

Ambika Prasad Vs. State

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Court : Delhi

Decided On : Mar-21-1997

Reported in : 1997CriLJ2853; ILR1997Delhi609

Judge : Arun Kumar and; K.S. Gupta, JJ.

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

Appeal No. : Criminal Appeal Nos. 45, 49 and 50 of 1992

Appellant : Ambika Prasad

Respondent : State

Advocate for Pet/Ap. : Anil Soni,; D.C. Mathur,; Akshay Bipin,;

Judgement :

Arun Kumar, J.

(1) These appeals are directed against the judgment dated 24th March, 1992 of an Addl. Sessions Judge, Delhi whereby the four appellants were convicted for offences under section 302/34 Indian Penal Code, 341/34 Indian Penal Code and 307/34 Indian Penal Code and sentenced to life imprisonment along with fines etc. under section 302/34 Indian Penal Code besides imprisonment for offences under section 307/34 and 341/34 Indian Penal Code These sentences were to run concurrently. As a matter of fact in all six accused were tried together in a joint

trial. Out of the six accused, two, namely, Ram Adhar and Shivraj Singh were acquitted while the remaining four, i.e., Ambika Prasad, Kishanpal Singh, Ram Chander and Rajinder Singh were convicted. These three appeals are by the said four convicts. Since the appeals arise from a common judgment, they can be disposed of by this judgment.

(2) At the root of the incident is a dispute about land in village Libaspur Pratap Singh owned land in the said village out of which he sold some portion to one Mahinder Yadav for consideration. Mahinder Yadav in turn appears to have carved out smaller plots in the portion of land purchased by him from Pratap Singh and sold the same to third parties. Dispute arose between the vendor and the vendees over this transaction of sale of land. This gave rise to civil litigation in which the vendor party is stated to have obtained stay order from the court against threatened dispossession at the hands of the vendees or the subsequent purchasers. The family of Pratap Singh is the complainant party. Vikram Singh Public Witness -4, Karan Singh Public Witness -5, Anurudh Singh Public Witness -7 belonging to the complainant party are sons of Pratap Singh. Kishan Dei, Public Witness -10 is the wife of Pratap Singh. Deceased Virender Singh was the son of elder brother of Pratap Singh. Fir No-200/82 Ex.PW-13/B was registered on the basis of the following statement of Vikram Singh son of Pratap Singh Public Witness -4. This statement of Vikram Singh is Ex.PW-4/A and was recorded thus on 30th June, 1982, soon after the incident

'I with my family reside at the above given address and do the work of cultivation. We own 24 bighas and same bids was of land towards east of G.T. Road, by the side of village Libaspur. We had entered into a transaction inspect of the said entire land with Saroop Nagar Housing Society through Mahinder Yadav of Samai Pur and it was decided that we will receive the entire consideration amount of the aforesaid land at the lime of the registration (of sale-deed) but the said amount has not been paid to us so far and hence, we remained in possession of the said land. About six months back, the Saroop Nagar Society, started constructing houses on our land. thereon we obtained stay order against them from the Court. The said stay order is still in operation. Litigation is also pending in respect of the aforesaid land. We started ploughing the said vacant land by means of the tractors, since

28th June 1982 just after the rain of 27.6.82. Today at about 10 a.m. when my brothers Karan Singh and Anurudh, cousin (father's elder brother's son) Virander Singh and myself were returning by our tractor No. Dhg 9233 after finishing our work passing through the plot of Dhillon at that very moment Ambika Prasad along with his companion Rajinder Diarywala, Ram Adhar Phelwan and his so called adopted brother whose both cars were broken whom I known from before came there from the side of the house of Ambika Along with other 4/5 persons whom I can also identify on confrontation, and all of them intercepted us. Rajinder was holding a Ballam (a kind of short spear) Ambika was having a lathi, Ram Adhar was equipped with a jaili (rake) and his so called adopted brother was armed with gun whereas other persons were holding lathis. Ram Adhar in a loud voice asked to lay us dead so that the matter may come to an end for ever actual words being 'In Ki Lashen Bicha Do - Jis Se Roz Roz Ka Tanta Khatam Ho Jai'. Thereupon all them in collusion with one another collectively with common intention attacked us. I in order to revere the tractor drove back towards the plot of Dhillon and as a result whereof in frustration the tractor had entrapped in a ditto (?) on the back side. When we all the brother descended the tractor, the so called adopted brother of Pahelwan fired a shot on the chest of Virender and as a result whereof Virender fell down there and then on the spot and died. rajinder gave a forceful blow of ballam on the face of Karan Singh, resultantly he started bleeding and while he was running away from there, Ram Adhar and Ambika Prasad rushing towards, him, succeeded in making him to fall down by hilling him with there respective jaily and lathi. Their other accomplices made Anuradh to fall down by hilling him with lathies. I rushed and hid myself behind the tractor. Meanwhile the brother of Pahalwan fired a shot on me also but I escaped and run away defensively and raised alarm for help. On hearing the alarm, Prem Singh and Rattan who belong to our village along with other persons arrived at the spot. I with the help of Prem, Rattan and other persons over powered Ambika and his one accomplice whose name now has .been known as Krishan Pal, along with their lathies. They have sustained injuries during the scuffle. Meanwhile you Along with your staff arrived at the spo. and all the injured persons were removed to the hospital. I have heard the statement and the same is correct. Legal action may be taken.'

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(3) The occurrence is of 30th June, 1982 at about 10.00 A.M. Police appears to have reached the spot soon after the occurrence because two accused were apprehended then and there while they were trying to run away after allegedly committing the crime and were handed over to the police. Virender Singh had died on the spot. Out of the remaining four injured persons, two belong to the complainant party while two belong to the accused party. These two were apprehended at the spot. All the four injured were taken to the Hindu Rao Hospital, Delhi by S.I. Prithpal Singh of Police Control Room. the time of arrival of the injured persons in the hospital is given as between 12.05 P.M. and 12.10 P.M. The Mlc of Karan Singh and Anurudh Singh arc exhibits PW-1/A and Public Witness - 1/C respectively. They are in the hand of Dr. Joginder Mittal, C.M.O., Hindu Rao Hospital who appeared as Public Witness -1. Dr. Mittal slated that on 30th June, 1982 at about 12.05 P.M. Karan Singh aged 32 years was brought with the alleged history of light. He had no history of unconsciousness or bleeding. On local examination injuries were found on his person:-

1. Clean lacerated wound 1-1/2' long on the upper lip on the right side.
2. C.L.W. 2-1/2' on the upper lip extending to the lower lip on the right side. Active bleeding seen.
3. Black eye on the left side.
4. Left upper incisor was dislocated.
5. An abrasion on the occipital 1' long.
6. Tenderness and swelling present in the left hip joint. Patient was advised X-ray of left hip joint. His report is EX.PW-1/A, which is in his hand, signed by him. The same doctor also examined Anurudh Singh who was staled to be conscious when he was brought to the hospital and on whom the following injuries were found :-
 1. Tenderness and swelling left upper arm and left fore-arm. He was advised X-ray left upper arm, A.P. and lateral views.

