

**Veer Singh Vs. State**

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**Court :** Delhi

**Decided On :** Oct-09-2015

**Judge :** Sanjiv Khanna&Amp; R.K. Gauba

**Appeal No. :** CRL. A. No. 124 of 2000

**Appellant :** Veer Singh

**Respondent :** State

**Judgement :**

Sanjiv Khanna, J.

1. Veer Singh by the impugned judgment dated 18th January, 2000 has been convicted under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for having committed murder of Praveen Kumar at about 11 P.M. on 4th March, 1996. The appellant-Veer Singh has also been convicted under Section 27 of the Arms Act, 1959 for having used a sword to cause injuries on the upper part of pinna adjoining the temporal region of Praveen Kumar.

2. The factum that the deceased-Praveen Kumar had died a homicidal death is discernibly established and proved from the Medical Legal Report (Exhibit PW-24/A) recorded at the Hindu Rao Hospital on 4th March, 1996 at 11.50 P.M. The said patient Praveen Kumar was brought by one Rishi Kumar, who has deposed in the court as PW-7. The patient was unconscious, pulse was not palpable, pupils were dilated and the heart beat was absent. Praveen Kumar was declared as

brought dead. Dr. V.P. Singh (PW-24) proved the said MLC, in the handwriting of Dr. Tarun Sikri, who had also signed at point A'. The post-mortem report of Praveen Kumar marked Exhibit PW-22/A was proved by Dr. C.B. Dabas (PW-22), who had conducted the post-mortem. As per the post-mortem report, the following external injuries were noticed:-

1. One incised wound 2.5x2 cm over left pinna in upper part and adjoining part of temporal region of scalp anteriorly located 6 cm posterior to outer angle of left eye.
2. Abrasion 2.5x2.5 over left side forehead.
3. Bruise 9x7 cm over upper inner aspect of right arm in axille.
4. Abrasion 0.5x0.5 cm over lower back of right arm.
5. Abrasion 2x1 cm over back of right elbow.
6. Superficial incised wound 0.5x0.4 cm in left lumber region of front of abdomen.
7. Abrasion 2x0.4 cm on right side front of abdomen in lumber region.

On Internal Examination, with reference to injury No. 1 it was observed: Injury No. 1 had cut through temporal bone on left side and then cut the meninges over brain entered to lateral surface of left temporal lobe of cerebrum and after perforating through it cut through the puiatary fossa and ended on its left side on inner surface of right temporal frontal lobe upto a depth of 10.5 cm. Injury No. 1 had caused the death of Praveen Kumar due to cranio-cerebral damage. The said injury had cut through the temporal bone on the left side and then the meninges over brain, etc. The injury was deep i.e had a depth of 10.5 cm. We shall subsequently refer to the deposition of Dr. C.B. Dabas (PW-22), when we determine the question of the offence committed by the appellant Veer Singh.

3. There is ample evidence and material to show that there was a grapple and a free fight between two groups at about 11 P.M. in front of Roshanara Building on the night before Holi, i.e., 4th March, 1996. In this quarrel which had erupted while Holi fire was burning, that the fatal penetrating injury No. 1 was penetrated on the left pinna of Praveen Kumar. Three others Mahesh Singh, Yogesh @ Kallu and

Yogender @ Gattu were also charge sheeted and had faced prosecution, but stand acquitted by the impugned judgement, as sharing of common intention for invoking Section 34 IPC was not proved and established beyond reasonable doubt. The impugned judgment accentuates several infirmities to hold that the said acquitted accused had not overtly or covertly acted to provoke or facilitate the fatal attack on Praveen Kumar and in fact no exhortation stood attributed to them. Learned counsel for the appellant-Veer Singh has highlighted observations in paragraph 21 of the impugned judgment wherein it has been held that the evidence of recovery of weapon appeared to be doubtful and the eye-witness version did not appear reliable against the acquitted accused Mahesh Singh and Yogender. The contention is that in spite of ascribing unpropitious and bleak opinion as to the version of the eye witnesses, it has been held that the appellant-Veer Singh had caused the fatal injury on the pinna of Praveen Kumar. Our attention was drawn to paragraphs 26 to 28 of the impugned judgment. Apropos to paragraph 32, it was submitted that the trial court has disbelieved evidence of recovery of the sword, but still held that appellant-Veer Singh had used a sharp weapon like a knife or a sword. Paragraph 32 of the impugned judgment reads as under:- 32. Even though I have disbelieved the evidence of recovery of sword, it is obvious that Veer Singh had used a sharp weapon like knife or sword. The mere fact that the recovery of such weapon has not been proved, cannot exonerate him. ?

