

Devi Dutt and ors. Vs. State of Uttaranchal

Devi Dutt and ors. Vs. State of Uttaranchal

SooperKanoon Citation : sooperkanoon.com/514341

Court : Uttaranchal

Decided On : Sep-17-2005

Reported in : 2006CriLJ1748

Judge : J.C.S. Rawat, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 304, 323 and 506; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Cri. Appeal No. 743 of 2001

Appellant : Devi Dutt and ors.

Respondent : State of Uttaranchal

Advocate for Def. : A. Rab, AGA, a/b.,; Rajeev Mohan and; M.C. Joshi, Ad

Advocate for Pet/Ap. : B.S. Adhikari, Adv., a/b.,; S.C. Bhatt, Adv.

Disposition : Appeal dismissed

Judgement :

J.C.S. Rawat, J.

1. This criminal appeal arises out against the judgment and order dated 21-7-1984 passed by Additional Sessions Judge (Special Judge), Nainital in S. T. No. 180 of 1981 whereby the learned Additional Sessions Judge convicted and sentenced the

appellants to pay a fine of Rs. 1000/- under Section 323/34, IPC and in default of payment of fine each of the appellants to undergo R.I. for a period of three months. Appellant Shanti Ballabh was convicted and sentenced under Section 304, Part I, IPC to undergo R.I. for a period of 3 years and to pay a fine of Rs. 1000/- and in default of payment of fine to undergo six month R.I.

2. At the time of hearing of argument of the learned Counsel for the parties, the learned Counsel for the appellants submitted that appellant-Hari Nandan (in Appeal No. 743 of 2001) has died during the pendency of appeal. In this regard, a report was called for from the chief Judicial Magistrate, Udham Singh Nagar, who sent his report dated 4-6-2002 about the death of the above-named appellant. It reveals from the said report that the appellant-Hari Nandan has died during the pendency of appeal. Hence the appeal is dismissed as abated against Hari Nandan.

3. The prosecution case, in brief, is that on 5-5-1981 at 8 a.m. accused Devi Datt, Hari Nandan, Satish Chandra and Shati Ballabh came to the field of Ramesh Singh and started making 'Jhala' in his field. Ramesh Singh tried to stop them on which the accused started abusing him. At the same time, Nandan Singh, brother of Ramesh Singh and Smt. Dharma Devi, mother of Ramesh Singh went to the place of incident and they also protested to the accused. The accused also abused them. The appellant Shanti Ballabh was having 'Sambhal' and the other appellants were having 'Danda' in their hands. The appellants started beating Gopal Singh, Nandan Singh and Smt. Dharma Devi due to which they received injuries. On the alarm, witnesses Sher Singh and Bishan Singh arrived at the spot and intervened. The injured persons were taken to P.H.C. Khatima where Ramesh Singh was medically examined by Dr. L.D. Khatri on 5-5-1981 at 2:00 p. m. The following injuries were found on his person.

(1) Lacerated depressed wound size 10 cm x 1 cm x bone deep on the anterior half of the right side head in the antero-posterior direction with suspected fracture of the underneath bone. Injury was kept under observation and advised X-ray.

(2) Abrasion 0.5 cm x 0.5 cm on the left side forehead. The general condition of the injured Ramesh Singh was low and according to the opinion of the doctor

injury No. 1 had been caused by 'Sabbal' and injury No. 2 by some blunt weapon. He also opined that the parietal and frontal bones below injury No. 1 were fractured and were in pieces and the meninges were lacerated.

4. The injuries of Smt. Dharma Devi PW-2 were also examined on the same day at 1:40 p.m. and the doctor found the following injuries on her person:

(1) Lacerated wound 1.5 cm x 0.5 cm x bone deep on the right side forehead about 3.5 cm above the right upper eyelid.

(2) Complaints of pain on both side lower part of the chest.

The injuries were fresh in duration and according to the opinion of the doctor could be caused by 'Sabbal'.

