

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

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Court : Allahabad

Decided On : Dec-14-1999

Reported in : 2000CriLJ2842

Judge : J.C. Gupta and ;S.K. Agarwal, JJ.

Acts : Evidence Act - Sections 6; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 35, 38, 302, 323 and 324; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 2112 of 1980

Appellant : Budhu and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.M. Misra, Adv.

Disposition : Appeal dismissed

Judgement :

1. The above named appellants have preferred this appeal against the order dated 6-9-1980 of Sri P. Chandra the then Sessions Judge, Bijnor convicting them under Section 323/34, 324/34 and 302/34 of the Indian Penal Code and sentencing each of them to 1 year rigorous imprisonment, 3years rigorous imprisonment and life imprisonment under the said counts respectively. All the sentences have been

ordered to run concurrently.

2. In order to know inter se relationship between the accused, the deceased and the injured witnesses, it may be stated that Ganga Ram and Ghasita were real brothers. Ganga Ram had a son Khacheru whose wife was Smt. Parmeshwari the deceased of the present case. Ghasita has three sons namely accused Budhu, accused Har Kishan and accused Natthu while accused Chhotu is the son of accused Buddhu. Khacheru, the husband of Smt. Parmeshwari died tssueless about 3 - 3 1/2 years ago from the date of incident. After his death, his widow Smt. Parmeshwari inherited his properties and her name was mutated in revenue records and Smt. Parmeshwari herself started getting the land left by her husband cultivated. It is alleged that accused persons were putting pressure on Smt. Parmeshwari to transfer her land in their names to which Smt. Parmeshwari was not agreeable, therefore, she was being threatened by the accused person on account of which Smt. Parmeshwari came down to her brother Sukhram P.W.1 in village Qadarabad and started living with him for the last about two months before the present incident. Injured Smt. Bhuria is the wife of Sukhram while injured Ram Pal P.W. 2 and injured Ram Kumar are the sons of Sukhram. The prosecution case further is that about one month before the incident Buddhu accused along with his brother-in-law Ram Lal came to the house of Sukhram and asked Smt. Parmeshwari to come back to her house, for which she did not agree and told them that there was danger to her life at their house. On this Buddhu accused said that she would give her land to her brother and he would teach a lesson to her and her brother. After giving this threat the said persons went back.

3. It is further said that in the mid night of 28/29-8-1979 all the accused persons namely Buddhu, Har Kishan, Natthu and Chhotu came at the house of Sukhram and caught hold of Smt. Parmeshwari who was sleeping in the courtyard. Sukhram and other witnesses were also sleeping there. On the cries of Smt. Parmeshwari the witnesses were awakened and noticed that Buddhu accused was having a gun while other accused were holding spears and they were assaulting Smt. Parmeshwari. When they tried to save her accused persons assaulted Sukhram P.W. 1 as also his sons Ram Pal P.W. 2 and Ram Kumar and his wife Smt. Bhuria. The accused assaulted them with the barrel of gun and those

holding spears used the weapons from both the sides i.e. from the pointed end and from the stick side. Buddhu also fired one shot in air to threaten the witnesses and they took Smt. Parme-shwari towards South. Smt. Parmeshwari was then killed in the field of Peer Bux. On the shrieks of the deceased and the injured witnesses Shyam Lal P.W. 3 and others residing in the neighbourhood also collected and saw the incident. It is said that at the time of incident a lantern was burning in the courtyard and during the course of incident Ram Pal P.W. 2 set fire heap of 'Phoos' kept at a distance of 20 paces from the courtyard. The accused persons were identified in the said sources of light. After the incident was over Sukhram and others went to the field of Peer Bux and found Smt. Parmeshwari lying dead there, Due to fear. Sukhram could not go to the police station during night hours and he went to the police station Afzalgarh in the morning and dictated an oral report Ex. Ka-6 at 7.30 A.M. which was reduced to writing in the check register. Dr. Mohan Lal Sharma P. W. 5 examined the injuries of Sukhram on 29-8-1979 at 8.30 A.M. and found following injuries :

1. Lacerated wound 3cm x 8cm x brain deep on the fore head 3.5cm above to the median level of right eye brow ;
2. Contused wound 3cm x 1/2cm at the Anterior surface of right leg 4 cm below to the interior border of the patellae of right knee joint;
3. Abrasion 4cm x 1 /2cm on the Anterior surface of right leg 12cm below to the interior boarder of the patellae of the left knee joint;
4. Abrasion 1cm x 1 /2cm on the Anterior surface of left leg 3cm below to the interior border of the patellae of the left knee joint;
5. Traumatic pain in right fore arm no clear injury mark was seen.

