

Rajiv Kumar and ors. Vs. State

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Court : Delhi

Decided On : May-13-1988

Reported in : 36(1988)DLT164

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 24 of 1984

Appellant : Rajiv Kumar and ors.

Respondent : State

Advocate for Pet/Ap. : Anjana Gosain and; G.S. Sharma, Advs

Judgement :

Charanjit Talwar, J.

(1) This is an appeal in which the case property including the weapons of offence has not been produced before us during arguments and thus we have been deprived from fully assessing it on merits. During the course of arguments, Mr. G.S.Sharma, learned counsel for the State, made the following statement on 14/04/1988 :

'THE case property including the weapon of offence is no longer available as it was auctioned.'

In support of his statement, Mr. Sharma filed the report of the District Nazir of the Deputy Commissioner's Office which report has been placed on record.

(2) Mrs. Anjana Gosain, learned counsel for the appellant, submitted that non-production of the case property is a serious infirmity which must be held to be fatal to the prosecution case and on that ground alone the three appellants are entitled to be acquitted. We would, however, advert to this aspect after noticing the facts.

(3) Rajiv Kumar, his brother Purshottam and their brother-in-law, namely. Ram Chander, challenge their conviction for the offence under Section 302 read with Section 34 of the Indian Penal Code. They were found guilty vide judgment dated the 29/08/1983. They further seek setting aside of the order dated the 30/08/1983 of the Additional Sessions Judge sentencing them to life imprisonment and a fine of Rs. 1,000.00 each. In default of payment of fine, the appellants were directed to undergo simple imprisonment for a period of six months each.

(4) The allegation against the appellants was that in furtherance of their common intention on 13/08/1982 at about 10.15 p.m., they caused bodily injuries to one Prem, alias Kuckoo, which injuries were sufficient in the ordinary course of nature to cause his death. The occurrence took place near the Blocks 20 and 21 of Service Officers' Enclave on S.P. Marg, New Delhi. The injured was immediately removed to the Military Hospital by Surgeon Lt Commander Mrs. V A. Khandekar, who was occupying flat No. 568 in Block No 21. However, Prem was declared dead by Capt. Raja Gopal, the Medical Officer on duty.

(5) Mrs. Khandekar has appeared as P.W.1. She is not an eyewitness to the occurrence but was admittedly the first person to have reached the spot where Prem was lying. She stated that on 13/08/1982 at about 10.20 pm. she was told by her daughter that there was a lot of noise on the road outside their flat. When informed about the noise, she was in her bathroom. She came out and from her balcony saw that one person was lying on the ground. She took a torch and along with her husband came down the stairs and went to the spot. She could not

recognise the injured person but with the help of torch light saw a bleeding wound on his head. That person was lying on the ground with his face downwards. She felt his pulse which was very 'fast and thready'. She is a doctor; she wanted that person to be taken to the hospital immediately and, therefore, came back to her flat and rang up the clinic for sending the ambulance, which arrived within about five minutes. The injured was put in that ambulance and she followed it in her car. It seems that the very time when she got into her car, she found Ram Chander, one of the appellants present at the place of incident with a cut on his left arm. According to her, he was also in need of first aid and as she knew him, she took him to the clinic in the car. Dr. S. Raja Gopal examined the injured who had been taken in the ambulance and declared him to be dead; the time was about 11.00 p.m. Ram Chander who had been taken in the car was given first aid.

(6) P.W.1, Mrs. V. A. Khandekar, knew all the three accused. Her maid servant, Rani, is the sister of the two appellants Purshottam and Rajiv Kumar. Ram Chander is their brother-in-law. On arrival at the clinic, Mrs. Khandekar rang up the Chanakya Puri Police Station and after sometime, according to her, S.I. Hosbiar Singh reached there. He searched the pockets of the deceased and found out a paper which contained his name and address. It was from that paper that the witness (P.W.1) came to know the name of the injured as Prem and also his address.

