

Before : A. L. Bahri, J.

SWARAN SINGH AND ANOTHER,—Appellant.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 89-DB of 1989.

17th March, 1992.

*Indian Penal Code, 1860—Ss. 34, 300, 302—Co-accused participating after occurrences already started—S. 34—Application of—Motive—Importance of—Fight erupting suddenly—Accused giving one blow—Offence committed.*

*Held*, that even if the prosecution version is accepted on its face value, it cannot be said that there was any pre-consultation between the two accused to attack or to participate in the occurrence. It is only after the occurrence had already started that he came to the spot and started participating therein without any instigation from Swaran Singh accused. If on his own Mewa Singh on hearing commotion came out of his house armed with *gandasi* and participated in the occurrence seeing that Swaran Singh accused was involved, at the most it can be said that he intended to either save Swaran Singh or to attack assailants of Swaran Singh. In case he was having such an intention that would be nothing more than same intention as Swaran Singh had. There is marked difference between same intention and similar intention. The former will not attract the provision of S. 34 of the I.P.C., whereas the latter would.

(Page 37)

*Held further*, that proof of motive in a given case may lend corroboration to the prosecution story. However, non-proof of motive or absence of motive *per se* will not be sufficient to discard the prosecution story. Non-proof of the motive *per se* would not be sufficient to raise any presumption that the accused were aggressors or that they had the right of private defence.

(Para 35)

*Held further*, that when all of a sudden the fight erupted it would be difficult to say that the accused also intended to cause such bodily injury which in all probabilities was likely to cause death. The possibility of inflicting the injury which ultimately caused the death in the heat of passion in a sudden fight cannot be ruled out and rather on the facts and circumstances of the present case this appears to be so. This would take the case fall under Exception 4 to S. 300 of the I.P.C. It would be a case of homicide not amounting to murder. The offence committed would fall under S. 304 Part II of the Indian Penal Code.

(Para 41)

*(The Division Bench consisting of Hon'ble Mr. Justice I. S. Tiwana, and Hon'ble Mr. Justice B. S. Nehra, gave their judgments on 8th May, 1991 but due to divergent opinion expressed by the Hon'ble judges of the Bench, this appeal was placed before Hon'ble Mr. Justice A. L. Bahri as provided u/s 392 of the Code of Crl. Procedure for final decision in the matter of conviction and sentence. His Lordships finally decided the case with some modification in the above case regarding conviction and sentence on 17th March, 1992).*

*Appeal from the order of the Court of Shri N. K. Jain, Sessions Judge, Sirsa dated 6th February, 1989 convicting and sentencing the accused.*

#### CHARGES AND SENTENCES :

*Sentencing both the accused to rigorous imprisonment for three years each and to pay a fine of Rs. 500 each or in default of payment of fine the defaulter to further undergo rigorous imprisonment for one year. In the case of Swaran Singh, both the substantive sentences shall run concurrently.*

*Sessions Case No. 16 of 1988.*

*Sessions trial No. 19 of 16th May, 1988.*

*FIR No. 126 of 22nd October, 1987. under Section 302/326/read with section 34 of the Indian Penal Code. P. S. Ellenabad.*

*Before : A. L. Bahri, J.*

*K. S. Ahluwalia, Advocate with S. S. Randhawa, Advocate, for the appellant.*

*Jatinder Sharma, Advocate, for the respondent.*

*B. S. Randhawa, Advocate, for the complainant.*

*Before : I. S. Tiwana & B. S. Nehra, JJ.*

*Dara Singh, Sr. Advocate with K. S. Ahluwalia, Advocate, for the appellant.*

*R. K. Gupta, AAG Haryana, B. S. Randhawa, Advocate, for the respondent.*

#### JUDGMENT

*B. S. Nehra, J.*

*This appeal is directed against the judgment dated 6th February, 1989 of Shri N. K. Jain, Sessions Judge, Sirsa, convicting Swaran Singh, appellant No. 1, under Section 302 and both Swaran Singh and Mewa Singh, appellants, under Section 326 read with Section*

34 of the Indian Penal Code (hereinafter referred to as 'the Code') and sentencing Swaran Singh, appellant No. 1 to imprisonment for life and a fine of Rs. 500 for an offence under Section 302 of the Code and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year and further sentencing him and Mewa Singh co-accused under Section 326 read with Section 34 of the Code of rigorous imprisonment for three years each and a fine of Rs. 500 each and in default of payment of fine to further suffer rigorous imprisonment for one year. However, Mewa Singh accused was acquitted of the charge under Section 302 read with Section 34 of the Code.

(2) The prosecution case is that Swaran Singh accused was got married by Nihal Singh, maternal uncle of Nachhattar Singh, Harjodh Singh, and deceased Bikkar Singh. Swaran Singh accused used to visit the house of Nihal Singh in a drunken condition and he used to cough loudly, which used to be objected by the complainant party, due to which Swaran Singh accused nursed a grudge against them (complainant party). On 21st October, 1987, at about 9 or 9.30 PM, Bikkar Singh brother of Nachhattar Singh PW was coming back to his house when Swaran Singh accused met him on the way near a water tap. Thereupon, the latter gave a Lalkara that he would teach him a lesson for objecting to his visits to the house of Nihal Singh and inflicted a Gandasa blow on the head of Bikkar Singh, as a result of which he fell down. When P.W. Nachhattar Singh came forward, Swaran Singh accused gave a Gandasa blow on his head. In the meantime, Mewa Singh accused also joined his co-accused and inflicted injuries on the person of Nachhattar Singh. Harjodh Singh came to the rescue of his brother Nachhattar Singh and Bikkar Singh and inflicted injuries to the two accused. The occurrence was witnessed by Dilbagh Singh. However, the accused managed to escape. The complainant party went to the Hospital at Sirsa and from there Bikkar Singh injured was referred to Medical College Hospital, Rohtak, where he succumbed to the injuries. First information report was registered on the basis of statement of P. W. Nachhattar Singh, which was recorded in Civil Hospital, Sirsa.

(3) During the course of investigation, the accused were arrested and in pursuance of their disclosure statements, a Gandasa each was recovered from them. Their Gandasas, clothes of the deceased which were stained with blood, were sent to the Forensic Science Laboratory for examination and report of the Assistant Chemical

Examiner. After completion of the investigation, the accused were sent up for trial and were charged as described above.

