

(1993) 05 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: C.A. No. 185-DB of 1991

Raj Singh and Others

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision: May 5, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 148, 149, 202, 300, 302

Hon'ble Judges: S.K. Jain, J; J.S. Sekhon, J

Bench: Division Bench

Advocate: R.S. Chema and S.S. Narula, for the Appellant; J.C. Sethi, Additional A.G., for the Respondent

Judgement

S.K. Jain, J.

Raj Singh, Bijie Singh, Ishwar Singh, Ram Sarup, Dharambir and Raj Kumar were found guilty of the murder of Sube Singh and causing injuries to Ram Kishan, Risal Singh, Chhote Lal and Ramesh and also of committing the offence of rioting and at that time Raj Singh was armed with a farsi, Ishwar Singh with jaili and Ram Sarup, Raj Kumar, Bijie and Dharambir a lithi each, by Additional Sessions Judge. Sonapat and they were convicted and sentenced as under : --

No.	Name of the accused	Offence	Sentence
1	Raj Singh	u/s 148 IPC	Rigorous imprisonment for one year.
		u/s 302 IPC	Rigorous imprisonment for life and to pay a fine of Rs. 200/-

or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

u/s 323/149 IPC Rigorous imprisonment
(on four, counts) for (sic) months on
each count.

u/s 325/149 IPC Rigorous imprisonment
for one year and to
pay a fine of Rs. 200/-
or in default of payment
of fine to Undergo
further rigorous
imprisonment for three
months.

2. Raj Kumar u/s 148 IPC Rigorous imprisonment
for one year.

u/s 302/149 IPC Rigorous imprisonment
for life and to
pay a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

u/s 325 IPC Rigorous imprisonment
for one year and to
pay a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

u/s 323 IPC Rigorous imprisonment
for six months.

u/s 323/149 IPC Rigorous imprisonment
(on three counts) for six months on
each count.

3. Ram Sarup 148 IPC Rigorous imprisonment
for one year.

302/149 IPC Rigorous imprisonment
for life and to

pay a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for
three months.

323 IPC

Rigorous imprisonment
for six months.

323/149 IPC
(on three counts)

Rigorous imprisonment
for six months on
each count.

u/s 325/149 IPC Rigorous imprisonment
for one year and to
pay a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

4. Ishwar Singh u/s 148 IPC Rigorous imprisonment
for one year.

u/s 302/149 IPC Rigorous imprisonment
for life and to
pay a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

u/s 323 IPC Rigorous imprisonment
for six months.

u/s 323/149 IPC Rigorous imprisonment
(on three counts) for six months on
each count.

u/s 325/149 IPC Rigorous imprisonment
for one year and to
pay a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

5. Bije Singh u/s 148 IPC Rigorous imprisonment

for one year.

u/s 302/149 IPC Rigorous imprisonment
for life and to pay
a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

u/s 323 IPC Rigorous imprisonment
for six months.

u/s 323/149 IPC Rigorous imprisonment
(three counts) for six months on
each count.

u/s 325/149 IPC Rigorous imprisonment
for one year and to pay
a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

6. Dharambir u/s 148 IPC Rigorous imprisonment
for one year.

u/s 302/149 IPC Rigorous imprisonment
for life and to pay
a fine of Rs. 200/-
or in default of payment
of fine to further
undergo rigorous
imprisonment for three
months.

u/s 325/149 IPC Rigorous imprisonment
for one year and to pay
a fine of Rs. 200/-
or in default of payment
of fine to undergo
further rigorous
imprisonment for three
months.

u/s 323/149 IPC Rigorous imprisonment
(on four counts) for six months on
each count.

2. All the substantive sentences were, however, ordered to run concurrently.

3. Feeling aggrieved against their conviction and sentences, Bijie Singh, Ishwar Singh and Raj Kumar appellants have filed Criminal Appeal No. 184-DB-1991 whereas Raj Singh, Ram Sarup and Dharmbir filed Criminal Appeal No. 185-DB-1991. (Ram Sarup had died during the pendency of the appeal, therefore, Appeal No. 185-DB-1991 stands abated except the sentence of fine. Since these appeals have arisen out of one single judgment of the learned trial Court, both of them are proposed to be disposed of through this single judgment.

