

Ghansa Singh and ors. Vs. State

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Court : Rajasthan

Decided On : Jul-31-1957

Reported in : AIR1958Raj226; 1958CriLJ1231

Judge : J.S. Ranawat and; K.K. Sharma, JJ.

Acts : [Evidence Act, 1872](#) - Sections 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 40, 141, 148, 149 and 302

Appeal No. : Criminal Appeal No. 43 of 1956

Appellant : Ghansa Singh and ors.

Respondent : State

Advocate for Def. : R.A. Gupta, Adv.

Advocate for Pet/Ap. : J.K. Mathur, Adv.

Disposition : Appeal dismissed

Judgement :

K.K. Sharma, J.

1. The appellants Ghansasingh, Harbans Singh, Pyarasingh, Niranjansingh, Singarasingh and Lalsingh were challaned in the court of the Second Extra Magistrate, First Class, Alwar, for riot, murder and charges of grievous and simple

hurts under various sections of the Indian Penal Code. All the appellants are Majhabhi Sikhs and it is alleged that the appellant Lalsingh resided in a portion of the same house in which Atmasingh, also a Majhabhi Sikh, resided with his son Kandharasingh, his wire Mst. Isar Kaur and his daughter Surendra Kaur in village Jhareda, district Alwar.

At about 2-30 P. M. on 30-4-1955 Jogen-drasingh son of Lalsingh appellant had killed a cock of Atma Singh and had thrown, it away. Mst. Isar Kaur protested to Lalsingh about the conduct of his son who instead of remonstrating with his son threatened Mst. Isar Kaur that his son had only killed a cock, but ho would kill her men. Mst. Isar Kaur protested against this threat and Lalsingh asked his wife Mst. Kesar Kaur to catch hold of Mst. Isar Kaur. Both the women grappled with each other and Lalsingh called members of his family. On this the remaining five appellants came to the spot with a few others.

All of them dragged Kandharasingh by his hair, gave him a beating and took him to the house of Rudhsingh, brother of Lalsingh and tied him with a rope to a Neem tree. Seeing this Surendra Kaur P. W. 4 left for a neighbouring village Dabri where Atmasingh had gone to attend a marriage at Shersingh's place. Surendra Kaur was accompanied with a boy named Chandrasingh and she informed Atmasingh about the treatment meted out to her brother by Lalsingh and his party men. Atmasingh accompanied by his son-in-law Ajeetsingh, his maternal cousin Jogasingh and Ajoefeingh's cousin Hazarasingh, son of Gangasingh immediately left for Jhareda. Atmasingh rode on a mare and the remaining companions followed him on foot.

When Atmasingh had traversed a distance of about a couple of fields from the village Dabri and was passing by a well near that village, he saw the six appellants armed with Kirpans, Takwa and other weapons followed by 4 others coming from Jhareda side. Harbansingh, appellant was riding on a horse and the remaining accused were on foot. Harbansingh challenged Atmasingh by saying 'Tagra Hojao,' which according to the language of the parties, was a challenge to Atmasingh to prepare himself.

Hearing this Atmasingh turned his mare back towards Dabri but Harbansingh pursued him and overtook him about 10 to 12 paces away from the well and gave a Kirpan blow on, the back side of his head. Atmasingh fell down from the mare and Harbansingh getting down from his mare gave another Kirpan blow on Atmasingh's arm. Meanwhile the appellants Ghansingh and Pyarasing, who were also armed with Kirpans reached near Atmasingh and inflicted Kirpan blows on him. Pyarasingh and Ghansingh surrounded Jogasingh who had come to intervene and gave him Kirpan blows. Niranjansingh also reached there and he too dealt a Kirpan blow to Jogasingh on his parietal bone. Harbansingh appellant gave a Kirpan blow on the right shoulder of Jogasingh.

The appellants continued dealing Kirpan blows to Jogasingh until he died on the spot. The appellants Lalsingh and Singarasingh gave blows with the blunt side of an axe with which he was armed to Ajeetsingh as a result of which the latter fell down, Hazarsingh, son of Gangasingh, who wanted to rescue Ajeetsingh, was caught hold of by Lalsingh and Singarasingh gave an axe blow on his head and thereafter Niranjansingh gave a Kirpan blow on his face.

2. A report Ex. P. 1/A was lodged at the police station, Govindgarh at about 6-30 PM., on the very day of the occurrence by Narain Singh, who is said to be an eye-witness of the occurrence and alleged to have been present on the well where the offence took place. Sri Durjansingh, S. H. O. Govindgarh at once proceeded to the spot for investigation. He found Jogasingh's dead body in the way near the well. He then proceeded to village Jhareda and is said to have found Kandharasingh tied with a rope to a Neem tree at the house of Rudhsingh and got him released from there. Then he returned to the scene of the occurrence and prepared the inquest report Ex. P. 1 in respect of Jogasingh deceased. He also prepared a site plan Ex. P. 32 of the scene of occurrence. He took into possession some earth appearing to be blood stained from the place where Jogasingh's dead body was lying and prepared a memo Ex. P. 3. Jogasingh's dead body was sent to Lachmangarh Dispensary with the constable Chandulal P. W. 5.