Additional Public Prosecutor has contested and challenged the said submissions, relying upon the eye witness's description of the events.

4. We proceed to examine the evidence and material on record. Raj Kumar Sharma (PW-1) has deposed that on 4th March, 1996 at about 10.30 P.M. he along with other persons in the locality were preparing to alight the Holi fire. At that time when Ajay and Yogesh (acquitted) were dancing, a scuffle took place between the two. One Rajesh and Yogender (acquitted) had intervened and separated them. At about 11 P.M. there was heated exchange of words between Ajay and Yogender (acquitted). On this Yogesh (acquitted) ran towards his house and returned with his father Mahesh, who had an axe in his hand and the appellant Veer Singh, who had an open sword. The deceased Praveen Kumar at

that time was trying to intervene and separate Yogender (acquitted) and Ajay. Mahesh (acquitted) had caught hold of Praveen Kumar and questioned why he (Praveen Kumar) was siding with Yogesh etc. The appellant-Veer Singh had then urged that they should first settle with Praveen Kumar and stuck the sword on the left side pinna of Praveen Kumar, who started bleeding profusely. Raj Kumar Sharma (PW-1) ran towards Mahesh (acquitted), and Yogender (acquitted) took out a knife and struck PW-1 on the left side of the face and chest. Others also suffered injuries. Raju, elder brother of Ajay, had managed to snatch a danda from Yogesh (acquitted) and had given blows to Mahesh (acquitted) and Yogender (acquitted). People present raised an alarm. In the meanwhile, Rishi Kumar (PW-7) arrived at the spot along with his cousin Anil Kumar Sharma (PW-6) and took Praveen Kumar to a hospital in a three wheeler scooter. Police was informed and Raj Kumar Sharma (PW-1) was taken to the Hindu Rao Hospital in a PCR van for treatment. Raj Kumar Sharma (PW-1) testified that Mahesh (acquitted), Yogender (acquitted) and Veer Singh, had also arrived at the hospital and they were detained by the police. Subsequently, SI Bachu Singh (PW-23) came to the hospital and recorded his statement (Exhibit PW-1/A), which became the substance of the FIR. In his cross-examination, Raj Kumar Sharma (PW-1) affirmed that he knew the family of Veer Singh since childhood and there was no enmity between the family of Veer Singh and the deceased Praveen Kumar. He has also accepted that when they had proceeded to alight the Holi fire, elders were present and the atmosphere was joyous. Drums were being beaten. Earlier or at the first instance, there was no physical scuffle between Ajay and Yogesh (acquitted), and disparaging words were exchanged in the presence of about 100 persons. He denied the suggestion that appellant-Veer Singh was not armed with a sword and had a hollow aluminium pipe of a TV antenna in his hand. Raj Kumar Sharma (PW-1) affirmed that he had seen only one injury on the body of Praveen Kumar and did not see any other injury being inflicted. He denied that Praveen Kumar was injured by others who had come to join the Holi celebrations. However, PW-1 has accepted that Mahesh and Yogender (both acquitted) and the appellant-Veer Singh were injured when they had come to the hospital, for the injuries were visible and they were given medical treatment.

5. Similar statement is made by Bal Kishan (PW-2) about the occurrence at about 11 P.M. on 4th March, 1996 at the time of Holi. Bal Kishan (PW-2) has deposed that the appellant-Veer Singh had a sword. Mahesh (acquitted) had caught hold of the deceased Praveen Kumar and had berated why Praveen Kumar had intervened. At that time, appellant-Veer Singh had stated let us first see Praveen Kumar and struck him (Praveen Kumar) with a sword on his left pinna. Praveen Kumar started bleeding and fell down. Bal Kishan (PW-2) reiterates that others had suffered injuries. Praveen Kumar was taken to the hospital in a three wheeler scooter. PW-2 affirmed that Ajay had given danda blows on the head of Mahesh (acquitted) and Yogender (acquitted), but denied the suggestion that the appellant-Veer Singh had not attacked Praveen Kumar.

