

Goverdhan Lal and anr. Vs. State

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Court : Rajasthan

Decided On : May-17-2004

Reported in : 2004CriLJ3966

Judge : Rajesh Balia and; K.K. Acharya, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 154; [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 304; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(2)

Appeal No. : Cri. Jail Appeal No. 288 of 2000

Appellant : Goverdhan Lal and anr.

Respondent : State

Advocate for Def. : K.R. Bishnoi, Public Prosecutor

Advocate for Pet/Ap. : Sanjeev Johari, Adv.

Judgement :

K.K. Acharya, J.

1. This jail appeal has been filed by the appellants against the judgment dated 8-6-2000 passed by Special Judge, SC/ST (Prevention of Atrocities Cases), Udaipur whereby the accused appellants Govardhan Lal and Chunni Lal were convicted for

the charges under Section 302 read with Section 34, I.P.C. and Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act (hereinafter referred to as the 'Act' only). For the charge under Section 302 read with Section 34, I.P.C., the Special Judge, Udaipur sentenced both the accused appellants to undergo life imprisonment and to pay fine Rs. 1,000/- and in default of payment of fine to further undergo R.I. for three months. The same sentence was passed against them for the offence under Section 3(2)(5) of the Act. Both the sentences were directed to be run concurrently.

2. The appeal was admitted on 3-8-2000 and notice was issued to the Public Prosecutor. Record of the lower Court was called for. Mr. Sanjeev Johri, learned counsel was appointed as amicus curiae to assist the Court.

3. The brief facts of the case are that on oral information lodged by one Manoharlal, a case under Section 302, I.P.C. was registered at Police Station Dabok on 28-5-1999. Manohar Lal has informed the Police orally that when he was sleeping in his house at about 11 p.m., his cousin Sohan Lal came to his house and informed him that Govardhan Lal and Chunni Lal have taken away his brother Shanti Lal towards the fodder shed. He rushed to that place. His father and brother Himmat also came there and they saw that Govardhan Lal and Chunni Lal were beating Shanti Lal. Then, they intervened and when they were returning to their house, Chunni Lal and Govardhan Lal again came there having sword and 'churi' (knife) in their hands respectively. They told that why you called their mother as 'Dakan'. After saying this, Chunnilal inflicted one blow over the right hand of Shanti Lal and Govardhan has given a stab wound with churi at the back of the chest of Shanti Lal and thereafter they ran away. Blood started oozing profusely and Shantilal became unconscious. Then the Police was informed through telephone. The Police arrived at the spot and Shantilal was shifted to hospital where he was declared dead. This statement was recorded on 28-5-1999 at 12.30 a.m. and F.I.R. was registered at 2.00 a.m. in the same night. Thereafter, investigation was conducted. The police inspected the site immediately. Postmortem was also done. Statement of witnesses were also recorded. Both the accused persons were arrested and police recovered the bloodstained sword as well as the 'churi' as per information of the accused. Soil as well as bloodstained

soil was taken from the spot. Cloths of the deceased were also taken. All these articles were sent to FSL for chemical examination. After investigation, charge-sheet was filed against the accused-appellants before the Court. Thereafter, the case was committed to the Special Judge, SC/ ST (Prevention of Atrocities Cases), Udaipur.

4. The Special Judge, Udaipur has framed the charges under Sections 302/34, I.P.C. and 3(2)(5) of the Act against the accused appellants. The accused appellants have not pleaded guilty and sought trial.

5. The prosecution has examined PW-1 Manoharlal, PW-2 Himmatlal, PW-3 Logarlal, PW-4 Smt. Prembai, PW-5 Chatra, PW-6 Moti, PW-7 Rooplal, PW-8 Arjunlal, PW-9 Mohanlal, PW-10 Lakki alias Liladhar, PW-11 Roshanlal, PW-12 Mangilal, PW-13 Laluram, PW-14 Sohanlal, PW-15 Dr. Tanvir Rijvi, PW-16 Udailal, PW-17 Man Singh, PW-18 Mujammal Husain, PW-19 Dr. G. L. Daad, PW-20 Dr. S. K. Bhatnagar, PW-21 Rajiv Joshi and PW-22 Hari Singh Rathore. Thereafter, accused were examined under Section 313, Cr. P. C. No evidence was led by the accused appellants. After hearing both the parties, the learned Special Judge, Udaipur held both the accused guilty for the charges under Sections 302/34, I.P.C. and Section 3(2)(5) of the Act and sentenced them as aforesaid against which this appeal has been filed.

