

**Hardutt Vs. State**

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**Court :** Delhi

**Decided On :** Feb-14-1997

**Reported in :** 1997IIIAD(Delhi)202; 69(1997)DLT773; 1997(41)DRJ683

**Judge :** Arun Kumar and; N.G. Nandi, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

**Appeal No. :** Criminal Appeal No. 56 of 1994

**Appellant :** Hardutt

**Respondent :** State

**Advocate for Pet/Ap. :** K. Vohra and; Mukta Gupta, Advs

**Judgement :**

**N.G. Nandi, J.**

(1) The appellants/convicts, who have been convicted for the offence punishable under Section 302 read with Section 34 Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs. 10,000.00 and in default S.I. for three months, and also as regards offence u/s. 307/34 Indian Penal Code all the appellants stand sentenced to undergo 10 years R.I. and to pay a fine of Rs.5,000.00 each and in default S.I. for one month, and both the substantive sentences have been ordered to run concurrently in F.I.R. No. 252/85, P.S.

Narela, Delhi in Sessions Case No. 100/96 by the learned Additional Sessions Judge, Delhi vide his judgment and order dated 31.1.1994 assail the said conviction, and sentence in this appeal under Section 374(ii) Criminal Procedure Code.

(2) The facts leading to the filing of the present appeal by the appellants/convicts, shortly stated, are that on 17.11.1985, S.I. Satya Prakash of police post Bawana, Delhi, was on patrol duty in the area of Village Harevali and reached the crossing of Auchandi Road and Harevali Road; that Hari Kishan, President of the Panchayat of Village Harevali met him and informed that some quarrel had taken place in the fields of village Harevali and some persons were lying in injured condition, whereupon S.L.Satya Prakash, along with the patrolling party rushed to the field of Pawan and Mahender, sons of Ram Chander and found Gopi Chand and Mahender lying there in the injured condition; that while on way to the hospital taking injured Gopi Chand and Mahender, at the pond of Village Harevali, Pawan Kumar son of Ram Chander was also found lying in injured condition, who was also taken in the vehicle along with injured Gopi Chand and Mahender and all the three were taken to the Hindu Rao Hospital, Delhi and admitted for treatment; that the statement of injured Pawan Kumar, was recorded vide 11X.PW-1/A, narrating the incident, implicating each of the accused Hardutt, Nanhe, Parkashi @ Om Prakash and Roop Ram with the role attributed together with the weapons allegedly possessed in the occurrence by each of the assailant/accused; that S.L.Satya Prakash sent the rukka to P.S.Narela for registration of the case and accordingly, F.I.R. No. 252/85 was registered. Charge-sheet came to be filed against all the accused persons. Thereafter, charge u/s. 288 Cr.P.C. came to be framed for the offences alleged. On denial of the charge by the accused persons, the prosecution adduced oral as well as documentary evidence to substantiate the charge leveled against each of the accused persons. The learned trial Judge, appreciating the documentary as well as the oral evidence as also the statements of the accused persons under Section 313 Cr.P.C., held the charge proved against each of the accused persons and found each of the accused persons guilty and imposed the sentences, as aforesaid. It is this finding of guilt/conviction and the imposition of sentences, which have been assailed by each of the convict/appellant in this appeal.

(3) It is not in dispute that one Kali Ram happened to be the grand-father (mother's father) of Public Witness .1 and Public Witness .5 and accused Nos. 2, 3 and 4 and father-in-law of accused No. 1, Hardutt; that the mother of PWs-1 & 5, Sharbati happened to be the sister of Murti, the mother of accused No. 2, 3 and 4 and the wife of accused No. 1; that Kali Ram had agricultural land at Village Harevali. According to the prosecution. Kali Ram had sold his share in the said agricultural land to Public Witness s. 1 and 5 for consideration of Rs. 30,000.00 and that there is dispute in connection with this agricultural land originally belonging to deceased Kali Ram between the complainant party and the accused persons.

