

State Vs. Ladhu Singh

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Court : Rajasthan

Decided On : Apr-24-1970

Reported in : 1970WLN278

Judge : B.P. Beri and; L.S. Mehta, JJ.

Appeal No. : D.B. Murder Reference No. 4 of 1969

Appellant : State

Respondent : Ladhu Singh

Disposition : Appeal dismissed

Judgement :

L.S. Mehta, J.

1. The deceased Bhoor Singh and his brother Khuman Singh had an ancestral house in the village Kaya, Police Station Nai. Partition of the house had taken place between Khuman Singh and Bhoor Singh some time back. Ladhu Singh started living in the village Kaya. He purchased that portion of the house which had gone to Khuman Singh in partition. Pratap Singh (accused No. 2) was the domestic servant of Ladhu Singh. Thavra (accused No. 3). who was a village Barber, was also somehow associated with Ladhu Singh. Mst. Manak Bai (accused No. 4), widow of Mangu Singh started living with her husband's brother

Ladhu Singh. Ladhu Singh was alleged to be carrying on the business of producing illicit liquor and selling the same. He was entangled in a criminal case on that account. In that case Bhoor Singh was the principal witness' examined on behalf of the prosecution. It is for this reason that Ladhu Singh got annoyed and commenced harbouring enmity against him.

2. On June 24, 1968, at about 4 a. m. Bhoor Singh was returning home from his 'Mahuwavala' field. Ladhu Singh, Pratap Singh, Thavra and Manak Bai set out from their residence for going to the agricultural land of Bhoor Singh. Ladhu Singh was armed with a 12 bore double barrel gun. Both Pratap Singh and Thavra were having with them a muzzle loading gun. While proceeding towards the field of Bhoor Singh, Ladhu Singh was hurling vulgar abuses at him. When the party reached somewhere near Ram Singh's house Pratap Singh and Thavra happened to see Bhoor Singh from a distance, Both of them told their leader Ladhu Singh-- 'here comes Bhoor Singh'. After seeing Bhoor Singh, Ladhu Singh loaded his gun and fired a shot at him, as a result of which he was badly injured and died instantaneously on the spot. Soon after Ladhu Singh's party saw Som Singh S/o Bhoor Singh coming towards his house. As soon as Som Singh arrived near Ram Singh's house, Ladhu Singh also fired a shot at him. Ladhu Singh then reloaded his gun and fired another shot at him. Som Singh fell down injured. Some pellets of the second shot fired by Ladhu Singh on Somsingh also hit Mst Kesri w/o Sadda, (PW9). Mat. Hirki (PW 10) and Mst. Kesri w/o Khatu (PW 11 All the accused then returned to the house of Ladhu Singh. Sometime later they left Kaya by a service bus proceeding from Rakhabdeo to Udaipur.

3. First information report of the occurrence was made by Sav Singh (PW 1) to Mangilal (P.W. 24), Station House Officer, Nai, soon after the occurrence at 5 p. m.. when he was going in a bus to Todi. On receipt of the report, the Station House Officer immediately proceeded to the site of the incident. The information of this happening was sent to the Police Station, Nai, through Mangilal Police Constable No.1646, on 25-6 1968 Thereafter a case against the accused persons was registered at the police Station, Nai The police prepared injury report of Som Singh, Ex. P. 21, inquest report Ex. P. 8, a description memo of the spot Ex. P. 9. and various other documents. The accused Ladhu Singh absconded away

towards Ahmedabad. He returned to Udaipur on June 28, 1968. He was then arrested by the police in Udaipur on June 28, 1968. The accused Thavra, who was also absconding, was arrested by Parthvi Singh, Head constable and was produced before Pratapnagar police station on July 7, 1968. Pratap Singh accused was arrested by the Station House Officer Mangilal in the morning of June 27, 1968, in Bedla from the house of one Rajee Bai. On June 30, 1968, Ladhu Singh gave information to the police that he had put the weapon of the offence, viz., 12 bore double barrel gun, with Amar Singh (PW 5) The information was reduced to writing and is marked Ex. P. 12. In pursuance of that information the gun Ex. 1 was recovered from the house of Amar Singh at the instance of the accused Ladhu under memo Ex. P. 4. Amar Singh also produced licence of the gun Ex. P. 5 Three empty cartridges found on the spot were made over by Mst. Ghishi (PW.3) to the police on June 24, 1968, under memo Ex. P. 3. The fired cartridges and the gun were sent to the Ballistic Expert, Jagdish Prasad, PW. 29 of the Forensic Science Laboratory, Sagar, for examination. Test firing was conducted through both the barrels of the gun by the Ballistic Expert. They were compared with the empties received by him. In his opinion, gun Ex. 1 was in perfect working order and all the 3 empties Exs. 13 to 15 had been fired through that very gun. On July 5, 1968, Pratap Singh also got recovered his gun Ex. 3 under memo Ex. P. 13 On July 9, 1968, the accused Thavra while in the police custody gave information regarding the place where he had put the muzzle loading gun. That information was reduced into writing and is marked Ex, P. 34. The accused took the police to Rawji-ka-Hatta, Udaipur, at the house of Mst. Vallabh Bai, where he got his gun Ex. 2 recovered under memo Ex. P. 10. The jeep No. RJY 2608 in which the accused Ladhu Singh travelled was seized by the police from the possession of Bansilal driver on June 28, 1968, under memo Ex. P. 35. Autopsy of the dead body of Bhoor Singh was conducted by Dr. Man Mohan Pawaha, Medical Jurist, General Hospital, Udaipur, on June 25, 1968: vide Ex. P. 23. 29 pellets were removed from the body of Bhoorsingh. Following injuries were found on his person:

1. Triangularly oval shaped wound with ragged inverted margins and surrounded by six small punched up holes below the main wound and five medial to the main wound Size 4'X3' X bone deep. On front of upper part of right Knee. There is fracture of the lower end of right femur at the junction of the shaft with the

condyles. It is wound of entry of the Missile from a shot gun fired from a distance of 2 to 3 yards.

2. Vertical wound with everted margins 2'X' Lateral surface of right knee. It is connected with the wound of entry.

3. Vertical wound 3'X 1' with everted margins. On back of right knee. It is connected with the wound of entry.

4. Vertical wound with everted margins 2 'x1'. It is connected with the wound of entry. On back of right knee 3/4 medial to No. 3 Wounds Nos. 2, 3 and 4 are wound of exit of the missile.

In the opinion of the Doctor Bhoor Singh's death was caused due to syncope as a result of shock from sudden excessive haemorrhage from injury to the big vessels (popliteal artery and popliteal vein) resulting from firearm. All the injuries were ante-mortem in nature. The weapon must have been fired from a distance of 2 to 3 yards.

4. Somsingh was medically examined on June 3, 1968 by Dr. Pahwa. wa vide Ex. P. 21. Following injuries were notice on his person:

1. Round punched up wound with inverted margins 1/3' diameter x tissue deep 3' above Right Axilla front surface. This was wound of exit of Gun shot.

2. Round punched up wound with inverted margins J' diameter x tissue deep, it lateral to No. 1. wound of entry of gun-shot.

3. Round punched up wound with evented margins ' diameter x tissue deep, Middle of right Deltoid. Wound of entry of gun shot.

4. Round punched up wound with everted margin 1/3' diameter into tissue deep just above insertion of right deltoid, wound of exit of gun shot.

5. Round punched up wound with inverted margins ' diameter x tissue deep. 3 1/5' to lateral and slightly below No. 4. Wound of entry of gunshot.

6. Round punched up wound with inverted margins 1/5' diameter x tissue deep, 2' below apex of Axilla, posterior fold on back of right upper arm. Wound of entry of gunshot.
7. Round punched up wound with inverted margins ' diameter x tissue deep. Anterolateral surface of right upper arm at junction of lower 1/3rd and upper 2/3rd. Wound of entry of gunshot.
8. Round punched up wound with inverted margins ' diameter x tissue deep. Wound of entry of gun shot on postero lateral surface of right forearm proximal 1/3rd.
9. Round wognd with inverted margin 1' diameter x tissue deep 1' above and medial to left medial epicondyle. Wound of entry of gun shot.
10. Round wound with everted margins 1/3' diameter x tissus deep ' anterior to No. 9. Wound of exit gun shot.
11. Round wound with inverted margins ' diameter x tissue deep, ' below left medial epicondyle. Wound of entry of gun shot.
12. Round wound with inverted margins ' diameter x tissue deep, left cubital foses. Wound of entry gun shot
13. Round wound with inverted margins ' diameter x tissue deep middle of left foses. Wound of entry of gunshot.
14. Round wound with everted margins 1/3' diameter x tissue deep 1' lateral to No. 13 on Volar aspect of left forearm. Wound of exit of gun shot.
15. Round wound with inverted margins ' diameter x tissue deep 3/4' distal to No. 13. Wound of entry of gunshot.
16. Round wound with everted margins 1/3 diameterx tissue deep, 3/4' distal to No. 14. Wound of exit of gun shot