(4) The prosecution in support of its case produced PW6 Nachhattar Singh, PW7 Dilbagh Singh and PW11 Harjodh Singh, who are the witnesses to the ocular account. According to them, the occurrence had taken place at about 9 or 9.30 PM when Swaran Singh accused way laid Bikkar Singh saying that he would teach him a lesson for stopping him from going to the house of his (deceased) maternal uncle. They have also testified that meanwhile Mewa Singh came out with a Gandasa in his hand. Nachhattar Singh and Harjodh Singh also reached there. Dilbagh Singh came from the side of fields and within their view, accused Swaran Singh inflicted a Gandasa blow on the head of Bikkar Singh and then inflicted a Gandasa blow on the head of Nachhattar Singh. Mewa Singh accused inflicted a Gandasa blow which cut the shoe of Nachhattar Singh and also his middle toe of the right foot. The witnesses further deposed that Swaran Singh inflicted injuries to Nachhattar Singh with his Gandasa Lathiwise and Harjodh Singh inflicted injuries to the accused persons in self-defence. The witnesses have added that they brought Bikkar Singh to Sirsa and from there he was taken to Medical College Hospital, Rohtak. PW Nachhattar Singh also deposed that he made statement Exhibit PH before the police on the next day at about 12 noon and showed the place of occurrence to the police.

(5) The other prosecution evidence consists of the statement of PW8 Nazar Singh who deposed about the production of Gandasa by the two accused. PW1 Dr. G. K. Kataria conducted medicolegal examination of Mewa Singh and Swaran Singh accused on 22nd October, 1987 at 12.30 P.M. He found one incised wound, two lacerated wounds, a contusion and an abrasion on the person of Mewa Singh and seven injuries on the person of Swaran Singh, out of which one was an incised wound, others were abrasions and a reddish bruise. Dr. Gurtej Singh (PW2) conducted X-Ray of Nachhattar Singh and found fractures of frontal bone and middle phalanx of the third toe of right foot. On X-Ray of Mewa Singh, he found fracture of both the bones of left fore arm PW10 Dr. J. S. Chhimpia conducted medicolegal examination of Bikkar Singh on 22nd October, 1987 at about 12.25 A.M. and found one incised wound over the left side of scalp parallel to the mid-line, which had been caused within six hours. On examination of Nachhattar Singh, he found two incised wounds and one abrasion also caused within about six hours. Bikkar Singh was referred to the Medical

---

College Hospital Rohtak by Dr. Ajay Gupta. PW12 Dr. O. P. Dhania, Medical Officer, Model Town Dispensary, Rohtak, conducted the post-mortem examination on the deadbody of Bikkar Singh. He found one stitched wound on the scalp of the deceased and opined that the injury was ante-mortem and sufficient to cause death in the ordinary course of nature and further that the death was the result of head injury.

(6) Apart from the above described evidence, the prosecution has examined PW3 Inderjit, Draftsman, who prepared the scaled site plan, PW4 Head Constable Ganesh Dutt, who received the *ruqqa* about the death of Bikkar Singh and sent a message around 5 P.M. on 22nd October, 1987; PW5 Rohtash Kanwar, who swore affidavit Exhibit PG/3 and deposed that he had handed over the special report to the Ilaqa Magistrate at 5 P.M., PW9 Ram Sarup, Sub-Inspector, who on receipt of *ruqqa* visited the Civil Hospital, Sirsa, and obtained the opinion of the doctor that Bikkar Singh was not fit to make a statement; PW13 Yad Ram, Sub-Inspector, who deposed that he received a message at about 4 or 5 A.M. on 22nd October, 1987, whereupon he visited the Hospital and made the enquiry from the doctor about the condition of Bikkar Singh, who was declared unfit. Thereafter he recorded the statement of Nachhattar Singh, on the basis of which first information report was recorded in this case. Then he carried out investigation of the case, arrested the accused and interrogated them. In pursuance of their disclosure statements, the accused got recovered Gandasas from their custody. The prosecution tendered in evidence the affidavits of formal witnesses, the report of the Assistant Chemical Examiner, Forensic Science Laboratory, Madhuban and concluded its case.

(7) In their statements, recorded under Section 313 of the Code of Criminal Procedure, the accused denied the allegations of the prosecution regarding infliction of injuries to the complainant party and alleged that Swaran Singh was coming from the house of Nikal Singh when he was stopped by Bikkar Singh and Nachhattar, who were armed with Lathi and a Gandasa respectively; that they assaulted Swaran Singh, whereupon Mewa Singh came there and inflicted injuries to the complainant party in the defence of Swaran Singh co-accused. The accused tendered in evidence the copies of first information reports Exhibits D1, D2 and D3 and closed the prosecution case without examining any witness in their defence.

(8) The learned counsel for the appellants contended that the appellants had exercised the right of private defence of their bodies

and hence they are not liable for punishment in this case. Alternatively, he argued that the appellants were entitled to seek protection under Exception IV to Section 300 of the Code, according to which culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. Having regard to the said contentions, the only point which calls for consideration in this case is as to which of the two parties, viz. the complainant party or the accused, was aggressor.

(9) For determining as to which of the two parties in the facts and circumstances of the case was the aggressor, the significant point to be kept in consideration is the place of occurrence. At the outset, it is to be noted that in reply to question No. 24 put to both the appellants in their statements under Section 313 of the Code of Criminal Procedure, they have stated that they were coming from the house of Nihal Singh (uncle of Bikkar Singh deceased). The former (Nihal Singh) is stated to have got Swaran Singh married. At this stage, Bikar Singh and Nachhattar Singh armed with a Daang and Gandasa respectively were present in front of their house, and they inflicted injuries to Swaran Singh and when Mewa Singh accused tried to save Swaran Singh co-accused from the clutches of the complainant party, he (Mewa Singh) also inflicted injuries in the scuffle in self-defence. The second part of this statement is significant as it is the admission of the accused that the occurrence had taken place in front of the house of the complainant party, though, according to the site plan Exhibit PE of the place of occurrence, the occurrence is stated to have taken place a few Karams away from the house of the complainant party. Be that as it may, it is established beyond any shadow of doubt that the occurrence had taken place near the complainant's house and ordinarily there was no occasion for the accused to be present there especially when, even according to the site plan Exhibit PE, their (accused's) houses are not situated on the spot. This would show that they had come to the spot duly armed to pick up a quarrel with the complainant party and for no other purpose.

