

Janki and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/489253

Court : Allahabad

Decided On : Mar-25-2003

Reported in : 2004CriLJ2370

Judge : Vishnu Sahai and ;R.C. Pandey, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 300 and 302

Appeal No. : Crl. A. Nos. 805, 830 of 1984 and 36 of 1985

Appellant : Janki and ors.

Respondent : State

Advocate for Def. : Umesh Verma, APP

Advocate for Pet/Ap. : Begum Sahiba Kamal, Adv.

Judgement :

Vishnu Sahai, J.

1. Eight persons, namely, Janki, Mangrey, Ram Bilas, Smt. Gilha alias Gula, Rohan, Moti, Sirdar and Bhognath were tried by the VII Additional Sessions Judge, Sitapur for offences punishable under Sections 302/149 IPC (on three counts), 324/149 IPC, and 323/149 IPC. In addition Ram Bilas, Smt. Gilha, Rohan, Moti, Sirdar and Bhognath were tried for the offence punishable under Section 148 IPC

and Janki and Mangrey for that punishable under Section 147 IPC.

Vide Judgment and order dated 15-10-1984 the learned Judge found all of them guilty on the said charges and convicted and sentenced them in the manner stated herein after:--

(i) Under Section 302/149 IPC to imprisonment for life;

(ii) Under Section 324/149 IPC to one year's R. I.; and

(iii) Under Section 323/149 IPC to six months' R.I.

In addition, he convicted and sentenced Ram Bilas, Gilha, Rohan, Moti, Sirdar and Bhognath to one year's R.I, for the offence punishable under Section 148, IPC and Janki and Mangrey to six months' R. I, for the offence punishable under Section 147 IPC.

All the sentences of the said persons were directed to run concurrently.

2. Aggrieved by their convictions and sentences Janki, Ram Bilas, Moti, Smt. Gilha, Sirdar, and Bhognath preferred Criminal Appeal No. 805 of 1984 in this Court; Rohan and Mangrey Criminal Appeal No. 830 of 1984; and Mangrey preferred an appeal from jail i.e. Criminal Appeal No. 36 of 1985.

3. Since all these appeals arise out of a common factual matrix and impugned judgment, we are disposing them off by one judgment.

4. Shortly stated, the prosecution case runs as under :--

At the time of the incident, informant Lalloo (PW-2); the other three eye-witnesses Laltu (PW-1), Rampati (PW-3), and Rameshwar (PW-7); the injured witness Shiv Pyari (not examined); and the three deceased persons, namely, Chhidu, Jasoda and Ram Kumar were residing in village Ghazipur within the limits of Police Station Sidhauri, District Sitapur. At that time, the eight appellants were also living in their proximity in different village situated within the limits of Police Station Sidhauri, District Sitapur. There was enmity between the informant's uncle Chhidu and appellant Janki, who was the cousin brother of Chhidu. Two days before the

incident a case, which was pending between them in the Court of S. D. M., had been decided in favour of Janki. Chhidu was all set to prefer an appeal against the Impugned order.

It is pertinent to mention that the remaining appellants are closely related/connected with appellant Janki. Smt. Gilha is the wife of Janki; Ram Bilas and Moti are the sons of Janki; Sirdar is the Samdhi of Janki (their issues inter-married); Sirdar is a relation of Janki inasmuch as his (Sirdar's) daughter was married to his (Janki's) son Moti; Bhognath is the real brother of Sirdar; Rohan is the Samdhi of Janki (their Issues inter-married); and Ram Bilas is the son of Rohan.