17. Round wound with inverted margins 1' diameter x tissue deep 1' medial to No. 14. Wound of entry of gun shot.
18. Round with with everted margins. 1/3' diameter x tissue deep 3/4' proximal and lateral to No. 17. Wound of exit of gunshot
19. Grazing abrasion 1/2' x 1/4' on radial border of left forearm, 2' proximal to wrist, Simple, hard and blunt.
20. Nine small round punched up wounds with inverted margins each 1/4' diameter x tissue deep on volar aspect of left forearm as shown in diagram. All wounds of antry of gun shot.
21. Round wound with inverted margins 1/3 diameter x tissue deep. Left hypothener eminence. Wound of entry of gun shot.
22. Round wound with everted margins 1/3' diameter x tissue deep. Dorsum of left hand at the space between 4th and 5th meta carpals. Wound of exit of gun shot.
23. Round wound with inverted margins 1/4' diameter x tissue deep, right side of chin, and little below it. Wound of entry of gun shot.
24. Round wound with everted margins 1/3' diameter x tissue deep on left side of chin. Wound of exit of gun shot.
25. Grazing abrasion 1/3' x 1/10'. 1' above and slightly towards right of Pomum adami. Simple, hard and blunt.
26. Round with everted Margins 1/3' diameter x tissue deep at 7 O, clock position of tight nipple. Wound of exit of gun shot.
27. Round wound with inverted margins 2' above and slightly medial to right nipple. 1' diameter x tissue deep. Wound of entry of gun shot.
28. Round wound with inverted margins 1' diameter x tissue deep. 2' above and slightly lateral to right nipple, wound of entry of gun shot.

29. Round wound with inverted margins 1' diameter x tissue deep. 3/4' medial to right nipple. Wound of entry of gunshot.
30. Round wound with inverted margins 1' diameter x tissue deep 1' below and lateral to No. 26 Wound of entry of gunshot.
31. Round wound with inverted margins 1' diameter x tissue deep 1' below and lateral to No. 30. Wound of entry of gun shot.
32. Round wound with inverted margin 1/4' diameter x tissue deep 1' lateral to inferior angle of right scapula. Wound of entry of gun shot.
33. Grazing abrasion 3/4' X 1/10' on right costal margin. Simple, hard and blunt.
34. Round wound with inverted margins 1' diameter x tissue deep 2' above umbilicus and towards right of midline. Wound of entry of gunshot.
35. Round wound with everted margins 1/3" diameter x tissue deep 1' medial to No. 34 wound of exit of gun shot.

The Doctor opined that the wounds on the person of Som Singh on the right and left sides of his body indicated that all of them could not have been caused by a single fire. The injuries were of 6 hours duration. The distance of the fire-arm must have been more than 11 yards from the victim. The gun Ex. 1 could have caused the injuries found on the person of the victim. These injuries were not sufficient in the ordinary course of nature to have caused his death.

5. The said Doctor also examined Mst. Kesri w/o Khatu, Mst. Hirki, w/o Sawai and Mst. Kesori w/o Sudda and he found some gun shot injuries on their persons as given in his statement. Dr. Pahawa examined the accused Partap Singh on June 25, 1968; vide injury report Ex. D. 20. He found the following external injuries on his parson:

1. Green shaped lacerated wound transverse limb is 1' X 1/10' verticle limb is 3/4' X 1/8' X 1 10' . 4' above left ear.
2. Bruisse abrasions and swelling of whole of right gygoma and part lateral to it.

3. Rub abrasion 1 2' X'. 1' lateral to right eye.

Bruise with vertical abrasions 1' X 3 4' Left sternomastoid in its upper part.

5. Vertical abrasion bruise 2' X 1 5' at lateral part of left sternomastoid and below No- 4.

6. Bruise with abrasion 2' X 1' front of right shoulder.

7. Two rub abrasions 1/5' X 1/5' dorsum of right first metacarpal.

8. Transverse abrasion 1' X linear. Dorsum of right forearm lower half.

9. Transverse abrasion 1/3' X linear dorsum of left hand at II Metacarpal.

10. Abrasion 1/5' X 1/6' medial part of spine of left scapula.

11. Bruise 4' X 2' medial to mid medial border of left scapula.

12. Vertical bruise with abrasion 3' X 1/8' body of right scapula.

13. Multiple rub abrasion on back of lower half of right chest and below it upto iliac crest.

14. Abrasion ' X ' lateral surface of right thigh lower half.

15. Abrasion ' X ' left greater trochanter.

All these injuries were simple in nature and could have been caused by a hard object. The duration of the injuries was 24 hours. So also the doctor examined Mst. Manik Bai, He found the following 4 abrasions on her person:

1. Abrasion 1/3' X 1/4' Palmar surface of left hand medial half.

2. Abrasion 1/5' X 1/3'. 1/3' lateral to No. 1.

3. Abrasion 1/10' X 1/10'. . 1/3' lateral to No. 2.

4. Abrasion 1/10' X 1/10' back of right elbow.

These injuries were simple in nature and could have been caused by a hard and blunt object. Their duration was 24 hours. The Doctor expressed his opinion in the re-examination that the injuries in respect of Exs. D. 20 and D. 21 could be self-inflicted.

6. After the investigation was concluded, the police put up a challan against the accused Ladhu Singh, Pratap Singh, Thanara, and Manak Bai in the court of the Addl. Munsiff Mag., Udaipur. The said Mag. conducted preliminary inquiry in accordance with provisions of Section 207-A Cr. P.C., and committed the accused persons to the court of the Sessions Judge, Udaipur, to face trial Under Sections 302, 307 and 324 I.P.C. read with Sections 34 and 114 I.P.C. The accused Ladhu Singh was charged under Sections 302, 302/ 34, 307, 307/34, 324 and 324/34 I.P.C., to which he pleaded not guilty. The other accused persons were charged under Sections 302/34 114, 307 34 and 114, and 324 34 and 114 I.P.C. They denied the commission of these offences. In support of its case the prosecution examined 29 witnesses. The accused Ladhu Singh in his statement recorded under Section 342 Cr. P.C., deposed that one or two days after November 29, 1967, the excise party caught him at his house at Udaipur and he was challaned under the Excise Act. In that case he came to know that Bhoor Singh was a witness in the Panchnama. He further pleaded that he had gone to Ahmedabad on June 22, 1968. He remained there for 6 days and returned to Udaipur on June 28, 1968. At Ahmedabad he fell ill and there he was treated in the hospital as an out-door patient from June 24, 1968 to June 28, 1968. At Ahmedabad he stayed with Sarvar Khan. The accused Pratap Singh said in his statement that in the morning of June 24, 1968, at about 7 or 8 he was getting a 'Babool' tree felled. That tree had been purchased by Ladhu Singh accused from Sav Singh Bhoor Singh and others came there. They again came at 3 or 3.30 p. m. and asked him as to why he was getting the 'Babool' tree cut. Sav Singh fired his gun at him. He managed to escape the impact of pellets. He then went to Manak Bai. 9 villagers ran after him and threw stones while running. Thereafter he entered the house of Ladhu Singh. He then took out a gun therefrom and stood on the 'Poli'. Bhoor Singh ran towards him with a naked sword, shouting that he would kill him. Bhoor Singh did not stop proceeding towards him, whereupon he fired his gun and went away to the police outpost Kaya. He fired another shot on the villagers with the same gun,

which was a double barrel muzzle loading gun. He told Jai Singh about this happening at Kaya out-post. Thereafter he went to the house of Ladhu Singh at Rawji-ka Hatta, Udaipur, and then to Bedla. At Udaipur he got himself medically examined. He was arrested by the police next morning. Accused Thanwra admits that Bhoor Singh was lying dead on the Chabutra of Ram Singh. He saw Partap Singh running from the side of 'Khariwala' well. He was being chased by Bhoor Singh and others. Thereafter some exchange of fire took place. Pratr Singh and Manak Bai accused received injuries, in course of that firing Bhoor Singh also sustained injuries. He was lifted by Moti and was placed on the Chabutra of Ram Singh.

7. In their defence the accused examined 7 witnesses. By its judgment, dated October 17, 1989, Ladhu Singh was convicted under Section 302 IPC, and was sentenced to death subject to confirmation by this Court. He was further convicted under Sections 307/324, I.P.C., but was not awarded separated sentences on these counts. Pratap Singh and Thavra were convicted under Section 302 read with Sections 34 and 114, I.P.C., and were sentenced to undergo imprisonment for life each. The trial court also convicted them under Sections 307 and 324 read with Sections 34 and 114 I.P.C., but did not pass any separate sentences against them. Manak Bai was acquitted of the offences with which she was charged.

8. Aggrieved by the above judgment, the accused Ladhu Singh, Partapsingh and Thavra have filed appeals in this Court (D.B. Criminal No 706 of 1969 and 35 of 1970). The trial court has submitted for the confirmation of the death sentence a reference, which has been registered as No. 4 of 1969. Both the reference and the appeals are disposed of together by one judgment.

