

**Mohinder Singh Vs. State**

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**Court :** Delhi

**Decided On :** Sep-08-1971

**Reported in :** 1972CriLJ1590

**Judge :** Hardayal Hardy and; Prithvi Raj, JJ.

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

**Appeal No. :** Criminal Appeal No. 4 of 1971

**Appellant :** Mohinder Singh

**Respondent :** State

**Advocate for Pet/Ap. :** S.N. Chaudhary and; K.L. Arora, Advs

**Judgement :**

**Hardayal Hardy, J.**

(1) On 8-9-1968, in a small village called Poothkhurd within the jurisdiction of police station Narela in Delhi State a young man named Daya Nand who was employed as a teacher was murdered near about 11.30 A.M. Two persons named Mohinder Singh S/o Sultan Singh, aged about 21 years and Umed Singh S/o Dhani Ram, aged about 26 years who were cousins of the deceased were sent up for trial for an offence u/s 302 read with Section 34 I.P.C. and were sentenced to imprisonment for life by Shri D. R. Khanna. Additional Sessions Judge, Delhi.

(2) Mohinder Singh has come up in appeal against his conviction and sentence and is appellant in criminal appeal No. 4 of 1971. Umed Singh who was also a school teacher is appellant in criminal appeal No. 7 of 1971. Both these appeals have been heard together as they arise out of a common incident and the appellants have been tried and convicted by the same judgment. Mohinder Singh is represented by Shri S. N. Chowdhry while Umed Singh is represented by Shri A. N. Mulla with Shri D. R. Kalia. Separate arguments have been addressed on behalf of both the appellants although the main argument was addressed by Shri A. N. Mulla, counsel for Umed Singh.

(3) It appears that before the trial court both the appellants were represented by Choudhry Rizak Ram and all the witnesses have been cross-examined by the same learned counsel appearing for both the appellants.

(4) The appellants and the deceased Daya Nand were related to one another, the common ancestor being Shri Har Chand who had 3 sons. Prabhu, Jot Ram and Ram Sarup. Jot Ram died issueless while Prabhu left his son named Sultan. Mohinder Singh appellant is the son of Sultan. Ram Sarup died leaving 3 sons named Chatru, Dhani Ram and Laik Ram. Laik Ram died about 12 years ago leaving a son named Daya Nand while Dhani Ram had a son named Umed Singh. Daya Nand is the deceased while Mohinder Singh and Umed Singh are the accused-appellants.

(5) Laik Ram was married to a woman named Risalo (Public Witness 1). On the death of Laik Ram there was a Karewa marriage between Risalo and Chatru. Daya Nand who was then a minor came and started living with Risalo in the house of Chatru. Umed Singh and Mohinder Singh were not only related as cousins but their mothers were also real sisters.

(6) Jot Ram owned 30 Biggas of land out of which he gave 1/2 to Umed Singh and the other 1/2 to Daya Nand. There was no gift-deed as such but a suit was filed by both Daya Nand and Umed Singh against Jot Ram to the effect that they were the Bhumidars of that land and the conferment of those rights by Jot Ram was illegal. Jot Ram conceded the claim of Daya Nand and Umed Singh and on its basis a decree was passed in their favor. Mohinder Singh accused asserted that in due

course he would have got a share in the estate of Jot Ram and, therefore, his exclusion was not proper. Daya Nand and Umed Singh thereupon gave 1 Kila of land each (measuring 5 Biggas in each case) for cultivation to Mohinder Singh. No mutation of the same was, however, effected and it was the prosecution case that Daya Nand was agreeable to the same but Umed Singh declined. This was also the stand taken by Mohinder Singh. In his examination U/s 342 Criminal Procedure Code. Umed Singh, however, did not accept that position and according to him he and Daya Nand had both declined that mutation.