4. In brief, the facts of the prosecution case are that in the evening of 12-7-1989 Surinder son of Ram Phal was going in the village street on the way to his house. There had been exchange of abuses between him and Raj Singh. Sube Singh had gone there in order to help the son of Ram Phal, Raj Singh abused him. Sube Singh slapped Raj Singh whereupon he threatened Sube Singh to teach him a lesson on some later date. Surinder and Sube Singh went to their house so did Raj Singh accused. Sube Singh narrated the occurrence to his brother Ram Kishan PW 9.

5. On 17-3-1989 at about 7a.m. Sube Singh led his buffalo to Sattiwala Johar to water it. Ram Kishan and Dharam Singh had also gone there in order to ease themselves. When they were returning to their house. Raj Singh accused armed with Pharsi, Ishwar Singh with a jaili, Bijie Singh. Ram Sarup, Dharmbir and Raj Kumar armed with a lathi each were standing near the banian tree. On seeing Ram Kishan, Dharam Singh and Sube Singh, they raised a lalkara that they should be done away with. PW Chhote Lal, Risal Singh and Ramesh being attracted by the lalkara raised by the accused reached there. Raj Singh accused dealt a pharsi blow on the left nipple on the chest of Sube Singh who fell down. Ishwar Singh gave jaili blows lathi-wise on the head, left hand and on the right ankle of Ram Kishan. Bijie Singh accused inflicted an injury with his lathi on his right eye brow. Ram Sarup inflicted a lathi blow on the back of the left ear of Ram Kishan. Bijie accused also inflicted blow to Risal Singh on his left arm whereas Raj Kumar accused gave lathi blows on the head and left hand of Ramesh PW. He also inflicted a lathi blow on the head of Chhote Lal PW. The injured PWs also caused injuries to the accused persons in their self defence. Therefore, all the accused persons bolted away from the spot with respective weapons. Sube Singh died at the spot. Hukam Singh and Maha Singh chokidars came there. Ramesh PW was removed to Medical College Hospital, Rohtak by Balbir and Ram Kishan, and Dharam Singh proceeded to Police Station Kharkhoda in order to lodge a report but happened to meet Sub Inspector Inder Lal on the bus stop of village Sesana. Ram Kishan PW lodged report Ex. PL with the Sub Inspector. It was concluded at 10 a.m. and on its basis, First Information Report Ex. PL/1 was recorded at 11.15 a.m. Under Sections 202/323/148/149 of the Indian Penal Code against the accused. Special report was conveyed to the Ilaka Magistrate, Sonapat at 2 a.m. After recording the statement of Ram Kishan, Sub Inspector Inder Lal accompanied him to the spot. Photographs were caused to be

taken. He drafted inquest report Ex.PO/1 on the dead body of Sube Singh which was lying on the spot. The dead body was entrusted to Constables Hewa Singh and Sube Singh for post-mortem examination. On spot inspection, the SI lifted blood stained earth from the spot vide recovery memo Ex. PR. A pair of chappal which was blood stained was taken into possession vide recovery memo Ex. PR/1. The Sub Inspector also prepared rough site plan Ex. PS of the spot.

6. The Autopsy on the dead body of Sube Singh was conducted by PW 8 Dr. B.D. Chaudhary, on 13-7-1989 at 4.15 p.m. He found as under : --

1. There was an incised wound 5 cms x 2.5 cms on the left side of chest wall just lateral to nipple, horizontally placed over lying the 5th inter-costal space. Clotted blood was present. On probing the chest wall, wound was 16 cms going in downward, backward and medial direction. Clotted blood was present.

On further explanation the pleura on left side showed incised wound of 5 cms x 1 cm. The corresponding lung on left side showed incised wound 4.5 cm x 1.5 cm on upper lobe medial side. There was about 1000 cc of blood in left pleural cavity. The peri-cardium was also injured. There was incised wound 4 cms x 1 cm on the pericardium. The left ventricle showed incised wound 4 cms x 2 cms. Clotted blood in left chamber of the heart was seen.

7. Rest of the viscera was normal.

8. The doctor opined; (i) that the death was caused due to shock and haemorrhage as a result of the injuries to the vital organs like heart and left lung (ii) that the injuries were antemortem and were sufficient to cause death in ordinary course of nature and (iii) that the time that elapsed between injuries and death was within a few minutes and between death and post-mortem was within 24 hours.

9. PW Ramesh was medico-legally examined by Dr. Sanjay Narula PW 1 on 13-7-1989 at 8.55 a.m. and following injuries were found on his person : --

1. There was swelling of left forearm extending from elbow joint up to 10 cms length x 6 cms, tender. Advised X-ray forearm including elbow joint.

