

Pooran Ram and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-27-1990

Reported in : 1990(2)WLN502

Judge : Kanta Bhatnagar and; Yad Ram Meena, JJ.

Appeal No. : D.B. Criminal Appeal No. 65 of 1984

Appellant : Pooran Ram and ors.

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. Doonger Singh

Judgement :

Kanta Bhatnagar, J.

1. The appellants were tried by the Sessions Judge, Churu for the charges Under Sections 147, 302 read with 149, 325, 323 read with 149 I.P.C. vide judgment dated February 3, 1984, the learned Sessions Judge held them all guilty and convicted them Under Sections 147, 302 read with 149, 325 read with 149 and 323 I.P.C. and sentenced them of one years Rule I. Under Section 147 I.P.C. imprisonment for life and a fine of Rs.1000/-, in default of payment of fine to undergo six months R.I. each under I Section 302 read with 149 I.P.C. there years R.I. and a fine of Rs. 500/- in default of payment of fine to undergo three months

Rule I. Under Section 325 read with 149 I.P.C. and six months Rule I. Under Section 323 I.P.C. with an order that all the substantive sentences shall run concurrently

2. Feeling aggrieved by their conviction and sentences the appellants have preferred this appeal in this court.

3. Succinctly narrated the facts of the case giving rise to the trial and conviction of the appellants and the present appeal are that on August 24, 1983 Kamli (P.W. 12) was sitting at her house at village Santyu along with her daughter Santosh (PW 13). Her son Ram Swroop @ Sarup Ram was taking food there at the time. Pooran Ram appellant inflicted a lathi blow to the street dog, at which Ram Swaroop asked him as to why had he given a beating to his tamed dog. Pooran Ram hurled abuses and went away. After his going from there Ram Swaroop went to call Sarpanch Mala Singh (PW 4). Kamli and Santosh also accompanied him. when Ram Swaroop reached near the house of Ladhu Ram appellants Bhagwana Ram, Pooran Ram, Mohan, Sugna Ram, Shishupal and Udmi Ram went there. Bhagwana Ram inflicted lathi blow on the head of Ram Swroop. Then Udmi Ram inflicted lathi blow On his head. Ram Swaroop fell down, then Pooran Ram inflicted blow on the left eye of Ram Swaroop. Thereafter all the appellants gave a beating to him. In order to rescue him Kamli and Santosh (PW s 12 and 13 respectively) fell on Ram Swaroop. Udmi Ram gave a beating to Kamli also on the two ladies raising a cry Change Ram (P.W. 1), Pooran Ram (P.W. 2) and Banwari Das (P. W.3) reached the site and rescued them. The assailants went away from there. Santosh called her brother Mohan from the 'bada' near the house Mohan called Sarpanch Mala Singh (P.W. 4) and reached the site where Ram Swaroop was lying unconscious. Mala Singh telephonically informed Police Station, Tara Nagar and asked the Constable to send the Jeep. After half an hour a Jeep came from Tara Nagar in which Mala Singh and Change Ram took the injured to Churu Hospital. All the three injured were admitted there. On receiving information from the Doctor, A.S.I. Sohan Lal of Police Station, Churu reached the hospital at 8.00 A.M. on August 25, 1983. He recorded the statement of Kamli and sent the statement to Police Station, Tara Nagar where at 9.00 A.M. case against the accused was registered Under Sections 147, 148, 149, 302, 325, 323/34 and 448

I.P.C. Dr. S. L. Soni (P.W. 10), Medical Jurist, Government Hospital, Churu examined the injuries of Ram Swaroop and noted following injuries on his person:

1. Extensive echhymosis of the upper of lower lids of left eye.
2. Extensive diffused swelling on the left temporal region.
3. Lacerated wound 3'x3'x bone deep on the left parietal region with diffused swelling all around it.
4. Lacerated wound 1'xV8'x bone deep on the left parietal region with diffused swelling all around it.
5. Multiple contusions of different shapes and sizes on the left shoulder with diffused swelling all over it.
6. Abrasion 1/4'x112' on the left clavicle.
7. Contusion 4' x 1' horizontally placed on the left thigh, anteriorly.
8. Contusion 6' x 1' on the lateral aspect of left thigh.
9. Contusion 6' x 1' on the lateral aspect of right mid chest.
10. Contusion 4' x 1' on the right mid dorsal region.
11. Two abrasions each 1/4' x 1/2' on the right lower dorsal region.