(7) The land given by Daya Nand, to Mohinder Singh remained uncultivated for one crop and it was the prosecution case that when about a week before 8-9-1968 Daya Nand went to plough the same, Mohinder Singh picked up a quarrel with him and there was some scuffle. Each received one lathi blow from the other. Mohinder Singh denied the incident in his examination U/s 342 Criminal Procedure Code . and stated that he continued to cultivate the land which Daya Nand had given to him but there was evidence of Risalo (Public Witness I) and Gulab Singh (Public Witness 6) who deposed about the same. Umed Singh appellant admitted that there was scuffle between Daya Nand and Mohinder Singh as he had heard about the same. The admission of Umed Singh, however, does not establish the correctness of this incident as he had no personal knowledge about the same.

(8) The prosecution further alleged that for the settlement of property dispute between Dhani Ram, father of Umed Singh, Daya Nand and Chatru, the step father of Daya Nand, there was an assemblage of Panchayat in the village about a month or two before the murder of Daya Nand. Jit Ram (Public Witness 9), Mange Ram (Public Witness I 0) and Puran (Public Witness I 6) deposed to that fact. No settlement was, however, arrived at although it was stated by Daya Nand that whatever would be decided by Chatru and the elders would be acceptable to him. According to Mange Ram, Dhani Ram also said that it was a domestic matter for them. Both the accused having denied that any such Panchayat had assembled, the holding of the Panchayat loses all importance for Dhani Ram and Daya Nand being died at the trial, any admissions made by them would not be relevant and admissible.

(9) The incident which culminated in the death of Daya Nand on 8-9-1968 was narrated by Risalo (Public Witness 1), the mother of the deceased. Mewa, who is the wife of the deceased was the other eye witness. Two other eye witnesses, named Nafe Singh (Public Witness 2) and Hukam Singh (Public Witness 3), both of whom were independent persons and were not related to the parties, also deposed to the same. Nafe Singh was declared hostile and his evidence has not been accepted by the trial judge. Hukam Singh's evidence has been accepted by the trial judge along with the evidence of Risalo and Mewa and the entire prosecution case rests on the oral testimony of these witnesses. The name of Hukam Singh was not mentioned by Risalo on whose statement (EX.PA) the first information report (EX. Public Witness 22/B) was registered by the police. According to the prosecution Hukam Singh was no doubt present at the time of occurrence but Risalo in her statement (EX.PA) did not mention his name and it was immediately after her statement was recorded that she made a further statement in which she mentioned the presence of Hukam Singh at the site.

(10) It was conceded by the learned counsel for the appellants that even if the evidence of Nafe Singh and Hukam Singh were discarded, the evidence of Risalo and Mewa, if accepted would be sufficient to make out a case against the appellants. It was, however, contended that Risalo and Mewa were not reliable witnesses at all and had falsely implicated the two appellants. According to the defense there was no doubt a quarrel between Daya Nand deceased and Dhani Ram but Risalo and Mewa had deliberately included the names of the two appellants who were not present on the occasion. Support for this argument was sought by the death of Dhani Ram whose dead body was found on the railway track near Narela on 9-9-1968 at about 10-15 A.M. Dhani Ram was found to have committed suicide as according to Laxman Singh, S.I. of Railway Police (Public Witness 14) the report submitted to the Station House Officer, Railways, showed that Dhani Ram was killed under some train between the night of 8-9-1968 and 9-9-1968. The inference arising out of the death of Dhani Ram was made the subject of great deal of argument by Shri A. N. Mulla, counsel for Umed Singh and will be examined later. Mohinder Singh was arrested by the police at 6 P.M. on 11-9-1968 from Dayapur village in Delhi. Umed Singh was arrested on 16-9-1968 from near the Kothi of Choudhry Rizak Ram, Advocate at Vithal Bhai Patel House, New

Delhi. According to Mohinder Singh he himself appeared at the police station Narela with his maternal-uncle on 11-9-68 when he came to know of the case. Umed Singh on his part stated that when he learnt of this case he went to the house of Choudhry Rizak Ram at Sonapat but since Choudhry Rizak Ram was not there he went with his personal assistant to his house in New Delhi. It may be mentioned here that Choudhry Rizak Ram, an advocate is also a Member of Parliament. Umed Singh stated he explained the whole position to him and according to him Choudhry Rizak Ram telephoned the police and Umed Singh was then put under arrest.

