

Surjit Singh and ors. Vs. the State

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Court : Delhi

Decided On : Oct-18-1995

Reported in : 1995IVAD(Delhi)429; 1995(35)DRJ245

Judge : P.K. Bahri and; J.B. Goel, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal Nos. 22 and 55 of 1992

Appellant : Surjit Singh and ors.

Respondent : The State

Advocate for Pet/Ap. : K.B. Andley,; Sunil Sethi,; Sima Gulati and;

Judgement :

J.B. Goel, J.

(1) Sukhbir Singh, Surjit Singh, Mehtab Singh and Vikram Singh, all sons of Rati Ram, four appellants in Criminal Appeal No.22/92 and Anand Prakash, son of Hoshiar Singh, appellant in Criminal Appeal No.55/92 (in all five accused) were charged with the offences under Sections 302/34, 307/34 and 323/34 Indian Penal Code for the murder of Bhim Singh and for causing injuries to Amar Singh and Hoshiar Singh in the morning of 26.6.1987 at village Rangpuri, New Delhi. All the

five accused have been convicted under Sections 323/34 and 302/34, in addition Mehtab Singh under Section 324 and other four accused under section 324/34 Indian Penal Code by an Additional Sessions Judge, New Delhi and all have been sentenced to life imprisonment and a fine of Rs.2,000.00 each, and in default of payment of fine further R.I. for six months under Section 302/34 Indian Penal Code .; and to three months S.I. under section 323/34 and Mehtab Singh in addition has been sentenced to undergo R.I. for six months and pay a fine of Rs.500.00 and in default to undergo Si for three months and other four appellants to undergo R.I. for six months and to pay fine of Rs.500.00 each and in default to undergo Si for three months each with direction that the substantive sentences shall run concurrently.

(2) Briefly stated the prosecution case is that the accused persons had given beatings to Bhim Singh and Amar Singh and their father Hoshiar Singh in the morning on 26.6.1987. Information about the quarrel was given to P.C.R. by Anuradha wife of deceased Bhim Singh which was conveyed to Police Post (for short PP), Mahipal Pur where DD26 (Ex.PW-7/A) was recorded at 4.50 a.m. On receipt of copy of this Dd, Hc Khema Ram Along with Constable Rajbir Singh reached the spot. S.I. Om Parkash, in charge of Pp on coming to Pp was also informed of it at about 5.30 a.m., and vide Dd 29 (Ex.,PW.7/C) he left for and reached the place of occurrence situated at premises bearing Khasra No.607, Village Rangpuri. The three injured persons had already been removed to hospital by Pcr Van. Hc Khema Ram was deputed to guard the spot and said Si Along with constable Rajbir Singh reached Safdarjang Hospital; and approached the doctor to find out if the injured persons were fit to make statement; Bhim Singh was found unfit for statement and Hoshiar Singh who was fit for statement made first information statement Ex.PW.3/A to him.

(3) He stated that he was living in that village Rangpuri Along with his family; at about 4.30 a.m. he had gone to answer the call of nature and on return after 15 to 20 minutes reached his Gher situated at Khasra No.607 to wash his hands at the hand pump located there; Accused Sukhbir Singh who was present there threatened him to run away from there, otherwise he would be killed; on his call his three brothers, namely, accused Surjit Singh, Mehtab Singh and Vikram Singh,

two armed with Jelly and one with axe and their associate Anand Parkash armed with Lathi reached there. He asked them to surround him and give beatings to him. First Sukhbir Singh gave Lathi blow on his right arm, then Surjit Singh gave a jelly blow injuring his right hand finger; Anand Prakash, (complainant's son) said that he (complainant) was not his father and asked the other accused persons to give beatings to him. He started running away from there to escape when his son Bhim Singh, who was going for call of nature, on hearing his alarm and seeing him running came there to rescue him. All the five accused persons gave beatings to him with their respective weapons, as a result of which he fell down; Hari Singh, a neighbour, reached there and separated them. His son Amar Singh who was going to answer the call of nature also reached there. The accused persons surrounded him also and accused Mehtab Singh, Vikram Singh and Surjit Singh gave beatings to him with their weapons and he fell down. Hoshiar Singh rushed to his house and at his instance Anuradha wife of Bhim Singh informed the police on telephone No.100. Pcr police reached there and removed all the three injured persons in their van to Safdarjang Hospital.

(4) The said S.I. had recorded this statement at 8.00 a.m. and with his endorsement sent it through constable Rajbir Singh to the police station where Fir No.200/87 was recorded by Duty Officer at about 8.37 a.m. for offences under Sections 308/324/506/34 IPC.

(5) Investigation was entrusted to said Si Om Parkash, who collected blood sample, and blood stained earth from the spot and also prepared site plan. Bhim Singh remained unfit to make statement and succumbed to his injuries on 28.6.87 in the hospital. Then offence under section 302/34 was converted and investigation was taken over by Si Mahinder Singh. Inquest Report was prepared. Post-mortem on the dead body was conducted by Dr. G.K. Chaube on 29.6.1987 who had found 16 external injuries on the dead body as mentioned in his report (Ex.PW.15/A). Clothes of the deceased stained with blood and blood sample were preserved and seized by police.