(4) There is no much dispute about Gopi, the brother-in-law of Public Witness .5 Mahender having died a homicidal death on 18.11.1985 consequent upon the incident taking place at about 5 p.m. on 17.11.1985 in the field when the paddy crop was being harvested by the complainant party.

(5) It has been the argument on behalf of the appellants/convicts that the injuries on the person of deceased Gopi is not connected with the weapons of offence and that PW.1 and PW.5 did not receive injuries at the hands of any of the accused persons and that the accused have been falsely implicated because of the land dispute. It is deposed by Public Witness .1 Pawan Kumar that on 17.11.1985, the witness, Mahender and Gopi along with nine labourers were present in the Field for cutting of paddy crop which started at about 3 p.m.; that at about 5 p.m., all the four accused persons reached the field; that Hardutt was having two revolvers in his both the hands, Roop Ram was armed with Farsa, Nanhe was having a Jelly, Prakashshi had a lathi; that Hardutt fired two shots and told the labourers to leave the place at once otherwise they would be killed; that out of fear, the labourers fled away; that the witness, Mahender and Gopi also tried to run; that the accused persons surrounded them. Prakashshi gave lathi blow to Mahender with the result he fell down in the field of Zile; that Nanhe inflicted injury to Gopi with Jelly using it as lathi and Gopi fell down; that Gopi was also assaulted by the accused with lathi, Jelly and farsa; that Mahender was also assaulted with lathi. Jelly and farsa; that the witness was also assaulted in the same manner and thereafter the accused ran towards Sough. In the cross-examination, it has been stated that the crop was

being cut up to 5 p.m.; that on 8.1.1986 he and Mahender had accompanied the draftsman at the spot and the draftsman was shown the places where they were assaulted. P.W.5 Mahender, in his evidence, has stated to the effect that there was a dispute with Hardutt in connection with the agricultural land, which originally belonged to Kali Ram; that the said land is situated in the Village Harevali. According to this witness, this land was sold by his grand-father Kali Ram; that on 17.11.85 along with his brother Pawan and brother-in-law (wife's brother) Gopi; that the witness had gone to the field for cutting of paddy crop and for that purpose, nine labourers were hired and taken to the field at about 3 p.m.; that the cutting of paddy crop was in progress at about 5 p.m. when the accused persons came to the field; that Hardutt was having two pistols in both his hands while Roop Ram was armed with Farsa, accused Prakashi was having Lathi whereas Nanhe was having Jelly; that on coming to the field, Hardutt fired two shots from the revolvers that he was having and asked the labourers to go away; that the labourers fled out of fear; that the witness also tried to run towards the field of Zile; that Pawan also ran in the same direction; that Prakashi gave lathi blows on the legs of the witness as a result of which, he fell down; that Nanhe gave a blow to Gopi on head using Jelly as the Lathi and caused injury; that Gopi fell in paddy field; that Pawan was chased by Hardutt and Roop Ram, Hardutt fired a shot towards Pawan which missed Pawan, Nanhe and Prakashi ran towards Pawan and Pawan was beaten by them with lathi, jelly and farsa; that in the mean time, Nanhe, Roop Ram and Prakashi again assaulted Gopi and the witness was also assaulted with lathi, jelly and farsa by Nanhe, Prakashi and Roop Ram; that one farsa blow was inflicted with the front blade on the leg and hand of the witness; that Pawan was chased and after assaulting him, the accused fled towards canal. P.Ws. 1 and 5 also state that they showed the place of incident to the draftsman for preparing the plan sketch, EX.PW.IO/A with the details as to where which of the accused and Public Witness s. 1 and 5 and deceased Gopi were at the time of occurrence in the field. Public Witness .1 has identified the weapons i.e. lathi, jelly and farsa, which are stated to be Ex.P-1 to Ex.P-3 and also has identified Ex.P-4 the shirt which he had put on at the time of incident. Public Witness .5 has also identified the weapons Ex.P-1 to P-3 i.e. lathi, jelly and farsa and also Ex.P-5 and P-6, the Kurta and Pajama respectively, put on by the witness at the time of

incident.

