

**Om Parkash Vs. State**

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**Court :** Delhi

**Decided On :** Apr-11-1979

**Reported in :** ILR1979Delhi735

**Judge :** Prithvi Raj and; O.N. Vohra, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 174

**Appeal No. :** Criminal Appeal No. 393 of 1977

**Appellant :** Om Parkash

**Respondent :** State

**Advocate for Pet/Ap. :** P.P. Grover,; Charanjit Singh and; P.P. Malhotra, Advs

**Judgement :**

**Prithvi Raj, J.**

(1) This appeal is filed against the judgment dated 23rd September, 1977, passed by Shri Joginder Nath, Additional Sessions Judge, Delhi, whereby the appellant, Om Parkash, was found guilty under section 302, Indian Penal Code, for intentionally causing the death of Kesho Ram. He was also found guilty under section 324, Indian Penal Code, for having caused injuries with a sharp edged weapon on the persons of Smt. Chameli and Kanhaya Lal. The trial Court after

affording opportunity of being heard to the appellant, by its order dated 27th September, 1977, sentenced him to life imprisonment under section 302, and also sentenced him to rigorous imprisonment for one year under section 324, Indian Penal Code. The sentences were, however, ordered to run concurrently.

(2) The appellant challenges the correctness of his conviction and sentence imposed upon him, both on facts and in law.

(3) The prosecution case as revealed by Kanhaya Lal (Public Witness 1) is as under: Eighteen months prior to the recording of his statement in Court on 15th February, 1977, he was residing at 60-A, Mata Sundri Road, D.D.A. Colony, Delhi. His wife, Chameli and his son Kesho Ram, were also residing with him. Prior to taking up the residence on Mata Sundri Road, he was residing in Ganjmir, Sis Mahal. The appellant was residing in his neighborhood in Ganjmir. A quarrel had taken place between him and the appellant while they were residing at Ganjmir but the same was settled on the intervention of the Panchayat members. When he shifted to D.D.A. Colony, the appellant also had come to reside there near his quarter.

(4) On 3rd August 1975, at about 2 or 2.15 p.m. he was present in house sitting on a cot. The appellant came there and took out a Rampi and proclaimed that he would kill him with it. Thereafter, the appellant inflicted Rampi blows on his left foot, left knee and left shoulder at the back side. He raised an alarm, on hearing which his wife, Chameli, and his son, Kesho Ram, came out of the house to save him. The appellant inflicted Rampi blows on the chest of his son, Kesho Ram. Another Rampi blow was given by the appellant on the foot of Kesho Ram. With the same Rampi the appellant inflicted an injury on the back of his wife, Chameli. Chameli was injured when she was trying to lift their son, Kesho Ram. Kanhaya Lal found a Danda lying at the spot. He picked up the same and inflicted two or three blows with it on the head of the appellant. Kesho Ram became unconscious. At the time of occurrence, he stated, Daulat Ram, Hari Ram and Devi Ram were also present. Other persons also had come at the spot. Hari Ram took Kesho Ram in a scooter to the hospital while he and his wife, Chameli, went to the hospital on foot. Devi Ram and Daulat Ram caught hold of the appellant. At the time when the

appellant was caught hold of by these persons, he stated, the Rampi had fallen down on the ground. On being shown Rampi, Exhibit P/1, in the Court, the witness stated that it was the same Rampi with which injuries were caused by the appellant. He stated that his Bunyan, Exhibit P/2, which was stained with blood, was taken by the police into possession vide memorandum Exhibit Public Witness 1/B. The witness admitted that his statement was recorded by the police in the hospital which is Exhibit P.W. 1 /A. He remained in the hospital for two days and his wife Chameli, remained there for 2/3 days.

(5) Statement of Kanhaya La'1 (Public Witness 1) has been duly supported by other eye-witness, namely, Daulat Ram (Public Witness 2) Devi Singh (Public Witness 11) Mangal Ram (Public Witness 13) and Chameli.

(6) All these witnesses have corroborated the testimony of Kanhaya Lal in material details. Daulat Ram and Devi Singh witnesses had caught hold of the appellant while he was holding Rampi in his hand. The appellant was handed over to the flying squad of police who came to the spot after 5 or 6 minutes the injured, Kesho Ram, had been removed in the three wheeler scooter to the hospital.