9. Learned Counsel for the appellants has assailed the judgment of the trial court on several grounds. First information report Ex. P. 1, he urges, was not submitted to the officer Incharge of the Police Station concerned in accordance with the provisions of Section 154, Cr P.C., nor was it sent to such Police Station for its registration promptly. The investigation of the case was conducted not only by the S.H.O. Mangilal P.W . 24, but also by the Deputy Superintendent of Police, Jamil Ahmad, P. W. 19, and the latter did not maintain any diary. This omission

has materially prejudiced the accused by depriving them of the right of cross examining prosecution witnesses. Recovery of the gun Ex. 1 and the 3 empty cartridges Exs. 13 to 15 was not honestly made by the Investigating Officer and, therefore, it cannot be made use of against the accused. All the prosecution witnesses, learned Counsel adds, were not only of interested and partisan character, but were on inimical terms with the accused. They are inconsistent and wholly unreliable. Learned Counsel then complained that the prosecution has failed to show as to how the accused Pratap Singh received 15 injuries on his person. Failure of the prosecution to offer explanation regarding these injuries shows that the evidence of the prosecution witnesses relating to the incident is not true, or at any rate not wholly true. These injuries probabalise the plea of self-defence taken by the injured Pratap Singh. Learned Additional Advocate General on the, other hand, supported the judgment of the court below.

10. In this case the first point that it to be considered is whether Bhoorsingh was killed near the 'Chabutra' of Ram Singh in the village Kaya on June 24, 1968. It is then to be seen whether Som Singh, P.W. 2, also received gun shot injuries and whether Mst. Kesri w/o Sadda, Mst Hirki and Mst. Kears w/o Khatu to sustained gunfire injuries. Argument of learned Counsel for the appellants in this connecetion is that the prosecution has failed to locate the exact place where Bhoor Singh was murdered Bhoor Singh's dead body was found on the 'Chabutra' of Ram Singh by the Station House Officer, Mangilal, P.W. 24, The prosecution evidence is that Bhoor Singh was dead near the 'Chanda' of Ram Singh's house. This inconsistency, learned Counsel argues, creates a doubt as to the exact place of the occurrence, which according to him was the 'Poli' of Ladhu Singh's house and not near the 'Chanda' of Ramsingh's house

11. P W. 1 Sav Singh says that when Ladhu Singh fired his gun, Bhoor Singh was in front of his 'Dhalia' P.W. 2 Som Singh injured has deposed that when his father was passing in front of the house of Ram Singh, he stopped there. Then he heard a gunshot and he saw his father falling down. Another eye-witness P.W. 3 Mst. Ghishi has deposed that when Bhoor Singh arrived in-front of Ramsingh's house on the corner of 'Chanda' (wall), Ladhu Singh fired at him. P.W. 4 Moti testifies that when Bhoor Singh was near the corner of the house of Mst. Raju, he arrived at the

spot. After some time Bhoor Singh came near the corner of Ram Singh's house and there he was shot. Another eye-witness Mst. Raju. P.W. 6, told the court that on Bhoor Singh's arriving near the 'Chanda' of Ram Singh's house, he was shot dead by Ladhu Singh. From this evidence it is manifest that Bhoor Singh was shot near the 'Chanda' of Ram Singh's house. The inquest report Ex. P. 8 indicates that Bhoor Singh's dead body was lying on the 'Dhar' (slope) near the 'Chanda' of Ram Singh's house. This stands proved by the S.H.O Mingilal. The Investigating Officer Mangilal, P.W. 24, no doubt, says that on his reaching the spot, he saw the body of Bhoor Singh lying on the 'Chabutri'. Now the question remains how the dead body of Bhoor Singh was found on the nearby 'Chabutri' of Ram Singh's house. The S.H.O Mangilal, P.W. 24, who proved the report Ex. P. 8, has not been put any question whether there was a trail of blood from the house of Ladhu Singh upto the 'Poli' of Ram Singh, nor has such a suggestion been made in the cross-examination of other prosecution witnesses. The accused Thavra has, no doubt, stated that Bhoor Singh's body was removed from Ladhu Singh's residence to Ram Singh's 'Chabutri'. So are the statements of Udai Singh, D.W. 1, and Babulal, D.W. 3. But these statements stand uncorroborated either by some blood trail or by any documentary evidence. We are not prepared to place any reliance in the circumstances of the case, upon the plea taken by Thavra. We, therefore, hold that the actual place of the occurrence is located outside the house of Ram Singh and not near the 'Poli' of Ladhu Singh.

12. Learned Counsel for the appellants further submits that there is no convincing evidence on the record to suggest that Bhoor Singh died of the gun shot injuries. Dr Man Mohan Pahawa, Medical Jurist, General Hospital, Udaipur, P W. 22, while giving the description of the injuries, as mentioned above, has positively stated that Bhoor Singh's death was caused due to syncope as a result of shock from sudden excessive haemorrhage on account of the injury to the big vessel (popliteal artery and popliteal vein), resulting from the firearm. The Doctor further opined that the injuries received by Bhoor Singh were sufficient in the ordinary course of nature to have caused his death. These injuries could have been caused with the gun Ex 1. The injuries were ante-mortem in nature. The doctor further expressed the view that the weapon must have been fired from a distance of about 2 or 3 yards, Popliteal artery and popliteal vein are important parts of a human

body. If this artery is injured, it may result in a sudden loss of blood which has much more serious effect than the same quantity lost slowly. A person may succumb to the quantity of blood lost in a few seconds, which he would have been able to survive had it escaped slowly. This is one reason why the severance of an artery proves so much rapidly fatal. Death speedily follows severance of a large artery like the popliteal one. The wound on the popliteal vein may also, from the quantity of the blood suddenly lost, speedily end the life vide Page 177 Taylor's Principles and Practice of Medical Jurisprudence, Twelfth Edition, Vol. 1. In this case the medical evidence shows that popliteal artery and vein were crushed and considerable blood was suddenly lost. It is, therefore, plain that Bhoor Singh died of the severe injury caused on the popliteal artery and popliteal vein, as a result of gun shot fire.

13. Here we may also state that Dr. Man Mohan Pahawa has deposed that the death of Bhoor Singh was also due to syncope. (The term 'syncope' is applied to a sudden cessation of the action of the heart, which may prove fatal. As is given at page 127 in Glaister's Medical Jurisprudence and Toxicology, Eleventh Edition, syncope may be brought about by a large variety of causes including excessive haemorrhage and shock. Here the injury on the popliteal artery was such that it could have resulted in severe haemorrhage. When the; loss of blood becomes such that it cannot maintain an effective circulation the vital centres of the brain can no longer obtain a normal amount of blood and death results. In this case because of the severe haemorrhage, as a result of injury on popliteal artery, syncope was brought about and that also culminated in death.

14. We may now deal with the injuries on the person of Som Singh. He was examined by Dr. Man Mohan Pahawa. P.W. 22, on June 24, 1968. He found as many as 35 gun shot injuries on his person. These injuries were all of about 6 hours' duration. Learned Counsel submits that there is no basis for the Doctor to suggest that these injuries were the result of the two gun fires, Som Singh received injuries both on the right upper limb, right side of the chest and the left side of the upper arm. The eye-witnesses P.W. 1 Sav Singh P.W. 2 Som Singh, P.W. 3 Mst. Ghishi, P.W. 4 Moti and P.W. 6 Mst. Raju are consistent on the point that Som Singh sustained injuries as a result of two gun firings. It is also apparent

from the medical evidence that most of the entry wounds were smaller than the exit ones in size. Unless pellets or bullets pass through a point or other solid object, bullets or pellets usually split from within outwards and are often bigger than the missile vide Taylor's Principles and Practice of Medical Jurisprudence Twelfth Edition, page 289 If the bullet passes through a bone or other solid object, it shows a fairly cleancut hole at the orifice of entry and an excavated hole at the exit. In the instant case the size of the entrance and exit wounds and their location give an indication that Som Singh sustained injuries as a result of shots from a fire arm.

15. It has not been disputed that P.W. 9 Mst. Kesri w/o Sadda, P. W. 10 Mst. Hirki and P.W. 11 Mst. Kesri w/o Khatu also sustained injuries on account of gun shot fires. It is manifest not only from the statements of the above named 3 witnesses, but also from the medical evidence of Dr, Pahawa, P.W. 22. The doctor says that Mst. Kesri w/o Sadda received 2 punched out wounds, Mst. Kesri w/o Khatu and Mst Hirki got one grazing abrasion each. These injuries were caused on account of a fire. This part of the story has not been challenged in the course of arguments.