(10) It is true that the motive part of the prosecution case regarding the opposition of the complainant party against the visits of Swaran Singh accused to the house of Nihal Singh has not been established for PW6 Nachhattar Singh, who attributed motive for the crime to the accused, has been contradicted by PW8 Nazar Singh to whom Nachhattar Singh is stated to have complained about

the visits of Swaran Singh to the house of the latter's uncle Nihal Singh. Even so the prosecution case cannot be thrown out as untrustworthy merely because the motive attributed to the accused has not been established. It is not always possible for the prosecution to establish as to what may be in the mind of the accused to pick up a quarrel with the complainant party in a given case but the fact remains that the accused in the instant case had no occasion to be present on the spot duly armed with deadly weapons like Gandasas at 9 P.M. on that day having regard to the fact that their houses are situated far away from the spot. The testimony of PW6 Nachhattar Singh, complainant, brother of Bikkar Singh deceased is categorical when he deposed that he (Bikkar Singh deceased) was returning home after making enquiries about mustard oil and engine oil from the house of one Partap Singh and when he reached near the house of Raja Ram, Swaran Singh, appellant, holding a Gandasa in his hand raised a *Lalkara* to his brother (Bikkar Singh) from the opposite side. Meanwhile, Mewa Singh, appellant, also reached there. This shows that Bikkar Singh deceased was returning home merely after making enquiry regarding the availability of mustard and engine oil and, therefore, he cannot be said to have prepared himself for any fight with any one much less the accused party. Besides PW11 Harjodh Singh has testified that after the occurrence, the accused fled away towards their houses. This part of the prosecution version has also remained unchallenged. This again goes to show that the accused had come to the spot duly armed with deadly weapons with the sole object of picking a fight with the complainant party and for no other innocent reason. This makes their presence on the spot wholly unnatural.

(11) The injuries on the person of the two accused have been well explained by PW11 Harjodh Singh brother of Bikkar Singh deceased. He has deposed that he caused two or three blows to each of the accused after taking a Gandasa from one Dilbagh Singh (PW7) who is an old man aged about 62 years and who keeps the same to ward off the dogs. The presence of Dilbagh Singh on the spot is natural for he was returning from his fields at that time.

(12) As regards injuries on the person of the accused there are six injuries caused to Swaran Singh, 5 of which are abrasions and sixth is a bruise. All these injuries were simple in nature. These injuries could be caused by friction against hard surface as testified in the cross-examination by PW1 Dr. G. K. Kataria. The two fractures on the non-vital parts (two arms) of Mewa Singh accused.

an old man aged 65 years, could be the result of blows inflicted by PW11 Harjodh Singh who has explained this aspect in his statement before the Court. Having regard to the nature of the injuries on the person of the two accused, they cannot be allowed to urge that they were the victims of aggressions at the hands of the complainant party for if that was so, they would not have escaped either with minor injuries or with injuries on their non-vital parts, if the intention of the complainant party was to surround them after getting well prepared in advance. Had the complainant party picked up the quarrel, the accused would have sustained much more serious injuries than the injuries sustained by the complainant party. This circumstances also tends to bely the plea of the accused that the complainant party was an aggressor.

(13) Besides, the appellants, went to the Hospital on the following day at noon time while Bikkar Singh deceased and Nachhattar Singh PW were taken to Civil Hospital, Sirsa, on the preceding night intervening 21/22nd October, 1987 at 12.25 A.M., that is, within about three hours of the occurrence as testified by PW10, Dr. J S. Chhimpa. He found an incised wound bone deep over the left side of the scalp parallel to the mid-line on the person of Bikkar Singh and two incised wounds and one abrasion on the person of PW Nachhattar Singh. He added that the injuries No. 1 and 2 on the person of Nachhattar Singh were caused by sharp edged weapon and were kept under observation. Bikkar Singh, who was in a serious condition, was unconscious. In the circumstances, it cannot be urged that PW Harjodh Singh brother of Bikkar Singh deceased and PW Nachhattar Singh, who had swiftly removed his brothers in injured condition to the Hospital within about three hours of the occurrence, had any intention to febricate a false version nor could it be said that they had self-suffered their injuries. Since the presence of Harjodh Singh along with his two injured brothers in the Hospital has been admitted by PW10 Dr. J. S. Chhimpa, the presence of PW11 Harjodh Singh on the spot at the time of occurrence cannot be doubted much less can it be said by the accused that he had made a false statement against them.

(14) At the cost of repetition, it has to be observed that had the complainant party been the aggressors, the injuries on the person of the two accused would have been much more serious particularly when the occurrence took place in front of the houses of the complainant party. In the circumstances the conclusion is irresistible that the theory of the accused that they are the victims of aggression at the hands of the complainant party is a far-fetched one and the only conclusion that can be reached is



that the accused were in fact the aggressors. Hence the contention of the learned counsel for the appellants that the appellants acted in the right of private defence is devoid of any merit. Even the alternative submission of the learned counsel for the appellants that they are entitled to the benefit of Exception IV to Section 300 of the Code is unacceptable for it is highly implausible that the appellants acted without premeditation in a sudden fight, in the heat of passion, upon a sudden quarrel, and without their having taken undue advantage or acted in a cruel or unusual manner. Having regard to the detailed discussion of the merits of the case above, there is no doubt that the appellants had acted with premeditation and surrounded Bikkar Singh and belaboured him brutally. The appellants cannot be allowed to urge that it was a case of sudden fight. Bikkar Singh deceased, who was returning home after attending to his domestic responsibility, was suddenly overpowered by the appellants who were armed with deadly weapons. They had, therefore, taken undue advantage of Bikkar Singh and his brothers; unpreparedness in this fight, for which the appellants have clearly been found to be aggressors. They have unmistakably acted in a cruel manner. Hence even the second plea of the learned counsel for the appellants is without any merit and is, therefore, repelled.

(15) For the reasons recorded above, the appeal fails and is dismissed.

#### JUDGMENT

*I. S. Tiwana, J.*

(16) Having had the advantage of perusing the judgment prepared by my learned brother Shri B. S. Nehra, J., I, however, choose to strike a discordant note in answering the all important questions raised in this appeal, that is, "as to which of the two parties viz. the complainant party or the accused was the aggressor". In view of the detailed narration of facts in the said judgment. I do not feel the necessity of referring the same over again except to the extent it is necessary. As is well indicated by the judgment of my learned brother, it is a case where the accused-appellants have set up a right of self-defence. This is what Swaran Singh appellant pleaded under Section 313 of the Code of Criminal Procedure in answer to question No. 24 :—

"I was returning from the house of Nihal Singh; when Bikkar Singh and Nachhattar Singh armed with a daang and

gandasa respectively were present in front of their house and they inflicted injuries to me and on my alarm Mewa Singh accused came there with a gandasa and in order to save me he inflicted injuries to the complainant party and also received injuries in the scuffle."

Mewa Singh appellant owned this stand by admitting the causing of injuries to the complainant party in order to "save Swaran Singh accused from the clutches of the complainant party."

