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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-D-156-DB-2004 (O&M)
Date of Decision: 13.05.2025****VARINDER KUMAR @ BINDER @ RAVINDER KUMAR & OTHERS****... Appellants****Versus****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate
Ms. Kashish Sahni, Advocate and
for the appellant.

Mr. Siddhart Attri, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 14/19.01.2004 passed by the Addl. Sessions Judge, Kapurthala.

2. The FIR was registered on 17.07.2000, the judgment of conviction and order of sentence passed by the Addl. Sessions Judge, Kapurthala is dated 14/19.01.2004, the appeal was filed on 09.02.2004 and the matter is being taken up for hearing now i.e. after a period of more than 24 ½ years from the date of registration of the FIR.

3. The facts, in brief are that Amandeep Singh alias Banti S/o Beant Singh, was a permanent resident of Mohalla Kurla, Railway Road, Sultanpur Lodhi. Rajinder Kumar alias Pappu, Binder Kumar alias Binder, Gulshan



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Kumar and Harsh Kumar alias Happy, were residing in their neighbourhood, with their family members. They had installed their gate in the courtyard of the house of Amandeep Singh. On 16.07.2000, at about 11 p.m., Rajinder Kumar alias Pappu and the other accused, were demolishing the pillar of their gate, when Amandeep Singh and his family members, heard the noise of demolition, as result whereof, Jaswant Kaur mother, Beant Singh father, Narinder Kaur alias Pinki aunt of Amandeep Singh and he came outside their rooms. They stopped Rajinder Kumar and other accused from demolishing the pillar of the gate, upon which Rajinder Kumar alias Pappu raised an exhortation that Amandeep Singh and his companions, be caught hold of and be taught a lesson, for stopping them from demolishing the pillar of their gate. In the meanwhile, Urmila wife of Jagdish Ram and Sonia Rani wife of Rajinder Kumar alias Pappu, grappled with Jaswant Kaur and Narinder Kaur. Binder Kumar alias Binder, gave an iron rod blow, on the head of Jaswant Kaur. Gulshan Kumar gave an iron rod blow, on the right arm of Narinder Kaur, as result whereof, the same got fractured. Adarsh Kumar @ Harsh Kumar @ Happy caused injuries with an iron rod, on the person of Amandeep Singh and his father Beant Singh. Thereafter, an alarm was raised by Amandeep Singh and other injured, as a result whereof, a number of persons, from the neighbourhood, assembled at the spot. On seeing them, Rajinder Kumar alias Pappu and his co-accused, fled from the spot, with their respective weapons.

4. Blood in sufficient quantity, had oozed out of the injury on the head of Jaswant Kaur, and she fell down. Amandeep Singh and his father



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Beant Singh, arranged a vehicle, and took her to the Civil Hospital, Sultanpur Lodhi. Since, the condition of Jaswant Kaur, was serious, the doctor advised that she be taken to some better hospital. Beant Singh, father of Amandeep Singh, left with Jaswant Kaur and Narinder Kaur, for another hospital, whereas, Amandeep Singh went to lodge the report. Iqbal Singh, ASI, P.S. Sultanpur Lodhi, met him at bus stand, Sultanpur Lodhi, and he made his statement, which was recorded. The statement, Ex. PM, was read over and explained to him and after admitting the same to be correct, he signed it. Endorsement, Ex. PM/1, was appended thereon and the same was sent to the Police Station for the registration of the case, through Dharam Pal, Constable, on the basis whereof, formal FIR, Ex. PM/2, was recorded by Davinder Singh, ASI. The special report. Ex. PM/3, was delivered to the Illaqa Magistrate.

5. On that day, a chit, Ex. PE, had been received, from Civil Hospital, Sultanpur Lodhi, by Iqbal Singh, ASI, when he was in the Police Station, regarding the admission of Jaswant Kaur wife of Beant Singh, resident of Railway Road, Sultanpur Lodhi. Iqbal Singh, ASI, and the complainant, alongwith other police officials, proceeded to the Civil Hospital, Sultanpur Lodhi and moved an application, Ex. PF, as to whether, Jaswant Kaur was fit to make a statement. The doctor, vide his endorsement, Ex. PF/1, informed that she had been referred to higher institute, for treatment. Thereafter, Iqbal Singh, ASI, Singh accompanied by Amandeep Singh PW, went to the place of occurrence. Some other persons were also joined. In the presence of Amandeep Singh and other persons, the place of



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occurrence, was inspected. The rough site plan, Ex. PT, was prepared, with correct marginal notes. Blood stained earth was lifted, from the spot, which was converted into a parcel, sealed with the seal, bearing impression 'IS' and taken into possession, vide recovery memo, Ex. PN, attested by Faqir Chand, HC and Amandeep Singh PW. The supplementary statement of Amandeep Singh, was recorded. Thereafter, Iqbal Singh, ASI, was returning to the Police Station and when, he reached at Jhatghai Chowk, Sultanpur Lodhi, Anup Singh, Punjab Home Guard volunteer met him and produced before him, a chit, Ex. PG, informing about the death of Jaswant Kaur, He then proceeded to the Civil Hospital, Sultanpur Lodhi, where, Anup Singh, aforesaid, produced Ex.PV, a copy of the Daily Diary Entry, before Iqbal Singh, ASI, according to which, the offence under Section 302 of the Indian Penal Code, had also been added. Iqbal Singh, ASI, prepared the inquest report, Ex. PD/2, of the dead body of Jaswant Kaur, which was lying in the mortuary of the Civil Hospital, Sultanpur Lodhi, in the presence of Tarlochan Singh and Parminder Singh, who identified the same. The Medical Officer also handed over Ex. PH, Medico-legal Report of Narinder Kaur to Iqbal Singh, ASI. He then moved an application, Ex. PV, to know about the fitness of said Narinder Kaur, to make a statement. The Medical Officer made his endorsement, Ex. PV/1, that she was fit to make a statement. The statement of Narinder Kaur, was recorded, before conducting the inquest proceedings. The dead body was handed over alongwith the police papers, including the inquest report and application, Ex. PD, to Faqir Chand, HC and Dharam Pal, Constable, for getting the post-mortem, conducted. Thereafter, Sarup Singh,



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SHO, P.S. Sultanpur Lodhi, reached the Old Hospital, Sultanpur Lodhi and took over the investigation from Iqbal Singh, ASI.