4. All the injuries according to the Doctor were simple in nature and caused by blunt weapon within a twelve hours from the medical examination. The patient was semi conscious. The injury report is Ex.P/14

5. On the same day Dr. Soni examined the injuries of Kamli and noted following injuries on her person.

1. Contusion 2'x 1' on the middle of the dorsal aspect of left forearm with fractures of bone below it.
2. Contusion 4' x 1" on the right shoulder.

3. Contusion 4' x 1" on the upper front of the back of left thigh.

4. Contusion 5 1/4' x 3' on the lower part of the lateral aspect of left side of chest with an abrasion 1' x 1/4' in size on it.

6. According to the Doctor injury No. 1 was grievous as per X ray report Ex.P/12 and the remaining injuries were simple and caused by blunt object within a period of twelve hours from the medical examination. The injury report is Ex.P/15.

7. Dr. Soni also examined the injuries of Santosh and following injuries on her person:

1. Lacerated wound 1' x 1/8' bone deep on the right parietal region.

2. Lacerated wound 3' x 1/3' x bone deep on the left parietal region.

3. Diffused swelling on the dorsum of left hand.

4. Lacerated wound 1/4' x 1/8' x 1/8' on the web between the left index and middle fingers.

5. Lacerated wound 1/2' x 1/16' x 1/16' on the proximal phalanx of left index finger.

6. Abrasion 1/4' x 1/8' on the vertical aspect of phalanx of left index finger

7. Abrasion 1/8' x 1/8' on the pulp of the left Index finger.

8. Linear scratch 1/4' Long on the right wrist.

8. According to the Doctor all the injuries were simple and caused by blunt object within a period of twelve hours from the medical examination. The injury report is Ex.P/16.

9. Ram Swaroop while admitted in the Hospital expired at 5.45 P.M. on August 27, 1983. Dr. B.L. Soni conducted autopsy over the dead body of Ram Swaroop on August 28, 1983 at 9.45 A.M. and noted following external injuries.:

1. Stitched wound 3' long on the left parietal region.

2. Stitched wound of 'long on the left parietal region 1.5' Internal to the injury No. 1.
3. Extensive ecchymosis of the upper and lower lids of left eye.
4. Ecchymosis of the upper and lower lids of right eye.
5. Multiple irregular contusions of different shapes and sizes on the left shoulder with diffused swelling all around.
6. Extensive diffused swelling all over the left temporal region and left side of the face.
7. Partially healed abrasion 0.5' x 0.25' on the left clavicle.
8. Partially healed abrasion 0.5 ' x 0.25' on the lower part of the left leg anteriorly.
9. Horizontal contusion 4' x1" on the left thigh anteriorly.
10. Contusion 6' x 1' on the lateral aspect of left thigh.
11. Two abrasions, partially healed, each 0.25' x 0.5' on the right lower dorsal region near the spines.
12. Contusion 6' x 1' on the lateral aspect of right side of chest.

10. According to the doctor all the injuries were antemortem in nature caused by blunt weapon. Injuries No. 1 and 2 were greivous and the rest simple. The Doctor noted fracture on the left parietal bone and extensive extra-dural haematoma on the left parietal and temporal region. In the opinion of the Doctor the cause of death was extensive extra-dural haematoma on the left parietal and temporal regions due to fracture of left parietal bone caused by external injuries. The injuries No. 1 and 2 in particular and all injuries together were sufficient in the ordinary course of nature to cause death. The post-mortem report is Ex. P/17.

11. On August 25,1983 Station House Officer Bhanwar Lal (P.W. 16) of Police Station Tara Nagar, on finding a case registered by A.S.I. Govind Ram (P.W. 6), took charge of the investigation and went to Church hospital. He sent Govind Ram to the site. Govind Ram inspected the site and prepared the site plan Ex.P/4 and

site inspection Memo Ex.P/4-A. He took the blood soil and the control soil from the site.

12. On August 27,1983 Bhanwar Lal S.H.O.(P.W. 12) received the information of the death of Ram Swaroop. He went to the hospital on August 28,1983 and prepared the inquest report Ex.P/22 and Panchayatnama of the dead body Ex. 23. The case Under Section 307 therefore, was converted Under Section 302 I.P.C. The S.H.O. seized the blood soaked clothes of Ram Swaroop in possession. The S.H.O. arrested Mohan Ram, Sugna Ram, Shishupal and Pooran Ram and two others Asha Ram and Shrawan Kumar (since acquitted by the trial Court) on August 29, 1983. On August 31,1983 those arrested accused furnished information for getting recovered lathi. In pursuance of their information lathies were recovered by the S.H.O. On September 1983 Bhagwana Ram and Udmi Ram were arrested. They are said to have furnished information for getting recovered lathies and in pursuance of their information lathies were recovered.

