2025 INSC 1262

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1624 OF 2011

OM PAL & ORS **...APPELLANT(S)**

VERSUS

STATE OF U.P
(NOW STATE OF UTTARAKHAND) **...RESPONDENT(S)**

WITH

CRIMINAL APPEAL NOS.1613-1614 OF 2011

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. The present set of Appeals is directed against the common judgment and order dated 29.11.2010 whereby the High Court dismissed the criminal appeals filed by the appellants against their conviction under Section 302 read with Sections 149 and 307 of the Indian Penal Code, 1860[1].

[1] "IPC"

2. In the present set of Appeals, Criminal Appeal No.1624 of 2011 is filed by appellants – Om Pal, Narendra and Ranvir; Criminal Appeal No.1613 of 2011 is filed by Dharamvir; and Criminal Appeal No.1614 of 2011 was filed by Inchha Ram, who has passed away during the pendency of the present Appeals. Therefore, Criminal Appeal No.1614 of 2011 preferred by Inchha Ram stands abated and the same is, accordingly, dismissed as such.

A. FACTUAL MATRIX

3. In the present case, two sets of First Information Reports[2] were lodged with regard to the same incident which took place on 19.05.1988.

THE FIRST FIR

4. FIR No.65 dated 20.05.1988 was lodged under Sections 147, 148, 149, 323, 324 and 307 of the IPC from the side of the appellants stating that one Molhar along with his brother Kantu and his sons, Narendra, Om Pal, Inchha, Ranvir and Pardeep were cutting sugar cane and at the same time, Dile Ram, Ved Pal, Bengal Singh, Sher Singh entered the field of the appellants along with *lathis*, *tabals* and axes and started attacking the appellants. There was a fight that ensued and, in the process, Kantu, Narendra, lnchha received several injuries.

THE SECOND FIR

5. FIR No. 65A/1988 under Sections 147, 148, 149, 307, 323, 324 and 506 of the IPC was lodged by the opposite/complainant side on 23.05.1988 that

[2] "FIR"

Molhar and Dharamvir Singh damaged their boundary of the field on 19.05.1988 and, thereafter, the appellants started beating Dile Ram with *lathis*, *tabals*, axes, phawara due to which Dile Ram, Braham Singh and Bangal Singh received serious injuries, both were taken to hospital where Dile Ram succumbed to the injuries on 24.5.1988 and Braham Singh expired on 31.5.1988.

6. Taking into account the two sets of FIR, FIR No.65 gave rise to Session Trial No.57 of 1992 and FIR No. 65A emanated into Session Trial No.56 of 1992.

7. In Session Trial No.56 of 1992, out of which the present Appeals have arisen, all the seven accused persons were found guilty of the offences punishable under Section 302 read with Section 149 IPC, and Section 307 read with Section 149 IPC. Each of them were sentenced to imprisonment for life and a fine of ₹10,000/- under Section 302/149 IPC, rigorous imprisonment for 10 years and a fine of ₹10,000/- under Section 307/149 IPC. Additionally, the accused persons were individually sentenced to the following:

Appellant	**Offence**	**Sentence**
Molhar	Section 147 IPC	R.I. for 2 years
Kantu	Section 147 IPC	R.I. for 2 years
Om Pal	Section 147 IPC	R.I. for 2 years
Narendra	Section 147 IPC	R.I. for 2 years
Ranvir	Section 147 IPC	R.I. for 2 years
Inchha Ram	Section 148 IPC	R.I. for 2 years
Dharamvir	Section 148 IPC	R.I. for 2 years

8. On the other hand, in Sessions Trial No.57 of 1992, which emanated from FIR No. 65A lodged by the appellants, all the accused persons were acquitted.

9. Aggrieved by the judgment in Session Trial No.56 of 1992 convicting the appellants, three separate appeals were preferred — Criminal Appeal No.1516 of 2001 by Molhar and Dharamvir, Criminal Appeal No.921 of 2001 by Kantu and Criminal Appeal No.922 of 2001 by Om Pal, Narendra, Inchha Ram and Ranvir before the Allahabad High Court.