6. On 17-7-2000, Sarup Singh, Sub Inspector/ SIIIO, P.S. Sultanpur Lodhi, took into possession, the clothes of deceased Jaswant Kaur, after the post-mortem examination, which were handed over to him by Faqir Chand, HC. The clothes consisted of one nighty-shirt, one trouser (Salwar) and one underwear. These were converted into a sealed with the seal, bearing impression 'SS' and were taken into possession, vide recovery memo, Ex.PW12/A, attested by Faqir Chand, HC.

7. On the same day, Urmila and Sonia Rani, accused, were arrested, vide arrest memo, Ex. PX. Intimation with regard to their arrest, was given to Gobind Ram.

8. On 21-7-2000, Surinder Singh, ASI, arrested Ravinder Kumar and Adarsh Kumar @ Harsh Kumar @ Happy, accused. During investigation, on 23-7-2000, Ravinder Kumar alias Binder, made a disclosure statement, to the effect, that he had concealed an iron rod (Sabbal) in the Chubara, of his residential house, in the area of Sultanpur Lodhi and he get the same recovered. His disclosure statement, Ex.PQ was recorded, signed by him and attested by Amrik Singh and Beant Singh, PWs. Thereafter, Harsh Kumar accused was interrogated. He also made a disclosure statement that he had concealed, an iron rod (Sabbal), in front of his house and which he could get recovered. His disclosure statement Ex.PR, was recorded, which was signed by him and attested by the aforesaid witnesses. In pursuance of his disclosure statement, Ravinder Kumar alias Binder, accused, led the police party to the



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pre-disclosed place and got recovered iron rod (Sabbal), Ex. P3 and sketch thereof Ex. PQ/2, was prepared. The said rod was taken into possession, memo Ex. PQ/1, attested by Beant Singh and Amrik Singh, PWs. Thereafter, Harsh Kumar accused, led the police party, to the pre-disclosed place and got recovered iron rod (Sabbal), Ex. P.4, and sketch thereof, Ex. PR/2, was prepared. The rod was taken into possession, vide recovery memo, Ex. PR/1, attested by the aforesaid witnesses. The rough site plan, Ex. P13/A, of the place of recovery, was prepared.

9. On 27-7-2000, Sarup Singh, Sub Inspector, arrested Rajinder Kumar and Gulshan Kumar, accused, vide arrest memo, Ex. PW12/B and the same was attested by Sudarshan Lal and signed by the accused.

On 31-7-2000, Gulshan Kumar, accused, was interrogated, who disclosed that he had concealed one iron rod, in the Dussehra ground, near a well, in the area of Sultanpur Lodhi and could get the same recovered. His disclosure statement, Ex.PW12/C, was recorded by Sarup Singh, S1, which was signed by him (Gulshan Kumar accused) and attested by Jasbir Singh, HC. In pursuance of the disclosure statement, Gulshan Kumar, accused led the police party, to the pre-disclosed place and got recovered an iron rod (Sabbal), Ex. P1 and sketch thereof, Ex. P2, was prepared. The said rod was taken into possession, vide recovery memo Ex. PO, attested by Amandeep Singh and Jasbir Singh, Head Constable.

10. The statements of the prosecution witnesses, were recorded at various stages of the investigation. The case property was also deposited with the Moharir Head Constable, at various stages of the investigation. After the

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completion of investigation, the accused were challaned, for the offences, punishable under Sections 148, 302, 302/149, 325, 325/149, 323, 323/149, 323 and 323/149 of the Indian Penal Code.

11. On commitment, charges were framed under Section 148 against all the accused, under Section 302 IPC against Varinder Kumar alias Binder, under Section 302 read with Section 149 IPC against the remaining accused, under Section 325 IPC, against Gulshan Kumar and under Section 325 read with Section 149 IPC, against the remaining accused, under Section 323 IPC against Harsh Kumar alias Happy, for voluntarily causing simple hurt to Beant Singh and under Section 323 read with Section 149 IPC against the remaining accused, under Section 323 IPC, for voluntarily causing simple hurt on the person of Amandeep Singh, against Harsh Kumar accused and under Section 323 read with Section 149 IPC against the remaining accused. The accused pleaded not guilty to the charge and claimed trial.

12. The prosecution in support of its case, examined as many as 14 witnesses. The gist of their statements is as under:-

PW1-Dr. Baljit Singh, Medical Officer, Civil Hospital, Sultanpur Lodhi, on 17-7-2000, at 8.38 p.m.. medico-legally examined Beant Singh son of Mehtab Singh, 55 years male, resident of Kurla Mohalla, Sultanpur Lodhi, who was brought by Sarup Singh, Policeman, and found the following injuries, on his person:-

1) A reddish blue contusion 3.5 cm x 1.5 cm lying horizontally oblique on posterio medial aspect of left forearm. It was 7.5 cm from wrist joint. There

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was a small lacerated injury over the contusion with hard clotting. There was no tenderness

2) A reddish blue contusion measuring 7 x 2.5 cm lying anterior posteriorly on superior surface of right shoulder joint. Joint movements were normal.

Both the injuries were declared simple in nature. The probable duration of the injuries, was within 24 hours. The weapon used, was blunt for both the injuries. He proved, Ex. PA, the correct carbon copy of the original MLR, which was brought by him, and the pictorial diagram, Ex. PA/1, showing the seats of injuries.

On the same day, at 9-10 p.m. he also medico-legally examined Amandeep Singh son of Beant Singh, aged 27 years male, resident of Kurla Mohalla, Sultanpur Lodhi, who was brought by Sarup Singh, ASI, and found the following injuries, on his person:-

1) A long reddish blue contusion 8 x 1.5 cm lying along the medial border of left forearm. It was 4 cm from wrist joint.

2) A small lacerated injury 1.5 x 0.3 cm muscle deep, lying horizontally on left iliac region, 4 cm from left anterior posterior illiac spine.

Both the injures were declared simple in nature and the probable duration of the injuries, was within 24 hours. The kind of weapon used, was blunt for both the injuries. He proved, Ex. PB, the correct carbon copy of the original MLR, which he had brought, and Ex. PB/1, pictorial diagram, showing the seats of the injuries.