4. In the opinion of the doctor all the injuries were simple. Injuries Nos. 1, 2 and 5 were caused by some blunt object while injuries Nos. 3 and 4 were caused by friction against some rough surface. Dr. Mohan Lal Sharma has proved the injury report as Ex. Ka-5.

5. Injuries of Ram Pal P.W. 2, Smt. Bhuria and Ram Kumar were examined by Dr. J. P. Gupta P.W. 4. Ram Pal was medically examined at 11.30 A.M. on 29-8-1979 and following injuries were found ;

1. Traumatic swelling 3cm x 3cm on the right side occiput 6cm from the right ear.
2. Abrasion 3.5cm x 1cm obliquely placed on the left shoulder just below the left scapula bone.
3. Abrasion 1/4cm in breadth making just like a triangle 5cm x 7cm on the back of left shoulder.
4. Contusion 4cm x 1.5cm obliquely placed on outer side of the right arm 12cm below the left of right shoulder.
6. In the opinion of the doctor all the injuries were simple. Injuries Nos. 1 and 4 were caused by blunt object while injury No.3 was caused by some pointed object like spear and injury No.2 was caused by friction against raw surface or hard blunt object. Injury report of Ram Pal is Ex. Ka.2.

7. Ram Kumar was medically examined at 11.45 A.M. and following injuries were noted ;

1. Contusion 9cm x 3cm obliquely placed on the lateral side of the left thigh 10cm above the left knee.
2. Traumatic swelling 6cm x 4cm on the front and upper part of the left knee. In the opinion of the doctor both the injuries were simple and caused by blunt Object, injury report of Ram Kumar is Ex. Ka3.

8. Smt. Bhuria was medically examined on the same day at 12.00 noon and she had following injuries :

1. Penetrated wound 2cm x 1/2cm x 1.5cm deep on the upper part of the right breast 4cm above the right nipple whole of the right breast is inflamed due to injury.

2. Lacerated wound 2cm x 1/2cm x skin deep on the left side occipit 4cm from the left ear.
3. Contusion 6cm x 2.5cm obliquely placed on the left hip.
9. In the opinion of the doctor all the injuries were simple and injury No.1 was caused by a sharp and pointed object while injuries Nos. 2 and 4 by blunt weapon. Injury report of Smt. Bhuria is Ex. Ka.4.
10. The post mortem examination on the dead body of Smt. Parmeshwari was conducted by Dr. R. B. Saxena, P.W.6 on 30-8-1979 at 7.30 A.M. and he found following ante mortem injuries :
 1. L.W. 1 1/4' x 1/4' x bone deep on right side head with fracture of underlying bones 2' above right eye brow.
 2. Depression on right side face, side and upper of right ear, right side head 13' x 13' in which injury No.(1) is with in its area.
 3. Incised wound 3/4' x 1/4' x muscle deep right side face adjacent to right eye brow and outer to it.
 4. Penetrating incised wound 1/2' x 1/2' x 1/2' which is 1/2' below injury No. (3).
 5. Penetrating incised wound 1/4' x 1/4' x 1-1/2' which is 1/2' below injury No.(4).
 6. Incised wound 1 1/2' x 1/4' x skin deep which has cut right ear lobe in lower part and extending behind it on right side neck.
 7. Incised wound 1/4'x 1/4'x 1/2' right side face 1' outer and front of right ear.
 8. L.W. 1/2' x 1/4' x skin deep left side forehead.
 9. Abrasion multiple on back of both elbows.
11. In the internal examination the doctor found fracture of right frontal, and parietal bones. Right frontal bone was broken into 3 pieces along with fracture of right temporal, right maxilla and zygomatic bones. All these fractures

corresponded to ante mortem injury No.2. In the opinion of the doctor cause of death was shock due to injury to brain & skull. The post mortem report has been proved as Ex.Ka.6. It may be stated here that in the opinion of the doctor death of the deceased occurred in the mid night of 28/29 August, 1979 and the ante-mortem injuries were caused by blunt object and pointed sharp weapon.

