

**Kamal and ors. Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/758995](http://sooperkanoon.com/758995)

**Court :** Rajasthan

**Decided On :** Apr-29-2003

**Reported in :** RLW2003(4)Raj2473; 2003(3)WLC320

**Judge :** Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 147, 148, 149, 302, 307, 323 and 341

**Appeal No. :** D.B. Cr. Appeal No. 238 of 1997

**Appellant :** Kamal and ors.

**Respondent :** State of Rajasthan

**Advocate for Def. :** S.S. Rathore, Public Prosecutor

**Advocate for Pet/Ap. :** G.C. Chatterjee, Adv. for Appellants 1 to 5, 7 and 8 and;  
Alok Sharma, Adv. for Appellant No. 6 and;

**Disposition :** Appeal dismissed

**Judgement :**

**Sharma, J.**

1. Eight appellants were placed on trial before the learned Additional Sessions Judge Deeg (Bharatpur) for having committed murder of Smt. Buddho in Sessions Case No. 118/94. The learned Judge vide judgment dated May 16, 1997 convicted

and sentenced each of them as under -

1.

2.

3.

4.

5.

Kamal

Ganga Sharan

@ Sharan

Leele

Bhagwan Sahai @ Pappu

Harro

u/Sec. 147 IPC

to suffer 6 months S.I. and fine of Rs. 100/- in default to further suffer 1 month S.I.

u/Sec. 341 IPC

u/Sec. 148 IPC

u/Sec. 307/149 IPC

u/Sec. 302/149 IPC

to suffer 3 months S.I. and fine of Rs. 100/- in default to further suffer one month S.I.

to suffer 6 months SI and fine of Rs. 100 in default to further suffer one month S.I.

to suffer 3 years SI and fine of Rs. 1000 in default to further suffer 6 months S.I.

to suffer imprisonment for life and fine of Rs. 1000 in default to further suffer six months S.I.

6.

7.

Mansho

Jawahar

u/Sec. 147 IPC

u/Sec. 323 IPC

u/Sec. 148 IPC

u/Sec. 307/149 IPC

u/Sec. 302 IPC

to suffer 6 months S.I. and fine of Rs. 100/- in default to further suffer 1 month S.I.

to suffer 3 months SI and fine of Rs. 100/- in default to further suffer one month S.I.

to suffer 6 months SI and fine of Rs. 100/- in default to further suffer one month S.I.

to suffer 3 years SI and fine of Rs. 1000 in default to further suffer 6 months S.I.

to suffer imprisonment for life and fine of Rs. 1000 in default to further suffer six months S.I.

8.

Harbhan

u/Sec. 147 IPC

u/Sec. 323 IPC

u/Sec. 148 IPC

u/Sec. 307 IPC

u/Sec. 302/149 IPC

u/Sec. 341 IPC

to suffer 6 months S.I. and fine of Rs. 100/- in default to further suffer 1 month S.I.

to suffer 4 months SI and fine of Rs. 100/- in default to further suffer one month S.I.

to suffer 6 months SI and fine of Rs. 100/- in default to further suffer one month S.I.

to suffer 3 years SI and fine of Rs. 1000/- in default to further suffer 6 months S.I.

to suffer imprisonment for life and fine of Rs. 1000/- in default to further suffer six months S.I.

3 months SI fine 100/- default one month S.I.