(6) P.W.16 Dr.Sudhir Mittal stated in his evidence that in Hindu Rao Hospital, he had examined injured Gopi on 17.11.1985 and the injuries found have been noted in the Certificate Ex.PW-16/A, issued by this witness; that the injuries were lacerated wound on left partial region 4' x 1', lacerated wound on left forearm 2 1/2' x 2' and lacerated wound near right eye brow; that the general condition of the injured was poor with vomiting, bleeding and convulsions. P.W.11 Dr.Vishnu Kumar, who performed the post-mortem examination on 19.11.1985 on the dead body of Gopi s/o Man Singh, has stated that there were as many as 17 external injuries; that he also noticed internal injuries during post-mortem; that the injuries on the head were sufficient to cause death in the ordinary course of nature, by causing intra cranial damage. The postmortem notes have been proved vide Ex.PW-12/A. It is further deposed by this witness that all the injuries were ante mortem, recent and could be caused by lathi blows.

(7) As seen above, Public Witness s. 1 and 5 both have stated in their evidence that accused Nanhe inflicted injury to Gopi by jelly using it as lathi. Thus, the injury to Gopi on the head region, which is stated to be sufficient to cause death in ordinary course of nature and could be caused by lathi as per PW11- can be attributed to convict Nanhe, as suggested from the evidence of PWs. 1 and 5 and corroborated by PW.11 Dr.Vishnu Kumar and PW.16 Dr. Mittal. In this connection, relying on the decision in the case of State of Haryana v. Gurdial Singh : 1974 CriLJ1286 it has been argued by counsel amicus curiae for the appellants that there is inconsistency between the version of the occurrence given by the prosecution witnesses and the medical evidence and for this reason, conviction can not be recorded against the accused persons. As far as the principle enunciated in the decision (supra) requiring the benefit of doubt to be given to the accused where there is inconsistency between the ocular version of the occurrence and the medical evidence with regard to the injuries sustained, there can be no disagreement and the accused in such cases have to be given benefit of doubt. In the instant case, as pointed out above, there is no inconsistency between the ocular version of the incident given by the prosecution witnesses and the medical evidence appreciating the evidence of PW-11 Dr.Vishnu Kuroar and

PW-16 Dr.Mittal. We do not find any substance in the submission by the defense that the injuries to Gopi are not corroborated by the medical evidence.

(8) In the incident of 7.11.1985, three persons Public Witness .1, Public Witness .5 and Gopi sustained injuries. PW-1 and 5 survived their injuries whereas the injuries inflicted to Gopi proved fatal and he succumbed to the same and died on 18.11.1985 in Hindu Rao Hospital. It is suggested from the evidence of PW1 that in the said incident, the witness and his brother Mahender PW5 also sustained injuries. As far as injury to Pwi Pawan Kumar and PW5 are concerned it is suggested from the evidence of FW1 that Prakashi - Om Prakash gave lathi blow to Mahender as a result of which he fell down near the field of Zile; that Hardutt fired a shot at the witness but the shot missed the target i.e. the witness as he had fallen down, then Hardutt had caught hold of the witness and accused Roop Ram inflicted blow with Farsa on the right hand waist and the witness fell down in the field of Zile. When the witness tried to run towards the village, accused persons chased him and gave him beatings with lathi and jelly; that Mahender was also assaulted 'by lathi, jelly and farsa; that accused persons again assaulted the witness; that the witness remained in the hospital till 27.11.1985. Another injured is Mahender PW5. It is suggested from his evidence that he along with PW1 and Gopi had gone to the field at about 3 p.m. for cutting paddy crop. At about 5 p.m. all the accused persons came to the field of the witness. On Hardutt firing shots to scare the labourers, the witness also tried to run towards the field of Zile. PW1 also ran in the same direction. Accused Om Prakash - Prakashi gave lathi blow to the witness on his legs. The witness fell down; that Pwi was chased by accused Hardutt and Roop Ram. Hardutt fired a shot towards Pwi which missed the object as Pwi had fallen down; that Pwi was chased by accused Nanhe and Prakashi. Pwi was beaten with lathi, jelly and farsa; that the witness was assaulted by lathi, jelly and farsa by accused Roop Ram, Prakashi and Nanhe. The jelly was used from the pointed side for inflicting injury to the witness; that farsa blow was also given on the leg and hand of the witness; that Pwi was again chased by the accused and after assaulting PW1 accused ran towards canal; that the witness was removed to the hospital by the police. So also deceased Gopi and PW1 Pawan Kumar; that Pawan was removed from a place near the pond; that at about 9 p.m., the witness gave his statement to the police in hospital; that he was