13. Upon completion of necessary investigation charge sheet against six appellants and Asha Ram and Shrawan Kumar was filed in the Court of Munsif and Judicial Magistrate, Rajgarh. The learned Magistrate committed the case to the Court of Sessions Judge, Churu. The learned Judge charge sheeted the appellants as stated earlier and recorded their pleas. All of them denied the indictment and claimed to be tried. In order to substantiate its case prosecution examined sixteen witnesses in all. The learned trial Judge did not find the case against Asha Ram and Sharwan Kumar proved and acquitted them of the charges. The case against the present appellants was however held to be established and the judgment under appeal was passed and they were convicted and sentenced vide judgment under appeal.

14. We heard Mr. Doonger Singh, learned Counsel for the appellants and Mr.Kanti Lal Jasmatiya learned Public Prosecutor for the State.

15. The learned Counsel for the appellants has assailed the finding of the learned trial Judge on a number of grounds. It has been contended that Asha Ram and Sharwan Kumar have been acquitted by the trial court which shows that either there was no evidence against them and they were falsely involved in the matter

or they were really the assailants and in order to move them others have been falsely involved in the matter in order to bring the case within the ambit of Section 147. I.P.C.

16. The learned Counsel for the appellants contended that origin of the quarrel has not been brought on record because it is not believable that on a trivial matter of Pooran Ram inflicting lathi blow to the dog and on hot altercation between him and Ram Swaroop so many persons would assemble in the late hour of the night and give beating to Ram Swaroop especially so when those people could not have known that Ram Swaroop would pass that way at that time.

17. Another challenged to the finding of the learned Judge by the learned Counsel is that according to Kamli (P.W. 12) and Santosh (P.W. 13), Chandgi Ram (P.W. 1) had reached the site on their raising cries and Pooran Ram and Banwari Das are said to have reached there still later and therefore none of these three witnesses could have seen the start of the quarrel. That Kamli and Santosh might not have accompanied Ram Swaroop at the nighttime and even if it was so as evident from their statements they were quite at a distance. There the statements are discrepant from their version before the Police.

18. It has been vehemently argued by the learned Counsel that the appellants residing in different houses could not have made up their mind to assemble at the road to give a beating to Ram Swaroop because, as the prosecution case is, there immediately after Pooran Ram leaving the place where he had inflicted danda blow to the Dog. Ram Swaroop left his meals half way and proceeded to sarpanch Mala Singh (P.W. 4). As such the learned Counsel contended the presence of eight persons at the site according to the prosecution two out of whom have been acquitted by the trial Court is an exaggerate version in order to make it a case of unlawful assembly so that persons against whom there is no specific allegation of any act may also be convicted with the help of Section 149 I.P.C.

19. The learned Public Prosecutor controverted these contentions and submitted that even if Chandgi Ram (P.W. 1), Banwari Das (P.W. 3) and Pooran Ram (P.W. 2) witnesses might not have been there at the start of the beating still they had reached the site on hearing the cries of Kamli and Santosh and therefore, their

evidence regarding the presence of the appellants should be believed.

20. The learned Public Prosecutor submitted that presence of Kamli and Santosh who had accompanied Ram Swaroop is free from any suspicion and the learned trial Judge has rightly based conviction on their testimony.

21. At the very outset it may be observed that prosecution has not tried to bring true facts on the record regarding origin of the quarrel and presence of the assailants. The initial case was against the six assailants, but thereafter the Investigation Officer proceeded against Asha Ram and Shrawan Kumar also. No witness at the trial has stated about the presence of those two. The witnesses rather have categorically stated that those two persons were not there. Investigating Officer has stated that it was through the statement of Banwari that name of Shrawan Kumar was disclosed. There being no evidence against those two accused, the learned trial Judge did not hold the case established against them and acquitted them of the charges. Acquittal of one or more accused out of the lot in a case would entitle the remaining to acquittal, but, in a case like the present one, when the assailants are said to be six persons by the alleged eye witnesses the roping in of two more by the Police indicates the attempt of the Investigating agency, for the reason best known to it, to involve innocent persons also. This has legitimately given rise to the argument of the learned Counsel for the appellants that if two persons could be falsely implicated the possibility of the appellants being near relative of Pooran Ram appellant with whom Ram Swaroop is said to have quarrel being falsely implicated in order to bring the case within the definition of unlawful assembly cannot be ruled out.