2. As per the prosecution story, on June 7, 1994 around 6.30 p.m. Jasmat @ Jarko was surrounded by the appellants on the way near 'Malin Ki Chaupal' and Kamal exhorted to kill him. Mansho, Jawahar and Harbhan had firearms, Harro, Leela and Bhagwan Sahai had Pharsas and Kamal and Sharan were armed with lathies. Hearing the shrieks of Jasmat Kanwar Singh, Vijay, Buddho (now deceased) Devla and Kundan rushed to save him. Finding Mansho, Jawahar and Harbhan about to fire at Jasmat, Buddho lay herself down on Jasmat in order to

save him and in the process received gun shot injuries on her abdomen. When Kundan attempted to intervene, Harbhan opened fire at him. Harro and Leele inflicted Pharsa blows on the thigh of Buddho. Leele and Harro also gave Pharsa blows on the head of Vijay whereas Kamal and Sharan gave lathi blows on the person of Kunwar Singh and his father Devla. Buddho died on the way to the Hospital. A written report (Ex.P.8) was submitted by Kunwar Singh to the SHO PS Kotwari Deeg on June 7, 1994 at 11.30 p.m. and a case under Sections 147, 148, 149, 302, 307, 341, 323 IPC and 3/25 Arms Act was registered and investigation commenced. On completion of investigation chargesheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Deeg. Charges under Sections 147, 148, 323, 341, 307/149, 302/149 IPC were framed against Harro, Leele, Bhagwan Sahai, Ganga Sharan @ sharan and Kamal whereas Mansho, Harbhan and Jawahar Singh were charged under Sections 147, 148, 323, 341, 302, 307/149 IPC. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 18 witnesses. In the explanation under Section 313 Cr.P.C., the appellants claimed innocence. No defence witness however was produced. Learned trial judge on hearing the final submissions convicted and sentenced the appellants as indicated above.

3. To narrate the events that occurred on the fateful evening the prosecution examined seven eye witnesses viz. Kunwar Singh (PW.3) Ramesh (PW.5), Jasmat (PW.6) Kundan (PW.7), Chhutan Singh (PW.8) Devla (PW.9) and Jagdish Prasad Sharma (PW.12). The injuries sustained by Buddho are described by Dr. Amar Singh (PW.1) who performed the postmortem of her body in these words-

#### External Examination

1. Three abrasions 1cm. x 1/2 cm: on right leg
2. Abrasion 1 cm. x 1 x c. on right knee lateral aspect.
3. Multiple punctured wounds With Black margin on anterior wall of abdomen below umbilicus, Rt. thigh anterior, lateral and medial aspect, Lt. thigh median aspect upper 1/3.

## Internal Examination

### Abdomen

Walls- Multiple puncture wounds with black margin throughout the wall.

Peritoneum - Multiple puncture wounds on Rt. side and below umbilical region.

Cavity-Massive haematoma present

Large intestines- Healthy with multiple puncture wounds

Kidneys - Rt. side kidney covered with haematoma.

Bladder- Anterior wall has multiple puncture wounds

Organs of- Multiple puncture wounds on generation anterior wall of uterus present.

Cause of her death was shock due to blood loss, rupture of Rt. Iliac and femoral vessels by fire arm injury.

Dr. Amar Singh (PW.1) also examined the injuries of Devla, vide Ex. P.2, Vijay vide Ex.P.3, Jasmat s/o Devla vide Ex. P.4, Kundan son of Devla vide Ex. P.5 and Kunwar Singh son of Devla vide Ex.P.6. The description of injuries is as under:

Devla S/o Gyasi:

1. Bruise 5 cm. x 2 cm. on Rt. Shoulder supra anterior aspect
2. Swelling 3 cm. x 3 cm. on Rt. Scapular region.

Vijay s/o Kishni:

1. Lacerated wound 5 cm. x 1/2 cm. scalp deep on mid parietal region of skull.
2. Lacerated wound 1 cm. x 1/2 cm. subcutaneous deep on middle phalanx of index finger.

3. Complain of pain on back no visible injury.

Jasmat s/o Devla :

1. Incised wound 4 cm. x 1/2 cm. bone deep on mid parietal region of skull.

Swelling 2 cm. x 2 cm. with Abrasion 1/2 cm. x 1/ cm. on Lt. shoulder anterior aspect.