6. Heard learned amicus curiae as well as learned Public Prosecutor and gone through the record of the case.

7. Learned amicus curiae has argued that lower Court has wrongly relied upon the evidence of eye-witnesses namely PW-1 Manoharlal PW-2 Himmatlal, PW-3 Logarlal, PW-4 Smt. Prembai and PW-14 Sohanlal because all these eye-witnesses are relative witnesses and no independent witness has been produced. Although, this occurrence has taken place in the abadi area and so many people were present in the nearby houses but no independent witness has been produced by the prosecution side. He has argued that PW-3 Logarlal is father of the deceased and PW-2 Himmatlal is brother of the deceased. PW-4 Smt. Prembai is sister in law of the deceased and PW-14 Sohanlal is also first cousin of the deceased. Learned amicus curiae has also argued that in fact Shantilal and

Sohanlal had quarrel and Sohanlal also received injuries in this quarrel. In fact, he has inflicted the injuries over the person of the deceased-Shantilal and the accused appellants have wrongly been implicated in this case. He has also brought to our notice some contradiction in the statement of prosecution witnesses. Learned amicus curiae has also argued that PW-1 Manohar Lal has stated that the injury was inflicted over the chest of deceased by Govardhan Lal but other witnesses have not stated that the injury was caused over the chest. He has also argued that the presence of all these witnesses is not natural, thus, their statements are not reliable. Learned amicus curiae has further argued that there was no motive and no enmity amongst the accused appellants and deceased. Therefore, learned amicus curiae has argued that no case under Section 302/34, I.P.C. is made out against the accused appellant. The evidence of eye-witnesses is also not reliable. Learned amicus curiae has further argued that as far as PW-14 Sohanlal does not reside in the locality and his presence at the time of occurrence is also doubtful. If, at all his presence at the time of occurrence is stated to be true but at the time of occurrence he was not present. In fact, there was fighting between PW14 Sohanlal and deceased. PW 14 Sohanlal has also received injuries over his person and he has also inflicted injuries over the body of the deceased. After that PW 14 Sohanlal ran away from the place of occurrence and the accused persons have wrongly been implicated in this case. Learned amicus curiae has also argued that on whose information the police has reached the place of occurrence is also not clear and evidence on this point is also contradictory. He has also argued that it is nobody's case that the deceased was beaten on the ground that he was a member of the scheduled caste, therefore, no offence under Section 3(2)(5) of the Act is also made out against the accused appellant.

8. Learned amicus curiae has also argued that the recovery of weapons cannot be believed and the lower Court has wrongly relied upon the evidence of recovery of weapons. He has drawn our attention to the statement of PW 13 Lalu Ram wherein he has stated that the sword and knife were recovered from open place. The police has first searched the house where nothing was recovered and from the second house also, nothing was recovered and while searching third house, these weapons were recovered and both these weapons were lying in the open place. It appears that the police has searched the houses and the recovery was

done. He has also argued that the recovery has been done on the next day of occurrence. The occurrence has taken place in between the night of 27-5-1999 and 28-5-1999 and this recovery has been done on 29-5-1999. Since, it is a joint house therefore, it cannot be said that this recovery was done on the information of the accused appellants. Thus, accused appellants cannot be connected with the crime on the ground of recovery of the weapons. In the alternative, learned amicus curiae has also argued that if this Court reaches to the conclusion that the accused appellants have inflicted any injury over the person of the deceased, then there was no motive or enmity amongst the accused appellants and deceased. This occurrence has taken place on the provocation given by the deceased by telling their mother as 'Dakan'. Sudden quarrel had taken place in the heat of passion and the accused appellants had no intention to cause death of the deceased because both the accused persons have inflicted single blows and they have not repeated any injury and after inflicting single blows over the person of the deceased they ran away. Thus, if any of the evidence is found to be true, the case of the accused appellants will not travel beyond offence under Section 304 Part-II, I.P.C. and no case under Section 302 I.P.C. is made out against the accused appellants.