10. Aggrieved by the judgment in Session Trial No.57 of 1992, Criminal Revision No.321 of 2001 was filed by Molhar Singh before the Allahabad High Court.

11. All the three criminal appeals and the criminal revision were transferred to the High Court of Uttarakhand under Section 35 of the Uttar Pradesh Reorganization Act, 2000 after the formation of the State of Uttarakhand.

12. The High Court of Uttarakhand *vide* its common impugned judgment and order dated 29.11.2010 after reappreciating the entire evidence of the prosecution, dismissed all the criminal appeals and the criminal revision filed by appellants. Thus, the High Court *vide* impugned judgment affirmed the conviction and sentence awarded by the Trial Court in Sessions Trial No.56 of 1992.

13. The appellants are now before us assailing the judgment passed by the High Court which affirmed their conviction.

B. SUBMISSIONS OF THE PARTIES

14. Learned counsel for the appellants submit that the present case is not of a premeditated murder but a result of a free fight that ensued between the two

groups. As the injuries were sustained on both sides, the possibility of the appellants exercising their self-defense cannot be ruled out. Also, the fact that none of the witnesses could attribute specific role to any particular accused, thus, it indicates that it was a case of free fight.

15. Additionally, it was the side of the appellants that lodged the first FIR. It was also argued that the cross-FIR from the side of the complainant was in fact lodged after three days of the incident by the son of the deceased Dile Ram and not by the injured eyewitness.

16. Learned counsel for the appellants have also questioned the testimonies of the eyewitnesses. In a nutshell, it was argued that the conviction of the appellants under Section 302/149 of the IPC is totally misconceived and, if at all they are liable, they can be liable only under Section 304 Part II of the IPC as their case falls under fourth exception to Section 300 IPC.

17. To bolster their submissions, the appellants have relied on the decisions of this Court in ***Puran vs. State of Rajasthan***[3], ***Pappu vs. State of M.P.***[4], ***Kailash vs. State of M.P.***[5]***, Vadla Chandraiah vs. State of A.P.***[6] and ***Sandhya Jadhav (Smt.) vs. State of Maharashtra***[7].

18. Per contra, the respondent-State has argued that the appellants had the motive for killing Dile Ram since the consolidation proceedings were pending

[3] (1976) 1 SCC 28
[4] (2006) 7 SCC 391
[5] (2006) 11 SCC 420
[6] (2006) 13 SCC 587
[7] (2006) 4 SCC 653

between the parties, but in the consolidation proceedings, the field was given to Dile Ram, which enraged the appellants.

19. It was also argued that it was the appellants who were the aggressors. They are the ones who attacked on the complainant side. PW-2 (Bangal Singh) (injured eyewitness) in his testimony had stated that the appellants' *lathi* contained an arc shaped iron blade. Hence, it cannot be stated that the injuries on the person of accused are not explained.

20. The State has argued that the fourth exception to Section 300 of the IPC is not attracted in the present case considering that it was a shared motive on the part of the appellants to cause death on the complainant side. Additionally, on the issue of delay in lodging the FIR by the complainant, the State argues that the Trial Court has rejected this contention as the delay was well explained by the complainant side. Thus, the present Appeals need no interference and the conviction against the appellants be upheld in toto.

21. To bolster its submissions, the State relied on the decisions of this Court in ***Pulicherla Nagaraju alias Nagaraja Reddy vs. State of A.P.***[8] and ***Abdul Sayeed vs. State of Madya Pradesh***[9]**.**

22. The rival submissions now fall for our analysis.

C. ANALYSIS

23. Having heard the learned counsel appearing for the parties and having gone through the material on record, the only question that falls for our

[8] (2006) 11 SCC 444
[9] (2010) 10 SCC 259

consideration is whether the High Court committed an error in passing the impugned judgment and order?