(6) Accused Surjit Singh was arrested on 30.6.87 and he made a disclosure statement (Ex.PW.17/C) and a blood stained jelly was got recovered by him from

the heap of hay lying in a Chhappar. Accused Anand Prakash was also arrested on 30.6.87; he also made a disclosure statement Ex.PW.17/D and got recovered a lathi from a Jawar field. Other three accused persons had surrendered in the Court of the Magistrate concerned on 7.7.1987. They were arrested and police remand was obtained. On interrogation accused Sukhbir Singh had made his disclosure statement Ex.PW.18/J and also got recovered a lathi from heap of wood. All these weapons were blood stained and sealed. In due course C.F.S.L. reports Ex.PW.18/K and Public Witness .18/L were obtained; human blood of group 'B' was found on the blood sample and blood stained earth picked up from the spot as well as on the clothes of the deceased; human blood of group 'B' on one lathi and human blood on other lathi and jelly was detected but without showing blood group. After completing investigation the five accused persons were put to trial. The prosecution, inter alia, had examined Hoshiar Singh Public Witness .3, his injured son Amar Singh, Public Witness .8 and a neighbour Hari Singh Public Witness .5 as eye witnesses, besides, Anuradha (Public Witness .10); Dr. Sudha Nigam (Public Witness .1) had examined the three injured in the Safdarjang Hospital on admission vide M.L.Cs. Ex.PW.1/A, Ex.PW.,1/D and Ex.PW.1/G, Dr. Y.Singh Radiologist (Public Witness .4) had given reports about two fractures found on Bhim Singh, injured on the basis of X-Ray reports, Dr. G.K. Chaube (Public Witness .15) conducted post- mortem; others being police officials.

(7) During trial on behalf of three accused, Surjit Singh, Mehtab Singh and Vikram Singh document Ex.PW.7/DA alleged to be copy of another report having been lodged on 26.6.1987 by Hoshiar Singh at Pp Mahipal Pur, was produced to show that place of occurrence was at the house of the deceased and not at Khasra No.607 and the assailants except Anand Prakash were unknown persons. The accused persons denied their involvement but led no evidence. The Trial court believing the prosecution case, found all the accused guilty and convicted and sentenced them as aforesaid.

(8) The learned counsel for the appellants have contended that the findings of the Trial Court are unreasonable and unjustified inter alias because the three eye witnesses Public Witness .3, Public Witness 5 and Public Witness .8 are not reliable and their testimony suffers from serious infirmities which have not been

considered by the Trial Court, and that the Trial court has wrongly discarded the defense plea and the document Ex.PW.7/DA, which was the first document giving information about the occurrence, the place of occurrence and assailants and Fir Ex.PW.3/A is belated, manipulated and was made after deliberations. These assertions are controverted by the learned counsel for the State.

(9) Report Ex.PW.7/DA on which great reliance has been placed on behalf of the appellants has been held by trial court as forged one. To appreciate the contention it is being reproduced below:

'The in charge Police Post Mahipal Pur, Mew Delhi-37. Dated: 26.6.87 Sub: Complaint against Anand Prakash, my son presently r/o village Qutab Garh, Delhi and seven outsiders for taking legal action against them. Sir, It is respectfully submitted as under: That today, i.e., on 26.6.87 early in the morning I, my sons Bhim Singh and Amar Singh were present in our house and were taking tea. Meantime, all of a sudden, the above mentioned persons armed with sticks and knives in their hands, entered in the house forcibly and they all attacked on us, saying that teach them a lesson today of construct a C.P. Tank without the partition of house and having not taken their consent. Bhim Singh and Amar Singh tried to face their attack but received injuries and fell down on the ground in pool of blood. I raised alarm. Then they all ran away from the house. The above persons have caused injuries to me, my sons Bhim Singh and Amar Singh with common object to kill us. It is, therefore, requested that a legal action against all the above persons be taken immediately and be arrested. Time:4.30 a.m. Thanks Yours faithfully, sd/- (HOSHIAR SINGH) Seal of Police Post Mahipal Pur S/o Late Shri Niadar Singh sd/- Village Rangpuri P.O. Mahipal Pur 26.6.87 N. Delhi-37'

(10) This document is in carbon impression and obviously could be the carbon copy of its original if delivered as alleged. It purports to be a report lodged by Hoshiar Singh (who had also lodged Fir Ex.PW.3/A). In normal course, this document should have been in possession of Hoshiar Singh, if he had delivered the report in person to Public Witness .7 as stated by the latter but it was produced by counsel for the accused Surjit Singh, Mehtab Singh and Vikram Singh during the course of cross-examination of Hoshiar Singh (Public Witness 3). First, its

photocopy marked 'DA' was produced on 16.10.89 and then this document itself was produced on 22.12.89. Hoshiar Singh has stated that, he had neither gone to the Pp to deliver it nor this writing is written or signed by him. No material has been brought on record, how this document came in possession of the accused or their counsel. Learned public prosecutor had also raised a query recorded on 22.12.1989, as to how it came in possession of the accused persons, but still no Explanationn is forthcoming even during arguments.

(11) Public Witness .7, Constable Amrik Singh has stated that, on the night of 25/26.6.87, he was working as duty constable at Pp Mahipal Pur. His statement was first recorded on 27.9.1989 when he had not deposed anything about this document Ex.PW.7/DA. But he was recalled again on 27.2.90 when he has deposed that original report was delivered to him at the Pp by Hoshiar Singh (whom he pointed out as present in the Court) in the morning on 26.6.87 and it bears his signatures with the date and seal of Pp at point A in token of having received this report on that day. He has further stated that, he had not delivered Ex.PW.7/DA to the accused persons at any time. He has also deposed that such like reports are not entered in the Roznamcha (Daily Diary), but, normally are put on the table of the in charge PP. He has further deposed that at the time of receipt of this report, in charge Pp was not present at the Pp and he had not given it to the in charge Pp when he came, though he has, stated that information of DD-26 (Ex.PW.7/A) was given by him to the said in charge when he came to the Pp and on receipt of which he had proceeded to the spot. There is no reason why he would not have brought it to the notice of the Pp in charge as it pertained to the same occurrence if it was given to him by that time.