5. On the same day Dr. Khatri medically examined Nandan Singh PW-5 at 1.30 p.m. and found the following injuries on his person:

(1) A traumatic swelling of the size of about 10 cm x 8 cm on the left knee joint front posterior aspect with the contusion 5 cm x 2.5 cm in the middle of the swelling. Kept under observation, X-ray was advised.

(2) Contusion 6 cm x 2.5 cm on the back of the right upper part of the chest.

(3) Abrasion 0.5 cm x 0.5 cm on the upper lateral aspect of right thigh.

(4) Contusion 8 cm x 2.5 cm on the lower back of the left side of chest.

All the injuries were simple in nature and had been caused by some blunt weapon. The doctor prepared the injury reports Ex. Ka-16 to Ka-18 respectively.

6. Gopal Singh submitted a written report (Ex. Ka-1) at P.S. Khatima on 5-5-1981 on the basis of which FIR (Ex. Ka-11) was prepared and a case was registered vide G. D. entry Ka-12.

7. On 6-5-1981 Ramesh Singh died in the hospital and S.I. Vikram Singh on receipt of intimation from P.H.C. Khatima went to the hospital and conducted inquest and prepared necessary papers which are marked Ex. Ka-5 to Ka-10.

8. Dr. B.P. Agrawal, Medical Officer, Civil Hospital, Pilibhit PW-8 conducted the postmortem on the dead body of the deceased on 6-5-1981 at 2.00 PM. The following ante-mortem injuries were found on his person:

(1) Stitched wound 12 cm x 0.5 cm x bone deep on the right side of head 5 cm above right eyebrow and 11 cm above and in front of the right ear. On exploration right frontal and both parietal bones had commuted fractured. The meninges underneath the fractured bone were torn and lacerated and haematoma of about 450 cc found underneath the injury.

(2) Abscess 3 cm x 2 cm lower border of mandible in the middle.

(3) Abscess 6 cm x 3.5 cm above inner aspect of right ankle joint.

The cause of death was due to shock and haemorrhage as a result of ante-mortem injury No. 1. He prepared post-mortem report (Ex. Ka-15).

9. The investigation of the case was taken up by S.I. Siya Ram Verma. He visited the place of occurrence where he prepared site plan (Ex. Ka-3). He took into possession one 'Sabbal' (Ex.-I) and prepared its memo (Ex. Ka-2).

10. Charge was framed against the accused under Section 323/34, IPC and 304, Part-I, IPC to which the appellants denied and claimed trial.

11. The prosecution in support of its case examined PW-1 Gopal Singh complainant, Smt. Dharma Devi PW-2 injured, Bejendra Pal Sharma PW-3 is a formal witness, Bishan Singh PW-4 eye-witness, Nandan Singh PW-5 injured, PW-6 S.I. Siya Ram Verma I. O., Head Constable PW-7, PW-8 Dr. V. P. Agrawal and PW-9 Dr, L. D. Khatri are the formal witnesses.

12. After the evidence of the prosecution was over, the statement of the accused/ appellants were recorded under Section 313 of the Criminal Procedure Code. The defence has taken a case that on the date of incident Devi Dutt was repairing his Gaushala situated towards north of his house, The complainant party came to his place and started damaging his Gaushala as a result of this some scuffle took place between them and appellant Devi Datt. When these people were damaging

the Gaushala, a balli fell from the roof on the head of Ramesh Singh. He had stated that he had lodged the report of incident on 5-5-1981 at about 10:45 a.m. against accused Ramesh Singh and Nandan Singh under Sections 323, 304 and 506, I.P.C. That report is Ex. Kha. 1 on record. The accused person did not adduce any evidence in their defence.

13. The learned trial Court, after hearing learned Counsel for the parties and having perused the entire evidence on record was pleased to convict the accused under Section 323/34, IPC and 304, Part-I, IPC vide judgment and order dated 21-7-1984.