9. Learned Public Prosecutor has supported the judgment of the lower Court and argued that the FIR was lodged immediately after occurrence in the same night. PW 1 Manoharlal, PW 2 Himmat Lal, PW 3 Logar and PW 14 Sohanlal are eye witnesses of the occurrence and they have specifically stated that the accused Chunnilal had sword and he had inflicted the sword injury on the right hand of the deceased and Govardhan Lal has inflicted knife injury at the back of the deceased and thereafter they ran away. Thus, their presence at the place of occurrence is not doubtful and the evidence has also been corroborated by the medical report, by the post mortem report as well as from the recovery of blood stained weapons. Their presence at the place of occurrence was very natural and the same cannot be discarded merely on the ground of relationship. PW 14 Sohanlal has informed them about the dispute and thereafter all these witnesses have gone towards the place of occurrence and they rescued Shantilal from the custody of the accused persons and when they were returning to their houses, both these accused persons have committed this offence. Therefore, the learned Special Judge has

rightly believed their evidence and no interference is required.

10. As far as recovery of weapons is concerned, learned Public Prosecutor has argued that investigating officer as well as the attesting witnesses of the recovery have supported the prosecution version. The recovered weapons and the blood stained soil taken from the spot by the Police have been sent for FSL. From the FSL report (Ex. P/23), it appears that human blood of group 'O' was found on Exs. 1, 5, 6, 7, 9 and 10. Learned Public Prosecutor has also argued that the presence of Sohanlal at the place of occurrence cannot be disputed as he has received injuries over his person. Learned Public Prosecutor has drawn our attention to the Post Mortem report (Ex. P/22), which shows that two incised wounds have been caused over the person of the deceased and cause of death was shock due to injury No. 2 which was inflicted at the back of the chest and over the right lungs. In reply to the alternative argument, the learned Public Prosecutor has supported the judgment of the Special Judge, Udaipur and stated that the Special Judge has held that the injury which was caused at the back of chest, has injured the lungs and the same was sufficient in ordinary course of nature to cause death. Thus, it was prayed that this is not a case which will travel under Section 304 Part-II IPC.

11. As far as lodging of FIR is concerned, learned Special Judge has dealt with this argument and has held that PW 18 Mujjafar Hussain has stated in his statement that he was posted as SHO, Police Station Dabok on 27-5-1999 and he received a telephonic message from Nahara Magra that some fighting is going on near fodder house of Nahara Magra and the informant has not given his name. He reached at the spot between 11 to 11.30 pm where he saw Shantilal. Blood was oozing out from his body and family members of Shantilal viz. Logar, Himmatlal, Sohanlal and Manoharlal were present there. Shantilal was unconscious and they taken him to the hospital. Thereafter, Manoharlal has lodged oral report, which is Ex. P/1. From the statement of PW18, it is clear that first information report was given by Manoharlal i.e. Ex. P1 there was only telephonic message by a stranger, who has not named himself and he has only informed that fighting is going on in the Nahra Magra area. Therefore, non production of any document regarding the telephonic message is not at all material in this case and even it was not registered by PW 18. Since, he received the telephonic message, he rushed to the

place of occurrence. PW 1 Manoharlal has also clearly stated that he has telephoned the police and on his information Police came on the spot. After that, he has given information i.e. Ex. P1. Therefore, mere a telephonic message to the police, informing about any fighting cannot be treated as FIR. Normally a telephonic message is given to the police so that it may reach to the spot immediately. The first argument of learned amicus curiae cannot be sustained.

12. Now, we will take up the evidence of eye witnesses. Although, all the eye witnesses are relative and it is well settled position of law that mere relationship cannot be a ground to discard the testimony of witnesses. Although it has been held in some of the cases that the statements of relative eye witnesses should be read closely. Now, we would like to appreciate the evidence of the eye-witnesses. PW 1 Manoharlal has stated in his statement, recorded on 31-8-1999 that Shantilal was his real brother and in the fifth month of this year at about 9-9.30 pm he was sleeping in his house, his cousin Sohanlal came there and informed him that Chunnilal and Govardhan Lal has taken away his brother. Himmatlal's wife was also present at that time. He has also identified Chunnilal and Govardhanlal in the Court. He has also stated that when he went to the house of accused persons, they were beating Shantilal and he rescued his brother. One of his cousin was also with him and when they were coming back, Chunnilal and Govardhan Lal came there and said that why you called my mother 'Dakan'. Chunnilal had sword in his hand. He inflicted one blow over the hand of deceased and Govardhanlal had knife in his hand and he inflicted knife injury over the chest of deceased. Blood was also oozing out from the body of deceased. Someone has informed police and then police came on the spot and took Shantilal to the hospital and the FIR was lodged with the police.