(12) Si Om Parkash was in charge of that Pp at that time. He appeared as Public Witness 16 and deposed in cross- examination that report Ex.PW.7/DA was not put up to him in the morning on 26.6.87, nor it was on his table when he had proceeded for the place of occurrence. Very strangely, a suggestion has been put to him on behalf of the accused that the said Constable Amrik Singh had given this report (Public Witness 7/DA) to him Along with information of DD-26 and that he had purposely over-looked this report which he has denied. This suggestion is contrary to what Public Witness 7 had deposed as noticed above when he had

stated that he had not delivered this report to this witness. This suggestion obviously is not bonafide.

(13) This report Ex.PW.7/DA discloses a very serious cognizable offence, showing bleeding injuries to victims. There is no reason why Public Witness 7 would not have referred Hoshiar Singh, if he had brought it to him, to the Police Station for registration of a formal Fir forthwith. It required immediate attention and action in the matter either at the Pp level or at the Police Station level and to remove the injured to Hospital forthwith. There is no reason, why he would not have brought it to the notice of the in charge Pp Along with DD26 when he proceeded to the spot for inquiry about DD-26, had this report Ex.PW.7/DA been actually delivered to him. Obviously, this report had not been lodged by Hoshiar Singh as alleged, and so was not put up to the said in charge PP. There is also no reason, why he had not forwarded it to the Police Station or entered this report in the Daily Diary atleast forthwith. In these circumstances, it does not inspire confidence, that this report would have been delivered to Public Witness 7 in the morning of 26.6.87 by Hoshiar Singh.

(14) On the basis of this document Public Witness 7/DA, it was suggested to Public Witness 3 Hoshiar Singh in cross-examination on 16.10.89 that on the day of occurrence, a C.P. Tank was being dug in front of his house, and on this there was quarrel between his son Bhim Singh on one side and his other sons Amar Singh, Anand Prakash and Umed Singh on the other side, and that Anand Parkash and his associates had given beatings to Bhim Singh which he has denied, and that quarrel/occurrence had taken place at the house of Hoshiar Singh, which suggestions he has denied. On behalf of accused, Anand Prakash it had been suggested that he did not cause any injury to any person and that he had simply saved his father, which he denied. In his suggestion, he has not disclosed as to who were the assailants from whom he had saved his father and what was the cause of that quarrel. There is no suggestion or Explanationn from his side as to how Bhim Singh and Amar Singh were injured. No material /evidence has also been brought on record that any C.P. Tank was being constructed by Hoshiar Singh in front of his house and that there was any dispute between Hoshiar Singh and his said sons or inter-se between his sons.

(15) Public Witness 8 Amar Singh was also injured in that occurrence. The suggestions put to him are that Bhim Singh deceased was given greater portion in the house as compared to other brothers, and on account of this reason differences had arisen between the brothers and secondly that a C.P. Tank was under construction on the day of occurrence in front of the house of his father Hoshiar Singh and the quarrel had taken place between them and Bhim Singh on account of that C.P. Tank and they had inflicted injuries on Bhim Singh. Public Witness 8 has denied these suggestions. On behalf of Anand Prakash, the suggestion put to Public Witness 8 is that he and his father had named him as one of the assailants on suspicion which he denied. Sukhbir Singh, accused, has cross-examined him separately and has suggested that the quarrel had taken place at the house of his father which he denied. No suggestion has been put by him as to what was the cause, why quarrel had taken place and who were the parties and assailants involved in it. There is no consistency in the defense pleas put to these witnesses. No plea has been taken by any of the accused persons in their statement under Section 313 Criminal Procedure Code . that the cause of quarrel was construction of C.P. Tank by Hoshiar Singh or quarrel had taken place at the house of Hoshiar Singh or that there were inter se disputes between Hoshiar Singh and his sons, Bhim Singh, Amar Singh and Umed Singh. There is no material brought on record to show that there was any inter-se disputes between Hoshiar Singh and his sons Bhim Singh, Amar Singh and Umed Singh resulting in such serious conflict between them. No material/evidence has also been brought on record that any C.P. Tank was being constructed by Hoshiar Singh in front of his house against the wishes of his sons.

(16) On the other hand, the prosecution case is that the occurrence had taken place at the Gher bearing Khasra No.607. Public Witness 3 Hoshiar Singh has deposed that he had gone out to answer the call of nature at about 4.40 a.m., after 15 to 20 minutes he returned and was going to his Gher at Khasra No.607 for washing his hands at the handpump there when Sukhbir Singh had asked him to run away, otherwise, they will kill him and on his call his three brothers Surjit Singh, Mehtab Singh and Vikram Singh and his associate Anand Prakash came there armed with weapons like Lathi, Jellys and axe. First, Hoshiar Singh was attacked and then Bhim Singh who reached there to rescue him was attacked and

seriously injured and when Amar Singh came he was also attacked and injured; Public Witness 5 Hari Singh, a neighbour has also corroborated him on this aspect. PW9 Hc Khema Ram and Const. Rajbir Singh had reached there and H.C. Khema Ram was deputed to guard the scene of occurrence at that Gher, Si Om Parkash had picked up sample blood and blood stained earth and had also prepared site plan showing the place of occurrence there. No suggestion has been put to Public Witness 9 or Public Witness 16 Si Om Parkash that this Gher was not the correct place of occurrence or that it was at the house of Hoshiar Singh.

(17) In the report Ex.PW.7/DA time of delivery of the report is mentioned as 4.30 a.m. If the occurrence had been reported by Hoshiar Singh in person at about 4.30 a.m. there would have been no occasion for Anuradha having again given information to Pcr which was conveyed to Pp at 4.50 a.m. about the same occurrence. It is also most unlikely that after having given report Ex.PW.7/DA at Pp, Hoshiar Singh would not have arranged through the police or by himself to remove his two injured sons who had been seriously injured and also himself to the hospital.

