verbal spat had already taken place between deceased-Mool Chand and Balwan Singh. Thus, till the time that a grievance was raised with Balwan Singh about the alleged intentional mischief of Basti Ram, seemingly nothing untoward had occurred between the parties and that the disharmony was triggered on account of attribution of mischief to Basti Ram by deceased/Mool Chand before Balwan Singh. The said circumstances rather probablise the case of a free fight instead of a pre-meditated assault with an intent to cause death.

64. Hence, the defence has been able to bring home some evidence to probablize an eventuality of free fight and thus bringing the case within exception 4 of Section 300 of the Indian Penal Code, 1860. We are thus of the opinion that the judgment of the trial Court convicting the appellants viz. Balwan Singh and Basti Ram for offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 is misplaced and does not take into consideration the circumstances as aforesaid. Hence, their conviction for commission of offence under Section 302 read with Section 34 of the Indian Penal Code, 1860 is ***set aside***.

65. The same leads to the next pertinent question as to whether appellants, viz. Balwan Singh and Basti Ram would be liable to be convicted for offence under Section 304-I or 304-II read with Section 34 of the Indian Penal Code, 1860, which read thus:-

“304. Punishment for culpable homicide not amounting to

murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

66. It is evident from the above that Section 304-I of the Indian Penal Code, 1860 gets attracted when the act by which the death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death. Undisputedly, when Balwan Singh is alleged to have gone to his Nohra to get weapons, there was no exhortation of any elimination or death. Besides, only one injury was caused on the vital part of the deceased, while the second injury, i.e. the irregular wound on the thighs with a *jaili* was found to be simple in nature.

67. Despite being armed with a sharp-edged weapon, Balwan Singh did not cause injury from the sharp side; the same is indicative of an underlying sub-conscious intent of not causing death or causing any injury as was likely to cause death. The aforesaid intent draws further support from the subsequent conduct reflecting exercise of restraint by the above two

assailants to repeat any injury on the person of the deceased. Thus, even though the injury No.1 may have proved fatal, however, the intent is to be gathered from the totality of circumstances which, in this case, not point to a crystallised intent to cause death or to cause injury sufficient to cause death. Thus, the ingredients for invoking Section 304-I of the Indian Penal Code, 1860 would not be made out.

68. At the same time, it has to be kept in mind that the houses of the deceased as well as the accused persons were facing each other and they are amongst the same collaterals sharing a common well. They are thus deemed to be in full knowledge of the age as well as the health conditions of Mool Chand. While the intent to cause an injury sufficient to cause death may not have existed, however, it is expected of every prudent person to be aware and to be in the knowledge that if any injury is caused on the vital part, viz. the head of a person who is of nearly 70 years, the same is likely to prove fatal. There is nothing available on record on the basis whereof it may be assumed that the cognitive faculties of the assailants were not developed to a stage where existence of such knowledge could be obviated. Thus, accused/Balwan Singh and Basti Ram are held liable for commission of offence punishable under Section 304-II of the Indian Penal Code, 1860.

69. The case having been examined and it being noticed that there is a strong likelihood of a free fight instead of a concerted assault to commit murder, the case would not be punishable for offence under Section 302 of the Indian Penal Code, 1860 and instead be punishable under Section 304 (Part-II) of the Indian Penal Code, 1860. The Hon'ble Supreme Court examined cases based on certain similar facts and it too set aside the

judgment of conviction under Section 302 of the Indian Penal Code, 1860 and sentenced under Section 304 (Part-II) of the Indian Penal Code, 1860.

70. Reference and reliance in this regard is placed on the judgment in the matter of '***Chamru Budhwa Vs. State of Madhya Pradesh.***', reported as ***AIR 1954 SC 652***. Relevant extract thereof reads thus:-

“4. It appears that the Appellant did not plead any exception mentioned in Section 300 of the Indian Penal Code. The circumstances however as found by the Courts below were that there was a severe exchange of abuses between the parties preceding the incident, that during the abuse the tempo rose and both the parties came out of their respective houses in anger and that in the course of the quarrel the Appellant dealt the fatal blow on the head of the deceased with his lathi. Even though the circumstances were such as not to bring the case within Exception 1 to Section 300 of the Indian Penal Code it appears that the crime was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the appellant's having taken undue advantage or acted in a cruel or unusual manner thus bringing the case within Exception 4 thereto with the result that the offence committed was culpable homicide not amounting to murder. The Appellant therefore could not be convicted of having committed an offence under Section 302 of the Indian Penal Code.