2. Tenderness and swelling in the left thigh. He was advised for X-ray AP& lateral view.

3. Tenderness and swelling right hand. He was advised for X-ray and Ap & lateral view. His report is EX.PW-I/C which is written and signed by the Doctor. Dr. P.K. Saknodia of Hindu Rao Hospital was examined as Public Witness -2 regarding the injuries on accused Ambika Prasad and Kishanpal Singh. According to him the said two accused were brought to him in the Hindu Rao Hospital on 30th June, 1982 at 12.10 P.M. Both were conscious and on examination of Ambika Prasad, the following injuries were found on him :-

1. Clw 3 c.m.size left cheek over left zygomatic.
2. Clw 4 c.m. in size on parietal region over.
3. Multiple bruises with swelling in the right leg.
4. Multiple abrasions right fore arm and hand.
5. Multiple bruise with swelling left leg and ankle joint.
6. Multiple bruise with swelling on left forearm.
7. C.L.W. lateral side of left wrist joint.
8. Multiple bruise with swelling on back. The injuries on accused Kishanpal Singh were stated to be as under :-

1. Clw 4 c.m. size left side forehead.
2. Clw left palm between thumb and index finger.
3. Clw right palm and little ring Finger.
4. Bruise with swelling on right ear and right occipital region behind the ear.
5. Swelling with abrasion right forearm.

6. Abrasion with swelling right leg over shin in the middle of right leg. The MLCs regarding both these accused are Ex.PW-2/E and Public Witness -2/A respectively. According to Dr.Saknodia, they were both written in his hand and were signed by him. PW-3 is Dr.L.T. Ramani who conducted the post mortem on Virender Singh deceased on 30th June, 1982 itself at about 3.00 P.M. The body of Virender Singh was brought to this doctor by Constables Attar Singh and Inderjit Singh at the instance of Gurdial Chand, Sho, Police Station Alipur. The body was identified by Harjit Singh, uncle of deceased. According to Dr.L.T. Ramani, the external injuries on the body of Virender Singh were as under :-

1. An oval wound 4 c.m. x 3 c.m. in size with punched out margins just below the neck over supernatural notch pieces of wats and card board were seen lying very superficial on the wound (removed and seen).

2. There were multiple (26 in number small punctured wounds scattered all around injury no.1 Scattered over an area of 6 c.m. x 5 c.m. (approximately 2 c.m. all the around of margin of injury no.1) These small punctured wound were rounded to oval varying in size from 0.5 to 0.8 c.m. with collar of abrasions around them.

3. An abrasion 2 c.m. x 1 c.m. on the back of right form arm.

4. Perplex bruising on the upper part of back interscapular area. Further according to the said doctor, a total number of forty three pellets were recovered from the body of Virender Singh. the doctor opined that all the injuries were ante mortem and caused by fire arm except injury No.

3. Injuries No. 1and 2 were entry wounds and at injury No. 4 pellets were found lodged. These injuries were opined to be sufficient to cause death in the ordinary course of nature. He further stated that death was due to haemorrhage shock resulting from injuries. In cross-examination, Dr. Ramani stated that the Firing in this case was from a short distance. The distance may be approximately four to Five feet between the object and from where shot was Fired. The direction of the shot was straight from the front. From the above narration of the facts of the case it is apparent that there was a group clash in which four persons were injured, two from the side of the accused and two from the side of the complainants. Fifth

person belonging to the complainant party died in the said clash. At the route of the clash was the dispute about land. This fact is admitted even by the accused party as evidenced by the statement of Ambika Prasad, appellant, under section 313 Criminal Procedure Code . In reply to question No. 66, Ambika Prasad accepted as correct that Bhagwan Dass had purchased land from Pratap Singh in village Libaspur and he had carved out plots from the said land and sold the plots to different persons. Ambika Prasad also admitted having purchased one of these plots in the name of his brother. The complainant party are the vendors of the land while in the accused party some of them are purchasers of plots carved out from the land in question. There can be no dispute about the occurrence because two accused, namely, Ambika Prasad and Kishanpal Singh were arrested then and there while trying to flee from the spot after the occurrence. They had suffered injuries in the clash. The only question is who was the aggressor? Six accused were tried for the offences. Some of the accused raised the plea of alibi, the trial court acquitted two accused, namely, Ram Adhar and Shivraj Singh while the remaining four, i.e., Ambika Prasad, Kishanpal Singh, Rajinder Singh and Ram Chander were convicted. The police had arrived at the scene of occurrence soon after the incident because the two accused who were caught at the spot while fleeing were handed over to the police then and there. The time of the incident as per the Fir is 10.00 A.M. while the four injured persons were admitted in Bara Hindu Rao Hospital between 12.05 P.M. and 12.10 P.M. by S.I. Prithpal Singh. Thus the police had taken the injured to the hospital. The Fir was recorded at 12.40 P.M. on the basis of statement of Vikram Singh. the entire case really turns on the statements of three eye witnesses, namely,

(1) Vikram Singh Public Witness -4 who had given the initial statement forming the basis of the FIR;

(2) Karan Singh Public Witness -5 and

(3) Anurudh Singh Public Witness -7. All these witnesses are real brothers. Two out of them, i.e., Public Witness -5 and Public Witness -7 suffered injuries in the clash. Deceased Virender Singh was First cousin of these three eye witnesses inasmuch as he was a son of elder brother of the father of these three witnesses.

The statement of Vikram Singh, Public Witness -4 which was recorded in court makes an interesting reading. At places he has gone back on his initial statement under section 154 Criminal Procedure Code . (the Rukka) and in that sense has turned hostile. However, reading his statement as a whole shows that he has full knowledge of the entire incident as he is at times admitting certain important facts showing his complete knowledge of the incident while at other places there are denials on his part which show that he is trying to hold back facts. The reason for denials could be either having been won over or out of fear. The trial court felt that this could be for the reason of having been won over. We are reluctant to subscribe to this view because we feel that being the real brother of two other injured eye witnesses and a First cousin of the deceased, the possibility of being won over is lesser as compared to the other possibility of being under fear. He admitted in cross-examination that he was under fear from the accused. When we discuss PW-7 it will become more apparent that fear prevailed in the minds of the complainant party which could be for the reason that the accused party were stronger in terms of money power and muscle power. In the background of these remarks it may be useful to refer to some significant portions of the testimony of Vikram Singh Public Witness -4. He says 'some litigation about the same land had also taken place in the year 1981 as some plot holders claimed their entitlement to the said land whereas we insisted that we were cultivating since 1973-74. We had obtained stay from the concerned court with regard to .the same'. After this statement, the next sentence he uttered was that he did not know anything about the occurrence. Then Additional Public Prosecutor sought permission of the 'court to cross examine this witness and in cross-examination he stated :-