(18) On behalf of accused reliance in this behalf has also been placed on DD26 (Public Witness 7/A) recorded on information given by Anuradha wife of deceased Bhim Singh, wherein, information recorded is that 'Vakil Bhim Singh Ke Makan Par Jhagra Hua Hai'. Anuradha who appeared as Public Witness 10 has deposed that her father-in-law Shri Hoshiar Singh came running to the house and told her that a quarrel had taken place with her husband at the Gher and on his asking she had informed the police at telephone No.100 from the house of Shri Rana, Advocate. She denied the suggestion that she had informed the police that the quarrel had taken place at their house. No specific suggestion has been put to her that actually the quarrel had taken place at their house and not at the Gher. No suggestion has also been put to her that any C.P. Tank was being dug at their house, which was the cause of quarrel. It cannot be said that necessarily the telephonic message was recorded in the same language in which she had given the information. The message was recorded at the Pp on the basis of information transmitted by Pcr and obviously this is based on hearsay evidence, and so it is not legally admissible in evidence to prove this fact.

(19) The trial Court after taking into consideration the material on record and other circumstances has come to the conclusion that this document Ex.PW.7/DA is fake and a forged one and has been fabricated by the accused with the aid of Constable Amrik Singh. We find unable to persuade ourselves to take a different view. We do not find any legal infirmity in this finding and uphold this finding of the Trial Court.

(20) Then it is contended that the Fir is belated. The occurrence had obviously taken place at about 4.50 a.m. when information was given to the Pp through Pcr where DD-26 was recorded. Pcr Police reached the spot and removed the three injured to Safdarjang Hospital, Bhim Singh was examined at 6.25 a.m. vide Mlc Ex.PW.1/A, while Amar Singh and Hoshiar Singh were examined at 6.40 a.m. and 7.15 a.m. vide their MLCs. Ex.PW.1/D and Ex.PW1/G. Si Om Prakash in charge Pp had received information of the occurrence at about 5.30 a.m. when he came to the Pp, he first went to the spot and from there reached Safdarjang Hospital, made three applications Ex.PW.16/A, Ex.PW.16/B and Ex.PW.16/C to the doctor to find out if the injured were in a position to make statement. Bhim Singh was found unfit to make statement, Hoshiar Singh lodged Fir Ex.PW.3/A recorded by 8.00 a.m. The statement runs into three pages which would have taken sufficient time in recording it. The statement was sent to Police Station where Fir was recorded at about 8.37 a.m. by Public Witness .13 who was working as Duty Officer. No circumstances have been brought out in the cross-examination of Public Witness .13 that he had not recorded this Fir at about 8.37 a.m. In these circumstances, there is no delay or unreasonable or deliberate delay in lodging the Fir on the part of the complainant who was removed to the hospital in injured condition. In *Zahoor Vs . State of U.P. : 1991 CriLJ56* and in *Tara Chand Vs . State of Punjab : AIR 1991 SC63* it was held that where there are no indications of fabrication, the Court would not reject the version as given in Fir merely on the ground of delay. We do not find any such indications of fabrication in the FIR. In these circumstances, it cannot be said that the Fir was lodged belatedly.

(21) Then it was contended that special report had not been sent to the Magistrate concerned immediately after the registration of the FIR.

(22) The case was first registered under sections 308/324/506/34 Indian Penal Code and was converted under Section 302/34 Indian Penal Code after two days. Special report is required to be sent in murder cases and so it was not necessary to send such special report when case was registered. Moreover as held in State of U.P. Vs . Gokaran : 1985 CriLJ511 which was a murder case and there was a delay of about two days in sending such report to the Magistrate, it was held that mere delay in receipt of special report by the Magistrate would not enable the Court to dub the investigation as tainted one nor could the Fir be regarded as ante-timed if the investigation had already been started. This contention has also no merit.

(23) It was also contended that if Hari Singh Public Witness 5 was present at the time of occurrence, he would have lodged a report about the occurrence.

(24) Hari Singh is neither a victim nor relation of victims nor an aggrieved person. He would not have been in a position to give complete information about the origin and circumstances giving rise to the occurrence. Prosecution cannot be blamed if strangers do not come forward to lodge such reports nor his not lodging the Fir would mean that he was not present at the time of occurrence.

(25) Then it was contended that place of occurrence was not got photographed which also shows that the place of occurrence was at different place.

(26) Taking of photograph of the place of occurrence in itself is no evidence. This would normally be required to show the relative positions of the eye witnesses. The Io might not have considered it necessary to get the spot photographed especially when the case was registered only under Section 308/324/506/34 Indian Penal Code No question has been put to the Io Public Witness 16 in this regard to know the reason for this omission, if any. From this circumstance, it cannot be said that place of occurrence would be different.

(27) It has also been contended that there are material contradictions and discrepancies in the testimony of the three eye witnesses-PW3, Public Witness 5 and Public Witness 8 which make their testimony unreliable and prosecution case doubtful.

(28) Public Witness 3 Hoshiar Singh had lodged the FIR. He has deposed that at 4.30 a.m. he had gone to answer the call of nature, on return after 15/20 minutes, he was going to wash his hands at the handpump installed at his Gher at Khasra No.607. Sukhbir Singh accused was present there. He warned him to run away from there otherwise they will kill him; he also called his three brothers Surjit Singh, Mehtab Singh and Vikram Singh and their associate Anand Prakash and asked them to attack him; Sukhbir Singh gave Lathi blow on his right hand, Surjit Singh gave Jelly blow on the finger of his right hand; accused Mehtab Singh and Vikram were armed with Kulhari and Jelly and Anand Parkash had said that he(PW3) was not his father and asked the other accused persons to attack him; he was trying to run away to save himself when his son Bhim Singh who was going for answering the call of nature on hearing his noise and seeing him running came there; Bhim Singh was attacked by Sukhbir Singh with Lathi, by Surjit Singh with Jelly, Mehtab Singh with Kulhari, by Vikram with Jelly and Anand Prakash had given Lathi blow and he was fallen down. On raising alarm 'Bachao Bachao -Maar Dia Maar Dia' Hari Singh a neighbour reached there who separated them his other son Amar Singh who was going to answer the call of nature also came there when accused Mehtab Singh gave Kulhari Blows on his head and Sukhbir Singh gave Lathi blows to him. Vikram and Surjit Singh had given Jelly blows but they missed him as he had fallen down and, thereafter, on being informed the Police reached there and removed them to Hospital. In cross-examination it is suggested to him that on the date of occurrence a Cp Tank was being dug in front of his house which he denied. No evidence or material has been brought on record to this effect and this has not been found correct above.