16. It is now to be seen how far the accused are responsible for causing injuries to Bhoor Singh, Som Singh and the three ladies. Mst. Kesri w/o Sadda, Hirki, & Mst. w/o Khatu. Learned Counsel representing the appellants at the initial stage of the arguments disputed the authenticity of the first information report. He submitted that the report Ex. P 1 was not given to the Police Officer incharge of the police station concerned, nor was it sent to the police station Nai promptly and therefore, that report should be abandoned as a useless document. From the testimony of P.W. 24 S.H.O. Mangilal it is clear that he was the Station House Officer, Police Station, Nai, on the relevant date. In the cross-examination he has stated: 'The report Ex. P. 1 was sent by me to , the police station on 25.6.68 It could not be sent on the same day, i.e. 24.6.68, because I had no policemen with me for that purpose.' Section 154 Cr. P.C, provides that every information relating to the commission of a cognizable offence, if given, orally to a police officer incharge of a police station, shall be reduced to writing by him or under his direction. The section requires that the report should be submitted to the, officer incharge of a police station, The definition of an 'officer incharge of a police station', as given in

Section 4(i)(b), Cr. P.C., Includes when the officer incharge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house, who is next in rank to such officer and who is above the rank of constable or, when the State Government so directs, any other police officer so present. The power to act for the officer incharge of a police station is conferred on the next senior police officer, who is present at the station house. This docs not mean that the moment such officer leaves the station house, he loses his authority. In the case in hand Mangilal, P.W. 24, though on tour, was still incharge of the police station, Nai. He did not lose his authority by merely leaving the police Station on official duty. An oral report was submitted to him when he was on tour and there was nothing wrong in doing so. The explanation furnished by Mangilal that he had no spare police constable to be deputed to the police station, Nai, from Kaya, along with the report and, therofore, there was no way out for him but to detain the report and send it to the police station the next day; appears to be reasonable and valid. The statenment of Mangilal shows that while on tour he was accompanied by Dhannaram constable and that constable had to be deputed to Udaipur with the injured Som Singh, rendering of medical aid to Som Singh was of greater importance than to send the first information report to the police station, Nai. In this view of the matter, the argument of learned Counsel for the appellat that the report was detained with a deliberate desings by the police officer does not appear to be sound.

17. The other argument put forth on behalf of the appellants is that Jamil Ahmad, Deputy Superintendent of Police, P.W. also conducted the investigation in this case. He did not maintain any police diary. Absence of such a diary has caused prejudice to the accused, inasmuch, as they were deprived of the valuable right of cross-examining the prosecution witnesses on the basis of the statements, recorded under Section 161, Cr. P.C. To meet this argument suffiice it to say that the investigation of the case was conducted by the S.H.O. Mangilal, P.W. 24. Mangilal went away on leave almost at the fag end of the investigation The challan of the case was, therefore, put up in the court by P.W. 23 Mohammed Khan, Station House Officer, Pratapnagar, as per orders of the Superintendent of Police; Udaipur From the testimony of Jamil Ahmed, it is clear that he as a superior police officer simply supervised the investiga tion of the crimes, occurring within his

jurisdiction. Section 551, Cr. P.C. runs as follows:

Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

The section lays down that the powers of an officer incharge of a police station may be exercised by any police officer superior in rank to that officer within the local area of his jurisdiction, Thus superior police officer is entitled to the same powers as are exercised by the police officer in charge of a police station. That does not mean that while exercising the powers of supervision the superior officer should also maintain a separate diary. The officer incharge of the police station can make an investigation under the orders or supervision of his superior officer. It is not disputed that the Deputy Superintendent of Police had jurisdictional area extended over the place of the occurrence. The question before us is whether in such supervision over the investigation a special procedure unknown to law was adopted with the evil eye or an unequal hand. In view of the clear provision in Section 551, Cr, P.C., it cannot be said that the procedure was illegal or was motivated by any evil purposal vide R.P. Kapoor v. Sordar Partap Singh AIL 1961 SC 1117. Therefor, there is nothing wrong for Jamil Ahmad to have supervised the investigation conducted by Mangilal, P.W. 24. That apart, even if it is assumed that some irregularity was committed, such an irregularity is not enough to throw away the prosecution case. A reference in this connection is made to Ram Prakash v. The State of U.P. : (1969)1SCC48 . In this manner the contention that certain irregularities were committed in the course of police investigation appears to us to be devoid of substance and is not tenable.

18. Learned Counsel for appellants pointed out several inconsistencies and contradictions in the statements of the eye-witnesses and made a frantic effort in persuading us to reach the conclusion that it would not be safe to rely upon their testimony.

19. In this case there are two sets of witnesses. The first set consists of those witnesses who are alleged to be fully aware of the whole incident. The other set comprises those witnesses who had seen the latter part of occurrence relating to

the injuries caused on the person of Som Singh, P.W. 2, Mst. Kesri w/o Sadda, P.W. 9, Mst. Hirki, P.W. 10, and Mst. Kesri w/o Khatu. P.W. 11.

20. We may now examine the statements of first set of witnesses. The first set includes P.W. 1 Say Singh, P.W. 3 Mst. Ghishi. P.W. 4 Moti, and P.W. 6 Mst. Raju. The second set consists of P.W. 8 Som Singh. P.W. 9. Mst. Kesri, w/o Sadda, P.W. 10 Mst. Hirki and P.W. 11 Mst. Kesri w/o Khatu.

21. We would not like to deal with the evidence of the first set of witnesses. P.W. 1 Sav Singh says that he saw all the four accused Ladhu Singh, Pratap Singh, Thavara, and Manak Bai going towards the field of Bhoor Singh. Ladhu Singh had a 12 bore double barrel gun. Pratap Singh and Thavara each had a single barrel muzzle loading gun. Ladhu Singh, while traversing the way on foot, was abusing Bhoor Singh. Soon after Pratap Singh and Thavars saw Boor Singh from a distance. Both of them told Ladhu Singh where is Bhoor Singh The house of Mst. Ghishi is also near the place of the occurrence. The residence of Moti is about 10 to 12 'Paundas' away from that, of Mst. Raju. Mst. Ghishi called Moti. As soon as Moti arrived, he told Ladhu Singh not to quarrel with or show resentment towards Boor Singh. Ladu Singh did not agree to it. He took out two cartridges from the right hand side pocket of his pant and loaded his gun. Moti caught hold of the barrel of Ladhu Singh's gun. Ladhu Singh gave a jerk and pushed Moti. who fell down on the ground. Ladhu Singh also slipped away and fell down. Ladhu Singh then fired his gun towards Bhoor Singh in a sitting position. At that time Bhoor Singh Singh was in front of the 'Dhalia' of Ram Singh. The shot hit on the left knee. He felt down and died immediately within minutes Thereafter Som Singh, son of Bhoor Singh, also came there from his from his field. On seeing Som Singh, Ladhu Singh fired at him. The shot hit Som Singh on his right chest, but he did not fall down. Ladhu Singh took out one more cartridge from the right hand pocket of his pant and reloaded his gun. He fired second time on Som Singh, which hit him on his left chin, chest and left arm. Mst. Kesri w/o Khatu, Mst. Kesri w/o Sadda and Mst. Hirki, who were at some distance, were also hit by some pellets. Mst. Nanak Bai picked up the three empty cartridges from the place. These cartridges fell down on the spot. P W. 3 Mst. Ghishi picked them up She produced them before the Sub-Inspector of police that very day. After the firing of the gun all accused first

returned to Ladhu Singh's house. Then they boarded the bus and went away towards Udaipur side.

22. The testimony of this witness has been attacked by learned Counsel for the appellants on the ground that he had deposed in his statement Ex. D, 2, at portion marked A to B, before the committing court that he had desired that Ladhu Singh should not live in the village. This statement has been disowned by the witness before the trial court. Again, the witness told the committing court in the above statement, at portion marked C to D, that his 'Babool' tree had been cut by 2 to 4 persons coming from Udaipur. This portion of his statement has also been disowned before the trial court. The witness had stated before the committing court, at portion marked E to F in Ex. D. 2, that it was correct that his friend was near the field of the accused. This statement has also been denied by the witness before the trial court. In Ex. D.S. at portion marked K. to L, the witness said that only Bhim Singh and Moti arrived there after the gun shot. This part of the statement is also repudiated by the witness before the trial court. In far as the last contradiction is concerned, it does not relate to the occurrence in front of the house of Ram Singh. When the portion K to L is read with reference to the context it is apparent that it pertains to the occurrence alleged to have taken place near the 'Babool' tree in the morning of June, 24, 1968. As for the other details, suffice it to say that they had no bearing on matters of importance. They are of very minor nature and are likely to occur unless the witness is tutored. Learned Counsel further urged that Sev Singh should have asked Bhoor Singh to run away and his omission to do so shows unnatural conduct on his part. It is not necessary that the witness should have informed Bhoor Singh first. At any rate no question in this regard was put to the witness in the course of his cross-examination and therefore, it was not possible for him to clarify the position. Learned Counsel further challenged the evidence of this witness on the basis that he had lodged the first information report and if Mst. Ghishi had picked up the three empty cartridges on the spot, that fact should have been mentioned therein. The first information report Ex. P. 1 contains that Mst. Nanak Bai picked up all the three cartridges from the ground. That lends corroboration to the existence of three empty cartridges on the spot. Mere omission in the report that these cartridges were subsequently picked up by Mst. Ghishi would not adversely affect the evidence of this witness. All the

prosecution witnesses are unanimous on the point that. Manak Bai first picked up the empty cartridges and when the accused were running away from the scene of the occurrence, she had left them there and they were picked up by Mst. Ghishi. The trial court, which examined P. W, 1 Sav Singh, relied upon his testimony. It is a settled law that the appellate court should not ordinarily interfere with the trial court's opinion as to the credibility of a witness as the trial Judge along knows the demeanour of the witness and he along can form a reliable opinion as to whether the witness emerged with credit from cross-examination: vide Valarabak v. Standard Coal Company AIR 1943 PC 189. We therefore, do not propose to disagree with the discretion exercised by the trial court in the matter of the credibility of this witness.