14. Feeling aggrieved by the aforesaid impugned judgment and order dated 21-7-1984, the appellants preferred appeal before the Hon'ble Allahabad High Court, which has been transferred to this Court, for disposal, after creation of Uttaranchal State.

15. Heard Sri P.S. Adhikari, Sr. Advocate assisted by Mr. S.C. Bhatt, learned Counsel for the appellants & Shri A. Rab, Additional G.A. & Sri Rajeev Mohan, Brief Holder for the State and perused the record.

16. At the outset, it needs to be mentioned that it is not disputed that the deceased Ramesh Singh met an homicidal death on account of injuries sustained by him on the date of the occurrence. It is not disputed that the injured Dharma Devi PW-2 and Nandan Singh PW-5 sustained injuries on the date of the occurrence. The evidence of Gopal Singh PW-1, Dharma Devi PW-2, Nandan Singh PW-5 and Bishan Singh PW-4 are as eye-witnesses of the incident. They have categorically stated that the deceased, Ramesh Singh, Dharma Devi and Nandan Singh sustained the injuries on the date of the occurrence. The medical Officer Dr. L. D. Khatri PW-9 had opined that the injury No. 1 caused on Ramesh Singh, had been caused by Sabbal (hard blunt object made by iron) and the doctor also examined Dharma Devi and Nandan Singh and opined that their injuries were simple in nature and these injuries have been caused by some blunt object such as, lathi. All the injuries except injury No. 1 which was kept under observation were simple. Dr. V. P. Agrawal PW-8 conducted the post-mortem on the body of the deceased on 6-5-1981 at about 2:00 p.m. According to the Dr. V. P. Agrawal PW-8, the

death of the deceased had been caused due to shock and haemorrhage as a result of the ante-mortem injury No. 1. Dr. L.D. Khatri PW-9 has further opined that the injuries were fresh in nature and these injuries can be sustained by the injured as well as by the deceased on 5-5-1981 at about 8:00 a.m.

17. Now I have to consider whether the appellants were the authors of the injuries sustained by Ramesh Singh, Dharma Devi and Nandan Singh. To prove this fact, the prosecution has adduced the evidence of Dharma Devi PW-2 and Nandan Singh PW- 5 who were injured in the said incident. Gopal Singh PW-1 and Bishan Singh PW-4 were also present at the time of the incident. According to the prosecution witnesses on 5-5-1981 Ramesh Singh along with Bishan Singh, Sher Singh, Nandan Singh and Dharma Devi were sitting at their house. The appellants Hari Nandan (now died), Devi Datt, Satish Chandra and Shanti Ballabh came to the field of Ramesh Singh at about 8:00 a.m. and they started making 'Jhala' on his land. When Ramesh Singh saw the appellants to construct the Jhala on his land he tried to stop them on which the appellants hurled abuses upon him. At the same time, Nandan Singh, brother of Ramesh Singh and Dharma Devi, their mother reached at the place of the incident. They also prevented them to construct the said Jhala. The appellants also started hurling abuses to Dharma Devi and Nandan Singh. The appellant-Shanti Ballabh had a Sabbal on his hand and Satish Chandra, Devi Dutt and Hari Nandan Singh were armed with lathies. They started beating Ramesh Singh deceased, Nandan Singh and Dharma Devi with lathies whereas Shanti Ballabh-appellant had a Sabbal and he struck blow by Sabbal to Ramesh Singh. When Dharma Devi, mother of Ramesh Singh tried to save Ramesh Singh, she was also struck by the Sabbal. Ramesh Singh and Dharma Devi fell on the ground. Sher Singh and Bishan Singh who were present at the house of Ramesh Singh came immediately at the spot and they also intervened in the incident. The appellants fled away from the place of occurrence leaving the Sabbal at the spot. Immediately thereafter the injured were brought to their houses and they were taken to the hospital Khatima where all the persons were medically examined. Thereafter the report was lodged by Gopal Singh PW-1 at the police station Ex. Ka-1. Gopal Singh PW-1 and Bishan Singh PW-4 have further corroborated each other on the material details regarding time and place and the manner of incident.