(29) It is then suggested to him that there was a quarrel between his son Bhim Singh on the one hand and his other sons, namely, Anand Parkash , Amar Singh and Umed Singh on the other and that Anand Prakash and his associates gave beatings to Bhim Singh which he denied. No material has been brought on record to show what was the immediate cause of quarrel between his sons. There is also nothing to show that Umed Singh was at all present at the scene of occurrence or in the village on that date who appears to be residing at Najafgarh. A number of other suggestions have also been put to this witness which apparently have no bearing to the controversy involved in the case nor any effort has been made to

bring any material on record to support such suggestions.

(30) On the other hand he had stated that a civil case was pending between him and accused Surjit Singh, Sukhbir Singh, Mehtab Singh and Vikram Singh and he had proved Ex.P/4, a certified copy of the order dated 29.11.1986 and copies of three complaints/reports dated 24.10.1986, 17.2.1987 and 30.3.1987 (Ex.P.6/1-10) lodged by him against these accused persons. In cross-examination it was elicited that the aforesaid civil suit was still pending trial in the court and in the said suit status quo was granted by the Court. The accused in their statements under sections 313 Criminal Procedure Code . have also admitted that civil suit was pending between this witness and the aforesaid four accused persons. It is also elicited from his cross-examination that a Panchayat was held on 25.6.87 in which Anand Parkash was also present. It has further been elicited that Bhim Singh, deceased had filed a complaint against Anand Parkash under section 392 Indian Penal Code which was pending before the Metropolitan Magistrate, Patiala House, New Delhi and that the complaint was not pressed by this witness after death of Bhim Singh.

(31) Public Witness 3 was living Along with his son Bhim Singh and his family in village Rangpuri whereas Amar Singh his other son who was injured in the occurrence was living in Faridabad and he had come on the previous night on being called by him as a Panchayat had taken place on that date. Public Witness 3 has also deposed that Khasra No.607 comprised of four bighas two bids was which had a boundary wall and there were four Chhappars on it out of which two belonged to him and the other two belonged to the four accused brothers. It was also suggested to Public Witness 8 Amar Singh that on the date of occurrence the accused Surjit Singh, Sukhbir Singh, Mehtab Singh and Vikram Singh were in exclusive possession of Khasra No.607 which he denied and stated that his family was also in possession of it. Public Witness 8 has also deposed that the aforesaid four accused persons were restrained from interfering into their possession in this Khasra No.607. Obviously, the dispute between Public Witness .3 and the four accused brothers who are nephews of Public Witness 3 was going on regarding the use and possession of premises situated at Khasra No.607. As appears from Ex.P.4, the court of the Sub Judge on application under Order 39 Rules 1 & 2 Civil

Procedure Code in the suit filed by Hoshiar Singh (Public Witness 3) against his aforesaid four nephews, had ordered the latter to maintain status-quo regarding the extent of construction, fencing on it and the extent of possession in respect of the portions of the Gher existing on the aforesaid piece of land. Inspire of this interim order the complainant Hoshiar Singh had to make complaints dated 27.2.1987 and 30.3.1987 to Police complaining that the said accused persons were interfering in his possession. It also appears from the cross-examination of Amar Singh Public Witness 8 that his father Hoshiar Singh had called him from Faridabad on 25.6.87 because a Panchayat had taken place between the parties and the police was also present in that Panchayat and both the parties were directed not to interfere in the possession of each other and the parties shall not raise any construction over the disputed premises. No suggestion has been put to Public Witness 8 also that he had any dispute whatsoever with his brothers.

(32) Obviously, the main cause for the present occurrence was dispute between Hoshiar Singh and his family on the one hand and his nephews about the use and occupation of premises situated in Khasra No.607 which apparently was owned by Public Witness 3 and his four nephews accused and inspire of the status quo order passed by the Civil Court the accused persons were threatening and interfering or preventing Public Witness 3 and his family from entering or using the said premises. This is also so proved from the fact that when Public Witness 3 Hoshiar Singh was entering Khasra No.607 to wash his hands at his handpump there accused Sukhbir Singh, raised an alarm asking him to run away from there otherwise they will kill him. Obviously, accused persons were not allowing or liking entry of Public Witness 3 over the premises in question.

(33) Accused Anand Parkash was living in village Qutab Garh for the last 7/8 years and there is no material on the record to justify his presence and his attending the Panchayat on 25.6.1987. Bhim Singh, deceased had filed a complaint against him under section 392 Indian Penal Code as also evidenced from Mark 'B' and he seized this opportunity to side with the other accused persons and associated with them in attacking Bhim Singh, Hoshiar Singh and Amar Singh. There is no material brought on record to show that there was any other ground for this occurrence.

(34) It has already been held that the place of occurrence was not at the house of Public Witness .3 but at the Gher situated at Khasra No.607 wherefrom the three injured were also removed to Hospital. Public Witness 3 had lodged Fir vide statement Ex.PW.3/A without any unnecessary delay giving details of the attack on the assailants and also the weapons used. This statement Ex.PW.3/A corroborates him. He has also been corroborated by medical evidence, Dr. Sudha Nigam, Public Witness 1 had examined him and had noticed injuries on his person vide Report Ex.PW.1/G who had found the following injuries on his person:

1.BRUISEand swelling on left fore arm. 2.Bruise over right forearm and hand. 3.Swelling and bruise over left knee. 4.Leniar bruise over left thigh. 5.Bruise over lower part of right thigh. 6.Bruise over back (left lumber region). 7.Superficial clean incised wound of about 2 cm over right middle finger.