23. We may now switch over to the evidence of Mst. Ghishi. She also narrates the prosecution story in its entirety. Her evidence has been assaulted by learned Counsel for the appellants on the reasoning that in fact the witness did not go to call Moti. We do not agree with this allegation. Moti has been produced by the prosecution as P.W. 4. He in a plain and straight forward manner corroborates the testimony of Mst. Ghishi that she did approach him, requesting him to intervene in the matter Mst. Ghishi, according to learned Counsel, has stated that when Moti caught hold of Ladhu Singh's gun, he was given a push, Thereupon Moti fell down on the ground. Ladhu also fell down. Contrary to this, Moti has stated that he ran and seized the gun of Ladhu Singh. Ladhu Singh, give him a push and he fell down on the ground. As a result of giving a push, Ladhu Singh too slipped. There is no mention in the statement of Moti that as a result of giving a push Ladhu Singh also slipped. Such a minor inconsistency is of no consequence. Another criticism levelled against the witness is that when Ghishi saw Bhoor Singh, she ought to have informed him not to proceed further. But she refrained from doing so and that suggests unnatural conduct. In this connection, it may be pointed out the from the trend of the evidence of Mst, Ghishi it appears that she expected a crucial situation with bad consequences to follow. She therefore, deemed it proper to first call Moti Cameti so that through his intervention the crisis might be eased Ghishi has frankly admitted in her statement that she was puzzled. It may be sufficient reason for her not to wait to tell Bhoor Singh in the first instance to abstain from proceeding forward This conduct of Mst. Ghishi does not weaken her statement.

Mst. Ghishi has said at one place in her statement before the committing court Ex. D. 9, at portion marked A to B, that Som Singh came towards his father after receiving the gun shot near the house of Raju and then embraced the corpse of Bhoor Singh. At that time Ladhu Singh had fired the third shot as a result of which Som Singh fell down. This minor inconsistency may be due to lapse of memory. The witness had said in the committing court in Ex. D. 9 at portion marked E to F, that Partap Singh was getting the 'Babool' tree cut at the field, where the report of gun was heard. She devies this version. As this part of the statement relates to the occurrence, which had taken place in the morning time, this denial does not in any way adversely affect her testimony. Learned Counsel for the appellants fervently urged that Mst. Ghishi was on innrica! terms with Ladhu Singh as she had once stolen away an egg and Ladhu Singh had reprimanded her. A question on the point was specifically put to her and her answer was that she fondled or petted gently Ladhu Singh. It cannot be said that on account of this trivial happening the witness bore such an enmity against the accused so as to implicate him falsely in a serious charge of murder. Looking to the evidence of Mst. Ghishi as whole, we are in agreement with the views of the trial court that her evidence also merits acceptance.

24. We may now come to the statement of Moti. P.W. 4. He also relates the whole happening from the beginning to the end, Learned Counsel for the appellants has attacked hie statement on the ground that when in the course of snatching away the gun of Ladhu Singh he fell down, he should have received some injury. But no injury was found on his person, In this connection, suffice it to say that it is not essential that by a mere push a person should necessarily receive a hurt The other point raised on behalf of the appellants is that it is highly improbable that Moti would dare to cath the gun of a powerful wrestler like Ladhu Singh Moti merely wished to avert violence. He says that when Ladhu Singh loaded his gun, he ran and caught hold of his weapon. Ladhu Singh gave him a push and he fell down on the ground. There is nothing unnatural in the conduct of this witness. He being a Gameti of the village was to ward off mishap. In his police statement Ex. D.12 he had deposed, at portion marked A to B, that Ladhu Singh stumled down and he darted upon him to catch the gun and caught hold of the gun while he was lying. In the trial court he has not fully adhered to this statement. He has simply

said that he caught hold of the gun of Ladhu Singh upon which the latter gave him a push and he fell down. The alleged inconsistency is of little significance. Moti said in the committing court Ex. D. 10. at portion marked C to D., that Mst. Ghishi called him from the 'Magri' (hillock) atanding behind his house. This part of the statement has not been adhered to. But it makes no difference. The area of the occurrence is admittedly a hilly one and if Mst. Ghishi stood on a hillock and called Moti, it was not a matter of surprise. Reading the statement of Moti as a whole, we see no reason to discard it.

25. We may now deal with the testimony of P.W. 6 Raju. She also narrates the whole prosecution tale. She lives in the vicinity of the place of the occurrence. She says that Ladhusingh snatched away the house of Khuman Singh & also killed him by making him drink liquor. This portion of the statement is only an exaggeration or embellishment on the basis of which his whole incident cannot be condemned. The witness had said at one place that about a year ago Ladhu Singh made his dogs bite her cow. This event might have happened. But this event is not of such a magnitude so as to prompt the witness to tell a deliberate lie and implicate the accused in a serious indictment of murder. The witness has said in her committing court's statement Ex. D. 15. at portion marked E to F, that Mst. Ghishi went to call after Bhoor Singh had been killed. As suggested by learned, we cannot add the word 'Moti' after 'call' in the impugned sentence. It has not been clarified in the statement Ex. D. 15 whether Mst. Ghishi went to call Moti or someone else. At one place the witness had said that the villagers came on the spot after two hours of the occurrence. In the cross-examination the witness admits that she does not understand the implication of an hour. She says that four minutes would make one 'Ghanta' (hour). Thus, because of the above minor discrepancies the evidence of this witness cannot be condemned outright.

26. There is no doubt that when a criminal court has to appreciate evidence given by witness, who are partial or interested, it has to be very careful in weighing it. But it would be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is the evidence of partisan or interested witnesses. Often though, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to

deal with evidence of a partisan type and we cannot mechanically reject such evidence on the sole basis that it is partisan vide *Nanalal v. State of Uttar Pradesh* (4). We have examined the statements of the above prosecution witnesses with meticulous care and are firmly of the view that their testimony is worthy of credence.

27. We may now consider the evidence of the second set of witnesses. Som Singh, P.W. 2, is the son of the deceased Bhoor Singh. He says that his father was returning home on the occurrence from the 'Mshuwavala' field. He was ahead of him by 10 paces. When his father was passing in front of the house of Ram Singh, he heard a gun shot and he saw his father falling down. He proceeded a little ahead when he too was fired by Lahdu Singh. He was hit on right chest, arm and chin. Lahdu Singh took out one more cartridge from his right pocket of his pant and loaded it in his gun and fired another shot at him. He was injured on the left side and fell down on the ground. Lahdu Singh had a 12 bore double barrel gun. Pratap Singh and Thavra each had a muzzle loading gun with them. He then named the witnesses who were present on the spot. No doubt in his statement recorded by the committing court Ex. D. 5. the witness has stated that it was incorrect that the accused resided at the house of Khuman Singh. But this is a discrepancy of an unimportant nature. Som Singh admits that he could not give statement to the police for about 6 days after the occurrence. He gives well grounded reasons to withstand the criticism. He says that his health was not proper. He became a bit better after 2/3 days in the hospital. He sustained as many as 35 injuries, and looking at the gun shot hurts which he had received, there is no wonder that the delay in question occurred. Another assault which has been made on the statement of Som Singh is that he suppressed the injuries upon the person of Pratap Singh. Pratap Singh did not receive injuries at the place of the occurrence. He might have received the same in the morning of June 24, 1968. This omission, therefore, cannot be called a suppression of facts. We have gone through the lengthy cross-examination of this witness. He has not been shattered on any material aspect of the case. The trial court has fully relied upon his testimony and we associate ourselves with its views.

28. The statement of Som Singh gets ample corroboration from the testimony of Mst Kesri w/o Satta P.W.9 Mst Hirki, P.W. 10, and Mst. Kesri w/o Khatin, P.W. 11. They saw the accused persons present on the spot armed with guns. They also saw Ladhu Singh firing at Som Singh. Some of the pellets fell upon these witnesses and they were injured. These witnesses belonged to the same village in which the occurrence took place. In the light of these circumstances, there is no manner of doubt that the three lady witnesses did see the latter part of the occurrence.