'ON 30.6.82 as well I had gone to the same Field along with tractor No.D.H.G-9233 along with Karan Singh & Anuruth Singh, and Virender Singh for ploughing the said Field. It is also correct that at about 10.00 on 30.6.82 I was returning from the said Field along with the above mentioned persons, after ploughing the Field. It is correct that there is a farm of one Shri Dhillon, and when our tractor was near that farm of Shri Dhillon, and when our tractor was near that farm there was some commotion as usual I know Rajinder Diarywala and Ambika Pd. and Ram Adhar accused present in the court today from before. Ram Adhar and Ambika Pd. and Rajinder Diarywala were also amongst the persons who were creating that

commotion. It is correct that when we came near the farm of Shri Dhillon, the above said three accused and other persons stopped our tractor. I had seen ballam in the hand of Rajinder Accused, lathi in the hand of accused Ambika Pd. a jaili in the hand of Ram Adhar and a gun in the hand of another person who was called as a spoken brother by Ram Adhar again said the dynamo of the tractor had fallen in a ditch and I had leaned towards that to lift it up, I did not properly see as to what was being carried by which of the said persons. I did not hear if accused Ram Adhar uttered at that time that the bodies of all of us should be laid down on the ground so that the matter may be finished once for all. As I was underneath the tractor, I did not see the above named accused having assaulted any one of us. I also did not see if the companion of Ambika Pd. accused, who was having a gun, fired a shot which hit Varinder in his chest, upon which Varinder fell on the ground. I however had seen Varinder with a gun shot and bleeding from his chest and lying on the ground in dead condition. I also did not see accused Rajinder hitting Karan Singh with his ballam on his face as a result of which he bled his face; and thereafter he fled away. I did not see Ambika Pd. accused and accused Ram Adhar hitting him with their respective weapon i.e. jaili and lathi. I also did not see the other companions of the accused hitting Anurudh Singh with lathi. I do not know if the spoken brother of Pehlwan (Ram Adhar) had also fired at me, but I saved myself. However, I had fled away from there and had shouted for help. It is also correct that Prem Singh, Rattan Singh & some other persons of our village also arrived there. It is also correct that accused Ambika Pd. and his other companions ran away from the spot when other persons came there. It is also correct that accused Ambika Pd. & Kishanpal along with their lathis were apprehended by us at the spot. The police had also arrived at the spot. In the incident, Varinder Singh had died while Karan Singh & Anurudh Singh had sustained injuries. The police had sent them to the hospital. The police had recorded my statement which I had signed at point 'X'. The statement is Ex.PW-4/A. Some part of my statement had been told to the police, and some part they wrote themselves of their own. When I signed the same, it was read over to me before I signed the same. I had given the correct statement to the police.'

(4) In cross-examination he further stated that :

'I know many of the persons present in the court today, as they hold plots near my filed. I know all the accused present in the court today. They were all present at the spot on the day of the incident. I cannot say who had Fired the shot, as I was under the tractor. It is incorrect to suggest that Ram Chander accused Fired shot at Varinder and later on upon me and I have deposed falsely today in court, as I have been won over by them. It is correct that because of fear from the accused, I have not slated correctly in the court today.'

(5) He also admitted in the cross-examination that the police had arrived at the place of occurrence after about 20/25 minutes of the occurrence and that the inhabitants of the village had come to the place of occurrence only on the arrival of the police. He admitted having seen injuries on the person of Ambika Prasad and Kishan, accused but denied having caused the same. He, however, slated that his brothers had also not caused those injuries. When questioned about the Gurudwara near the place of occurrence he stated that there was none. He denied the suggestion that there was a Gurudwara having a boundary wall. According to him there was only a room but he had not noticed any Nishan Sahib near the room. He also denied the suggestion that he and his brothers had started demolishing the boundary wall of the Gurudwara inspire of protest by residents of that Gurdwara and by accused Ambika Prasad and Kishanpal Singh. He also stated that all the accused persons were known to him prior to the incident. He denied the suggestion that Ram Chander and Ram Adhar and Shivraj Singh were not known to him before. He also denied the suggestion that somebody from the public had Fired which had caused death of Virender Singh. From the above resume of the statement of Vikram Singh, Public Witness -4 there can be no doubt that Vikram Singh was present at the spot at the time of the occurrence and he knew everything that had happened. He could not sustain his initial denial of knowledge of the occurrence when subjected to cross-examination. He in fact admitted that fear was at the back of this type of statement on his part. This brings us to Public Witness -5 .Karan Singh. He has given a vivid and complete description of the entire incident. He is the one who suffered maximum injuries in the incident. The facts about the incident given by him in material terms tally with the version of the incident given by Vikram Singh Public Witness -4. Some portion of his statement need to be reproduced :-

'ON30.6.82 I, Public Witness . Vikram Singh & Anurudh Singh and Varinder Singh (deceased) were ploughing our Field with our tractor. We were returning on our tractor after ploughing the said Field at about 10.15 or 10.30 A.M. When our tractor reached near Dhillon's plot, all the accused present in the court today, came from the side of house of Ambika Pd. accused. The accused surrounded us. Accused Ram Chander was having a gun in his hand, accused Ram Adhar was having a jaili, accused Rajinder was having a ballam, and accused Ambika Pd. was having a lathi, and other accused also having lathis. After surrounding us they started giving beating to us. Accused Rajinder inflicted a ballam blow upon me as a result of which one tooth of mine gave way and blood also came out of the injuries. Accused Ram Adhar also inflicted jaili upon me as well as upon Anurudh Singh. Accused Ram Chander Fired a shot from his gun which hit Varinder Singh in his chest, as a result of which Varinder fell dead there. The accused who were possessing lathis also inflicted lathi blows on us. Rattan Lal & Prem reached the spot after the occurrence. We had raised alarm. I was taken to the hospital where I was examined. The accused ran away from there. However, with the help of some persons, accused Ambika Pd. & Kishan Pal were apprehended and over powered.'