3. Lacerated wound 1 cm. x 1/2 cm. muscle deep on Dorsum of Rt. foot.

4. Lacerated wound 1/2 cm. x 1/2 cm. with swelling 2 cm. x 2 cm. Lt. side chin.

Kundan son of Devla :

1. Lacerated wound 2 mm x 2 mm. Lt. side abdomen anterior aspect with black margin.

As per X-ray report Ex. P.7, two radiopaque pellet shadows were noted in Lt. abdominal region.

Kunwar Singh son of Devla :

1. Complain of pain Rt. scapular region No visible injury.

4. Learned counsel for the appellants pointed out following infirmities in the prosecution case :-

(i) As per the testimony of Kunwar Singh, Kishni, Ramesh, Jasmat, Kundan and Devla appellants Mansho, Jawahar and Harbhan were standing on a higher place and Buddho was at a lower place therefore direction of fire arm shot ought to have been downwards, but the direction of the shot that hit Buddho was found straight by the autopsy surgeon Dr. Amar Singh (PW.1). Thus there is an inconsistency between the ocular testimony and medical evidence.

(ii) As per the testimony of the eye witnesses there was a distance about 15-20 ft. between Mansho, Jawahar and Harbhan and the deceased Buddho and other appellants Kamal, Ganga Sharan @ Sharan, Leela, Bhagwan Sahai @ Pappu and

Harro, who had surrounded her and they were only at a distance of 2-3 steps from her therefore, had the incident occurred as narrated by the eye witnesses the shots that were fired at a distance of 15-20 ft. ought to have hit Kamal, Ganga Sharan, Leele, Bhagwan Sahai and Harro and it was next to impossible that the shots would have hit only Buddho. This improbability shows that origin and genesis of the occurrence has been withheld by the prosecution.

(iii) According to FIR, just before Harbhan, Mansho and Jawahar fired the shots at Jasmat, Buddho, Devla and Kundan rushed to save him and Buddho lay herself down on Jasmat and sustained gun shots on her abdomen. But at the trial Kunwar Singh, Ramesh, Jasmat, Kundan and Devla deposed that first shot that hit Buddho on abdomen was fired by Mansho and another was fired by Jawahar which also hit on her abdomen. However as per the deposition of Dr. Amar Singh all the multiple wounds received by Buddho on her abdomen could be caused by one fire. These contradictory versions create doubt in the prosecution story.

(iv) In view of the testimony of eye witnesses where two 12 bore SBBL Guns and one Country made Pistol were simultaneously fired, there ought to have been 300 pellets at or near the place of incident but as per site plan (Ex.P.12) only one pellet and one 'dot kartoos' were found. Site plan thus pollutes the prosecution story.

(v) As per the testimony of eye witnesses, the appellants Harro, Leele and Bhagwan Sahai had inflicted injuries with pharsas on Jasmat Devla and Vijay. But as per injury report (Ex.P.2) Devla only sustained bruise and swelling whereas Jasmat vide Ex.P.4 received only one incised wound. Vijay as per injury report (Ex.P.3) did not receive any injury with sharp edged weapon. It is thus not established as to who caused that sharp injury on the person of Jasmat.

(vi) Jasmat in his deposition stated that he sustained injuries with pallets on his foot but there is no such injury in his injury report Ex.P.4. Similarly injuries with Pharsas on the thigh of Buddho were attributed to Harro and Leele but in the post mortem report of Buddho no such injuries were found.

(vii) All the witnesses deposed that Kamal and Ganga Sharan inflicted lathi blows on the person of Kunwar Singh but no injury was found on his person vide injury

report Ex.p.6.

(viii) In his deposition Jasmat stated that he was wearing safi (turban) which was cut into four pieces after receiving the pharsa blow, whereas Kundan deposed that Jasmat was not wearing safi while he received pharsa blow.

(ix) Pharsas allegedly recovered were not stained with blood and recovery of fire arms from the open place was doubtful. Recovered weapons were not produced in the trial Court.

(x) Independent witnesses were not produced.