(7) According to the prosecution, the eye witnesses to the occurrence are: 1. Brig. V.P. Airys, P.W.2, who was occupying flat No 570 in Block No. 21 of the Officers Enclave, S.P. Marg, New Delhi. 2. Commander R.K. Sharma, P.W.8, who was residing at Flat No. 563, Block No. 20, Officers Enclave, S.P. Marg, New Delhi. 3. Smt. Savitri Devi, P.W.13, mother of the deceased. 4. Shri Hari Singh, P.W.7, who is a brother of Smt. Savitri Devi. P.W.13. Brig. V.P. Airys, P.W.2, occupied his present flat, i.e. No 570 in Block No. 21 on 5/08/1982. The incident occurred eight days thereafter, that is, on 13/08/1982. On that date, according to him, between 10.00 to 10.15 pm, he heard a lot of noise/shouts outside his flat. He rushed out to see what was happening. From his balcony he observed three boys beating another boy. It is appropriate at this stage to quote from his testimony: 'I found a boy was lying on the ground and three boys were beating him.'

I shouted 'Ye Kaya Ho Raha Hai'. Out of those three boys who were healing the person who was lying on the ground, one of them was armed with a hockey and the second one was armed with an iron rod. I did not notice any weapon being carried by the third boy. Those three boys were beating the person lying on the ground and were giving blows with their respective weapon on various parts of his body like head, leg and back etc. When I shouted at those boys who were beating one of them caught hold of the injured with his leg and dragged him to a distance of about 15 feet. I hereafter they left the injured on the road and started going towards the rear side of the block where servant quarters are situated. I shouted at those boys as to why they were quarrelling. One of them replied that the person who was lying on the ground was a Gunda and he had come to them to pick up a quarrel. I then asked them as to why they were quarrelling and why they were not lodging the report with the police. Lady Doctor Khandekar Along with others arrived there and she called the ambulance and took the injured and one of the accused (The witness pointed out towards Ram Chander) to the clinic. I identify all the three accused persons present in the court and are the same who were present on that day and were giving beating to the person who was lying on the ground. Accused Purshottam was having a hockey, accused Ram Chander was armed with an iron rod accused Rajiv was not having any weapon with him. Accused Purshottam and Ram Chander had dragged the injured to a distance of about 15 feet as referred above. Later on, I came to know the name of the injured as Prem and he was also a resident of servant quarter situated on the back side of Block No. 21. The incident occurred in between blocks No 20 and 21. After a short time mother of the victim had also arrived there and she was weeping. I also came to know later on from the arrival of Dr. Khandekar from the clinic that injured Prem had expired. The above quotation brings out the salient features of the prosecution case. In cross-examination, this witness admits that he saw the occurrence with the help of a torch light from his balcony. The torch was a powerful one with four battery cells. He further admitted that 'it was not possible for me', again said 'it may not be possible for me to identify the accused persons without the help of the torch light.'

(8) It is to be noticed that the admitted case of the prosecution is that there was no identification parade of the accused held during the investigation. The plea raised

on behalf of the appellants was that as Public Witness 2, Brig. Airys, in his statement did not allege that he knew the three accused, the identification of the accused in court by him was of no value. To crosscheck the above version we have gone through the vernacular record also and we find that in the witness statement it is recorded that he knew the accused (Jaanta hoan). We presume that being a senior Army Officer, he was deposing in English. In the English record he said that he identified the accused. In his words, 'I identify all the three accused persons present in the Court'. It is possible that the word 'identify' was translated as 'Jaanta Hoon' (Know) instead of 'Pehchanta Hoon' (identify) by the Reader of the court (the official who takes down the testimony in vernacular). We are emphasising this fact as on his own assertion. Brig. Airy had occupied the flat only eight days prior to the incident and none of the accused were working for him. Normally, in that short span he would not have been able to know even by the face all the persons living in the servants quarters block Purshottam and Rajiv Kumar were admittedly residing in the servant quarters.

(9) After close scrutiny of the testimony of Brig. Airys, we are of the opinion that it cannot be held that he knew the accused from before the date of the incident. The other eye witness to the occurrence, P W 8 Commander R.K. Sharma, also identified the three accused in court. According to him, the accused present in court on the date his deposition was recorded were the assailants. He pointed out towards accused Ram Chander as the one who had iron rod and was giving beating to the person lying on the ground with it. He also identified accused Purshottam as the person who was giving blows with hockey stick. While pointing out to Rajiv, the third accused, the witness stated that he was the one who was giving kicks and first blows to the victim (Prem). In his cross-examination, he admitted that 'I was not in the knowledge about the name of the assailants as well as the injured and their place of residence'. To another question, he affirmed that prior to the occurrence he did not know that Purshottam and Rajiv were residing in the servant quarters. At one stage, he admitted that 'I had seen the accused persons present in the court on the date of occurrence and thereafter I had seen them today in the court.'