(6) In cross-examination he admitted that his statement was recorded by the police on 8th July, 1982 at the police station. He further admitted that he remained hospitalised for Five days. According to him he had received two injuries with ballam and one with jaili. He had also received one injury with lathi. He denied the suggestion that they had taken their tractor inside the boundary of the Gurudwara and had demolished certain boundary walls. He also denied the suggestion that he and his brother had started demolishing the wall of the Gurudwara inspire of protest by Gurmeet Singh, Ambika Prasad, Kishanpal Singh and others. He denied the suggestion that Ram Chander and Ram Adhar, accused were present at the place of occurrence and that they had been implicated at the instance of the police. He explained the delay in recording of his statement on the basis that he could not make the statement because of his injuries and his mouth being swollen because of the injuries. He denied the suggestion that his statement was delayed because he knew nothing about the incident or the accused persons. This type of suggestion to the witness appears to be preposterous in view of the fact that this witness was taken from the spot in an injured condition straight to the hospital by a

police officer. He further stated that police had been coming to him while he was admitted to the hospital for the purposes of recording of his statement but the same could not be recorded on account of injuries on his face which had resulted in his mouth being swollen. The doubt, if any, about the identity and presence of accused Kishanpal Singh was laid to rest by this witness when in answer to a question in cross-examination he stated that he had known Kishanpal Singh about a month before the occurrence. He had been Kishanpal Singh visiting the Fields of his father. He stated that after the occurrence the accused persons had run away towards the east. According to him accused Kishanpal Singh was carrying a lathi. According to him he had become unconscious immediately after receiving the injuries and remained unconscious till he reached the hospital. Anurudh Singh Public Witness -7 is the third brother who had also received injuries in the incident. His statement about the incident corroborates the statement of Public Witness -4 Vikram Singh and Public Witness -5 Karan Singh, his other two brothers. Relevant portions of his statement are :-

'I know the accused persons present in court today. On 30.6.82 at about 10 a.m. I was Along with my brothers Karan Singh, Vikaram Singh and Verinder deceased. We were on a tractor. We were on our way back home after ploughing our Fields. The accused persons met us there on our way back home. Ram Adhar accused was armed with a jaily, Rajinder accused was armed with a ballam, Ambika Pd' Kishan Pal and Shiv Raj accused were armed with lathies and Ram Chander accused was armed with a gun. Ram Adhar -accused asked the other accused persons to Finish the trouble once for all. (Hamesha Ke Liye Tanta Khatam Kar Do). 'Put all of them to death.' (Lashen Bicha Do). Thereupon Karan Singh was hit with a jaily a Ambika Prasad Ram Adhar and Rajinder accused gave ballam blow on the face of Karan Singh. Ambika Pd accused gave me lathi blow. Ram Chander accused Fired his gun at Verinder causing him injury on his chest. On receiving that injury Verinder had fallen down on the ground. On hearing the noise the villagers had collected there. Prem and Rattan Singh were amongst those persons who had collected there. The accused persons had thereafter taken to their heels but Ambika Pd and Kishanpal were caught by the villagers. I was medically examined. Ambika Pd accused and Kishanpal had also received injuries. I do not know how they had received injuries. While they were running away, they were

followed by the villagers. I can identify the jaily as well as the gun. I can also identify the ballam. I can also identify the lathis which Ambika Pd and Kishanpal accused were holding.'

(7) In cross-examination he was questioned about the identity of accused Ram Chander and Ram Adhar. He replied that he knew both of them from before the occurrence but did not know their names. According to him after the occurrence villagers had arrived at the place of occurrence and enquired about the name of the person who had Fired the gun. He told the villagers that he could identify the person but could not give his name at that lime. The police had arrived after about half an hour of the occurrence. He denied having seen injuries on the person of accused Ambika Prasad and Kishanpal Singh. The occurrence according to him had lasted about 10-15 minutes. He denied the suggestion that he along with his brothers and cousin Virender had gone on the tractor to demolish certain boundary walls. This suggestion in other words was that they were the aggressors. He also denied the suggestion that he and his brother had caused injuries on the person of Ambika Prasad and Kishanpal Singh accused having resisted their effort to demolish the boundary wall. Implicit is the presence of accused Ambika Prasad and Kishanpal Singh at the place of occurrence in this suggestion. He also denied the suggestion that somebody From the public had fired the shot which caused the death of Virender. He denied the suggestion that Ram Chander and Ram Adhar were not present at the site. He admitted that he had been discharged from the hospital after three-four hours and had gone back home. He also denied the suggestion that he had refused to give his statement to the police on the dale of occurrence after he was discharged from the hospital. It is significant to not the following portions of his testimony :-

'FROM the hospital I had not gone back home because I was apprehensive of the accused and had gone straight to the house of my in-laws. The next day I had visited my house and so also my brother Karan at the hospital. I had been visiting my brother in the hospital also every day. However, my such visits were made stealthily.'

(8) He went to his house along with Karan Singh after Karan Singh was discharged from the hospital. He admitted that till Karan Singh returned from the hospital he did not go to the police station to make a statement. The reason he have for this was that because he was afraid of accused persons. In cross-examination on behalf of accused Rajinder Singh he stated that Rajinder was known to him for many years. He denied the suggestion that Rajinder was not present at the time of occurrence or Rajinder had not caused injury to anyone. According to his statement Kishanpal accused was armed with a lathi. He stated that he had been taken to the hospital after about 10-15 minutes after the arrival of the police. He denied the suggestion that Kishanpal had not participated in the occurrence and that he was arrested on suspicion. The testimony of the above three eye witnesses is clear and consistent about the place of occurrence, the nature of the incident, the weapons held by each accused and the injuries inflicted by them as also about their fleeing from the place of occurrence after the event. The version of the incident given by all the three brothers is similar in all material terms and there is no inconsistency in their respective versions of the incident. The three brothers are natural witnesses of the incident. They were undisputedly present at the place of occurrence. Three of them suffered injuries of which one of them died on the spot. Admittedly there was dispute about land. The accused party was wanting to take possession while the complainant party, i.e., the vendors had refused to do so and had obtained stay order from competent court. The brothers belonging to the complainant party say that they had gone to plough their Fields and while they were returning they were stopped and attacked by the accused party. Some of the accused are admittedly purchasers of plots of land from out of the disputed land. The defense story that the complainant party was trying to demolish the boundary wall of Gurudwara has no legs to stand because no witness has been examined by them in this behalf. They have led no evidence to support this stand. None has been produced from the Gurudwara or even from the village to support this. The version of the incident given by the three prosecution witnesses referred to above is spontaneous and inspires confidence. We have no reason to disbelieve the testimony of these three eye witnesses. Even if Public Witness -4, Vikram Singh may be technically said to have turned hostile, yet his testimony to which we have made detailed reference, shows that the

version of the incident given by him tallies in all material terms with the version of the incident given by the other two eye-witnesses. Thus the three brothers have corroborated each other about the nature of the incident and the role played by each accused at the relevant time. We have no reason to disbelieve the eye-witnesses. There is no reason also to think that the accused persons have been falsely implicated because why would the complainants spare the real culprits even if it is assumed that they may try to implicate these accused because of the land dispute with them. No stranger who can be said to be the real culprit has been named. If there was one, there is no reason why he or she would have been spared. Asi Rameshwer Dayal, Public Witness -15 has deposed about various recoveries of weapons of offence involved in this case at the instance of the accused persons. We do not wish to attach much importance to the recoveries in view of the clear and reliable and confidence inspiring testimony of the eye-witnesses referred to hereinbefore. The only fact about the recoveries which needs a little mention is that accused Ram Chander had allegedly made a disclosure statement after his arrest on 24th July 1982. On the next day Ram Chander led the police party to a room in the 'Akhara' in New Police Lines. After pointing out to the place accused Ram Chander brought out a double barrel gun 22 bore which was in three parts from a box from the room in the Akhara. The gun was marked as Ex.P-11. It was taken possession of vide memo Ex.PW-15/D. The pointing out memo Ex.PW-15/C is as under :-