6. Identically, Narender Kumar (PW-3) has referred to Mahesh's (acquitted) scorn on Praveen Kumar for he used to side with Ajay and that he would see Praveen Kumar. Veer Singh, PW-3 affirmed, had attacked Praveen Kumar with a sword on his left pinna. Yogender (acquitted) had taken out a knife from his pocket and inflicted injuries on others, including Raj Kumar Sharma (PW-1). He denied the suggestion that the appellant-Veer Singh was not having a sword, but had an aluminium rod.

7. Om Parkash (PW-4) is equally assertive and has deposed that the appellant-Veer Singh had reprimanded Praveen Kumar verbally and then had struck the sword on his left pinna, upon which Praveen Kumar started bleeding profusely. Om Parkash (PW-4) in his cross-examination has accepted that he did not remember the direction of the face of Praveen Kumar at the time of assault, though Veer Singh had attacked him from the front side. Om Parkash (PW-4) has denied that Praveen Kumar had suffered seven injuries or that a riot took place or that Praveen Kumar had suffered injuries in the said riot.

8. Anil Kumar Sharma (PW-6) and Rishi Kumar (PW-7) have deposed that they arrived at the spot after the occurrence had taken place. Rishi Kumar (PW-7), professes having seen the appellant-Veer Singh with a sword in his hand, when he was present with others, who stand acquitted. He had subsequently seen the deceased-Praveen Kumar lying in an injured condition and had taken him to the

hospital. Rishi Kumar (PW-7) has testified that Veer Singh had got the sword recovered from the space between the boundary wall of the community centre and the railway line. The sketch of the sword was marked Exhibit PW-7/C. It is also noticeable that Rishi Kumar (PW-7) claims that Mahesh (acquitted) had an axe in his hand. Testimony of Rishi Kumar (PW-7) has been examined in detail in para 12. Similar assertion is made by Raj Kumar Sharma (PW-1). Narender Kumar (PW-3) also supports the factual position that Mahesh (acquitted) had an axe in his hand. Om Parkash (PW-4) too affirms that Mahesh (acquitted) had some axe like weapon in his hand.

9. Anant Ram (PW-8), who asserts that he was present at the time of occurrence, reiterates that Mahesh (acquitted) had an axe like thing in his hand, while appellant-Veer Singh was armed with a sword. Anant Ram (PW-8) attributes the actual strike on the left pinna of Praveen Kumar to the appellant-Veer Singh with a sword. Anant Ram (PW-8) denied the suggestion that appellant-Veer Singh had an aluminium rod in his hand.

10. Rajesh Kumar (PW-9) identified the appellant-Veer Singh as the perpetrator who had an open sword in his hand, whereas Mahesh (acquitted) was having something like an axe. Mahesh (acquitted) had pulled Praveen Kumar and had taunted him for taking sides and on this appellant-Veer Singh had stated that would see Praveen Kumar first. Veer Singh had attacked Praveen Kumar with a sword, which had struck Praveen Kumar's left pinna. Praveen Kumar started bleeding. Yogender (acquitted) had taken out a knife from his pocket and attacked Raj Kumar Sharma (PW-1). Rajesh Kumar (PW-9) snatched a danda from Yogesh (acquitted) and had furiously waived it. Praveen Kumar was removed to the hospital in an auto rickshaw. In his cross-examination, Rajesh Kumar (PW-9) has accepted that Praveen Kumar was not a party to the dispute and that appellant-Veer Singh was standing behind Mahesh (acquitted) when he had uttered that they should see the deceased Praveen first. Upon this, Praveen Kumar had turned backwards and thereafter the injury was caused by the sword. Rajesh Kumar (PW-9) had also gone to the hospital at about 12 mid-night and had seen the appellant-Veer Singh, Mahesh (acquitted) and Yogender (acquitted) in the hospital. They were in police custody.