(17) By now it is well laid down that an accused pleading the right of self-defence need not prove it beyond reasonable doubt. It is enough if he establishes facts which on the test of preponderance of probabilities make his defence acceptable. Further he is not required to prove this defence by calling evidence on his side and is rather entitled to establish the plea by reference to the facts and circumstances transpiring from the prosecution evidence itself. In nut-shell, question in such a case is a question of assessing the true facts of the prosecution evidence and not of discharging any burden of proof. Equally well laid down is the proposition of law that in case an accused raises a plea of self-defence justifying his role in an occurrence, he cannot be convicted on that plea alone in so far as it involves an admission of certain facts by him. It is in this background that the facts of the case need be scrutinized and some of the important factors which call for determination pertain to motive on the part of either party, the place of occurrence and the number and nature of injuries received by the two sides.

(18) The motive that has been attributed to the appellants in the words of Nachhatar Singh PW-6 is as follows :--

"Initially, our relations with the accused Swaran Singh were cordial, however he used to come to the house of my maternal uncle in drunken condition and used to raise Lalkaras. We then requested our Sarpanch to tell the accused not to enter the house of our maternal uncle and to raise Lalkaras. The Sarpanch might have told him about it and the accused kept a grouse of it in his mind."

This statement firmly establishes that the complainant party had an ill-will or resented the visits of Swaran Singh appellant to the house of Nihal Singh, their maternal uncle in a drunken condition and they had even conveyed the same to Nazar Singh Sarpanch of the village. However, Nazar Singh as PW-8 completely belies this stand of

Nachhatar Singh when he states that "Nachhatar Singh had not complained to me that Swaran Singh used to tease him and others or that he used to go to the house of Nihal Singh aforesaid. Similarly, the stand of the prosecution that at the time of causing injuries to Bikkar Singh deceased, Swaran Singh appellant had raised any Lalkara that he would teach a lesson to the former from stopping him from going to the house of Nihal Singh, stands discredited by the evidence of Harjot Singh PW-11, brother of PW-6. When duly confronted with his statement under Section 161 of the Code of Criminal Procedure, Harjot Singh PW-11 admitted that "I did not tell the police in my statement that the accused Swaran Singh had raised a Lalkara to Bikkar Singh that he would teach a lesson to the latter for stopping him from going to the house of Nihal Singh." Not only that, Nachhatar Singh PW-6 even admitted in the opening part of his cross-examination that "I did not state in my statement Exhibit PH on the basis of which the first information report was recorded, that the accused used to go in a drunken condition to the house of my maternal uncle, that he used to raise lalkaras there and that I had reported the matter to the Sarpanch of the village and told him to ask the accused not to visit the house of my maternal uncle nor did I state that Sarpanch might have told the accused about our grouse and that the accused might have nursed a grudge against us on that account." It is manifest from this evidence that though the complainant party and more particularly, PWs 6 and 11 were nursing a grudge against Swaran Singh appellant and resented his visits to the house of their maternal uncle Nihal Singh, yet the prosecution has completely failed to attribute or establish any ill-will on the part of the appellants or Swaran Singh towards the prosecution witnesses or Bikkar Singh deceased. Thus, it is abundantly clear from the prosecution evidence itself that the appellants had no reason or motive to cause any injury to the complainant party. On the contrary, the evidence of the above noted witnesses lends credence to the stand of the defence that the complainant party had a reason or cause to harm the appellants. Therefore, the learned counsel for the appellants does not appear to be wrong in maintaining that it was the complainant party, that is, PW-6 and Bikkar Singh deceased who opened the attack on Swaran Singh appellants.

(19) So far as the determination of place of occurrence is concerned, the prosecution case itself is that it took place at point mark '1' as shown in site plan Exhibit PE prepared and proved by PW-3

Inderjit Draftsman. It is clear therefrom that this point mark '1' is towards the west of the houses of Nihal Singh, Nachhatar Singh PW-6, Harjot Singh PW-11 and Bikkar Singh deceased which are in a row. As per evidence of this witness (PW-3), the distance between place of occurrence, that is, point mark '1' and the gate of house of Nachhatar Singh PW-6 is 140 feet. Similarly, the gate of house of Harjot Singh PW-11 is 128 feet from this point. The house of Nihal Singh maternal uncle of these PWs from whose house, as per the stand of Swaran Singh appellant, he was returning, is at a distance of 188 feet, from the place of occurrence. This house adjoins the house of Nachhatar Singh PW on the eastern side. Further the house of Mewa Singh appellant, as per evidence of PW-3 is only 64 feet from the place of occurrence, that is, point mark '1'. The fact that the occurrence had taken place at this point is again firmly established by the evidence of PWs 6 and 11, besides the evidence of PW-3. PW-6 admitted in his cross-examination that Swaran Singh accused gave lalkara when he was close to the water-tap, that is, at a distance of 2 karams from the same. Again Harjot Singh PW-11 admitted that the occurrence had taken place when "Bikkar Singh was at a distance of 1-1½ karam from the water-tap and the accused Swaran Singh was at a distance 1-2 karams from the water-tap. Even in his examination-in-chief, he admits that at the time of occurrence "Bikkar Singh (deceased) was present near the water-tap near the house of Raja Ram". This water-tap is denoted by point '7' in the site plan Exhibit PE and is very close to point mark '1', that is, the place of occurrence. This evidence, to my mind, conclusively establishes that the occurrence took place at quite a distance from the houses of the complainant party, that is, Bikkar Singh deceased, Nachhatar Singh PW-6, Harjot Singh PW-11, who are otherwise brothers *inter se*. Further it is manifest from this evidence that Swaran Singh appellant had passed from in front of houses of PWs 6 and 11 and the deceased and had covered quite a distance towards the west when he and the deceased confronted each other. The stand of the prosecution that at the time Bikkar Singh was returning from the house of Partap Singh where he had gone to make some enquiries about the mustard oil and engine oil remains completely unsubstantiated as Partap Singh has not been examined as a witness to vouchsafe this fact. Otherwise also it is not made clear by any witness and more particularly PWs 6 and 11 as to how they got to know it as a fact that at that time the deceased was returning from the house of Partap Singh. Therefore, the stand of Swaran Singh appellant that at that time (9-00 P.M.),

Bikkar Singh deceased and Nachhatar Singh PW-6 respectively armed with a daang and gandasa were present in front of their house, sounds very natural and probable. At that hour of the day, these witnesses like all other family men are expected to be present in or in front of their house.

(20) So far as the number and nature of the injuries suffered by the two sides is concerned, the details are as follows :--

(21) Bikkar Singh deceased had only one injury on his head which proved fatal. Its dimensions were as follows :--

"12.5 cms surgically stitched wound (9 stitches) over the left side of scalp starting 9 cms superior to left eye brow and 2.5 cms parallel to mid-line."