(11) The prosecution case shows that immediately after the incident took place on 8-9-1968 at about 11.30 A.M. Daya Nand was found conscious and the assailants escaped inside their houses. Many villagers assembled and Daya Nand was put on a 'charpai' and an attempt was made to give him some milk. Daya Nand was not in his senses and did not take the milk and instead blood came out of his mouth. Meanwhile Chatru also came there and according to Mst. Risalo he had also seen some of the assailants. Risalo along with Chatru, Chhotu Chowkidar, and two other persons Sube and Puran took Daya Nand in that unconscious state in a bus. When the bus reached Bawana, about 2 miles away, Daya Nand expired. The bus was then taken to police station Narela which was about 5 miles from village Poothkhurd. Risalo's statement (Ex. PA) was then recorded, and formed the basis of the F.I.R. (Ex. Public Witness 22/B). According to her, she was much grief-stricken due to the death of her only son and as such immediately after the report she gave another statement in which she mentioned the name of Hukam Singh as a person who had also witnessed the occurrence.

(12) On the same evening Risalo was admitted in Irwin Hospital because of the injury inflicted on her by Dhani Ram with Jeli (Ex. P3). Dr. Captain Ved Rattan (Public Witness 20) deposed that she was found to have suffered a fracture. Her injury was declared grievous and she remained in the hospital till 30th September, 1968.

(13) The story given by Risalo in her statement (Ex. PA) and in her deposition in court is more or less the same except with slight variations. Those variations

appears to us to be inconsequential and in spite of strenuous cross-examination the details of the incident as deposed to by her have remained unshaken.

(14) According to Risalo it was Sunday and as such Daya Nand was in the village at the house of Chatru where he would reside whenever he would be in the village. Chatru had built this house about a month before the incident. Before that he had given 1 / 3rd share of the land where the house was built to Umed Singh and Dhani Ram and the remaining 3/4th portion he constructed a house. On 8-9-1968 at about 8 A.M. Dhani Ram and his son Umed Singh came there and asserted that they would have 1 / 2 share of the house, and if the same was not given to them they would see to it. Daya Nand according to Risalo, replied that the matter should be settled with Chatru and that he would have no objection to whatever Chatru would decide. Chatru was present at the time and he said that during his life time he would not give his house to anyone. Dhani Ram and Umed Singh then left after giving a warning that they would see to it on the same day.

(15) At about 11 or 1 1.30 A.M. Dhani Ram. Umed Singh and Mohinder Singh again came to the house of Daya Nand. Umed Singh had a Kulhari (Ex. P1) in his hand and Mohinder Singh had a Lathi (Ex. P2) with him, which had iron wire around it at one of its ends. Daya Nand, his wife Mewa, his grand-mother (Manbhari mother of L;ik Ram) and Risalo were there. Umed Singh then uttered a filthy abuse and said, 'come out we will finish you'. Daya Nand came out and told them that they would take the whole of the house and that it was not proper to pick-up a fight on that score. He also added that it depended on Chatru and that he would abide by whatever Chatru would decide. Umed Singh then took a half size brick and hurled the same at Daya Nand which struck the left side forehead of Daya Nand. The latter fell down and tried to get up and move into his house. Dhani Ram then caught hold of him and dragged him near the door of his own house about 10 paces away. Mohinder Singh then began giving lathi blows to Daya Nand and Umed Singh gave blows to Daya Nand with the Kulhari from its blunt side. Daya Nand tried to rise but the two appellants Umed Singh and Mohinder Singh continued to give him blows. In that process Daya Nand who was held by Dhani Ram would some time go below Dhani Ram and some time would come above him while grappling with him. Risalo. MeWa. Nafe Singh and Hukam