29. From the evidence discussed above, it is proved beyond unerring certainty that Ladhu Singh armed with a double barrel 12 bore gun came out of his house He was accompanied by his two confidants, Pratap Singh and Thavra. They too were Well armed. Pratap Singh and Thavra told Ladhu Singh 'here comes Bhoor Singh,' whereupon Ladhu Singh fired at Bhoor Singh and shot him dead on the spot. When Som Singh arrived on the scene after sometime, he too was fired at twice. He sustained 35 gun shot injuries on his person. There after the accused left the village by boarding a service bus.

30. The prosecution story gets corroboration from the recovery of the 3 empty cartridges on the spot. It is in the evidence of the S.H.O. Mangilal, P.W. 24, that Mst. Ghishi produced these empty cartridges. Their seizure memo is marked Ex. P. 5. These cartridges were sent to the Ballistic Expert duly sealed. Lodhu Singh was arrested on June 31, 1968. He furnished information on June 30, 1968 (Ex. F. 12) that the weapon of the offence was lying with Amar Singh, P.W. 5 Amar Singh has stated in his police statement Ex. P. 6. that he made over the gun to Ladhu Singh in the morning of June 24, 1968 and he returned the same in the night at 11 O' clock. He changed this version in the trial court, therein he said that Ladhu Singh borrowed his gun from his wife in the morning of June 24, 1968. Ladhu Singh came to his house again in the night at about 11 and he returned his gun to him. Obviously the witness made this alteration in his statement, so that he might not be trapped under the Arms Act for giving the gun to a third person without the permission of the authorities concerned. The defence has examined Mst. Bhanwari Bai, D.W. 6, of wife Amar Singh, and she says that she did not lend the gun to Ladhu Singh. The gun along with the empties were sent to the Ballistic Expert,

Foresnsic Science Laboratory, Sagar, Shri Jagdish Prasad Nigam, P.W. 29 From the statement of the S.H.O. Mangilal, P.W.24, Ganeshpuri, P.W. 26, Bhanwarlal, Head Constable, P.W. 27 and Bira Singh, P.W. 23, it is clear beyond reasonable doubt that the gun and the empty cartridges reached the Ballistic Expert in a sealed condition. The seals were not tampered with anywhere. Jagdish Prasad fired some test cartridges from the gun Ex. 1 and reached the conclusion that the three empty cartridges Exs. 13 to 15 were fired through the gun Ex. 1. The recovery of the gun and the empty cartridges is a very important link which connects the accused with the crime. It may also be noted down here that the gun No. 102297 was identified by Sav Singh. P.W. 1 and Moti, P.W. 4, under identification memo Ex. P. 22. This memo is proved by the evidence of Jai Singhani, Sub Divisional Magistrate, Udaipur, P.W. 18 who conducted the identification proceedings in respect of the weapon on July 11, 1968

31. Both the accused Pratap Singh and Thavra did not deny their presence at Kaya on the date of the occurrence. Ladhu Singh has raised the plea of alibi He says that his buffalo was lost and in search thereof he went to Ahmedabad on June 22, 1968 and remained there for 6 days. He returned to Udaipur on June 28, 1968. At Ahmedabad he was taken ill He went to the hospital and underwent treatment there from June 24, 1968 to June 28, 1968. In support of this plea he has produced a certificate Ex. D. 36. He has also examined Avtar Singh D.W. 2 and Sarwer Khan D.W. 5 in this connection.

32. Iqbal Hussain, P.W. 12, has stated that he was working as a driver in the Green Bus Company. On June 24, 1968, he was travelling by bus No, R.J Y. 1503 from Kilhabheo to Udaipur When his bus reached Kaya, Ladhu Singh along with two females and two males, who were present in the court, boarded the bus. Ladhu Singh was armed with a double barrel gun. The others two accused were in possession of a single barrel gun each. All the five passengers got down at Udaipur. The evidence of this witness shows the presence of Ladhu Singh at Kaya on the date of the occurrence. The argument of the learned Counsel for the appellants is that no bus tickets were purchased at Kaya on June 24, 1968 In this connection he relied upon the testimony of DW. 7 Babulal Jain, who was the cashier in the Green Bus Company. This witness has said that no tickets were

purchased from Kayn on June 24, 1968 in respect of bus No. R.J.Y. 1503 In the cross-examination the witness says that he does not know whether travel took place without tickets or not. There is nothing surprising in the accused might not have purchased tickets at Kaya to evade creation of evidence against them. At any rate, the trial court has relied upon the testimony of the bus driver Ikbal Husawin, P.W. 12, and we do not feel inclined to take a contrary view in the matter. The prosecution has examined Banshilal, P.W. 7, who says that he is the driver of Jeep No. 2690. His vehicle was hired by Ladhu Singh on June 24, 1968, at about 5 30 p.m. Ladhu Singh travelled in this jeep from place to place, Ultimately the tyre of the jeep burst somewhere near Kherwera. In the meantime an ambassador car green in colour arrived from Udaipur side. Ladhu Singh and his friend Gurdayal Singh boarded that car and proceeded towards Ratanpur (Gujarat). The witness has not faltered or stumbled in the cross-examination to any substantial degree. From the evidence of this witness it is manifest that that Ladhu Singh was present at Udaipur in the evening of June 24, 1968.

33. There is a very important documentary evidence on the record which suggests that Ladhu Singh was present Kaya on June 24, 1968. Mst. Manak Bai submitted a report to the police wherein she accompanied by Ladhu Singh, stated that there had been a quarrel between herself and the Minas and the Rajputs of the village Kaya, which resulted in certain injury in the palm of her left hand Learned for the appellants has argued that the first information report submitted by the accused is not admissible in evidence and therefore, this document should not be looked into. Where the first information report is given by an accused to a police officer and it amounts to a confessional statement, the proof of the confession is prohibited by Section 25 of the Evidence Act. The 'confess' includes not only the admission of the offence but all other admissions of incriminating facts relating to the offence contained in the confessional statement. As has been held in *A Magesia v. State of Bihar* : 1966 CriLJ100 , no part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27 Here it may be pointed out that Ex. D. 19 is not the report made by the accused Manak Bai in connection with this crime. Apart from this, this document has been produced on behalf the defence. This document unequivocally speaks that Ladhu Singh accompanied Manak Bai to the police station, Nai, on June 24,

1968, That shows that Ladhu Singh was present at Udaipur in the evening of June 24, 1968.

34. In rebuttal, Ladhu Singh has examined D.W. 2 Avtar Singh. He says that he has got a hotel on the border of Ratanpur. Ladhu Singh came to him in the night of June 24, 1968. Both he and Ladhu Singh went to Ahmedabad to buy parts of the motor bicycles. He met Ladhu Singh 'Kabadi' market on June 24, 1968, at 5 p.m. In the cross-examination he has said that he cannot give a single date of his visit to Udaipur. He admits in the cross-examination that he is involved in a rape case as also in a case of breaking the glass of room of Prince Hotel, Udaipur. The case is sub-judice in the court of the Munsiff-Magistrate, Udaipur. When he was in Udaipur Jail, Ladhu Singh was also in that very Jail. The witness cannot give any week or day when Ladhu Singh met him in that hotel. We do not remember the names of the calendar (Gregorian) months. This witness, therefore, does not at all help the defence. In the cross-examination he has positively said that he does not know when Ladhu Singh came to his hotel. Ladhu Singh examined Sarwar Khan Pathan, D.W. 6. He is a wrestler of Ahmedabad. He says that Ladhu Singh came to his house on June 23, 1968. at 5 a. m.. and left his place in the morning of June 27, 1968. At Ahmedabad Ladhu Singh fell ill. He took him to the hospital. Ladhu Singh had obtained a medical certificate to be produced in the court which was trying a case under the Excise Act. In the cross-examination the witness has said that he did not note down the dates of the arrival and departure of Ladhu Singh. He is unable to give the date of birth of any one of his children. From the trend of his evidence it appears that he is a concocted witness. Ladhu Singh has produced a medical certificate obtained from Ahmedabad hospital. In support of that certificate he wanted to examine Dr. B.S. Dhatt, Civil Surgeon, Head quarters, Ahmedabad. Since he could not produce the Doctor before the trial court, he could not examine this witness there. However, with a view to afford full opportunity to the accused to lead his defence evidence, Dr. Bhatt was examined by this Court. He says that Ex. D. 25, dated June 26, 1968, was issued by him. He has no personal knowledge whether its contents are correct or not. The witness further says that there is an overwriting in the letter 'Da'. Letter 'Da' has been altered into 'Dha'. If the overwriting had not been done, the name would have been read as Lada Singh or Ladha Singh. The witness further says that in almost all the pages

of the register of the out door patients in which Ex. D, 26 is contained the last printed line is left black. Ex D. 26, is, however. written on the last printed line. He cannot say by examining the record as to which Doctor treated the patient covered by the entry Ex. D. 26. He did not interview the patient before issuing the certificate Ex. D. 26. The witness, in the end, states that the preceding entry also bears the same number 2686 and that the cannot offer any explanation for that. The same number has been repeated with distinguishing letters A and B from the medical evidence it is not clear whether this very accused Ladhu Singh underwent medical treatment at Ahmedabad during the relevant dates. Dr. Bhatt did not personally interview Ladhu Singh in the hospital. The entry in the outdoor patient register is also not immune from suspicious circumstances.