3. All the six appellants along with four others were arrested on 3-5-1955 as till then they were said to have been untraceable. The appellants are said to have

produced some Kirpans and axes from their houses. They were seized and after having been sealed were sent for chemical examination at Jaipur. Ex. P. 36 is the chemical examiner's report and Ex. P. 37 that of the serologist. The dead body of Jogasingh was subjected to post-mortem examination by Dr. Bhagwan Sahai at Lachmangarh Dispensary and it is Ex. P. 28 on the record. The persons of Hazarasingh, Atmasingh and Ajeetsingh were also medically examined by Dr. Prem Shanker P. W. 16 at Govindgarh Dispensary and injury report Ex. P. 22 relating to Hazarasingh and Ex. P. 23 relating to Atmasingh and Ajeetsingh were prepared.

He also examined Mst. Isar Kaur, Kandha-rasingh and Sundersingh, father of Atmasingh and prepared injury reports Ex. P. 24 relating to Mst. Isar Kaur and Ex. P. 25 relating to Kandharasingh and Sundersingh. Hazarasingh Atmasingh and Ajeetsingh were examined on 30-4-1955 and Mst. Isar Kaur, Kandharasingh and Sundersingh on 1-5-1955. He also examined the appellants Harbanssingh, Ghansa-singh and Pyaresingh on 4th May, 1955 and prepared injury reports Ex. P-26 relating to them. He also examined Mst. Kesar Kaur, wife of Lalsingh appellant on 10th May, 1955 and the injury report relating to her is Ex. P-27.

4. After investigation the case was challaned in the Court of the Second Extra Magistrate First Class, Alwar who committed all the six appellants to take their trial before the Sessions Court at Alwar for the following offences :

1. Niranjansingh Under Section 302, I. P. C.
2. Ghansasingh, Harbanssingh and Pyaresingh Under Section 302 read with Section 149 and Sections 326 and 324, I. P. C.
3. Singarasingh Under Section 302 read with Section 149 and Section 326, I. P. C.
4. Lalsingh Under Sections 302, 326 and 324 read with Section 149, I. P. C. and Section 323, I. P. C.
5. The learned Sessions Judge in addition to the charges framed by the committing Magistrate, further charged all the accused Under Section 148, I. P. C.

6. All the appellants pleaded not guilty and claimed to be tried. The prosecution produced 21 witnesses out of whom Atmasingh, Ajeetsingh and Hazarasingh s/o Gangasingh P. Ws. 10, 11 and 13 respectively, were the three injured persons themselves. Narain Singh, Pyaresingh and Hazarasingh P. Ws. 8, 14 and 21 respectively also came forward as eyewitnesses of the main occurrence relating to the belabouring of Jogasingh, Atmasingh, Ajeetsingh and Hazarasingh s/o Gangasingh.

Narainsingh P.W, 8 is also the maker of the report. Kandharasingh P. W. 1, Mst. Tsar Kaur P. W. 2, and Surendra Kaur P. W. 4 deposed about the incident relating to the fight at Jhareda between Atmasingh's wife Mst. Isar Kaur on one side and Lalsingh appellant and his wife Mst. Kesar Kaur on the other and also to the belabouring of Kandharasingh. Sri Durjansingh P. W. 15 is the Investigating Officer.

He deposed about the F. I. R., seizure of various articles, despatching of the dead body of Jogansingh for post-mortem examination and the arrest of the appellants. He also deposed about having found Kandharasingh tied with a rope to a Neem tree at village Jharoda where he reached soon after the F. I. R. The statements of Dr. Bhagwan Sahai, who performed the post-mortem examination of the dead body of Joga Singh and of Dr. Prem Shanker, who examined the injured person Atmasingh, Ajeetsingh and Hazarasingh and others, recorded in the committing Court, were also taken on the record and they are respectively Exs. P-35 and 34. Other witnesses of the prosecution are more or less formal witnesses. In defence the accused produced no evidence.

7. The learned Sessions Judge accepted the prosecution story and convicted and sentenced the various appellants as follows :

Name of the accused	Conviction	Sentence
1. Ghansa-singhu/s.	302/149, I.P.C. for causing the death of Jogasingh.	Imprisonment for life.
2. u/s. 324, I. P.C. for causing simple hurt with a sharp-edged weapon to Atmasingh	u/s. 148, I. P.C.	Two years' R.I.

No separate sentence.2. Harbans-singhu/s. 302/149, I. P.C. for causing the death of Jogasingh

u/s. 324, I. P.C. for causing simple hurt to Atmasingh with a sharp edged weapon
U/s. 148, I. P. C. Imprisonment for life.

Two years' R.I.

No separate sentence.3. Pyara-singhu/s. 302/149, I. P.O. for causing the death of Jogasingh

u/s. 324, I. P.C. for causing simple hurt with a sharp-edged weapon to Atmasingh u/s. 148, I. P. C. Imprisonment for life.

Two years' R.I.

No separate sentence.4. Niranjana-singhu/s. 302/149, I.P.C. for causing the death of Jogasingh u/s. 148, I. P. C. Imprisonment for life.

No separate sentence. 5. Singara-singh U/s. 302/149, I.P.C. for causing the death of Jogasingh

u/s. 326, I. P. C. for causing grievous hurt to Hazarasingh with a sharp-edged weapon u/s. 148 I.P.C. Imprisonment for life. Three years' R. I.

No separate sentence.6. Lalsinghu/s. 302/149, I.P.C. for causing the death of Jogasingh

u/S. 148, I. P. C. Imprisonment for life.

No separate sentence.

8. All the six convicted persons have come in appeal to this Court.

9. We have heard Sri J. K. Mathur on behalf of the accused and Sri R. A. Gupta on behalf of the State. It has been argued by Sri Mathur that the evidence of the eye-witnesses of the main occurrence is altogether unreliable. It was argued that the three injured persons Ajeetsingh, Atmasingh and Hazarasingh s/o Gangasingh

were the injured persons themselves and their testimony is therefore interested. They also bore enmity to the party of the accused. So far as the remaining three eye-witnesses, namely, Narainsingh, Pyaresingh and Hazarasingh s/o Shersingh P. Ws. 8, 13 and 21 respectively, are concerned, it was argued that they were chance witnesses.