discharged from the hospital after about one week.

(9) PW17 Dr.V.K.Goel has stated in his evidence that he had examined injured Pawan Kumar and that he had received as many as six injuries which have been noted in the Mlc Ex. PW17/A proved by the witness. The evidence of PW13 DrJ.R. Dass and the report Ex.PW13/A issued by the witness suggest that Pwi Pawan Kumar had sustained fracture injury of the lower end of ulna of left hand and fracture shaft of fibula of left leg. It is also suggested from the medical evidence that Pwi had also sustained injury namely incise wound 2' long on the right lumber region and also the intestine bulging out from the wound. According to the witness, this injury was caused by sharp weapon whereas rest of the injuries to Pwi were stated to have been caused by blunt weapon. The medical evidence also discloses that all the injuries suffered by Pwi are grievous injuries. PW18 Dr.Rajesh Mehta stated in his evidence that he had examined PW5 Mahender and that when he examined the said injured on 17.11.85 in Hindu Rao Hospital, he had noticed nine injuries on the person of the injured for which Mlc Ex.PW18/A is issued by this witness. It is also suggested from the evidence of the witness as well as Mlc Ex.PW18/A that injury No. 6 - 'V' shaped wound on dorsum of right foot which had incised hedges and a flap of skin raised was caused by sharp cutting weapon whereas the rest of the injuries are caused by blunt weapon. DrJ.R. Dass, PW13 who also examined injured Public Witness .5, took the X-ray plates of injury sustained by this injured, has stated in his evidence that 10th rib of the right side of the chest and shaft of fibula of right leg, shaft of ulna of right wrist of the injured were found fractured and for which report Ex.PW13/B has been issued by the witness. The evidence of PW14, Dr.Ashok Tyagi suggests that the injuries sustained by injured Mahender are of grievous nature for which he has given opinion Ex.PW14/A dated 30.12.1985. The above medical evidence and ocular version of the occurrence given by two injured PWs 1 and 5 are absolutely consistent with each other. We do not feel that there is any inconsistency between the ocular version of occurrence given by PWs 1 and 5 and the medical evidence discussed above. The evidence of PWs 1 and 5 clearly implicate all the accused with the part played by each of them in the occurrence. It need hardly be said that the injured are the best witnesses to give the tru and correct account of thp incident and there does not seem any plausible reason to disbelieve the injured

PWs 1 and 5.

(10) One of the arguments advanced on behalf of the defense is that no ripped crop sickle/implements are attached from the place of incident so as to suggest that the complainant party had sown the paddy crop in the field and that they were harvesting the same at the time of incident. It may be appreciated that according to the defense, PWs 1 and 5 with others were harvesting the crop from the field which crop belonged to collaterals of late Kali Ram and that PWs 1 and 5 had trespassed in the said land and that there was quarrel with the collaterals of Kali Ram. The seizure of the paddy crop harvested and the implements would not be relevant in our opinion, be it of the complainant party or of collaterals of Kali Ram since the factum of harvesting of the paddy crop is not in dispute. As far as the occurrence is concerned, PWs 1 and 5 have in unmistakable terms stated that when the paddy crop was being harvested they were attacked by the accused persons.