13. We have also gone through the cross-examination conducted by the accused appellants. PW 1 has also admitted that Sohanlal has also received injuries but he ran away from the spot before arrival of the police. The presence of Sohanlal was not mentioned in Ex. P1 and also in police statement Ex. D1. He has stated that one injury was inflicted over the chest. This fact was also not mentioned in Ex. D1. This witness has stated that injury was caused over the chest but in Ex. P1 as well as in his police statement, external injury was found over the back of the chest and

this part of the Statement of witness cannot be believed that Govardhan Lal has inflicted injury over the chest of the deceased. It was dark night and injury was inflicted suddenly by the accused and blood was oozing out from the body, therefore, this possibility cannot be ruled out that he might not have seen on which part of the body Govardhan Lal has inflicted injury over the person of deceased but only from this count his whole statement cannot be disbelieved. He reached on the spot along with Sohanlal, Himmatlal, Logar and all of them have seen this occurrence, therefore, his presence at the time of occurrence cannot be doubted but his statement that Govardhanlal has inflicted injury over the chest cannot be believed, on this count alone. From medical evidence also this fact has not been corroborated that there was any external injury over the chest of the deceased. From post mortem report also, injury No. 2 was found on back of the chest i.e. 3 cm below from inferior angle of scapula. Since, this witness has given the wrong statement, which is also contradictory from Ex. P1 and Ex. D1 and is also not corroborated by the Medical evidence, His whole statement cannot be disbelieved. It is settled position that if one witness is telling something lie his whole statement cannot be discarded. He has also stated in cross-examination that the report was lodged by his father but he has also admitted in Ex. P1 that he has signed the report. There are some contradiction in his statement but he has stated that he is not a well educated man and belongs to rural community. Thus, minor contradictions cannot lead to infer that whole of his statement should be discarded. From the statement of PW 1, it is clear that the accused persons came when they were returning to their houses after rescuing Shantilal, suddenly Chunnilal inflicted one sword blow over the hand of deceased and one knife blow was also inflicted by Govardhan Lal but it was not inflicted over the chest but in fact it was inflicted over the back of his chest.

14. PW 2 Himmatlal is also brother of Shantilal. He has deposed that this occurrence took place on 27-5-1999 at about 1,1.00 pm. He had been at his residence. His wife Prem Bai has gone for bringing water from hand-pump and Shantilal was also accompanying his wife. Sohanlal came to their village to meet his mother as she was sick. Sohanlal came to him in the night and told that Govardhanlal and Chunnilal have taken away Shantilal towards fodder house then he along with his father Logarlal and brother Manoharlal went towards the house

of accused persons, Manoharlal has gone there prior to them and he went with fast speed. He and his father reached on the spot slowly because one leg of his father was in bad shape. They saw that Chunnilal and Govardhan Lal were beating Shantilal. Then they rescued Shantilal. They were fighting as 'Dakan' was said to the mother of Chunnilal and Govardhanlal. When they were returning to their houses, Chunnilal and Govardhanlal came with Sword and knife. Govardhan Lal inflicted one knife injury over the back of chest and Chunnilal also inflicted one sword injury over the hand. Shantilal fell down. Both the accused persons also inflicted injuries over the person of Sohanlal and he also received three injuries. Thereafter, Police came on the spot and Shantilal was taken to the hospital. This witness has been cross-examined by the counsel for the accused persons. He has also admitted that accused appellants have inflicted injuries coming behind him but he has seen them Inflicting these injuries. They tried to intervene and also searched some stones but they could not find stones. Other people were also there and they were watching the occurrence but none came there. He has also admitted that it was dark night and Sohanlal has not run away from the spot. While perusing the whole statement of this witness, his presence cannot be disbelieved. He is relative of deceased and he has reached on the spot and while returning back he has seen the occurrence. Although there are some minor contradictions in his statement but they are not material.