They have not been able to satisfactorily show why they should have been present on the well near the scene of the occurrence at the time of the occurrence. It was argued that Narainsingh made certain discrepancies between his statements in the F. I. R. and before the committing Court relating to the information regarding the belabouring of Kandhara-singh at village Jhareda. It was further argued that the statement about the persons who made fatal attack on Jogansingh in the F. I. R. appears to be interpolated at the end and Narainsingh does not appear to have made that statement in the F.I. R. But at the trial he stated that he had seen Pyaresingh, Har-banssingh, Ghansasingh and Niranjana Singh assaulting Jogasingh.

It was further argued that even in the F. I. R. Ex. P-1/A, the name of Niranjansingh has not been specifically mentioned as the assailant of Jogasingh, but this addition has been made by Narainsingh in his statement before the Court. It was further argued that Narainsingh was admittedly the brother-in-law of the injured Hazarasingh and therefore he was an interested witness. The evidence of Pyarasingh P. W. 13 has been criticised not only on the ground that he was a chance witness, but also on the ground that he stated in the committing Court that the injured persons did not beat the accused, and in his statement at the trial he stated that Ghansasingh was beaten with a stick by Jogasingh.

It was also argued that this witness was an interested witness as he was with Narainsingh at the time of the making of the F. I. R. and also when the inquest report was prepared. It was also argued that he bore enmity with Ghansasingh. It was argued that there was no necessity for the accused to beat Atmasingh and his party. If they had any grievance against Mst. Isar Kaur for having taken Lalsingh to task for not remonstrating with his son for having killed her cook, it had been satisfied by beating Kandharasingh and tying him with a rope to a Neem tree at

Jharoda.

It was also argued that although in the F. I. R. Tarasingh, Bantasingh, Charansingh and Katersingh had also been named among the eyewitnesses, yet they were not examined. It was argued that the case is altogether due to enmity between the parties. Finally it was argued that in any case no common object of the accused was proved and so they could neither be held guilty of riot nor of any other offence by virtue of Section 149, I. P. C.

10. On behalf of the State it has been argued by Sri Gupta that the three injured persons were the best witnesses of the occurrence as their presence at the time of the occurrence was not open to any doubt. There was no reason why they were falsely implicating the accused when they were not beaten by them. As regards the remaining eye-witnesses, Narainsingh, Pyaresingh. and Hazarasingh P. Ws. 8, 14 and 21 respectively, it was argued that their presence at or near the well near which the occurrence took place has been fully explained as the well is said to be the only fresh water well in the village and they have stated that they had gone there to serve water to their bullocks.

It was argued that when there are eyewitnesses, there is no question of want of motive, but even the motive is there because the appellants were in angry mood and after dealing with the son of Atmasingh, they wanted to deal with Atmasingh himself. It was further argued that all the appellants had gone to the place of occurrence armed with various weapons and immediately on reaching there a challenge was thrown to Atmasingh and beating by all the accused took place. They had, therefore, a common object of beating Atmasingh and his party and they must have known that if they attacked with their sharp-edged weapons, death was likely to result.

All of them were therefore guilty of riot Under Section 148, I. P. C. as they were armed with deadly weapons and were guilty of murder of Jogasingh by virtue of Section 149, I. P. C. and were also guilty of the specific acts which they themselves committed. They have therefore been rightly convicted.

11. As regards the arguments of the learned counsel for the appellants that although a number of eye-witnesses were mentioned in the F. I. R., only three were examined, it was argued that two of them Tarasingh and Charansingh were produced in Court for the purposes, of cross-examination by the accused, if they so liked, but the accused did not cross-examine them. Simply because Katersingh and Bantasingh were not produced, the evidence of the eye-witnesses who have been produced, cannot be disregarded.

12. We have considered the arguments of both the learned counsel. The following points arise for determination in this appeal:

1. Whether the six appellants or some of them formed an unlawful assembly? If only some, which of them formed such an assembly;
2. What was the object of the assembly? Was it unlawful within the meaning of Section 141, I. P. C.?
3. Was riot committed by such assembly?
4. Whether Jogasingh died by violence and if so, who is responsible for causing his death?
5. What is the liability of the other accused who joined in beating Jogasingh, but who did not deal the blow which led to Jogasingh's death?
6. What is the liability of the other members of the unlawful assembly who did not belabour Jogasingh, but participated in the riot?
7. Whether grievous hurt was caused to Hazarasingh son of Gangasingh and simple hurt to Atmasingh and Ajeetsingh with a sharp edged weapon, and if so, which of the appellants are responsible for causing these injuries to these persons?

13. We have carefully considered the arguments and gone through the evidence on the record. We take up points Nos. 1, 2 and 3 together as it will be convenient to deal with these points together :

(14-16) Points Nos. 1, 2 and 3 : (After discussing the evidence of some of the prosecution witnesses the judgment proceeds :)

The evidence of these witnesses has been criticised on the ground that they were more chance witnesses and could not be present at the well at the time the occurrence took place. It is in the evidence of Narainsingh, Pyaresingh and Hazarasingh that they were taking their bullocks for serving water to them at the well near the place of occurrence. The occurrence! took place at about 4 p. m. and it is not improbable that these three witnesses should be at or near the well for serving water to their bullocks.