(35) He was examined at about 7.15 a.m. and his injuries were one or two to three hours old. In her opinion injury No.7 was caused by sharp edged weapon and the rest were caused by blunt object. In cross-examination it was elicited that superficial injury mentioned in his Mlc Ex.P.W.1/G could be self inflicted. No suggestion has been put to Public Witness 3 that this injury was self inflicted by him. The police was informed immediately after the occurrence who reached there within a short period and had removed him Along with two other injured from the spot in injured condition to Hospital where he was examined by the Doctor at about 7.15 a.m. and he had lodged Fir soon thereafter. There would have been no occasion for him to have self inflicted this injury. Moreover, it is not suggested that other injuries could also have been self inflicted. It is not suggested nor it can be said that these injuries could not have been caused by lathi and jelly.

(36) He has also been corroborated by medical evidence about injuries found on the person of injured Bhim Singh by Public Witness 1 and by the Post Mortem Doctor Public Witness .15. Public Witness 1 Dr. Sudha Nigam examined him at 6.25 a.m. in Safdarjang Hospital vide Mlc Ex.PW.1/A and she had noticed nine injuries:

(37) Doctor Public Witness .1 has opined that the weapons used were sharp and blunt and injuries No.1, 2, 4, and 5 were caused by sharp weapon and injury No.3,

6, 7, 8, and 9 were caused by blunt object. Injury No.8, and 9 were grievous while injury No.1 was dangerous. Public Witness .4 Dr. Y. Singh, Radiologist has deposed that X-rays were taken and on examination of X-ray he had found fractures on left femur-shaft and right Ulna on the person of Bhim Singh. In cross-examination it has been elicited that injury No.1 could be caused by the Khurpi. In further cross-examination some Meat cutting knife of the size of 8' with a width of over 1' having sharp edge over one side was shown to the witness and it was elicited that injury No.1 could be caused with this cutting knife. That knife has not been brought on record and so it is not possible to appreciate this reply. There is no suggestion put to him that this injury could not have been caused by a Kulhari as apparently such injury would have been caused by Kulhari used by one of the accused as deposed by Public Witness .3. Unfortunately, that Kulhari remained untraced and was not recovered by the Investigating Agency.

(38) The post mortem Doctor Public Witness .15, however, had noticed the following external injuries on his person in his post mortem report Ex.PW.15/A:-

1.EXTERNALinjuries: There was stitched wound over right parietal region horizontally placed 7 cms. in length. 2.There was abrasion over left parietal eminence 3 cms. in length. 3.There were both sides black eyes. 4.There was abraded contusion over right forehead 2x1 cms. 5.There was lacerated wound starting from lateral side of eye brow, horizontally placed 3 cms. in length. 6.There was stitched wound over right cheek starting from right corner of mouth 6 cms. in length. 7.There was stitched wound upper lip 3 cms. in length. 8.There was stitched wound tip of nose 2 cms. in length. 9.There was linear abrasion horizontally placed over left cheek 5 cms. in length. 10.There was contusion over left upper arm 16x10 cms. 11.There was contusion over right shoulder 7x8 cms. 12.There was contusion over right arm 10x6 cms. 13.There was contusion over left shin of tibia 3x1 cms. 14.There was contusion over left thigh 9x6 cms. 15.There was fracture of femur lower 1/3rd. 16.There was fracture of forearm bones both sides lower 1/3rd.

(39) And on internal examination on scalp there was contusion over right parietal region and on skull there was fracture of right parietal bone.

(40) No suggestion to this doctor was put that these injuries could not have been caused by blows of Lathis, Jelly and Kulhari. However, it was contended that there is variation about the nature of injuries in the reports of two doctors Public Witness 1 and Public Witness .15. The doctor who had prepared the MLC might not have noticed all the smaller or minor injuries as he would be concerned to give immediate medical aid and the details of all the injuries are clearly and extensively noticed at the time of post mortem examination to ascertain the cause of death and weapons used. It has not been pointed out during arguments that the nature of injuries as noticed by two doctors were materially different and could not have been caused by the weapons as stated by Public Witness .3.

(41) Public Witness .3 has further been corroborated by the medical evidence about the injuries found on the person of Amar Singh by Public Witness .1 Dr. Sudha Nigam who had examined him at about 6.40 a.m. vide MLC. Ex.PW.1/D and had found the following injuries:

1.THERE was clean incised wound about 3 cms. over anterior part of scalp.
2.There was 2 clean incised wound 3 cm & 2 cms. over middle of scalp. 3.Bruise over left fore arm. 4.Bruise over left shoulder. 5.Tenderness over upper part of right leg. 6.Bruise over upper part of right arm.

(42) The doctor has opined that these injuries would have been caused one or two hours before her examination and injury No.1 & 2 could be caused by sharp object while rest could have been caused by blunt object. No suggestion has been put to the Doctor that first two injuries could not have been caused by Kulhari blows and jelly and Lathi blows.