22. In order to appreciate the evidence on record and findings of the learned trial Judge we would first of all discuss the origin of the quarrel.

23. Kamli (P.W. 12) and Santosh (P.W. 13) have stated about there being quarrel between Ram Swaroop deceased and Pooran Ram appellant on the latter inflicting lathi blow on the Dog which Ram Swaroop claimed to his tamed one. These two witnesses have also stated about there being some quarrel between the two fifteen or twenty days prior to this incident, but both of them have not witnessed that quarrel and Kamli has stated that she was told so by Ram

Swaroop. It is important to note that this fact is missing in the F.I.R.(Ex.P/2) made by Kamli and her Police Statement(Ex.D/4) and Police Statement(Ex.D/5) of Santosh to which commission their attention was drawn and they could not explain the reason for not stating so before the Police. It so appears that because the incident is said to have taken place on a trivial matter of inflicting lathi blow by Pooran Ram to the Dog, which ordinarily could not have led an assembly of certain persons to give a beating to Ram Swaroop, the story of previous quarrel between the appellant Pooran Ram and Ram Swaroop has been introduced. It is important to note that Mohan, brother of Ram Swaroop was there at the time in the 'bada 'adjacent to the house and in the natural course of events he must have been informed about the threatening if any given by Pooran Ram appellant and the ladies instead of proceeding with Ram Swaroop in the night time must have asked Mohan, a grown up person of twenty two years of age to accompany Ram Swaroop. The suggestion to Kamli and Santosh by the defence counsel was that at that time they were there at their house and Mohan informed them about Ram Swaroop being given a beating and then they rushed to the site. The witnesses have denied this suggestion. Though the suggestion appears to be plausible in the absence of any other evidence on the point, we are left with no alternative but to scrutinise the testimony of Kamli and Santosh taking them to be the persons present at the site.

24. These two witnesses have named all the six appellants as the assailants attributing specific overt-act of causing injuries to Ram Swaroop to Pooran Ram, Bhagwana Ram and Udmi Ram. They have attributed the greivous injuries on the hand of Kamli to Bhagwana Ram. Santosh has stated about Shishupal injury on the back of Ram Swaroop. For the remaining appellants there is omnibus statement that all of them gave a beating. Chandgi Ram (P.W. 1) is said to have reached the site on hearing the crises of the two ladies and therefore. naturally could not have seen the origin of the incident. According to Kamli and Santosh when Ram Swaroop on receiving the lathi blow by Bhagwana Ram on his head fell down, they fell on the injured Ram Swaroop and raised the cries and meanwhile Udmi Ram and Pooran Ram also inflicted blows on the head and eye of Ram Swaroop. Chandgi Ram as such could not have witnessed the actual infliction of blows by any body to Ram Swaroop. He can be believed only to the extent that

Ram Swaroop was lying down and the ladies were lying on him in order to rescue him and certain lathi blows were being inflicted. So far as Pooran Ram (P.W. 2) and Banwari Das (P.W. 3) are concerned, suffice it to say that they having reached the site after Chandgi Ram could not have seen more than what Chandgi Ram could see.

25. There is force in the contention of the learned Counsel for the appellants that prosecution has tried to implicate more assailants than they actually were in order to make it a case of unlawful assembly so that each person present there could be held responsible for any overt-act of other vicariously and the whole family may be sent behind the bars. The false implication of Shrawan and Asha Ram in the case cannot be taken lightly. Two persons have been falsely implicated without there being any iota of evidence against them. In such a situation possibility of one or two persons being included in the list of assailants in order to make the number five or more cannot be ruled out.