15. PW 3 Logarlal is the father of deceased, who has also stated the same story. He has stated that he has only one leg and because of this reason he reached on the spot slowly. Manpharlal, Sohanlal and Himmatlal reached on the spot early. When he reached on the spot, he saw that Chunnilal, Govardhan Lal and Shantilal were fighting there. They intervened and when they were returning to their houses, Chunnilal and Govardhan Lal came there with sword and knife in their hands. Govardhanlal has inflicted knife injury and Chunnilal has inflicted sword injury over the person of Shantilal and thereafter they ran away from the spot. After that police came on the spot and they took Shantilal to the hospital. Shantilal succumbed on the spot. PW 3 Logarlal has also been cross-examined by the counsel for the accused appellants. He has also admitted that it was dark night there were other houses, other persons also reside near the place of occurrence but none came on the spot but he admitted that since police came on the spot they informed the

police regarding the occurrence. He has also admitted that Shantilal went with Prem Bai to hand-pump for fetching the water in the night. Prem Bai informed Sohanlal that accused Goverdhan Lal and Chunnilal have taken away Shantilal towards their house then Sohanlal informed them. He has also admitted that there is no enmity amongst him, Govardhanlal and Chunnilal. He has not admitted that Shantilal have inflicted these injuries over the person of Shantilal.

16. PW14 Sohanlal is also eye witness. He has deposed in his statement that on 27-5-1999 at 10.30 to 11.00 pm, this occurrence took place when he was going towards the house of his aunt at that time his sister in law Prem Bai was taking water from the hand-pump. She told that Shantilal, Chunnilal and Goverdhan Lal are fighting. Chunnilal and Goverdhan Lal had taken away Shantilal towards fodder house. Prem Bai has also told him that he should go to the house and ask the persons lest they may not fight. Then, he went to house of his aunt and informed Himmat Lal, Manhor and Logar. Manhor Lal immediately rushed to the spot and Himmat Lal also started from their house with him. When they reached near the fodder house, they saw that Shantilal, Chunnilal and Goverdhan Lal were fighting there. Then they rescued them and when they were returning Chunnilal and Goverdhan Lal came there running from behind Chunnilal had sword in his hand and he has inflicted sword injury over the hand of Shantilal. Goverdhan Lal had knife in his hand and he has inflicted one knife injury over the back of Shantilal. When he intervened, Govardhanlal has inflicted four knife injuries over his person. He has also identified accused persons in the Court. With this fear that accused may not give any more beating he ran away from the spot and he went to his house at Laxmanpura. In the morning he heard that Shantilal was murdered. Then he went to the Police Station Dabok and his injuries were also seen by Doctor. He has also given his T-shirt to Police i.e. Ex.-P/7. He was also admitted in the hospital and was discharged from hospital on 8-6-99. In cross-examination he has admitted that his village Laxmanpura is 15 to 18 Km. away from village Nahar Magra. He has been cross-examined thoroughly by the counsel for the accused but they could not establish that he has inflicted any injury over the person of deceased. He has not been shaken in cross-examination regarding the actual occurrence and infliction of injuries by accused persons over the person of Shantilal.

17. Now we would like to take up the corroborative evidence. PW-4 Prem Bai has also stated that the name of her brother-in-law is Shantilal. Three months back she went to fetch water from the hand-pump and at about 9.00 P.M. Goverdhan Lal and Chunnilal both came there and took away Shantilal with them. Shantilal came with her from the house to fetch water from the hand-pump. Goverdhan Lal and Chunnilal have taken away Shantilal towards the fodder house. They were saying at that time that why he has called their mother 'Dakan'. His relative Sohan Lal also came there to meet her mother-in-law as she was sick. Sohanlal came towards the hand-pump then she asked Sohanlal to go to the house and tell to her mother-in-law that Chunnilal and Goverdhan Lal have taken away Shantilal towards their house. She has also stated that Sohanlal has met all of her family members at her house. Then all of them went towards the fodder house. Thereafter she was informed that fighting has taken place towards the fodder house. She has been cross-examined thoroughly by the counsel for the accused but she has not been shaken in her cross-examination.