(7) Mangal Ram (Public Witness 13) is the resident of quarter No. 65-A in the vicinity of the quarter of Kanhaya Lal while Daulat Ram (Public Witness 2) was sitting in the house of his brother's quarter No. 59 with his children. Both of them came out of their houses on hearing the noise 'Mar Dia, Mar Dia, and saw the occurrence as detailed by Kanhaya Lal which they had supported in meticulous details in their testimony. Devi Singh (PW 11) at the time of occurrence was standing near quarter No. 10-A when his attention was drawn by the cries of Kanhaya Lal 'Mar Dia', Mar Dia. The veracity of his statement had not been challenged in cross-examination. His house is at the back of the house of Kanhaya Lal. His presence at the spot was natural. He had fully corroborated the testimony of Kanhaya Lal.

(8) The witnesses are natural witnesses and their presence at the spot cannot be doubted. They have given a vivid description of the version. Despite lengthy cross-examination directed on them, the substratum of the prosecution version given by them remains unaffected. No exception can be taken to the presence of Smt.

Chameli (Public Witness 16) at her house at the time of occurrence. Naturally on the hearing of the noise she would rush out to rescue her husband. She had given a graphic description of the occurrence which is free from any embellishment. Her version is cogent, consistent and natural, inspiring confidence. In her statement we find the motive for the attack. According to her on the day of occurrence at about 9 or 9.30 a.m. her husband was sitting outside the house on the ground. She was also there at a little distance. Her husband and got himself sterilized. The appellant came there and taunted her husband that he had become impotent on getting himself sterilized. There was exchange of hot words between them. The appellant left the place after giving a threat to her husband. This part of her statement goes unchallenged in cross-examination and thus stands accepted by the appellant.

(9) Kesho Ram having been brought in the hospital in an injured condition was examined at 2.40 p.m. by Dr. K. S. Chadha (Public Witness 18) who was working as Casualty Medical Officer in the Irwin Hospital, Delhi. On examining him the doctor found the following injuries on his person :

1. An incised wound over the front of the right chest one inch below the cleical bone, 1 1/2' long (in first intercostal space). There was no surgical emphysema present round the wound. 2. A wound 4' X 3' oval in shape present on the lateral aspect of knee joint and ligaments of knee joints were exposed. According to the doctor the patient was brought in the state of shock and he was gasping for breath. He was cold and calm and his pulse rate was 130 per minute. The doctor advised for his admission in the resuscitation ward for detailed examination. He proved a copy of his report. Exhibit Public Witness 18/A, which he stated was signed by him and was correct.

(10) Kesho Ram succumbed to his injuries in the hospital.

(11) POST-MORTEM examination on the body of deceased was performed by Dr. Bishnu Kumar (Public Witness 12) on 4th August, 1975, to whom the body was brought by constables Rajpati and Parbhat Singh of Police Station Darya Ganj. The dead body was identified by Risal Singh and Kiran. On external examination of the body the following injuries were found by the doctor :

'(1)Cut open drip wound unstitched 1.8 c.m. on right leg in lower and inner parts. (2) Incised wound 7.4 X 3.5 c.m. and 1 c.m. deep up to bone on the outer lower part of the left knee joint region, transverse and exposing tendons and muscles. (3) Abrasion 1x 0.3 c.m. on the back and outer side of left elbow. (4) Scratch 1.5 X 0.8 c.m. as if caused by a semi-shrap object, transverse on the left outer surface of chest over 5th rib in anterior axillary line with a pin-head size scratch just below it. (5) Linear scratch 4 c.m. as if caused by a pointed object with interruptions at places, oblique, on the left side of chest in anterior axillary line over 6th and 7th rib region. (6) incise punctured wound 3 X 1.5 c.m. transverse on the right side front of chest, para eternal, over second rib and second intercostal space, inner angle being very acute. It was going in the chest cavity directed downwards and backward. Blood on pressure oozed out of the wound. No surgical emphysema was present'.