'IN the presence of the witnesses mentioned hereinafter, Ram Chander s/o Ram Jiawan, the accused of village Sihoka, police station Janghe Distt. Gorekh Pur, U.P. under police custody voluntarily going ahead pointed out Aakhara of the pehalwan at New Police Lines, Delhi and further pointed out the room built towards the eastern wall inside, the Aakhara. The memo of pointing out has been prepared. The signatures of the witnesses have been obtained.'

(9) From the box a bell containing 16 live cartridges was also recovered. The cartridges were marked as Public Witness -16/1 to 16. A license for the gun was also recovered which was marked as Ex.P-17. The bell was marked as Ex.P-18. It may also be noted here that as per the Cfsi report this gun was not used for Firing the fatal shot on Virender Singh, deceased. This could only mean that the gun

which was actually used for Firing the fatal shot remained untraced. It could also mean that Ram Chander in order to mislead the police partly got another gun for which he held a licence, recovered. This could be for purposes of supporting his case that he was not present at the time of occurrence at the spot. We may note here that mere non-recovery of the weapon of offence cannot lead to acquittal if there is other clear evidence implicating the accused in the crime. We will have occasion to deal with this aspect later. Learned counsel appearing for the appellants in these appeals have raised the following points :-

1. Delay in recording statements under section 161 Criminal Procedure Code . of the material witnesses particularly Public Witness -5 and Public Witness -7 renders their testimony unreliable and, thereforee, the same ought to be rejected.
2. Failure of the investigating officer to appear as prosecution witnesses is fatal to the prosecution case because the accused have lost opportunity to cross-examine him and elicit material information from him, including the reasons for delay in recording the statements under section 161 Criminal Procedure Code .
3. Delay in sending copy of the special report to the Area Magistrate.
4. Failure to record substance of the Fir in the Daily Diary.
5. Public Witness s-4, 5 and 7 are close relations of the deceased and their testimony should be carefully scrutinised.
6. Prosecution tried to buttress its case by producing witness Kishan Dei PW-IO, mother of Public Witness s-4,5 and 7.
7. Accused Ram Chander was not named in the Fir nor he was put up for Test Identification Parade. The gun allegedly recovered at his instance was not used as a weapon of offence as per the Cfsi report and, thereforee, Ram Chander ought to be acquitted.
8. On behalf of accused Rajinder Singh, it has been argued that he had not purchased any plot and, thereforee, he had no motive for the crime. Secondly, it is argued on his behalf that he was alleged to have a ballam with him. There is no injury on Public Witness -5 or 7 which could be ascribed to sharp or pointed edge of the ballam. Thus if at all the ballam was used it must have been used as a lathi which would show that there was no intention to kill. thereforee, his conviction under section 302 or 307 Indian Penal Code is not sustainable. If ' he intended to kill his victims he would have used the sharp or pointed edge of the ballam.
9. The plea of alibi has been raised on behalf of both Ram Chander and Rajinder Singh.
10. There is no case for invocation of section 34 Indian Penal Code in the facts of the present

case. 11. Accused Ram Adhar has been acquitted - exhortation was imputed to him and the same goes with the acquittal of the accused Ram Adhar. therefore, section 34 Indian Penal Code cannot be invoked. 12. Injuries on the two accused, namely, Ambika Prasad and Kishanpal Singh remained unexplained. Point NO.1. As already noticed, this case really turns on the testimony of the three eye witnesses, namely, Vikram Singh Public Witness -4, Karan Singh Public Witness - 5 and Anurudh Singh PW-7. These three witnesses are real brothers. So far as Vikram Singh Public Witness -4 is concerned, his statement formed the basis of the FIR. It was recorded almost instantaneously, i.e., immediately after the occurrence. His version of the incident tallies with the version of the incident given by Karan Singh Public Witness -5 and Anurudh Singh Public Witness -7. It has already been noticed that technically it may be said that Vikram Singh had turned hostile while appearing in court as Public Witness -4, yet reading his statement as a whole leaves no manner of doubt about his having witnessed the entire incident because he has given a complete account of the entire incident. The argument regarding delay in recording statements has been advanced only in relation to statements of Karan Singh PW-5 and Anurudh Singh Public Witness -7. Statement of Karan Singh under section 161 Criminal Procedure Code . was recorded about a week after the incident while that of Vikram Singh was recorded subsequent thereto. The delay in recording the statements of these witnesses by the investigating agency stands explained in the testimonies of these witnesses recorded in court. The evidence of Karan Singh read along with his Mlc shows that as a result of the injuries received by him in the incident, his mouth was swollen. Some of the injuries were on his face and in the region of his mouth as a result of which he was not in a position to speak. The learned counsel for the appellants have emphasised the fact mentioned in the Mlc of Karan Singh that he was not unconscious and was fit for statement. Read in abstract these nothings convey that inspite of the witness being Fit for recording statement, his statement was not recorded. But a closer scrutiny of facts leaves no scope for this argument. In medical terms the witness was not unconscious and, therefore, could be said to be Fit for statement. However, when his mouth was swollen with injuries all around he could hardly speak. The evidence on record shows that the investigating officer was visiting the hospital almost daily. It was obviously for purposes of recording