As per the statement of Dr. J. S. Chhimpa PW-10, Nachhatar Singh PW-6 had the following three injuries on his person :--

1. Incised wound on the scalp  $4 \times \frac{1}{4}$  cm. bone deed, 10 cms above glabella. Fresh bleeding present. X-ray was advised.
2. Incised wound  $3 \times \frac{1}{2}$  cm over dorsum of 3rd toe (right foot) it was bone deep and fresh bleeding was present. X-ray was advised.
3. Abrasion  $3 \times \frac{1}{2}$  cm over front of right shin of tibia starting from tital tuberosity."

PW-1 Dr. G. K. Kataria, who examined Swaran Singh appellat on 22nd October, 1987, at about 1.00 P.M., found eight injuries on his person out of which injury No. 2 had been caused with a sharp edged weapon and rest with a blunt weapon. Similarly, Mewa Singh appellat, who was also examined by the said doctor, on the said date, had suffered five injuries out of which No. 3 had been caused with a sharp edged weapon and the remaining four by a blunt weapon. Dr. Gurtej Singh PW-2 on X-ray examination found that both the bones of the left fore-arm of Mewa Singh appellat were fractured. He further opined that these injuries on the persons of the two appellants could possibly be caused around 9.00 P.M. on 21st October, 1987. In the light of this evidence on record, it is patent that the appellants had not only suffered more injuries than they are stated to have caused to the other side, that is, the complainant party but the injuries on their persons which were of

simple and grievous nature, had apparently been caused with two types of weapons that is, sharp edged and blunt weapons. This again probablises the version of the appellants as compared to that of the prosecution that the injuries to them were caused by two persons, that is, Bikkar Singh deceased and Nachhatar Singh PW-6 and not by Harjot Singh PW-11 alone, who is said to have caused these injuries to them with a gandasa which he snatched from Dilbagh Singh PW-7. As a matter of fact, Harjot Singh PW-11 admits of having inflicted "2 or 3 blows" to each of the accused. Wherefrom rest of the injuries on the persons of the appellants had come is not explained by the prosecution. Further Dilbagh Singh PW though initially tries to explain that he at that time was carrying a *soti* only, yet had to divulge on repeatedly being asked by the Prosecutor that the *Soti*, in fact, was a *gandasi* but it was "a small *gandasi* with him of the height of about 4 feet to ward off the dogs" It looks highly improbable that Harjot Singh could cause such number of injuries to the appellants with such a light weapon. Then the wonder of wonders is that Harjot Singh was able to cause as many as 13 injuries to the appellants and himself remained unscathed, without a scratch even. Had he been on the scene. and was instrumental in causing injuries to the appellants, then to my mind, he in the normal course must have received some sort of injury. There is yet another circumstance which to my mind supports the case of the defence. As pointed out earlier, the two appellants have 13 injuries on their person as against 4 on Nachhatar Singh PW-6 and Bikkar Singh deceased together. The latter received only one injury on his head which proved fatal. On the receipt of this injury, he must have been immobilised. Had he received this injury right in the beginning as is suggested by the prosecution, then Nachhatar Singh alone could not possibly cause 13 injuries to the two appellants and himself suffer 3 injuries only. Therefore, it sounds probable that some of the injuries had been caused to the appellants before the fatal blow was given to Bikkar Singh deceased.

(22) In addition to all that has been said above, it is not possible to place implicit faith in the statements of PWs 6 and 7 in view of the notes recorded by the trial Judge about the demeanour of these witnesses while in the witness box. This is what has been recorded *qua* Nachhattar Singh PW-3, "The witness takes undually long time to answer the question what he had stated before the police regarding the cause of enmity between accused and themselves and then states that he had stated to the police that the cause of annoyance

between the accused and themselves was the frequent visits of the accused to the house of his maternal uncle." At another place, the learned Judge has recorded. "The witness again starts thinking when questioned whether he had stated to the police that the accused Swaran had given a lalkara to his brother Bikkar Singh saying that he would teach him a lesson for stopping him for going to the house of his maternal uncle. After sometimes the witness states that he had stated those facts before the police."

(23) With regard to Dilbagh Singh PW-7, the trial Court observed as follows :—

"On repeatedly being asked about the nature of weapon, witness states that it was gandasi with him which was taken by Harjot Singh."

It is thus patent that these witnesses have tried to attribute all the guilt to the appellants while suppressing their own role in the whole affair.

(24) In the light of the facts and circumstances noticed heretofore, it sounds probable as is urged by Shri Dara Singh, the learned Senior Advocate for the appellants that it was the complainant party, that is, the deceased, Bikkar Singh, PW-6 Nachhatar Singh, who are otherwise brothers *inter se* which had a grouse against Swaran Singh appellant and having noticed him passing from in front of their houses at that time and place, attacked him and Mewa Singh appellant, whose house was nearby and is an uncle of Swaran Singh appellant, while armed with a gandasa intervened and caused injuries to the deceased as well as PW Nachhatar Singh. Thus, to my mind, the defence plea deserves to be accepted. I, therefore, hold that the appellants are not guilty of the offence with which they have been charged and deserve to be acquitted. I order accordingly.

x x x x x x x x

I. S. Tiwana and B. S. Nehra, JJ.

(25) In view of the above noted difference of opinion amongst us, the matter may be laid before the Hon'ble Chief Justice for proper orders.

---

**JUDGMENT**

A. L. Bahri, J.

(26) Because of divergent opinion expressed by Hon'ble Judges constituting the Bench hearing the appeal, this appeal has now come up before me.

(27) Sessions Judge, Sirsa, on February 6, 1989, convicted Swaran Singh appellant under section 302 of the Indian Penal Code and sentenced him to imprisonment for life and to pay a fine of Rs. 500 or in default of payment of fine to further undergo rigorous imprisonment for one year. Swaran Singh and Mewa Singh, appellants, were further convicted under section 326 read with section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 3 years each and to pay a fine of Rs. 500 each or in default of fine to further undergo rigorous imprisonment for one year. Mewa Singh accused was acquitted of the charge framed under section 302 read with section 34 of the Indian Penal Code.

(28) As per prosecution case on October 21, 1987, at about 9.00 p.m. Bikkar Singh was coming to his house when Swaran Singh accused met him near the water tap in village Kumbhala. Swaran Singh accused raised a *lalkara* to teach him a lesson for objecting to his visits to Nihal Singh's house and inflicted a *gandasi* blow hitting Bikkar Singh on his head who fell down. Nachhattar Singh PW came forward. He also received *gandasi* blow from Swaran Singh on his head. Mewa Singh accused came from his house, situated nearby, and inflicted injuries on the person of Nachhattar Singh. In the meantime Harjodh Singh brother of Nachhattar Singh was attracted to the spot and in order to save Nachhattar Singh and Bikkar Singh, he caused some injuries to the two accused—Swaran Singh and Mewa Singh. The accused managed to run away from the spot. The two injured Bikkar Singh and Nachhattar Singh were taken to hospital at Sirsa, from where Bikkar Singh was referred to Medical College Hospital, Rontak, where he succumbed to his injuries. On the statement of Nachhattar Singh recorded by the police in Civil Hospital, Sirsa, case was registered.