According to the doctor, internal examination revealed that injury No. 6 entered the chest cavity after cutting the second rib obliquely and the second intercostal space. It then entered the upper lobe of right lung passing through and through the upper lobe and coming out near inter lobar fissure on the back. Entry wound in the lung was 2 c.m. and exit wound 3.4 c.m. The total path in lung tissues in collapsed state was 6.5 c.m. Direction of injury No. 6, according to the doctor, was downward and backward and its total depth from skin was approximately 10 c.m. Right pleural cavity contained clotted and liquid blood approximately 2 1/2 to 3 litres. In the opinion of the doctor the death was due to hemothorax as a result of excessive bleeding from right lung stab wound via injury No. 6. All the injuries were ante-mortem and recent. Injury No. 3, the doctor stated was caused by some blunt object or surface while rest by some sharp edged penetrating weapon. The doctor further stated that injury No. 6 was sufficient to cause death in the ordinary course of nature.

(12) Rampi, Exhibit P/1, was sent to the doctor in a sealed packet for his examination and his opinion. The sealed packet was opened in the presence of the doctor and the Rampi was taken out from it. In his opinion injuries No. 2, 4, 5 and 6 could be caused by the said Rampi. After examination he sealed the Rampi by his personal seal bearing the letters 'BK' and handed it over to the constable

together with the original post-mortem report. He proved his report, Exhibit Public Witness 12/A, stating that it was in his hand and bore his signatures, and was correct.

(13) The doctor further stated that on 1st October, 1975, upon the application of the Additional Station House Officer Darya Ganj, a sealed packet containing clothes bearing seals of C. F. S. L. was received by him and opened in his presence. Clothes, Shirt, Exhibit P/3, and Pyjama, Exhibit P/4, were taken out of that parcel. The shirt on examination by him was found to be torn on both sides on the front with buttons missing and button holes enlarged. It also showed one angular cut on left side corresponding to injury No. 5. No cut corresponding to injury No. 6 was present on it. Square cuts made by C. F. S. L. were present at two places. The shirt, the doctor stated, was stained with blood at several places. Pyjama, Exhibit P/4, the doctor stated, showed a cut corresponding to injury No. 2, a long transverse gap looked to be a tear on the right side back in lower buttock region and 4 square cuts made by C. F. S. L. at different places were present. After examining the clothes the doctor sealed them in a parcel with his personal seal bearing the letters 'BK' and handed over the same to the Additional Station House Officer Darya Ganj. He proved the report, Exhibit P. W. 12/B, regarding this examination stating that the same was signed by him and was correct.

(14) Doctor Jasbir Singh (Public Witness 14) on 3rd August, 1975, was posted as Assistant Medical Casualty Officer, Irwin Hospital. He examined Kanhaya Lal and found the following injuries on his person :

- (1) Incised wound on the lateral side of left knee joint. Its size was approximately 1'.
- (2) Incised wound on the right elbow. Its size was approximately 1/2'

He proved his report, Exhibit Public Witness 1/C, signed by him at point E. According to the doctor the kind of weapon with which the injuries had been inflicted on the person of Kanhaya Lal was sharp.

(15) On the same day he examined Chameli, wife of Kanhaya Lal and found the following injury on her person :

'INCISED wound back of left lumber region going up to spinal column, and had crossed the mid-line of body. Size of the injury was approximately 1'.

He proved his report, Exhibit Public Witness 10/B, which, he stated was signed by him at point 'X'. According to the doctor the injury found on the person of Chameli was caused by a sharp weapon.

(16) Dr. Deepak Saxena (Public Witness 10) examined Chameli on 3rd August, 1975, regarding the nature of injury. He proved his endorsement Exhibit Public Witness 10/B at point A and his endorsement at point B on the aforesaid Exhibit regarding the nature of her injury.

(17) SUB-INSPECTOR Surjit Singh (Public Witness 4) who on the day of occurrence was posted on duty in the police control room, at about 2.48 p.m. received information from the police control room that at Mata Sundri Road near D. D. A. quarters a murder had been committed. He went to the spot and found a large gathering there. He stated that the appellant had been caught hold of by the crowd and he was having a Rampi in his hand. He found the appellant in an injured condition. After leaving one constable at the spot to guard the same he took the appellant to the Irwin Hospital. He identified Rampi Exhibit P/1, to be the same which was in the hand of the appellant. When the Station House Officer reached the Irwin Hospital he produced the Rampi before him. The Station House Officer took the same into possession vide memorandum Exhibit Public Witness 4/A and prepared its rough sketch Exhibit Public Witness 4/B.

