

Lakhasingh Vs. State

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Court : Rajasthan

Decided On : Feb-01-1994

Reported in : 1994CriLJ2952; 1994(1)WLN348

Judge : Jasraj Chopra and; R.P. Saxena, JJ.

Acts : Indian Explosive Substances Act, 1908 - Sections 5; Indian Arms Act - Sections 3, 25 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 109 and 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Criminal Jail Appeal No. 343 of 1985

Appellant : Lakhasingh

Respondent : State

Advocate for Def. : Visyal Raj Mehta, Public Prosecutor

Advocate for Pet/Ap. : J.R. Patel, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Jasraj Chopra, J.

1. These two jail appeals are directed against the Judgment of the learned Additional Sessions Judge, Bhilwara dated 26-8-1985, whereby the learned Addl.

Sessions Judge has held the accused appellant Ghewaria guilty of the offences Under Section 302, I.P.C. and Under Section 5 of the Indian Explosive Substances Act, 1908 and accused appellant Lakha Singh guilty of the offences Under Section 302/34 IPC and Under Sections 3/25 and 27 of the Indian Arms Act. The accused-appellant Ghewaria has been sentenced to imprisonment for life together with a fine of Rs. 100/- and in default of payment of fine', to further undergo rigorous imprisonment for three months for the offence Under Section 302, IPC and three years rigorous imprisonment together with fine of Rs. 100/-and in default of payment of fine, to further undergo rigorous imprisonment for three months for the offence under Section 5 of the Explosive Substances Act and the accused appellant Lakha sing has been sentenced to imprisonment for life together with a fine of Rs. 100/- and in default of payment of fine, to further undergo rigorous imprisonment for three months for the offence Under Section 302/34, IPC and rigorous imprisonment for six months and one year for the offences Under Sections 3/25 and 27 of the Indian Arms Act. respectively. The substantive sentences were ordered to be run concurrently.

2. The facts necessary to be noticed for the disposal of these two appeals briefly stated are that on 2-7-1983, at about 3.15 p.m., P.W. 2 Vensingh was working at his hotel situated in village Suraj. He was preparing tea and Shri Udaisingh Rawat and Rupa Gujar were sitting there to take tea from him. At. that time, from the western side, Pratapsingh Rawat resident of Banjari, who was in police uniform and was armed with a single barrel rifle, Lakhasingh Rawat, resident of Masaniya Magari, who was armed with a double barrel muzzle loaded gun wearing a white Jhaba and yellow turban and Dhoti and one more person who was smaller in size and was aged about 25 years, to whom, he did not know by name but he was later on identified as Ghewaria, and was holding explosive substance in his hand, came to his hotel. It is alleged that Pratap Singh called Udaisingh outside the hotel but on seeing them, Udaisingh tried to enter into the room of the Hotel from the verandah where he was sitting, whereupon, it is alleged that accused Pratap singh fired from his rifle on Udaisingh and accused Ghewaria threw some explosive substance (hand-grenades) on Udaisingh, which created lot of noise and smoke. Udaisingh fell near the gate of the room and lot of blood came out from his body. The splinters of the explosive substance caused injuries to Roopa Gujar. The

stone pieces of the wall and floor as also explosive substance hit Vensingh also. It is further alleged that at that time, Mst. Pyari wife of Udaisingh was standing on the Hand-Pump and was filling water in her pitcher. Thereafter, all these three persons dragged Udaisingh inside the room of the tea Hotel of Vensingh and there again, Pratapsingh fired on his head. Accused Lakhasingh was standing with his gun in a firing position. On account of receiving these injuries, Udaisingh died then and there and thereafter, all the three went away from the place of the occurrence, towards the western side.

3. It was suspected that deceased Udai singh's brother-in-law was serving in Police Station, Tatgarh and, therefore, these accused-persons feared that Udaisingh is being used as an informant and, therefore, he was killed by accused Pratapsingh and his companions.