(11) Another argument advanced on behalf of the appellants, is that in the MLCs Ex.PW16/A, 17/A and 18/A of deceased Gopi, PW1 Pawan and Pws Mahender, in the case history, the names of the assailants have not been mentioned and what is mentioned is fight or quarrel with some people. It may be appreciated that as far as the case history in the MLCs is concerned, the object of the same is to know the cause/reason of the injury received rather than the person/persons causing the same. To be more precise, whether the injuries sustained are on account of some accident or self-inflicted or caused by some third-party which can by no stretch of imagination be intended to elicit information as regards the identify of the assailants. A medical person treating the injured is hardly interested in knowing the name of the person causing the injury. It may also be seen that the incident took place at about 5 p.m. in the evening, injured Gopi was brought to the hospital in serious condition, injured Pwi and 5 had also sustained serious injuries. At that point of time, none of the injured could give the names of the assailants and the injured would only be asked as to how the injuries have been caused and nothing further. It may also be appreciated that PWs 5 and Gopi were lying in the field in injured state and PW24 Satya Prakash was taking them to the hospital and also found PW-1 lying having sustained injuries and all the three injured were brought

to the hospital. At that point of time, there was no person excluding the injured who could even give the names of the assailants and the injured could not be expected, looking to the nature of the injuries and their condition, to give the names of the assailants. Suffice it to say that non-mentioning the names of the assailants in the case history can not be regarded fatal to the prosecution case.

(12) One of the arguments advanced on behalf of the appellant/convicts is that fired cartridges have not been recovered from the field where the accused are stated to have come and accused Hardutt was holding two revolvers in his two hands and is said to have fired' two shots to scare the labourers and threatened them to leave and that thereafter accused Hardutt is said to have fired shot at PW-1 Pawan but as Pawan fell down, missed the aim. It may be appreciated that first two shots, according to PWs 1 and 5 were fired in the air to scare the labourers and the third shot missed the target, namely PW1 Pawan. First two shots were certainly not intended to cause injury to the labourers but to scare them. No injury is caused by the third shot as the same missed the aim. It would have been necessary to collect the fired cartridges/bullets, had any injury been caused because of the third bullet fired in order to show that three shots were fired of which one caused the injury from the revolver held by accused Hardutt. Non-recovery of the fired cartridges would, in our opinion, pale into insignificance for the reason that PWs 1 and 5 having categorically deposed about the entire incident including accused Hardutt having fired two shots in the air and the third shot missing the target. We do not regard the non-recovery of the fired cartridges to be sufficient to throw the prosecution case over board when there is cogent evidence of PWs 1 and 5 with regard to the occurrence with the part played by each of the accused persons and the non-recovery of the fired cartridges can be regarded at the best as the remissness on the part of the investigating agency and nothing further.

(13) One of the arguments advanced on behalf of the appellants is that the Fir in the instant case is not proved and even the copy of the same has not been produced. In this regard, reliance has been placed on the decision in the case of Mahabir Singh v. State, reported in Air 1979 Cri Li 1159. The Division Bench of this court, in light of the facts before it, held that 'non-sending of the Fir to the

Magistrate and non-compliance with Section 157 of the Criminal Procedure Code, is bound to cast shadow on the prosecution case'. In the case (supra), the question was of non-compliance with Punjab Police Rules also. In the instant case the contention advanced is that the FIR/copy of the Fir is not produced/proved on the record of this case. It is also argued that there is no evidence of sending copy of F.I.R. to the Ilaqa Magistrate. This argument is insignificant & does not deserve any credence in view of clear & cogent evidence with regard to the occurrence and the same would not be fatal as there is clear and reliable evidence of eye witnesses which was recorded soon after the incident. In our opinion, the Division Bench judgment of this court (supra) relied on by the learned counsel-amices curiae for the appellants would not be of any assistance to the appellants. It has to be said that there is no copy of Fir produced on the record of this case. PW12 Hari Kishan s/o Hira Singh stated in his evidence that on 17.11.1985 at about 6.45 p.m. he was going to his house from his field and when he reached the house, he was told by the Chowkidar that a quarrel was going on between two parties in the fields; that he is the Pradhan (President) of the village (we take it to be village Panchayat); that at about 6.45 p.m. he was going to P.P.Bawana by bus for lodging the report and the police met him there; along with the police he came back to the field which stood in the name of Mahender and Pawan; he saw Mahender Singh and Gopi lying in injured condition in the paddy field; both were taken to Hindu Rao Hospital in police van. PW24 Si Staya Prakash stated in his evidence that on 17.11.85 at about 6.45 p.m. he along with other police persons had reached the crossing at Auchandi Road and Harevali Village. Per-chance, PW12 Hari Kishan Pradhan of Village Harevali met them and told about some quarrel having taken place in the field of Mahender where some people were lying in injured condition; that on this information, he immediately proceeded towards the field of Mahender along with PW12 and police persons and there he found Mahender and Gopi lying in badly/seriously injured condition who were taken in the police vehicle in order to carry them to the hospital; that on way to Hospital, he also found another injured Pawan Kumar lying near 'Johar' (pond). He was also carried in the same vehicle and taken to the hospital for treatment; that after obtaining the M.L.C. of injured PW1, the witness recorded the statement of PW1 in the hospital and after putting his endorsement, send the rukka through the police