(18) Bhagwant Singh, Inspector of Police (Public Witness 19) who was posted as Station House Officer of Darya Ganj Police Station, earlier at 2. 50 p.m. on receiving a message that a murder had taken place in D. D. A. Flats, Mata Sundri Road proceeded to the place of occurrence along with Sub-Inspector, Gurmail Singh, Sub-Inspector, M. C. Sharma and constables, Baldev Raj and Som Vir. On reaching the place of occurrence he was told by the people who had gathered there that the injured as well as the accused had been taken to the Irwin Hospital. He immediately rushed to the hospital along with Sub-Inspector, Gurmail Singh and Constable, Som Vir. On reaching the hospital he met Kanhaya La-1, father of Kesho Ram deceased and recorded his statement. Exhibit Public Witness 1/A. He

sent ruqqa along with his endorsement, Exhibit Public Witness 17/A, to the police station for registration of the case.

(19) On receipt of the Ruqqa, Sub-Inspector Pritam Singh recorded the formal first information report No- 795, copy Exhibit Public Witness 1718. He gave a copy of it to the constable for delivery the same to the investigating Officer.

(20) Shri Balwant Singh after completing the investigations and preparing the report under section 173 of the Code of Criminal Procedure, submitted the challan in the Court.

(21) The learned trial Court believing the testimony of the witnesses, noted above, and placing reliance upon the evidence on the record. found the appellant guilty and convicted and sentenced him, as noted earlier.

(22) Shri P. P. Grover, learned counsel appearing for the appellant, submitted that the first information report was not a spontaneous document in that it was recorded much later in point of time than the purported time given on it. He contended that the Investigating Officer after having made enquiries into the matter had concocted the first information report on the basis of investigations conducted by him and that the first information report was manipulated on the lines it is purported to be recorded. It was submitted that recording of the first information report was delayed to bring in a distorted version.

(23) This submission was sought to be reinforced contending that the inquest report was prepared the next day because the Investigating Officer had yet to spin out a story. It was submitted that preparation of the inquest report was purposely delayed with a view to fit in the prosecution story on the basis of the information gathered by the Investigating Officer.

(24) We find no substance in this submission. Preparation of inquest report is provided under section 174 of the Code of Criminal Procedure. The purpose of preparing an inquest report is to give the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such

marks appear to have been inflicted. This report the officer in charge of a police station has to prepare on getting information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. It is, therefore, evident that the purpose of preparing an inquest report is to draw up a report of the apparent cause of death of the deceased. The gist of the occurrence is not required to be detailed in an inquest report. The patient had already been removed to the hospital immediately after the occurrence where he was examined by Dr. K. S. Chadha (Public Witness 18) who in his report. Exhibit Public Witness 18/A, had mentioned the injuries found on the person of the deceased who was stabbed by some one. The delay in preparing the inquest report does not militate against the prosecution version given by the eye-witnesses in Court. On reaching the hospital the Investigating Officer got busy in recording the statement of Kanhaya Lal. He took further time in preparing the recovery memorandum while taking into possession Rampi, Exhibit P/1. In the meantime the dead body had been removed to the mortuary. It was already 5 p.m. and according to the Investigating Officer the doctor was not available. Besides, as stated by him. it was rainy season and he considered it necessary to visit the spot for spot inspection so as to avoid the spot evidence being washed away by rain. The Investigating Officer has specifically denied a suggestion put to him that the inquest report was not prepared because by that time the first information report had not been recorded as the investigation was yet in the process of being completed. In the circumstances the preparing of the inquest report on the next day would not render the investigation suspicious or cast any doubt on the genuineness of the report lodged by Kanhaya Lal with the police.