18. Ramesh Singh died on the next day. Thereafter, the body was taken for the postmortem and communication was sent by the Hospital to the Police Station for the postmortem on the deceased.

19. Dharma Devi and Nandan Singh were produced before the Court and they had sustained injuries on their persons on the place of the occurrence at the time of the incident cannot be disputed. Bishan Singh PW-4 and Gopal Singh PW 1 are the independent witnesses of the incident. Both the independent witnesses were present at the time of the occurrence. All the prosecution witnesses had stated that they were present on the house of Ramesh Singh with other persons. Gopal Singh PW-1 is the resident of the same locality. He has stated that his house is nearby the house of the deceased Ramesh Singh. He had further stated that he had been sitting with Ramesh Singh along with other persons at his house before the incident when the incident took place.

20. Bishan Singh PW-4 who is the resident of other village had come to the deceased house to take paddy seeds on the same day. He came early in the morning in his village. According to the prosecution case, his village is 2 kms. from the place of occurrence. He had corroborated the evidence of other eye-witnesses. The learned Counsel for the appellants have suggested that his house is about 4 kms. from the place of incident. This suggestion has been categorically denied by Bishan Singh.

21. Learned Counsel for the appellants contended that the prosecution had failed to prove the place of occurrence as has been stated in the site plan. They have further contended that Gopal Singh PW-1 had not written the plot number of the field or its boundaries where the incident took place and Nandan Singh PW-5 in his deposition stated that the field where the incident took place was field No. 409 and its area was about 10-1/2 bighas. He had also indicated the boundaries of the field. According to the site plan Ex. Ka-3, which was prepared on the next day of the incident, the place of occurrence had been shown at place A. It is on the southern side of the house of the deceased and is in northern side from the houses of the appellants. I have gone through the entire evidence on record. The evidence of prosecution clearly indicates that the incident took place in the field

lying towards South of the field of Ramesh Singh and lying towards the North of the houses of the appellants. The Investigating Officer has not mentioned in the site plan who were the owners of the land. Nandan Singh PW-5 had stated that the appellants had claimed the said field as their own and the deceased-Ramesh Singh refuted their claim. This clearly shows that there is a dispute between the parties with regard to the possession of the said field. All the witnesses had stated in their evidence that the place of occurrence is the field of Ramesh Singh which is adjacent to the houses of the appellants which fall towards the northern side of their houses. Learned Counsel for the appellants further contended that Nandan Singh PW-5 has categorically stated that the incident took place in the field No. 409 measuring 101/2 bighas. The learned Counsel for the appellants further contended that they were in possession of the field and they filed the extract of Khatauni Ex. Kha. 4 in support of their contention. The learned Addl. G. A. refuted the contention. Perusal of the said Ex. Kha. 4 clearly reveals that the land was not in the name of the appellants on the date of the incident. This document shows that the name of the Khatedar had been shown as Babu Ram. Learned Counsel for the appellants tried to take the benefit of the mere column in which the possession of the appellant-Devi Dutt had been recorded. This entry does not support the contention of the defence. The said entry was made in the year 1984 whereas the incident took place in the year 1981. This entry merely shows that the possession of Devi Dutt was recorded after about more than 3 years from the date of incident. The prosecution evidence clearly states that the complainant party is in possession over the land for 10-15 years. They have stated that they had purchased the land.

22. The learned Counsel for the appellants further contended that Gopal Singh PW-1 had stated in his F.I.R. that the said field belongs to Gopal Singh. Learned Counsel for the appellants contended that the written report clearly reveals that the field in which the incident took place pertains to Gopal Singh. It had been mentioned in the report that the accused forcibly started making Jhala in the field of Gopal Singh PW-1. Gopal Singh and his brother protested on which the appellants caused the injuries to the deceased. The prosecution case is that it was Ramesh Singh's field on which the accused wanted to make Jhala and it was Ramesh Singh and Nandan Singh who had protested to the appellants.