12. Raja Ram Nagar P.W. 7 was posted as Station Officer at police station Afzalgarh and the F.I.R. of the present case was registered in his presence. He took up the investigation and recorded the statement of Sukhram at the police station itself and then he reached the place of occurrence at 9.45 A.M. Finding that Ram Kumar, Ram Pal and Bhuria had injuries on their persons, he sent them to Qadarabad dispensary for medical examination. The investigation officer then reached the field of Peer Bux and found dead body of Smt. Parmeshwari lying there. He completed the inquest proceedings and sent the dead body for post-mortem examination. He also made inspection of the place of occurrence and prepared site plan Ex. Ka. 12, wherein he indicated the place by letter 'A' where lantern was burning. He examined the lantern and found the same in working condition. The lantern was given back in the custody of the First Informant through Memo Ex. Ka. 13. He also found a heap of 'ash' near the place of occurrence from which he collected sample. One empty cartridge Ex.3 was also collected through Memo Ex. Ka. 14. Blood was also found at the place where the dead body was found lying. After completing investigation he submitted charge sheet against all the accused persons who were nominated in the F.I.R. The accused persons were duly tried by the Sessions Judge, Bijnor.

13. At the trial the prosecution produced seven witnesses including the three witnesses of fact namely Sukhram P.W. 1. Ram Pal P. W. 2 and Shyam Lal P.W. 3. Out of these three witnesses Sukhram and Ram Pal are the injured witnesses while Shyam Lal P.W. 3 is an independent witness living in the neighbourhood of Sukhram.

14. The accused persons in their statements recorded under Section 313 Cr.P.C. admitted the inter se relationship as has been mentioned in earlier part of this judgment, it is further admitted by accused Buddhu that in village Sabdalpur

Rehra, Khacheru had half share which was succeeded by his wife Smt. Parmeshwari and she was doing cultivation. It has also been admitted by accused Buddhu that Smt. Parmeshwari had gone to her brother's place two months before the incident but added that she had gone there on her own free-will. He further admitted that Sukhram P.W. 1 had no concern with the land of Smt. Parmeshwari nor he had any evil eye on the same. All the accused persons however denied their participation in the incident in question and it was suggested to the witnesses that a dacoity was committed at the house of Sukhram wherein Smt. Parmeshwari was murdered and the witnesses assaulted.

15. The learned Sessions Judge after consideration of the evidence adduced in Court and material placed on record inter alia came to the findings that the accused persons had a strong motive to commit the murder of Smt. Parmeshwari ; that the witnesses P.W.1 Sukhram and P.W.2 Ram Pal themselves received injuries in the course of incident; that their evidence was supported not only by an independent witness P.W.3 Shyam Lal but by medical evidence also ; that the accused persons who were relatives of the witnesses were identified in the light of lantern and the light created on account of fire set to 'phoos', and that the possibility of dacoity having been committed at the 'dera' of the first informant was completely ruled out. With these findings the learned Sessions Judge has convicted and sentenced the appellants under various counts as already described above.

16. In his submissions made before us, the learned counsel for the appellants has not disputed that Smt. Parmeshwari was murdered and other persons received injuries at the time and place as alleged by the prosecution. However, he submitted that the assailants were unknown persons and they could not be identified because of darkness and the appellants were nominated by the first informant due to enmity or suspicion. He further submitted that the evidence of the witnesses with regard to sources of light and identity of the accused persons is not reliable and trustworthy, therefore the prosecution case must be held to have not been proved beyond reasonable doubt and all the appellants deserve to be acquitted. It was further submitted that in any event the accused persons could not be held guilty under Section 302 with the aid of Section 34 I.P.C. as from the

circumstances appearing in the case it is not established that they had the requisite common intention to commit murder of Smt. Parmeshwari and in the absence of evidence specifying the roles played individually by each accused, their conviction under Section 302 read with Section 34 I.P.C. is bad in law. On the other hand learned A.G.A submitted that since P.W. 1 Sukhram and P.W.2 Ram Pal themselves had received injuries in the course of incident their presence could not be doubted and there is no reason for not placing reliance on their testimony. The learned State counsel supported the findings recorded by the learned Sessions Judge.