Singh who all happened to be there then shouted that Daya Nand was being killed and his life should be spared. Dhani Ram then went inside his house and brought a jeli (Ex. P.3) with which he hit Risalo on her left arm. As a result of beating Daya Nand became unconscious and the assailants made away. Mewa supported the version given by Risalo. Risalo further deposed about the scuffle that had taken place between Mohinder Singh and Daya Nand. a week before the date of murder. In cross-examination she admitted that there was no police report about the incident as the same was considered as a quarrel between the brothers and of a minor nature. This incident was also not mentioned by her in her statement to the police (EX.PA).

(16) In cross-examination an unsuccessful attempt was also made that the Kulhari (Ex. PI) was brought by Daya Nand from his house when he came out and that the two accused were not there. She also denied the suggestion that the quarrel was between Daya Nand and Dhani Ram.

(17) An attempt was also made in cross-examination to show that she had illicit relations with Dhani Ram, father of Umed Singh, and that Umed Singh had also lodged a report with the police about 4 years earlier. She, however, admitted that she had learnt about a quarrel between Umed Singh and his father and that both of them had been taken to the police station. But this was about 3 to 4 years ago when they were living separately. Later on both of them were living in the same house.

(18) In their examination U/s 342 Criminal Procedure Code both the appellants denied that they were present at the time of occurrence or that Umed Singh had gone with Dhani Ram to the house of the deceased in the early part of the day. Umed Singh further stated that Dhani Ram was not getting on well with his wife as he had developed illicit connections with Risalo and that, therefore, he and his mother lived away from Dhani Ram and he had also lodged a report to that effect with the police. In support of his statement he produced a report lodged by him on 21-4-1964 in which he had accused his father Dhani Ram of having abused his mother and asked her to leave the house. According to that report he and his mother had both gone to the police station to lodge that report.

(19) It was contended by the learned counsel for Umed Singh that the relationship between Dhani Ram and Umed Singh being strained Umed Singh could not have joined Dhani Ram in going to the house of the deceased either in the morning of 8-9-1968 or at about 11.30 A.M. It was also contended that if Umed Singh and Dhani Ram had gone to the house of the deceased in the early part of the day and had threatened the deceased that they would see to the matter during the course of the day, when they went again at about 11.30 A.M., Umed Singh being armed with a Kulhari (P1) and Mohinder Singh being armed with a lathi (P2), the deceased would have normally anticipated that they had come back to pick-up a quarrel. He would not have, therefore, come out of his house unarmed. That lent support to the defense suggestion that instead of Umed Singh having Kulhari, the weapon was actually in the hands of Daya Nand who apprehended danger had armed himself with it before he came out of his house.

(20) It was further contended that Dhani Ram would not have accompanied the two assailants Umed Singh and Mohinder Singh without any weapon and that in any event if Umed Singh had a Kulhari in his hand he would not have picked up a half brick and hurled the same at Daya Nand. Instead he would have used the Kulhari and killed Daya Nand out-right.

(21) It was also contended that if Umed Singh had a Kulhari there should be evidence to show that any of the injuries sustained by the deceased were the result of Kulhari blows. On the other hand the prosecution case was that the sharp edge of the Kulhari was not used at all and that it was with the blunt-edge of the Kulhari that some injuries were stated to have been inflicted.