11. Ajay Sharma (PW-14) has deposed that on 04.02.96 at about 10:30 PM he along with others was dancing and beating drum on the occasion of Holi. Accidentally his elbow had struck Yogesh @ Kallu who started abusing and beating him. Rajesh, his elder brother came to rescue PW-14 and an altercation took place. Praveen Kumar and his brother Raj Kumar had intervened to separate them. Thereafter, again an altercation developed, when Yoginder @ Gattu, who was also present there, started abusing and threatening PW-14. Rajesh, Praveen and Raj Kumar had thereupon tried to rescue PW-14. In the meantime Yogesh @ Kallu ran towards his house and brought his father Mahesh who had an axe and uncle Veer Singh who was having an open sword. As soon as they arrived, Mahesh (acquitted) took him in his grip from behind with both hands and remarked that the deceased Praveen took sides too often. Veer Singh attacked Praveen with the words let us see him first ?. The blow of the sword fell on the left pinna of Praveen, who started bleeding profusely. As soon as Raj Kumar came forward to save Praveen, Yoginder @ Gattu had attacked Raj Kumar with a knife. The knife blow fell on his left cheek and Raj Kumar sustained injuries on his finger in an effort to save himself. Brother of PW-14 snatched the danda from the hands of accused Rajesh @ Kallu (Yogesh @ Kallu) and attacked the all the accused persons in order to scare them away. People present there raised an alarm. The accused ran away from the spot. In his cross-examination Ajay Sharma (PW-14) has accepted that he knew all the accused since childhood as they were living in the same building. He denied that Veer Singh had an aluminium rod in his hand. PW-14 claims that he did not run away after he saw Veer Singh with a sword because Yoginder @ Gattu had caught hold of him by his collar.

12. The contention that the appellant, in view of the doubt expressed regarding recovery of the weapon of the offence i.e. the sword, an order of acquittal would be correct and justified, is unacceptable and fallacious. We record our inability to accept the said contention in light of the categorical and compelling evidence against the appellant Veer Singh as the person who had inflicted an injury with the sword on the deceased Praveen Kumar. The said definitive assertion finds abundant corroboration from the ocular testimony of even outsiders like Rajesh Kumar (PW9) and Ajay Sharma (PW14). We also express our reservation on the argument relying on paragraph 32 of the impugned judgment. The trial court it is

pertinent has convicted Veer Singh under Section 27 of the Arms Act. Thus, the fact that the appellant Veer Singh had yielded a sword or a sharp edged weapon and inflicted an injury on the deceased Praveen Kumar cannot be doubted. The eye-witnesses in seriatim have stated that the blow was directed towards the left pinna. The reason given in the impugned judgment to doubt and reject recovery of the sword is the failure to join an independent public witnesses, namely, Udaibir Singh and Hundi Lal, who had earlier witnessed the personal search memos of Veer Singh and Mahesh Singh marked Ex.PW23/DA and Ex.PW23/DB, respectively. The finding fails to notice that the aforesaid personal search memos are dated 5th March, 1996 and the recovery of the sword was effected on 6th March, 1996. On 6th March, 1996, as per SI Bachchu Singh (PW23), residence of Veer Singh and Mahesh Singh (acquitted) at Roshanara Building was searched but nothing was recovered. Subsequently, on sustained interrogation the appellant Veer Singh had disclosed that he had hidden the sword in the space between the walls of the community centre and railway line as recorded in the disclosure statement (Ex.PW23/J). Thereafter, the appellant was taken to the spot and the sword lying between the two walls was recovered. The sword itself was marked Ex.P7 and the sketch Exhibit PW-7/A.

