

Krishna and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-11-2003

Reported in : 2003CriLJ4620

Judge : U.S. Tripathi and ;D.P. Gupta, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Cri. Appeal No. 874 of 1981

Appellant : Krishna and ors.

Respondent : State of U.P.

Advocate for Def. : Apul Mishra, Adv. and ;R.S. Sengar, A.G.A.

Advocate for Pet/Ap. : G.S. Chaturvedi, ;S.K. Srivastava and ;P.C. Chaturvedi, Adv.

Disposition : Appeal dismissed

Judgement :

D.P. Gupta, J.

1. In S.T. No. 340 of 1980 State v. Sumera and two others under Section 302/34, 307/34, I.P.C., P.S. Tindwari, District Banda, II Additional Sessions Judge Banda, by his judgment dated 25-3-1981 convicted and vide order dated 26-3-1981

sentenced Sri Krishna appellant to undergo imprisonment for life for offence punishable under Section 302, I.P.C., 7 years R. I. for offence punishable under Section 307, I.P.C. No sentence was awarded for offence punishable under Section 323 read with Section 34, I.P.C. Appellant Sumera (who is now dead and his appeal has abated) was convicted and sentenced to undergo imprisonment for life for offence punishable under Section 302 read with Section 34, I.P.C. 2 years R. I. for offence punishable under Section 307/34, I.P.C., 6 months R. I. for offence punishable under Section 323 read with Section 34, I.P.C. Appellant Kaira was convicted and sentenced to undergo imprisonment for life for offence punishable under Section 302 read with Section 34, I.P.C., 3 years' R. I. for offence punishable under Section 307 read with Section 34, I.P.C. and 6 months R. I. for offence punishable under Section 323 read with Section 34, I.P.C. Sentences so awarded were to run concurrently.

2. Feeling aggrieved, the present appeal has been preferred by all the 3 appellants. During pendency of the appeal Sumera appellant has died. Vide order dated 3 September, 2002 appeal preferred by appellant No. 2 Sumera has been abated. Before us now remain appeals preferred by appellant No. 1 Krishna and appellant No. 3 Kaira.

3. Facts giving rise to this appeal may be narrated in brief. Appellants Krishna and Kaira are real brothers and are the sons of Sumera P.W. 1 Ram Manohar complainant and deceased Chunua Chamar were real brothers. Both the parties are the residents of the same village Piprenda, P.S. Tindwari, District Banda and are neighbours. It was the case of the prosecution that appellant Kaira borrowed Rs. 350/- from deceased Chunua Chamar about 5 month prior to the occurrence. Occurrence of this case took place on 8th July, 1980, time about 7.15 a.m. Two days prior to the occurrence Chunua deceased demanded his money back from Kaira appellant. Kaira not only refused to return the money but also denied to have borrowed any money from the deceased Chunua on the following day again Chunua deceased demanded his money from Kaira and being enraged by this, accused Sumera, Krishna and Kaira quarrelled with deceased Chunua and Ram Manohar and chased to beat them. The deceased Chunua and Ram Manohar somehow managed to escape themselves by running away. On the fateful day i.e.