(xi) Version that the accused had hidden themselves behind the stones was introduced only at the trial in order to establish unlawful assembly.

5. In support of the submissions learned counsel placed reliance on various authorities that shall be considered at the ..... juncture.

6. On the other hand learned Public Prosecutor and learned counsel for the complainant supported the impugned judgment and urged that the eye witnesses are the natural and truthful witnesses. In the deposition of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observations, memory and due to shock and horror at the time of the incident. It is established that Buddho had died of fire arm injuries and all the appellants were rightly convicted by the learned trial court.

7. In order to find out tenability of the rival submissions, we may now delve deep into the facts and circumstances of the case. Jasmat in his deposition stated that in the evening around 6-7 PM while he was on his way to visit the house of his uncle, Kamal, Harro, Mansho, Jawahar, Bhagwan Sahai, Leele, Harbhan and Sharan, who were standing near 'Malion Ki Chaupal' surrounded him, In the cross examination he however deposed that he was only encircled by five persons, and three others namely, Mansho, Harbhan and Jawahar were standing at a distance of 10-12 ft. under a tin-shed. He also admitted that he had seen all the eight persons when they were five steps away from him. He also stated that in the afternoon of that day his cousin Ramesh informed him that buffalo of his uncle had

some stomach trouble, therefore in order to enquire well being of buffalow, he proceeded towards his uncle's house. Investigating Officer Ram Swaroop Yadav stated that the tin shed where the three accused armed with fire arms stood, was at a distance of 30-32 ft. from the place of incident. He further stated that Buddho had lost her life due to quarrel between the two groups. , Investigating Officer was not able to say as to what was the motive behind killing of Buddho. He further stated that when he went to the village he had heard that Jawahar was not involved in the incident, Witness Ramesh however stated that about 500 persons gathered at the place of incident.

8. Harish Chand, H.C. Armer, who examined the SBBL 12 Bore Gun and SBBL 12 Bore country made Pistol recovered at the instance of Mansho and Harbhan and vide Ex. P.37, Opined that they were fit for fire action. SBBL 12 Bore Gun recovered at the instance of Jawahar was also found fit for fire action as per Armer report Ex. P.36. Testimony of Kunwar Singh, Kishni, Ramesh, Jasmat, Kundan and Devla reveals that Mansho, Jawahar and Harbhan were standing on a higher place and Buddho was at a lower place and there was distance about 15-20 ft. between them and Buddho. They further stated that Kamal, Ganga Sharan @ Sharan, Leele, Bhagwan Sahai @ Pappu and Harro had surrounded Buddho and they were only at a distance of 2-3 steps from her. Kunwar Singh, Ramesh, Jasmat, Kundan and Devla further deposed that first shot that hit Buddho on abdomen was fired by Mansho and another was fired by Jawahar which also hit on her abdomen. As per the deposition of Dr. Amar Singh, all the multiple wounds received by Buddho on her abdomen could be caused by one fire. Buddho however did not receive injuries on her thigh as per the post mortem report, although the prosecution case is that Harro and Leele inflicted Pharsa blows on her thigh. The prosecution case further is that Harro, Leele and Bhagwan Sahai had inflicted injuries with Pharsas on Jasmat, Devla and Vijay, but as per injury reports Devla sustained bruise and swelling whereas Jasmat received only one incised wound over his head. Vijay also did not receive any incised wound on his person. Kunwar Singh although stated that Kamal and Ganga Sharan inflicted lathi blows on his person but no injury was found in the injury report of Kunwar Singh. In his deposition Jasmat stated that he was wearing safi (turban) which was cut into four pieces after receiving the pharsa blow, but according to Kundan, Jasmat

was not wearing Safi. In the FIR it was not mentioned that the accused had hidden themselves behind the stones and this story appears to have been introduced for the first time at the trial.