On 18-9-1981 when appellant Janki started ploughing the field in respect of which he had succeeded in litigation against Chhidu two days ago, Chhidu accompanied by the informant, informant's mother Jasoda, Ram Kumar, Shiv Pyari and Rampati went to protest. At that time the other seven appellants, namely, Ram Bilas, Gilha, Moti, Sirdar, Bhognath, Rohan and Mangrey were present. Chhidu implored them that he was going to prefer an appeal and they should not plough the land till the appeal was decided. At that juncture, Janki left ploughing and Bhognath instigated that such opportunity we will not get and thereafter Mangrey with a lathi, Ram Bilas with a sickle and Moti with a gadasa started belabouring Chhidu. Ram Bilas gave a sickle blow on Chhidu's stomach. At that time, the informant's mother Jasoda started raising cries. Thereupon, Mangrey with a lathi; Sirdar with a ballam; Bhognath with a banka; and Gilha with a sickle assaulted her, resulting in her instantaneous death. Then Mangrey assaulted Ram Kumar with a lathi; Janki pressed the neck of Ram Kumar with his leg; and Sirdar assaulted him with a ballam. He too died instantaneously. In the meantime, Rampati ran some distance, but Rohan caught hold of her and Gilha snatched her one year' child which she was essaying and threw it. Thereafter, Rohan and Gilha assaulted her with sickle. Finally, Mangrey assaulted Shiv Pyari with lathi. Hearing the cries of the informant and the victims, a number of persons including, Laltu (PW-1) and Rameshwar (PW-7), came to the place of the incident. They reprimanded the appellants, who thereafter ran away.

Thereafter, the informant, Lalloo proceeded to Police Station Sidhauri, where he lodged his F. I. R.

5. The evidence of Head Constable Achal Din (PW-4) shows that on 18-9-1981 (on the date of the incident) at 8.50 A.M. Lalloo came to Police Station Sidhauri and on the information furnished by him he scribed the F. I. R. and registered a case on its basis vide Exhibit Ka-2.

6. The evidence of S. I. Umesh Chandra Pathak (PW-13) shows thus :--

On 18-9-1981 at 8.50 A. M. the F. I. R. was lodged in his presence. He immediately took over the investigation and thereafter along with some police personnel and Lalloo left for the place of the incident. He reached the field of the deceased Chhidu, where he found the three dead bodies lying. Thereafter, he deputed S. I. Balvir Singh to perform the inquest on the dead bodies and then he prepared the site plan (Exhibit Ka-30). Since the condition of Smt. Rampati was serious he sent her and Smt. Shiv Pyari through constable for medical examination to Sidhauri Hospital, along with chitthi majroobis (letters for request for medical examination). He recovered blood from beneath the dead bodies of Jasoda and Ram Kumar and also from the place where Smt. Rampati had been injured. The said recovery was made under recovery memos. On the date of the incident itself he interrogated Laltu (PW-1), Rameshwar (PW-7) and some other witnesses. He did some other investigation also, but since, in our view, a reference to it is not necessary for the disposal of these appeals we are not adverting to it.

On completion of Investigation, he submitted the chargesheet against the appellants.

7. Going backwards, the injuries of Smt. Rampati and Smt. Shiv Pyari were medically examined on 18-9-1981 at 11.55 A. M. and 12.30 P. M. respectively by Dr. M. A. Bart (PW-8), Medical Officer, Incharge Primary Health Centre Sidhauri.

On the person of Smt. Rampati Dr. Bari found the following injuries :--'

(I) Incised wound from left eye brow to carving over 1' above it and piercing deep and going downwards lateral to left eye 1/2' lateral to outer (sic) of left eye.

Bleeding present. The wound is in total 2 1/2' long 3/10 to 1/2 wide at different places and bone deep.

(ii) Incised wound 2 1/2' x 3/10' x bone deep at head and 5' above the left ear.

In the opinion of Dr. Bari, the said injuries were fresh in nature and attributable to a sharp object. Dr. Bari advised x-ray of skull to determine the nature of the injuries.

It is pertinent to mention that x-ray report shows no abnormality and consequently vide his supplementary report Dr. Bari reported that the injuries of Smt. Rampati were simple in nature.

On the person of Smt. Shiv Pyari Dr. Bari found the following injuries :--

(i) Traumatic swelling 6' x 3' of lower part back 2' above the right Iliac crest.