(22) WE. however, do not see any substance in these arguments. According to Risalo the attitude of Daya Nand was extremely fair. He knew that Dhani Ram was his uncle and that Umed Singh and Mohinder Singh were his cousins. Both he and Umed Singh were teachers. He had earlier agreed with Umed Singh to have 30 Biggas of land divided between himself and Umed Singh. Chatru had also given to Dhani Ram and Umed Singh 1 / 4th of the land on which his house was built. The only dispute between Dhani Ram and Umed Singh on the one part and Chatru and Daya Nand on the other part was about 1/2 of the house. Chatru no doubt did not

have any male issue and, therefore, Dhani Ram and Umed Singh apparently anticipated that the whole of the house would go to Daya Nand, but Daya Nand took up an extremely reasonable attitude. He said he would have no objection to abide by the decision of Chatru. It was Chatru himself who had earlier told Dhani Ram and Umed Singh that he would not give the house to anyone as long as he was alive. Daya Nand, therefore, did not expect that Dhani Ram and Umed Singh would actually hold him responsible, for any trouble between themselves and Chatru. He himself was quite prepared to abide by the decision of Chatru. In these circumstances even when Umed Singh came armed with a Kulhari, Daya Nand could not have apprehended any serious harm to himself and came out of his house with a view to have dialogue with him. His being unarmed would, therefore, not cast any doubt on the correctness of the statement made by Risalo.

(23) The contention on behalf of Mohinder Singh, on the other hand, was that if Daya Nand had taken up such a reasonable attitude with Mohinder Singh that he had given him one Killa of land which Mohinder Singh was actually cultivating, Mohinder Singh could not have had a grievance against Daya Nand. On the other hand the only persons against whom he could have a grievance were Dhani Ram and Umed Singh who had declined to give any land to him and had refused to allow any mutation to be effected in his favor.

(24) This circumstance, however, fails to take note of the fact that actually there was no mutation in favor of Mohinder Singh, and meanwhile when Daya Nand had attempted to cultivate the land which he had earlier given to Mohinder Singh, this might have made Mohinder Singh suspicious about his real intentions. All the three persons namely Dhani Ram, Umed Singh and Mohinder Singh might have felt that Daya Nand was actually person who was instigating Chatru not to divide the house between himself and Dhani Ram and Umed Singh on the one hand and also that Daya Nand who had expressed his willingness to have the mutation effected in favor of Mohinder Singh actually did not mean to do so. In reality he had attempted to cultivate the land which he had earlier given to Mohinder Singh. They had, therefore, a common object and regarded Daya Nand as their enemy. They, therefore, joined hands together and came to assault Daya Nand.

(25) Counsel for Umed Singh contended and his argument was adopted by the counsel for Mohinder Singh that Risalo was a woman of loose moral. After the death of her first husband Laik Ram, she had agreed to a Karewa marriage with Chatru. But she had nonetheless developed an infatuation for Dhani Ram and had illicit connections with him. It may be that she was a woman of easy virtue but the illicit relationship to which Umed Singh referred in the statement U/s 342 Cr. P.C. related to the year 1964. Between April, 1964 when Umed Singh had lodged a report against his father Dhani Ram with the police station Narela and September, 1968, more than 4 years had gone-by. It cannot be said that Risalo retained her infatuation for Dhani Ram during all this period, particularly when after the quarrel in 1964 Dhani Ram and Umed Singh had started living separately. Either Dhani Ram, relented or Risalo changed her mind. So far as the year 1968 is concerned there was no evidence at all to show that the old-relationship between Dhani Ram and Risalo persisted.

(26) Another circumstance which lends weight to this way of looking at the situation is that when Risalo started making noise and used the word 'Baiman' Dhani Ram went to his house and brought out a jeli with which he fractured the hand of Risalo. If Dhani Ram and Risalo were so friendly to each other Dhani Ram would not have inflicted a grievous injury like that on her.

(27) The story put forth by Risalo has a ring of truth about it. Her report was lodged at the police station Narela before P.M. In between she was all the time looking after her son and preparations were being made to remove him to the hospital. There was no occasion for her to take counsel with someone to concoct the story implicating Umed Singh and Mohinder Singh when the actual scuffle was between Daya Nand and Dhani Ram.