PW2-Dr. Surinder Pal Surila, SMO, Civil Hospital, Sultanpur Lodhi, conducted medico-legal examination, on 17-7-2000, at 1-45 a.m.



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(night), of Narinder Kaur wife of Pritpal Singh, aged 35 years, resident of Railway Road, Sultanpur Lodhi, brought by Amandeep Singh and found the following injury:-

1) A reddish contusion 6 x 3 cm covered by a diffused swelling of 10 x 6 cm on the back of right forearm in its lower half 10 cm above the wrist joint. Crepitus was felt, unnatural movement of the affected part was there and it caused severe pain on moving the part to her.

The nature of the injury, was kept under observation. The probable duration of injury, was within 24 hours. The kind of weapon used, was blunt. He proved, Ex PH, the correct carbon copy of the original MLR, which he had brought and pictorial diagram, Ex.PH/1, showing the seat of injury. On receipt of X-ray report of Dr. Mukesh Gupta, Radiologist, Civil Hospital, Kapurthala, Ex. PJ/1 and the skiagram, Ex. PJ/2, he declared the injury, on the person of Narinder Kaur, as grievous in nature. Dr. Mukesh, Gupta, PW5, stated that on 18-7-2000, he conducted the X-ray examination of Narinder Kaur and found fracture right radius in its lower 1/3rd of her right forearm. He proved the X-ray report and skiagram.

PW2-Dr.Surinder Pal Surila also conducted the post-mortem examination, on the dead body of Jaswant Kaur wife of Beant Singh, 47 years female, resident of Mohalla Kurla, Railway Road, Sultanpur Lodhi, Distt. Kapurthala, on 17-7-2000, at 10-30 am. The same was brought by Faqir Chand, Head Constable and Dharam Pal. The dead body was identified by Tarlochan Singh and Dharminder Singh. It was dead body of a moderately built and nourished woman, aged about 45/46 years. Rigor mortis was



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present in all four limbs. Bloody fluid was coming out of the nostrils and the following injury was found on her person:-

1) A lacerated wound which was dressed measured 7 cm x 1 cm on the left side of the head, 6 cm above the left pinna top and 10 cm above the outer end of left eye brow. The wound went backward and medially reaching the midline of the head.

On Dissection: underlying bone was having depressed fracture and a chip of the bone was thrust into the brain matter, piercing the membranes. Cranial cavity contained blood. There was haemotomma 5 cm x 5 cm having blackish clotted blood and brain matter was torn underneath the injury. Base of skull was fractured in its anterior and middle parts.

He proved, Ex. PC, correct carbon copy of the original postmortem report brought by him, in the Court and Ex. PC/1, pictorial diagram, showing the seat of injury. He further stated that the patient was brought to the Civil Hospital, Sultanpur Lodhi, in a serious condition, on 16-7-2000, at 11-40 p.m. and was referred to higher institution, as he was in a serious condition and an intimation, with regard to the same, vide chit, Ex. PE, was sent to the Police Station Sultanpur Lodhi. He also proved, Ex. PF, the application, moved by the police of Police Station Sultanpur Lodhi and endorsement, of Ex. PF/1, that Jaswant Kaur had been referred to some higher institution. He further stated that after the death of Jaswant Kaur, her dead body was brought to Civil Hospital, Sultanpur Lodhi, on 17-7-2000, at 1-45 a.m. and an information, Ex. PG, in this regard, was sent to the Police Station Sultanpur Lodhi.

In the opinion of the doctor, the cause of death was shock and



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haemorrhage as a result of the injury, on the person of Jaswant Kaur and was sufficient to cause death in the ordinary course of nature. The injury was antemortem in nature. The probable time that lapsed, between the injury and death was few hours and between death and post-mortem, was 6 to 24 hours. After the post-mortem examination, the well stitched dead body alongwith its belongings and the police papers, were handed over police.

Amandeep Singh, PW6, is one of the injured-cum-complainant. The broad features of his testimony already stand narrated, while, summing up the facts of the case, and need not be reiterated. Narinder Kaur, PW7, is also one of the injured. She corroborated the statement of Amandeep Singh, PW6, in all material particulars. Beant Singh, PW8, another injured, also corroborated the statement of Amandeep Singh and Narinder Kaur.

Iqbal Singh, ASI, PW10, partly investigated this case. PW12-Sarup Singh, SI/ SHO, P.S. Sultanpur Lodhi, at the relevant time also partly investigated the case, whereas, PW13-Surinder Singh, SI also partly investigated this case. The broad features of their testimony already stand noticed, while summing up the facts of the case, and need not be reiterated here.

Ravinderbir Singh, Constable, PW3, proved his affidavit, Ex. PK. Sakattar Singh, HC, PW4, proved his affidavit, Ex. PL. Ranjit Singh, Constable, PW9, proved his affidavit, Ex. PS. Faqir Chand, IIC, PW11, proved his affidavit, Ex. PW11/A, whereas, Ajit Singh Matharu, Draftsman, PW14, on 17-8-2000, prepared the scaled map, Ex. PW13/A, at the instance of Beant Singh, and proved the same.



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The Public Prosecutor, for the State, gave up Davander Singh, ASI, Amrik Singh and Jasbir Singh, Head Constables, Prosecution Witnesses, as unnecessary. He tendered into evidence Ex. PY, report of the Forensic Science Laboratory and closed the same.

13. The statements of the accused were recorded under Section 313 Cr.P.C. They were put all the incriminating circumstances, appearing against them, in prosecution evidence. They pleaded false implication. Rajinder Kumar, accused, stated that he and his wife Sonia Rani, with their children, were settled at Chitgaon, District Shimla, where, he was running a shop of cloth, under the name & style of Bholla Cloth House. He further stated that on the day of alleged occurrence, he was not present at Sultanpur Lodhi. He further stated that he came from Shimla, and surrendered before the police.

14. Sonia Rani, accused, in her statement under Section 313 Cr. PC, stated that she had come to her parents, to see them and on learning about the occurrence, she reached Sultanpur Lodhi, in the afternoon, on 17-7-2000, where she was arrested and involved in this case.