(10) We agree with Ms, Gosain, counsel for the appellants, that there can be no doubt about the fact that this witness did not know the assailants, i.e. the appellants herein, prior to the occurrence. In any case it was for the prosecution to specifically bring on the record by questioning the said two witnesses that they knew the accused from before. Thus, the infirmity that there was no identification parade during the investigation to enable the participation of the said two eye witnesses is to be borne in mind while assessing the prosecution case. However, before adverting to the merits, another submission of Ms. Gosain needs consideration. She submitted that Hari Singh, Public Witness 7, and Savitri Devi, Public Witness 13, were not eyewitnesses to the occurrence. Shri Hari Singh, Public Witness 7, who emphatically submitted that he had seen the occurrence is belied by the prosecution evidence itself, it is urged.

(11) Hari Singh, after deposing to the facts of assault by the accused as stated by Public Witness 2, Brig. Airys, whose testimony we have quoted above, averred that he was the one who had taken his nephew Prem in an injured condition to Military Hospital where he was declared dead. The plea is that this part of the testimony that he was the one who had accompanied the injured is not borne out from the record. The driver of the ambulance, Sita Ram Pandey, has been produced as Public Witness 10. In his testimony he is silent regarding Hari Singh accompanying him in his ambulance bearing No. SC 32955 from the place of occurrence to the hospital. Capt. Raja Gopal, P.W. 9, who had declared Prem to be dead on arrival at hospital in his medico-legal certificate (M.L.C) (Exhibit P.W.9/A) noticed that the said person was 'unidentified'. He affirmed this fact in his testimony by saying 'one person whose name was not known (was) brought dead'. It does not stand to reason that if Hari Singh had accompanied the body to the hospital, he would not have informed the doctor about the name of the dead person. The driver of the vehicle, Sita Ram Pandey, would have also noticed the presence of Hari Singh in the ambulance, in case he had accompanied the injured as claimed by him. In the other M.L.C. Exhibit P.W.9/B) relating to Ram Chander prepared by Dr. Raja Gopal (P.W. 9), the name of the injured is mentioned and under the clinical Note it is stated 'Brought to the clinic by Capt. (Mrs.) Khandekar at 2300 hours'. It is thus doubtful to hold that Hari Singh had accompanied the injured to the hospital as deposed to by him.

(12) According to Hari Singh he had gone to meet his sister at about 5.30p.m. on 13/08/1982, i.e. the date of occurrence. From his testimony, it appears that in those days he was living in a village. When he was about to go home at about 7.00 p.m., his sister insisted that he should have his dinner. And, after meals, he was asked to stay at her house as it was getting late. At about 10.15 p.m., he heard some noise of 'Bachao Bachao'. On hearing that, he along with his sister, came down from her flat which was on third floor of the servant quarters and saw his nephew lying on the ground near Block No. 21 of the officers flats. He went on to say that he saw the accused Purshottam with a hockey stick in his hand, and accused Ram Chander wielding a Saria (iron rod). He assigns the roles to the three accused as stated by Brig. Airys and Commander R.K.Sharma. According to the witness, when the assailants saw the witness they threw their weapons, that is, hockey stick and saria (iron rod) and ran towards their house. Many persons had collected there including some Military Officers. Thereafter, he stated that with the help of some Military Officers, he took Prem in an injured condition to the hospital and on the way Prem expired.

(13) The testimony of this witness that he was present at the spot or near about the place of occurrence cannot be accepted as Public Witness 1, Lt. Commander Mrs. V.A. Khandekar. who was admittedly the first person to arrive at the spot, did not see any other person there. She is positive that when the injured was taken to the clinic there was only an ambulance assistant in the van along with the injured and the driver. Even at that time, i.e. about 5 to 10 minutes after the occurrence, she did not find Hari Singh present there. Thus we have no doubt in our mind that Hari Singh is not an eye witness to the occurrence. He must have been called later on to the hospital and, possibly, accompanied the body to the mortuary from there as his signatures are found on the various memorandums prepared at the mortuary.