(25) The statement of Parbhat Singh constable (Public Witness 9) in cross-examination that the dead body was taken from the hospital at 4.30 p.m. on 3rd August, 1975, and that the Station House Officer was present in the hospital at that time and that the inquest papers had been prepared on 3rd August, 1975, marked A, B, and C which were with him when the dead body was taken to the mortuary, would not in any manner destroy the deposition of the Investigating Officer, noted above. On the basis of the statement of Parbhat Singh it cannot be

held, as was sought to be suggested that the Investigating Officer took his convenient time for preparing the inquest report as he was yet to spin out at story. As a matter of fact to a specific question asked from Parbhat Singh to see the date of the inquest report and tell the Court whether the inquest report was prepared on 4th August, 1975, the witness corrected himself by stating that the papers were delivered to him on the morning of 4th August, 1975, at 8 a.m. by the Station House Officer. The contention that the first information report was delayed to bring in a distorted version, is equally devoid of merit. On receipt of information from the control room at 2.50 p.m. an entry was made in the daily diary of Police Station Darya Ganj. Copy of the said entry is Exhibit Public Witness 17/DB. A copy of it was delivered to Sub-Inspector Gurmail Singh who along with other police officials left for the spot. The Station House Officer on being informed also left for the spot. On reaching there he learnt that the injured had been removed to the Hospital. He accordingly proceeded towards the Hospital where he recorded the statement (Exhibit Public Witness 1/A) of Kanhaya Lal and sent the same with his endorsement at 3.45 p.m. for registration of the first information report. Immediately on receipt of the Ruqqa. formal first information report No. 795 was registered at 4 p.m. a gist of which was entered at No. 16-A of the daily diary, copy whereof is Exhibit Public Witness 17/DA. The gist of the first information report recorded in the daily diary at 4 p.m. gives the name of the complainant, the place of occurrence, name of the accused and the section of the Indian Penal Code under which the case was registered.

(26) The observations of the trial Court to the contrary in paragraph 29 of the judgment appear to have been made on misappreciation of the contents of the daily diary.

(27) No delay had been occasioned in recording the first information report casting a doubt about its veracity.

(28) The learned counsel for the appellant, however, submitted that the occurrence was alleged to have taken place at 2.50 p.m. and that Ruqqa was alleged to have been sent within fifty-five minutes of the occurrence, namely, at 3.45 p.m. The timings so recorded, he urged lends support to his contention that in

such a short time it was not possible to complete all formalities including recording of statement of Kanhaya Lal and sending the Ruqqa at the time at which it was purported to have been sent. It was accordingly contended that the time of dispatch shown on the Ruqqa was manipulated on the next day after completing the investigations.

(29) We do not agree. The Investigating Officer had proceeded to the spot in a police van and in the same van he must have reached the hospital. A perusal of the statement of Kanhaya Lal (Public Witness 1/A) and the endorsement made by the Investigating Officer on it show that they are not lengthy to take much time for recording the same. Surjit Singh, Sub-Inspector, (Public Witness 4) in cross-examination had stated that the Station House Officer had reached the hospital at about 3 p.m. to whom he handed over the Rampi at that time. As already noted above, it was not difficult for the Investigating Officer to reach the hospital with ten to 15 minutes in the police van and within 45 minutes it was possible for him to record the statement of Kanhaya Lal and send the same with his endorsement for recording the first information report by completing other formalities.

(30) Learned counsel for the appellant, however, contended that according to Bachi Ram (DW 1) appellant Om Parkash along with Rampi was handed over to the Investigating Officer at 3.40 hours as per entry made in the log book of the control room. He contended that the Investigating Officer would have taken some time for preparing the recovery memorandum for taking the Rampi into possession; and that the Ruqqa could not be sent at the time at which it was purported to have been sent.

(31) We find no substance in this contention. The time noted in the log book of the control room must have been so noted by Bachi Ram constable according to his watch and it being a matter of common knowledge that invariably there is difference of timing in different watches, no capital can be made on this ground

(32) It was then submitted that Kanhaya Lal admits in crossexamination that the police met him on the following day at his house and recorded his statement which he thumb-marked at his house and that the police had never met him in the hospital. He had further admitted that he did not remember as to what the police

had asked from him in the house and that he did not remember as to what he had told before the police. It was also submitted that according to Kanhaya Lal he was made to put his thumb impressions in the police station but he did not remember on how many papers. Further, he admits that the contents of the papers on which he had put his thumb impressions in the police station were not read out to him. He also could not say if the thumb impression at point 'X' on Exhibit Public Witness 1/A was his and was put by him in the police station or not. According to Kanhaya Lal, it was submitted, even the memorandum about the recovery of the Bunyan was thumb marked by him in the police station. Learned counsel for the appellant laying great stress on the above-noted testimony of Kanhaya Lal contended that one cannot strain the language and hold contrary to the suggestions specifically admitted by the witness. That being so, it was submitted that the witness had to be believed that he signed blank papers in the police station. His statement, it was urged, cast a doubt on the fairness of the investigation. We do not agree.