15. Varinder Kumar alias Binder alias Ravinder Kumar, in his statement under Section 313 Cr.PC, stated that at the time of occurrence, he was not present. He stated that he did not cause any injury to anyone. It was stated by him that he was taken to the police station, on the evening of 17-7-2000, alongwith his brothers Gulshan Kumar and Harsh Kumar, his mother Urmila Rani and sister-in-law Sonia Rani, who had reached Sultanpur Lodhi, in, the afternoon, on 17-7-2000. He further stated that all the members of his family had been falsely involved in this case.

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16. Gulshan Kumar, accused, in his statement under Section 313 Cr.PC, stated that he was living with his mother, at Sultanpur Lodhi and his house was under construction. He further stated that he was demolishing the pillar of the door, to affix a new door. Narinder Kaur and Jaswant Kaur came there and tried to obstruct him, from demolishing the pillar. A brick-bat struck both of them and they suffered accidental injuries. It was stated by him that his brothers, mother and sister-in-law, were not present. It was further stated by him that the accident was converted into occurrence/incident. He stated that he was not at fault at all. He also stated that he did not cause any injury to anyone.

17. Urmila Rani, accused, in her statement, under Section 313 Cr.PC, stated that she was employed in Govt. Girls School, at Sultanpur Lodhi. She stated that she was not present, at the time of the alleged occurrence, and was falsely involved in this case.

18. Adarsh Kumar alias Harsh Kumar alias Happy, accused, in his statement, under Section 313 Cr.PC, stated that he was not present at the time of the alleged occurrence. He stated that he did not cause any injury to anyone. He stated that he was taken to the police station, on the evening of 17-7-2000, alongwith his brothers Gulshan Kumar and Varinder Kumar, his mother Urmila Rani and sister-in-law Sonia Rani, who reached Sultanpur Lodhi, in the afternoon, on 17-7-2000. He further stated that all the members of his family, were falsely implicated in this case.

19. The accused, in their defence evidence, examined Baljinder Singh, Head Constable, DW1. He brought the record, relating to FIR No. 135

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dated 4-12-1998, P.S. Verowal, registered under Sections 467, 468, 471, 379, 420, 447 and 120-B of the Indian Penal Code, against Beant Singh, and proved the photo copy of the FIR, Ex. DX. Thereafter, vide separately recorded statements, the accused closed their defence evidence.

20. Based on the evidence led, while Rajinder Kumar alias Pappu, Urmila and Sonia Rani were acquitted Varinder Kumar alias Binder alias Ravinder Kumar, Gulshan Kumar and Adarsh Kumar alias Harsh Kumar alias Happy came to be convicted and sentenced by the Court of Addl. Sessions Judge, Kapurthala vide judgment and order of sentence dated 14/19.01.2004 as under:-

Convicts	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Varinder Kumar alias Binder alias Ravinder Kumar	302 IPC	Imprisonment for life	Rs.2000/-	RI for 01 month
	325/34 IPC	RI for 1 ½ years	Rs.500/-	RI for 01 month
	323/34 IPC	RI for 06 months	Rs.200/-	RI for one month
Gulshan Kumar	302/34 IPC	Imprisonment for life	Rs.2000/-	RI for 01 month
	325 IPC	RI for 02 years	Rs.500/-	RI for 01 month
	323/34 IPC	RI for 06 months	Rs.200/-	RI for one month
Adarsh Kumar alias Happy	302/34 IPC	Imprisonment for life	Rs.2000/-	RI for 01 month
	323 IPC	RI for 09 months	Rs.200/-	RI for 01 month
	325/34 IPC	RI for 1 ½ years	Rs.500/-	RI for 01 month



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21. It is the aforementioned judgment, which is under challenge, in the present appeal.

22. The learned Sr. Counsel for the accused/appellants contends that even as per the prosecution case, the occurrence took place when the accused party was demolishing the pillar of their own gate and the complainant party came to the spot to prevent them from doing so. This is the version of the FIR got registered by the complainant Amandeep Singh and also his version when he deposed in Court as PW6 though he volunteered to state that the pillar was being demolished so as to extend the same towards the courtyard of the complainant side. Similar statements in cross-examination have been made by PW7-Narinder Kaur and PW8-Beant Singh that the accused party were demolishing the pillar of their own gate. He, therefore contends as the occurrence took place when the complainant party came to the spot to complain about the demolition of the pillar of the accused party, the question of the applicability of Section 34 IPC would not arise and each accused would be liable for their individual acts. Even otherwise, it is not a case where some dangerous weapons were used but only iron rods. Further, the deceased was inflicted a single blow on the head by Varinder Kumar alias Binder. He thus contends that the conviction of Varinder Kumar alias Binder could only be recorded under Section 304 IPC, Gulshan Kumar could be convicted substantially only under Section 325 IPC for causing a grievous injury on Narinder Kaur whereas Adarsh Kumar alias Harsh Kumar alias Happy could be convicted substantially only under Section 323 IPC for



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having caused simple injuries on the person of the complainant and Beant Singh.

23. The learned counsel for the State, on the other hand, contends that all the accused persons were collectively demolishing the pillar of the gate of their house so as to extend their area into that of the complainant party when the occurrence place took place in which one person died and two suffered injuries. The medical evidence was totally in consonance with the ocular account. He, therefore contends that the present appeal is liable to be dismissed.

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

25. Before proceeding further, it would be apposite to examine various judgments on the issue at hand.

The Hon'ble Supreme Court in ***“Kedar Prasad and others versus State of M.P. 1992 AIR Supreme Court 1629”***, has held as under:-

2. We have heard learned Counsel for the appellant. His main prayer is that since the appellants are on bail, we may reduce the sentence of the appellants to the period already undergone. There are three appellants in these two appeals. In the dying declaration of the deceased specific roles have been ascribed to the appellants. The deceased Alafat had been attracted by a commotion in the neighbourhood where a woman was being beaten. The deceased asked the assailants not to beat that woman. Then malice was transferred to the deceased and the accused persons exhorted to each other to divert their attention to the deceased. The first blow was given by Kedar Prasad appellant with his stick which struck on the head of the deceased and another blow was given by Ramlal appellant with his spear striking at his knee and yet another one on his hand and thereafter the deceased says that he was given blow by others. By process of exclusion 12 out of 15 accused originally



arraigned have been acquitted by the courts below. Out of the remaining, two appellants, namely, Kedar Prasad and Ramlal have been convicted under Section 304, Part I, Indian Penal Code and sentenced to rigorous imprisonment for five years. All the three appellants however have been convicted under Section 323 of the Penal Code and sentenced to one year's rigorous imprisonment.