Admittedly, Gopal Singh PW-1 is an illiterate villager, he got report typed from a petition writer and the application had been written in the professional terms. He was only concerned that the genesis of the incident should be placed on the record and he had submitted the report to the police station. When he came to this fact, he clearly stated in his evidence that the field belongs to the deceased Ramesh Singh. It is in the evidence because the said field belongs to Ramesh Singh. When such an incident took place, the normal errors of observations, the normal errors of memory are due to mental disposition as a shock and horror at the time of the occurrence occurs. The Court has only to see whether the incident took place at the place where it is stated in the evidence or in the F.I.R. or not. Perusal of the record reveals that the word Prarthi had been written due to mistake and the evidence of Gopal Singh PW-1 is consistent and cogent on this point and he had properly explained in his evidence and nothing could be elicited in the cross-examination on this point.

23. Thus I am of the view that the prosecution had established that the incident took place in the field adjacent to the house of the appellants and that belongs to Ramesh Singh.

24. Learned Counsel for the appellants contended that Bishan Singh is a chance witness and he is resident of village Duri which is about 4 kms. from the place of incident. His presence is doubtful at the place of incident. The learned Addl. G. A. refuted the contention. Bishan Singh PW-4 had categorically stated that he came in the house of Ramesh Singh in the morning and his purpose to come to his house was to take paddy seeds from him. It is well settled principle of law that the evidence of chance witnesses cannot be discarded on the ground that he is not a resident of the same village. His evidence can only be scrutinized carefully. In this case, the evidence of Bishan Singh PW-4 is credible and cogent. Nothing can be elicited from his cross-examination. His deposition is natural and his presence at the spot is also explained by the prosecution. The prosecution had come straightforward that he belongs to another village and the distance of the village is about 2 kms. There is nothing in his cross-examination to disbelieve his testimony. Even if the testimony of Bishan Singh is not taken into account, there is sufficient evidence on record to convict the appellants. The evidence of Dharma Devi PW-2

and Bejendra Pal Sharma PW-3 are credible and cogent and nothing could be elicited from their evidence as such their evidence is reliable and convincing.

25. Learned Counsel for the appellants further contended that the incident took place at about 8:00 a.m. in the morning and it is also in the evidence that so many persons came at the spot. Learned Counsel for the appellants further contended that there are number of houses situated near the place of occurrence and the prosecution could have adduced the evidence of other witnesses of the locality. Learned Addl. G.A. refuted the contention. It is pertinent to mention here that Gopal Singh PW-1 was produced as an eyewitness of the locality and Bishan Singh PW-4 was also produced as an eye-witness of the incident. It is not in the evidence that other persons reached at the place of incident. It is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. It is the evidence available on record is otherwise satisfactory in nature and can be said to be trustworthy and increase in the nature of witnesses cannot be turned up as the requirement of the case. The witnesses if they are participating in that event their evidence cannot be thrown out rightly on the ground that the other locality witnesses have not been produced. The Courts have to more carefully examine the evidence of interested witnesses. If the witnesses are trustworthy then it is not required that there should be a multiplicity of evidence. I am fortified with the view taken by the Apex Court in the following decisions:

It has been held in *Komal v. State of U.P.* MANU/SC/0701/2002 : AIR 2002 SC3057 as under (Para 10): Learned Counsel next contended that though, according to the statements of witnesses, some villagers had arrived at the place of occurrence when the members of the prosecution party were being assaulted and they intervened in the matter, none of them has been examined in the case on hand. In our view, non-examination of these witnesses by itself would not affect the veracity of the prosecution case when the evidence of PWs-2 and 4, the two injured eyewitnesses who had received multiple injuries, has been found to be trustworthy and their evidence is corroborated by the informant PW-5 and supported by medical evidence as well as objective finding to the Investigating

Officer.