8-7-1980 Chunua deceased along with P.W. 1 Ram Manohar in the morning after attending the call of nature went to Shripal Kori for seeking his advice as what should be done in the matter. Shripal advised not to fight, but to lodge a complaint with the police. From the house of Shripal, deceased Chunua and Ram Manohar came to their house and without taking breakfast both of them proceeded to police outpost Chilla. P.W. 3 Smt. Ram Pyari, wife of deceased Chunua also followed them. It was about 7.15 a.m. when deceased Chunua and Ram Manohar reached near the field of Chunua Kanchi, which was in the west of rasta, accused Krishna armed with 'Barchi', Sumera and Kaira accused appellants armed with lathi came there from the eastern side. Accused persons started abusing deceased Chunua and his brother Ram Manohar. Deceased Chunua and Ram Manohar retaliated by abusing them P.W. 2 Sri Shiv Baran Singh reached there. Sumera gave lathi blow to Chunua deceased. When P.W. 2 Shiv Baran Singh tried to intervene, Kaira appellant gave lathi blow which hit him causing injury to his hand. When P.W. 1 Sri Ram Manohar tried to save and intervene Krishna appellant gave Barchhi blow causing injury to him. Krishna accused appellant exhorted to eliminate Chunua. Thereupon Sumera accused gave lathi blow to deceased Chunua and Kaira also gave lathi blow. Krishna appellant gave Barchhi blow causing injury to deceased Chunua. Chunua fell down and died then and there in the field of Chunua Kanchi. On the hue and cry Surajpal, Arjun and many other villagers collected there. These persons chased the accused who ran away towards the west. Leaving Smt. Rampyari near the dead body, after getting report drafted from Dasharath, Ram Manohar P.W. 1 accompanied by P.W. 2 Shiv Baran Singh injured and other village persons, proceeded to the police out post Chilla, P.S. Tindwari, District Banda which was about 18 or 20 Kms. from the village Piprendha. There P.W. 1 Ram Manohar handed-over the written report. On the basis of written report a case at crime No. 123 of 1980 was registered at 8.45 a.m. on 8-7-1980, under Sections 302, 307, 504, I.P.C. against all the 3 accused appellants Sumera, Krishna and Kaira. P.W. 6 Om Shanker Shukla, I. O. of the case who was the Incharge of the police outpost, took up investigation, recorded the statements of injured Ram Manohar P.W. 1 and injured P.W. 2 Shiv Baran Singh and sent them for medical examination to district hospital Banda.

4. On 8-7-1980 Dr. K.L. Agarwal, P.W. 5, medically examined Sri Ram Manohar, P.W. 1 at 11.00 a.m. and found one punctured wound 1.3 cm. x .5 cm. x Chest cavity deep on left-side chest, outside 12 cm. below and outside left nipple at 5. O'clock position. Margins of the injury were irregular. Dr. kept injury under observation, and advised X-ray. In the opinion of P.W. 5 Dr. K. L. Agarwal the injury was caused by some pointed object. Duration was fresh.

5. P.W. 5 Dr. K.L. Agarwal examined P.W. 2 Shiv Baran Singh on 8-7-89 at 11.15 a.m. and found one contused swelling over an area of 7 cm. x 6 cm. on left dorsum of hand. Injury was kept under observation. X-ray was advised. In the opinion of P.W. 5 Dr. K. L. Agarwal injury could be caused by some blunt object. Duration was fresh.

6. The Investigating Officer proceeded to the place of occurrence with necessary papers. After completing Panchayatnama and sealing the dead body of Chunua deceased, with necessary papers he sent it for post-mortem examination. He took simple and bloodstained earth from the place of occurrence. He took one danda, which was lying near the dead body and after preparing recovery memo gave danda in the supurdagi of Smt. Ram Pyari, P.W. 3 the wife of deceased Chunua. He also prepared the site plan.

7. P.W. 5 Dr. K.L. Agarwal conducted post-mortem examination of deceased Chunua at 1.00 p.m. on 9-7-1980. The age of the deceased Chunua was about 40 years. Rigor mortis was present in the lower limbs of the body. Abdomen was slightly distended. Decomposition was just set in. Dr. K.L. Agarwal, P.W. 5 found the following ante mortem injuries;

1. Punctured wound 2 cm. x .5 cm. x chest cavity deep front of neck 2 cm. above supra sternal notch. Margins were lacerated. Direction of wound down ward slightly backward and to the right.

2. Lacerated wound 1.5 cm. x .5 cm. x bone deep top of scalp 14 cm. above bridge of nose.

3. Lacerated wound 1.5 cm. x .5 cm. bone deep back of right middle finger between proximal and middle phalanx.

8. On internal examination P.W. 5 Dr. K.L. Agrawal found right pleura ruptured. Larynx trachea, bronchi were congested. Upper lobe was perforated through and through. Lungs were congested, chambers of the heart were empty. Right neck vessels were ruptured. Chest cavity contained about one liter fluid and clotted blood. Bladder, and Intestines were empty. Gall Bladder was full. Death was due to shock and haemorrhage caused by ante-mortem injuries.