They have been cross-examined at length, but nothing has been brought out in their cross-examination to show that they were deposing falsely about their presence at the time of the occurrence. It was argued that Narainsingh was a relation of the injured Hazarasingh s/o Gangasingh and therefore he was interested. As regards Pyaresingh it was argued that he had enmity with Ghansasingh because he suspected him to have stolen his clothes when both were in military service a few years ago. So far as Hazarasingh is concerned it was argued that he is the son of Shersingh at whose place the marriage in which Atmasingh and his party had participated had taken place.

We have considered the arguments of the learned counsel. There is no doubt that Narainsingh P. W. 8 is related to Hazarasingh injured, but he is the witness who made the F. I. R. within about 2 hours of the occurrence and therein he has given in a general way all the facts relating to the occurrence. Of course therein he has not said as to which of the accused gave beating to Atmasingh, Hazarasingh and Ajeetsingh, but in Ex. P-I/B he has clearly named Pyaresingh, Harbanssingh, Ghansasingh and Niranjansingh as the persons who fatally wounded Jogasingh. It was argued that this finds place at the end of the F. I. R. after the words [^]^nknjZlh dh tkos** (action be taken) and therefore it is an interpolation.

As regards Niranjansingh it was argued that his name was not mentioned in Ex. P-1/A as one of the assailants of Jogasingh and therefore it is a subsequent improvement to say that he was also one of the assailants. So far as Pyaresingh, Harbanssingh and Ghansasingh are concerned, their names are to be found not

only in Ex. P-1/B, but also in Ex. P-1/A. Of course the name of Niranjansingh is not recorded in Ex. P-1/A as one of the assailants of Jogasingh, but it is clearly recorded in Ex. P-1/B- We have very closely examined the documents Exs. P-1/A and P-1/B.

The Hindustani words meaning Pyare-singh, Ghansasingh and Harbanssingh have murdered Jogasingh do not appear to have been added afterwards in Ex. P-1/A and the same words along with the name of Niranjansingh do not appear to have been subsequently added in Ex. P-1/B. We are fully convinced by the evidence of Narainsingh as well as that of the Investigating Officer Sri Durjansingh P. W. 15 that the words in Hindustani meaning that Ghansasingh, Pyaresingh, Harbanssingh and Niranjansingh had murdered Jogasingh were not added afterwards, but were written at the dictation of Narainsingh when the entire F. I. R. was recorded. It was argued that Narainsingh had deposed that he did not say anything after the words *nkjZlh dh tkos* in his examination before the committing Court. This is true but Narainsingh has clearly stated that he did not know what was meant by the words *nkjZlh dh tkos* and that he had dictated in the F. I. R. that Ghansasingh, Pyaresingh, Niranjansingh and Harbanssingh killed Jogasingh. We fully believe Narainsingh that it was because he did not understand what was meant by the technical words.

nkjZlh dh tkos that he made some confusion in his statement before the committing Court. Otherwise there too he had clearly stated that he had dictated that Ghansasingh, Pyaresingh, Harbanssingh and Niranjansingh had murdered Jogasingh. It was argued that in Ex. P-1/A the name of Niranjansingh is not mentioned. It is true but it is proved by the evidence of Sri Durjansingh P. W. 15 and the constable Matadin P. W. 16 that Ex. P-1/B is the original report made by Narainsingh and that Ex. P-1/A is the copy prepared from Ex. P-1/B. It is clear from the evidence of Matadin that by oversight he forgot to copy out the name of Niranjansingh from Ex. P-1/B. We have carefully examined Ex. P-1/B. It is signed by Narainsingh and scribed by D. S. Chouhan which appears to refer to Sri Durjansingh. It is written in natural manner. There does not appear to be any interpolation and we have no reason to disbelieve the evidence of Sri Durjansingh and Matadin that Ex. P-1/B is really the original F. I. R. recorded at the dictation of

Narainsingh and in that document the names of Ghansasingh, Pyaresingh, Niranjansingh and Harbanssingh are clearly mentioned among the assailants of Jogasingh. It is true that Narainsingh did not specifically give the names of the assailants of Atmasingh, Hazarasingh and Ajeetsingh, but that appears to be due to the fact that his attention was focussed on the more serious part of the occurrence, namely, the murder of Jogasingh and therefore while he gave the names of the assailants of Jogasingh he narrated the remaining incident only in a general way. It is however quite clear from Exs. P-1/A and P-1/B that all the six appellants were specifically named and it was stated that the assembly was armed with Kirpans, axes, etc. and that Atmasingh, Hazarasingh and Ajeetsingh had been severely injured. Narainsingh was not asked in his cross-examination why he did not specifically name the assailants of Atmasingh, Ajeetsingh and Hazarasingh in the F. I. R. If the prosecution wanted to show that Narainsingh was deposing falsely about the persons who assaulted Atmasingh, Ajeet-singh and Hazarasingh, questions ought to have been put in cross-examination why he did not specifically name those persons in the F. I. R., so that he might have had an opportunity of explaining why he did not specifically name the assailants of Atmasingh, Ajeetsingh and Hazarasingh. We consider the F. I. R. to be very strong corroborative evidence in this case as it was within two hours of the occurrence when this witness had no occasion to consult the injured who were not in their full senses after the severe injuries they had received. Narainsingh's evidence was also attacked on the ground that he had mentioned in the F. I. R. as if he himself saw Surendra Kaur imparting information about the incident at Jhareda to Atmasingh whereas in his evidence he says that Atmasingh had told him that his daughter had come and imparted the said information to him. We have considered the statement in the F. I. R. as well as the evidence of Narainsingh on this point and agree with the learned Sessions Judge that there is in fact no material discrepancy between the two statements. It may be that Narainsingh came to know from Atmasingh that his daughter had come and informed him about the incident at Jhareda, but in the F. I. R. he did not take the meticulous care of stating that he had received that information from Atmasingh and gave the bare fact that Surendra Kaur had given this information to Atmasingh. As regards Hazarasingh, and Pyaresingh P. Ws. 21 and 14 respectively we find their names in the F. I. R.