24. As the appellants before us seek for interference with the concurrent findings by two Courts below, this Court generally should be slow in interfering with the concurrent findings. In ***Mekala Sivaiah vs. State of Andhra Pradesh***[10], this Court observed as follows:

> "**15.** It is well settled by judicial pronouncement that Article 136 is worded in wide terms and powers conferred under the said Article are not hedged by any technical hurdles. This overriding and exceptional power is, however, to be exercised sparingly and only in furtherance of cause of justice. Thus, when the judgment under appeal has resulted in grave miscarriage of justice by some misapprehension or misreading of evidence or by ignoring material evidence then this Court is not only empowered but is well expected to interfere to promote the cause of justice.
>
> **16.** It is not the practice of this Court to reappreciate the evidence for the purpose of examining whether the findings of fact concurrently arrived at by the trial court and the High Court are correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice on account of misreading or ignoring material evidence that this Court would interfere with such finding of fact."
>
> (Emphasis supplied)

25. The scope of this Court for interference under Article 136 of the Constitution of India was further explained in ***Shahaja alias Shahajan Ismail Mohd. Shaikh vs. State of Maharashtra***[11]

> "**23.** Again, in Balak Ram v. State of U.P. [(1975) 3 SCC 219:1974 SCC (Cri) 837], this Court also held that the powers of the Supreme Court under Article 136 of the

[10] (2022) 8 SCC 253
[11] (2023) 12 SCC 558

Constitution are wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances. In Arunachalam v. P.S.R. Sadhanantham [(1979) 2 SCC 297:1979 SCC (Cri) 454], this Court, while agreeing with the views expressed on the aforesaid mentioned decisions of this Court, has thus stated : (SCC p. 300, para 4)

> "4. ... The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the court to set limits to itself within which to exercise such power. It is now the well-established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the court. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted "perversely or otherwise improperly"."
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> (emphasis supplied)"

24. In Nain Singh v. State of U.P. [(1991) 2 SCC 432: 1991 SCC (Cri) 421] , in which all the aforesaid decisions as referred to hereinabove were considered and after considering the aforesaid decisions on the question of exercise of power under Article 136 of the Constitution and after agreeing with the views expressed in the aforesaid decisions, the Court finally laid down the principle that the evidence adduced by the prosecution in that decision fell short of the test of reliability and acceptability and, therefore, was highly unsafe to act upon it. In State of U.P. v. Babul Nath [(1994) 6 SCC 29: 1994 SCC (Cri) 1585], this Court, while considering the scope of Article 136 as to when this Court is entitled to upset the findings of fact, observed as follows : (SCC p. 33, para 5)

> "5. At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the

> evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."
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> **25.** From the aforesaid decisions of this Court on the exercise of power of the Supreme Court under Article 136 of the Constitution, the following principles emerge:
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> **25.1.** The powers of this Court under Article 136 of the Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of fact save in exceptional circumstances.
>
> **25.2.** It is open to this Court to interfere with the findings of fact recorded by the High Court if the High Court has acted perversely or otherwise improperly.
>
> **25.3.** It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.
>
> **25.4.** When the evidence adduced by the prosecution falls short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.
>
> **25.5.** Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

26. The parties in the present matter are close relatives of each other as they happen to be the descendants of a common ancestor. There was a long-standing dispute between the rival parties due to the pending land boundary dispute. On

the day of the incident, an altercation took place between both the groups as the appellants had broken the *mendh* (ridge) between the farmlands of the appellants and the complainant side. Both the sides inflicted injuries on each other, leading to the death of Dile Ram and Braham Singh.

27. To prove the guilt of the appellants, the prosecution examined PW-1 (Tejpal Singh) (complainant and son of deceased Dile Ram), PW-2 (Bangal Singh) (injured and eyewitness), PW-3 (Mahendra Singh) (eyewitness), PW-4 (Mohan Lal @ Som) (another eyewitness), PW-5 (Dr. R.K. Singhal) (who conducted postmortem examination on the dead body of Braham Singh), PW-6 (Constable Jeet Singh) (who registered the case and prepared chik report of both the cross cases), PW-7 (Dr. Harish Chandra Dua) (who recorded injuries of the accused and injured), PW-8 (Sub-Inspector D.C. Yadav) (who started the investigation), PW-9 (Inspector P.C. Pant) (who completed the investigation), and PW-10 (Dr. P.S. Chahal) (who conducted postmortem examination on dead body of Dile Ram).