constable to the police station for registration of the case.

(14) It is suggested from the record of the case that Fir No. 252/85 is dated 17.11.1985 and the same is a joint Fir for two cases, the one under Section 27 of the Arms Act against accused Hardutt and accused Roop Ram as the pistols were recovered on 30.11.1985 when both were arrested in the present case and the other case being the present case for the incident dated 17.11.1985. In view of the fact that there were more than one cases registered vide the same Fir, the original Fir has not been placed on the record of this case. It would have been better had the I.O./learned Prosecutor at least caused the copy of Fir No. 252/85 Filed on the record. Despite the fact that Fir No. 252/85 was a joint Fir including the present case, the I.O./Prosecutor concerned has not got the copy of the same produced. Suffice it to say for the present purpose that the evidence of PWs 1,5,12 and 24 and EX.PWI/A, Ex.PW24/A all recorded on 17.11.1985, pursuant to which the case has been registered by P.S.Narela for the offences u/s. 307 Indian Penal Code vide Fir No. 252/85, it can not be said even for a moment that the incident dated 17.11.1985, as stated by PWs 1 and 5 and suggested from the deposition of PW24 and reflected from EX.PWI/A and PW24/A did not take place. The omission on the part of the I.O./Prosecutor to get the F.I.R. produced, can not, in any way, be taken advantage of by the accused in view of the evidence with regard to the incident, as aforesaid.

(15) In *Somappa v. State of Mysore* : 1979 CriLJ1358 , there was no F.I.R. forthcoming on the record. The prosecution wanted to rely on the statement of one of the prosecution witnesses as F.I.R. This was objected to by the defense. The objection was upheld. However, it was held that rejection of that statement as F.I.R. would not detract the testimony of the eye witnesses which was to be assessed on its own merit. In the present case, we have already discussed the testimony of the eye witnesses and hold the same to be reliable. therefore, not proving the F.I.R. in evidence is not sufficient to throw out the prosecution case.

(16) One of the arguments advanced on behalf of the defense is that accused have been falsely implicated because of the enmity on account of land dispute in as much as injured PWs 1 and 5 had trespassed in the land of the collaterals of

late Kali Ram and in the quarrel with the collaterals of Kali Ram, PWs 1,5 and Gopi sustained injuries. Excepting the bare suggestion by the defense in this regard, there is no evidence to substantiate the same. If collaterals of Kali Ram were the assailants, then why PWs 1 and 5 should not name the collaterals of Kali Ram as the assailants. There is no suggestion to PW1 and 5 that they have enmity with the collaterals of Kali Ram over the land. It may be appreciated that according to the prosecution PWs 1 and 5 purchased the agricultural land from deceased Kali Ram who also happened to be the mother's father of accused Nos. 2 to 4 and father-in-law, of accused No. 1. Naturally, as the children of another daughter, accused Nos. 2 to 4 and for that matter accused No. 1 would be equally interested in the land of Kali Ram. But as the land came to be sold to PWs 1 and 5 by Kali Ram. The motive on the part of the accused would be stronger to assault PWs. 1, 5 and Gopi as they were harvesting the paddy crop from the field in which they were interested by virtue of they being the children of another daughter of Kali Ram. Enmity is a double edged weapon. If because of enmity accused could be falsely implicated, then enmity can as well be the reason for assaulting Public Witness s. 1, 5 and Gopi. Appreciating the evidence on record in this regard, we do not find any substance in the contention raised by the learned counsel-amices curiae for the appellants in this regard.