17. The factum of death of Smt. Parmeshwari on account of ante-mortem injuries has neither been disputed nor challenged before us. It is also otherwise established from the evidence that Smt. Parmeshwari died a homicidal death. As already pointed out above it has also not been disputed that in the same occurrence P.W. 1 Sukhram and P.W.2 Ram Pal had also received besides Smt. Bhuria wife of Sukhram and Ram Kumar another brother of Sukhram. The presence of P.W. 1 and P.W.2 therefore, at the scene of occurrence is not to be doubted. They were medically examined on the very next morning and by no stretch of imagination it could be said that the injuries of these injured persons were fabricated or self suffered. There is nothing on record to indicate that these witnesses were having any grudge or animosity against any of the appellants. It may be pointed out here that the accused Buddhu in his statement recorded under Section 313 Cr. P.C. admitted that Smt. Parmeshwari had gone to her brother's (Sukhram) place two months before the incident. He further admitted that Sukhram had no concern with the land of Smt. Parmeshwari nor he was having his eyes over the same. It has also come in the statement of P.W. 1 Sukhram that neither in the lifetime of Smt. Parmeshwari nor after her death he ever made any effort to get her land transferred in his name. We therefore, fail to understand as to why for no rhyme or reason Sukhram would implicate falsely the accused persons, who were his near relations. We have carefully scrutinized the evidence of these two witnesses and find no reason whatsoever for not placing reliance on the same. Their evidence is wholly consistent, trust-worthy and corroborated by medical evidence brought on record. The prosecution has also produced P.W.3 Shyam Lal who has also stated that an incident had occurred during the relevant time at the

'dera' of Sukhram wherein Sukhram P.W. 1, Ram Pal P.W.2, Ram Kumar, Smt. Bhuria and Smt. Parmeshwari were assaulted and then Smt. Parmeshwari was dragged to the fields of Peer Bux, where she was killed. Learned counsel for the appellants tried to make a capital out of that portion of the statement of P.W.3 wherein he stated that accused persons were not known to him from before the incident and on account of his being placed at a distance he could not identify them. Be that as it may, his statement at least supports the prosecution with regard to the factum of incident and sources of light. It may further be pointed out here that he categorically stated that when he reached the dera of the first informant, on his asking, Sukhram and others told him that they have been assaulted by accused Buddhu, Chhotu, Har kishan and Natthu who were members of the family of the in-law of Smt. Parmeshwari. This part of his statement cannot be over-looked, as the same is relevant under Section 6 of the Evidence Act.

18. So far as question of light at the time of incident is concerned, the prosecution witnesses have stated of two sources. First, that a burning lantern was hanging in the courtyard of the 'dera' where the deceased and other witnesses were sleeping, and the second is that during the course of incident Ram Pal had set fire to the heap of 'phoos' kept at a distance of 20 paces from the courtyard. The lantern was examined by the investigating officer soon after he reached the place of occurrence and the same was found in working condition. The investigating officer also found a heap of ash at the place where Ram Pal is said to have set 'phoos' on fire and a sample therefrom was also collected by the I.O. it may not be out of place to mention here that about these sources of light not only the two injured witnesses have stated but P.W. 3 Shyam Lal who reached the place of incident immediately, has also stated likewise. There is absolutely no enmity of the accused with this witness nor it could be shown that this witness was in any way interested in their prosecution or was having any affinity with the first informant. In the F.I.R. which was lodged at the police station within a reasonable time, both these sources of light had been disclosed. All the accused persons were very well known to P.W. 1 and P.W. 2 being his close relatives and since both these witnesses were also assaulted by the accused persons they must have come in close contact with each other, therefore, it would not have been difficult for them to

have identified the accused persons. Thus, there could not be any doubt about the identity of the accused persons as being the assailants.

19. In the trial Court suggestions were thrown to the witnesses that as a matter of fact a dacoity had been committed at the 'dera' of the first informant wherein the deceased was killed and witnesses assaulted. Before us also learned counsel for the appellants raised the same contention, however on a careful scrutiny of the evidence and on a proper consideration of the circumstances appearing in the case, we have no doubt in our mind that no such incident had in fact occurred at the 'dera' of P.W. 1 as suggested by the defence. Both the witnesses in clear words have denied the said suggestion, even P. W.3 Shyam Lal has denied that any dacoity was committed at the dera of P.W. 1. He even went on to say that no dacoity to his knowledge had ever been committed in any house in that area. The investigating officer also did not find any signs of dacoity at the scene of occurrence. We may also point, out that P.W. 1 Sukhram as per his statement was simply a labourer. He categorically stated that his monthly earnings were not more than 800-900 rupees. He used to do cultivation on 'BATAI'. He was by no means an affluent person. Even Smt. Parmeshwari could not be shown to be a rich lady and nothing could be brought on record that at the time of incident she was possessed of any valuables, cash, jewellery or ornaments etc. When her dead body was examined by the investigating officer at the time of inquest, only a Brass 'Long' was found in her nose and a pair of Lachha in legs which were of 'Gilat' not even of Silver. It is beyond comprehension that the miscreants would have dragged this old lady to the fields of Peer Bux when she was not having any valuables on her body. The commission of any dacoity at the 'dera' of P.W. 1 in the circumstances is, therefore, completely negatived.