18. PW-5 Chatra has not seen occurrence but he has stated in his statement that when he was sleeping in the house he heard the voices that Chunnilal and Goverdhan. Lal has killed Shantilal and identified their voices. He also corroborates that some occurrence took place in the vicinity of his house. The same statement has been given by PW-6 Moti. PW-6 Moti has also stated that he has not seen the occurrence but heard the voices of Chunnilal and Goverdhan Lal and identified their voices but he did not come out from his house.

19. From the perusal of evidence of eyewitnesses namely PW-1 Manohar Lal, PW-2 Himatlal, PW-3 Logar Lal and PW-14 Sohanlal, it is clear that this occurrence took place in the night and Chunnilal inflicted one sword injury over the hand of Shantilal and Goverdhan Lal had inflicted one knife injury over the back of Shantilal. They have also inflicted injuries over the person of Sohanlal but this charge has not been framed against these accused persons. The presence of Sohanlal cannot be denied at the place of occurrence. Their statements are being corroborated by each other and they also corroborate FIR. Merely they are relative witnesses, their statements cannot be discarded. They reached on the spot on the information of Sohanlal. From the evidence of PW-20 Dr. Suresh Kumar

Bhatnagar, who has proved the postmortem report (Ex.-P22) of Shantilal, it is clear that two injuries were found over the person of Shantilal. One incised wound was found over the right hand of deceased Shantilal and second injury was found over the back of the chest. The cause of death was injury No. 2 which has damaged the lungs. Two external injuries have also been corroborated by the medical evidence. There is no force in the arguments of learned amicus curiae that the evidence of eye witnesses cannot be believed on the ground of relationship. He has shown contradictions in the statements of eye witnesses but we have already discussed their evidence hereinabove. Although there are minor contradictions but they seems to be natural one. When these persons reached on the spot they saw the occurrence from different angles and from the different time. When all of them were returning accused persons came from the back of these persons and suddenly caused injuries over the person of Shantilal. It was dark night but they could see the accused persons in the night and they have also identified both the accused persons in the Court and evidence of these witnesses is being corroborated by the medical evidence and also by the evidences of PW-4 Prem Bai, PW-5 Chatra and PW-6 Moti. The argument of learned amicus curiae that Sohanlal has inflicted injuries over the person of Shantilal and he run away from the spot cannot be believed. There is no reason to believe as to why Sohanlal will inflict injuries over the person of Shantilal. They are close relative and there was no enmity between them. Sohanlal has received injuries and he has categorically stated that these injuries were caused by accused Goverdhanlal by knife which has been corroborated from the medical evidence. PW-19 Dr. G. L. Dad has examined Sohanlal and he has found three injuries over his person, caused by sharp aged weapon. This defence of accused cannot be believed that they have wrongly being implicated in this case. Lower Court has rightly reached to the conclusion that Chunnilal and Goverdhan Lal has inflicted sword and knife injury over the person of Shantilal in furtherance of the common intention and injury caused by Goverdhan Lal over the back of chest was fatal injury which damaged the lungs and Shantilal died due to this injury. From the record it is proved that Goverdhan Lal and Chunnilal has inflicted single blows over the person of Shantilal in furtherance of common intention and Shantilal died due to injury No. 2 which was over the back of the chest.

20. As regards recovery of articles, we have considered the arguments of learned amicus curiae and learned Public Prosecutor and gone through the evidence, Ex.-P/11 is the memo of recovery of Churi and Ex-P/12 is memo of recovery of sword. Investigating Officer PW-18 Muzamal Hussain Khan has proved the information given by the accused persons under Section 27 of the Evidence Act. He has also proved arrest memos of accused persons i.e. Ex-P18 and Ex.-P19. He has also proved the recoveries of Churl and Talwari, e. Ex.-P11 and Ex.-P12 and the site inspection plan of recovery Ex.-P13. Investigating Officer has also proved Ex.-P2 site inspection plan of occurrence. He has also taken blood stained soil from the spot i.e. Ex.-P4. He has recovered one Rumal and also the cloths of the deceased as well as of Sohanlal vide Ex.-P5 to Ex. P7. The witnesses of recoveries of weapons PW-12 Mangilal and PW-13 Lalu Ram has fully proved the recovery at the instance of accused persons. This recovery has been done from the house of accused persons and they were sealed on the spot. From prosecution evidence, Investigating Officer as well as linked evidence has been proved. These articles were sent for FSL examination and FSL report was received i.e. Ex.-P23. Article 4 blood smeared soil, Article 5 Rumal, article 6 Pant, Article 7 Shirt, Article 9 Churi and Article 10 Talwar were found to be of blood group 'O'. From FSL report it is clear that the blood found over the Churi and Talwar, blood taken from the spot and blood found on the cloths of deceased were of same blood group. Therefore, this fact also corroborates the evidence of eye-witnesses. The argument advanced by learned amicus curiae regarding recovery of sword and Churi has no force. The factum of recoveries from the possession of the accused persons cannot be disbelieved. The statement of PW-16 Udai Nath, PW-17 Man Singh and the statement of Investigating Officer and evidence of PW-22 proved the complete link evidence.