(33) The statement of Kanhaya Lal, extracted above, shows that the main thrust of cross-examination was about his having put thumb impression. No positive suggestion was made to the witness that he was not interrogated in the hospital and his statement was not recorded there. Even the Investigating Officer in cross-examination was not asked that he did not. record the statement of Kanhaya Lal in the hospital.

(34) It was then contended that on his own showing Kanhaya Lal was unconscious and had completely regained consciousness three or four days of his arrival in the house from the hospital. He had further stated that the police had got his thumb impressions affixed when he was lying semi-unconscious in the hospital. If the witness is to be believed it was contended the above-noted statement of Kanhaya Lal could not be interpreted in any other way except that he made no statement to the police in the hospital and that his thumb impressions were got affixed on blank papers when he was lying semi-unconscious in the hospital.

(35) The above submissions ignores the endorsement made by Dr. Satish Kumar on the medicolegal report of Kanhaya Lal (Exhibit Public Witness 1/O in date 3rd of August, 1975, to the effect 'that the patient was fit to make a statement'.

Kanhaya Lal is an illiterate person and a labourer by occupation. His statement was recorded in the Court after 18 months of the occurrence. The portion of the statement, referred to above, in his cross-examination, undoubtedly appears to be the result of eclipsed memory due to long lapse of time. Reading the statement of Kanhaya Lal as a whole we find that there is a ring of truth in it and there was no occasion for the Investigating Officer to spin out aversion for implicating the appellant.

(36) Statement of Chameli (Public Witness 16) wife of Kanhaya Lal was sought to be discarded on the ground that she was not examined by the police immediately after the occurrence and that it was for the first time in her statement in Court that she deposed on the lines tutored by the police. Adverting to her cross-examination wherein she stated that she did not give any statement to the police and that she had not stated the facts deposed to by her in the Court, to the police, and that she had stated those facts for the first time in the Court, learned counsel for the appellant contended, no reliance could be placed on her statement recorded in the Court'.

(37) This submission is equally devoid of merit. Chameli is an illiterate lady and is a labourer by occupation. She seems to have made the statement in cross-examination under a misapprehension. It is significant to note that the defense relies upon her statement to the police under section 161 of the Code of Criminal Procedure, and had confronted her with portion marked C to C of her statement marked 'X'. Not only that, her attention was also invited to a subsequent part of her statement, marked D to D, recorded by the police. It is, therefore, futile to contend that she was volunteering as a witness for the first time when her statement was recorded in the Court.

(38) It was then contended that Chameli was not a truthful witness in that she was concealing the factum of injuries received by the appellant. The mere fact that she stated in cross-examination that she did not notice if Om Parkash had bled as a result of a Danda blow given to him, would not destroy her credibility.

(39) Apart from the statements of Kanhaya Lal and Chameli, we have the testimony of Daulat Ram (Public Witness 2), Devi Singh (Public Witness 11) and

Mangal Ram (Public Witness 13) who in material details corroborate the version given by Kanhaya Lal and his wife Chameli in the Court. On a perusal of the statements of the eye-witnesses we are of the opinion that in material particulars the evidence of the said witnesses is so convincing and natural that no doubt creeps into it.

(40) The discrepancies pointed out in the statements of the witnesses are minor and do not cast a cloud of suspicion on the credibility of the 'warp and woof' of the prosecution story.

(41) An effort was made by the learned counsel for the appellant to contend that recovery of Rampi (Exhibit P/1) made by the police was fabricated. We have already noted the testimony of the eye-witnesses and do not agree what the Rampi, in any manner, could be planted on the appellant and its recovery is a fabricated one.