(14) As we have noticed above, the presence of Savitri at the spot or near about the place of occurrence at the time when her son was given beating has also been challenged. From the testimony of Brig. Airys, which we have quoted, it is apparent that he did not find her when he reached the spot. He has stated that he came to know the name of the injured as Prem later on. He went on to state that

'after a short time mother of the victim had also arrived there and she was weeping'. It is not possible to pin point the exact time when the mother of the victim arrived at the spot or was seen there by the military officers, but, according to this witness (P.W. 2) when he reached there the injured was being put into the ambulance. As we have noticed above, the ambulance had reached the spot within 5-10 minutes of the telephonic message by Dr. Mrs. V.A. Khandekar. According to Public Witness 10, Shri Sita Ram Pandey, the driver of the ambulance, he was directed at about 10.30 p.m. by Dr. Raja Gopal to proceed to the flat of Dr. Khandekar. Brig. Airys when he says that after a short time mother of the victim had arrived at the spot, implies that she reached after a short time of his reaching. He reached at the time when the injured was being removed to the hospital in the ambulance. This would mean that she was spotted at about 10.45 p.m. Savitri Devi (P.W. 13) if she had been present at the time of occurrence, would have in the normal course told the said Army Officers that the injured was her son, Prem. Lt. Commander Mrs. V.A. Khandekar came to know of the name of the injured from a chit which was recovered from his person by the Police Officer at the Military Hospital. Public Witness 2, Brig. Airys, came to know of the injured's name later on, that is, after he had been removed to the hospital in an ambulance.170

(15) The testimony of the other eye witness, Commander R.K. Sharma (P.W. 8) seems to be at variance with the statement of Dr. Mrs. V.A. Khandekar and also that of Brig. Airys on this aspect. According to this witness, he had seen the occurrence from the balcony of his flat which is on fourth floor of block No. 20 at about 10.15 pm. The role assigned by him to the three assailants is exactly the same as deposed to by Brig. Airys. He however, says that he shouted from his balcony to the three boys to leave the injured alone and, thereafter, he straightaway proceeded to the ground floor, but on his way, he asked Commodore Adityoo (P.W. 14). who lives on the same floor, to inform the police that 'some persons were beating a chap'. When he reached the spot, he found Brig. Airys already present. The injured was lying on the ground with his face downwards and he found that 'one lady was also crying there and I later on came to know that she was the mother of the injured and few other persons had also reached there. After some time the ambulance was called and the injured was taken to the hospital in

the ambulance. Lady Dr. Khandekar had accompanied the injured in that ambulance'. In his cross-examination, he said that it was after about 15 to 20 minutes of his arrival at the spot that the ambulance had reached there. But, he did not remember whether the injured 'Prem was removed to the hospital in a private car or in the ambulance', He further admitted that before the arrival of the ambulance he had gone back to his flat for a couple of minutes but again came to the spot. He is definite that he came to know the name of the injured person later on.

(16) We are of the view that this witness, possibly an eye witness to the occurrence, has not been able to recollect the proper sequence of events. According to Brig. Airys the injured was being removed in the ambulance when he reached the spot. Commander Sharma admits that Brig Airys was already there but stated that the ambulance was called after about 15 to 20 minutes of his (Sharma's) reaching there. The time when the ambulance reached the spot is more or less certain. That was about 10.40 pm. It arrived at the hospital with the injured at about 11.00 p.m. Public Witness 1, Lt. Commander Mrs. V.A. Khandekar was the first one to reach the spot and that was about 10.25 p.m. Commander Sharma could not have reached the spot 15 to 20 minutes earlier than the arrival of the ambulance. The testimony of Public Witness 1 and Public Witness 2 on this aspect is clearer and straightforward. Commander Sharma left the spot, according to him, for a few minutes to go to his flat. Most probably, he found the mother of the injured at the spot on his second visit but it was only after the ambulance had left the place of occurrence. Apparently he has not been able to recollect the correct sequence. However, what is to be considered is whether Public Witness 13 (Savitri Devi) had seen the occurrence as deposed to by her. There is no doubt that she reached the spot after sometime of removal of her son. We have noticed above, that P.W. 1, Lt. Commander Dr. Mrs. Khandekar did not find her at the spot. Neither did Public Witness 2. Brig. Airys when he reached there. These eye witnesses came to know of the name of the injured much later as admitted by them. The injured, who died on his way to the hospital, was described as an 'unidentified person' by Public Witness 9, DI. Raja Gopal in the M.L.C. (Exhibit P.W. 9/A). All these facts go to show that Smt. Savitri Devi (P.W 13) most probably was not an eye witness to the occurrence.