5. It now remains to consider whether the offence which he committed falls within the first part or the second part of Section 304 of the Indian Penal Code. When the fatal injury was inflicted by the Appellant on the head of the deceased by only one blow given in the manner alleged by the prosecution it could as well be that the act

by which death was caused was not done with the intention of causing death or of causing such bodily injury as is likely to cause death. The act appears to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death within the meaning of Part II of Section 304 of the Indian Penal Code.”

71. Further, reliance is also placed on the judgment in the matter of **‘Lalji and others Vs. The State of U.P.’**, reported as **(1974) 3 SCC 295**.

Relevant extract reads thus:

“10. In appeal before us Mr. Nuruddin on behalf of the appellants has argued that the present is not a case wherein the accused party can be said to be members of the unlawful assembly or wherein the injuries caused by Lalji to Pancham can be said to have been caused in prosecution of the common object of the accused-appellants. Although Mr. Rana on behalf of the State has controverted the above contention, we find considerable force in the same. The trial court has found that Mahabir accused had been using water from the well near his hut-for irrigation purposes and that he along with Ram Naresh was repairing the old water channel on the ridge when the party of the complainant came there and stopped Mahabir and Ram Naresh from further repairing the water channel. The other accused who were present in the hut nearby, at a distance of 15 or 20 paces from the ridge, then came there. There was remonstrance and counter remonstrance which resulted in a fight. The trial court has also found that there

was no premeditation on the part of Lalji or any other accused to cause Pancham's death and that the fight was a sudden affair and was the result of heated passion. In the circumstances, in our opinion it cannot be said that the appellants who were present in front of their hut formed an unlawful assembly. An assembly of five or more persons is designated an unlawful assembly if the common object of the persons composing that assembly is to do any of the acts mentioned in the five clauses of Section 141 Indian Penal Code. According to the explanation to that section, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. The facts found by the trial court and the High Court and the circumstances of the case do not show that the appellants formed a common object to do any of the acts mentioned in the five clauses of Section 141. Reference has been made to clause (4) of Section 141, according to which an as" seemly of five or more persons would be unlawful if the common object of the persons composing that assembly is to enforce any right or supposed right by means of criminal force or show of criminal force. This clause cannot be of much avail because it cannot be said that the common object of the appellants was to enforce any right or supposed right by means of criminal force or show of criminal force. As mentioned earlier, no party attacked the members of the opposite party at the commencement of the

occurrence. There was only at that stage remonstrance and counter :remonstrance. Someone then started the fight and, according to the trial court, it could not definitely be determined as to which of the two parties struck the first blow. The circumstances of the case show that lathis were then wielded by the appellants other than Lalji, not with a view to enforce any right or supposed right in respect of the water channel but because of the fact that a fight had started and the complainant's party was found by be armed. As there was no premeditation and the occurrence was a sudden affair, each of the appellants, in our opinion' should be held to be liable for his individual act and not vicariously liable for the acts of others.

11. Lalji gave the spear blow in the abdomen of Pancham His conviction should, therefore, be maintained for the offence under Section 304Part I Indian Penal Code. The sentence of rigorous imprisonment for a period of ten years awarded to Lalji for the injury caused to Pancham cannot be held to be excessive. As regards the other appellants, we find that they caused simple hurt with their lathis. There is no doubt that one grievous injury was caused to Bhaggan with blunt weapon, but On the material on record it cannot be said as to who caused the said injury. We would accordingly maintain the conviction of Mahabir, Nar Singh, Paras Nath and Ram Naresh for the offence under Section 323 Indian Penal Code. The conviction

of Lalji for offences other than that under Section :304 Part I, and of the other four appellants for the offences other than that under Section 323 Indian Penal Code is set aside. Lalji is sentenced to undergo rigorous imprisonment for a period of ten years for the offence under Section 304 Part I. As regards the other four appellants who have been convicted under Section 323 Indian Penal Code, their sentence of imprisonment is reduced to the period already undergone.”

72. Reliance is also placed on the judgment of the case of **‘Surender Vs. U.T. Chandigarh’**, reported as **(1989) 2 SCC 217**. Relevant extract reads thus:

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of

this exception provided he has not acted cruelly. In the present case, the deceased and PW 2 had entered the room occupied by Sikander Lal and his family members and had demanded vacant possession of the kitchen. When they found that the appellant was disinclined to handover possession of the kitchen, PW 2 quarreled and uttered filthy abuses in the presence of the appellant's sister. On the appellant asking him to desist he threatened to lock up the kitchen by removing the utensils, etc., and that led to a heated argument between the appellant on the one side and PW 2 and his deceased brother on the other. In the course of this heated argument it is the appellant's case that PW 2 took out a knife from his pant pocket. This part of the appellant's case seems to be probable having regard to the antecedents of PW 2. It is on record that PW 2 was convicted at Narnaul on two occasions under Section 411, IPC and his name was registered as a bad character at the local police station. It was presumably because of this reason that he had shifted from Narnaul to Chandigarh a couple of years back and had started to live in the premises rented by PW 4. When the appellant found that PW 2 had taken out a pen knife from his pocket he went into the adjoining kitchen and returned with a knife. From the simple injury caused to PW 2 it would appear that PW 2 was not an easy target. That is why the learned Sessions Judge rejected the case that Amrit Lal had held PW 2 to facilitate an attack on him by the appellant. It further seems that thereafter a

scuffle must have ensued on Nitya Nand intervening to help his brother PW 2 in which two minor injuries were suffered by the deceased on the left arm before the fatal blow was inflicted on the left flank at the level of the 5th rib about 2" below the nipple- It may incidentally be mentioned that the Trial Court came to the conclusion that the injury found on the neck of PW 2 was a self-inflicted wound and had therefore acquitted the appellant of the charge under Section 307, IPC, against which no appeal was carried. We have, however, proceeded to examine this matter on the premise that PW 2 sustained the injury in the course of the incident. From the above facts, it clearly emerges that after PW 2 and his deceased brother entered the room of the appellant and uttered filthy abuses in the presence of the latter's sister, tempers ran high and on PW 2 taking out a pen knife the appellant picked up the knife from the kitchen, ran towards PW 2 and inflicted a simple injury on his neck. It would be reasonable to inter that the deceased must have intervened on the side of his brother PW 2 and in the course of the scuffle he received injuries, one of which proved fatal. Taking an overall view of the incident we are inclined to think that the appellant was entitled to the benefit of the exception relied upon. The High Court refused to grant him that benefit on the ground that he had acted in a cruel manner but we do not think that merely because three injuries were caused to the deceased it could be said that he had acted in a cruel and

unusual manner. Under these circumstances, we think it proper to convict the accused under Section 304, Part I, IPC and direct him to suffer rigorous imprisonment for 7 years.”

73. Having held so, the question which next falls for our consideration is the sentence to be awarded to the convicts. The facts of the case and the evidence available on record show that there are no criminal antecedents between the parties and that even after the occurrence in the year 2000, the accused persons have not indulged in any other crime or offence. They have faced the agony of a criminal trial for a period of nearly 26 years and there have been no further skirmishes or untoward incidents between the parties, although residing opposite to each other in the same village. The evidence on record thus reflects that the accused happened to have committed a crime in the heat of passion and have not displayed criminal tendencies. Hence, while acquitting the accused persons of offences under Section 452 of the Indian Penal Code, 1860, we are of the view that ‘**Ram Avtar, Dinesh, Rajesh and Raj Kumar**’ cannot be held liable for commission of offence under Section 324 read with Section 34 of the Indian Penal Code, 1860. They are thus acquitted of the said charge and they are convicted for commission of offence only under Section 323 of the Indian Penal Code, 1860. The sentence awarded to them for a period of 06 months for commission of the offence under Section 323 of the Indian Penal Code, 1860 **is modified to the period already undergone.**

74. Accused/Balwan Singh and Basti Ram are convicted for commission of offence under Section 304-II read with Section 34 of the Indian Penal Code, 1860 and they are sentenced to undergo rigorous

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imprisonment for a period of 07 years and to pay a fine of Rs.10,000/- each. In default thereof, they shall further undergo rigorous imprisonment for a period of 04 months. Accused/Balwan Singh is also sentenced to undergo rigorous imprisonment for a period of 01 year for commission of offence under Section 324 of the Indian Penal Code, 1860 and to pay a fine of Rs.2,000/-, in default thereof to further undergo rigorous imprisonment for a period of 02 months. ***The sentence awarded shall run concurrently.***

75. In light of the foregoing conclusions, ***CRR-289-2006*** titled as '***Khajan Singh vs. Balwan Singh and others***' is held to be bereft of merits and is accordingly ***dismissed***.

76. ***CRA-892-DB-2005*** titled as 'Balwan Singh and others Vs. State of Haryana', preferred against the judgment dated 22.11.2005 passed by Additional Sessions Judge, Rewari in Session Case No.11 of 2000/2005 arising out of FIR bearing No. 84 dated 21.05.2000 registered under Sections 148/149/323/324/452/302 of the Indian Penal Code, 1860 at Police Station Kosli, Rewari, is ***partly allowed***.

(VINOD S. BHARDWAJ)
JUDGE

(SUKHVINDER KAUR)
JUDGE

07.09.2026

Mangal Singh

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