13. However, there is a riddled and perilous lapse and failure on the part of the prosecution, which dents the prosecution version as the sword recovered was not identified by the eye witnesses, Raj Kumar (PW1), Bal Kishan (PW2), Narender Kumar (PW3), Om Parkash (PW4), Anant Ram (PW-8), Rajesh Kumar (PW9) and Ajay Sharma (PW14). The only witness, who has identified the sword (Exhibit P-7), is Rishi Kumar (PW7). He claims that at about 11 P.M. on 4th March, 1996 he had seen the appellant-Veer Singh emerging from the crowd with a sword in his hand. He had also seen Yoginder @ Gattu with a knife and Mahesh with axe in his hand. They ran away from the spot. On going inside in the crowd, he had seen Praveen lying with an injury on his ear. PW-7 had not seen the actual occurrence and was not present when the offence occurred. Anil Kumar Sharma (PW-6), who had taken the deceased Praveen to the hospital with Rishi Kumar (PW-7), has not deposed or professed having seen the sword. Subsequently, on 6th March, 1996 Rishi Kumar (PW-7) claims that a sword was recovered from a *gacha* on the pointing out of the appellant-Veer Singh. It is rather strange and unusual that as

many as 7 eye-witnesses namely Raj Kumar (PW-1), Bal Kishan (PW-2), Narender Kumar (PW-3), Om Prakash (PW-4), Anant Ram (PW-8), Rajesh Kumar (PW-9) and Ajay Sharma (PW-14) did not confirm and identify the sword. Even Rishi Kumar did not in categorical terms state that the recovered sword was the sword which he had seen in the hands of the appellant Veer Singh, though it can be assumed that it may be the same sword. Nevertheless silence and failure of the eye-witnesses to identify the sword recovered as the sword used to perpetrate the offence does dent the prosecution's case and creates doubt. There is also one more difficulty in accepting the prosecution version. The FSL report marked Ex.PW21/B and 21/C states that blood was too small for serological examination on exhibit 4 described as the weapon of offence i.e. blood stained sword having rusty brownish stains. The result of analysis does not affirm detection of blood on the said exhibit. The author of the report did not appear in the witness box and the FSL report was proved by Dr. V.K. Goyal (PW21), Assistant Director (Biology), FSL, by identifying signature of Dr. Rajendra Kumar at point A. Noticeably, the forwarding letter by which opinion was sought by the Investigating Officer, marked Ex.PW21/A, mentions exhibit 4 as the blood stained sword. This appears to be the reason why the result of analysis which did not detect blood on the sword, nonetheless records that blood was too small for serological analysis. If the blood was detected on the sword, it should have been specifically noted. The serological analysis report marked Ex.PW21/C records presence of blood on the knife alleged to have been recovered at the instance of Mahesh Singh (acquitted) through blood group could not be ascertained on account of žno reaction Ÿ.

14. In view of the aforesaid analysis, it has to be held that the prosecution has not been able to show and establish that the sword recovered pursuant to the disclosure statement of the appellant Veer Singh marked Ex.PW23/J was the weapon of offence. Under sub-section (1) of section 27 of the Arms Act, whoever uses any arm or ammunition in contravention of section 5 can be punished with a term of imprisonment not less than 5 years but which may extend to 7 years. The offender is also liable to pay fine. Section 5 (1) of Arms act consists of clauses (a) and (b), which are applicable to any fire arm or any other arms of such class or description as may be prescribed. For the sake of completeness we are reproducing in S.5 (1) and S. 27(1) of the Arms Act which read:-

5. Licence for manufacture, sale, etc., of arms and ammunition ”

No person shall ”

(a) [use, manufacture], sell, transfer, convert, repair, test or prove, or

(b) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any firearms or any other arms of such class or description as may be prescribed or any ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.

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27. Punishment for using arms, etc. ”

(1) Whoever uses any arms or ammunition in contravention of section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. ?

It is clear that S.5(1) is contravened when a person uses a fire-arm or any other arm of such class or description as is prescribed. A sword or a sharp-edged weapon is not a fire-arm but could well qualify as any other arms of such class or description as is prescribed ?. In the present case, in the absence of the sword or sharp-edged weapon or even its precise description, we do not know whether this requirement of S.5 (1) of the Arms Act is violated. In the absence and failure of the prosecution to establish that there was contravention of Section 5 (1) of the Arms Act, the appellant has to be acquitted of the charge under Section 27 of the Arms Act. In these circumstances conviction of the appellant Veer Singh under Section 27 of the Arms Act would be unjustified because we do not know what was the exact weapon used which has been described as a sword. Benefit of doubt, therefore, would accrue and go to the appellant Veer Singh on the said charge.