(17) Now, advertent to the stabbing incident as seen by the witnesses from their respective flats. Public Witness 1 Lt. Commander Mrs. Khandekar was¹⁷¹residing in flat No. 568 of block No, 21. Public Witness 2, Brig. Airys, was also residing on that very floor of the said block in flat No. 570. Mrs. Khandekar was informed at about 10.20 p.m. on 13/08/1982 about the noise on the road outside her house. Brig. Airys stated that it was about 10.15 p.m.when after hearing lot of noise he rushed to his balcony. Public Witness 8 Commander Sharma who was residing in the block opposite, i.e. block No. 20 in flat No. 563 also gives approximately the same time, i.e. 10.15 p.m. when he heard noise Public Witness 1 only saw a person lying on the ground but the other two witnesses say that they saw the actual assault from their respectivebalconies. Brig. Airys claims to have witnessed it with the help of torch light.Commander Sharma was able to see the same as near the place of occurrence there were two street lights. We rind from the site plan. Exhibit Public Witness 2A,that distance from the Blocks to the place of occurrence, which has been marked as 'C' has not been shown. The distance between the blocks has however been shown. It is 26 metres. Near Block No. 20 is an electric pole,which has been marked as 'A' and the one on the side of Block No. 21 has been marked as 'B'. On a rough calculation of the various distances marked in that site plan. it appears that electric pole nearer block No. 20 was at a distance of about 17 metres from it. Electric pole at the place marked 'B' would also bs at the same distance from Block No. 21. The place of occurrence is however nearer block No. 21 it is about 10' metres from electric pole 'A' and about 181 metres from electric pole 'B'. It appears that Brig.Airys although further away distant wise from Commander Sharma was able to see the occurrence not only because of the street lights, he also had advantage of having a torch light. All the three witnesses reside on the fourth floors of their respective blocks. Public Witness 1. at about 10.20 p.m., saw the injured from her balcony while he was lying motionless at the place marked 'E' in the site plan, five minutes earlier, i.e. at 10.15 p.m. Brig. Airys as well as Commander Sharma claim to have see. the assault which was taking place at the place marked 'C' and also the dragging of the injured after the assault up to the place marked 'E' The distance between those points in the site plan is about 6.7 metres. By the lime Brig. Airys had reached the point marked 'E', on his own admission, the injured was being moved

into the ambulance by Mrs. Khadekar and by the time Commander Sharma reached that place, Brig. Airys was already there. The two witnesses had practically simultaneously seen the occurrence, and, thereafter, rushed to the spot. Commander Sharma said that on his way he asked Commodore Adityoo to ring up the police. We have no hesitation in accepting the testimony in toto of Lt. Commander Mrs. Khandekar; she was the one who reached the hospital at about 11.00 p.m. with the injured. That time cannot be questioned at all as it has been mentioned in the M.L.C. (Exhibit Public Witness 9/A) by Dr. Raja Gopal. The time the ambulance left the hospital for the spot cannot be doubted as the driver, Shri Sita Ram Pandey, is categorical that at about 10.30 p.m. he was asked to proceed to the spot by Dr. Raja Gopal. P.W. 1 stilled that the ambulance reached within 5 minutes of her telephone call. As we have held earlier, Commander Sharma's recollection seems to be hazy, The sequence of events as deposed to by him is not borne out from the record. The statement regarding the timings given by Brig. Airys also does not inspire confidence. He stated that after remonstrating with the assailants from his balcony, he immediately rushed to the spot. But at that time he found not only Public Witness 1 but also the ambulance there. It could not have taken him twenty five minutes to rush down. In any view of the case, we are of the opinion that from their respective fourth floors it could not have been possible for the witnesses to identify the assailants, specially when they did not know them from before. Probably, these witnesses did see the occurrence from their balconies, but their assertion that they immediately came downstairs cannot be accepted. These two witnesses heard the noise and came out on their respective balconies at about 10.15 p.m. to investigate. According to Brig. Airys, he saw near his flat (at point 'C' in the site plan) three boys giving beating to another boy. He shouted 'YE Kya HORAHAI'. On his remonstrance, those three boys dragged the victim to a distance of about 15 ft., i.e. up to the point marked 'E' on the site plan. We may notice that in his earlier statement under Section 161 of the Criminal Procedure Code, there is no mention about the particular spot or about the reply given by the boys. However, the witness stated that it took him about 8 to 10 minutes to reach the spot after bearing the noise. That would mean that, according to him, he reached the spot before 10.25 p.m. This is not correct as by then the ambulance which he claimed to have seen had not arrived. Similarly, Public