(28) Counsel for the appellants contended that this is not a case in which Risalo has implicated innocent persons while letting the real assailants escape. She has no doubt mentioned Dhani Ram but has minimised his part by stating that he merely caught hold of the deceased and that injuries were inflicted by Umed Singh and Mohinder Singh. She also attributed to Dhani Ram the injury suffered by her but did not implicate him to that extent in the murder of Daya Nand. We fail to see

the logic behind this argument. According to the prosecution Dhani Ram was a member of the assaulting party. The Kulhari and the Lathi which Umed Singh and Mohinder Singh were carrying were not hidden weapons Dhani Ram could see those weapons. Whether he armed himself with any weapon or not would not make any difference for having accompanied these two persons and having caught hold of Daya Nand and grappled with him during the fight, he was as much responsible for his death as Umed Singh and Mohinder Singh were. He had a common intention with these two persons for he had come prepared to fight. There was, therefore, evidence of a common concert between all the three assailants. In addition he was also guilty of causing a grievous injury to Risalo. It cannot, therefore, be said that Risalo made any statement which lessened the part attributed to Dhani Ram. His participation in the crime was almost the same as that of the other two assailants named Umed Singh and Mohinder Singh. [After further discussing the evidence including the medical evidence His lordship proceeded: ]

(29) In the present case there was no evidence that Daya Nand received that injury by a fall over a projection affixed on the ground or that he fell on a stone or a brick. We are convinced, as was the learned trial judge himself, that the fractures in the skull were the result of the lacerated injuries on the forehead and that they were caused not only by a brick but also by a blunt-side of Kulhari.

(30) Besides the evidence of eye witnesses there is also the evidence of recovery of a Kulhari from the house of Umed Singh and of a lathi from the house of Mohinder Singh. We have seen that Mohinder Singh was arrested on 11th September, 1968 while Umed Singh was arrested on 16th September 1968. Prithvi Singh (Public Witness 7) deposed that on 8-9-1968 at about 7 or 8 P.M. the police recovered the Kulhari (P1), a jeli (P3) from the house of Dhani Ram and Umed Singh. The blunt side of the Kulhari had blood stains. writing was prepared which was attested by this witness (Public Witness 3/D). He also deposed to a lathi having been recovered from the house of Mohinder Singh on the same day. The lathi (EX. P2) was the same that was produced in court along with Kulhari and the Jeli. The lathi was sealed and a recovery memo (Ex. Public Witness 3/E) was prepared which was attested by the witness. The lathi also had blood stains.

Sketches of FX.P1 to P3 were then prepared. sketch of the brick was also prepared. All the sketches were attested by the witness. The Chemical Examiner, and Serologist examined lathi. Kulhari and Jeli and their reports (Ex.PH and EX.PK) show that there were human blood marks on the lathi. Kulhari, and Jeli but the blood grouping could not be established.

(31) What was said was that the evidence of the recovery witness was not reliable and that a Kulhari, a lathi and a Jeli are the common implements of agriculturists and as such they could be easily procured by the police. He found it difficult to accept this argument. The 3 weapons were secured by the police on the very first day when investigation started and when Umed Singh and Mohinder had not been arrested. The presence of blood stains on these 3 weapons goes a long way in establishing that they were used for committing the offence.

(32) In this view of the matter when the appellants have denied their presence at the occurrence, even if the evidence of Nafe Singh and Hukam Singh is to be discarded, there is sufficient evidence in the testimony of Risalo and Mewa to implicate the appellants. The argument that both these women witnesses are close relatives of the deceased does not detract from the veracity of their statements. The evidence of a relative has to be judged on its own merits and as we have said, there is a ring of truth about their statements, we cannot help accepting that evidence. There was no evidence of any animosity between the appellants and these two women witnesses. Both of them were examined on the same day. They could not have, therefore, falsely implicated the appellants.