9. After completing the investigation, charge-sheet was submitted against applicants Kaira, Krishna and Sumera for the offences punishable under Section 302/307/504, I.P.C.

10. Charges under Sections 302, 307 read with Section 34, I.P.C. were framed by the Court of Session against the accused appellants.

11. In the trial Court the prosecution examined complainant Sri Ram Manohar, P.W. 1, Sri Shiv Baran Singh, P.W. 2 and Ram Pyari P.W. 3 as eye-witnesses of the occurrence. P.W. 4, Vijay Bahadur Singh Head Constable was examined to prove the G. D. entries and chick report. P.W. 5 Dr. K.L. Agarwal who examined the injured witnesses and conducted post-mortem examination of the deceased. Affidavit of constable Sri Inam Khan was filed to prove that in sealed condition the dead body of deceased Chunua was taken for post-mortem examination. P.W. 6 Om Shankar Shukla after completing the investigation submitted the charge-sheet.

12. The case of accused was that on 8-7-80 at about 8.00-900 a.m. Bhola Singh, Arjun Singh, Kalua, Shiv Baran Singh, Chunua and Balle armed with lathi and barchhi came and after catching hold Sumera took him to the field of Chunua Kanchi and started beating. When Smt. Ramsakhiya wife of his son tried to save him by lying down, upon him, her dhoti was removed making her undressed. Krishna made a request to these persons not to do so. Smt. Ram Sakhiya also got injury. When deceased did not desist then snatching barchhi from the deceased Chunua Chamar Krishna appellant attacked on him.

13. The motive for this occurrence was that Jagdish Thakur, Kalua and other persons of the village in drunken condition used to come to the wife of Bailey at her house. Being neighbour Sumera used to object them.

14. On behalf of accused appellants Dr. K.L. Agarwal was examined as D.W. 1 who medically examined accused Sumera on 8-7-80 at 5.15 p.m. at District Hospital Banda and found the following injuries on his person:--

1. Lacerated wound 5 cm. x 1.5 cm. x bone deep back of scalp 1 cm. above the hair line.
2. Lacerated wound 4.5 cm. x .5 cm. x bone deep right side scalp 6 cm. above right ear.
3. Contusion 13 cm. x 1.5 cm. right side chest back upper part.
4. Contusion 26 cm. x 1.5 cm. middle of chest back across vertebral column.
5. Contusion 10 cm. x 1.5 cm. right side chest back between injury Nos. 3 and 4.
6. Contused swelling over an area of 8 cm. x 6 cm. right forearm upper 1/3rd inside.

Complaint of pain in both legs.

15. In the opinion of D.W. 1 Dr. K.L. Agarwal all injuries were simple except injury No. 6 which was kept under observation and X-Ray was advised. All injuries were caused by some blunt object. Duration was 1/2 day old.

16. The appellants also examined Babulal Yadav, record keeper as D.W. 2 who proved the application given by Smt. Parbasiya, w/o Sumera against Sabhajit and Sri Bhagwat Singh, constable as D.W. 3 who proved the report of Sumera and copy of G. D.

17. After considering and analysing the evidence on record the trial Court convicted and sentenced the appellants as mentioned above.

18. We have heard Sri Apul Mishra, learned amicus curiae for the appellants, learned A.G.A. for the respondent and have perused the entire evidence on record. On behalf of appellants it has been argued that it is a case of self-defence. It was a sudden occurrence and there was no intention to commit murder. Presence of P.W. 3 Smt. Rampyari is doubtful. There is no explanation of the injuries of Sumera accused. Occurrence has not taken place in the manner as has been stated by the prosecution.