35. Whenever a defence of alibi is set up and that defence utterly breaks down, it is a strong inference that if the prisoner was not in fact where he says he was then, in all probability, where the prosecution says he was vide *Sarat Chandra v. Emperor* : AIR1934 Cal719 , Unfortunately, on account of this defence of alibi being put as the first line of defence in the most criminal cases such a defence has fallen into disrepute and is often characterised as well worn defence. Generally in criminal cases the presumption of innocence casts on the prosecution the burden of proving every ingredient of the offence and if it does so, it is entitled to succeed. Thereafter, if the accused sets up a plea of alibi, the burden of proof lies on him under Section 103, Evidence Act. to establish the plea. Of course, if there were anything on the record to support the allegation of the accused, that, taken along with other facts and circumstances, may well raise a doubt and in that case the defence will be entitled to its benefit, But where, as here, a mere allegation is made by the accused, without any substantial evidence in support of such an allegation, it is of no consequence whatsoever. In this connection, a reference is made to a Full Bench decision of the Allahabad High Court reported as *Prabhoo v. Emperor* AIR 1941 All. 402, In this case not only the defence led no reliable evidence in support of the aforesaid allegation of alibi, but it was not even substantially put in cross-examination to the appropriate prosecution witnesses. Learned Sessions Judge's finding, in the circumstances of this case, regarding the falsity of the appellant's plea of alibi, appears therefore to be correct.

36. The defence of the accused Pratap Singh is that in the morning of June 24, 1968, at about 7 and 8 he was getting a 'Babool' tree cut by 4 persons. That tree had been purchased by Ladhu Singh from Sav Singh. Bhoor Singh and others objected to it. They once more came in the afternoon at about 3 or 3.30. At that time the tree was again in the process of being cut. Bhoor Singh and others came to him and objected to his cutting the tree. Sav Singh fired a gun at him. Some 9 villagers ran after him. He then went to Manak Bai and brought out a gun from it. Bhoor Singh rushed to wards him with a naked sword He asked Bhoorsingh to refrain from it but he did not stop Thereupon he fired his gun towards the right leg of Bhoor Singh & then he ran away to the police station, Nai. On his way villagers surrounded him and he was constrained to resort to further firing. He then went to the Udaipur hospital and got himself medically examined. Next day he was arrested by the police at Bedla. In support of his plea he examined 2 witnesses Udai Singh D.W. 1 and Mohanlali D.W. 3. Tonga driver Udai Singh says that he went to Kaya to purchase a horse on the date of the occurrence. He heard there a sound of drum beat. He saw that Pratap Singh was being chased by 20/25 villagers, who were throwing stones on him. Pratap Singh fired his gun. In the cross-examination the witness say? that he did not know any person in the village Kaya. He went to Kaya for the first and the last time. In village Kaya about 500 to 1000 stones were hit on Pratap Singh. He too was struck by 5/10 stones. No medical certificate is forth coming in support of the injuries alleged to have been received by the witness. How the witness went to Kaya to buy a horse when he did not know anybody there is shrouded in mystery Udai Singh first supported the prosecution by giving statements under Sections 161 and 164, Cr. P.C. Thereafter, it seems, he was won over by the accused and he appeared into the witness box and gave evidence as a deftnce witness. Similarly, Mohanlal D.W. 3 says that Pratap Singh was chased by 50 villagers They were throwing stones at him. Pratap Singh firing a gun. The witness was also hit by 5 or 10 stones. He made diametrically opposite statements before the police and the Magistrate under Section 164, Cr. P.C., Vide Exs. P. 54 and P. 55. No medical evidence has been produced in support of the injuries alleged to have been sustained by him. He did not mention the injuries which he had received in the police statement or in his statement recorded under Section 164, Cr. P.C. This witness too was once a

prosecution witness, but it seems that subsequently he has been gained over by the accused. Thus, the explanation furnished by the accused is not plausible. Pratap Singh was examined by Dr.Pahawa at 12 45 (noon) on June 25, 1968. 15 simple injuries were found on his person. Their duration was within 24 hours and they could have been self inflicted. Hari Singh says that he purchased one 'Babool' tree standing in Kays from Ladhu Singh. He went to Kaya with three labourers at about 8 in the morning. He met Pratap Singh at Kaya. Pratap Singh showed him the 'Babool tree. He then started cutting the tree. Some villagers asked him not to cut the tree. He, however, continued cutting it. After about 2 hours Pratap Singh came running. He was hurling stones at him. After about 15 minutes he heard a gun shot. The evidence on the record suggests that as a result of dispute between Pratap Singh and the villagers in the morning of June 24, 1968, somewhere near the 'Babool' tree Pratap Singh might have sustained injuries and that incident is not the integral part of the present occurrence. Evidence does not suggest that Pratap Singh got these injuries in the course of the present occurrence, which happened at about 4 O'clock in the afternoon outside Ram Singh's house. Learned Counsel for the appellant relied upon a decision of the Supreme Court report, d in Mohar Rai v. State of Bihar : 1968 CriLJ1479 In that case it is laid down that failure of the prosecution to offer explanation regarding the injuries on the person of the accused would show that the evidence of the prosecution relating to the incident is not true or at any rate not wholly true and that the injuries on the accused persons would probabalise the plea taken by him. In the present case the accused did not receive injuries in the course of this occurrence, He might have received them prior to it. Moreover, according to the medical evidence, these injuries could have been self-inflicted. Therefore, the Supreme Court authority does not support the plea taken by the appellant Pratap Singh.

37. The plea of the accused Thavra is that on June 24, 1968, at about 3 30 p. m. he was sitting outside his own house. He heard the sound of a drum beat by villagers. He saw Pratap Singh running from the side of 'Dharivala' well. He was chased by the villagers. Thereafter some exchange of fire took place. The incident occurred in 'Chowgan' (plain outside the 'Poli' of Ladhu Singh, The accused Thavra has not taken any specific plea in his defence.

38. Though Pratap Singh and Thavra did not fire their guns, they accompanied Ladhu Singh armed with deadly weapons like muzzle loading guns. They also followed Ladhu Singh in search of their victim Bhoor Singh. After Bhoor Singh, Som Singh and three other ladies were injured by gun fires, they returned with Ladhu Singh to his house. Later on, they boarded a bus armed with their guns along with Ladhu Singh and proceeded towards Udaipur. Then they absconded. Pratap Singh was arrested on June 27, 1968, at the house of Mst. Raju Bal situated at Bedla, Thavra was also absconding and was produced under arrest at Pratapnagar Police Station on July 7, 1968 vide statement of Jamil Ahmad, P.W. 19.

39. It is a settled law that when once it is found that a murder was committed in furtherance of the common intention of all, each one of such persons is liable as though the murder had been committed by him alone. Section 34, I.P.C. is intended to meet a case where members of a party acted in furtherance of the common intention of all. The principle which this section embodies is the participation in some action with the common intention of committing a murder. Once such participation is established, Section 34, I.P.C. is at once attracted vide *D.M. Dana v. State of Bombay* : 1960 CriLJ424 and *Jagir Singh v. State of Punjab* : 1968 CriLJ89. In *Mehbood Shah v. Emperor* AIR 1945 PC 118, it has been laid down that common intention for the applicability of Section 34 can be inferred from the act or conduct or other relevant circumstances of the case.

40. From what has been stated above, it is abundantly apparent that all the three accused persons were present on the spot by previous arrangement. The time and the place of the errand show that they intended to go to the field of Bhoor Singh and injure him. This intent was obviously shared by all the accused and with the prior arrangement. Looking at the injuries caused to Bhoor Singh, Som Singh and the three ladies in furtherance of the common intention of all, it is clear that Section 34, I.P.C. will apply to the case of Pratap Singh and Thavra.

41. The only question that remains to be answered is under what sections of the Indian Penal Code the accused can be held guilty. Learned Counsel for the appellants has submitted, as an alternative argument, that if the accused are held

guilty, their case cannot travel beyond Section 304, I.P.C. and in support of this proposition he has cited *Harjinder Singh v. Delhi Administration* : 1968 CriLJ1023 .

42. There is a clear enunciation of the scope of Section 300. I.P.C. in the leading case of the Supreme Court reported in *Virsa Singh v. State of Panjab* AIR 1958 SC 462, There Bose J. sets out the four elements which the prosecution must establish for bringing a case under Section 300. I.P.C. They are:

First, it must establish, quite objectively, that a bodily injury is present: secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and, fourthly, it must be proved that the injury of type just described, made of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the inquiry is purely objective and inferential and has nothing to do with the intention of the offender.