(29) During investigation of the case, both the accused were arrested and in pursuance of their disclosure statements, they got recovered *gandase* which were alleged to have been used in the occurrence.



(30) PW6 Nachhattar Singh, PW7 Dilbagh Singh and PW11 Harjodh Singh gave the ocular account of the occurrence which has been briefly described above. PW8 Nazar Singh deposed about the disclosure statements and in consequence thereof recovery of the *gandase* by the two accused. The medical evidence consists of the statement of PW1 Dr. G. K. Kataria, who medically examined Mewa Singh and Swaran Singh accused on October 22, 1987 at 12.30 p.m. He gave the details of the injuries found. PW2 Dr. Gurtej Singh conducted X-ray of Nachhattar Singh and found fracture of frontal bone and fracture of middle phalanx of third toe. He also conducted X-ray on Mewa Singh and found fracture on both the bones of left fore-arm. PW10 Dr. J. S. Chhimpa medically examined Bikkar Singh on October 22, 1987 at about 12.35 a.m. He gave the description of the injuries found. As stated above, Bikkar Singh was referred to Medical College Hospital, Rohtak. PW12 Dr. O. P. Dhania, Medical Officer, Mud-hut Dispensary, Model Town, Rohtak, conducted post mortem on the dead body of Bikkar Singh. According to his opinion the injury found on the scalp of the deceased was *ante mortem* and sufficient to cause death in the ordinary course of nature and the death was the result of the head injury. The draftsman as well as the Investigating Officer were also produced in this case.

(31) While denying the allegations of the prosecution, the accused putforth their story of the occurrence. Swaran Singh was coming from the house of Nihal Singh when he was stopped by Bikkar Singh and Nachhattar Singh who were armed with stick and *gandasi*, respectively. They assaulted Swaran Singh whereupon Mewa Singh came there and inflicted injuries to the complainant party in defence of Swaran Singh accused. These accused tendered copies of the First Information Reports-Exhibits D.1 to D.3 and closed their evidence.

(32) B. S. Nehra, J. in his judgment dated May 8, 1991 expressed the opinion that the two accused were rightly convicted by the Sessions Judge and recommended dismissal of the appeal. I. S. Tiwana, J., on the other hand, came to the opinion that it was the complainant party i.e. the deceased Bikkar Singh and Nachhattar Singh who had a grouse against Swaran Singh, and noticing him passing in front of their houses, attacked him and Mewa Singh.

The plea of the accused that they acted in the right of self-defence was upheld and thus they were not guilty of the offence and deserved to be acquitted.

(33) I have heard counsel for the parties and have gone through the evidence produced with their assistance.

(34) The prosecution has failed to establish any motive for the accused to commit the crime. The motive suggested is not considered otherwise sufficient for the accused to open the attack. According to PW3 Nachhattar Singh, his maternal-uncle had helped Swaran Singh accused to get married. Earlier their relations were cordial. Swaran Singh thus used to go to the house of Nihal Singh, the maternal-uncle. Since he used to visit Nihal Singh in a drunken condition and used to raise *lalkaras* (coughing). Nachhattar Singh and others requested the Sarpanch to tell the accused not to enter the house of Nihal Singh and the Sarpanch might have told Swaran Singh about it. PW7 did not state anything on this subject. According to him Swaran Singh gave a *lalkara* that he would teach a lesson to Bikkar Singh for stopping him from going to the house of his maternal-uncle, Nihal Singh. Similar statement was made by PW11 Harjodh Singh. PW6 Nachhattar Singh, during cross-examination, admitted that he did not state in his statement-Exhibit PH (FIR) that the accused (Swaran Singh) used to go in a drunken condition to the house of his maternal-uncle or that he used to raise *lalkaras* or that he had reported the matter to the Sarpanch to ask Swaran Singh not to visit the house of Nihal Singh. He also did not state in Exhibit PH that Sarpanch might have told the accused about their grouse or that the accused might have nursed a grudge against them on that account. He denied having made improvements during the trial in this respect and the Sessions Judge made a note that the witness was taken unduly long time to answer the questions. Further the witness had no idea since how long Swaran Singh accused had been drinking otherwise they had no grouse against the marriage of Swaran Singh with the intervention of Nihal Singh. Nihal Singh got married girl of the village to accused Swaran Singh. Nazar Singh (PW8), who was Sarpanch, was cross-examined in this respect. According to him Nachhattar Singh never complained to him that Swaran Singh used to tease him or that he used to go to the house of Nihal Singh. He hastened to state that it was after the present occurrence that Nachhattar Singh complained him about it.

In view of Nazar Singh's statement aforesaid the question of Nazar Singh informing Swaran Singh accused regarding complaint of Nachhattar Singh thus would not arise. The prosecution has thus utterly failed to prove the suggested motive.

(35) Proof of motive in a given case may lend corroboration to the prosecution story. However, non-proof of motive or absence of motive *per se* will not be sufficient to discard the prosecution story. Non-proof of the motive *per se* would not be sufficient to raise any presumption that the accused were aggressors or that they had the right of private defence. With regard to the occurrence the evidence of eye witnesses and other circumstances are to be independently appraised.

(36) The most important question for consideration in this case is as to who was the aggressor. In other words, how the occurrence originated. The factum of occurrence is not disputed. Each party had tried to put the blame on the other for attacking. Both the parties were armed with *gandase* which are ordinary weapons, usually kept by the villagers with them. No doubt, the occurrence has taken place near the houses of Nachhattar Singh and others, presence of Swaran Singh armed with a *gandasi* in his own village at the relevant time is not unnatural. No presumption could be drawn from this fact alone that Swaran Singh had gone to the place of occurrence to attack the deceased Bikkar Singh or Nachhattar Singh. As per prosecution case Bikkar Singh was returning home after making enquiries about the oil from the house of Partap Singh son of Kishan Singh. Thus, Swaran Singh accused was not expected to know that Bikkar Singh would be found by him at the relevant time. Thus, it appears to be a case where there was confrontation between the two sides suddenly.