(33) Counsel for Umed Singh did suggest that Risalo was a women of loose morals and had induced Mewa to take to the same course of life. This was evident from the fact that Mewa was pregnant when she came to give evidence in court. It was also said that Mewa's father Hari Singh accompanied by Mewa had gone to see Umed Singh in Jail and Mewa had suggested that he should marry her and that she would give no evidence favorable to him. But since he was a married man and was also a government employee, he could not accede to her request and she left with the remark that she would have him hanged. A request for summoning the Jail register and for medical examination of Mewa to prove that

she was pregnant long after the death of her husband was therefore made to the learned trial judge but the request was declined. We cannot attach much importance to these submissions. Umed Singh appears to have made allegations of unchastity against both the women. It is easy to make such allegations against women. There may be truth in those allegations or the allegations may be totally unfounded. The fact remains that these two women were the first persons to be examined by the police on the very day on which the deceased died. No material contradiction has been brought out in their statements to the police and their statements in court. We cannot therefore, accept the defense suggestion that these women have given false evidence.

(34) The prosecution also examined Shri Surender Saroop (PW18). He was Head Master of the Municipal School. Shalimar, Delhi. Daya Nand deceased was an Assistant teacher in that school. He deposed to a writing (EX.P5) which was in the hand of Daya Nand and was attested by the Head-Master. In this writing Daya Nand had stated that Umed Singh and Dhani Ram had threatened him many a time and that they wanted to deprive him of his land and property. He also asked the Head Master to forward his application to obtain a gun license (EX.P6). On enquiry he was told by Daya Nand that he had for his safety he wanted a gun. The appellants no doubt denied the handwriting of Daya Nand but there is no reason to disbelieve the statement of Public Witness 18. This again shows that there was had blood between the deceased on the one hand and Umed Singh and Dhani Ram, on the other hand.

(35) The above evidence leaves no doubt in our mind that the deceased met his death at the hands of Umed Singh and Mohinder Singh.

(36) Mr. Kalia who added a few words after Mr. Mulla had concluded his arguments, submitted that Chatru and Manbhari were essential witnesses and yet both of them had not been produced on the ground that they had been won over. Relying upon a decision of the Privy Council in *Stephen Seneviratne v. The King* A.I.R. 1936 P.C. 289 learned counsel argued that if such vital witnesses are not called up, adverse inference should be drawn against the prosecution.

(37) It is no doubt true that witnesses essential to the unfolding of the narration on which the prosecution is based, must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution. But that does not mean that the prosecution must call witnesses irrespective of considerations of number and reliability for it was said in that case that the prosecution cannot discharge the functions both of prosecution and defense. If it does so, confusion, is apt to result, more especially so when the prosecution calls witnesses and proceeds automatically to discredit them by cross-examination.

(38) According to Risalo. Chatru came on the scene a little later. His evidence was, therefore, not at all essential to the unfolding of the prosecution case. Manbhari was an old woman and since the accused are so closely related to the deceased and the Prosecutor was satisfied that she had been won-over he could very-well exercise his discretion. Her evidence was not essential to the unfolding of the prosecution case. She was only one of the 3 or 4 eye witnesses. The Prosecutor, therefore, thought that it would be no use cross-examining that witness if she turned against the prosecution. Her nonexamination would, therefore, not effect the prosecution case.

(39) Mr. Kalia then referred to a decision of Bombay High Court in Appanna Yellowwa Madar and others State : AIR1956 Bom471 where it was said that when eye witnesses for prosecution though unsophisticated were found clever enough to make improvements on the points which they thought material, it was a very serious infirmity particularly in a murder case, and if such evidence was not wholly satisfactory the subsidiary facts on which the prosecution relied viz the discovery of the axe, however, suspicious, could not cure the infirmity. We have already said that there were some material variations between the statements of Risalo and Mewa U/s 161 Criminal Procedure Code . and their statements in court but we cannot regard those variations as amounting to an improvement on some material points. The case. has, therefore, no bearing on the facts before us.