2. There was abrasion of left side of scalp in parietal region 3 cms long. X-ray of skull was advised and opinion of Orthopaedic was also advised. He was conscious at that time.

10. The doctor opined that the injuries were caused within the duration of six hours by blunt weapon.

11. Dr. S.B. Gandhi, PW 2 had radiologically examined Ramesh on the same day and found fracture of his left radius.

12. Injured Chhote Lal was medico legally examined by Dr. S.S. Malik PW 1 on 13-7-1989 at 3.15 p.m. and found as under : --

1. There was lacerated wound size 5 cms x 1.75 cm x .75 cm on the left parietal region, 12.5 cms above the tragus of left pinna. Fresh " blood was oozing from the wound. There was swelling of size of 8 cms x 7 cms around the mark of injury. Patient was advised X-ray of skull. AP and lateral view.

13. Doctor opined that injury had been caused within a probable duration of 12 hours by blunt weapon.

Injured PW Ram Kishan.

14. On 13-7-1989 at 3.30 p.m. Dr. S.S. Malik medico legally examined Ram Kishan PW and found following ten injuries on his person : --

1. There was lacerated wound 5 cm x .5 cms x .5 cms on the mid line on the frontal region of the scalp 7 cm above the medial right eye brow. Fresh blood was oozing. Bone was visible. Patient was advised X-ray of skull. AP and lateral view.

2. There was lacerated wound of size 2 cm x .5 cms x .5 cms on the left frontal region 4 cms above the medial and of left eye brow. Fresh blood was oozing from the wound.

3. There was a lacerated wound size 3 cms x 0.25 cm x 0.25 cms on the left parietal region, 13 cms above the tragus of left pinna. Fresh blood was oozing from the wound.

4. There was abrasion mark of size 1 cm x .25 cm on the left parietal region 2.5 cms posterior to the back of left pinna. Fresh blood was oozing from the wound.

5. There was a lacerated wound of size 1.5 cms x .25 cm x .25 cm on the back of left forearm. 8 cms distal to left olecranon process. Fresh blood was oozing from the wounds. Movements at the left elbow joint were normal.

6. There was lacerated wound of size 1.5 cms x .25 cm x .25 cm on the back of left forearm. 8.5 cms distal to the injury No. 5. Fresh blood was oozing from the wound.

7. There was abrasion mark of size 1 cm x .25 cm on the dorsum of left hand on the base of left middle finger. There was swelling of size 17 cms x 8 cms around the mark of injury, extended to the injury No. 6 Patient was advised X-ray.

8. There was a lacerated wound of size 1.5 cms x .25 cm x .25 cm on the dorsum of left hand at the first interflangeal joint of left index finger. Movements were restricted. Patient was advised X-ray.

9. There was lacerated wound of size 2.5 cms x .25 cm x .25 cm on the lateral side of right eye brow.

10. There was a lacerated wound of size 2 cms x .75 cm x .75 cm on the dorsum of right lower leg 10 cms above the right medial malleolus. Fresh blood was oozing from the wound. Movements were normal.

15. Doctor opined that injuries Nos. 2 to 6, 9 and 10 were simple in nature and had been caused within a probable duration of 24 hours by blunt weapon.

Risala PW.

16. Dr. Malik on the same day at 4.20 p.m. medico legally examined Risala PW and found following two injuries on his persons : --

1. There was abrasion mark of size 3 cms x 1 cm on the posterior side of left forearm 13 cms distal to the left olecranon process. Reddish blood was oozing from the wound. Movements at left elbow joint were normal.

2. There was red coloured bruise mark of size 3 cms x 1 cm on the lateral side of right upper arm 10 cms below the top of right shoulder. Movements at right shoulder were normal.

The doctor opined that both the injuries were simple in nature and had been caused within probable duration of 24 hours by blunt weapon.

Dharambir accused.

17. Dr. Malik on the same day at 5.45 p.m. had medico legally examined Dharambir accused and found the following seven injuries on his person: --

1. There was lacerated wound of size 4 cms x .25 cm x .5 cm on the left parietal region, 10 cms above the tragus of left pinna. Serous discharge was oozing from the wound.

2. There was lacerated wound of size 5 cms x .25 x .75 cm on the left parietal region 3 cms posterior to the injury No. 1. Serous discharge was oozing from the wound. X-ray of skull was advised. AP and lateral view.

3. There was lacerated wound 2.5 cm x .5 cm x .25 cms on the right parietal region 14 cms above the tragus of right pinna. Fresh blood was oozing from the wound.