4. After the accused-persons went away from the place of the occurrence, Vensingh got written the report of the incident and sent it to the Police Station through one Duda singh. Lot of village people assembled there. Mst. Pyari also came there. A case under Section 302, IPC was registered against, the accused-persons and on the basis of the written report Ex. P-4, formal FIR Ex. P-11 was drawn by SHO Ishwarlal, who deputed P.W. 11 Rameshwarsingh Head Constable to investigate the matter. He went on the spot and inspected the site on 3-7-1983 and prepared the site inspection memo and site plan. He also collected the bloodstained soil and control soil from the place of the occurrence. The exploded parts of the grenades (explosive substance), and some pieces of plastic and coconut were also collected by him vide Ex. P-8. He also took into possession the bloodstained clothes of the deceased vide memo Ex.P-9 and prepared his Inquest report Ex. P-10. The postmortem of the dead body was got conducted from Dr. M.L. Sharma at the place of the occurrence on 3-7-1983 vide Ex. P-3. The injury reports of Roopa Gujar and Vensingh are Exs. P-1 and 2 respectively.

5. Accused Lakhasingh was arrested vide memo Ex. P-18 and he gave information about the recovery of two guns which were kept by him in the house of Durgasingh, vide Ex. P-24 and the recovery memo of those two guns is Ex. P-23. Accused Ghewariya was arrested vide memo Ex. P-25. The recovered guns and

bloodstained clothes etc. were sent for chemical and serological examination but no report has been received from there.

6. After usual investigation, the case against the accused-persons was challaned in the Court of the learned Munsif and Judicial Magistrate, Gulabpura, from where, it was committed to the Court of the learned Sessions Judge, Bhilwara, from where, it was made over for trial to the learned Additional Sessions Judge, Bhilwara.

It is alleged that accused Pratapsingh who was also involved in the case died in an encounter before the challan was filed and, therefore, his challan could not be filed but one Premsingh, who was named by Mst. Pyari was also challaned along with these two accused-appellants. Accused Ghewariya was charged with the offence under Section 302, IPC read with Section 5 of the Explosive Substances Act, whereas accused Lakhasingh has been charged with the offences Under Section 302/34, IPC and Sections 3/25 and 3/27 of the Arms Act. Accused Premsingh was also charged with the offence Under Section 302/109, IPC. The accused-persons did not plead guilty to the charges, whereupon, the prosecution examined as many as 13 witnesses. The statements of the accused-persons were also recorded under Section 313, Cr. P. C. and they did not examine anybody in their defence. However, after hearing the parties, the learned Addl. Sessions Judge has convicted and sentenced the accused-appellants as aforesaid. He has, however, acquitted accused Premsingh for the charges framed against him. Hence, these two appeals by the accused-appellants through Jail.

7. We have heard Mr. J.R. Patel, the learned Amicus Curiae appearing for the accused-appellants and Mr. Vishal Raj Mehta and Mr. D.R. Bohra, learned Public Prosecutors for the State and have carefully gone through the record of the case.

8. In this case, the FIR of the incident has been lodged by the hotel owner i.e. Vensingh. He has no relation either with the deceased or with the accused-persons. The FIR was sent through Dudasingh to the Police Station. Doodasingh has categorically accepted this fact that on the date of the occurrence, Udaisingh was killed at the hotel of Vensingh and a written report was sent through him by Vensingh and he produced it before the Police Station on that very day. He has

been examined as P.W. 5. This fact is further supported by the evidence of P.W. 4 Ishwarlal SHO, who has stated that this report was submitted to him by Doodasingh.

9. Mr. J.R. Patel, the learned Amicus Curiae, appearing for the accused-appellants has contended that in this case, the FIR has reached the Magistrate on 6-7-1983 whereas the occurrence took place on 2-7-1983 and the report of this incident was lodged on that very day and, therefore, it should be treated to be a fictitious document or a post investigation document and hence, much reliance cannot be placed on it.