(37) It would be relevant at this stage to discuss as to whether the two accused; Swaran Singh and Mewa Singh had acted in pursuance of their common intention in the occurrence. Even if the prosecution version is accepted on its face value, it cannot be said that there was any pre-consultation between the two accused to attack or to participate in the occurrence. The house of Mewa Singh, as would be shown from the site plan prepared by the draftsman Exhibit PE is just close to the place of occurrence it is only after the occurrence had already started that he came to the spot

and started participating therein without any instigation from Swaran Singh accused. The three eye-witnesses produced in this case did not state that Swaran Singh accused, at any stage either called for help or asked Mewa Singh accused to help or to attack. If on his own Mewa Singh on hearing commotion came out of his house armed with a *gandasi* and participated in the occurrence seeing that Swaran Singh accused was involved, at the most it can be said that he intended to either save Swaran Singh or to attack assailants of Swaran Singh. In case he was having such an intention that would be nothing more than same intention as Swaran Singh had. There is marked difference between same intention and similar intention. The former will not attract the provision of Section 34 of the Indian Penal Code, whereas the latter would. Sessions Judge was, therefore, not correct in applying the provisions of Section 34 of the Indian Penal Code to the facts of the case even for the offence under section 326 of the Indian Penal Code for causing grievous hurt to Nachhattar Singh. If provisions of Section 34, Indian Penal Code, are not applicable, part of each accused is to be independently considered to see what offence, if any, is committed. No one would be liable vicariously for the acts of others. As already stated above, there is no evidence and it is not the prosecution case that there was any pre-consultation between the two accused to commit the crime. Further there is no evidence that such similar intention was formed on the spot.

(38) If on going through the evidence produced by the prosecution, a firm finding can be recorded that the accused was the aggressor, there would be no difficulty in recording conviction of Swaran Singh under section 302 of the Indian Penal Code. However, if it is not so found and it is also not possible to give a firm finding that the prosecution witnesses were the aggressors, the plea of the accused that they acted in exercise of the right of private defence, cannot automatically be accepted. Such a right can only exist if it is established that the prosecution witnesses in fact were the aggressors. No doubt, the accused are not supposed to prove their defence beyond reasonable doubt and if such a defence is reasonable and plausible, the same should be accepted. On perusal of the evidence and taking into consideration the circumstances of the present case I am of the view that the right of private defence was not available to the accused. No firm finding can be recorded with respect to the origin of the fight and as to which of the parties was the aggressor and in such

circumstances the accused would be liable for the acts done. Injuries to Bikkar Singh had already been caused when Mewa Singh accused came on the scene. Thus, the injuries found on Swaran Singh and Bikkar Singh deceased are being noticed. PW1 Dr. G. K. Kataria, medically examined Swaran Singh accused on October 22, 1987 at 1.00 p.m. and found the following 8 injuries :—

1. A reddish abrasion 4 cms.  $\times$  1½ cms. on the right frontal region close to the hairy margin. Bleeding and tenderness was present.
2. A curved incised wound 2 cms.  $\times$  ½ cm.  $\times$  bone-deep on the back of right hand, in middle of second metacarpal bone. Bleeding and tenderness was present. Advised X-ray.
3. Abrasion 1 cm  $\times$  1 cm. on the outer aspect of right upper arm, just above the elbow joint. Tenderness was present. Advised X-ray.
4. An abrasion ½ cm.  $\times$  ½ cm. on palmer aspect of bage of left thumb. Tenderness was present.
5. An abrasion ½ cm.  $\times$  ½ cm. on back of inter-phalangeal joint of left ring finger. Tenderness was present.
6. An abrasion 3 cms.  $\times$  1 cm. on the front of right knee. Tenderness was present.
7. An abrasion 8 cm.  $\times$  ½ cm. on the back in lect scapular region. Tenderness was present. Advised x-ray.
8. A reddish bruise 15 cm.  $\times$  5 cms. on left side of back just below injury No. 7. Tenderness was present. X-ray was advised.

Injury No. 2 was caused with a sharp edged weapon and the other injuries were caused with a blunt weapon. Exhibit PB is the copy of the medico-legal report. The duration of the injuries was stated to be 24 hours.

(39) PW 2 Dr. Gurtej Singh deposed that on X-ray being conducted on Swaran Singh accused, no fracture of any bone was found. Thus all the injuries found on Swaran Singh accused were simple in nature.

(40) PW 10 Dr. J. S. Chhimpa medically examined Bikkar Singh and found an incised wound  $12\frac{1}{2}$  cms.  $\times$   $\frac{1}{2}$  cm. bone deep over left side of the scalp parallel to the mid-line antero-posteriorly. Fresh bleeding was present. On *post mortem* on the dead body of Bikkar Singh the aforesaid injury was found along with surgical stitched wound. The death was due to the head injury which was sufficient to cause death in the ordinary course of nature. Copy of the *post mortem* report is Exhibit PW 12/B. Since all the injuries found on the person of Swaran Singh were simple in nature, it cannot be held that he was incapacitated from causing injury to Bikkar Singh. However, it is certain that Bikkar Singh after receipt of the head injury, as aforesaid, was not in a position to cause any injury. According to PW6 Nachhattar Singh, Harjodh Singh (PW 11) inflicted injuries on the two accused with his *gandasi*. PW 11 Harjodh Singh stated that he took the *gandasi* from Dilbag Singh and inflicted 2 or 3 injuries to each of the two accused. According to the statement of Swaran Singh accused recorded under section 313 of the Code of Criminal Procedure. Bikkar Singh and Nachhattar Singh armed with *gandase* confronted him and they inflicted injuries on him. On his alarm Mewa Singh accused came to the spot and he also suffered injuries. Nachhattar Singh was examined by PW 10 Dr. J. S. Chhimpa and the following three injuries were found at 1.50 a.m. on October 22, 1987 :—

- (1) Incised wound on the scalp 4 cms.  $\times$   $\frac{1}{4}$  cm. bone deep, 10 cms. above glabella. Fresh bleeding present. X-ray was advised.
- (2) Incised wound 3 cms.  $\times$   $\frac{1}{2}$  cm. over dorsum of 3rd toe (right foot), it was bone deep and fresh bleeding was present. X-ray was advised.
- (3) Abrasion 3 cms.  $\times$   $\frac{1}{2}$  cm. over front of right shin of tibia starting from tital tuberosity.

Injuries Nos. 1 and 2 were kept under observation. Injury No. 3 was simple. Injuries Nos. 1 and 2 were caused by sharp-edged

---

weapon and injury No. 3 by a blunt weapon. Duration was 6 hours. Exhibit PN is copy of the report. On X-ray conducted on Nachhattar Singh, fracture of frontal bone and fracture of middle phalanx of third toe were noticed. Thus, injuries Nos. 1 and 2 were found to be grievous. Exhibit PD is the X-ray report. Since injury No. 1 was grievous and was on the head it could only be said that after receipt of such injury. Nachhattar Singh was not able to cause injuries to other. However, with other two injuries, it could not be said that he could not cause injuries to Swaran Singh. Harjodh Singh PW 11 did not receive any injury in the occurrence. It is his own case that he caused injuries to the two accused. Since there is no cross-case involving Harjodh Singh for the injuries caused, much significance cannot be attached to his statement made in the Court. His house is, of course, near the place of occurrence and his presence on the spot may be natural but his participation in the occurrence may be doubted as he did not receive any injury on his person. In order to lend corroboration to the prosecution case, he being closely associated to the deceased, was easily available to stand as a witness. His statement, thus, cannot be accepted on its face value more particularly with respect to the origin of the fight.