(40) Mr. Mulla himself did not cite any authorities but he depended on Mr. Kalia with regard to his arguments that there was conflict between medical evidence and

the statements of eye witnesses. This argument was based on the so-called conflict between the evidence of Dr. A. K. Ghosh and the statements of Risalo and Mewa. Reliance was placed on a decision of the Supreme Court in Smt. Nagindra Bala Mitra and another v. Sunil Chandra Roy and another : 1960 CriLJ1020 . Two other decisions of Mysore High Court and Calcutta High Court were also cited namely in Madivalappa Channappa Hulgur and another A.I.R. 1966 Mys 142 and in Raj Kishore Rahidas v. The State : AIR1969 Cal321 . None of these cases can be of any help to the argument of the learned counsel for we. do not find any conflict between the statements of the eye witnesses and the medical evidence. We do not think it necessary to refer to the facts in these 3 cases because in all these cases there was patent conflict between the statements of eye witnesses and the medical evidence. There is no such case before us.

(41) The next 'question that arises before us is about the offence committed by each of the two appellants. It was vehemently argued by the learned counsel for the appellants that the appellants had no intention of causing the death of the deceased. They also did not want to cause any serious injuries to the deceased. They were related to the deceased and their mere object was to give him a thorough beating. Were it not so. appellant Umed Singh would have used the sharp-edge of the Kulhari and caused the death of the deceased. Besides Dhani Ram would not have come unarmed. We are not impressed by this argument. The entire transaction, according to Risalo, took about 10 to 15 minutes. Umed Singh first hurled a brick at the deceased which independently hit the deceased in the forehead. The deceased was unarmed. If the intention was to give a beating to the deceased the brick injury on the forehead of the deceased would have served the purpose. But the appellants had come armed with a Kulhari and a lathi and they went on inflicting blows on the deceased, especially when he was caught hold of by Dhani Ram after he was actually running away from the place of receipt of a brick injury.

(42) But Dhani Ram kept holding him and meanwhile the two appellants inflicted injuries on him with the lathi and the blunt-side of the Kulhari till the man dropped down. They left the place only when they found that the deceased had fallen down. His death occurred within a few minutes after he was put in the bus. Before

1 P.M. he was already dead, while he was being transported by bus to the hospital.

(43) This clearly goes to show that the appellants had come with the intention of causing such bodily injuries to the deceased as they knew to be likely to cause his death. The case, therefore, comes within the purview of Section 300 Indian Penal Code . and therefore means to murder. All the two appellants and Umed Singh's father Dhani Ram had come together, two of them were armed with a lathi and a Kulhari. Dhani Ram and Umed Singh had been to the house of deceased at 8 A.M. on that very day and had threatened to return on the same day. Their again coming was, therefore, the result of previous meditation and there was concert among them to cause the death of the deceased. Dhani Ram either out of remorse or for fear of facing the people in the village for having caused the death of his own nephew, sought refuge in taking his own life. The two appellants, however, went and hid themselves till they were arrested by the police. The statement of Mohinder Singh that he had been falsely implicated by the police on getting money from the maternal-uncle of Daya Nand and Risalo does not stand established. No question was put to Risalo as to who the maternal-uncle of Daya

(44) Nand was and what part he had played in this case.

(45) There is, thus, no question of the offence being reduced from one punishable U/s 302 Indian Penal Code . to some other offence. The appellants have been rightly convicted U/s 302 Indian Penal Code . read with section 34 Indian Penal Code . and the sentence of life imprisonment appears to us to be a proper sentence. There are no extenuating circumstances at all. On the other hand the appellants went and took the life of a person who was not prepared to harm them in any way.

(46) This judgment, therefore, disposes of the appeal filed by Mohinder Singh as well as Umed Singh. Both the criminal appeals are accordingly disallowed.