10. The FIR Ex. P- 11 contained an endorsement of the learned Magistrate, which shows that the FIR has been received by him through post. It was sent by post to the learned Magistrate because the Head Constable was sent for investigation of the case and the SHO went in search of the accused-persons. In these circumstances, if the FIR has been received by the learned Magistrate, on 6th July, 1983 at 10.30 a.m. through post, it does not minimise the importance of the FIR because it was lodged by an unconcerned person and was also sent through an unconcerned person to the Police Station. P.W. 4 Ishwarlal has also supported this fact that this FIR was lodged before the SHO on 2-7-1983 itself. There is no allegation against Vensingh and Doodasingh that they were in any way interested in falsely fastening the guilt on the accused-persons and, therefore, the authorities which have been cited by Mr. J.R. Patel, the learned Amicus Curiae for the accused-appellants are of little avail. It may be stated here that during investigation, the documents which have been prepared on 3-7-1983, FIR number is very much recorded on them. Even on the injury reports, this FIR number is recorded and, therefore, the FIR in this case cannot be treated to be a post investigation document.

11. It is true that ordinarily, the FIR has to be sent to the learned Magistrate forthwith as held by their Lordships of the Supreme Court in *Ishwarsingh v. State of U.P.*, : 1976 CriLJ1883 . Unexplained delay in sending the FIR to the Magistrate coupled with other circumstances may create suspicion as regards the veracity of the FIR but this authority has no application to the facts of the present case where

the FIR has not been filed by any interested person but it has been filed by an unconcerned person, on whose shop, the incident has taken place and the FIR has been sent to the Police at his instance with an unconcerned person.

12. Mr. Patel next drew our attention to a Division Bench decision of the Patna High Court in Abdul Rehman v. The State of Bihar, 1992 (1) Crimes 459, wherein also, it has been held that if there is no explanation for sending the FIR late to the learned Magistrate, then it may be treated to be an ante dated document. That possibility of ante-dating the FIR is totally ruled out so far as this case is concerned.

13. Reliance was also placed on a decision of this Court in Tejsingh v. The State of Raj., 1984 RLW 210, wherein it has been held that the delay in lodging the FIR coupled with the fact regarding discrepancies in oral testimony of eye-witnesses and medical evidence shows that the FIR is concocted one and prepared after investigation. In this case, we are thoroughly convinced that the FIR cannot be said to be an ante dated document.

14. Our attention was further drawn to a Division Bench decision of the Allahabad High Court in State of U.P. v. Gauri Shankar, 1992 (3) Crimes 86, wherein it was alleged that the FIR was the result of consultation and afterthought. This possibility too is totally missing in this case and hence, it has no application to the facts of the present case. Here, nobody is interested in falsely implicating the accused-persons. Thus, there is no possibility of any concoction nor it is a case in which the testimony of the eyewitnesses is in any way contradictory to the medical evidence and, therefore, this authority has little application to the facts of the present case.

15. Now, so far as the facts of this case are concerned, P. W. 2 Vensingh has categorically stated that accused Lakhasingh, Ghewariya and Pratapsingh came to his shop. Lakhasingh was armed with a muzzle loading gun and Pratapsingh was armed with a rifle and Ghewariya was holding the hand-grenades (explosive substance) in his hand. At that time, he was preparing tea at his shop and Udaisingh and Roopa Gujar were sitting there to enjoy tea. As soon as these three accused-persons came there, accused Pratapsingh called Udaisingh outside his shop. On this, Udaisingh tried to run towards the room adjacent to the Verandah,

where they were sitting. On this, accused Ghewariya threw hand-grenades on him, which exploded and injured Udaisingh's arms and Stomach. The body material came out of his stomach and the blood was oozing out of the injuries received by him. Udaisingh fell down on account of explosion of the explosive substance. A lot of noise was created along with a lot of smoke. The entire room was filled with that smoke as also with the splinters of the explosive substance or the splinters of the floor and wall. Roopa Gujar was also injured. He tried to run away towards the shop of Hastimal, on which, Pratapsingh aimed his gun on him. He folded his hands and told him that he may be allowed to go. Thereafter, he ran away towards the shop of Hastimal and from there, he saw the entire incident, that took place thereafter.