statement of this witness. But on account of his incapacity because of swollen mouth, the statement could not be recorded. Anurudh Singh Public Witness -7 has explained that he was under a tremendous fear from the accused party. He said that he was not even going to his house and was staying with his in-laws and was moving about stealthily. One of his brothers Karan Singh had received serious injuries. He Himself received injuries. His cousin had died in the incident. Fear was natural. We Find that the above facts emerging from the records are sufficient Explanationn for the delay in recording the statements of these witnesses. In this connection we could like to refer to and rely upon a judgment of the Supreme Court in Dr. Krishna Pal and Another v. State of U.P. 1996 Scc (Cri) 249. In this case even when there was no Explanationn for the delay in recording statements of witnesses by the police, the statements of witnesses recorded in court were not discarded when the statements were found to be otherwise convincing and reliable. On this point we may also note that the reason for insisting on the statements of the eye witnesses being recorded by the police at the earliest is to rule out the possibility of embellishment or improvements in the version of the crime by the witnesses. In the present case there can be no such apprehension and it cannot be alleged that Karan Singh and Anurudh Singh made improvements in the version of the incident because there was delay in recording their statements. This is because the version of the incident was given by their third brother Vikram Singh whose statement was recorded almost immediately after the incident and who gave a complete eye account of the incident in that statement. The account of the incident given by the other two witnesses whose statements to the police were delayed is the same as given by Vikram Singh. thereforee, we Find no merit in this argument in the facts and circumstances of the present case. Because of these facts and there being a satisfactory Explanationn for delay in recording the statements of the two eye witnesses, as discussed above, we do not Find that any assistance can be taken by the learned counsel for the appellants from the Judgment of the Supreme Court in Balakrushna Swain v. The State of Orissa : 1971 CriLJ670 . Point No 2 It is true that the investigating officer failed to appear as a witness for the prosecution in this case. The record shows that various opportunities were granted to the prosecution to produce the investigating officer, however, he did not appear. The reason for his non-appearance is not far

to seek. Obviously he was trying to help the accused. It is settled law that the prosecution case cannot be allowed to suffer at the hands of the investigating officer or the investigating agency. The investigating officer cannot be permitted to hold the prosecution to ransom by his deliberate acts. To make good this point the learned counsel for the appellants relied on the fact that the investigating officer alone could give Explanation for delay in recording the statements of the eye witnesses. The aspect of delay in recording the statement of eye witnesses has already been discussed above. We do not feel that the prosecution case should be thrown over-board merely on account of this default on the part of the investigating officer which we are constrained to observe, appears to be deliberate in order to help the accused persons. Nothing else was suggested to indicate how the defense suffered on account of non-production of the investigating officer as a witness. In the facts of the case we find no merit in this argument. Point NO.3 The argument of the learned counsel for the appellants is that the incident was of 30th June, 1982 at 10.30 A.M. The Fir was recorded on the same day at 12.40 P.M. According to the learned counsel as per the record the copy of the Fir was received by the concerned Magistrate at 5.10 P.M. on 1st July, 1982. These facts taken on their face no doubt suggest that there has been a considerable delay in sending the copy of the Fir to the Magistrate. The question, however, is that is this a sufficient ground to throw out the prosecution case? We must note the purpose behind the requirement of promptly despatching copy of the FIR to the Magistrate. This is one of the safeguards for the accused in order to ensure that the prosecution does not improve its case or fill in the lacuna, if any, once the special report is submitted to the Magistrate. The matter there is out of the hands of the prosecuting agency and there is no scope for embellishment. This is the main object of this requirement. However, if this safeguard for the accused is otherwise taken care of in the facts and circumstances of a given case or there is a reasonable Explanation for the delay in sending the special report to the Magistrate, this ground alone cannot frustrate the prosecution case. Coming to the facts of the present case, it has to be noted that the entire case against the accused persons is unfolded in the statement of Vikram Singh which was recorded soon after the incident and which formed the basis of the FIR. The same version of the crime has been repeated by the other eye witnesses, which has been

the prosecution case throughout. Names of all the accused along with their respective roles find mention in the said statement of Vikram Singh. Another fact to be noted in this connection is that the request for conducting post mortem on the body of Virender Singh was sent by the I.O. vide Ex.PW-3/B. This appears to have been received at the hospital at 2.15 P.M. 429 on 30.6.82 as per endorsement contained on that document. This document was accompanied with 13 papers which included an inquest report as well as a copy of the statement of Vikram Singh which is the rukka or the basis of the Fir in this case. This again leaves no scope for any padding of the case by the police, therefore, this cannot be said that any prejudice has been caused to the accused persons on account of delay in sending the special report to the concerned Magistrate. There is no merit in this point .in the facts of the present case and the same is hereby rejected. Point NO.4. This point is regarding not recording the substance of the Fir in the Daily Diary. The rules require that the substance of the Fir should be noted in the Daily Diary maintained at the police station. This appears to have not been done in the present case. The real question again will be, has any prejudice been caused to the accused persons on this Count This requirement is also one of the safeguards against improvement in the prosecution case at a subsequent stage. By recording substance of the Fir it is sought to be ensured that the investigating officer will be pinned down to the version of the crime contained therein and he should not be able to make improvements thereupon subsequently. For reasons contained in our discussion on point No.3, we are of the view that non-compliance of this requirement has not in any way prejudiced the accused persons in the facts of the present case and, therefore, for this lapse on the part of the prosecution the prosecution case cannot be allowed to fail. Thus in the facts of the present case, failure to record substance of the Fir in the Daily Diary cannot be said to be fatal to the prosecution case. Point NO.5. It is well settled that the testimony of close relations of the victim of the crime has to be carefully scrutinised. It has to be read with caution. It is equally well settled that the testimony of a witness cannot be rejected merely on the ground that he or she is a close relation of the victim. So what has to be seen in each case is that the testimony of such a witness should inspire confidence after a careful and cautious scrutiny. In the present case the complainant party at the time of occurrence consisted of four persons. Out of

these four persons one died in the incident while two received injuries and the fourth escaped injuries by hiding himself by the side of the tractor on which all the four were at the start of the incident. It is beyond dispute that both the groups had dispute about certain lands. On the date of the incident the complainant party consisting of three real brothers and a cousin were resuming on their tractor after ploughing the Fields. As per the prosecution witnesses, i.e., Public Witness -4 and Public Witness -5, the tractor was stopped by the accused party and the occupants of the tractor were surrounded by them and attacked with weapons which the members of the accused party were carrying. In fact there is no dispute about the incident having taken place in which at least Ambika Prasad and Kishanpal Singh of the accused party and the four members of the victim party were involved. Accused Ambika Prasad had admitted about the incident in his statement under section 313 Criminal Procedure Code . Though according to him the other side was the aggressor. The fact that accused Ambika Prasad and Kishanpal Singh received injuries and were arrested from the spot and were taken to the hospital by the police of- 430 fleers is not in dispute. Their MLCs are on record as exhibits Public Witness -2/A and Public Witness -2/B showing that these persons were brought to the hospital by a police officer. Likewise in the face of the MLCs of Karan Singh Public Witness -5 and Anurudh Singh Public Witness -7, their presence at the spot is also established beyond doubt. Vikram Singh Public Witness -4 is the person who gave the initial statement which formed basis of the FIR. Thus he was also undoubtedly present at the spot. All these three witnesses are thus natural witnesses, of the crime. They were present on the spot, they were involved in the incident, they suffered injuries in the incident and thus are the best persons to give an eye witness account of the incident. The land dispute between the parties was the motive for the incident. Admittedly Ambika Prasad Accused was the secretary of the society which was claiming to be the purchaser of the disputed land. That is why the statement of Karan Singh Public Witness -5 appears to be natural when he stated that all the accused present in court came from the side of house of Ambika Prasad, accused. He further stated that the accused surrounded them. Then he goes on to give the role of each of the accused in the incident. We have already quoted this portion of the statement of Karan Singh PW-5 and, therefore, it need not be repeated. Same version of the