(ii) Traumatic swelling 4' x 3' at back of right thigh 6' above the right knee joint.

In the opinion of Dr. Bari, the said injuries were simple in nature; attributable to a sharp object; and their duration was fresh.

8. Once again going backwards, the autopsy on the corpse of Chhidu, Ram Kumar and Jasoda was conducted on 19-9-1981 at 4.00 P.M., 5.00 P. M, and 5.30 P. M. respectively by Dr. K. L. Sindhi (PW-12), Medical Officer, District Hospital Sitapur.

On the person of Ram Kumar, Dr. Sindhi found the following injuries :--

(i) Lacerated injury 2.5 cm x 1 cm x bone deep 9 cm above left ear pinna, 7.5 cm posterior to the left eye brow, anteropost direction.

(ii) Lacerated wound 2 cm x 0.5 cm x bone deep on right side mandible, 4 cm below and lateral to the outer angle of mouth ..sic...Mandible underneath injury present horizontally placed.

(iii) Contusion 2 cm x 16 cm on both side upper chest and lower part of neck 7 cm below chin 1st and 2nd rib of right side and 2nd rib of left side fractured.

In the opinion of Sr. Sindhi, Ram Kumar died due to asphyxia as a consequence of suffocation.

On the person of Chhidu, Dr. Sindhi found the following ante mortem injuries :--

(i) Lacerated wound 1.5 cm x 1 cm x bone deep 1 cm above left eyebrow outer angle.

(ii) Lacerated wound 1.5 cm x 0.8 cm x bone deep on middle of left eyebrow.

(iii) Lacerated wound 7.5 cm x 2 cm x bone deep on lower jaw right side and left side underneath injury lower jaw (sic) 0.5 cm below lower lip.

(iv) Incised wound 2.5 cm x 0.5 cm x bone deep outer side chin, 1.5 cm lateral to midline.

(v) Multiple abraded contusion 25 cm x 17 cm on full face and forehead underneath injury fracture of facial bones and skull in multiple pieces extending from lower part of chin to hair mouth, forehead and ear to ear.

(vi) Incised wound 19 cm x 5 cm x cavity deep. Large and small bowel coming out from the abdominal wound 3 cm above umbilicus, 9.5 cm below xiphisternum, direction of injury left to right, backward and horizontally greater intestine of stomach left side incised small and large intestine incised.

(vii) Multiple abrasion in an area of 14 cm x 3 cm on left leg and 16 cm below left knee joint.

On internal examination. Dr. Sindhi found the base of skull to be fractured and liver cut.

In the opinion of Dr. Sindhi, the deceased died on account of shock and haemorrhage as a result of ante mortem injuries.

On the person of Smt. Jasoda, Dr. Sindhi found the following ante mortem injuries :--

(i) Lacerated wound 1 cm x 0.5 cm bone deep, 2 cm above outer side left eyebrow.

(ii) Lacerated wound 1.5 cm x 1 cm x bone deep on outer angle of left eyebrow.

(iii) Lacerated wound 1 cm x 0.5 cm x muscle deep (paper torn) lateral to mouth angle left side.

(iv) Incised wound 2 cm x 0.5 cm bone deep, 5 cm lateral and below mouth angle left at 5 O' Clock position obliquely placed.

(v) Lacerated wound 5 cm x 2 cm x bone deep on left side (paper torn) parietal region 5 cm above left ear pinna 9.5 cm above left eyebrow anteroposterioly.

(vi) Incised wound 2 cm x 0.5 cm x bone deep right maxillary prominence 3.5 cm left to eye angle outer.

(vii) Incised wound 4.5 cm x 1.5 cm x collar bone cut cavity deep on right clavicle horizontally placed directing left to right and downward, towards chest cavity deep. 5 cm ulna lateral outer sternal notch.

(viii) Incised wound 7 cm x 1.5 cm x bone cut on left forearm dorsally, 3.5 cm above wrist joint.

(ix) Incised wound 9 cm x 1 cm x bone deep on palmer aspect, horizontally placed, 3.5 cm below wrist joint on left side.