(43) Public Witness 8 Amar Singh who was injured in the same occurrence, has deposed that in the morning of 26.6.1987 at about 4.45 or 5 a.m. he was going out to ease himself and from Plot No.607 he heard the noise of Bachao-Bachao and found his father standing in front and also his brother Bhim Singh had been laid down by the accused persons who were beating him. The accused persons surrounded him also; accused Mehtab Singh gave two blows of Kulhari on his head, Surjit Singh and Vikram Singh had attacked him with Jellies but he had fallen down, while Sukhbikr Singh and Anand Parkash gave him Lathi blows. It has

not been disputed that he was present at the time of occurrence and was injured in the same occurrence. However, in his cross-examination he has stated that when he had reached there Bhim Singh and Hoshiar Singh had not received injuries. To this extent there is variation/contradiction between his statement and that of Public Witness 3. Apparently, he had not seen Bhim Singh when he reached near the spot. Bhim Singh was injured in the same occurrence and was also present at the spot before he reached there. No new development had taken place after his arrival. Hoshiar Singh and Bhim Singh who were present at the spot had been given beatings before his arrival and he himself was attacked suddenly as he reached there. Obviously, this portion of his statement is not correct due to error of memory or lack of observation or confused state of mind as he himself was seriously injured in the same occurrence. There is no reason to disbelieve Public Witness 3 in these circumstances, especially when it is not disputed that all the three injured persons had been injured in the same occurrence; the occurrence had taken place in quick succession injuring Hoshiar Singh, Bhim Singh and Amar Singh one after the other. Public Witness 3 is the father and Public Witness 8 is his son. Four of the accused are nephews of Public Witness 3 whereas 5th accused Anand Prakash is his son. There is no reason why they would have substituted the accused persons who are their very close relations for other assailants. Their testimony is reliable and cogent and we do not find any inherent infirmities therein. They have been rightly believed by the Trial Court. In our view their testimony is sufficient to sustain conviction without any further corroboration.

(44) However, prosecution has also examined Public Witness 5 Hari Singh as an eye witness. He has deposed that at about 4.45/5 a.m. he was present at his house situated nearby when he heard the alarm of 'Maar Dia Maar Dia' from Plot No.607, came and saw Sukhbir and Vikram Singh both armed with Jelly, Mehtab was having Kulhari, Surjit and Anand Parkash were having Lathis and these accused persons were attacking Bhim Singh and, in the meantime, Hoshiar Singh also reached there; he and Hoshiar Singh rescued Bhim Singh, in the meantime Amar Singh also reached there and on seeing him all the accused persons gheraoed him; Mehtab Singh gave axe blows on the head of Amar Singh as a result of which he fell down, and Surjit and Vikram Singh gave Jelly blows to Amar Singh which he avoided and Sukhbir Singh and Anand Parkash gave Lathi blows;

police was informed; Police reached there and apprehended all the accused persons and the injured were removed to the hospital.

(45) It has been pointed out that he has made a false statement that police had apprehended all the accused persons at the spot. No doubt this is not correct statement made by this witness as it is not the case of the prosecution nor that of the accused that any of the accused was apprehended at the spot. It is also pointed out that this witness was old person aged 70 years with both his legs fractured and it cannot be believed that he would have entered the fray. It is not suggested to him that he was not in a position to walk. There is nothing brought on the record to show that he was inimically disposed towards any of the accused persons. He was living nearby. It cannot be said that it would be improbable for him to reach the spot and intervene to separate the accused to rescue Bhim Singh from their attack, The error in his statement that the accused persons were apprehended at the spot could be explained due to old age and lapse of time, and weak memory. In any case, his testimony does not create any infirmity in the testimony of Public Witness 3 and Public Witness 8. Even after excluding his testimony, testimony of Public Witness 3 and Public Witness 8 is cogent, sufficient, and trustworthy to sustain conviction of the accused persons.

(46) It was also contended that Public Witness 3 and Public Witness 8 were conscious when they reached the hospital but still they did not disclose the names of their assailants to the Doctor who recorded their MLCs.

(47) Public Witness 1 Dr. Sudha Nigam had recorded their MLCs. No suggestion has been put to her if she had made any query about the names of the assailants from Public Witness 3 or Public Witness 8. Nor it was obligatory for her to have elicited such information. It was also not obligatory for the injured to have told the names of the assailants to the doctor. The doctor had first examined Bhim Singh and he would have been more concerned to attend to him. The names of assailants had been given in his statement Ex.PW.3/A by Hoshiar Singh without unnecessary delay.

(48) Prosecution had also relied on three weapons of offence, one Ex.P.1, a lathi alleged to have been recovered in pursuance of disclosure statement Ex.PW.17/D

of accused Anand Prakash; Ex.P.2, a Jelly alleged to have been got recovered by accused Surjit Singh in pursuance of his disclosure statement Ex.PW.17/C and another lathi Ex.P.3 alleged to have been recovered in pursuance of disclosure statement Ex.PW.18/J made by accused Sukhbir Singh. These recoveries have been disputed as planted ones and not made in presence of independent and reliable witnesses.

(49) Public Witness 18, Si Mahinder Singh, has deposed that accused Sukhbir Singh was arrested by him on 7.7.87, when he had surrendered in the court and his police remand was obtained from that court and thereafter he had made disclosure statement, Ex.PW.18/J, and in pursuance thereof on 8.7.1987 he Along with the accused and constable Ram Pal had gone to village Rangpuri, where Hoshiar Singh was joined and on the pointing out of the place by accused Sukhbir Singh, lathi Ex.P.3 was recovered from the lathis which were lying on the chhappar in the heaps of wood, it was having blood stains and was sealed with the seal of 'MS'. In cross- examination he also stated that constable Rampal was present with him at the time when this disclosure statement was made. A suggestion was put to him that on 8.7.87 he was on arrangement duty and had not taken out the accused from the police lock up and no recovery had been made at his instance, which he denied. He also denied the suggestions that the signatures of Sukhbir Singh were obtained on the disclosure statement under duress and that the lathi was planted on the accused. Roznamcha register was got produced from him and it proved that the accused was taken out from the Lock up on 8.7.87 vide entry No.DD No.22(Ex.PW.18/DA). No material has been brought on the record that this Si Mahinder Singh was engaged elsewhere in some arrangement duty at relevant time or that the statement was made under duress by this accused. He has been corroborated by Public Witness 17, constable Rampal. He also denied the suggestion that he and Si Mahinder Singh were on arrangement duty in connection the visit of the Prime Minister in Vasant Vihar area from early morning till afternoon on 8.7.87. Public Witness 3 Hoshiar Singh has also deposed that on 8.7.87 accused Sukhbir Singh had led the police party to a Chhappar and from the goods stored over there, he took out and produced before the police a lathi having some cracks and blood stains which he identified as Ex.P.3. He denied the suggestion that this lathi, Ex.P.3, was not recovered at the in-stance of accused

Sukhbir Singh. No suggestion has been put to Public Witness 3 that Public Witness 17 and Public Witness 18 had not visited the village for the recovery of this lathi on 8.7.87. This lathi was sealed and seized vide seizure memo Ex.PW.3/G. In the seizure memo this parcel has been given the number as W.3.