26. It has been further held in Babu Ram v. State of U. P. 2002 SCC (Cri) 1400 : 2002 Cri LJ 3745 as under (Para 10):

It was submitted by the learned Counsel for the appellants that Ram Autar, an independent eye-witness present at the scene of occurrence according to the prosecution case and a Government: servant has not been examined, and therefore, an adverse inference should be drawn against the prosecution. It is settled law that non-examination of an eye-witness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of the pen. An effort should be made at appreciating the worth of such evidence as has been adduced. If the evidence coming from the mouth of the eye-witnesses examined in the case is found to be trustworthy and worth being relied on so as to form a safe basis for recording a finding of guilt of the accused persons then non-examination of yet another witness who would have merely repeated the same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case. In the case at hand we additionally find from the testimony of Ashrafi Lal that in spite of being a Government servant and not involved in local village disputes he is afraid of deposing against the accused persons and there is substance in the submission of the learned Counsel for the State that Ram Autar if tendered in the witness box would have followed the same track as was chosen by Ashrafi Lal P. W. 3.

27. In view of the above discussion, I am of the view that the contention of the learned Counsel for the appellants, carries no weight.

28. Learned Counsel for the appellants further contended that there are certain discrepancies in the evidence of the prosecution and as such, the evidence cannot be relied upon. It was pointed out that some of the witnesses had stated that Ramesh Singh became unconscious at the spot and he never regained his conscious whereas the doctor had stated that he was not unconscious. The learned Counsel for the appellants also pointed out certain discrepancies in the proposition of the witnesses. I have gone through the entire discrepancies pointed out by the learned Counsel for the appellants. Normal discrepancies are bound to

creep in the testimony of natural and reliable witnesses. The normal discrepancies in evidence are those which are due to normal errors of observations or normal error of memory due to Lapse of time. It is also in the evidence of Siya Ram Verma PW-7 that when the deceased-Ramesh Singh was brought to the hospital his condition was very low and poor. If his condition was low and very poor, the illiterate person can presume that he is in an unconscious position. The observation differs from person to person and what one may notice another may not. An object or moment might emboss its image on one person's mind whereas it might go unnoticed on the part of another. By and large the people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder. The witness cannot be expected to pose a photographic memory and to recall the details of an incident. Ordinarily it so happens that witness is overtaken by the events, the witness could not have anticipated the occurrence, which so often has an element of surprise. Ordinarily a witness cannot be expected to recall accurately the sequences of events, which took place in a rapid succession or in a short time of span. A witness is likely to get confused or mixed up when interrogated, later on. The witnesses are illiterate and belong to the villages. Some times (sic) the witness may not stand the test of prosecution which may be sometimes, because he is a bucolic witness and is not able to understand the question put to him by the skillful cross-examiner and at times under the stress of cross-examination, certain answers are Snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored. The Courts have to remove chaff from the grains. It has to disperse the suspicious cloud and dust out of the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. It is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the Court within permissible limits to find out the truth. It means on the one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot-free. Now the maxim 'let hundred guilty persons be acquitted, but not a single innocent be convicted' is,

in practice, changing the world over and Courts have been compelled to accept that 'society suffers by wrong convictions and it equally suffers by wrong acquittals.' See Krishna Mochi v. State of Bihar 2002 SCC (Cri) P/1220 : 2002 Cri LJ 2645. The contradiction which has been pointed out to me are not such as affects the genesis of the incident and the discrepancies are as such which are bound to creep in the testimony of the truthful witnesses. I do not find any weight in the contention of the learned Counsel for the appellants,