20. The motive for the murder of Smt. Parmeshwari suggested by the prosecution is that Khacheru the husband of Smt. Parmeshwari was the brother of Ghasita father of accused Buddhu, Har Kishan and Natthu and grand-father of accused Chhotu. Khacheru died issueless about 3-3 1/2 years ago from the date of incident, and after his death Smt. Parmeshwari succeeded his properties and her name had been mutated in Revenue records. She was getting cultivation done herself to the dislike of the accused persons. They wanted to cultivate the land of

Khacheru themselves and were putting pressure on Smt. Parmeshwari to part with her land in their favour but she was not agreeable. When they threatened her, she left their house and went to her brother's house in village Qadarabad two months before the date of occurrence. During this interval Buddhu accused along with his brother-in-law Ram Lal once visited the 'dera' of Sukhram P.W. 1 and in his presence they again tried to persuade Smt. Parmeshwari to go back to her house with them but she did not agree and told them that there was a danger to her life at their house. On this Buddhu accused said that she was desirous of giving her land to her brother and for that reason she was not going back and he threatened that he would teach a lesson to her and her brother. The prosecution story regarding motive has been stated by P.W. 1 in clear words and we have no reason to doubt the same inasmuch as after the death of Smt. Parmeshwari the property of Khacheru would have devolved upon the accused persons being the reversioners and not on Sukhram. We have already pointed out above that it is admitted to the accused that Sukhram P.W. 1 had no concern with the land of Khacheru nor he was interested therein in any manner whatsoever. Sukhram P.W. 1 has also testified that neither during the lifetime of Smt. Parmeshwari nor after her death he made any effort to obtain the said land. In this view of the matter, we find that accused persons had a strong motive to eliminate Smt. Parmeshwari and with that end in view they all came to the house of Sukhram P.W. 1 in the night of incident and committed the murder of Smt. Parmeshwari and when Sukhram and others intervened, they were also assaulted.

21. From the discussion made above, we find that it is fully established beyond any reasonable doubt that it were the appellants who caused injuries to the deceased Smt. Parmeshwari as well as to the four injured namely Sukhram P.W. 1, Ram Pal P.W. 2, Smt. Bhuri and Ram Kumar in the manner and at the time alleged by the prosecution.

22. Now it is to be found out for what offences the appellants could be held guilty, it was vehemently argued by the learned counsel for the appellants that the very fact that only simple injuries were caused to the injured witnesses and neither the gun was fired upon the deceased nor spears were pierced so as to cause any fatal injury, would indicate that there was no common intention of the accused persons

to commit the murder of Smt. Parmeshwari. It was submitted that had there been an intention to kill Smt. Parmeshwari, in natural course it was expected that the accused having firearm would have made use of the same instead of inflicting blows from its barrel. Similarly those who were holding spears would at least have caused some serious piercing injuries. It was also submitted that in the absence of clear cut evidence as to which of the four accused caused injuries Nos. 1 and 2 on Smt. Parmeshwari which proved fatal, all the accused cannot be held guilty for the offence of murder with the aid of Section 34 I.P.C. After examining the material on record, we find no merits in this submission of the learned counsel for the appellants.

23. The general principle of criminal liability is that it is the primary responsibility of the person who actually commits an offence and only that person who has committed the crime can be held guilty and punished in accordance with law. However, Section 34 of the Indian Penal Code is in the nature of an exception to this general rule, which lays down a principle of joint liability in the doing of a certain act and the essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. In the case of *Afrahim Seikh* ; AIR 1964 SC 1263 : (1964 All. LJ 437) the Supreme Court stated :

No doubt, a person is responsible ordinarily for what he does and Section 38 ensure that; but the law in Section 34 (and also Section 35) says that if the criminal act is the result of a common intention, then every person who did the criminal act with common intention would be responsible for the total offence irrespective of the share which he had in its preparation.