On internal examination. Dr. Sindhi found the base of skull broken on the left side.

In the opinion of Dr. Sindhi, the deceased died as a result of ante mortem injuries.

9. The case was committed to the Court of Sessions in the usual manner, where the appellants were charged for the offences mentioned in paragraph-1. They pleaded not guilty to the charges and claimed to be tried. Their defence was of denial.

During trial, in, all, the prosecution examined fourteen witnesses. Four of them, namely, Laltu, Laloo, Rampati and Rameshwar, PWs 1, 2, 3 and 7 respectively,

were examined as eye-witnesses. During cross-examination the suggestion given to them was that they falsely implicated the appellants; which suggestion was obviously denied by them.

It is significant to point out that in defence no witness was examined by the appellants.

The learned Trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellants in the manner stated in paragraph-1.

Hence, these appeals.

10. We have heard learned counsel for the parties and have gone through the entire record. After the utmost circumspection we have reached the conclusion that :--Criminal Appeal No. 805/1984 deserves to be partly allowed inasmuch as appellant Sirdar deserves the benefit of doubt (we however feel that the said appeal so far as it relates to the other five appellants, namely, Janki, Ram Bilas, Moti. Smt. Gilha and Bhognath, has no force); Criminal Appeal No. 830/1984 preferred by appellants Rohan and Mangrey; and Criminal Appeal No. 36/ 1985 preferred by Mangery through jail are without substance and warrant to be dismissed.

11. As would become manifest from above, the learned Trial Judge has founded the conviction of the appellants on the ocular account furnished by Laltu, Lalloo, Smt. Rampati and Rameshwar, PWs 1, 2, 3 and 7 respectively. In our judgment, the testimony of the said witnesses inspires confidence against appellants other than appellant Sirdar, who as mentioned by us earlier deserves the benefit of doubt.

We now propose furnishing our reasons for reaching the said conclusion.

12. We begin with the testimony of the informant Lalloo (P.W. 2). Since in paragraph-4 we have set out the prosecution story primarily on the basis of recitals contained in his examination-in-chief we do not want to burden our Judgment by reiterating the details. In short, his evidence shows :--

There was litigation between the deceased Chhidu, who was his (Laloo's) real uncle, and appellant Janki, who was Chhidu's cousin. Two days before the incident, Janki had succeeded in the said litigation from the Court of SDM and Chhidu was all set to prefer an appeal. On the date of the incident, at about 7.30 A. M., when Janki was ploughing the field, in respect of which Chhidu had lost from the Court of SDM two days before, Chhidu accompanied by him, Smt. Jasoda, Ram Kumar, Rampati and Shiv Pyari came to the said field. There the seven other appellants were also present. He implored all of them not to plough the field till the appeal was decided. On that Bhognath instigated that they be killed and thereafter :-- Ram Bilas with a sickle, Moti with a gandasa and Mangrey with a lathi assaulted Chhidu (Ram Bilas gave a sickle blow on the stomach of Chhidu, who died instantaneously), Mangrey with a lathi, Sirdar with a ballam, Bhognath with a banka, and Rohan with a sickle assaulted Jasoda, who died on the spot; Janki pressed the neck of Ram Kumar with a lathi and Mangrey with a lathi and Sirdar with a ballam assaulted him; Rohan and Gilha with sickles assaulted Rampati; and Mangrey assaulted Shiv Pyari with a lathi. In the meantime, on his cries and that of others, a number of witnesses, including, Laltu (PW-1) and Rameshwar (PW-7) came and when they reprimanded the appellants they ran away. Thereafter he proceeded to Police Station Sidhauri and lodged his F. I. R.

13. We have gone through the evidence of informant Laloo and make no bones that it inspires confidence against appellants Mangrey, Ram Bilas, Moti, Bhognath, Smt. Gilha, Janki and Rohan. The manner of assault as furnished by him (referred to in the preceding paragraph) is corroborated by the ante mortem injuries suffered by the three deceased persons, namely, Chhidu, Jasoda and Ram Kumar, and the injuries suffered by the two injured, namely, Smt. Rampati and Smt. Shiv Pyari.