19. On behalf of the State it has been argued that prosecution is not bound to explain injury or injuries on the person of accused, unless there is evidence that the injuries were received by the accused in the same occurrence. Trial Court has given sound reasoning for accepting the version of prosecution. Occurrence was not sudden but was a deliberate and planned one. The presence of P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh cannot be doubted at the time of occurrence. Both witnesses are injured. There is a prompt F.I.R. and the cross-version as has been set up by the accused is contradictory. It appears that after legal consultation the accused got a report prepared and lodged it at Kotwali, Banda. Investigating Officer did not find substance in cross-report and submitted final report. The place of occurrence is also admitted to the accused persons. Injuries of P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh have been admitted by the accused persons. An unsuccessful effort has been made to dispute the time of occurrence but the accused have failed. They have categorically admitted time of occurrence.

20. The place of occurrence alleged by the prosecution is also admitted by the appellants. P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh have stated that the occurrence took place in the field of Chunua Kanchi. P.W. 6 Sri Om Shankar Shukla, Investigating Officer, who visited the place of occurrence found, the dead body of Chunua Chamar lying in the field of Chunua Kanchi. He took simple and bloodstained earth from the same field. Appellants Sumera and Krishna in their statement under Section 313, Cr. P. C. admitted that Chunua got injuries and died in the field of Chunua Kanchi.

21. Sumera also admitted injuries to P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh, Krishna accused in his statement under Section 313, Cr. P. C. admitted the injuries of Chunua Chamar but had shown ignorance about the injuries of Ram Manohar P.W. 1 and Shiv Baran P.W. 2. From the evidence on record the presence of P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh at the time of occurrence has been proved by the prosecution beyond all reasonable doubts.

22. In this case, it has also been established by the prosecution that the occurrence took place at about 7.00 or 7.15 a.m. as alleged by the prosecution. The distance of police chauki Chilla from the place of occurrence was about 20 Kms. Getting the report scribed by Dasharatha. P.W. 1 Ram Manohar, P.W. 2 Shiv Baran Singh and many other villagers proceeded to police out post Chilla, leaving Smt. Ram Pyari near the body of Chunua in the field. Report was lodged at 8.45 a.m.

23. Sumera in his statement recorded under Section 313, Cr. P. C. stated that Chunua Chamar died at about 10.00 or 11.00 a.m. If we look to the nature of injury caused to Chunua it will show that death was immediate and instantaneous. There was a punctured wound 2 cm. x .5 cm. x chest cavity deep front of neck 2 cm. above supra sternal notch. Right pleura was ruptured. Upper lobe was perforated through and through. Right neck vessels were ruptured. If the case of appellant that occurrence took place between 8.00-9.00 a.m. and Chunua Chamar died at about 10.00 or 11.00 a. m. is accepted then the report could not have been lodged at 8.45 a.m. P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh were medically examined at District Hospital Banda at 11.00 and 11.15 a.m. respectively on the same day. In the F.I.R. the fact that dead body of Chunua was lying in the field is mentioned. From the evidence on record it is not made probable or proved that F.I.R. is ante timed. Thus we find that time of occurrence was 7.00 or 7.15 a.m. as has been alleged by the prosecution and it stands proved.

24. F.I.R. was lodged by P.W. 1 Ram Manohar within 1 and 1/2 hours of the occurrence. It is prompt. When the report is prompt, it rules out or minimizes the possibility of manipulations concoction and also of improvements. P.W. 1 Ram Manohar has stated that he and the deceased without eating breakfast or anything

were going to lodge report. In post-mortem examination of deceased Chunua, doctor found stomach, and intestines empty. This leads support to the statement of P.W. 1 Ram Manohar. Thus the case set up by appellants that the occurrence took place between 8.00-9.00 a.m. cannot be believed and it is also not borne out from the evidence on record. The case of the prosecution was that while Chunua deceased along with Ram Manohar (P.W. 1) were going to the outpost Chilla and reached near the field of Chunua Kanchhi the appellants and Sumera came there and committed murder of Chunua and caused injuries to P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh.