16. It is alleged that thereafter, all the three accused-persons entered into the room of the shop and dragged Udaisingh inside the room from the verandah and put his body on the ground face towards and then Lakhasingh inflicted an injury on his occipital region by his gun. Udaisingh died then and there. On account of receiving injuries the entire material of his stomach came out and lot of blood also came out of those injuries. He has categorically stated that he did not see Prem-singh there. However, he has stated that Hastimal was there at his shop and Udaisingh's wife was also there because she came there to fetch water from the hand-pump and she too has seen the occurrence. He has stated that he was not hit by any splinters of the explosive substance but he was hit by the pieces of floor. He has stated that thereafter, lot of people from the village assembled there. He was cross-examined with his earlier portion A to B of his FIR wherein he has stated that after taking Udaisingh inside the room of the shop, the gun was fired at his head by accused Pratapsingh but he has resiled from that testimony and has stated that this gun was fired by accused Lakhasingh. Except this fact in his statement, there is no other contradiction, which has been brought on record. He has identified accused Ghewariya in Court. He has stated that his name was disclosed to him by Mst. Pyari on that very date of the occurrence and it was this Ghewariya, who was armed with explosive substance and has thrown it at Udaisingh.

17. P.W. 6 Roopa, the another injured witness has also been examined. He has, of course, admitted that he was sitting on the shop of Vensingh for enjoying tea. Udaisingh was there. He has also admitted that Mst. Pyari came there to fetch water and when she was going to her house along with the pitcher full of water, Udaisingh called her and told her to take the child with her and as soon as she was taking the child with her, one man in police Uniform came there threw some explosive substance, which exploded and its splinters hit on the back and knee of Udaisingh, by which, Udaisingh fell down. How many persons were with that person, who was in police Uniform, he has been unable to disclose because he has taken the plea that his eye-sight is weak and, therefore, he could not identify anybody. He has been unable to say as to what other thing was there in the hand of that person, who was in police uniform. He has been declared hostile. He has confronted with his earlier police statement, where he has categorically stated that the accused-persons came there and they were armed with guns and grenades and they have committed the murder of Udaisingh. He has, however, stated that Udaisingh's wife left the place of the occurrence with her child before the grenade was thrown. The grenade was thrown at Udaisingh when he was going towards the room. Thus, although he supports the occurrence but he speaks a lie about the identification of the. accused persons. From his evidence, it is clear that the occurrence has taken place at the shop of Vensingh, where the grenade was exploded and Udaisingh died at the hotel of Vensingh when a person who came in police Uniform threw grenade on him. It seems that he has tried to speak lie about the number of accused-persons who participated in the occurrence and the manner in which the occurrence has taken place.

18. The another eye-witness of the occurrence; is P.W. 7 Prabhulal, whose shop is situated nearby the place of the occurrence. He has stated that he heard the noise of explosion but he thought that as the work of famine is going there and, therefore, the compressor must have exploded. Thereafter, he has heard the noise of weeping. He came out and heard that Udaisingh has been killed. Thereafter, so many persons from the village assembled there but he did not enquire anything from them. He too has been declared hostile and has been cross-examined on the basis of his earlier police statement but he has stated that he did not see anything.