He stated that :--

(a) appellant Mangrey assaulted the deceased Chhidu and Ram Kumar and the injured Shiv Pyari with lathi. We have earlier seen that on the person of Chhidu the autopsy surgeon Dr. K. L. Sindhi found three lacerated wounds, one multiple abraded contusion and one multiple abrasion and on the person of Ram Kumar two lacerated wounds and one contusion and Dr. M. A. Bari, who medically

examined Smt. Shiv Pyari, found on her person two traumatic swellings. It is common knowledge that lacerated wounds, contusions and traumatic swellings are caused by a blunt weapon.

(b) appellant Ram Bilas assaulted the deceased Chhidu with his sickle on his stomach and the autopsy surgeon found an incised wound (ante mortem injury No. (vi) in the region of umbilicus and abdomen of Chhidu). It is common knowledge that an incised wound is attributable to a sickle.

(c) appellant Moti assaulted the deceased chhidu with a gandasa on his face and the autopsy surgeon found an incised wound 2.5 cm x 0.5 cm x bone deep on the outer side chin 1.5 cm lateral mid line. Once again, it is common-knowledge that such an incised wound can be caused if a tip of gandasa strikes.

(d) appellant Bhognath not only instigated but also assaulted Jasoda with a banka and the autopsy report of Jasoda shows that she sustained four incised wounds, namely, ante mortem injuries No. (vi) to (ix). It is common knowledge that incised wounds are attributable to a banka.

(e) appellant Gilha assaulted Jasoda with sickle and Injured Smt. Rampati with sickle and the post mortem report of the former shows four incised wounds and the injury report of the latter two Incised wounds. It is common knowledge that Incised wounds can be caused by sickle.

(f) appellant Janki pressed the neck of the deceased Ram Kumar with his leg and ante mortem injury No. (iii) suffered by Ram Kumar was a contusion 2 cm x 16 cm on both sides upper chest and lower part of neck 1 cm below chin, first and second rib of right side and second rib of left side fractured. It is significant to point out that in the post mortem report the cause of death of Ram Kumar has been mentioned as asphyxia as a result of strangulation and it is obvious that injury No. (iii) was the result of appellant Janki pressing the neck of Ram Kumar with his leg. It was this injury which led to the death of Ram Kumar, and

(g) appellant Rohan assaulted the injured Rampati with a sickle and the injury report of Rampati shows that she received two Incised wounds (the other person

who assaulted her was Smt. Gilha). To repeat, It is common knowledge that incised wounds can be caused by a sickle.

14. We however make no bones in observing that we are not inclined to accept his (Lallu's) evidence that appellant Sirdar assaulted the deceased Jasoda and the injured Ram Kumar with ballam. We say this because the autopsy surgeon Dr. K. L. Sindhi found no punctured Injury on the person of Jasoda and instead stated in his cross examination that he did not find any punctured injury either on the person of Jasoda or on that of Ram Kumar. We have earlier reproduced the injuries suffered by the said persons and seen that on the person of Ram Kumar the autopsy surgeon found two lacerated wounds and one contusion. We are not oblivious to the fact that the autopsy surgeon found two Incised wounds on the corpse of Jasoda and in his examination in chief stated that one of the Incised wounds, namely, injury No. 7 could be caused by ballam, but on the face of definite evidence of this witness (Laloo) that it was Ram Bilas, who inflicted a sickle blow on the stomach of the deceased, it would be reasonable to infer that the said injury was not the result of ballam blow given by Sirdar. That apart the autopsy surgeon Dr. Sindhi in his cross-examination stated that injury No. 7 suffered by Jasoda appeared to have been caused by a sharp edged weapon and he did not find any puncture beneath it.

15. It is significant to mention that Laloo has explained his presence on the place of the incident. He stated that he had accompanied Chhidu and others when they went to Implore appellant Janki and others not to plough the field, which was the subject matter of litigation.