Witness 8 Commander Sharma must have reached the spot at about 10.25 p.m. as he had also heard the noise at 10.15 pm. The beating and the dragging, most probably, was over by 10.20 p.m., the time by which Mrs. Khandekar came out from her bathroom to her balcony. From the sequence of events and their timings discussed above, we are of the view that Public Witness 2 and Public Witness 8 did come to the spot but much later than 10.25 p.m. By the time Brig. Airys arrived, the ambulance had reached the spot. Their testimony in its entirety cannot, thus, be accepted.

(18) From the statements of Brig. Airys and Commander Sharma, the prosecution can take support only to prove that these two witnesses had witnessed three boys beating another boy. As we have held earlier, these witnesses did not know the assailants from before. therefore, their identification in court at least of the two accused, namely, Purshottam and Rajiv, in the absence of the identification parade during investigation, is of no value.

(19) There is yet another aspect. Both these officers say that they witnessed the hockey stick in the hands of Purshottam and an iron rod in the hands of Rajiv. In his cross-examination. Brig. Airys stated that the iron rod was about 3' ft. long. It was round in shape and its diameter was over $\frac{3}{8}$ x ' inches. The three accused persons after dragging the victim started running towards back side of his flat on his shouting. The witness further stated 'accused persons threw the weapons to the one side when they were going to the back side of our block. I have not seen the iron rod and the hockey when I came to the victim. However, they were recovered by the police later on. I saw the accused persons throwing the aforesaid weapon with the help of light of my torch. I was having a torch containing four dry cells at that time. I could notice the iron rod being thrown but I had not seen it falling on the ground. Similarly, I could witness the hockey being thrown by the accused and I did not see the same falling on the ground.' (italics added)

(20) It is the admitted case of the prosecution that police had arrived at the spot at about 11.30 p.m. on 13/08/1982. The eye witness were questioned by them. Brig. Airys admits that the police remained at the spot up to 8.00 a.m. next morning. According to him he went back to his house at about 3.45 a.m. and again came at

the spot at about 6. a.m. He did not specify in his statement as to when the police recovered the weapons, but it is obvious that during investigation this witness must have informed the 173 police not only about the weapons but also their having been thrown. In any case he admitted those were recovered by the police. The prosecution, however, wanted the court to believe that the weapons were recovered after the accused had made disclosure statements on 14/08/1982. The disclosure statement made by Purshottam Lal, is Exhibit Public Witness 7/G and the one made by Ram Chander is Exhibit Public Witness 7/H. These two statements are attested by Hari Singh, Public Witness 7, unless of the deceased. The pointing out memo leading to the recovery of hockey stick is Exhibit P.W.7/E and the one leading to the recovery of the iron rod is Exhibit Public Witness 7/F. Those are also attested by Hari Singh, Brig. Airys while stating that the weapons were recovered by the police did not specifically state that those were recovered in his presence. But since he supports the fact of recovery (although he is not an attesting witness) it has to be presumed that on being informed by this witness, the police officers searched for those weapons. The weapons were thrown in the vicinity of the officers' blocks, and the police, thus, must have recovered the same or at least knew their whereabouts. The formal recovery of those weapons after the disclosure statement and on the pointing out by accused is worthless as it is obvious from the statement of Public Witness 2 that the police had already 'recovered' those weapons. Neither the disclosure statement nor the seizure memos have been signed by Brig. Airys or by Commander Sharma or by any of the other officers who were available. The only public witness that signed them is Hari Singh. We are of the view that those recovery memos made on the pointing out by the appellants have to be discarded.