9. Let us first advert to the submissions advanced in regard to the charge of unlawful assembly. On examination of entire evidence of the prosecution we do not find a single fact which could show that there was previous ill will or enmity between Jasmat and the appellants. It also does not appear from the record that the appellants had prior knowledge about Jasmat's visit to his uncle house. From the testimony of Jasmat it is evident that he took decision to enquire about well-being of his uncle's buffalow all of sudden and proceeded towards his uncle's house. It also appear that Mansho, Harbhan and Jawahar were standing under a tin-shed at a distance of about 30 ft. from the other appellants and as per the testimony of Ramesh around 500 persons gathered at the time of incident. It is also not established that all the eight appellants came together at the place of incident and the appellants Kamal, Ganga Sharan, Leele, Bhagwan Sahai and Harro already knew as to what was in the mind of Mansho, Harbhan and Jawahar who were standing at a distance of 30 ft. from them. It could not be proved that unlawful object to kill Buddho, who suddenly lay herself down on Jasmat, was developed at any point of time prior to the actual occurrence.

10. In order to attract the culpability under Section 149 IPC it has to be borne in mind that Section 149 does not create new offence but deals with vicarious liability of the members of the unlawful assembly for the acts done in prosecution of common object and for such offence as its members knew to be likely to be committed in prosecution of that common object. 'Unlawful assembly' is defined in Section 141 IPC. In order that the assembly can be designated as an unlawful assembly, it has to be shown that the assembly consisted of five or more persons having one of the five specified objects as enumerated in the section, itself as their 'common object'. In Gangadhar Behera v. State of Orissa (1), the Hon'ble Apex Court dealt with 'common object' thus -

'The word 'object' means the purpose or design and, in order to make it 'common', it must be shared by all. In other words, the object should be common to the

persons, who compose the assembly that is to say, they should all be aware of it and concern in it. 'Common object' is different from common intention as it does not require a prior concert and a common meeting of mind before the attack.'

11. In Chandra Behari Gautam v. State of Bihar (2), their Lordship of the Supreme Court indicated as follows :-

'Section 149 is an exception to the criminal law whereunder a person can be convicted and sentenced for his vicarious liability only on proof of his being a member of the unlawful assembly, sharing the common object, notwithstanding as to whether he had actually participated in the commission of the crime or not. Common object does not require prior concert and a common meeting of minds before the attack, An unlawful object can develop after the accused assembled. The existence of common object of the unlawful assembly has to be ascertained in the facts and circumstances of each case.'

12. Looking to the notable features of the case as noticed above we are of the view that the prosecution is not able to establish the existence of common object amongst the appellants to attract the provisions of Section 149 IPC. The evidence of the prosecution, in so far it relates to the presence of Mansho, Jawahar and Harbhan armed with firearms under the tin-shed is consistent and trustworthy but in regard to the participation of other accused viz. Kamal, Ganga Sharan, Leela, Bhagwan Sahai and Harro, we find certain puzzling features In the prosecution case. As already observed all the eye witnesses deposed that when Mansho, Jawahar and Harbhan opened fire, they were at a distance of about 15-20 ft. from Buddho who was surrounded by Kamal, Ganga Sharan, Leele, Bhagwan Sahai and Harro. It is also the prosecution case that only two shots were fired at Buddho by Mansho and Jawahar, Learned counsel urged to give benefit of doubt to Mansho and Jawahar and reject the prosecution evidence on the strength of the testimony of Dr. Amar Singh (PW.1) according to whom the injuries sustained by Buddho could be caused only by one fire, and it could not be ascertained as to who caused those injuries. The inconsistency canvassed by the learned counsel is immaterial in view of the observations made by the Hon'ble Supreme Court in Leela Ram v. State of Haryana (3), where the High Court of Punjab and Haryana

acquitted the accused on the ground that the eye witnesses account regarding the number of shots fired by the accused on the deceased stood contradicted by medical evidence. The positive case of the prosecution as set up by Leela Ram (the son of the deceased) was that two shots were fired by the accused at the deceased but the High Court after scanning medical testimony, was of the view that injuries on the dead body of the deceased were the result of one gun shot and not of two shots as stated by the eye witnesses. Leela Ram assailed the judgment of the High Court by filing S.L.P. before the Hon'ble Apex Court. Their Lordships of the Apex Court after setting aside the acquittal indicated in para 15 of the judgment thus :-