(42) Learned counsel for the appellant then contended that the prosecution has not given the real genesis of the fight and has allowed the same to remain in the realm of mystery. It was strenuously contended that the prosecution after leaving the genesis of the occurrence shrouded in mystery, cannot live in the hope of forcing the accused to trip up by taking a false step or plea. The prosecution case, it was submitted, cannot succeed merely because the appellant was not telling the truth and stares us with blank denial of the occurrence. Elaborating the argument, it was contended that the real cause of the fight between the appellant and Kanhaya Lal resulting in the unfortunate death of Kesho Ram was that Kanhaya Lal had reprimanded the mother of the accused two or three times that she should behave well and that she should leave her immoral activities as she was residing in the Mohalla. Kanhaya Lal, it was submitted, admits this fact in his cross-examination though he had added that he did not know if the mother of the accused was of bad character. Learned counsel further submitted that Kanhaya Lal was prone to brawls, he admits in his cross-examination that he was apprehended by the police in one or two cases under the Bombay Police Act and had been fined in those cases on confessing the offence. It was contended that in the medicolegal report, Exhibit Public Witness 1/C, the doctor had found that

Kanhaya Lal was smelling of alcohol and had made a mention of that fact in the said report but subsequently the word 'not' at point 'A' was interpolated by the doctor. Kanhaya Lal, it was contended, was under the influence of drink and seeing the appellant passing by his house must have taunted him about his mother and thus a provocation must have come from Kanhaya Lal. Not only that, it was contended, Kanhaya Lal admits having attacked the appellant with a Danda. Kanhaya Lal does not state wherefrom this Danda came. He must have picked it up earlier and was armed with it to attack and indeed attacked the appellant. The appellant, in the circumstances, was justified in his right of self-defense to ward off the attack mounted upon him and if in that process Kesho Ram intervened and was hit resulting into his unfortunate death the appellant could not be fastened with any liability.

(43) We do not agree. We have perused the medicolegal report, Exhibit Public Witness 1/C. We do not find that the word 'not' had been interpolated by the doctor subsequently as on examining Kanhaya Lal the doctor had found him smelling of alcohol.

(44) The appellant had not taken the plea of self-defense. It is, however, true that even when the plea of self-defense is not raised, the Court is not precluded from giving the benefit of private defense, if, on proper appraisal of evidence and other relevant material on the record that right was available to the accused. In the instant case, however, such a right is not available to the appellant. We have noted the prosecution case as deposed to by the witnesses in an earlier part of this judgment. From the said evidence no right of self-defense is available to the accused. On the contrary the testimony of the witnesses unerringly points to and establishes the guilt of the accused.

(45) Kanhaya Lal in his statement had deposed that a quarrel had taken place between him and the appellant when they were earlier-residing in Ganjmir Sismahal. The matter, he stated, was settled between them on the intervention of the Panchayat members. This part of the deposition of Kanhaya Lal establishes that the parties had strained relations. According to Chameli her husband Kanhaya Lal had got himself sterilized. On the day of occurrence at about 9 or 9.30 a.m.

while her husband was sitting outside his house on the ground the appellant came there and taunted him that he had become impotent on account of getting himself sterilized. There was exchange of hot words between the appellant and her husband. The appellant left the place after giving threat to her husband that he would be coming back soon. The above-noted parts of the testimony of Kanhaya Lal and his wife Chameli remain unchallenged in cross-examination. The motive for the fight was the insult which the appellant wanted to avenge as a result of hot words exchanged between him and Kanhaya Lal, in the morning of the day of occurrence. With a view to avenge the insult allegedly shown to him by exchange of hot words, the appellant came to the house of Kanhaya Lal at about 2 or 2.30 p.m. and attacked him as deposed to by the witnesses. Not only the appellant inflicted injuries on Kanhaya Lal but also on Chameli and on the deceased Kesho Ram. In the circumstances, there was no question of right of self-defense being available to the appellant

(46) The learned counsel for the appellant then contended that the appellant had not intended to cause the injury which ultimately proved to be fatal, on the person of Kesho Ram deceased. Unless, the learned counsel submitted, the prosecution succeeds in proving that the appellant intended to inflict injury No. 6, the appellant could not be held guilty of having committed the offence punishable under section 302 of the Indian Penal Code. Reliance for this submission was placed on *Harjinder Singh v. Delhi Administration*, : 1968 CriLJ1023 . The said case is distinguishable on its own facts. The evidence in that case indicated that while the appellant was trying to assault Dalip Kumar, the deceased intervened. The appellant finding himself one against two took out the knife and stabbed the deceased. The evidence also indicated that the deceased at that stage was in a crouching position presumably to intervene and separate the two. The deceased received injury on his thigh, which proved to be fatal, in that position. It was in those circumstances that their Lordships held that it could not be said with any definiteness that the appellant aimed the blow at that particular part of the thigh knowing that it would cut the artery. The facts of that case further revealed that the appellant had not used the knife while he was engaged in fight with Dalip Kumar. It was only when he felt that the deceased had also come up against him that he whipped out the knife. It was accordingly in those circumstances that the Court