incident has been given by Anurudh Singh Public Witness -7. The same version of the incident can be found in the statement of Vikram Singh Public Witness -4. As already observed his statement read as a whole gives a correct version of the incident and leaves no manner of doubt that he was reluctant in making the statement because of the fear from the accused persons and that is why initially he denied knowledge about the incident. We have already observed that we Find the statements of these eye witnesses truthful and reliable. We have no reason to think that inspire of having received such serious injuries, Karan Singh Public Witness -5 would leave out the real culprits and implicate innocent persons in the crime. Thus we Find no merit in the argument on behalf of learned counsel appearing for the appellants that the testimony of these three eye witnesses should be disbelieved. Point NO.6. It was argued that the prosecution was trying to buttress its case by producing false witnesses. In support of this argument reference is made to Kishan Dei Public Witness -10, mother of Public Witness s-4, 5 and 7. Her testimony was rejected by the trial court and this has given rise to the present argument on behalf of the appellants. She is not an eye witness of the incident and, therefore, nothing really turns on her statement. We have already observed that the fate of this case rests on the testimony of Public Witness s-4, 5 and 7. If these witnesses are believed, the convictions have to be upheld otherwise they cannot be sustained. therefore, we do not attach any importance to the statement of Kishan Dei Public Witness -10. Point NO.7. This point relates exclusively to accused Ram Chander. First it has been argued that he is not named in the FIR. This argument can be dealt with straight away with reference to the rukka Ex. Public Witness -4/A which is the basis of the FIR and Ex.PW-13/B. Accused Ram Chander has not been referred to by name in the document. He is referred to by his description, i.e., adopted brother (Mooh bola bhai) of Ram Adhar, Pahalwan, whose both cars were broken and who was known to the complainant from 431 before. There is no other person with broken ears. Moreover, as per the maker of the Fir he is known to him from before and further he was referred to as the adopted brother of accused Ram Adhar, pahalwan. This description is sufficient to identify accused Ram Chander and merely because his name as such was not given is of no consequence. Next it was submitted on behalf of accused Ram Adhar that no Test Identification Parade was held qua him

and, therefore, the prosecution witnesses should not be relied upon so far as this accused is concerned. The idea of holding Test Identification Parade is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. This is as per : 1983 CriLJ689 Mohd. Abdul Hafec/. v. State of Andhra Pradesh. In the present case accused Ram Chander was known to all the three eye witnesses before the occurrence. This is clear from the statements of the three witnesses in question. All of them have mentioned his presence at the scene of occurrence with a gun in his hand. All of them have stated that accused Ram Chander fired a shot from his gun which hit Virender Singh in his chest. In the entire cross-examination of Karan Singh, Public Witness -5 by the learned counsel appearing for accused Ram Chander there is not even a suggestion to the witness that Ram Chander was not known to the witness earlier and he saw him for the first time on the date of occurrence. However, Public Witness -7 Anurudh Singh was cross-examined on this issue when a question was put to him. 'Ques. I put it to you that you did not know Ram Chander and Ram Adhar before the occurrence. Ans. I had seen them before the occurrence but did not know their names.' Further Public Witness -7 was questioned as to why he did not tell the name of Ram Chander at the time of his statement to the police. His reply was that till the time he did not know the name of this person but he otherwise knew him and could identify him. Thus, holding a Test Identification Parade was not essential in this case. Learned counsel for the accused Ram Chander further argued that no evidence was led by the prosecution to show that Ram Chander had the special features, i.e., broken ears or that of Mooh Bola Bhai of accused Ram Adhar. What is important in this connection is that all the witnesses have stated that they knew Ram Chander from before and could identify him. The special features, if any, only come later. Suppose in a given case the accused does not have any special features at all, would the witness who said that he could identify the accused as he knew him before, be disbelieved only for this reason? Thus we find no merit in this submission of the learned counsel appearing for accused Ram Chander. Next it was argued for accused Ram Chander that the gun allegedly recovered at his instance was not used as the weapon of offence as per the Cfsi report, therefore, it cannot be said that he fired the shot which resulted in the death of Virender. We

are not impressed by this argument. This could at best mean that the weapon of offence remained untraced. There can be no dispute that Virender Singh died as a result of gun shot injury. This is established by the medical evidence on record to which we have already referred. By getting a different gun recovered, accused Ram Chander may be trying to mislead the prosecution. Failure to recover the weapon of offence need not necessarily result in acquittal of an accused when there is other overwhelming evidence on record establishing his guilt. The offence in this case was committed in broad day light, i.e., about 10.30 A.M. on 30th June, 1982 when summer is at its peak. It is committed in open fields. The question about identity of the accused and about his role in the incident does not admit of any doubts even if the gun which was recovered at the instance of the accused was not used in the crime. There is ample evidence on record to establish the guilt of accused Ram Chander. We are not impressed by any of the arguments raised specifically qua accused Ram Chander. Point NO.8. This point pertains to exclusively accused Rajinder Singh. Firstly it is urged that he had not purchased any plot and, therefore, he had nothing to do with the land in dispute and as such he had no motive for the crime. Regarding this we have only to observe that presence of motive is not a sine qua non for conviction of an accused. Accused Rajinder was a member of the accused party. He is said to be wielding a ballam in his hands. The plea of alibi has been raised on his behalf. The burden of proof for such a plea lies on the person who raises it. Accused Rajinder has not led any evidence worth the name in support of his said plea. On the other hand, the presence of Rajinder along with the other accused has been consistently mentioned by all the prosecution witnesses. His presence is mentioned by Vikram Singh in his initial statement to the police as also while appearing as Public Witness -4. His presence is mentioned by Public Witnesses -5 and 7. All of them have stated that he had a ballam in his hand and he gave ballam blows. Out of the victim party consisting of four persons, one had died in the incident; the other three appeared in the witness box and had unequivocally spoken about the presence of Rajinder with ballam in his hand at the time of incident and he has used ballam in the attack on the victims. Faced with this situation the learned counsel appearing, for accused Rajinder Singh argued that there was no injury through a sharp-edged weapon on the body of Karan Singh Public Witness -5 or Anurudh Singh PW-7.