It is significant to point out that although he was subjected to an extensive cross-examination but nothing could be extracted therefrom which could shake his credibility.

16. For the said reasons, in our view, it would be safe to accept the evidence of Laloo (PW-2) vis-a-vis appellants other than appellant Sirdar.

We would now like to take up the evidence of Smt. Rampati (PW-3), Since she has set forth the same manner of assault as Laloo we do not want to burden our

judgment by reiterating the details. Consequently, on the logic what is good for the goose is also good for the gander we are inclined to accept her evidence in relation to appellants other than appellant Sirdar.

As we have seen she has explained her presence on the place of the incident and has stated that she also went along with the informant and the deceased persons to implore Janki not to plough the field, which was the bone of contention between the parties.

17. It should be borne in mind that Smt. Rampati is an injured witness of the incident and her injuries lend a seal of assurance to her claim of having seen the incident. She stated that appellants Rohan and Gilha assaulted her with sickles and as we have seen earlier Dr. M. A. Bari (PW-8), who medically examined her on the date of the incident itself at 11.55 A. M., found on her person two incised wounds. It is significant to point out that Dr. Bari found the said injuries to be fresh in nature and stated that injuries remain fresh for six hours. We feel that since the incident took place at 7.00 A.M. on 18-9-1981 it is obvious that she received the injuries during the course of the incident. It is pertinent to mention that it is common knowledge that incised wounds can be caused by a sickle. It is also pertinent to mention that both the incised wounds suffered by her were in the region of head and there was no question of their being manufactured because in manufacturing them she could have got more than she could bargain for (in fact she could have even lost her life).

We may mention that although she was thoroughly cross-examined but her claim of having seen the incident, which is corroborated by the injuries she received, could not be discredited in her cross-examination.

18. For the aforesaid reasons, we accept the testimony of Smt. Rampati (PW-3) against the appellants, other than appellant Sirdar.

19. We now come to the testimony of Laltu (PW-1) and Rameshwar (PW-7). We would like to take up their evidence together. Their evidence shows that on the date and time of the incident they were at their field; the former was ploughing his field and the latter was digging groundnuts therefrom. On hearing the cries of the

informant and others they went to the place of the incident and saw the same. Since they have also furnished the same manner of assault as Lalloo and Smt. Rampati we do not want to burden our judgment by reiterating the details.

It is significant to point out that both these witnesses are independent witnesses, who had no rancour or ill-will against the appellants. In our view, in the absence of the same they would not have falsely Implicated the appellants.

It is pertinent to mention that although they were subjected to extensive cross-examination but their credibility could not be impeached.

19A. In our judgment it would be safe to accept the testimony of Laltu (PW-1) and Rameshwar (PW-7) against appellants, other than appellant Sirdar for reasons mentioned above while dealing with the testimony of Lalloo (PW-2).

20. It is significant to point out that assurance to the claim of four eye witnesses of having seen the incident is lent by the circumstance that the F. I. R. of the incident was lodged within one hour and twenty minutes of the incident taking place. It is pertinent to mention that the incident took place on 18-9-1981 at 7.30 A. M. and the F.I.R. was lodged the same day at 8.50 A. M. by Lalloo (PW-2) at Police Station Sidhauri, which was situated at a distance of two miles from the place of the incident. It is significant to point out that in this prompt F. I. R. of the 'incident the material facts pertaining to the prosecution case, including,

(a) the motive for the incident;

(b) the time of the incident;

(c) the place of the incident;

(d) the names of the eye-witnesses;

(e) the names of the appellants;

(f) the weapons in the hands of the appellants; and

(g) the manner of assault have all been mentioned.

20A. Criminal Courts attach great importance to the prompt lodging of the F.I.R. because the same substantially eliminates the probability of embellishments and concoctions creeping in the prosecution story. In our judgment, the circumstance that the F. I. R. of the incident, wherein the appellants are named, was lodged very promptly goes volumes to show that the participation of the appellants, other than appellant Sirdar, has been established beyond the pale of doubt.