19. The next important witness, who has been examined on behalf of the prosecution is P.W.10 Mst. Pyari, whose presence at the place of the occurrence has been certified by P.W. 2 Vensingh as also by P.W. 6 Roopa Gujar. It is an admitted case of the witnesses that she came there to fill up the water from the hand-pump. She has stated that at about 3.00 p.m., her husband was sitting on the shop of Ven Singh and she was filling water in her pitcher from the hand-pump, which is situated in front of that shop. She saw accused Pratapsingh, Lakhasingh, Ghewariya and Premsingh coming. Accused Pratapsingh and Lakhasingh were armed with guns and accused Ghewariya was armed with hand-grenade. She has further stated that accused Pratapsingh fired at her husband along with Ghewariya and thereafter, Ghewariya threw grenade at her husband and thereafter, Pratapsingh has inflicted a gun-shot injury on the head of her husband. She does not say that Lakhasingh inflicted any injury on the head of her husband. The explosive substance exploded and lot of smoke was created. On this, she reached the shop of Vensingh. On account of the smoke having subsided, she saw that her husband has been killed and her body has been put in the room of the shop of Vensingh, According to her, Premsingh had one bag on her shoulder. Whether it was empty or any thing was there, she does not know but she was definite that it was Pratapsingh who hit the head of her husband with gun fire.

20. When cross-examined, she has admitted that, although, she did not see the actual throwing of the grenades by Ghewariya but her attention towards the place of the occurrence was attracted when she heard the noise of explosion and saw the smoke. She then ran towards the place of the occurrence. She has stated that her husband had some enmity with them but she does not know what was that enmity. Thus, it comes out from her evidence that she saw the accused persons going towards the shops of Vensingh and thereafter, probably she became busy in filling water in her pitcher and as soon as the explosive substance exploded, she went to wards the shop of Vensingh. Thus, she certifies the presence of these accused persons as also explosion of the grenades and firing by Pratapsingh on the head of her husband. Vensingh has stated that this fire was made by accused Lakhasingh. After this, all the three accused-persons dragged Udaisingh inside the room of the shop. Although, in his earlier version in statement Ex. P-4 made

before the Police, Vensingh has stated that this fire on the head of deceased Udaisingh was made by accused Pratapsingh and not by accused Lakhasingh. Lakhasingh was standing outside with a gun in a firing position.

21. Thus, from the above evidence, it is clear that all the three accused-persons came together at the place of the occurrence with a common intention to kill Udaisingh and they were armed with weapons. Accused Pratapsingh and Lakhasingh were armed with guns and accused Ghewariya was armed with hand-grenades (explosive substance) and they attacked Udaisingh and killed him. The grenade was thrown at Udaisingh and it has exploded and has caused injuries to his arms and stomach. Udaisingh has also been hit by a gun fire on his occipital region. This fact is fully corroborated by the testimony of P. W. 1 Dr. M.L. Sharma, who found one lacerated wound of the size of 2 1/2 x 2 1/2- and more than 3' deep to brain matter on occipital region and brain matter was coming out. The edges of the wound were blumed up. There was a lacerated wound of the size of 8' x 6' from epigetric to umbilical and other parts of the stomach were coming out. They too were burnt. Even the liver was coming out of the wound. One splinter was recovered from this wound. There was also a lacerated wound of the size of 3' x 6' x 4' on the right forearm. One splinter was also recovered from this wound. Although, no pallet was recovered from the lacerated wound of the occipital region. According to the Doctor, the injured died on account of the injuries received on his head and stomach and both these injuries were sufficient in the ordinary course of nature to cause his death and he has received these injuries from a close range. The Doctor has proved the postmortem report Ex. P-3. According to him, all these injuries were ante mortem in nature.

22. Dr. M.L. Sharma has also examined the injuries of Roopa Gujar and he found three lacerated wounds on his person which were received by him within a period of 6 hours by some explosive object. He also found 7 abrasions on the person of Vensingh but they have been received by blunt object. Thus, the testimony of the witnesses is fully supported by the medical evidence and there fore, there is no reason to disbelieve the testimony of P.W. 2 Vensingh and P.W. 10 Mst. Pyari.

23. In this case, every effort has been made to examine the material witnesses. It is not a case of suppression of material witnesses and therefore, the decision of their Lordships of the Supreme Court in *Patel Naranbhai v. Dhulabhai*, : [1992]3SCR384 has no application to the facts of the present case.