26. The incident is of August 24,1983. On the next day statement of Mst.Kamli was recorded and on the basis of that parcha-bayan, the F.I.R. was chalked out. It was sent to the Court on August 26,1983. There was thus sufficient time for thinking over as who were to be shown to be the assailants. We do not mean to say that the case as a whole is fabricated one. We would rather try to ascertain the actual number of the assailant sent to find out whether the F.I.R. is the spontaneous version of Kamli or it was at the intervention of others. It is not far to seek that the F.I.R. is not the exact version of Kamli and somebody else has interfered. Our opinion is based on one glaring factor that Kamli has specifically stated that she was not knowing the names of the fathers of Mohan, Shishupal and Sugna and that she had not told the Sub-Inspector the names of their father and that she could not say as to how the names of the fathers of these accused were therein Ex/P/2. She also stated that at that time Chandgi had also not told the Sub-Inspector the names of the fathers of these persons. Thus the possibility of Chandgi Ram who only was present at the time of the statement of Kamli telling the name is ruled out and as such the names of the fathers of these accused being there in Ex.P/2 indicated improvement in the exact version given by Kamli. Such a step can be taken by the Investigating Officer raises suspicion about the

truthfulness of the prosecution story that even those whom no overt-act has been attributed were also there. In order to hold a person vicariously liable for the act of other by sharing the common object, it is necessary to find out whether all the assailants with common object had arrived at the site together and gave a beating to the victims. There may be certain cases in which persons present at the site may not initially be members of unlawful assembly but by their subsequent act of conduct may become members of unlawful assembly. In other words an assembly not unlawfully at the initial stage may turn up unlawful assembly by five or more persons participating in the crime with a common object. As indicated in the site plan (Ex.P/4), Ram Swaroop left his house and proceeded in the lane in front of the house. In one side there is the house of Udmi Rani appellant and opposite to that of Dadu Ram Siyad. Udmi Ram happens to be the father of appellants Bhagwana Ram and Pooran Ram and it might be possible that after the hot altercation on Pooran Ram indicting lathi blow to the Dog, he might have gone to his house and informed his brother Bhagwana Ram and father Udmi Ram about Ram Swaroop going to call Mala Singh Sarpanch (P.W. 4). In between the house of Udmi Rani and Ishar Ram there was a house of Hanuman Khatri and the place of incident is at the mouth of the lane in between the house of Gopal Siyad and Ladu Ram Siyad in front of the house of Udmi Ram. Ram Swaroop is said to have left his meals half way and proceeded to call Sarpanch Mala Singh(P.W. 4) which shows that there could not be time with Pooran Ram to go to the house of Ishar Ram and call his sons to help him in taking vengeance from Ram Swaroop for seeking ill to him for his giving lathi blow to the Dog. It is not the case of prosecution that all the appellants were at the relevant time at the house of Udmi Ram. The prosecution case as coming forth from Santosh rather is that Pooran Ram, Bhagwana Ram, Sugna Ram, Mohan Ram and Udmi Ram came from their houses. Meaning thereby they had not come from one house i.e. the house of Udmi Ram where Pooran Ram might have gone. Possibility of Sugna Ram, Mohan Ram and Shishupal coming from their houses on hearing the cries therefore cannot be ruled out. The time of occurrence is said to be ten or eleven in the night. It was dark and Kamli and Santosh have admitted that there was neither any torch nor any lantern with them. According to Santosh they were at a distance of ten pavnadas i.e. fifty feet behind Ram Swaroop. Kamli has stated that sky was

cloudy and it was orizzling. She admitted that she was having poor eyesight for the last five or seven years. Thus she could not be in a position to see which of the assailants came with whom and from what direction and from which house. This version taken with the version of Santosh that the assailants had come from their houses and also that Bhagwana Ram came first of all and inflicted lathi blow on the head of Ram Swaroop and then Pooran Ram and others came, raises suspicion about the prosecution case that all the assailants had formed an unlawful assembly and had come together to give a beating to Ram Swaroop.

27. As discussed by us above, their houses being at a distance they could not have known what exactly had happened between Pooran Ram appellant and Ram Swaroop deceased and Ram Swaroop's passing that way that night. There is also no evidence to show that they had reached the site and tried to find out what had exactly happened which was natural in a case like the present one when the incident had taken place on a trivial point and which could not been known by anybody else except Pooran Ram or at the most his father and brother Udmi Ram and Bhagwana Ram might have told on going to the house.