28. In their statement under Section 313 of the Code of Criminal Procedure, 1973, appellant-Om pal admitted the on-going animosity with the complainant side and he had accordingly stated that Bangal Singh and others had committed assaults upon him and in order to carve-out a cross-case against him, they had nominated appellant-Om Pal, as being an accused, in this matter. Appellant-Narendra too tendered identical statement. Appellant-Dharamvir had stated that since he happens to be a witness in the cross-case pertaining to the present matter, therefore, he had been nominated as an accused. Both the Courts below

while holding the appellants guilty heavily relied on the testimonies of PW-1 (Tejpal Singh) (complainant and son of deceased Dile Ram), PW-2 (Bangal Singh) (injured and eyewitness), PW-3 (Mahendra Singh) (eyewitness) and PW-4 (Mohan Lal @ Som) (eyewitness).

29. The Trial Court in its judgement while convicting the appellants held that from the evidence of PW-2, PW-3 and PW-4, it is clear that the appellants had initiated the said occurrence and they had been the aggressor. Further, nature of the injuries as well as the evidence available on record itself proved that the injuries had been knowingly and intentionally inflicted with due, proper and sufficient motive and object, while the blades of spades, *phawads* had been used, from their sharp contours in order to inflict fatal injuries on the head of both the deceased persons resulting in their death.

30. The High Court in the impugned judgment too held that the appellants were the aggressors. It was further held that the complainant side used *lathis* to defend themselves only after the assault was initiated from the side of the appellants who used sharp weapons. Additionally, PW-3 and PW-4, who were the eyewitnesses, have corroborated the prosecution's case as narrated by PW-2, an injured eyewitness.

31. Since injuries were sustained from both the sides, at the outset, it will be appropriate to mention the injuries that were found on Dile Ram, Braham Singh and Bangal Singh, and appellants - Om Pal, Narendra and Inchha Ram by PW-7 (Dr. Harish Chandra Dua) who prepared the injury report.

Dile Ram (deceased) received the injuries in nature of

i) *Incised wound 13 ½ cm X 2 cm X bone deep over parietal region left side extending upto right temporal region. Transversely placed. Margins clear cut, edges well defined, bleeding present.*

Braham Singh (deceased) received the following injuries

i) *Incised wound 13 cm X 2 cm X bone deep over left parietal region of skull extending upto left temporal region 9 cm above left ear. Margins clear cut, edges well defined. Oozing of blood present. Patient conscious.*

ii) *Lacerated wound 3 ½ cm X ½ cm X scalp deep over left parietal region of skull 3 ½ cm behind injury No. (i).*

iii) *Lacerated wound 2 ½ cm X ½ cm X bone deep over left parietal region of skull 3 cm behind injury No.(ii)*

iv) *Lacerated wound 4 cm X ½ cm X scalp deep over right parietal-temporal region of skull 9 cm above right ear.*

v) *Lacerated wound 3 ½ cm X ½ cm X muscle deep over back of left forearm 7 cm below left elbow joint.*

vi) *Lacerated wound 2 cm X ½ cm X muscle deep over back of left elbow joint.*

Bangal Singh (PW-2) received following injuries

i) *"Lacerated wound 3 ½ cm X ½ cm X scalp deep over left parietal region of skull 9 cm above medial ends of eyebrow.*

ii) Lacerated wound 2 cm X ½ cm X muscle deep in front and middle of right index finger with traumatic swelling 3 cm X 2 cm. Advised X-ray.

iii) Abrasion ½ cm X ½ cm over back of middle of index finger with traumatic swelling 2 cm X 1 cm extending upto root. Advised X-ray.

iv) Linear abrasion 6 cm in length over outer aspect of right upper arm 4 cm below the left shoulder.

v) Abrasion 2 cm X 1 cm over back of left forearm, below left elbow joint.

vi) Lacerated wound 3 cm X ½ cm X skin deep over outer aspect of left arm 14 cm above left elbow joint.