29. Learned Counsel for the appellants, further contended that the medical evidence does not corroborate with the ocular account given by the prosecution. He has pointed out accordingly to Gopal Singh PW-1, the marpeet took place about 2-3 minutes. It was further pointed out that if the four accused would cause injuries upon the injured by lathies and Sabbal for a period of 2-3 minutes, the number of the injuries would not be limited to the extent what had been shown in the medical certificates. It was pointed out that the deceased had sustained the lacerated wound and further pointed out that the lacerated wound could not be caused by the Sabbal. It was further pointed out that the injuries which has been shown in post-mortem report and the medical certificates did not tally with each other. Learned Addl. G.A. refuted the contention. The deceased had sustained the lacerated wound. The doctor had opined that the said wound was caused by a hard blunt object. It was further pointed out by the doctor during his evidence that the injuries could have been caused by the Sabbal. Sabbal is a blunt hard object made of iron. It is a heavy blunt object. If heavy blunt object is caused on the body, definitely, lacerated wound would be sustained by the deceased. Injury report of Smt. Dharma Devi Ex-Ka-17 shows that she had lacerated injuries and she also complained of pain on both sides of the lower parts of the chest. The possibility of her getting lathi blow cannot be ruled out. Nandan Singh PW-5 sustained 4 injuries and all these injuries were simple in nature and had been caused by some blunt weapon such as lathi. This incident took place in a short time of 2-3 minutes.

30. Gopal Singh PW-1 stated in his evidence that the marpeet took place about 2-3 minutes and each of the accused given 2-3 blows to the injured. Thus, the injuries received by the injured are just and proper and it does not belie the ocular testimony of the prosecution. It was further pointed out that according to the post-

mortem report, right frontal and both parietal bones had commuted fracture. It was pointed out that these injuries are not possible by a single blow of the Sabbal. Learned Add). G.A. refuted the contention. The medical evidence clearly reveals that these injuries are possible by Sabbal. As such, the contention has no force.

31. It was further pointed out that the blood-stained clothes of deceased Ramesh Chandra were taken in possession by the Investigating Officer and he did not send the same clothes to the chemical examiner. This only indicates the remissness on the part of the Investigating Officer. However, in this case there is no dispute that the death was caused due to antemortem injuries found on the person of the deceased. It is not disputed that it is not a homicidal death. In this case the ocular testimony of the prosecution witnesses are clear and cogent as such even it found defect in the investigation it pales insignificance when ocular testimony is found credible and cogent. It would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective.

32. In *Dhanaj Singh alias Shera and Ors. v. State of Punjab* MANU/SC/0203/2004 : 2004 CriLJ1807 , it was observed by the Hon'ble Supreme Court that in the instant case, the High Court found several disturbing features which indicated how the Investigating Officer had made out a new case to save the accused persons and to implicate the complainant party. Hence, the High Court analyzed the evidence of the eye-witnesses with due care and caution. On finding the said evidence to be credible, the High Court upheld the conviction recorded by the trial Court. Before the Hon'ble Supreme Court, the accuded appellants challenged the conviction on the grounds (1) that the police after thorough investigation had concluded that it was the complainant party which caused the death of the deceased, (ii) that the pellets, wads and cartridges were not recovered from the spot, (iii) that the weapons of assault and the pellets were not sent for ballistic examination, (iv) that the blood-stained earth was not sent for chemical examination, (v) that many persons who could have thrown light on the incident had not been examined, and (vi) that the evidence being that of highly interested and inimical persons, should have been discarded. Dismissing the appeal, it was held by the Apex Court that even if the investigation is defective, that pales into

insignificance when ocular testimony is found credible and cogent, In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. To do so would tantamount to playing into the hands of the Investigating Officer if the investigation designedly defective.

33. It has been held in *Chhotu v. State of Maharashtra* 1997 Cri. L. J. 4394 (SC) (Para 8):

That necessarily means that all of them were the most natural and probable witnesses to an incident that then took place near his house, notwithstanding the fact that they were not residents of that locality. It, also requires to be mentioned here that if the Investigating Officer failed to seize the bloodstained clothes of PWs-3 and 8 and to promptly examine PW-3, whose names as any eye-witness was disclosed immediately after the incident, it only indicates remiss-ness on his part but the evidence of PWs-3 and 8 was not in any way impaired thereby.