24. It is thus clear that Section 34 I.P.C. does not require proof that, any particular accused was himself responsible for the commission of the actual offence and it is not restricted to a case in which it may be difficult to distinguish between the acts of individual members of a party or to prove exactly what part was taken by each of them. The Section applies when a criminal act is done by several persons, in furtherance of common intention of all. In such a case, the other offenders are also vicariously liable in the same manner as the principal offender, as if the act were

done by such offenders also.

25. It is also well settled law that in invoking Section 34 against an accused prior concert or a pre-arranged plan has to be established but it is difficult to prove the intention of each and every individual and it has to be inferred from their act, conduct and other relevant circumstances but it is not necessary that any overt act must be done by that individual. The formation and nature of common intention is to be inferred from circumstances and no direct evidence is necessary for the same, keeping in mind that the inference is not to be based on surmises, conjectures or suspicion.

26. The Supreme Court in the case of Ram Tahal v. State of U.P. : (AIR 1972 SC 254) observed as under :

A common intention must be anterior in time to the commission of crime showing a pre-arranged plan and prior concert, and though, it is difficult in most cases to prove the intention of an individual, it has to be inferred from the act or conduct or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived on the scene of occurrence and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence for instance that all of them left to the scene of occurrence together and other acts which all or some may have done as would help in determining the common intention. In other words the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be connected.

27. Now coming to the facts of the present case, from the evidence brought on record the following facts have emerged out:-

1. that all the accused persons were related inter se. Accused Buddhu, Har Kishan and Natthu are real brothers while accused No.4 Chhotu is the son of accused Buddhu and all of them were closely related to Smt. Parneshwari, the sister of P.W. 1 Sukhram;

2. that they had a strong motive to eliminate Smt. Parmeshwari as the property inherited by her would have reverted back to the accused persons after her death under the law of succession, which she was not prepared to part with in favour of accused persons despite attempts made by them earlier,

3. that the accused had a fear or lurking suspicion that Smt. Parmeshwari may alienate her share to her brother or nephew and that suspicion gained strength from the fact that Smt. Parmeshwari started living with her brother Sukhram P. W. 1 in village Qadarabad for the last about two months before the present incident;

4. that about one month before the incident in question Buddhu, accused along with his brother-in-law Ram Lal came to the house of Sukhram and tried to persuade Smt. Parmeshwari to go back with him but on her refusal to do so she was threatened ;

5. that all the accused persons came together at mid night on the 'dera' of Sukhram, the brother of the deceased and at that time they all were armed with deadly weapons i.e. gun and spears ;

6. that the accused persons first caught hold of Smt. Parmeshwari and mounted attack on her in a calculated manner and when resistance was caused by Sukhram, his two sons and wife, who were also present in the same 'dera', they too were assaulted and then the accused persons dragged Smt. Parmeshwari to the field of Peer Bux and killed her there ;

7. that while assaulting the deceased and other witnesses the gun was used as a blunt weapon and assault was made by its barrel. It is also in evidence that the spears were used from both the ends i.e. the pointed one and the stick end and injuries both penetrating and of blunt weapon were caused to the deceased as well as injured persons;

8. that the number of injuries found on the deceased and the injured persons suggested that they were attacked in a concerted manner by more than one person;

9. that all the accused persons after causing injuries to the witnesses and killing the deceased, left scene of occurrence together;

28. From the aforesaid established facts and circumstances, no other inference is deducible than the one that murder of Smt. Parmeshwari was committed by the accused persons in furtherance of their common intention to cause her death. In the circumstances of the case, it was not necessary for the prosecution to prove it affirmatively as to what particular injury was caused by each accused. Therefore, in our opinion Section 34 of the Indian Penal Code is fully attracted to the facts of the present case and accordingly conviction of the appellants under Section 302 read with Section 34 I.P.C. is maintained.

29. For the reasons stated above, we find no force in this appeal and the same is dismissed.

30. The appellants are on bail. They shall be taken into custody forthwith to serve out the sentences awarded by the trial Court and as affirmed by this Court.

31. Copy of this judgment shall be sent to the Chief Judicial Magistrate concerned for immediate compliance.