32. From the side of the appellants, Narendra received injuries in the nature of:

i) Lacerated wound 3 ½ cm X ½ cm X scalp deep over right parietal region of skull. Oozing of blood present. Advised X-ray.

ii) Incised wound 20 cm X 4/10 cm X muscle deep over posterio aspect of index finger of right hand. Margins clear cut, edges well defined. Bleeding present.

iii) Incised wound 1 cm X 2/10 cm X skin deep just below injury No. (ii). Margins clear cut, edges well defined.

Om Pal received the following injuries:

i) Abraded contusion 11 cm X 2 ½ cm over upper surface of left shoulder.

ii) Abrasion in an area 3 cm X 2 cm in front of the lateral part of supra clavicular region left.

iii) Contusion 6 cm X 3 cm over lateral aspect left shoulder.

iv) Traumatic swelling 5 cm X 4 cm over medial aspect of left foot.

Inchha Ram received the following injuries:

i) Lacerated wound 7 cm X 1 cm X bone deep over left parietal region 6 cm above left ear. Margins of the wound are irregular and contused.

ii) Lacerated wound 1 ½ cm X ½ cm X scalp deep over right occipital region of the skull. 3 ½ cm behind injury No. (i).

iii) Lacerated wound 3 ½ cm X ½ cm X scalp deep right side of parietal region 12 cm above top of the right ear.

iv) Lacerated wound 1 ½ cm X ½ cm X scalp deep over right parietal region of skull. 8 cm above top of right ear.

v) Traumatic swelling in an area 18 cm X 8 cm over back of right forearm in upper half of the arm. Advised X-ray.

vi) Contusion 9 cm X 2 ½ cm over posterio lateral aspect of right shoulder and adjoining part of right arm.

vii) Contusion 3 ½ cm X 2 cm over back right side of scapula region, 14 cm below right shoulder.

viii) Contusion 6 cm X 2 cm over back of left arm 10 cm above left elbow joint.

ix) Abrasion 12 cm X 1 cm over posterio medial aspect of left forearm just below elbow joint.

x) Lacerated wound 3 ½ cm X ½ cm X skin deep over back of thigh just below the gluteal region.

OCULAR EVIDENCE

33. The present case before us is not the one based on circumstantial evidence, but is based on ocular evidence. Time and again this Court has held that ocular evidence is the best evidence unless there are reasons to doubt it. This Court in ***Shahaja alias Shahajan Ismail Mohd. Shaikh*** (supra) held thus:

> "**30.** To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.
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> **31.** There is nothing palpable or glaring in the evidence of the two eyewitnesses on the basis of which we can take the view that they are not true or reliable eyewitnesses. Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eyewitnesses."
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> (Emphasis supplied)

34. Coming to the testimony of PW-2 (Bangal Singh), an injured eyewitness. He stated that on the day of the incident his grandfather Dile Ram and uncle Braham Singh were working in the sugarcane field when at about 11:00 A.M.,

Molhar and Dharamvir damaged the *mendh* (ridge) of the field to which Dile Ram objected to, and Molhar and Dharamvir started hurling abuses. Thereafter, Molhar and Dharamvir called other accused Kantu, Inchha Ram, Narendra, Om Pal, Pehlu (since deceased) and Ranvir. He had further stated that Dharamvir and Inchha Ram were armed with *spades*, while the other accused were armed with *lathis*. It is further stated that both the deceased persons and PW-2 were assaulted with dangerous weapons. The witness further stated that at the time of incident PW-3 and PW-4 also arrived at the spot.

35. It is settled that the testimony of an injured eyewitness is accorded a special status in law. As being a stamped witness, his presence cannot be doubted. The testimony of an injured eyewitness has its own relevancy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of the injured eyewitness should be generally given due importance unless there are glaring contradictions.