34. The Apex Court has, while maintaining the conviction of the appellant in *Karnel Singh v. State of M. P.* 1995 Cri LJ 4173, observed (Para 5):

Notwithstanding our unhappiness regarding the nature of investigation, have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In case of defective investigation the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. Any Investigating Officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure memo in regard to the Chaddi. That is the reason why we have said the investigation was slipshod and defective.

35. It was further pointed out that the prosecution had stated blood was oozing from the injuries of the deceased. It was further pointed out that the Investigating Officer had not collected such blood from the spot. It was contended that the accused is entitled to be acquitted on this ground alone. The Investigating Officer

PW-6 had stated in his cross-examination that:

Vernacular text omitted....Ed.)

36. The above statement during the cross examination clearly explains as to how the blood could not be collected from the spot.

37. Learned Counsel for the appellants has suggested to Gopal Singh PW-1 and Dharma Devi PW-2 that the bullock cart in which Ramesh Singh, deceased, injured and other persons were travelling after the incident was involved in an accident as a result Ramesh Singh received the injuries on his head and ultimately he died on account of injuries. Smt. Dharma Devi PW-2 had stated in her cross-examination that bullock cart in which she was travelling with the other persons met an accident with the truck. She had categorically denied the fact that after the incident they had fallen down from the cart and Ramesh Singh was injured in that accident. Dr. L.D. Khatri PW-9 had stated that injury No. 1 of the injured Ramesh Singh could not be caused by the danda of the bullock cart. Dr. V.P. Agrawal PW-8 had stated if a person would fall from the bullock cart then such injuries may be caused to the deceased. The deceased did not fall from the bullock cart. As such, no such injuries can be caused. Apart from this, the defence has not specifically taken this case in the statement recorded under Section 313, Cr. P.C. The defence has taken a case that on the date of incident Devi Dutt was repairing his Gaushala situated towards north of his house. The complainant party came to his place and started damaging his Gaushala as a result of this some scuffle took place between them and appellant-Devi Dutt. When these people were damaging the Gaushala, a balli fell from the roof on the head of Ramesh Singh. He had stated that he had lodged the report of incident on 5-5-1981 at about 10:45 a.m. against accused (sic) Ramesh Singh and Nandan Singh under Section 323, 304 and 506, I. P. C. That report is Ex. Kha. 1 on record. The learned Sessions Judge while discarding the defence version had rightly held that it is generally seen in the villages, the chapper roof of Gaushalas is not very high and if a person stands underneath, the highest point would be only about two feet above his head. Fall of a balli from this height cannot result in such an injury as was caused to Ramesh Singh. Learned Sessions Judge further held that the defence had taken that

scuffle took place as seven persons who came at the spot and there was no abrasion on the person of Devi Dutt. It clearly shows that the version of incident as narrated by the defence is not correct. Thus the defence taken by the appellants is not convincing and deserves to be discarded. The defence had taken a specific plea that the incident took place at the same place. The appellant Devi Datt had lodged the report of the incident on 5-5-1981 and the place of the incident has been shown the same place which has been shown by the prosecution. There was a cross-version of the incident. I specifically enquired from the learned Counsel for the appellants, Sri. P.S. Adhikari Sr. Advocate as to whether there is any prosecution pending before any Court in pursuance of that F.I.R. The learned Counsel replied that no complaint was filed before the Court and no case proceeded on such F.I.R. If the defence version were correct, he would have come forward with a criminal prosecution before the Court.

38. In view of the above discussion, I am of the view that the prosecution has established the guilt beyond any reasonable doubt against the appellants. I find that the learned trial Court has rightly convicted and sentenced the appellants and there is no infirmity in the judgment passed by the trial Court. Hence, the appeal is dismissed and the conviction and sentence awarded by the trial Court are confirmed.

39. Let the copy of the judgment along with record of the case be immediately sent back to the Court concerned for needful compliance under intimation to this Court within four months positively.