24. Out of the eye-witnesses who have been examined two i.e. Vensingh and Smt. Pyari are sterling worth, although Roopa and Prabhulal have turned hostile for the reasons best known to them, may be on account of fear of the accused-persons but even, they support the fact that the occurrence took place at the shop of Vensingh and the death of Udaisingh was homicidal and it took place in the incident which took place in the broad day-light. The occurrence has taken place in the afternoon at 3 p.m. and, therefore, it cannot be said that it is a case of mistaken identity. It may be that Mst. Pyari has seen Premsingh along with a bag and has named her but Vensingh has categorically stated that he did not come to his shop and did not participate in the occurrence and therefore, if Vensingh has not supported the testimony of Mst. Pyari as regards the presence of Premsingh, it does not mean that the testimony of Mst. Pyari is not of sterling worth. It may be possible that she was standing on the hand pump and she might have seen Premsingh but he might not have gone to the shop of Vensingh because Vensingh has categorically stated that he did not come to his shop and therefore, it cannot be said that the witnesses have tried to falsely implicate anybody and, therefore, this evidence is not of sterling worth and, therefore, the decision of this Court in *Bhagwansingh v. State*, 1986 WLN (UC) 454 is of no avail so far as this case is concerned.

25. It is true that in this case, two guns have been recovered from the possession of accused Lakhasingh. P.W. 12 Ganeshdan has stated that accused Lakhasingh, while he was in custody, gave an information about the recovery of these two guns from the house of Durgasingh and they were recovered from the house of Durgasingh at the instance of accused-persons. Durgasingh (PW 9) and his brother Doongarsingh (PW 8) have been examined and they have stated that these guns have been recovered from the village Chowk and not from the house of Durgasingh. It is quite natural for Durgasingh and his brother to say that these guns were not given to Durgasingh by the accused persons and they were not

concealed by them. They at least, support this version of the prosecution that these two guns were recovered from Lakhasingh from his possession. It is true that these guns have not been sent for any ballastic examination and therefore, so far as the recovery of these two guns is concerned, this recovery does not connect the accused persons with the crime and to that extent, the decision in Bhagwansingh's case (supra) helps the case of the accused-persons.

26. Till the guns are sent for ballastic examination and a report is obtained that they are in working order, recovery of guns cannot connect the accused with the crime, and in this respect, we may place reliance on a Division Bench decision of this Court in Somsingh v. State, 1984 WLN (UC) 15.

27. It was argued by Mr. Patel that in the FIR, Ghewariya's name has not been mentioned by P.W. 2 Vensingh. Of course, he has identified Ghewariya in Court and he has stated that it was he who has thrown hand-grenade on Udaisingh and, therefore, when the accused has not been named in the FIR and has not been identified in the identification parade then his identification in Court carries little weight. In this respect, reliance has been placed on a decision of this Court in Somsingh's case (supra), wherein it has been held that if the name of the accused is not mentioned in the FIR, the omission is vital. The facts of that case are totally different from the facts of the present case. Here, P.W. 2 Vensingh has categorically stated that he did not know Ghewariya from before but he has stated that a man of short stature, aged 25 years was with the accused persons and he was armed with a hand-grenade and it was he, who has thrown this hand-grenade on Udai singh. He has, however, stated that the other accused-persons are known to him. He has stated that accused Lakhasingh and Pratapsingh came to his shop but Premsingh did not come to his shop. The only other man to whom he did not know was a man, who was armed with hand-grenade and it was Ghewariya whose name was disclosed to him by Mst. Pyari on that very day. Moreover, it is not a case where the accused has not been identified in the identification parade but the learned Magistrate has recorded that P.W. 2 Vensingh did not identify Ghewariya in the first round. Thus, this is not a case of total non-identification and, therefore, the importance of the identification made by Ven singh in Court cannot be minimised.