21. From the above discussions we do not find any substance in the arguments of learned amicus curiae that the accused appellants have wrongly been implicated in this case. From the evidence, it is clearly established that in furtherance of common intention the accused persons have inflicted injuries over the person of deceased Shantilal.

22. Now we shall come to the other argument of learned amicus curiae regarding charge under Section 3(2)(5) of the Act. We have considered the rival argument and gone through the entire evidence. There is nothing on record that the accused persons have inflicted these injuries over the person of deceased Shantilal on the ground that he belongs to scheduled caste.

23. The legal position in this regard has been settled by catena of judgments of Apex Court as well as of our own High Court that accused cannot be convicted under Section 3(2)(5) of the Act unless it is proved that the deceased was murdered on the ground that he belongs to scheduled caste and scheduled tribe. Since no evidence has been led by the prosecution on this point, the learned trial Court has wrongly convicted these accused persons for charge under Section 3(2)(5) of the Act.

24. Section 3(2)(5) of the Act provides that whoever not being a member of a Scheduled Caste or Scheduled Tribe, commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe, shall be punishable with imprisonment for life and with fine. To attract the provisions of Section 3(2)(5) of the Act, intention part too is relevant. Where accused was not aware of the fact that victim belongs to Scheduled Caste, he cannot be convicted under the Act. Where there are no circumstances of show that accused committed such offence on the victim on the ground that he was of Scheduled Caste and Scheduled Tribe, conviction under Section 3(2)(5) is not sustainable. The prosecution before requesting the Court to record conviction, should be able to satisfy the ingredients under Section 3(2)(5) of the Act. Where offence is committed against victim not because he is a member of SC/ST but for other reasons or without knowledge about the caste of victim, provisions under Section 3(2)(5) could not be attracted. Therefore, the trial Court has not at all given any consideration to these provision and wrongly convicted the accused appellants under Section 3(2)(5) of the Act. We set aside the conviction and sentence passed against the accused-appellants for the charge under Section 3(2)(5) of the Act.

25. Now the question remains as to what offence the accused persons have committed. Whether accused persons have committed culpable homicide amounting to murder or not. Learned counsel amicus curiae has argued that there was no previous enmity between the accused persons and deceased. This occurrence took place on sudden provocation given by the deceased as he told the mother of the accused persons as 'Dakan'. On this they fought each other. It is admitted from the prosecution evidence that both the accused persons as well as deceased were fighting with each other and they were rescued by the eye-witnesses and when they were returning accused persons after provocation has inflicted only single blows over the person of deceased. One blow was given on the hand and this was not on the vital part of the body or other blow was given over the back of the chest. Therefore, learned amicus curiae argued that there was no intention to cause death and accused persons were not intending to cause any particular injury which will be sufficient in ordinary course of nature to cause death. He argued that only knowledge can be attributed that accused persons might have knowledge that this blow is likely to cause death of the deceased. He has inflicted only one blow over the back of the chest which has damaged lungs, therefore, only knowledge can be attributed to the accused. Accused persons have not repeated any blows after inflicting one blow. Both the accused persons ran away from the place of occurrence. Thus, learned amicus curiae argued that only charge under Section 304 Part-II I.P.C. is proved against the accused appellants and charge under Section 302 I.P.C. is not proved. Accused persons have not committed the offence of culpable homicide amounting to murder. Learned Public Prosecutor has argued that trial Court has rightly held these accused persons guilty under Section 302 I.P.C., since accused persons have inflicted fatal blow over the back of the chest which was sufficient in the ordinary course of nature to cause death. The accused persons have intentionally inflicted these injuries therefore, there was clear intention to cause death therefore, the charge under Section 302 I.P.C. is clearly proved and the trial Court has rightly held these accused persons guilty for offence under Section 302/34 I.P.C. Therefore, no interference is called for.