held that it could not be said that it had been proved that it was the intention of the appellant to inflict the particular injury, namely, a stab wound on the thigh. But that is not the position in the instant case.

(47) The prosecution version that the appellant inflicted Rampi blows on the person of Kanhaya Lal and on his raising alarm his wife Chameli and his son Kesho Ram came out of the house to save him and that the appellant inflicted Rampi blows on the chest of Kesho Ram and also a blow on his foot besides inflicting an injury on the back of Chameli, clearly bears out that the weapon used by the appellant was a formidable one, the manner in which it was recklessly welded, and the callous conduct of the appellant in persisting in assaulting three persons all this irresistably leads to the conclusion that the injuries caused to the deceased were intentionally inflicted by the appellant and could not be said to have been inflicted accidentally. The thrust and depth of injury No. 6 inflicted by the appellant; on the deceased, nature and dimension of which have already been noted in an earlier part of this judgment, without doubt shows that the appellant intended to cause the said injury. The fatal injury No. 6, apart from other injuries inflicted upon the deceased, brings the case within clause Thirdly of Section 300 of the Indian Penal Code. It is futile to contend that a case under section 304, Part II, of the Indian Penal Code only is made out and that the conviction under section 302 of the Code is not sustainable.

(48) The grievance of the appellant that the investigation had been unfair to him, is equally devoid of merit. The precise contention was that although according to the medico legal certificate injuries were found on his person, especially on the scalp, yet no effort was made to have an x-ray examination with a view to probe further the nature and extent of the injury. The injuries found on the person of the appellant were 'a lacerated wound over the scalp near the suggested plane 1' long partial thickness of scalp (partial region)' besides some bruises found over the legs. No doubt according to the report of the doctor Hri Deepak Saxena on 3rd August, 1975, at 4.55 p.m. the appellant was not fit for making statement, that the doctor did not recommend him for x-ray examination. Whatever medical assistance that was considered necessary was rendered by the hospital authorities to the appellant. In the circumstances, it cannot be said that the

investigation was in any manner tainted or unfair to the appellant. The injuries found on the person of the appellant have been fully explained by the prosecution. Kanhaya Lal had categorically stated that after he, his wife and his son were attacked by the appellant he found a Danda lying at the spot and picking up the same he inflicted two or three blows on the head of the appellant. The omission on the part of the police to recover the Danda does not militate against the prosecution version.

(49) Lastly, on the question of sentence, the learned counsel for the appellant contended that the appellant in his statement under section 313 of the Code of Criminal Procedure recorded on 1st June, 1977, had given his age as 16 years. That being so, he being a minor at the time the offence was committed the sentence awarded to him could not be sustained.

(50) It is no doubt true that the Court has no right in substituting its own estimate about the age of an accused-person given by him while recording his statement under section 313, and on the basis of such estimate, to reject the statement as to his age made by the accused (See *Raisul v. State of U.P.* : 1977 CriLJ1555 but the fact remains that the prosecution has placed on record certificate of birth in respect of the appellant in which his date of birth is recorded as 18th September, 1957. The question about the age of the appellant was raised for the first time during the course of arguments with regard to the quantum of sentence to be awarded. It was at that time that the prosecution had put in the birth certificate. The report with regard to the birth of the appellant was lodged on 9th August, 1957, and his name and parentage have clearly been mentioned in the birth register. According to this certificate, the appellant was nearly 18 years of age at the time of committing the offence and at the time the conviction and sentence were awarded he was 20 years of age. That being so, no exception can be taken to the sentence awarded. In view of our discussion on the various points, noted above, we find no infirmity in the conviction and sentence awarded to the appellant under sections 302 and 324 of the Indian Penal Code. The appeal accordingly is dismissed.