28. Keeping in view the facts of the present case, where all other accused-persons are known to the witness i.e. Vensingh and only this man was not known and for him, he has stated that a man of short stature aged about 25 years was holding grenade in his hands. He was later informed by Mst. Pyari that he was accused Ghewariya. He has been identified by him in Court as also in the identification parade and therefore, it cannot be said that it is a case of total non-identification of the accused Ghewariya. It is no body's case that accused Ghewariya is not a man of short stature aged about 25 years. Moreover, he has been seen coming to the place of occurrence by Mst. Pyari. Accused Ghewariya has been held guilty of the offence Under Section 5 of the Explosive Substances Act. He was found in possession of this explosive substance and has used it in the incident. Their Lordships of the Supreme Court have held in Mohd. Usman Mohd. Hussain v. State of Maharashtra, : 1981 CriLJ588 that in order to bring home, the offence under Section 5 of the Explosive Substances Act, the prosecution has to prove that the substance in question is explosive substance; that the accused makes or knowingly has in his possession or under his control any explosive substance; and that he does so under such circumstances as to give rise to a reasonable suspicion that he is not doing so for a lawful object. Here, all the witnesses except hostile witnesses have stated that explosive substance was used in the occurrence and its splinters and remains have been collected by the Investigating Officer, who has been examined as P.W. 11. He has prepared the recovery memo of the remains of explosive substance vide Ex. P-8, which has been proved by him as also by P.W. 3 Shan keralal. P.W. 2 Vensingh has categorically stated that the hand-grenade (explosive substance) was thrown on Udaisingh by accused Ghewariya. P.W. 10 Mst. Pyari has seen him carrying a hand grenade. P.W. 7 Roopa has stated that a grenade has been thrown at Udaisingh, may be by Pratapsingh. Thus, it is clear that accused Ghewariya was in possession of explosive substance for unlawful object and this explosive substance has been used in killing Udaisingh by throwing it on his person. It has also been categorically stated by P.W. 1 Dr. M.L. Sharma that injuries which have been caused to Udaisingh by explosive substance were sufficient in the ordinary course of nature to cause his death and, therefore, we are convinced that the learned Addl. Sessions Judge was perfectly justified in holding the accused-appellant

Ghewariya guilty of the offence under Section 302, IPC read with Section 5 of the Explosive Substances Act.

29. Accused-appellant Lakhasingh accompanied the accused-persons with an avowed object and common intention to kill Udaisingh. He participated in the occurrence in the sense that he came armed with a gun and accompanied the accused-persons to the shop of Vensingh. After Udaisingh was injured with hand-grenade by accused Ghewariya, he helped the accused party in dragging Udaisingh inside the room of the shop and then he left the place of the occurrence with the accused-party and there fore, he has rightly been held guilty of the offence Under Sections 302/34, IPC.

30. Accused-appellant Lakhasingh was in possession of unlicensed arms. P.W. 2 Ven-singh and P.W. 10 Mst. Pyari as also P.W. 6 Roopa Gujar have categorically stated that Lakhasingh was armed with gun. Lakhasingh has not disclosed this fact that he is having any licence of those arms. As per the statements of P.W. 8 Doongarsingh and P.W. 9 Durgasingh, these two arms have been recovered from his possession and he has no licence with him. He went to the place of the occurrence armed with a gun with an intention to use it if occasion so arose and, therefore, he has rightly been held guilty of the offences Under Sections 3/25 and 27 of the Arms Act.

31. The upshot of the above discussion is that the accused-appellant Lakhasingh and Ghewariya have been rightly held guilty of the offences under Sections 302/34, IPC and 3/25 and 27 of the Arms Act; and 302, IPC read with Section 5 of the Explosive Substances Act respectively and in the facts and circumstances of this case, the sentences awarded to them by the learned Addl. Sessions Judge do not appear to be excessive.

32. In the result, we find no force in these appeals and they are hereby dismissed.

33. Let the accused-appellants be informed accordingly through Jail authorities and record of this case be sent to the learned lower Court forthwith.