It is also not the requirement of the section that the injuries should be intended to be serious. As Bose J. observed:

The question is not whether the person intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present...But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here nor there.

Bose J. has also observed in para 13 of the judgment cited above:

No one has a licence to run ground inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences: and they can only escape if it can be shown, or reasonably deduced, that the injury was

accidental or otherwise unintentional.

We may here also refer to a decision of Lord Coddard C.J., in R.V. stoama 1947 (1) All.E.R. 813 the learned C.J. saye.

If the prosecution prove an act the natural consequences of which would be a certain result and no evidence of explanation is given, then the jury may on a proper direction, find that the accused is guilty of doing the act with the intent alleged.

This very question was again considered by their Lordships of the Supreme Court in Auda v. State of Rajasthan : 1966 CriLJ171 . In that case it was observed by his Lordship Hidayatullah J:

The third clause of Section 300, I.P.C. views the matter from a general staid point. It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. Here the emphasis is on the sufficiency of the injury in the ordinary course of nature to cause death. The sucifficiency is the high probability of death in the ordinary way of nature. Then this sufficiency exists and death follows and the caucing of such injury to intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The intentional injury which must be sufficient to cause death in the ordinary course of nature, is the determinant factor.

43. In a recent decision of our own High Court reported in Ram Kumar v. State of Rajasthan , Bhandari C.J. observed:

It is sufficient if it is proved that the particular bodily injury was sufficient in the ordinery course of nature to cause death for holding the aecused guilty for the offence of murder.

In the present case, it has been established beyond doubt that the appellant Ladhusingh inflicted the injuries mentioned above & the medical evidencr is that the 'Victim died due to syncope as a result of the shook from sudden excessive haemorrhage from injury to the big vessels (popliteal artery and popliteal vein),

resulting from firearm.' All the essential ingredients constituting the offence of murder under the third category in Section 300, I.P.C., have been made out by the prosecution. Therefore, the convictions of the appellant Ladhu Singh under Section 302, I.P.C. and that of the other accused under sections 302/34, I.P.C. must stand. It is, of course, not necessary to inquire into every last detail as, for instance where there was the possibility of escape from death on account of injury caused to popliteal artery. Otherwise a man who has no knowledge of anatomy could never be convicted, for if he does not know that there is a heart or kidney or bowels, he cannot be said to have intended to injure them. Of course, that cannot be the kind of enquiry.

44. In this connection it may also be pointed out that the accused Ladhu Singh fired a gun shot at such a close range that it could not have had other than a fatal effect. It is also indicative of the intention of the accused that after firing at Bhoor Singh, fired a gun at Som Singh. Thereafter he re-loaded the gun and he fired another shot at Som Singh. From this fact also the only irresistible inference that can be drawn is that Ladhu Singh committed an offence under Section 302, I.P.C. Learned Counsel for the appellants referred to a decision of their Lordships of the Supreme Court reported as Harjinder Singh v. Delhi Administration (supra), In that case the appellant Lswarlal struck the deceased Kewal Kumar with a knife and caused his death. A stab wound 1'x' on the left thigh upper and below the inguinal ligament and an abrasion 1'x' linear on back of left fore-arm middle were caused on the person of the deceased. Their Lordships of the Supreme Court held that in the circumstances of the case it could not be said that it was proved by the prosecution that the appellant intended to inflict that particular injury on the particular place, and they refused to apply Clause 3 to Section 300, I.P.C. to the act of the accused. This Supreme Court case is clearly distinguishable from the facts of the present case. In that case the appellant did not use the knife while he was engaged in fight with Dalip Kumar. It was only when he felt that the deceased also came up against him that he whipped out the knife. In the instant case there was a pre-meditated arrangement to put an end to the life Bhoor Singh.

45. Having regard to all these facts and the circumstances of the case, we are of the view that the accused Ladhu Singh is guilty under Section 302, I.P.C. and his

associates Pratap Singh and Thavra also guilty under Section 302, read with Section 34. I.P.C.

46. In so far as Section 307, I.P.C. is concerned, it may be stated that illustration (c) to Section 307, I.P.C. throws a useful light. The illustration reads as follows:

A, intending to murder B, buys a gun and loads it. A has not yet committed the offence. A fires the gun at B, he has committed the offence defined in this section, and, if by each firing he wounds B he, is liable to the punishment provided by the latter part of the first paragraph of this section.

In Vasudeo v. Emperor AIR 1938 Bom. 378 a person fired upon another. No injury was in fact occasioned due to certain obstruction. The culprit was convicted of an offence under Section 307, I.P.C. Beaumont C.J. said at page 281:

I think that what Section 307 really means is that the accused must do an act with such a guilty intention and knowledge and in such circumstances that but for some intervening fact the act would have amounted to murder in the normal course of events.

This observation has been approved by their Lordships of the Supreme Court in Om Prakash v. State of Punjab : [1962]2SCR254 . In that case, their Lordships have observed that in cases of attempt to commit murder by fire-arm the act amounting to attempt to commit murder is bound to be the only and the last act done by the culprit. Till he does not commit any act towards the commission of the offence and once he fires and something happens to prevent the shot taking effect, the offence under Section 307. I.P.C, is made out. Expressions in such cases indicate that a person commits or attempt to commit murder only when they have committed the last act necessary to commit murder.

47. From the evidence discussed above, it admits of no doubt that Ladhu Singh fired his gun at Som Singh not only once but twice. The injuries, however, did not prove fatal because of some distance. Keeping in view the settled law as discussed supra, we hold that by this action Ladhu Singh has committed an offence under Section 307, I.P.C. Likewise, for the reasons stated above, Ladhu

Singh's confidants Pratap Singh and Thavra participated in the crime and offence under Section 307/34, I.P.C. also stands proved against them. In the course of arguments none has challenged the offence committed by the accused under Section 324, or 324/34, I.P.C.

48. Now we come to the question of sentence. Keeping in view the facts and the circumstances of the case, more specially the fact that Bhopr Singh sustained only the gun shot injury, we do not feel inclined to confirm the death sentence awarded by the trial court. The trial court had fallen in to grievous error in not awarding separate sentences under Sections 307 or 307/34, as also under Sections 324, or 324/34, I.P.C., to the accused persons. In *Jayaram v. State of Bombay* : 1956 CriLJ318 , it has been held that when a person convicted of several offences it is the duty of the court to pass separate sentences for each offence. The law does not evidence a person being convicted for an offence without a sentence being imposed therefore. When the trial court convicted the appellants under Sections 302, 302/34, 307, 307/34, 324 33, it was plainly its duty to have imposed sentences on each court.

49. It may be also stated here inter alia that when a conviction is affirmed in an appeal but no sentence has been awarded by the trial court, the award of a sentence is consequentail and incidental to the affirmation of the conviction. It is just and proper order to be passed under the law. When no sentence was imposed on a conviction by the trial court and one is for the first time awarded in appeal, it cannot correctly be said to be an enhancement. As has been observed in *Jayaram v. State of Bombay* : 1956 CriLJ318 supra, it is within the competence of this court to pass sentences on the convictions made by the trial court. When proceedings are taken against the accused for enhancement of sentence under Section 439 (2), Cr. P.C., has been a right to be heard both an on the question of propriety of the conviction and of the sentence to be imposed upon him, if he is convicted. In the present case the appellants had been convicted under Sections 302, 303/34, 307, 307/34, 324 and 324/34, I.P.C . and they had had an opportunity of pressing their case in respect of all these offences and in fact they availed themselves of the same. Such an order would not be enhancement of the sentence. Before a sentence can be said to be enhanced, there must be one which can be enhanced

and when no sentence was imposed on an conviction by the trial court and one is for the first time awarded in appeal, it could not be said to be an enhancement. In the circumstances such an order cannot be said to be bad for want of notice. The Law does not prescribe that any particular formalities should be complied with, before taking an action in accordance with the provisions of Section 423(1)(d) Cr. P.C.

50. In the result, we reject the reference submitted by learned Sessions Judge, Udaipur for confirmation of the sentence of death, imposed on Ladhu Singh. We, however, maintain the conviction of the accused Ladhu Singh under Sections 302, 307 and 323 I.P.C., and sentence him to imprisonment for life on the first count and to rigorous imprisonment for a period of ten years and to pay a fine of Rs. 100/- in default to undergo one month's further rigorous imprisonment on the second charge and to rigorous imprisonment for two years for the third offence. All the sentences are directed to run concurrently. We maintain the conviction of the accused Pratap Singh and Thavra under Section 302/34, 307/34, and 324/34, I.P.C., and sentence each of them to imprisonment for life on the first count, to rigorous imprisonment for ten years and to pay a fine of Rs. 100/- each, in default to undergo further rigorous imprisonment for one month each on the second charge and to rigorous imprisonment for two years for the third crime. With the above modifications the judgment of the court below is maintained. The appeal of Ladhu Singh is partially accepted accordingly. The appeals of Pratap Singh and Thavra stand dismissed.

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