36. While dealing with the importance of the injured eyewitness testimony, this Court in ***Jarnail Singh & Ors. vs. State of Punjab***[12] held as under

> "**28.** Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the

[12] (2009) 9 SCC 719

> scene stands established in case it is proved that he suffered the injury during the said incident.
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> **29.** In State of U.P. v. Kishan Chand [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below."
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> (Emphasis supplied)

37. In ***Abdul Sayeed*** (supra), this Court explained that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, deposition by the injured eyewitness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

38. In the present case before us, it is clear from the record that the defence had not at all challenged the version of PW-2, but on the contrary, the defence had admitted his presence at the spot of the said occurrence.

39. Keeping in view the principle that an injured eyewitness enjoys a presumption of truth and the fact that the same is supported by the medical evidence, testimony of PW-2 does not suffer from any infirmity and has to be considered while fixing the guilt of the appellants.

40. With respect to the testimonies of PW-3 and PW-4 who were the eyewitnesses, it has been revealed that they were taking their respective bullock-carts loaded with sugarcanes towards the Northern direction on the chak-road, in order to get the same weighed. While at the time of the incident, both of them had been in the vicinity of the spot of occurrence and they had accordingly arrived there upon hearing hue and cry and commotion being raised. PW-4 had also narrated that he had seen the *mendh* (ridge) which stood demolished and cut-off and the middle portion thereof had since been missing from the spot of its existence.

41. While examining these eyewitnesses, the defence had not at all been successful in eliciting any contradiction in their respective evidence on the basis of which their evidence may be according1y discarded and thrown out in this matter. Thus, there is nothing palpable or glaring in the evidence of the two eyewitnesses on the basis of which we can be of the view that they are not true or reliable eyewitnesses.

MOTIVE

42. Motive although is a relevant factor in all criminal cases, it, however, is not a *sine qua non* for establishing the guilt of the accused persons. Motive even in a case which rests on an eyewitness account, lends strength to the prosecution's case and fortify the Court in its ultimate conclusion. Thus, the fact of motive has to be seen in the light of the other cogent evidence available. In

the case of ***Sheo Shankar Singh vs. State of Jharkhand & Anr.***[13], this Court observed as under:

> "**15.** The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where the prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eyewitnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eyewitness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely, even if the prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eyewitnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eyewitness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eyewitnesses. See Shivaji Genu Mohite v. State of Maharashtra [(1973) 3 SCC 219 : 1973 SCC (Cri) 214] , Hari Shanker v. State of U.P. [(1996) 9 SCC 40 : 1996 SCC (Cri) 913] and State of U.P. v. Kishanpal [(2008) 16 SCC 73 : (2010) 4 SCC (Cri) 182]."

43. In the present case, the question is what actually drove the appellants to commit this double murder after forming an unlawful assembly. According to the prosecution, Dile Ram had asked Molhar and Dharamvir to desist from *mendh* (ridge) of his field, whereupon Molhar hurled abuses and then called upon

[13] (2011) 3 SCC 654

the other appellants on the spot and committed assaults upon the complainant party with *lathis*, *spades*, *phawadas*, which they had already carried with themselves. Also, the fact of a prior enmity on account of the boundary dispute clearly establishes the motive for the commission of the offence.

PRESENT CASE DOES NOT FALL UNDER THE FOURTH EXCEPTION TO SECTION 300 OF THE IPC

44. Now let us come to the contentions raised by the appellants. One of the main arguments from the side of the appellants was that since it was a case of free fight where injuries were received on the side of the appellants as well and considering there was no premeditation from their side, the case would fall under the fourth exception to Section 300 of the IPC. We, however, are not convinced with this argument in view of the law laid down by this Court in ***Pulicherla Nagaraju alias Nagaraja Reddy*** (supra) wherein it was held:

> "**29.** Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the

> following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."
>
> (Emphasis supplied)

45. From the medical evidence on record, it stands established that the death of both the deceased persons was the result of ante-mortem injuries. The nature and extent of these injuries, coupled with the surrounding circumstances, leave no doubt that they were intentionally inflicted. The use of the sharp edges of spades, *phawadas* to deliver fatal blows on the heads of the deceased demonstrates that the assailants acted with a clear motive and object of permanently eliminating them, thereby committing their murder. Thus, the circumstances to bring the case under the fourth exception to Section 300 of the IPC do not exist.