*3. The dying declaration of the deceased, which was relied upon by the courts below, discloses that the deceased had positively mentioned Kedar Prasad and Ramlal to be the persons who first gave him blows one after the other and then by others who do not figure in these appeals except Ram Bali appellant. It is evident that Kedar Prasad appellant gave the head injury. According to Dr. C. L. Nigam, P.W. 12, who performed the postmortem examination of the deceased, the deceased had died on account of the severe head injury causing multiple fracture of the skull besides extradural haemorrhage which by itself was fatal. Since the fatal injury is attributed to Kedar Prasad, appellant it appeals to us that his conviction and sentence as recorded by the High Court should be sustained and we order accordingly. So far as Ramlal, appellant is concerned the injuries given by him with a spear on the knee and the arm of the deceased were simple. For these injuries Ramlal appellant cannot be convicted under Section 304, Part I, Indian Penal Code as Section 34 Indian Penal Code has not been applied after setting aside conviction under Section 147 Indian Penal Code His conviction has thus to be brought down to one under Section 324 Indian Penal Code and we order accordingly. There is nothing which can be said about the conviction of Rambali appellant who stands' convicted under Section 323 Indian Penal Code The end result is that we confirm the conviction and sentence of Kedar Prasad appellant, after the conviction of Ramlal appellant to one under Section 324 Indian Penal Code and sentence him to the period already undergone under all counts and dismiss the appeal of Rambali reducing his sentence to the period already undergone under all counts. Thus both the appeals are disposed of.
Order accordingly.*



The Hon'ble Supreme Court in "***Gurmukh Singh versus State of Haryana 2009(15) SCC 635***", held as under:-

21. *In the instant case, the occurrence had taken place at the spur of the moment. Only the appellant Gurmukh Singh inflicted a single lathi blow. The other accused have not indulged in any overt act. There was no intention or pre-meditation in the mind of the appellant to inflict such injuries to the deceased as were likely to cause death in the ordinary course of nature.*

22. *On consideration of the entire evidence including the medical evidence, we are clearly of the view that the conviction of the appellant cannot be sustained under section 302 Indian Penal Code, but the appropriate section under which the appellant ought to be convicted is Section 304 Part II Indian Penal Code.*

23. *Before we part with the case, we would like to clearly observe that we are not laying down that in no case of single blow or injury, the accused cannot be convicted under section 302 Indian Penal Code. In cases of single injury, the facts and circumstances of each case has to be taken into consideration before arriving at the conclusion whether the accused should be appropriately convicted under section 302 Indian Penal Code or under Section 304 Part II Indian Penal Code.*

24. *These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under :*

- a) Motive or previous enmity;*
- b) Whether the incident had taken place on the spur of the moment;*
- c) The intention/knowledge of the accused while inflicting the blow or injury;*
- d) Whether the death ensued instantaneously or the victim died after several days;*
- e) The gravity, dimension and nature of injury;*
- f) The age and general health condition of the accused;*



- g) Whether the injury was caused without pre-meditation in a sudden fight;*
- h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*
- i) The criminal background and adverse history of the accused;*
- j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;*
- k) Number of other criminal cases pending against the accused;*
- l) Incident occurred within the family members or close relations;*
- m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?*

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.

25. When we apply the settled principle of law which has been enumerated in the aforementioned cases, the conviction of the appellant under section 302 Indian Penal Code cannot be sustained. In our considered view, the accused appellant ought to have been convicted under Section 304 Part II Indian Penal Code instead of under section 302 Indian Penal Code.

26. We accordingly convert the conviction and sentence of the appellant Gurmukh Singh from section 302 Indian Penal Code to one under Section 304 Part II Indian Penal Code and sentence him to suffer rigorous imprisonment for seven years. The fine as imposed by the trial court and as upheld by the High



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Court is maintained. The appellant would be entitled to get benefit of section 428 of the Code of Criminal Procedure.

27. The appeal is partly allowed in the aforementioned terms and disposed of.

Appeal partly allowed.

The Hon'ble Supreme Court in ***“Mariappan versus State represented by Inspector of Police 2024 AIR Supreme Court 253”***, held as under:-

8. Hence the only question that remains for consideration before us is whether the act of the accused is culpable homicide amounting to murder or not. In other words, the question is whether the acts of the accused would come under Exception 4 to Section 300 IPC or would be an act of culpable homicide amounting to murder punishable under Section 302.

9. This Court in Rampal Singh v. State of U.P. (2012) 8 SCC 289, while altering the offence under Section 302 to Section 304 Part 1 of IPC, has elaborately discussed the distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder. What is held is that classification would be a matter of fact depending upon the evidence led in the trial. Broadly speaking, the factors to be considered are enumerated in paragraph 25 thereof. The same is been reproduced below:

"25. As we have already discussed, classification of an offence into either part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of premeditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances greatly helps the court in coming to a final



conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view i.e. by applying the "principle of exclusion". This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, "culpable homicide amounting to murder". Then secondly, it may proceed to examine if the case fell in any of the Exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused."

10. It would also be apt here to refer to the judgement of Surinder Kumar v. Union Territory, Chandigarh (1989) 2 SCC 217, wherein this Court had laid down the grounds to invoke Exception 4 to Section 300 IPC:

"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."

11. In the present case, while looking at the facts and circumstances of the case, it can be seen that the appellant had suddenly stabbed the deceased during a heated verbal argument



with him and not during a preplanned attack which was carried out with the sole intention of causing the death of the deceased. The previous enmity between the appellant and the deceased had been a contributory factor leading to the verbal altercation but it was not the reason for the accused to carry out a pre-planned fatal attack against the deceased. The appellant had acted "suddenly", in the heat of passion and without a pre-planned approach to kill the deceased.

12. Right from the beginning i.e. the prosecution story as set up in the FIR was that initially there was a heated discussion between the parties and in a fit of anger the physical assault took place. Even the ocular testimony is also to the same effect. Although on the same evidence the Trial Court has acquitted two co-accused and convicted only the appellant. It has also come in evidence that the appellant had caused only one injury whereas other accused had caused multiple injuries. However, the Trial Court acquitted the other two accused.