4. There was red colour bruise mark of size 11 cms x 3.5 cms on the left suprascapular region. It was tender. Movements at left shoulder joint were normal.

5. There was swelling of size 7 cms x 6 cms on the front of left forearm, just proximal to the left wrist joint. It was tender, and the movements at left wrist joint were slightly restricted. Patient was advised X-ray.

6. There was a red colour bruise mark of size 8 cms x 1.5 cms on the lateral side of right elbow joint. It was tender. Movements at the right elbow joint were normal.

7. Patient was complaining of pain in left hip joint, but no external mark of injury was seen. Movements at left hip joint were painful but normal.

18. The doctor opined that injuries Nos. 3, 4, 6 and 7 were simple in nature and had been caused within probable duration of 24 hours by blunt weapon.

Raj Singh accused.

19. On the same day at 6.20 p.m. Dr. Malik had medico legally examined accused Raj Singh and had found following four injuries on his person : --

1. There was lacerated wound of size 5.5 cms x 0.75 cm x 0.5 cm on the vault of skull in the midline 15 cms above the tragus of left pinna. Fresh blood was oozing from the wound and the area was tender.

2. There was a red colour bruise mark of size 7 cms x 1.25 cm on the right scapular area. Movements at right shoulder joint were normal.

3. There was abrasion mark of size 3 cms x 0.5 cm on the left second intercostal space, 7.5 cms above and medial to the left nipple. Reddish blood was deposited on it. Movements in deep inspiration were normal.

4. Patient was complaining of pain in right knee joint, but there was no external mark of injury. Movements at right knee joint were normal.

20. Doctor opined that injuries had been caused within probable duration of 24 hours by blunt weapon and was simple in nature.

Ram Sarup accused.

21. On the same day, at about 6.45 p.m. Dr. Malik had medico legally examined Ram Sarup accused. He found following two injuries on his person : --

1. There was a lacerated wound of size 4 cms. x 0.75 cm x .75 cm on the left side of frontal area just above the left eye brow. Serosanguineous discharge was oozing from the wound. Patient was advised X-ray.

2. There was a red colour bruise mark of size 6 cms x 1 cm on the anterior side of left knee joint. There was swelling of size 14 cms x 14 cms around the mark of injury. Movements at left knee joint were slightly restricted. Advised X-ray.

In the opinion of the doctor the injuries had been caused by a blunt weapon, with probable duration of 24 hours.

Bije Singh accused.

22. On the same day at 7.00 p.m. Dr. Malik examined Bije Singh accused and found following eight injuries on his person: --

1. There was lacerated wound of size 6 cms X 0.5 cms X 0.75 cm on the right fronto parietal region 14 cms above the tragus of right pinna. Serosanguineous discharge was oozing from the wound. Advised X-ray.

2. There was a lacerated wound of size 5.5 cms X 0.25 cms X 0.5 cm on the left parietal region just left to the midline, 16 cms above the tragus of left pinna. Serosanguineous discharge was oozing from the wound.

3. There was lacerated wound of size 4 cms X 0.25 cms X .75 cm on the left parieto occipital region 5 cms posterior to the back of left pinna, Serosinguish discharge was oozing from the wound.
 4. There was lacerated wound of size 2 cms X 0.5 cm X 0.5 cm on the occipital area 4 cms medial to the injury No. 3 Serosinguish discharge was oozing from the wound.
 5. There was 6 cms linear abrasion mark on the right side of occipital. Reddish blood deposited on the abraded area.
 6. There was abrasion mark of size 20 cms X 7 cms on the left scapular area. Reddish blood deposited on the abraded area. Movements at left shoulder joint were normal.
 7. There was a swelling of size 6 cms X 3 cms on the dorsum of right wrist joint. It was tender. Movements at right wrist joint were slightly restricted. Patient was advised X-ray.
 8. There was a lacerated wound of size 4 cms X .5 cm X .75 cm on the web between left ring finger and left little finger. Serosinguish discharge was oozing, from the wound. Movements were restricted. Patient was advised X-ray.
23. The doctor opined that injuries Nos. 2, 3, 4, 5 and 6 were simple in nature and had been caused within probable duration of 24 hours by blunt weapon.

Ishwer Singh accused.