DELAY IN FILING OF FIR IS NOT FATAL TO THE CASE OF THE PROSECUTION

46. The issue of delay in the filing of the FIR from the side of the complainant came up during the hearing. It was argued that the cross FIR was lodged on 23.05.1988 which is after three days of the incident. Thus, according to them,

the second FIR was merely an afterthought of the first FIR which was lodged by the appellants. This contention has been dealt by both the Courts below holding that the delay was well explained by PW-1, who is the son of deceased Dile Ram. It is a settled position that delay in filing of the FIR cannot be considered to be fatal to the case of the prosecution when there is direct evidence and when the delay in filing the FIR is well explained. This Court in the case of ***State of H.P. vs. Gian Chand*** [14] observed that:

> "**12.** Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution…."
>
> (Emphasis supplied)

47. Furthermore, in the case of ***Raghbir Singh vs. State of Haryana***[15], this Court observed thus:

> "**11.** With regard to the delay in filing the FIR, both the courts have found that there was no delay in filing the FIR. The trial court found that the rushing of the victim to the hospital to save his life instead of first going to the police station was a satisfactory explanation for the delay in making the complaint. The view was affirmed by the High Court and we find no reason to interfere with the same."
>
> (Emphasis supplied)

[14] (2001) 6 SCC 71
[15] (2000) 9 SCC 88

48. In the present case, we will have to consider whether there was a probable explanation from the side of PW-1 for the delay in the lodging of the FIR. From the statement of PW-1, it is clear that on his coming back from Muzaffarnagar, he took his injured father (Dile Ram), injured uncle (Braham Singh), and nephew to the hospital in Chandigarh and after he came back from Chandigarh on 23.05.1988, he lodged the FIR. The present explanation, according to us, is probable and natural considering the facts and circumstances of the case.

NON- RECOVERY OF THE WEAPONS IS NOT FATAL TO THE CASE OF THE PROSECUTION

49. Another contention raised by the appellants was that the weapons used during the incident were never recovered from the site. However, this Court has many a times reiterated that non-recovery of the weapons cannot be considered fatal to the case of the prosecution if there is consistent medical and ocular evidence. This Court in the case ***State of Rajasthan vs. Arjun Singh & Ors.***[16] held as under:

> "**18.** As rightly pointed out by the learned Additional Advocate General appearing for the State that mere non-recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gunshot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gunshot wounds respectively while Raj Singh (PW 2) also received 8 gunshots scattered in front of left thigh. All these injuries have been noted by the doctor (PW 1) in his reports, Exts. P-1 to P-4."
>
> (Emphasis supplied)

[16] (2011) 9 SCC 115

50. Also in ***Nankaunoo vs. State of Uttar Pradesh***[17], this Court held that where in light of unimpeachable oral evidence is corroborated by the medical evidence, non-recovery of murder weapon does not materially affect the case of the prosecution. Any omission on the part of the investigating officer cannot go against the prosecution's case. Story of the prosecution is to be examined *dehors* such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice.

D. CONCLUSION

51. From the above discussion, there remains no doubt in our minds that the present appellants in furtherance of their common intention formed an unlawful assembly. Inncha and Dharamvir stood armed with sharp edged deadly weapons committed the murder of Braham Singh and Dile Ram, while in order to achieve their common intention, they had also inflicted such injuries on the physical person of Bangal Singh knowing fully well that had Bangal Singh died on account of the said injuries they ought to have been held guilty of causing his murder in this matter.

52. Consequently, the Appeals, being *sans merit*, stand dismissed. As we have dismissed the Appeals, the appellants shall surrender to custody forthwith and it will be the duty of the Trial Court to see that they are taken into custody. The bail bonds stand cancelled accordingly.

[17] (2016) 3 SCC 317

53. We shall further clarify that nothing mentioned above shall preclude the appellants from making an application for remission in accordance with law and the applicable policy of the State Government. In the event, such an application is preferred, the same shall be considered by the competent authority on its own merits, strictly in terms of the available policy of the State Government.

.....J.
(SANJAY KAROL)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
OCTOBER 28, 2025