13. Hence, it can be safely concluded from the evidence led in the present case that the appellant's overt act of killing the deceased happened during a fit of anger in the heat of a passionate verbal quarrel and would fall under Exception 4 to Section 300 IPC. Moreover, the clear intent needed to prove culpable homicide amounting to murder has also not been established by the prosecution.

14. The appeal is partly allowed.

15. The conviction under Section 302 IPC is Converted to Section 304 Part-I with sentence of 10 years Rigorous Imprisonment and fine of Rs. 50,000/-, to be paid to the victim's family.

26. The various High Courts have held as under:-



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In “*Mangalsingh and others versus State of M.P. 1996 CriLJ 1908*”, the Gwalior Bench of the Madhya Pradesh High Court, held as under:-

9. *It is not disputed that Pharsa blow was given to Pitaram only by Mangalsingh and not by other accused persons. As mentioned above, Dr. R.S. Dixit, P.W. 12, in his testimony and in his letter, Ex. P-31, has very clearly stated that Injury No. 1 on the head was not caused by any sharp edged weapon. The Pharsa, therefore, appears to have been inflicted from the blunt side which resulted in the fracture of scalp and damage to the brain. Dr. G.D. Agarwal, P.W. 15, who performed the post mortem has also in his deposition stated that the injury caused on the head might have been caused by hard and blunt object. In para 12 Dr. R.S. Dixit, P.W. 12, has very clearly stated that injuries Nos. 1, 2 and 3 found on the person of Pitaram were not sufficient in the ordinary course of nature to cause death. The version, as stated by the prosecution witnesses, makes out a case of free fight, as held by us above. We cannot, therefore, infer any intention on the part of the accused Mangalsingh to commit murder of Pitaram. The injuries were caused by him in the course of quarrel which suddenly took place when Roshansingh had gone to lodge protest to the house of Thakurdas. The offence, therefore, committed by Mangalsingh would not be one under Section 302 Indian Penal Code but under Section 304, Part I, Indian Penal Code. Mangalsingh had also caused injuries to complainant Bhagwansingh and he has also been convicted under Section 325 Indian Penal Code. We are informed that he is in jail since the date of incident and has almost suffered nine years sentence. We, therefore, set aside his conviction under Section 302 Indian Penal Code and instead convict him under Section 304, Part I, Indian Penal Code,*



Section 325 and Section 148 Indian Penal Code and sentence him for the period already undergone.

10. So far as the other accused-appellants Nos. 2 to 7 are concerned, they have all caused injuries by Luhangis and lathis. The injuries as per the injury reports, Ex. P-26 to Ex. P-29 are all contusions, abrasions and lacerated wounds. As held above, there was no formation of unlawful assembly within the meaning of Section 149 Indian Penal Code and there was no common intention. They are all, therefore, liable to be convicted only under Section 325 and Section 148 Indian Penal Code. They are all on bail. Appellant No. 21, Thakurdas, Appellant No. 6 Jagdish and appellant No. 7 Bhagwatsingh have suffered about two months sentence and appellant No. 3 Kalyansingh, appellant No. 4 Parashram and appellant No. 5 Premnarayan have all suffered three months sentence each before they were enlarged on bail. In this case, both parties clashed and had caused injuries to members of other party. In the circumstances of the case, in our opinion, ends of justice would be met by sentencing appellants Nos. 2 to 7 to the period of imprisonment already undergone by them and fine of Rs. 2000/- (Rupees Two thousand only) each payable as compensation to the injured within three months. In default of payment of fine they shall suffer further rigorous imprisonment for six months.

11. Consequently, the appeal only partly succeeds. The conviction of the appellants under Section 302 read with Section 149 Indian Penal Code is hereby set aside, instead appellant No. 1 Mangalsingh is convicted under Section 304, Part I, Section 325 and Section 148 Indian Penal Code and is sentenced to imprisonment for the period already undergone by him. The other appellants Nos. 2 to 7 are convicted for the offences under Sections 325 and 148, Indian Penal Code and are sentenced to the period of imprisonment already undergone



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by then and fine of Rs. 2000/- (Rupees Two thousand only) each payable as compensation to the injured within three months. In default of payment of fine they shall suffer a further sentence of rigorous imprisonment for six months. Their bail bonds are cancelled. All the appellants be set at liberty, if they are not otherwise required in connection with any other offence.

In **“Bhola Ram & Ors. versus State of Rajasthan, (D.B. Criminal Appeal No.22 of 2006 decided on 09.03.2015)”**, the Jaipur Bench, Rajasthan High Court, held as under:-

41. In the present case, that the occurrence was sudden affair, without any pre-meditation due to the incident at the well, where Smt. Guddi was given beating by Sunita and Saroj. It is the family members of Guddi, who felt hurt and it has rightly been stated in the written report that immediately thereafter, ladies of both the houses had an altercation. To us, sudden occurrence had erupted in the street and both sides came to blows. It is a case of sudden fight.

42. It was held by the Hon'ble Supreme Court in the case of Jumman & Ors. v. State of Punjab [AIR 1957 Supreme Court 469] as under:-

"(24). In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under Section 300, I.P.C., Exception 4.

(25). The matter has to be viewed in this way. It is clear that there was no pre-meditation and therefore when the contending factions met accidentally and attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden



quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence Exception 4 to section 300, I.P.C., applies with the result that the offence is under Section 304 (Part I), I.P.C."

43. A Division Bench of this Court in Buddhi & Ors. v. State of Rajasthan [2007 (1) RCC 228], relying upon Dharman v. State of Punjab, AIR 1957 Supreme Court 324] held as under:-

"13. Coming to the incident that occurred with deceased Saltu we find that he sustained injuries in the course of sudden fight ensued in the field of accused party. The complainant party was also armed with deadly weapons and as many as eight accused persons received lacerated and incised wounds on the vital parts. In Dharman v. State of Punjab, AIR 1957 Supreme Court 324 the Supreme Court held that when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner and that the case against the accused falls within Exception 4 of Section 300 of the Indian Penal Code and the accused who caused the injury was guilty under Part I of Section 304 and not under Section 302 of the Indian Penal Code."