among the eye-witnesses. The mere fact that there was some quarrel between Pyaresingh witness and Ghansasingh appellant several years back with respect to some clothes which Pyaresingh suspected to have been stolen by Ghansasingh could not to our mind induce Pyaresingh to fabricate a false case against not only Ghansasingh, but the remaining five appellants.

The fact that he deposed at a late stage about Jogasingh having dealt stick blow to Ghansasingh cannot be a sufficient ground for rejecting his testimony regarding the beating of Atmasingh's party by the appellants which is corroborated by other reliable evidence. If it were the case of the appellants that they beat Atmasingh's party in exercise of the right of private defence of their person, this fact might have had some importance, but as it is not the appellants' case, the fact that Joga-singh gave beating to Ghansasingh does not affect the prosecution case.

The party of the appellants being aggressors, the fact that Jogasingh gave one or two stick blows to the appellants' party does not give rise to any right to private defence of person to the appellants. So far as Hazarasingh P. W. 21 is concerned, no serious criticism has been made against his evidence excepting that he had admitted that he was the son of Shersingh. We do not think that merely because this witness happened to be the son of Shersingh at whose place the marriage had taken place in which Atmasingh's party had participated would induce this witness to give false evidence in a serious case against the appellants.

17. It was argued that although the names of Tara Singh, Banta Singh, Charan Singh and Kater Singh were mentioned in the First Information Report among the eyewitnesses, yet they were not produced by the prosecution. We have considered this argument. So far as Tara Singh and Charansingh are concerned, they were, of course, not examined as witnesses for the prosecution, but they were produced before the Court for the purpose of cross-examination by the accused if they wanted to do so.

The accused however did not care to cross-examine these witnesses. Under the circumstances from the mere fact that these witnesses were not examined by the prosecution at the trial as its witnesses, no adverse inference can be drawn against the prosecution. As regards Rantasingh and Katersingh, it was not

necessary for the prosecution to produce all the prosecution witnesses when there was quite a large number.

It examined the three injured persons and three other eye-witnesses. It produced before the Court two other eye-witnesses for the purpose of cross-examination by the accused. It was not incumbent upon the prosecution to examine the two remaining witnesses as its witnesses under the circumstances of the case. Therefore the non-production of Bantasingh and Katersingh does not give rise to any presumption against the prosecution.

18. We are fully convinced from this evidence that all the six appellants armed with Kirpans and other weapons went from Jhareda to Dabri with the purpose of belabouring Atmasingh and whosoever might intervene on his behalf. From the evidence on the record the following facts are fully proved :

1. That there was a quarrel between Isar Kaur, the wife of Atmasingh on one side and Lalsingh on another at Village Jhareda immediately before the occurrence on account of the killing of a cock belonging to Atmasingh by Lalsingh's son;
 2. That the quarrel led to grappling between Isar Kaur on one side and Kesar Kr., wife of Lalsingh appellant on another in which both the women were injured;
 3. That subsequent to this Lalsingh appellant began to beat Isar Kr.;
 4. That on the alarm raised by Lalsingh appellant his son Niranjansingh and his nephews Harbansingh, Singara Singh, Ghansasingh and Pyarasingh came to the spot (this relationship is proved by the evidence of Kandha-rasingh P. W. 1 who has not at all been cross-examined on this point) and began dragging and beating Kandharasingh and took him to Rudhsingh's house and tied him to a Neem tree with a rope;
- (6) that after the incident at Jhareda, all the accused appellants, who are close relations as shown above, came together armed with various weapons to village Dabri and soon a challenge was thrown to Atmasingh and the party of the appellants began to beat Atma-singh and all others who came to intervene on their behalf and

(7) that there was previous enmity between the parties.

19. It is therefore fully established that the six appellants armed with various weapons came in an assembly to village Dabri. The question is whether they formed an unlawful assembly. For an unlawful assembly within the meaning of Section 141 I.P.C. there ought to be five more persons. The appellants were six in number and therefore this condition was satisfied. The second condition is that they should have a common object.

The conduct of the appellants that as soon as they came near village Dabri and found Atmasingh proceeding towards Jhareda one of them, namely, Harbansingh challenged Atmasingh and when he began to retreat, he began to deal blows with Kirpan to him and Ghansasingh and Pyarasingh all began to attack Atmasingh with their Kirpans and when Jogasingh tried to intervene, he was fatally assaulted by Pyarasingh, Ghansasingh, Niranjana Singh and Harbansingh & Ajeetsingh who was in Atmasingh's company was also given beating by Lalsingh and Singarasingh and Hazarasingh P. W. 13 was caught hold of by Lalsingh and belaboured by Singarasingh and Niranjansingh clearly shows that they had come with the object of belabouring Atmasingh and any one else who intervened on his behalf. ,

We are perfectly satisfied from the facts proved in this case that all the six appellants had come to village Dabri with the common object of belabouring Atmasingh and anybody who came to intervene on his behalf,

20. It was argued that there was no necessity for the appellants to go to village Dabri and beat Atmasingh's party as they had already satisfied their grudge by roughly handling Isar Kaur, Sundarsingh and Kandharasingh at village Jhareda and if anybody might be thirsting for vengeance it was Atmasingh.