(41) There being no motive or immediate cause for the occurrence and taking into consideration the evidence of the eye-witnesses, circumstances of the case and the plea of the accused of self-defence being not accepted, the accused would be liable for their own actions. The fight took place all of a sudden when Swaran Singh accused per chance met Bikkar Singh in the street. A perusal of the plan prepared by the draftsman shows that Swaran Singh had already crossed the houses of the complainant party when the occurrence took place. There may be some cause for the complainants to stop Swaran Singh visiting the house of Nihal Singh that there was some quarrel between Bikkar Singh and Swaran Singh. Only one injury is attributed to Swaran Singh having been caused to Bikkar Singh on his head which ultimately proved fatal. There was no intention on his part to commit murder of Bikkar Singh. When all of a sudden fight erupts it would be difficult to say that the accused also intended to cause such bodily injury which in all probabilities was likely to cause death. The possibility of inflicting the injury which ultimately caused the death in the heat of passion in a sudden fight cannot be ruled out and rather on the facts and circumstances of the present case this appears to be so.

---

This would take the case to fall under Exception 4 to Section 300 of the Indian Penal Code. It would be a case of homicide not amounting to murder. The offence committed would fall under section 304 Part II of the Indian Penal Code. Swaran Singh was thus wrongly convicted by the Sessions Judge under section 302 of the Indian Penal Code. Reference in this context may be made to the decision of the Supreme Court in *Jumman and others v. The State of Punjab* (1). In para 24 of the judgment it was observed that :—

“—————where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides ? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with under Section 300, I.P.C., Exception 4.”

Similar view was expressed by the Supreme Court in *Ram Karan and others v. State of Uttar Pradesh* (2). The observations made in para 7 of the judgment may be noticed :—

“Taking an over all view of the situation, we find no evidence of any intention to kill the two deceased on the part of the accused because the occurrence itself had taken place suddenly when, to begin with, the entire episode started for the particular purpose of partitioning the land by the Commissioners who had visited the village. In these circumstances we are satisfied that Exception 4 to Section 300, IPC is attracted and the offence of murder would be reduced to culpable homicide.”

(42) Keeping in view the ratio of the decisions aforesaid and discussion of the evidence and the circumstances of the case, Swaran Singh accused is held guilty under section 304 Part II of the Indian Penal Code, and not under section 302, Indian Penal Code.

(43) Since section 34 of the Indian Penal Code was not attracted to the case in hand conviction under section 326 read with section 31

---

(1) A.I.R. 1957 S.C. 469.

(2) 1982 S.C.C. (Cr1.) 386.



of the Indian Penal Code could not be recorded. On behalf of the complainant side only Nachhattar Singh PW was injured in the occurrence. Injuries found on his person have already been described above. Injuries Nos. 1 and 2 were found to be grievous whereas injury No. 3 was simple in nature. Injuries Nos. 1 and 2 were caused with sharp edged weapon. Swaran Singh accused is alleged to have given *gandasi* blow hitting Nachhattar Singh on his head and Mewa Singh accused gave *gandasi* blow hitting Nachhattar Singh on his right little toe. Both these injuries were grievous in nature, therefore, both these accused would be guilty under section 326 of the Indian Penal Code.

(44) The other evidence produced in this case is not considered material for deciding the appeal; such as evidence of recovery of weapons etc. The net result is that Swaran Singh accused is held guilty under Section 304 Part II of the Indian Penal Code. He was arrested in November 1987 and since then he is in custody. He has spent about more than 4½ years in jail. The period of sentence already undergone, in the circumstances of the present case, is considered just. Thus, he is sentenced to rigorous imprisonment for the period already undergone and to pay a fine of Rs. 5,000. In default of payment of fine he would undergo rigorous imprisonment for one year. The fine, if recovered, would be paid to the next heirs of Bikkar Singh deceased. Swaran Singh accused is also convicted under section 326 of the Indian Penal Code for causing grievous hurt to Nachhattar Singh and is sentenced to rigorous imprisonment for 3 years. No separate fine is imposed on this count. This period of sentence would run concurrently with the sentence awarded under section 304 Part II of the Indian Penal Code.

(45) Mewa Singh accused who has been held guilty under section 326 of the Indian Penal Code for causing grievous hurt on the toe of Nachhattar Singh is on bail. He has suffered a protracted trial as well as the appeal for this period. Since the occurrence related to October 1987, after a lapse of such a period it is not considered appropriate to send him in jail. Thus, he is awarded the sentence already undergone by him and to pay a fine of Rs. 5,000. In default of payment of fine, he would undergo rigorous imprisonment for one year. The amount of fine, if recovered, would be paid to Nachhattar Singh PW.

---

(46) With the above modification in the matter of conviction and sentence, the appeal stands disposed of.

---

S.C.K.

Before : G. R. Majithia, J.

SARASWATI (SMT.) AND OTHERS,—Appellants.

versus

DR. SURESH JHAWAR,—Respondent.

Regular Second Appeal No. 303 of 1979.

30th March, 1992.

(1) *Limitation Act (XXXVI of 1963)—S. 21—Impleading of a party as plaintiff—Date of institution of suit quo such party.*

*Held*, that after the termination of the lease, anyone of the landlords can bring a suit for ejection against the tenant by joining the other landlords either as plaintiffs or as defendants. Failure to implead one of the heirs of the landlord does not affect the maintainability of the suit. There is no bar under S. 21 of the Limitation Act to declare that any plaintiff or defendant added subsequent to the institution of the suit will be deemed to have been added on the date when the suit was instituted, provided the applicant had acted in good faith.

(Para 7)

(2) *Transfer of Property Act, 1882—S. 106—Determination of tenancy by notice—Rent accepted after determination of tenancy—Whether a new tenancy created by such acceptance.*

*Held*, that where a contractual tenancy to which the rent control legislation applies has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises, acceptance of rent from the tenant, by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord had assented to a new contractual tenancy.

(Para 7)

*Regular Second Appeal from the order of the Court of Shri Gian Inder Singh, Additional District Judge, Ludhiana, dated the 17th day of August, 1978 affirming that of Shri P. S. Ahluwalia, Sub-Judge 1st Class, Ludhiana, dated the 25th April, 1977, dismissing the suit of the plaintiffs and leaving the parties to bear their own costs.*