28. There being no specific evidence about the six appellants coming together, the next question arising for determination would be whether all of them participated in the crime. The witnesses have stated that Bhagwana first of all inflicted lathi blow on the head of Ram Swaroop and he fell down. Then there is allegation of Pooran Ram and Udmi Ram inflicting lathi blows on the head and eye of Ram Swaroop. Then Kamli and Santosh fell over Ram Swaroop and Udmi Ram gave a lathi blow on Kamli's hand and one more lathi blow on her body. After that Kamli and Santosh raised cries, Santosh has stated that Shishu Pal inflicted lathi blow on the back of Ram Swaroop. Regarding Mohan Ram and Sugna Ram there is no specific evidence of any witness as to which victim and on what part of his body they actually caused injuries. The omnibus statement of the witnesses makes their presence doubtful. This fact coupled with the tampering with the version of Kamli in the F.I.R. as observed above indicates that they were implicated at the intervention of somebody else or by the Police in order to show the number of assailants to be five or more.

29. At the verge of repetition, it may be observed that just as Sharwan Kumar and Asha Ram have been falsely involved in the matter there could be possibility of Mohan Ram and Sugna Ram also being involved in the matter with the idea that they being the cousins of Pooran Ram their being members of the unlawful assembly might be believed.

30. In view of the above discussion, we are of the opinion that the prosecution case about the assailants forming an unlawful assembly with the common object to give beating to Ram Swaroop is not believable and only those against whom there is allegation of any specific act may be held liable for their individual acts. So far as Bhagwana Ram is concerned, there is specific evidence that he was the first person who inflicted lathi blow on the head of Ram Swaroop, which caused his fall. Santosh has stated about Pooran Ram and Shishupal inflicting lathis blow to Ram Swaroop. She has also stated about Bhagwana Ram, Pooran Ram and Udmi Ram causing injuries to her mother and she herself being injured at the hands of the assailants. She has specifically stated that she could not say about any specific injury at any particular part of the body of the three victims by Mohan Ram and Sugna Ram. Thus there is no cogent evidence about Sugna Ram and Mohan Ram participating in the crime.

31. From this evidence, only four persons viz. Bhagwana Ram, Udmi Ram, Pooran Ram and Shishupal can be said to have participates in the crime.

32. The number of assailants having been taken to be less than five, the charge of unlawful assembly is not substantiated. As such none of the assailants can be held vicariously liable for the act of others and they would be held responsible for their own acts. Santosh has stated that Bhagwana Ram came first of all at the site and inflicted lathi blow on the head of Ram Swaroop. So is the version of Kamli. Chandgi Ram, whom we have considered to be not present at the site at the commencement of the quarrel even if taken to have came the occurrence from a distance his version also is that Bhagwana Ram inflicted lathi blow on the head of Ram Swaroop. The learned Counsel for the appellants submits that even if it is believed that Bhagwana Ram inflicted lathi blow on the head of the deceased still there being three injuries on the head, as mentioned in the injury report, and two

as mentioned in the postmortem examination report prepared by Dr. Sahdeo Singh (P.W. 11), it cannot be said with certainty as to which particular injury was caused by Bhagwana Ram. The learned Counsel urged that in such circumstances, the offence of Bhagwana Ram does not travel beyond Section 325 I.P.C.

33. Dr. B.L.Soni (P.W. 10) has stated about injuries No. 1 and 2 of the postmortem examination report in particular and all other injuries together being sufficient in the ordinary course of nature to cause death. True it is that when there are more than one person inflicting blows on a particular part of the body and all the injuries by different persons are grievous in nature, all of them may be held equally responsible but in the case on hand when only Bhagwana Ram has been specifically stated to be the author of the first blow on the head of Ram Swaroop and the authors of the remaining blows on the head are not known, we do not consider it a case in which Bhagwana Ram's case may be taken so lightly as the learned Counsel for the appellants wants us to take it. The reason is that the first blow was with such a force that Ram Swaroop fell down. When if there were two injuries mentioned in the postmortem examination report, each one of them being fatal Bhagwana Ram can be held responsible of causing one fatal injury to Ram Swaroop. Kamli has specifically stated that Bhagwana Ram came first of all and inflicted lathi blow on the head of Ram Swaroop and thereafter Pooran Ram came and inflicted lathi blow. If a person first of all inflicts lathi blow on the head of victim with such a force that he falls down and the injury proves to be fatal then even in the given circumstances of the case i.e. the origin of the quarrel not being known and the prosecution story is believed, it being on a trivial matter and there being no previous enmity between the assailants and the victim, still the assailant of such an injury can be attributed with knowledge that forceful lathi blow inflicted by him may cause such bodily injury which may result in to death. Offence of Bhagwana Ram, therefore, falls within the ambit of Section 304 Part- II, I.P.C.