44. Taking totality of the circumstances, we are of the view that the accused Bhola Ram and Yadram have been substantively convicted for the offence under Section 302 for having given fatal blows to Moti Ram, the deceased. Thus, Bhola Ram and Yadram are held responsible for causing death of Moti Ram. Considering that the occurrence was sudden affair, without any pre-meditation, we are of the view that the offence qua them will not fall under Section 302 I.P.C., but under Section 304-I I.P.C.

45. Consequently, we convert the offence and set aside the sentence of life imprisonment awarded under Section 302 I.P.C. upon Bhola Ram. He is held guilty of offence under Section 304-



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I I.P.C. and sentenced to undergo ten years R.I. and to pay a fine of L 10,000/-, in default of payment of fine, to further undergo one year R.I.

46. Substantive conviction of Bhola Ram for the offence under Section 307 and 325 is upheld. The sentence awarded to him on all the counts by the trial court shall run concurrently.

47. We acquit the accused, Ghanshyam of offence under Section 302/149, 307/149 and 325/149 and maintain his substantive conviction for the offence under Section 324, as he is also individually liable for the role played by him. Consequently, we also upheld the sentence of one year awarded upon Ghanshyam under Section 324 I.P.C.

XXXXX

XXXXXX

XXXXX

49. Since we have held that Section 149 is not attracted, Prakash s/o Khayali Ram, Prakash s/o Mohan Lal, Ummedi Lal and Mannu Ram are acquitted of offence under Section 302/149, 307/149, 325/149 and 324/149 IPC and their substantive conviction for offence under Section 323 I.P.C. is upheld. We also uphold the sentence awarded to them under Section 323 I.P.C.

With the above modification, qua offence and sentence noted, qua each appellant, the present appeal stands disposed of.

In “Radheshyam and anr. versus State of Rajasthan, (D.B. Criminal Appeal No.1095 of 2005 decided on 24.03.2015)”, the Jaipur Bench, Rajasthan High Court, held as under:-

17. The contention of the appellant is that as per prosecution evidence when goats entered in the field of the complainant party on a spur of moment without any premeditation, the occurrence happened. Latoor has inflicted only one injury to the deceased that too by blunt weapon. There is no repetition of the



blows, hence the case of the appellant does not travel beyond the scope of Section 304 Part-I IPC. The contention of the counsel for the appellant seems sound and looking to the fact that incident has happened on a spur of moment when goats entered into the agricultural field of the complainant party. The appellant has not taken any undue advantage of the situation, he has not repeated the blow, consequently, we set aside the conviction of the appellant Latoor under Section 302 I.P.C. and convert it into 304 Part-I IPC.

18. It can be noted that prosecution witness has stated that Radheshyam has also inflicted injury by blunt weapon. PW/12 Ramdayal, PW/7 Shambhoo Dayal and PW/1 Ram Ratan have stated so but as considered earlier, the incident has occurred on a spur of moment. There was no pre-mediation of mind and when incident has occurred spontaneously, Section 34 I.P.C. would not come into play and common intention could not be attributed to Radheshyam but as specific injury has been attributed to him, he would be only liable for his individual act, hence his conviction under Sections 302 and 307 I.P.C. is set aside but conviction and sentence under Section 323 I.P.C. is maintained.

In the light of the above, the conviction of the appellant Latoor is converted from 302 I.P.C. to 304 Part-I I.P.C. As per arrest memo (Ex.P/18), Latoor was arrested on 29.10.2003. As stated by counsel, he is in custody from last 11 years and about five month, hence his substantive sentence is reduced to the period already undergone while maintaining the sentence of fine and default clause.

While maintaining the conviction and sentence of appellant Radheshyam for offence under Section 323 I.P.C., he is acquitted of offence under Section 302/34 and 307/34 IPC.



In “***Banwari and others versus State of U.P. (Criminal Appeal No.105 of 2012 decided on 20.11.2015) and Rakesh versus State of U.P. (Criminal Appeal No.106 of 2012 decided on 20.11.2015)***”, the Allahabad High Court held as under:-

16. Keeping in view the aforementioned legal position and the facts of the instant case which reflects that the incident has taken place on the spur of the moment and free fight took place between both the sides in which both sides have received injuries. Law is settled on the point that in case of free fight each and every accused shall be responsible for his own act and in the instant case both the accused persons are alleged to have given lathi blows to the deceased and the deceased has received two lathi blows on his head which proved fatal. So both the appellants have given one blow each on the deceased and no effort was made to repeat the blow on any vital part of the body. No undue advantage of the above situation was taken by any of the appellants and the offence was not committed with prior intention or premeditation. Thus this offence would fall under Section 304 part II IPC.

17. In these circumstances, the offence would fall only under Section 304 part II IPC. Accordingly, we are of the considered view that this appeal deserves to be partly allowed and is hereby partly allowed. Conviction of both the appellants deserves to be modified from Section 302 IPC to Section 304 part II IPC and their sentence deserve to be reduced from imprisonment for life to the rigorous imprisonment for a period of five years and also with fine of Rs. 10,000/- each with default stipulation of two months additional imprisonment. The conviction and sentence inflicted by the learned trial court for the offence under Section 325 IPC is also hereby confirmed. The appellants Banwari and



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Rakesh are in custody. They shall serve out the sentence as modified by this Court. The period already undergone by the appellants in custody in this case, shall be set off in their substantive sentence in accordance with the provision of Section 428 Cr.P.C.

In “***Jagram and others versus State of Rajasthan (in DB Criminal Appeal No.1255 of 2011 decided on 14.01.2016)***”, the Jaipur Bench, Rajasthan High Court held as under:

23. Thus, to us, the trial court has rightly given a finding of free fight. In the facts and circumstances, due to non-impleadment of right of self defence, we cannot say with a definite opinion that from the case of prosecution itself right of self defence of property of accused or person is made out.