26. We have considered the rival arguments and gone through the record of the case. It is admitted position from the prosecution side that the eye witnesses have

clearly admitted that there was no enmity between the accused persons and deceased. It has been admitted by the eye-witness PW-3 Logar Lal, who is the father of the deceased that there was no enmity between the accused persons and the deceased and his family. The origin of the occurrence has not been stated by the eye witness PW-4 Prem Bai who was present over the hand-pump. Accused persons came on the hand-pump and they took away the Shantilal towards the fodder house. They were saying that why he tells their mother as 'Dakan' (a bad spirit). The genesis of the occurrence has been narrated by PW-4 Prem Bai. Thereafter, she was not present at the place of occurrence. Eye witnesses were not present when Shantilal was taken away towards the fodder house by the accused persons. Prem Bai informed PW-14 Sohanlal regarding the factum of Shantilal being taken away towards fodder house and asked him to inform at the house of deceased. PW-1 Manohar Lal, PW-2 Himmat Lal, PW-3 Logar Lal and PW-14 Sohanlal reached on the spot and saw that deceased and accused persons were fighting with each other. They rescued Shantilal. Thereafter, each accused persons have inflicted single blows over the person of Shantilal. One sword blow was inflicted over the hand by Chunnilal and another knife blow was inflicted by Goverdhan Lal over the back of the chest of deceased. The accused persons have been given provocation by the deceased by saying their mother as 'Dakan' and when all of three were fighting with each other as the eye witnesses tried to rescue and when they were returning these injuries were inflicted by the accused persons over the person of deceased. It was sudden fight on provocation which was given by deceased to the accused persons. This case clearly falls under Exception 1 and Exception 4 of Section 300 I.P.C. On provocation which was given by the deceased himself while telling the mother of accused persons as 'Dakan'. No son will bear these words for his mother and this provocation persisted between the accused persons and deceased till the occurrence. Eye witnesses came on the spot and rescued Shantilal. There was no previous enmity and premeditation and under the heat of passion, this sudden quarrel has taken place without the accused persons having taken undue advantage or acted in a cruel or unusual manner. They have inflicted only single blows and no repetition was done.

27. From the facts and circumstances of the case, we are satisfied that this case does not travel under Section 302 IPC but only single injuries have been caused by both the accused appellants. On provocation this sudden quarrel took place between the accused persons and deceased as deceased was saying provocative words to the accused persons that their mother is 'Dakan' and on this provocation this quarrel has taken place and under the heat of passion and without having taken undue advantage, they have caused only single blows. Thus, it is clear that accused appellants have committed the offence which is culpable homicide, not amounting to murder. While perusing the post-mortem report, only single blow has been caused over the back of the chest of deceased by accused Govardhan Lal. There was no intention to cause a particular injury over the lungs, therefore, only knowledge can be attributed that this injury may cause death. Thus, the offence committed by the accused appellants will not travel beyond Section 304 Part II IPC.

28. From the above discussions, we hold that accused appellants have wrongly been convicted and sentenced for charges under Section 302 read with Section 34 IPC and under Section 3(2)(5) of the Act. Accordingly, we set aside the conviction and sentence passed against the accused appellants and acquit them for the aforesaid charges but we hold accused appellants guilty for lesser offence. Instead of Section 302 read with Section 34 IPC, we hold both the accused appellants guilty under Section 304 Part II read with Section 34 IPC. The appeal is partly allowed and conviction and sentence under Section 302 read with Section 34 IPC and Section 3(2)(5) of the Act is set aside and we find both the accused appellants viz. Govardhan Lal and Chunni Lal guilty for charge under Section 304 Part II r/w Sec. 34 of IPC. We sentence both the accused appellants to undergo five years RI with fine of Rs. 1,000/- each and in default of payment of fine, further to undergo three months RI.