34. Regarding Pooran Ram, the evidence is that he inflicted lathi blow to Ram Swaroop but the version of the witnesses is divergent regarding the part of the body hit by that blow. Chandgi Ram has stated that Pooran Ram inflicted lathi blow on the head of Ram Swaroop and then Udmi Ram inflicted lathi blow on his

right eye. On the other hand Kamli has stated about Poorna inflicting lathi blow on the right eye and Udmi Ram inflicting lathi blow on the head of Ram Swaroop. Ex.P/2 is the statement of Kamli on the basis of which F.I.R. was chalked out. It is not mentioned therein that Poorna inflicted lathi blow on the eye of Ram Swaroop. Rather it has been mentioned therein that Poorna inflicted lathi on the head. The witness could not explain the discrepancy. Her version is also different from other witnesses. No witness has stated about Pooran being author of two blows one on the eye and other on the head. Santosh has stated about Poorna giving lathi blow on the eye of Ram Swaroop. She has also stated about Shishupal inflicting one lathi blow on the back of Ram Swaroop.

35. In view of this type of varied version of the witnesses neither Udmi Ram nor Poorna Ram can be held guilty for the head injury of Ram Swaroop. However, as there is evidence about these two and Shishupal inflicting lathi blow after Ram Swaroop had fallen down. They are, therefore, held guilty Under Section 323 I.P.C. for the injuries of Ram Swaroop. None of the witnesses is specific about the injuries sustained by Kamli and Santosh. These two injured witnesses have stated that they are not in a position to say as to who caused injury on what part of their bodies. There is however evidence about Udmi Ram inflicting lathi blow on the hand of Kamli according to the medical evidence caused a fracture and was therefore, designated to be grievous injury. Udmi Ram is therefore, held guilty Under Section 325 I.P.C. for causing grievous injury to Kamli.

36. The learned Counsel for the appellants contended that in view of the facts and circumstances of the case and the injuries caused by the assailants a lenient view may be taken in the matter.

37. Bhagwana Ram appellants was arrested on September 1, 1983 and is in custody since then. He has been guilty Under Section 304 Part II.I.P.C. In our opinion five years R.I. and a fine of Rs. 1000/ would be adequate for him.

38. Udmi Ram, Pooran Ram and Shishupal have been held guilty Under Section 323 I.P.C. Three months R.I. and a fine of rupees five hundred would be adequate Punishment them. Udmi Ram had remained in custody for about four months. He was sixty-six years old on November 13, 1984 when his statement Under Section

313 of the Code of Criminal Procedure was recorded. Thus he may be over sixty six year old now and we do not consider it proper to stand him behind bars again and consider the imprisonment for the period he had remained in custody so far along with fine or Rs. 1000/- to be the sentence which would meet the ends of justice.

39. Consequently, the appeal of Mohan Ram and Sugna Ram appellants is allowed and their conviction and sentences awarded to them are set aside and they are acquitted of the charges framed against them. Appeal of Bhagwana Ram, Poorna Ram, Udmi Ram and Shishupal is partly allowed. Their conviction Under Section 302/149 and 325 read with 149 I.P.C. and their sentences on these counts are set aside. Instead of Bhagwana Ram is convicted Under Section 304 Part-II, I.P.C. and sentenced to five years R.I. and a fine of Rs. 1000/- in default of payment of fine are held guilty Under Section 323 I.P.C. and sentenced. to the period they had remained in custody so. For which is about six months in the case of Poorna Ram and about four months in the case of Udmi Ram and Shishupal. All these three appellants shall also be liable to be a fine of Rs. 500/- if default of payment of fine to undergo one month R.I. Udmi Ram is also convicted Under Section 325 I.P.C. for the grievous injury of Kamli to the period he had remained in custody so far which is about four months and a fine of Rs.1000/-, in default of payment of fine to undergo two months R.I. The substantive sentences of Udmi Ram will run concurrently. Half of the amount of fine recovered from each of the accused shall be paid to Kamli, injured, mother of deceased Ram Swaroop. Bhagwana Ram is in custody since February 8,1948 and has thus suffered the substantive sentence awarded to him by this judgment. He shall be set at liberty on his depositing the amount of fine or suffering the sentence awarded in default of payment of fine. Poorna Ram, Udmi Ram and Shishupal are on bail they are given two months time to deposit the amount of fine imposed on them by this judgment. On their going so, their bail bonds shall stand discharged.