(50) The Trial Court has believed this recovery in pursuance of disclosure statement made by this accused. Nothing has been elicited in the cross-examination of Si Mahinder Singh that he had any hostile inclination towards the accused or special interest in the victim or the complainant. There is nothing to doubt his bonafides in his investigation. Though no independent witness had been joined at the time of recovery but that in itself will not make this recovery illegal or improper. As held in State of Kerala Vs . M.M. Mathew and another : 1978 CriLJ1690 , the evidence of the investigating officers cannot be brushed aside on the ground that they are interested that the accused are convicted. Prima-facie, every public servant is to be presumed to act honestly and conscientiously and the same principle applies to police officers. Their testimony is to be judged on their intrinsic worth and human probabilities. Again in H.P. Administration Vs . Om Prakash : 1972 CriLJ606 it was held that the evidence relating to recoveries is not similar to that contemplated under section 103 of the Code of Criminal Procedure where searches are required to be made in the presence of two or more inhabitants of the locality in which the place to be searched is situated. In an investigation under section 157 the recoveries could be proved even by the evidence of the Investigating Officer if his evidence could otherwise be believed. In view of this position it cannot be said that the recovery of this weapon is not legal and proper or was not acceptable.

(51) In CfsI Reports Ex.PW 18/K and 18/L, human blood of 'B' group has been detected at two places on lathi Ex.P3. This is also the blood group of the deceased as found on blood stained earth picked up from the place of occurrence and the four wearing clothes of the deceased which were sent to CFSL. This recovery is admissible under section 27 of the Indian Evidence Act and this connects the accused Sukhbir Singh with the crime and also with the assault made on the deceased and corroborates Public Witness 3 Hoshiar Singh.

(52) Besides lathi, Ex.P3, Lathi Ex.P.1 and jelly Ex.P2 were also recovered at the instance of other two accused Anand Prakash and Surjit Singh. These were also sent to Cfsi and in the Cfsi reports though human blood has been detected but the blood group could not be ascertained. As such the recovery of these two weapons is not of any help.

(53) Learned counsel for the appellants have also contended that the weapons recovered have not been shown to the Doctor and it is not proved that these weapons had been used in the crime.

(54) All the weapons used in the assault have not been recovered. It was not contended during arguments that injuries found on the persons of Hoshiar Singh, Amar Singh and deceased Bhim Singh could not have been caused by these weapons. The circumstance of not obtaining the opinion of the Doctor is of no consequence.

(55) Now the question is what offences have been committed by the accused persons. No arguments were addressed on behalf of the four brothers- accused. However, on behalf of the accused Anand Prakash, it was contended that it is not proved that he had the common intention of his co- accused.

(56) As already noticed, a civil dispute was going on between Hoshiar Singh on the one hand and his four nephews-accused on the other hand and the civil court had ordered the parties to maintain status quo about the extent of construction, fencing and the respective possession of the parties over the premises situated at Khasra No.607. In spite of this fact, the complainant Hoshiar Singh had to file complaints to the police complaining that the said accused persons were preventing them from going or were otherwise trying to interfere in their possession over the said premises. A Panchayat was also held a day earlier where again the parties were so advised. The occurrence had taken place early in the morning when Hoshiar Singh was going to that gher when he was accosted by Sukhbir Singh with a warning either he should run away or he will be killed and he had also given a call to his three other brothers-accused and their associate, Anand Prakash, who were all present there. All of them came out at his call immediately armed with dangerous weapons, two were armed with lathi, two with

jellis and one with Kulhari. Anand Prakash was facing criminal case at the instance of deceased Bhim Singh and at that time, Anand Prakash had also openly disowned Hoshiar Singh as his father and had even asked his co-accused to kill (maaro) him and then Hoshiar Singh was given beatings. Meanwhile, Bhim Singh came to rescue him; all the five accused persons pounced on him and gave a number of blows with their respective weapons causing multiple injuries, even on head, as a result of which he died in the hospital after remaining in coma for two days, when Amar Singh also came there, he was also attacked by all the five accused persons and he also received a number of injuries at their hands.

(57) All the injured were unarmed and gave no cause for immediate provocation. It is obvious that the accused persons had acted with prior concert and in pursuance of some pre-arranged plan sharing the common intention to commit the murder of Bhim Singh. One of the injury caused to Bhim Singh has been opined to be sufficient to cause death in the ordinary course of nature. They had also attacked other two injured persons in pursuance of their similar common intentions. However, they had survived their attack. All the accused persons have been rightly convicted for offences under Section 302/34 IPC; Section 324 Indian Penal Code, Section 324/34 Indian Penal Code and Section 323/34 IPC.

(58) The sentences imposed are also reasonable and justified. In the result, we do not find any merit in these appeals and both the appeals are accordingly hereby dismissed.

(59) It may be mentioned that one of the appellant, namely, Surjit Singh in Crl. Appeal No.22/92 had died long ago after the present appeal was filed. No application was filed by his near relations as provided under Section 394 of the Code of Criminal Procedure for leave to continue the appeal. The appeal so far as it relates to him thus also stands abated on his death.

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