'.... whether there was one shot or two shots, can it not be termed to be immaterial in the matter, of assessing the culpability of the accused. The son who saw his father has been shot at and thereafter fell dead, total stunning effect on the son and it is on this score that mere hair splitting on the available evidence ought not to be undertaken and instead of totality of the situation ought to have been reviewed...'

In respect of medical evidence it was observed that :-

'... Needless to say that the Doctor probably has not been able to match the cross examining lawyer and there was thus an unequal dual between the medical man and a refined lawyer.'

13. Ratio indicated in *Mohinder Singh v. State* (4), is not applicable in the facts of the instant case. Here *Harish Chand H.C. Armer* after examining SBBL 12 Bore Gun and SBBL 12 Bore country made pistol opined that fire arms were fit for firing action.

14. In *Shyam Sunder v. State of Chhattisgarh* (5), their Lordships of the Supreme Court propounded that when an incident is narrated by the same person to different persons on different occasions, some difference in the mode of narrating the incident is bound to arise, but such differences do not militate against the trustworthiness of the narration unless the variations can be held to be so abnormal or unnatural as would not occur if the witness had really witnessed what

he was narrating.

15. In the instant case we find the narration of the incident by the eye witnesses in regard to participation of Kamal, Ganga Sharan, Leele, Bhagwan Sahai and Harro so unnatural that it cannot be believed. As per Medical Jurisprudence when a shot is fired with the muzzle in contact with or near the body, the shot enters as a mass and the gases produced by the explosion cause considerable laceration of the surface skin, destruction of the deeper tissues and after fragmentation of bone. The shot enters as a single mass upto about a yard. Upto about two yards the overshoot wad may be seen in the body. The wadding can produce an injury upto about three yards. Upto 2-3 yards, the shot produces an entrance hole with individual pellet holes round the periphery. An independent injury may be caused by the wad. As the range of fire increases, the charge of shot begins to spread so that small apertures, due to separate pellets entering the body, appear round the central opening caused by the main mass of shot. With further increase in the range, this is followed by more even distribution of pellet injuries with disappearance of the central aperture. At still longer ranges, the shot, depending upon its size and velocity may not lodge in the body. In the case on hand as per the deposition of witnesses when Mansho, Jawahar and Harbhan opened fire the, were at a distance of 30 ft. and Buddho was closely encircled by Kamal, Ganga Sharan, Leele, Bhagwan Sahai and Harro, therefore, had the incident occurred as described by the witnesses, the appellants Kamal, Ganga Sharan, Leele Bhagwan Sahai and Harro would necessarily have sustained fire arm injuries. As none of them had received injuries, it seems to us that the incident had not occurred in the manner as described by the prosecution witnesses. Because of this improbability we find that the origin and genesis of the occurrence has been Withheld by the prosecution and presence of Kamal, Ganga Sharan, Leele, Bhagwan Sahai and Harro at the scene of occurrence becomes doubtful.

16. There is yet another reason which creates doubt in regard to the participation of these five appellants. As per injury report Devla sustained only bruise and swelling whereas Vijay did not receive any injury with sharp edged weapon and Jasmat received one incise wound. But as per ocular version of Jasmat he sustained injuries with pellets on his foot and according to deposition of other eye

witnesses Harro, Leela and Bhagwan, Sahai inflicted injuries with pharsas on Jasmat, Devla and Vijay, Kamal and Ganga Sharan had been attributed injuries with lathi on the person of Kunwar Singh but as per medical report no such injury was found on the person of Kunwar Singh. Harro and Leele were attributed Pharsa blows on the thigh of Buddha but in her post mortem report no injuries on thigh were found. All these puzzling features of the case demonstrate that the evidence adduced by the prosecution falls short of proof in regard to participation of appellants Kamal, Ganga Sharan, Leele, Bhagwan Sahai and Harro.