It may be that Atmasingh might also have a good reason for harbouring a feeling of revenge against Lalsingh's party after having come to know about the rough treatment meted out to the members of his family at Jhareda by the appellants, but to say that because Lalsingh's party had roughly handled the members of Atmasingh's family at Jhareda, they could have no desire to belabour Atmasingh cannot be accepted as a sound argument.

From the conduct of the appellants, which has been fully proved by the prosecution witnesses, it is fully proved that they were not satisfied with the treatment meted out by them to the members of Atmasingh's family at Jhareda and that they had a further desire to settle accounts with Atmasingh. It might be due to the fact that their passions were not satisfied merely by rough handling of Atmasingh's family at Jharada and they wanted to teach a lesson to Atmasingh also or that they wanted to take the time by the forelock and batter (sic) accounts with Atmasingh before he could take any steps to avenge his treatment meted out to the members of his family at Jhareda or on account of previous enmity with Atma Singh wanted to make use of the present occasion for settling old accounts with him.

Offences are sometimes committed for very curious motives, even murders are committed for very small gains or on ordinary quarrel. Simply because it is not possible to find out the exact motive, the direct evidence cannot be disbelieved if it is reliable. The appellants have not at all tried to show what object they had in view in going armed in a body to village Dabri at the time of the occurrence. The only conclusion that can be drawn from the facts and circumstances of the case is that they went there with the common object of belabouring. Atma Singh and others of his party.

It cannot be denied that Jogasingh died as a result of violence and Atmasingh, Ajeet Singh and Hazara Singh received several injuries as it is proved by the medical evidence. It was broad day-light and it cannot be said that any mistake could be made about the identity of the assailants. It is ridiculous to say that somebody else might have caused injuries to these people and they falsely laid the blame at the doors of the appellants.

Under clause (3) of Section 141 I. P. C., if the common object of the persons composing an assembly of five or more persons is to commit any mischief or criminal trespass or any other offence, it is designated an unlawful assembly. As the common object of the assembly of the appellants was to belabour Atmasingh and his party, it was certainly an unlawful common object and the assembly was therefore an unlawful assembly. As violence was committed, the offence was that

of riot and as the appellants were armed with deadly weapons, their offence fails under Section 148 I. P. C.

21. Although we are perfectly satisfied that the unlawful common object of belabouring Atmasingh and his party was already there when the Appellants started from Jhareda to Dabri, yet even if we were not able to hold that we would have found the appellants guilty of an offence Under Section 148, I. P. C. because at any rate this unlawful common object had developed when Harbansingh threw out a challenge to Atma Singh and soon indulged in beating Atmasingh and the other appellants also followed suit and gave beating to Atmasingh and other members of his party.

This is supported by the ruling of their Lordships of the Supreme Court in the case of Sukha v. State of Rajasthan, (S) AIR 1956 SC 513 (A), in which it has been held that no prior concert is required when common object is in question and the essence of the distinction between the common object and common intention lies there. It has been observed by their Lordships that

'a common object is different from a common intention in that it does not require prior concert and a common meeting of minds before the attack and an unlawful object can develop after the people get there (para 29, 518)'.

22. Their Lordships further observed:

'But if five or more exceed the original lawful object and each has the same unlawful intention in mind and they act together and join in the beating, then they in themselves form an unlawful assembly. The only difference is that a case like this is more difficult to establish and must be scrutinised with greater care (para 13, 518)'.

This disposes points Nos. 1, 2 and 3.

23. Point No. 4 : We now come to the point No. 4. The evidence has been discussed in detail in connection with the first three points and it is fully proved by the evidence of the eye-witnesses Narainsingh, Pyarasingh and Hazarasingh P. Ws. 8, 14 and 21 respectively that Ghansasingh, Pyarasingh, Harbans-singh and

Niranjansingh appellants caused injuries with Kirpans to Jogasingh when he came to intervene on behalf of Atmasingh and Jogasingh died immediately. Medical evidence of Dr. Bhagwan Sahai (Ex. P-35) establishes that Jogasingh had received following injuries :

1. Incised wound 8' x 2' x 2 1/2' on neck right side cutting all the soft tissues, lobule of the ear, ramus of mandible bone and the third vertebrae about 1/2' cut.
2. Incised wound 3/4' x 1/4' x 1/4' - 3' behind the right ear.
3. Incised wound 2 1/2' x 1/4' x 1/4' - 2' behind injury No. 2 on occipital region.
4. Incised wound 1 1/4' x 1/4' x 1/4' - 2' above injury No. 3.
5. Incised wound 1' x 1/2' x 1/4' - 1' below injury No. 3.
6. Incised wound 1' x 1/4' x 1/4' - 1/2' below injury No. 5.
7. Incised wound 3' x 3/4' x 1/2' on the left scapular region Longitudinal.
8. Incised wound 1 1/2' x 1/4' x 1/4' at the middle of forehead.
9. Bruise 3' x 1/2' on the right shoulder back side.
10. Bruise 5' x 1/2' on left side back 2' below shoulder.
11. Bruise 5' x 1/8' x 2' below right shoulder.
12. Bruise 4' x 1/8' on left side 2' to the left of injury No. 11.
13. Bruise 2' x 1/2' on right side 3' below injury No. 11.
14. Bruise 4' x 1/8' below injury No. 13.
15. Bruise 6' x 1/8' on left side back at the 10th rib.