15. This conclusion of ours would not disturb finding of the trial court that the appellant Veer Singh was the perpetrator, who had caused the wound and injury to Praveen Kumar. However, the question which still remains unanswered is

whether the appellant is guilty of culpable homicide simpliciter or culpable homicide amounting to murder. The reason given by the trial court to reject applicability Exception VI is that the appellant had acted in a cruel manner. Reference stands made to the post mortem report (Ex.PW22/A) which records the depth of fatal injury as 10.5 cm from the body surface. The injury was with a sharp edged weapon on a vital organ of the body. The aforesaid reasoning in our opinion rightly does not dispute that there was a sudden quarrel in which the appellant Veer Singh was a paroxysmical participant, which is also the case of the prosecution. There is no doubt that the appellant Veer Singh had come with a sword or similar weapon. Mahipal Singh who stands acquitted was armed with an axe or a similar weapon. The fight or quarrel was primarily between Ajay Sharma (PW14), son of Anant Ram (PW8) and Yogesh @ Kallu who has been acquitted. The occasion was joyous as Holi festival was being celebrated. Exchange of harsh words or perhaps abusive language had enraged and was a precursor to the violence. The appellant Veer Singh had come armed but he did not use the words like let us kill them ?. The words used by Veer Singh were to the effect that let us deal with Praveen Kumar first ?. In that sudden burst of anger, the sword or similar weapon was used. On the question of nature and extent of injury, the post mortem report marked Ex.PW22/A records an incise wound of 2.5 - 2 cm present on the left pinna. Internally the injuries had made a cut thorough the temporal bone on left side and then cut the meninges of the brain to enter the lateral surface of the left temporal lobe after perforation. The depth of the injury was 10.5 cm., which reflects the injury was a result of a hard strike with a sharp weapon. However, there are aspects of debate i.e. whether the appellant Veer Singh wanted to cause the said injury or not and others including Mahipal Singh (acquitted) with an axe or something similar were also present. The reason why we hesitate and cannot give a firm finding on the said aspects is the deposition of Dr. C.B. Dabas (PW22). He has stated that on 27th March, 1996, nearly 20 days after he had conducted the post mortem on the dead body Praveen Kumar on 6th March, 1996, he was shown the weapon of offence and, thereafter, opined that injury No.1 and injury No.6 (superficial incised wound of 0.5 - 04 cm in the left lumber region of front of abdomen) could have been caused by a sharp edged weapon like the one examined by him. The second injury, it is apparent, is not attributed to the

appellant-Veer Singh. More importantly, Mahesh Singh had an axe or similar weapon but this fact was not notified and informed to Dr. C.B. Dabas (PW22). The factum that a knife was also used in the occurrence was brought to the knowledge to the said doctor. Therefore, the opinion expressed in the report marked Ex.PW22/C has to be read with care and caution, for it is an opinion on the basis of partial facts being notified and informed to the said doctor. On 14th December, 1998, a suggestion was given to Dr. C.B. Dabas (PW22) that the weapon Ex.P7 was not sharp. Dr. C.B. Dabas (PW22) negated the said suggestion on stating that the front portion of 10.6 cm approximately was sharp on both sides. However, PW22 accepted as correct that if the sword held by hand had been struck laterally (horizontally), the wound would have been more in length rather than deep. PW22 has accepted as correct that the injury No. 1 had been caused by a vertical wound and not horizontal wound. Though Dr. C.B. Dabas (PW22) avers that the wound could have been caused by swinging the sword Ex.P7, he accepts the wound would have been caused by piercing the sword vertically. A sword, we observe if held and struck, normally would cause horizontal wound, unless the strike is made by a vertical movement, which is not the usual way to bandish and hit with a sword. None of the witnesses have deposed as to the manner of the strike made with the sword. PW22 was recalled and further cross-examination was conducted on 29th November, 1999. He opined that width of the wound should have been between .5 cm to 1 cm at the level of the skull bone but this opinion was given considering the size and width of the weapon. Suggestions relying upon K.S. Narayan Reddy Forensic Medicine Toxicology, 16th Edition that perforating fractures were caused by fire arms and pointed sharp weapon like daggers, knives or axe and such weapons pass through both tables of the skull leaving more or less a clean cut opening, the size and shape of which corresponds to the cross-section of the weapon used, were accepted. PW22 has agreed that the thickness of the weapon i.e. sword produced was only 0.3 cm. Reference was then made to N.J. Mod on Medical Jurisprudence and Toxicology, that the stab wound caused by a sharp pointed and cutting instrument have clean cut edges which are almost parallel but slightly curved to each other like an ellipse. PW22 agreed. Lastly, PW-22 asserted that in a punctured wound, the length and breadth were similar and small and naked eye might show variation in width of the wound not corresponding to the