24. On the same day at 7.30 p.m. Dr. Malik had medico legally examined Ishwar Singh accused and found eight injuries on his person: --

1. There was a lacerated wound size 5 cms X 0.5 cm X 0.5 cm on the left parietal region 12.5 cms above and posterior to the tragus of left pinna. Serosinguish discharge from the wound.
2. There was abrasion mark of size 3 cms X 2 cms on the right side of forehead, 1.5 cm above the medial end of right eye brow. Reddish blood was deposited on the abraded area.
3. There was a lacerated wound of size 0.5 cm X 0.25 cm X 0.25 cm on the palmer aspect of left hand at the base of left little finger. Movements at metacarpalphalangeal joint were normal.
4. There was swelling of size 8 cms X 5 cms at the middle of left forearm, 8 cms proximal to the left wrist joint. Movements at left elbow and left wrist joint were normal.
5. There was a bruise mark of size 24 cms X 1.5 cm on the anteriolateral aspect of left thigh. 10 cms above and lateral to the left knee joint. Movements at left hip and knee joint were normal.

6. There was abrasion mark of size 8 cms X 2 cm on the right mammary region. Respiration in deep inspiration was normal.

7. There was abrasion mark of size 16 cms X 4 cms on the left scapular region. Reddish blood was deposited on the abraded area. Movements in deep inspiration were normal.

8. Patient was complaining of pain in the left side of chest but no external mark of injury was seen. Patient was also complaining of blood in sputum. Patient was advised X-ray.

25. He opined that injuries Nos. 2 to 7 were simple in nature and had been caused within probable duration of 24 hours by blunt weapon.

26. Sub-Inspector Inder Lal arrested all the six accused on 16-7-1989 at 10 a.m. at bus stand Kharkhoda and effected recovery of pharsi from the accused Raj Singh, jaili from accused Ishwar Singh and one lathi each from remaining accused on 20-7-1989 in pursuance of their respective disclosure statements which the accused had made on that day on interrogation.

27. After completion of the investigation and other formalities, all the accused were arraigned for trial on such like allegations for the murder of Sube Singh and causing hurt to the PWs.

28. Before the trial Court, in order to prove its above referred case, the prosecution examined 14 witnesses. PW 9 Ram Kishan, PW 10 Chhote Lal. PW 11 Risala, PW 12 Dharam Singh are the injured eye-witnesses. Of them Chhote Lal, Risala and Dharam Singh were tendered for cross-examination and were not cross-examined. Ram Kishan PW 9 and Chhote Lal PW 10, the injured eye-witnesses, supported the version of the prosecution.

29. All the accused when examined u/s 313, Code of Criminal Procedure, came forth with the plea of denial simpliciter and their contention as stated by accused Raj Singh and adopted by his remaining co-accused is that the occurrence had not taken place in the manner as alleged by the prosecution. In fact on the morning of the occurrence Raj Singh had led his buffalo to water it. Ram Kishan, Risal Singh, Chhote Lal, Ramesh PWs and Sube Singh deceased in this armed with a lathi each surrounded him and exhorted that he should be taught a lesson for giving slap to Surinder who had quarrelled with Satish on the previous day. They inflicted injuries on the person of Raj Singh, on various parts of his body including his head. Raj Singh raised alarm his father Ram Sarup who was plucking datun from nearby kihar tree was attracted to the spot. He reached there. He was also given injuries by the accused. In order to save Raj Singh, his father Ram Sarup inflicted an injury with Pharsi to Sube Singh. In the meantime, Ishwar Singh, Dharmbir Singh and Bijie Singh accused also arrived there and in exercise of the right of the self defence of Raj Singh and Ram Sarup, they inflicted injuries on the persons of the PWs. Raj Kumar

accused was not present at the spot at that time. Many persons including Dharm Singh Sarpanch had reached the spot at the time of occurrence. All the accused went to Kharkhoda hospital and were medically examined. They were admitted as indoor patients. Police had arrested them from the hospital. They had narrated their version to the police but they did not investigate their story and had falsely involved them in this case.

30. We have heard the learned counsel for the parties besides perusing the record.

31. It has been vehemently argued by learned counsel for the appellants that the delay of seven hours in conveying the report to the Ilaqa magistrate has not been explained, much less satisfactorily by the prosecution and that much time was consumed by the prosecution in spinning out a false version against the accused. We do not find any force in this argument. Occurrence took place at 7 a.m. on 13-7-1989. Ram Kishan PW had lodged the report with Inder Pal Singh Sub-Inspector at Bus Stand, Sisana, at 10.00 a.m. On the basis of this ruqa, formal First Information Report was recorded in Police Station Kharkhoda between 10.25 a.m. and 11.15 a.m. Special Report reached the Ilaqa magistrate at Sonapat at 2 p.m. The distance between village Gorar and Police Station Kharkhoda. We do not find any avoidable delay having been caused either in lodging the First Information Report or in conveying the special report to the Ilaqa Magistrate.