Injury No. 1 was fatal and the cause of death was haemorrhage and shock of the injuries. The eye-witnesses have also established that Ghansasingh, Harbanssingh, Pyarasingh and Niranjansingh caused injuries from their Kirpans to

the deceased. There is therefore no doubt that Jogasingh died by violence. As discussed above, the evidence of Narainsingh P. W. 8, Pyarasingh P. W. 14 and Hazarasingh P. W. 21 proves beyond doubt that Ghansasingh, Harbanssingh, Niranjansingh and Pyarasingh belaboured Jogasingh.

Several injuries were caused on the head region of Jogasingh by these persons. These witnesses have also said that it was Niranjansingh who caused the fatal injury to Jogasingh. These witnesses were however at some distance from Jogasingh when he was assaulted by these four persons in quick succession and therefore they might not have been able to see clearly as to which injury was caused by which of these four accused appellants.

The learned Sessions Judge has also not definitely found that Niranjansingh inflicted the fatal injury on Jogasingh and has not convicted him Under Section 302 simpliciter but has convicted him Under Section 149 read with Section 302, I. P. C. as he has done in the case of Pyaresingh, Ghansasingh, and Harbanssingh. In the circumstances we do not find ourselves able to record a definite finding as to which of the accused who attacked Jogasingh inflicted the fatal injury on him. We, however, feel no doubt that the fatal blow was given by one of these four appellants. As to whether Section 149, I. P. C. can be attracted to hold these four appellants liable for the death of Jogasingh, it will be discussed in connection with the point which we shall deal next.

24. Point No. 5 : We have held above that the fatal blow was given to Jogasingh by any one of the four appellants Niranjansingh, Ghansasingh, Pyaresingh and Harbanssingh. The injury was caused by a sharp-edged weapon to a vital part of Jogasingh's body. The four appellants between themselves caused 15 injuries to Jogasingh which have been detailed above in connection with point No. 4. One of these injuries, namely, injury No. 1 was, according to the medical evidence, sufficient in the ordinary course of nature to cause death.

According to Clause (3) of Section 300 therefore whosoever caused this injury was guilty of murder. The case does not come under any of the exceptions of Section 300. Numerous bodily injuries were deliberately caused indiscriminately without caring for the consequences. We are therefore confident that Jogasingh was

murdered and if we could hold without doubt as to which of the four appellants caused the fatal injury, we would have without any hesitation convicted him Under Section 302, I. P. C. without assistance from any other provision of law. As however we have felt some doubt as to which of the four appellants actually caused the fatal injury, we cannot convict any of these accused under Section 302 pure and simple, and they can be convicted Under Section 302, I. P. C. only if the provisions of Section 149, I. P. C. can be attracted.

25. For the application of Section 149, I. P. C. it is necessary that there should be a riot. We have held above that there was a riot. It was in the course of that riot that murder of Jogasingh was committed. The unlawful common object, if not the actual commission of murder, was the serious belabouring of Atmasingh and whosoever might intervene on his behalf. The assailants were six in number and therefore the condition that there should be five or more members to constitute an unlawful assembly has been satisfied.

We have also held that it was one of the members of the unlawful assembly who committed the murder of Jogasingh. The only thing that we have got to see is whether the murder was committed in prosecution of the common object of the assembly or such as the members of that assembly knew to be likely to be committed. Now there can be no doubt that when the appellants indulged in beating Jogasingh with deadly weapons like Kirpans, they must have known that murder was likely to be committed,

When quite a number of persons attacked him with sharp-edged weapons like Kirpans with the object of causing him serious injuries they must have known that one or the other of those blows may likely cause death. We have been referred by the learned counsel for the appellants to a ruling of the Supreme Court in the case of Chikkarange Gowda v. State of Mysore (S) AIR 1956 SC 731 (B). In that case the common object of the assembly was held by the lower Courts to give one Putte Gowda a severe and open chastisement only.

It was not found that any of the rioters had the intention to kill Putte Gowda or any of them knew that Putte Gowda was likely to be killed in prosecution of the common object of chastisement. On this finding of the High Court the accused

who did not cause any fatal injury were not held guilty of murder by virtue of Section 149, I. P. C., but were found guilty of only those offences which they had themselves committed.

In the present case we are able to find without the least doubt that all the appellants came to the spot with the common object of giving serious beating to Atmasingh and anybody who might intervene on his behalf and in the prosecution of this common object they caused numerous injuries to Jogasingh and one of the four appellants Niranjansingh, Harbans-singh, Ghansasingh and Pyaresingh caused the fatal injury and was guilty of murder and that all those four appellants must have known that murder was likely to be committed in prosecution of the common object.

In the case of (S) AIR 1956 SC 513 (A), cited above, one of the rioters used a foe arm and then continued to fight after an excited crowd had assembled and at least nine members of the assembly rushed in to join in the beating after the first shot. It was held that all the persons, who constituted the unlawful assembly must know either that somebody was likely to deal a fatal blow or at least that the cumulative effect of the blows inflicted by a number of persons armed with lathis is likely to cause death from shock.

Their Lordships observed : 'Riots of this kind are common and death frequently results; therefore not only was a killing a likely consequence of such an assault conducted in this fashion, but Sukha and Gumana as men of ordinary intelligence must have known that'. In that case Sukha and Gumana were the persons who took part in the beating of the deceased. In this case also the four of the appellants Niranjansingh, Harbanssingh, Ghansasingh and Pyarasingh took part in the beating, of Jogasingh and they as man of ordinary intelligence must have known that death was a likely consequence of an assault on Jogasingh by them with their sharp edged weapons. We therefore have no hesitation in holding Niranjansingh, Ghansasingh, Harbanssingh and Pyarasingh appellants guilty of an offence Under Section 302 by virtue of Section 149, I. P. C.