25. The case of the defence as per cross F.I.R. was that Chunua deceased, his brother P.W. 1 Ram Manohar, 3 and 4 other persons forcibly brought Sumera from his house to the field of Chunua Kanchi. It was about 8.00 or 9.00 a.m. Sumera was beaten by them, when Ramsakhiya, the wife of Kaira accused tried to save him, her dhoti was pulled away. Thereupon Krishna snatching Barchhi from Chunua attacked on him. Here, we may also see the suggestion which was put on behalf of the appellants to P.W. 1 Ram Manohar, putting their case, that when Dhoti of Smt. Ramsakhiya was pulled, then Krishna accused gave Barchhi blow to Chunua. Here, it was not put that after snatching the Barchhi from Chunua, he gave Barchhi blow. In his statement under Section 313, Cr. P. C. Krishna has stated that Shiv Charan, Bhola, Kallu, Chunua, and Ram Manohar were beating Sumera in the field of Chunua Kanchi. Chunua (deceased) was using Barchhi as lathi. When his Bhabhi Ramsakhiya covered Sumera in order to save him Chunua deceased pulled her dhoti making her naked. He (Krishna accused) at that time, was also armed with Barchhi, first he used Barchhi as lathi, when Chunua did not desist from doing so then he gave Barchhi blow, hitting Chunua as a result of which he died on the spot.

26. It is well-settled that the accused are not bound to lead evidence to prove the plea of self-defence. Even the accused is not bound to take the case of self-defence. If from the prosecution evidence, the accused are able to show that they acted in self-defence they will get the benefit of it. Keeping this in mind that accused are not required to prove their cross-version of self-defence independently, we may see whether from the prosecution evidence the appellants

have been able to show that they acted in self-defence.

27. P.W. 1 Ram Manohar was cross-examined at length. In his statement nothing has come which may shake his testimony. P.W. 2 Shiv Baran Singh has given graphic version of the incident with minute details. He stated that both the sides were abusing. Accused Krishna was armed with Barchhi, Sumera and Kaira were armed with lathi. When he reached and tried to intervene, Sumera gave lathi blow to Chunua. Chunua saved that blow on his danda. Kaira gave lathi blow. The witness tried to ward off the blow and got injuries in his hand. Krishna exhorted to kill Chunua, thereupon Sumera and Kaira gave lathi blows and Krishna gave Barchhi blow, Chunua fell down and died. '

28. Place of occurrence i.e. field of Chunua Kanchi was at the distance of about 2 bigha from the house of deceased as has been stated by P.W. 1 Ram Manohar and this fact has not been challenged or disputed. The house of P.W. 2 was about 300 or 350 steps in the Abadi from the place of occurrence. Near the place of occurrence also there were some houses. An effort was made by the side of the accused to say that no person of nearby houses has been examined while the occurrence must have been seen by such persons. P.W. 1 Ram Manohar has admitted the spot position but has stated that at the time of occurrence no person whose house was near the place of occurrence came there. P.W. 2 Shiv Baran Singh has also supported this fact when he stated that towards the field of Chunua Kanchi there was no door of any house. P.W. 6 Sri Om Prakash Shukla, Investigating Officer has also supported this by stating that there were no doors towards side of field of Chunua Kanchi. P.W. 2 Shiv Baran Singh has stated that on the hue and cry, Arjun, Surajpal and many other persons came there and they chased the accused persons who ran away towards the west.

29. Surajpal Arjun Singh who reached on the spot on hearing the hue and cry have also not been examined. The reason for not examining these witnesses have been given by P.W. 1 Ram Manohar, that Surajpal has colluded with the accused. The father of Surajpal is a surety for the accused. Arjun is Khandani of Surajpal. This statement and fact have not been challenged on behalf of appellants.