32. Second submission of the learned counsel for the appellants to the effect that absence of any injury on Raj Kumar accused points out that neither all the accused persons had participated in the occurrence initially nor the attack had been opened by them. Rather, they had caused injuries to the members of the complainant party in the exercise of the right of their self defence. This argument also does not find favour with us. Had the members of the complainant party opened the attack they would not have allowed Raj Singh to cause an injury with his pharsi on the chest of Sube Singh which proved fatal. On the other hand, it appears that there were equal number of person on both the sides and the fight having ensued suddenly almost all the members of both the parties had suffered injuries. Therefore, there is no question of the accused having caused injuries to the PWs in exercise of their right of private defence.

33. From the trend of cross-examination of the prosecution witnesses and the contention of the accused in their statements u/s 313, Code of Criminal Procedure, it is clear that they have admitted that the occurrence had taken place at 7 a.m. on 13-7-1987 near the pond of village Gorar. The accused have disputed the manner of occurrence and the presence of Dharam Singh PW and Raj Kumar accused at the relevant place and time. Combined reading of the statements of Dr. Sanjay Narula PW 1, Dr. S.B. Gandhi PW 3, Dr. S.S. Malik PW 4 and Dr. B.D. Chaudhary PW 8 shows that the members of both the parties had suffered following injuries : --

(i)	Ram Kishan PW9	10 injuries
(ii)	Chhote Lal PW 10	1 injury
(iii)	Risala PW 11	2 injuries
(iv)	Ramesh Singh PW 12	2 injuries
(v)	Sube Singh deceased	one injury

Members of the accused.

(i)	Dharambir accused	Seven injuries
(ii)	Raj Singh accused	Four injuries
(iii)	Ram Sarup accused	Two injuries
(iv)	Bije Singh accused	Eight injuries
(v)	Ishwar Singh accused	Eight injuries

34. From the above, it is evident that there were 16 injuries on the persons of the members of complainant party and 29 injuries on the accused persons.

35. Intervention of Sube Singh in an ordinary quarrel between Surinder and Raj Singh on the evening of 12-7-1989 was not such a serious matter that the accused persons would become so much aggrieved that they would share a common object to liquidate Sube Singh and cause grievous and simple hurt to the PWs after making preparations and way-laying them. Therefore, the genesis of the occurrence is also in smoke.

36. It is a matter of common knowledge that in rural side people go out of their houses preferably towards the village pond leading their cattle to water them and also to ease themselves. They also habitually carry lathis, gandasis and pharsis etc. with them because they have to cut datun etc. from kikkar trees. Therefore, it was not unnatural for the members of the two parties to be present at that hour of the morning near the pond. This fact seems to make it probable that there was some quarrel between the parties while they were at the spot near the pond. As the prosecution story stands it also seems to us that no sufficient motive existed for the appellants to make a sudden attack on the deceased, because an altercation between Surinder and Raj Singh wherein Sube Singh had intervened on the previous evening was not such a serious matter that the appellants harboured any ill will or grievance either against Sube Singh or against PWs. It must have been more against Surinder, with whom Raj Singh had such an altercation, than against the deceased. There seems to have been a sudden and unpremeditated fight between the parties, during the course of which members on both sides caused injuries to each other with weapons they carried with them. In the face of the conclusions we have arrived at, we find it difficult to hold the conviction of the appellants for culpable homicide amounting to murder. In our opinion, the case of Raj Singh would be covered by exception 4 to Section 300, Penal Code, whereas the remaining appellants deserve

acquittal.

37. We, accordingly, accept the appeal, alter the conviction of Raj Singh appellant from one u/s 302, Indian Penal Code to that u/s 304, Part I, Indian Penal Code, and reduce the sentence to rigorous imprisonment for five years and to pay a fine of Rs. 200/-, and in default of payment of fine to further undergo rigorous imprisonment for three months. All the remaining accused namely Raj Kumar, Ishwar Singh. Bije Singh and Dharambir are acquitted of all the offences with which they have been charged, convicted and sentenced. In view of the factum that the order of conviction and sentence of Ram Sarup appellant (since dead) has been set aside, there is no need to give notice to his heirs qua the sentence of fine.

38. Resultantly, Criminal Appeal No. 184-DB of 1991, is allowed whereas Criminal Appeal No. 185-DB of 1991 is partly allowed.