26. point No. 6 : What is the liability of other members of the unlawful assembly who did not belabour Jogasingh but participated in the riot? We have held above

that all the six appellants including Sigarasingh and Lalsingh formed an unlawful assembly and they had the unlawful common object of seriously belabouring Atmasingh and all others of his party who might try to intervene on his behalf. We have also held that all the six appellants were armed with deadly weapons and committed a riot and consequently we have held them guilty of an offence Under Section 148, I. P. C.

Singarasingh and Lalsingh were the members of the unlawful assembly and it has been fully proved by the evidence on the record that Lalsingh and Singarasingh were armed with axes : vide the statements of Narainsingh P. W. 8, Ajeetsingh P. W. 11, Pyarasingh P. W. 14 and Hazarasingh P. W. 21. It is also in the evidence of the witnesses Narainsingh P. W. 8, Pyaresingh P. W. 14 and Hazarasingh P. W. 21 that these two accused gave axe blows to Ajeetsingh and Singarasingh gave an axe blow also to Hazarasingh almost simultaneously with the beating given to Jogasingh.

Of course these two accused did not cause any injury to Jogasingh but when they joined the unlawful assembly which was armed with deadly weapons and had the common object of belabouring Atmasingh and his supporters they must have known that in the act of assaulting the party of Atmasingh with sharp edged weapons death to somebody was likely to be caused. Section 149, I. P. C. makes every member of an unlawful assembly liable for the offence committed by any member of the unlawful assembly such as the members of that assembly knew to be likely to be committed. In Sukha's case cited above Sukha and Gumana who themselves injured persons who had been murdered were convicted Under Section 302 by virtue of Section 149. As regards the other rioters also then-Lordships made the following observation :

'Much the same considerations apply in the case of the other appellants. They rushed in to hit persons who had already been fired OR and who had been felled to the ground. They were in the midst of a crowd which could hardly have been calm and impassive and they joined in with several others to beat them up. Any man of reasonable intelligence would have known that somebody would be likely to be killed in a melee like that. Therefore the requisite knowledge can be imputed

to them also.'

27. In the case of K. C. Mathew v. State of Travancore-Cochin, (S) AIR .1956 SC 241(C), two communists were arrested by the police. The case against the accused was that they had committed riot in order to rescue the two arrested persons and that the accused were all armed with deadly weapons such as choppars, knives, bamboo, other sticks and a dagger. Two police constables were killed in, the course of the riot. The High Court convicted 10 accused Under Section 302 read with Section 149, I P. C. They went in appeal to the Supreme Court but their conviction Under Section 302 read with Section 149 was upheld. Their Lordships observed: 'Now Section 149 applies not only to offences actually committed in pursuance of the common object but also to offences that members of the assembly know are likely to be committed. It would be impossible on the facts of this case to hold that the members of the assembly did not know that murder was likely to be committed in pursuance of a common object of that kind by any assembly as large as the one we have here.'

Accordingly, even if the common object be not placed as high as murder the conviction on the murder-cum-rioting charge was fully justified.'

28. We are therefore fully satisfied that Singarasingh and Lalsingh also knew that in belabouring Atmasingh and his party with Kirpans and axes it was likely that death of somebody might be caused in prosecution of the common object. Singarasingh and Lalsingh also were therefore liable for the offence Under Section 302 read with Section 149, I. P. C.

29. Point No. 7: Whether grievous hurt was caused to Hazarasingh s/o Gangasingh and simple hurt to Atmasingh and Ajeetsingh with a sharp edged weapon, and if so, which of the appellants are responsible for causing these injuries to these persons?

30. It is proved by the evidence of Hazarasingh s/o Gangasingh that he was given a cut by an axe by Singarasingh On his head. In this he is supported by the evidence of Narainsingh P. W. 8, Pyarasingh P. W. 14 and Hazarasingh s/o Shersingh P. W. 21. According to medical evidence injury No. 1 of Hazarasingh

was grievous and was by a sharp edged weapon. It was an incised wound on the back of the head on the: occipital region 4' x 1/3' x 1' deep oblique, bone protruding out of the wounds. Singarasingh was 'therefore guilty of a substantive offence Under Section 326, I. P. C.

31. It has been proved by the evidence of Narainsingh P. W. 8, Pyarasingh and Hazarasingh son of Shersingh and also by the evidence of Atmasingh that Atmasingh was given two cuts with Kirpan by Harbanssingh, Ghansa-singh and Pyarasingh appellants. The evidence of these witnesses has been corroborated by medical evidence of Dr. Prem Shanker.

Thus Harbanssingh, Ghansasingh and Pyarasingh had been rightly convicted Under Section 324, I. P. C. and Singara Singh Under Section 326, I. P. C. Under Section 148, I. P. C. no separate sentence has been passed on any of the appellants. Under Section 302 read with Section 149, I. P. C. lesser penalty of life imprisonment has been awarded and Under Section 324, two years' R. I. each has been given to Ghansasingh, Harbanssingh and Pyarasingh and Under Section 326 Singarasingh has been given three years' R. I. The sentences have been made to run concurrently. Under these circumstances there is no reason to interfere with the sentence of the appellants.

32. The appeal of all the six appellants is dismissed.