(17) According to the prosecution PW5 purchased this agricultural land from Kali Ram and had sown paddy crop therein which was being cut when the incident took place on 17.11.1985. PW-21 Karan Singh Patwari, Tehsil Delhi has produced Khasra Girdawari for the years 1984-85 and 1985-86 of Village Harevali. This witness has not been cross-examined by the defense. PW-22 Jai Kishan Patwari, Halqa Auchandi has stated in his evidence that he is working as Halqa Patwari - Auchandi; that village Harevali is included in that area; that the witness has seen Khasra Girdawari Register for the year 1984-85 produced by PW-21; that PW-21/A is the copy of the same and the entries made therein are as per the Khasra Girdawari register brought by PW-21 Karan, Singh. Perusal of Ex.PW-22/A suggests Mahender Singh and Pawan Kumar (PW-5 and PW-1 respectively) to be the tenure holders as per the number of Khatauni Khate 82 of 1.9 acres of land bearing Survey No. 21/5/2 of village Harevali Tehsil, District Delhi. The crop sown is paddy and the original form as per Ex.PW-22/A has been issued to Mahender

Singh s/o Ram Chander. Ex.PW-22/A along with sale will suggest the possession and the paddy crop sown in the agricultural land of PWs 1 and 5 on the date of the incident which is consistent with the prosecution version.

(18) The recovery of pistol and the cartridges from accused No. 1, proved through the evidence of PW-23 Jagdish, in our opinion, is of no significance because even according to the prosecution, no fired cartridges have been recovered from the place of occurrence and no injury has been caused to any one in the incident dated 17.11.1985 at 5 p.m. in the field of PWs 1 and 5 through Fire arm.

(19) It may be noted that the incident took place on 17.11.1985 and the evidence of PW-1 has been recorded on 25.5.1987, 26.5.1987 and 27.7.1987 and the evidence of PW-5 has been recorded on 27.10.1987 and 3.6.1988. Looking to the time gap between the date of occurrence and the recording of evidence of the injured/eye witnesses and considering the human memory, some omissions/contradictions are bound to be there. If there is no omission or contradiction in the evidence of the witnesses, and the evidence is as per the statements recorded in course of the investigation, then the witnesses would be labeled as 'parrot-like' evidence. So omissions and contradictions of trivial/minor nature are absolutely natural. In the instant case, the contradictions/ omissions suggested from the record in the evidence of PWs. 1 and 5' are absolutely natural. The omissions/contradictions are of trivial/minor nature and the same do not shake the evidence of any of the injured witnesses. The same, in our opinion, would not be sufficient to discard the evidence of both the injured and appreciating the evidence of PWs 1 and 5, as a whole, we are of the opinion that their evidence is absolutely trust-worthy, giving true and correct account of the occurrence.

(20) The above discussion would reveal that the prosecution has been able to establish the guilt beyond reasonable doubts against all the appellants/convicts as they had come with common intention and knowledge and caused such bodily injuries that any of PWs 1,5 and Gopi had died, they would be guilty of committing murder. In fact out of the three injured, Gopi succumbed to his injuries whereas PWs 1 and 5 survived as aforesaid. We do not Find any reason to interfere with the finding of guilt and sentence imposed by the trial court on appreciation of the

evidence as a whole and in our opinion, the trial court has justifiably recorded the conviction against all the accused persons for the offences with which they have been charged and consequent sentence.

(21) In the above view of the matter, the present appeal being devoid of merits is liable to be dismissed and the conviction and the sentence imposed confirmed.

(22) In the result, the appeal fails.

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