24. Supreme Court in Lakshmi Singh & Ors. v. State of Bihar [(1976) 4 SCC 394] has held that if the injuries on the person of accused are not explained, it is to be assumed that prosecution has suppressed genesis and origin of the occurrence and thus, acquittal of the accused should be recorded. The relevant paras of the aforesaid judgment are as under:-

"This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results

follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In *Puran Singh v. The State of Punjab* Criminal Appeal No. 266 of 1971 decided on April 25, 1975 : which was also a murder case, this Court, while following an earlier case, observed as follows:



In State of Gujarat v. Bai Fatima Criminal Appeal No.67 of 1971 decided on March 19, 1975 :) one of us (Untwalia, J., speaking for the Court, observed as follows:

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."



25. *Since both the parties, have withheld origin and genesis of the occurrence, it cannot be determined as to which party was aggressor. Thus, trial court has rightly held that it is a case of free fight. However, trial court wrongly came to the conclusion that Jagram and Kailash intended to cause death of Kanchan Lal, but Sajana Devi and Malli Devi have not shared the common intention with them. To us, this finding is not justified. Once the court come to the conclusion that it is a case of free fight, Section 34 IPC cannot be applied.*

26. *It was held by the Hon'ble Supreme Court in the case of Jumman & Ors. v. State of Punjab [AIR 1957 Supreme Court 469] as under:-*

"(24). In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under Section 300, I.P.C., Exception 4.

(25). The matter has to be viewed in this way. It is clear that there was no pre-meditation and therefore when the contending factions met accidentally and attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence Exception 4 to Section 300, I.P.C., applies with the result that the offence is under Section 304 (Part I), I.P.C."

27. *A Division Bench of this Court in Buddhi & Ors. v. State of Rajasthan [2007 (1) RCC 228], relying upon Dharman v. State of Punjab [AIR 1957 Supreme Court 324] held as under:-*

"13. Coming to the incident that occurred with deceased Saltu we find that he sustained injuries in the course of sudden fight ensued in the field of accused party. The complainant party was also armed with deadly weapons and as many as eight accused persons received lacerated and incised



wounds on the vital parts. In *Dharman v. State of Punjab*, AIR 1957 Supreme Court 324 the Supreme Court held that when two such contending parties, each armed with sharp edged weapons, clashed and in the course of a free fight some injuries were inflicted on one party or the other, it cannot be said that either of them acted in a cruel or unusual manner and that the case against the accused falls within Exception 4 of Section 300 of the Indian Penal Code and the accused who caused the injury was guilty under Part I of Section 304 and not under Section 302 of the Indian Penal Code."

28. Thus, taking totality of circumstances, we are of the view that conviction of the accused-appellants Jagram and Kailash cannot be sustained for offences under Sections 302 and 302/34 IPC respectively. Both the accused have caused one injury each on the head of deceased Kanchan Lal, thus by applying ratio of law laid in Jumman's case (supra) and Dharman (supra), Jagram and Kailash are liable to be convicted for offence under Section 304 Pt.I IPC.

29. Consequently, we convert the offence qua the appellants and set aside the sentence of life imprisonment awarded under Section 302 IPC upon Jagram and Kailash. They are held guilty of offence under Section 304 Pt.I IPC and sentenced to undergo ten years rigorous imprisonment. They are further held liable to pay a fine of Rs. 10,000/- and in default thereof to undergo one year rigorous imprisonment.

27. A perusal of the aforementioned judgments would show that where injuries were caused without pre-meditation in a sudden fight, which had taken place on the spur of the moment and the deceased had received a single fatal injury, then, ordinarily, Section 34/149 IPC would have no application and each accused would be convicted for the individual role played by him, in as much as, the accused who has given the fatal injury on the person of the deceased would be liable for having committed an offence



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under Section 304 IPC, whereas the other accused would be liable for the individual injuries caused by them to the deceased and other injured.

28. Coming back to the facts of the instant case, as per the prosecution when the accused side was dismantling the pillar of their own gate, the complainant party came to remonstrate with them. At that time, Rajinder Kumar @ Pappu (acquitted accused) raised a lalkara that the complainant party be caught and taught a lesson for preventing them from demolishing the pillar. Rajinder Kumar alias Pappu (acquitted accused), Urmila (acquitted accused) wife of Jagdish Lal and Sonia Rani (acquitted accused) wife of Rajinder Kumar @ Pappu attacked and quarrelled with the mother and aunt of the complainant. Then Varinder Kumar @ Binder @ Ravinder Kumar gave a rod blow to the complainant's mother Jaswant Kaur (deceased) which hit her on her head. Gulshan Kumar gave a rod blow to Narinder Kaur which hit her on her arm which got fractured. Then Adarsh Kumar @ Harsh Kumar @ Happy gave a rod blows to the complainant on his left arm and left hand and two blows to his father Beant Singh on his left wrist and right shoulder. Apparently, it was a sudden fight without pre-meditation in the heat of the moment and only iron rods were used. It cannot be said that the accused party acted in a cruel manner or took undue advantage. In fact, it was the complainant party which had gone towards the accused to protest against them demolishing their pillar of the gate. Therefore, exception 4 to Section 300 IPC would apply. In this situation, it cannot be said that the accused had a common intention as envisaged under



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Section 34 IPC to commit the offence in question. Hence each accused would be liable for his individual role/act.

29. In view of the aforementioned discussion, the conviction of the appellants is modified as under:-

- i. The conviction of Varinder Kumar @ Binder @ Ravinder Kumar is modified from 302 IPC, 325/34 IPC and 323/34 IPC to 304 Part I IPC only and he is sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs.2000/- in default of which he would undergo rigorous imprisonment for a period of 01 month.
- ii. The conviction of Gulshan Kumar for the offence under Section 302/34 IPC and 323/34 IPC is set aside and his conviction and sentence for the offence under Section 325 IPC for causing a grievous injury to Narinder Kaur is maintained.
- iii. The conviction of Adarsh Kumar @ Harsh Kumar @ Happy for the offence under Section 302/34 IPC and 325/34 IPC is set aside and his conviction and sentence for the offence under Section 323 IPC for causing simple injuries to Amandeep Singh is maintained.
- iv. The conviction of Adarsh Kumar @ Harsh Kumar @ Happy for the offence under Section 302/34 IPC and 325/34 IPC is set aside and his conviction and sentence for the offence under



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Section 323 IPC for causing simple injuries to Beant Singh is maintained.

The sentences imposed on Adarsh Kumar @ Harsh Kumar @ Happy shall run concurrently.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

13.05.2025

JITESH

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