17. That takes us to the contentions raised in regard to appellants Jawahar, Mansho and Harbhan. It was canvassed by the learned counsel that alleged recoveries of guns at the instance of the appellants were farce. SBBL 12 Bore gun and country made pistol were allegedly recovered on October 21, 1994 vide Ex.P.43 and 46 at the instance of Mansho and Harbhan and from the same place 12 Bore Gun got recovered on June 21, 1995 at the instance of Jawahar vide Ex.P.47. No independent witness had supported the recoveries. Investigating Officer Ram Swaroop Yadav admitted that he had heard that Jawahar was not involved in the crime. On the strength of these facts learned counsel urged to give benefit of doubt to Mansho, Harbhan and Jawahar. We regret our inability to accede to these submissions of learned counsel. The discrepancies pointed out by learned counsel are not boulders which can become hurdle in the way of the prosecution case. They are only in the realm of pebbles and one can easily tread upon them. The evidence of a case is required to be appreciated to find out what part of the evidence represents the true and correct state of affairs. It is for the court to separate grain from the chaff.

18. There is no dispute about the fact that Buddho died as a result of Gun shot injuries and all the eye witnesses attributed the gun shot injuries to Mansho and Jawahar. Harbhan was also with Mansho and Jawahar and he also opened fire that hit Kundan. We have considered the evidence from the point of view of trustworthiness and after separating the grain from the chaff we find that the eye witnesses had not spoken untruth in respect of involvement of Mansho, Harbhan and Jawahar in the crime and their testimony had not been polluted qua these three appellants.

19. From the X-ray report Ex.P.7 of Kundan it is established that two radiopaque pellet shadows were noted in Lt. abdominal region. From the statement of Kundan it is established that it was appellant Harbhan who caused the said injuries. We thus find that all the three appellants had shared common intention to commit murder of Buddho and to cause injuries on the person of Kundan. Therefore we hold the appellants Mansho and Jawahar guilty under Sections 302 IPC and 307/34 IPC. The appellant Harbhan is found guilty under Sections 302/34 and 307 IPC. We however give benefit of doubt to appellants Kamal, Ganga Sharan @ Sharan, Leele, Bhagwan Sahai @ Pappu and Harro and acquit all of them of the charges under Sections 147, 341, 148, 307/149, 302/149 IPC.

20. As a result of the aforesaid discussion we dispose of the instance criminal appeal in following terms :

(i) The appeal of Kamal, Ganga Sharan @ Sharan, Leele, Bhagwan Sahai @ Pappu and Harro stands allowed and they are acquitted of charges under Sections 147, 341, 148, 307/149, and 302/149 IPC. They are on bail they need not surrender and their bail bonds stand cancelled.

(ii) The appeal of appellants Mansho, Jawahar and Harbhan is dismissed. Conviction and sentence awarded by learned trial Judge to Mansho and Jawahar under Section 302 IPC and to Harbhan under Section 307 IPC stand confirmed. Mansho and Jawahar also stand convicted under Section 307/34 IPC to suffer 3 years simple imprisonment and fine of Rs. 1000/- in default to further suffer 6 months S.I. Similarly Harbhan is convicted under Section 302/34 IPC and sentenced to suffer imprisonment for life and fine of Rs. 1000/- in default to further suffer 6 months S.I. Mansho, Jawahar and Harbhan however stand acquitted of the charges under Sections 147, 323, 148 and 341 IPC.

(iii) Appellant Harbhan who is on bail, shall surrender to serve out the sentence. The warrants of arrest shall immediately be issued against him.

(iv) The impugned judgment of the learned trial judge stands modified as indicated hereinabove.