(21) Now the injuries alleged to have been inflicted on the deceased by those weapons may be noticed. Dr. L. T. Ramani, Medical Officer of the police hospital, who conducted the post mortem examination on the body of Prem found the following : 'External injuries:- 1. Abrasion 1' inch X 1 inch on the right zygoma (cheek bone). 2. Abrasion 1' X 1' inch on the right cheek. 3. Abrasion 3X 1 inch on the right mandibular border. 4. Clw 1 X ' inch into skin deep surrounded by abrasions on the left side of forehead. 5. Abrasions 1 inch X 3/4 inch on the right sub clavicular region. 6. Tiny abrasion scattered on the front of chest right side. 7.

Abrasion 1 inch X 1 inch over left cheek.8. Clw 1 inch x inch into scalp deep over left parietal eminence.9. Bruise 6x1 inch on the right shoulder and scapular area, margins were bright red in colour.10. Two abrasions 1 x 1 inch each on the right shoulder.11. Bruise reddish in colour 8 x 1 inch on the middle part of the back oblique.12. Bruise 4 inches X 1 inch on the lower part back of right side.13. Bruise 3 inches X 3/4 inches on the back of left knee.14. Clw 1 inch X 1 inch X 1 inch muscle deep with abrasions on the back of right elbow.15. Two bruises 4 inches X 3/4 inch each on the front of left thigh.16 Bruise 4 inches X 1 inch on the right thigh medial aspect.17. Abrasion 1 inch X 1 inch on the front of both knee.18. Abrasion 1 inch X 1 inch over left great toe.19. Abrasion 1 inch X 1 inch on the back of left elbow. Internal examination reveals: Haematoma under the scalp. Skull bones were intact, there was thick sheet of generalised subdural haemorrhage extending up to the base of skull. Neck tissues were normal. Hyoid bone was intact. Ribs were intact. Lungs were partially adherent to the chest wall Left lung showed bruising, heart was normal, stomach contained about 4 ounces of semidigested food. whole lice particles could be identified. Stomach mucosa was pale, bowels were normal, bladder contained clear urine. There were spleen kidneys were pale. Rectum was empty, there was blood clot under subcutaneous tissues under bruises all over.'According to the doctor all the injuries were caused by blunt weapons The injuries over the skull were sufficient to cause death in ordinary course of nature. The autopsy was conducted at 12.30 pm. on 14/08/1982. The doctor found the time since death was about 12 hours.

(22) For assessing whether any of the injuries caused on the skull could be inflicted by a rod of the dimensions referred to Brig. Airys and, particularly, with a view to verify whether he could have been able to judge from a distance the measurements of that rod, which rod, we may notice, is being termed as Sariya (twisted steel) by the Investigating Officer, we wanted to have a look at it. As noticed in the beginning, the weapons havenot been produced before us as they have been auctioned. In our view, from the fourth floor of the building, it would not be possible for Brig. Airys to state categorically whether the weapon being wielded by one of the assailants was of iron or was just an ordinary stick. And for him to have noticed the dimension also seems to be not very probable. He must have seen those weapons when they were recovered by the police during investigation,

but prior to recording of the disclosure statements of Purshottam and RamChander. We may note that Purshottam was arrested on 14/08/1982 at 3.20 a.m. and could have only made the statement thereafter which allegedly led to the discovery of the weapons, the existence and whereabouts of which were already known to the police officers.

(23) The case of the prosecution further is that Purshottam and Ramchander after committing the assault had gone to their houses and had inflicted on themselves cut injuries to enable themselves to have a defense 175 version. Ram Chander, as we have seen above, was noticed by Mrs. Khandekar to be present at the spot. She had found that he was bleeding, and, therefore, took him to the hospital for first aid. Although according to the doctor who had examined them in the police hospital the accused had admitted to have inflicted self injuries with blades, but that statement having been made in the presence of the Police Officers who had escorted them is to be ignored from consideration. The theory propounded by the prosecution regarding the self inflicted injuries does not seem to be cogent, particularly, in view of the fact that Ram Chander was found at the spot when Mrs. Khandekar was going to the hospital. Thus, if the statement of the accused recorded by the doctor in the presence of the police officer is ignored, the injuries to Ram Chander and Purshottam remain unexplained by the prosecution.

(24) For the reasons stated above, we are of the view that the prosecution has not been able to prove the charges against the appellants herein. We allow the appeal and set aside the convictions and sentences imposed on the appellants. We are informed that during the pendency of the appeal the sentence imposed on Purshottam was suspended and he is on bail. His personal bond and the surety bond are discharged. The other two appellants are directed to be set at liberty forthwith.