21. While dealing with the testimony of Lalloo we have already furnished our reasons as to why we do not find the participation of appellant Sirdar free from doubt. At the cost of repetition, we would like to mention that we have reached this conclusion because the evidence of the eye-witnesses is that he assaulted the deceased persons Jasoda and Ram Kumar with a ballam and three ante mortem injuries suffered by the latter were attributable to a blunt weapon and though the former suffered two incised wounds but since the evidence of the eye witnesses is that ante mortem Injury No. 7 suffered by the her was a result of sickle blow inflicted by appellant Ram Bilas on her stomach we, are not inclined to believe the statement of the autopsy surgeon, who in his examination in chief stated that the said injury could be caused by ballam; moreso because in his cross-examination he has categorically stated that it was attributable to a sharp edged weapon and he did not find any puncture beneath it. However, we make it clear that we are only giving benefit of doubt to appellant Sirdar; by way of abundant caution.

22. In our view, it is clear that the prosecution has proved its case against the other seven appellants, namely, Janki, Ram Bilas, Moti, Smt. Gilha, Bhognath, Rohan and Mangrey.

We would like to mention that all the four eye-witnesses have assigned to the said appellants specific overt acts which are corroborated by medical evidence.

It is pertinent to mention that they have assigned the appellant Mangrey the role of assaulting the deceased Chhidu and Ram Kumar and the injured Shiv Pyari with lathi. We have earlier seen that on the person of Chhidu the autopsy surgeon Dr. K. L. Sindhi found three lacerated wounds, one multiple abraded contusion and one multiple abrasion and on the person of Ram Kumar two lacerated wounds and one contusion. Dr. M. A. Ban, who medically examined Smt. Shiv Pyari, found on

her person two traumatic swellings. It is common knowledge that lacerated wound, traumatic swelling and contusion are caused by a blunt weapon like lathi.

Similarly, it is necessary to mention that all the four eye-witnesses have assigned appellant Ram Bilas the role of assaulting the deceased Chhidu with a sickle on his stomach. It is pertinent to mention that the autopsy surgeon found two incised wounds on the person of Chhidu, one of which, namely, ante mortem injury No. (vi), was situated in the region of umbilicus and abdomen. It is significant to mention that the said injury was attributable to a sickle.

Similarly, all the four eye-witnesses have assigned the appellant Moti the role of assaulting Chhidu with a gandasa on his face and the autopsy surgeon found an incised wound 2.5 cm x 0.5 cm x bone deep on the outer side chin 1.5 cm lateral midline. It is significant to point out that such an injury would be caused if the tip of the gandasa strikes.

It is significant to point out that all the four eye-witnesses have assigned the appellant Bhognath not only the role of instigation but also of assaulting the deceased Jasoda with a banka and the autopsy report of Jasoda shows that she sustained four incised wounds, namely, ante mortem injuries No. (vi) to (ix). It is common knowledge, that incised wounds are attributable to a banka.

Similarly, all the four eye-witnesses have assigned appellant Smt. Gilha the role of assaulting the deceased Jasoda with a sickle and the injured Smt. Rampati with a sickle and the post mortem report of the former shows four incised wounds and the injury report of the latter two incised wounds. It is common knowledge that incised wounds can be caused by sickle.

Similarly, all the four eye-witnesses have assigned appellant Janki the role of pressing the neck of the deceased Ram Kumar with his leg and ante mortem injury No.3 suffered by Ram Kumar was a contusion 2 cm x 16 cm on both sides of upper chest and lower part of neck 7' below chin, 1st and 2nd rib of right side and 2nd rib of left side fractured. It is significant to point out that in the post mortem report the cause of death of Ram Kumar has been mentioned as asphyxia as a result of strangulation and it is obvious that injury No. (iii) was the result of

appellant Janki pressing the neck of Ram Kumar with his leg. It was this injury which led to the death of Ram Kumar.