thickness of weapon. PW22 asserted that injury No.1 was an incised wound and not a punctured wound.

16. In view of the aforesaid evidence, it is submitted that during the free for all, it is possible that Mahesh Singh (acquitted) may have used the axe or the weapon in his hand. This contention may not appear to be acceptable in view of the ocular version of the eye-witnesses, but there is merit in the contention that was a free fight and jostling, which is apparent. Further, in view of the nature of injury there could be some debate or doubt on whether the injury in fact was caused by the sword or by the axe. Raj Kumar (PW1), Bal Kishan (PW2), Narender Kumar (PW3), Om Parkash (PW4), Rajesh Kumar (PW9) and Ajay Sharma (PW14) in their ocular testimonies have stated that the appellant - Veer Singh had used a sword. We do not doubt that the sword itself or something similar was used but none of the witnesses had deposed that the sword was used vertically to have caused the injury at the pinna and, thus, the deep vertical wound was caused. Normally, one would use the sword horizontally and cause a longer and not a deep vertical piercing wound. As per the death report of Praveen Kumar marked Ex.PW26/B, he was a tall man of about 5'10 of height. It would be rather unusual for a person to use a sword vertically to cause the said injury on a tall person like deceased, though we notice that the appellant himself who was present in person in the court is equally tall.

17. Intention to commit murder under clause 1 or bodily injury which the offender is likely to cause death under Clause 2 of section 300 IPC it can be said with a fair degree of certainty is missing. For invoking clause 3 of the section 300 IPC intention and actus for causing the injury suffered by the victim should be proved and established. In this connection we note that deceased Praveen Kumar was, in a way, a third party as he was not the person who had grappled or quarrelled with Yogesh (acquitted) or any of the accused. In fact, it was Ajay (PW14) son of Anant Ram (PW8) who was involved in the said quarrel. Deceased Praveen Kumar had tried to pacify the parties as was done on the earlier occasion by Yogender (acquitted). There is, therefore, merit in the contention of the appellant Veer Singh that the injury suffered would not have been the injury intended to have been caused by the appellant. Our observations in this regard have to be read with the

observations in paragraph 16 above.

18. In view of the aforesaid facts and circumstances, we are inclined to convert the conviction of the appellant from one under Section 300/302 IPC to Section 304, Part 1 IPC.

19. The last issue pertains to quantum of sentence which should be awarded. It is noticeable that the appellant has already suffered incarceration of about four years and six months and possibly would have earned remission, which on calculation, it is pointed out would be slightly more than one year. In normal circumstances, we would have asked the appellant to surrender and undergo rigorous imprisonment for a period of 8 years and not less. However, the offence was committed way back in 1996 and the appellant was released on bail after filing of the present appeal sometime in the month of September, 2000 i.e. almost 15 years back. It is not the case of the prosecution that the appellant Veer Singh is involved in any other case or offence. Veer Singh is more than 60 years of age and we notice that he has reformed and repented the occurrence.

20. In these circumstances, we accept the prayer of the appellant Veer Singh that he should not be sent back to the prison to undergo further rigorous imprisonment. The punishment already undergone would be treated as adequate and the punishment awarded. However, the appellant must pay fine/compensation of Rs.50,000/-, which shall be paid within a period of 3 months from the date of pronouncement of judgment, failing which, the appellant will undergo simple imprisonment of six months. The fine if and once realised would be paid to the legal heirs of Praveen Kumar as compensation.

21. With the aforesaid modification, the appeal is disposed of.

22. Copy of this judgment will be sent to the trial court for compliance.

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