30. An attempt has been made to show that P.W. 2 Shiv Baran Singh is an inimical witness. Sri Sabhajeet and Kallu are his sons. Suggestion was given that Sabhajeet and Kallu had beaten Sumera accused about 1 and 1/2 years before the occurrence and Sumera lodged a report against Sabhajeet and Kallu. This was denied by this witness. In order to impeach the testimony of this witness. D.W. 2 Sri Babulal Yadav was examined who stated that original application has been destroyed but in the register there is an entry dated 19-7-1973 of an application of Smt. Parbasiya, wife of Sumera against Sabhajeet. In the register, contents of application, parentage and address of any party were not given. This piece of evidence does not affect the credibility of P.W. 2.

31. The presence of P.W. 3 Smt. Rampyari at the time of inception of the occurrence is doubtful because in the F.I.R. it is mentioned that on the hue and cry being raised Rampyari, Arjun, Surajpal and other persons came there. Her presence at a later stage of the occurrence cannot be doubted. P.W. 1 Ram Manohar and P.W. 2 Shiv Baran Singh both have stated that on hearing the hue and cry Rampyari also reached there. Here the distance of the house of Rampyari wife of deceased Chunua is significant, P.W. 1 Ram Manohar has stated that distance was about 2 bigha. In the morning hours in the village if there is a hue and cry, it can easily be heard from such a distance, particularly when P.W. 3 Rampyari was in the know of the fact that her 'Dewar' and husband had gone to lodge report and after few minutes there was hue and cry. Therefore, the presence of P.W. 3 coming to the spot at a later stage cannot be doubted. P.W. 2 Shiv Baran Singh has stated that Smt. Rampyari reached on the spot when Chunua fell down and the accused were being chased by the witnesses.

32. P.W. 3 Rampyari was cross-examined though she has corroborated the statement of P.W. 2 Shiv Baran Singh as how and in what manner injuries were caused by the accused persons. Her presence at the time of actual mar-peat is doubtful. Trial Court has rightly not placed reliance on her statement.

33. About the presence of Kaira at the time of occurrence specific questions were put to P.W. 1 Ram Manohar. He has stated that all the three accused were together and Kaira also did mar-peat, P.W. 2 Shiv Baran Singh has corroborated

him.

34. Case of accused persons as suggested was that in drunken condition Kallu and other persons of the village used to visit wife of P.W. 1 Ram Manohar alias Bailey in her house and it was objected by Sumera. This was the cause of incident. Specific question put to P.W. 1 Ram Manohar was that in the house of this witness Jagdish Thakur entered to meet the wife of this witness and when Jagdish Thakur, was coming out from the house he was seen by Kaira accused and Jagdish Thakur and wife of Ram Manohar also came to know that Kaira had seen and upon this there was a punchayat. In the punchayat it was told that both would be defamed. Thus as per case of the defence the motive of mar-peed was bad character of the wife of Ram Manohar and on account of that Chunua, Ram Manohar and 3 or 4 persons caused injuries to Sumera and Smt. Ram Sakhiya also got injuries when she tried to save Sumera. No evidence on these facts is on record. The appellants are not able to point out anything from the prosecution evidence, which may make their defence case probable. Thus the arguments of the learned counsel for the appellants that accused persons acted in self-defence cannot be accepted.

35. Injuries caused to the accused Sumera have been proved by Dr. K.L. Agarwal D.W. 1. He examined Sumera on 8-7-80 at 5.15 p.m. He found 6 injuries on his person, except injury No. 6 all injuries were simple. There is no evidence that injury No. 6 was grievous. Thus all the injuries were simple. It is true that injury Nos. 1 and 2 were on the scalp. Deceased Chunua was having a dunda. A suggestion was given to the Investigating Officer that dunda having bloodstains was not sealed and was given in the supurdagi of Rampyari in order to weaken cross case. P.W. 6 Om Shankar Shukla, Investigating Officer, denied the suggestion. P.W. 1 Ram Manohar, P.W. 2 Shiv Baran Singh, P.W. 3 Smt. Rampyari had denied to have caused any injury to Sumera. No question was put to any witness whether any injury was seen by them at the time of incident on the person of Sumera. There is no such evidence that injuries were so prominent which could have been noticed easily. Unless the appellants are able to make it probable from the evidence of the prosecution or by their evidence that injuries were caused in the same incident and time, the prosecution is not under obligation