It is significant to mention that all the four eye-witnesses have assigned the appellant Rohan the role of assaulting the injured Smt. Rampati with a sickle and the injury report of Smt. Rampati shows that she received two incised wounds.

23. In our judgment, the surest yardstick of judging the veracity of eye-witnesses is the medical evidence and where the ocular account, which includes that of an injured witness Smt. Rampati, is corroborated by medical evidence (as is the case here) and assurance to it is lent by a prompt F. I. R. of the incident, wherein all the essential features of the prosecution case have been mentioned (as is the case here) the Court has no compunction in recording/sustaining a conviction on its basis.

24. It is for these reasons, we have reached the conclusion that the learned Trial Judge acted correctly in convicting the appellants Janki, Ram Bilas, Moti, Smt. Gilha, Bhognath, Rohan and Mangrey.

There can be no manner of doubt that the learned Trial Judge acted correctly in finding them guilty for offences punishable under Sections 302/149, IPC 324/149 IPC, and 323/149 IPC because the evidence of the eye-witnesses shows that they had formed an unlawful assembly and in prosecution of its common object caused death of three persons, namely, Chhidu, Jasoda and Ram Kumar and Injuries to two persons, namely, Smt. Rampati and Smt. Shiv Pyari. (Injuries with a sickle, which is an instrument of cutting and stabbing, were caused on the person of Smt. Rampati and injuries with a blunt object on that of Smt. Shiv Pyari).

We also feel that since Ram Bilas, Moti, Smt. Gilha, Bhognath, and Rohan were armed with deadly weapons the learned Trial Judge acted correctly in convicting them for the offence punishable under Section 148 IPC and inasmuch as appellants Janki and Mangrey were armed with blunt weapon (lathi) he acted rightly in convicting them for that punishable under Section 147, IPC.

So far as the sentence of the appellants for the offence punishable under Section 302/149 I. P. C. is concerned the learned Trial Judge gave them the lessor sentence, namely, imprisonment of life and therefore it is not open for us to reduce it.

So far as their sentence on other counts is concerned, the same, in our view, apart from not being excessive warrants no interference because they have been directed to run concurrently with their sentence for the offence punishable under Section 302/149 I. P. C.

25. In the result :--

(A) Criminal Appeal No. 805 of 1984 :---

The appeal is partly allowed, we acquit appellant Sirdar on all the four counts, namely, under Sections 302/149 I. P. C., 324/149 I. P. C., 323/149 I. P. C. and 148 I.P.C. He is on bail. He need not surrender. His bail bonds shall stand cancelled and sureties discharged.

We confirm the conviction and sentence of appellants Janki, Ram Bilas, Moti, Smt. Gilha and Bhognanth for offences punishable under Sections 302/149 I. P. C., 324/ 149 I. P. C. and 323/149 I. P. C. We further affirm the conviction and sentence of appellant Janki for the offence punishable under Section 147 I. P. C. and that of appellants Ram Bilas, Moti, Smt. Gilha and Bhognath for that punishable under Section 148 I. P. C.

Janki, Ram Bilas, Moti, Smt. Gilha and Bhognath are on bail and shall be taken into custody forthwith to serve out their sentences.

(B) Criminal Appeal No. 830 of 1984 :--The appeal is dismissed. We confirm the conviction and sentence of both the appellants, namely, Rohan and Mangrey for offences punishable under Sections 302/149 I.P.C., 324/149 I.P.C. and 323/149 I.P.C. We also confirm the conviction and sentence of appellant Rohan for the offence punishable under Section 148 I. P. C. and that of appellant Mangery for that punishable under Section 147 I.P.C.

Appellants Rohan and Mangrey are on bail shall be taken into custody forthwith to serve out their sentences.

(C) Criminal Appeal No. 36 of 1985 :--This appeal has been preferred by appellant Mangrey from jail and is decided in terms of our judgment in Criminal Appeal No. 830 of 1984, preferred by him through his counsel.

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