From this it is sought to be made out that the accused had no intention to cause death of any of his victims. If he had any such intention he would have used the ballam from its sharp-edged end. If he used the ballam as a lathi that would show absence of intention to commit murder. We are unable to accept this argument. When we discuss the question of common intention under section 34 Indian Penal Code we will have occasion to comment upon this. At this stage, we would only like to say that it was a common cause for all the accused who are before us in these appeals and the liability of all of them for the death of Virender Singh stands. The injuries on the other victims only come next. Further it need not necessarily be that the accused party wanted to commit murder of all the four brothers. Thus we do not find any merit in the submissions specially raised on behalf of accused Rajinder. Point NO.9. The plea of alibi raised on behalf of accused Ram Chander and Rajinder Singh does not inspire any credibility. About accused Rajinder Singh we have already made reference about this. Similar is the situation about accused Ram Chander. His presence at the scene of occurrence has been established by overwhelming evidence which we have no reason whatsoever to doubt. These accused have failed to lead any reliable evidence regarding this plea when the onus was squarely upon them in this behalf. Point NO.10 & 11 Both these points relate to section 34 Indian Penal Code and can be conveniently dealt with together. The appellants have argued that it is not a case of any prior meeting of minds or any decision taken in advance by the accused party to commit the crime. therefore, it is submitted that section 34 Indian Penal Code cannot be invoked. In support of this submission it is argued that to suggest that common intention could have developed at the spur of the moment, exhortation has been imputed to accused Ram Adhar. At the time of the incident accused Ram Adhar as per the prosecution witnesses, is supposed to have said, 'In Ki Lashen Bichha Do Jis Se Roz Roy. Ka Tanta Khalam Ho Jai' (Kill all of them so that the daily dispute is over). Accused Ram Adhar has been acquitted. His presence at the spot had been disbelieved by the trial court. The State has not appealed against that part of the judgment of the trial court. Thus it is argued that when presence of Ram Adhar has been disbelieved, the exhortation imputed to him also goes and this in turn knocks off the entire case under section 34 IPC. To examine the case of the prosecution on common intention a closer scrutiny of the prosecution evidence is necessary.

First, Vikram Singh, Public Witness -4 stated that he and his brothers were coming after ploughing the Filed at about 10.00 A.M. on 30th June 1982 on a tractor. When the tractor was near the farm of one Dhillon they were stopped. He saw ballam in the hand of Rajinder Singh, lathi in the hand of Ambika Prasad, jally in the hand of Ram Adhar and gun in the hand of Ram Chander whose description was given by the witness and not the name. They were the one who stopped the tractor and started attacking the four person of he victim party. The person having the gun fired the gun shot which hit Virender in his chest and he fell down as a result thereof. He further states that the accused persons, i.e. Ambika Prasad and his companions ran away from the spot. Ambika Prasad and Kishanpal Along with their lathis were apprehended while fleeing from the spot. Then we have the statement of Karan Singh, Public Witness -5 who staled 'all the accused present in Court today came from the side of house of Ambika Prasad, accused. The accused surrounded us. Accused Ram Chander was having a gun in his hand xxxx' From this statement it is clear that all the accused persons came together armed with weapons. They surrounded the victim party meaning thereby that they did not leave any scope for any of the victims to escape, he has gone on to say that after being surrounded they started giving beating to them. Respective roles by the accused persons have been detailed. He has further stated in cross-examination that after the occurrence the accused persons had run away towards the east which shows that the accused persons ran away together. These facts have to be seen in the background of the evidence that there was a land dispute, the members of the accused party were purchasers of the disputed land while the victims' party were the sellers. The victim party had injunction in their favor from the competent court restraining any construction on the disputed land. Still some construction had been raised. In this context the accused party had tried to suggest to the prosecution witnesses in their cross-examination that the victim party were trying to 434 demolish this construction with the help of their tractor. However, they did not lead any evidence in support of this. The further fact cannot be overlooked that the victim party did not have any weapons nor any weapons were recovered from the site. This clearly establishes that the accused party wee the aggressors. They came together and started the attack on the victim party. One of them was armed with a gun which he Fired and the shot killed one of the

members of the' victim party. They fled from the scene together. The common intention is clearly spelled out. Common intention has to be judged on the basis of the facts and events of the incident which unfold themselves on the record. The evidence of a prior meeting of minds, i.e., sitting together or holding a conference will be hard to get in most of the cases. It has to be inferred from the actions of the accused party and the facts and events which took place. We are satisfied about the existence of common intention on the part of the appellants and we find no difficulty in upholding the convictions with the aid of the section 34 IPC. Point NO.12. It has been found that there were injuries on accused Ambika Prasad and Kishanpal. Their MLCs are Exs.PW-2/A & B in the hand of Dr.P.K.Saknodia, Public Witness -2. It is in the cross-examination of Public Witness -2 that injuries on the person of both these accused were caused by blunt object. Contention advanced on behalf of the accused is that as the prosecution has failed to furnish Explanation in regard to the injuries on both the accused they must be held to have received them at the hands of the complainant party after they joined the other people and protested against the demolition of the boundary wall of the Gurudwara by the complainant party. In fact, this is the plea taken by the aforesaid two accused in their statements under Section 313 Criminal Procedure Code . It is in the deposition of Karan Singh Public Witness -5 that after the occurrence accused ran away from the scene of occurrence but with the help of other person Ambika Prasad and Kishanpal were apprehended and overpowered. It is further in the deposition of Anurudh Singh Public Witness -7 that on hearing the noise villagers including Prem and Rattan Singh reached the place of occurrence; that after the occurrence accused persons had taken to their heels but Ambika Prasad and Kishanpal accused were caught by the villagers. It is clear that the members of the complainant party were not carrying any arms. therefore, in all probabilities both the aforesaid accused may have received the injuries at the hands of the villagers in the process of being overpowered. Thus, the presence of the injuries on the bodies of Ambika Prasad and Kishanpal cannot be read as a circumstance against the prosecution. The learned counsel appearing for accused Kishanpal tried to emphasise that Kishanpal really did not have much of a role in the incident. It was suggested that at best he was said to be welding a lathi and to him reference has only been made in general terms by the prosecution witnesses. It

was argued that it is not proper or just to base the conviction of accused Kishanpal on such general allegations. A simple answer to this argument is that presence of accused Kishanpal at the scene of occurrence is beyond any shadow of doubt particularly when he himself received injuries in the incident and was taken to Hospital. His presence is mentioned by all the prosecution witnesses and it is slated that he look part in the attack. We have upheld the invocation of section 34 Indian Penal Code in this case. thereforee, no force is left in this argument. Accused Kishanpal is equally guilty along with the other accused persons. The result is that all the appeals fail and they are dismissed. The convictions of the appellants and the sentences awarded to them by the learned Additional Sessions Judge in his impugned judgment are upheld. All the appellants appear to be on bail. They are directed to surrender before the trial court forthwith in order to serve the sentences awarded to them respectively. The trial court will take steps to ensure that the appellants are taken in custody in order to serve the sentences awarded to them.

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