to explain the simple injuries on the person of accused. Evidence has come that Arjun and others chased the accused persons. It may be possible that during chase, the accused Sumera might have been beaten and got injuries. As per accused's version incident in which Sumera got injuries took place between 8.00-9.00 a.m. The incident in which Chunua got injuries and died, took place at about 7.00 or 7.15 a.m. Thus there may be some other incident in which Sumera might have suffered simple injuries. Therefore, in the circumstances of this case prosecution is not under obligation to explain the injuries of the accused Sumera. Thus non-explanation of the simple injuries of Sumera the accused in no way discredits or adversely effects the case of the prosecution and makes the defence case probable.

36. Accused persons did not lodge report at P.S. Tindwari or Police outpost Chilla. They went to district headquarter Banda and after getting report prepared lodged it at Kotwali, Banda. Argument of the learned counsel for the State that accused persons after legal consultation and after manufacturing injuries and defence theory lodged the report, has some substance.

37. The argument of the learned counsel for the appellants that this incident was sudden has no force. On the fateful day i.e. 8-7-1980 there was no quarrel prior to this incident. This fact has not been disputed by the appellants that the house of deceased, and P.W. 1 Ram Manohar on the one hand and house of the accused appellants on the other hand are adjacent to each other having a wall in between. Therefore, the possibility that the accused might have come to know that deceased Chunua and P.W. 1 Ram Manohar were going to lodge report at police out post Chilla cannot be ruled out. For going to police out post Chilla Rasta passes near the field of Chunua Kanchi. Accused person who were armed, way laid the deceased and Ram Manohar. Accused persons after surrounding, started abusing which was retaliated by them. Thus accused persons instigated and started the occurrence. Therefore, the argument that it was sudden occurrence cannot be accepted.

38. It has been argued that there was no intention of the accused appellant Krishna to commit murder of Chunua. The intention can be gathered from the

nature and seat of injuries caused. In this case injury to Chuhua, caused on the neck by Barchhi, clearly indicates that it was on vital part and death was instantenous. Injury caused to P.W. 1 Ram Manohar was also by Barchhi, which is a pointed weapon. It was also on vital part and could have caused death. P.W. 1 Ram Manohar remained admitted in the hospital for 10 days. These facts, are undisputed. Therefore, the argument that Krishna never intended to cause death has no force.

39. In this case we have observed that no charge under Section 323 read with Section 34, I.P.C. was framed by the trial Court yet Sumera and Kaira were convicted and sentenced under these sections also. In the judgment the trial Court has mentioned that simple injury of P.W. 2 Shiv Baran Singh had been caused by the, accused persons in furtherance of their common intention and, therefore, it held accused persons guilty under said sections. We may mention that trial Court has brought these circumstances and facts to the notice of the accused persons by putting questions to them while recording their statement under Section 313, Cr. P. C. We find that no prejudice has been caused to accused persons. It is true that under law no specific charge under Section 323 is required to be framed yet it would have been proper for the trial Court while framing other charges to have framed a specific charge also under Section 323, I.P.C. read with Section 34, I.P.C.

40. We have also observed that the trial Court has written of having recorded the statements of the accused under Section 281(ii), Cr. P. C. In fact the statements of accused are recorded under Section 313, Cr. P. C. Section 281(2), Cr. P. C. prescribes how statement of an accused person is to be recorded. It lays down the procedure. On this account also no prejudice has been caused to the appellants.

41. Thus on careful scrutiny of the entire evidence on record, we find no reason to interfere with the judgment and the order passed by the trial Court.

42. The appeal has no force and is liable to be dismissed and is hereby dismissed.

43. Appellant Krishna and Kaira are in Jail. They will serve out the sentences.

