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**(2010) 04 RAJ CK 0076**

**Rajasthan High Court**

**Case No:** None

Babulal, Ram Chandra  
@ Chandra Ram,  
Bhaga Ram and Pukh  
Raj

**APPELLANT**

**Vs**

The State of Rajasthan

**RESPONDENT**

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**Date of Decision:** April 15, 2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 107, 125, 173#Motor Vehicles Act, 1988  
â€” Section 133#Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 201, 209

**Citation:** (2010) 04 RAJ CK 0076

**Hon'ble Judges:** Govind Mathur, J; C.M. Totla, J

**Bench:** Division Bench

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**Judgement**

C.M. Totla, J.

Appellants (i) Ram Chandra @ Chandra Ram s/o. Magni Ram in appeal No. 416/05, (ii) Babulal s/o. Prabhu Ram in

appeal No. 621/05 and (iii) Bhaga Ram s/o. Magna Ram & (iv) Pukh Raj sons of Manga Ram in appeal No. 714/05, have challenged their

conviction and sentence for the offence of (a) Section 302 read with Section 149 IPC life imprisonment with fine Rs. 5,000/-, failing to pay three

years imprisonment, (b) Section 307 read with Section 149 IPC life imprisonment with fine Rs. 3,000/-, in default two years, (c) Section 364 IPC

five years rigorous imprisonment and fine Rs. 2,000/-, in default one year, (d) Section 454 IPC one year rigorous imprisonment with fine Rs. 500/-

, in default one month, (e) Section 201 IPC three years" rigorous imprisonment with fine Rs. 1,000/-, in default on year, (f) Section 148 IPC one

year simple imprisonment, (g) Section 323 one month simple imprisonment, (h) Section 341 IPC one month simple imprisonment, recorded and

directed vide judgment dated 15.4.05 before the Court of Additional Sessions Judge (Fast Track) No. 1, Jodhpur in Sessions Case Nos. 6/03

and 129/03. All the substantive sentences are ordered to run concurrently.

2. Incident and sequence of events allegedly, per prosecution are that on 19.9.02 at about 7.00 p.m. Mehra Ram PW 1, reaching police station,

Kherapa, submitted written report Ex.P2 to the then incharge ASI PW 16, informing that on that day in evening at about 6.30 p.m., when he,

mother Jhamku and sister Sua were sitting in dhani came in a jeep No. RJ 21 C 4304 Chandra Ram s/o. Magna Ram, Pukhraj s/o. Magna Ram,

Bhaga Ram s/o. Magna Ram, Magla Ram s/o. Ruga Ram, Durga Ram s/o. Puna Ram, Kharta Ram s/o. Puna Ram, Babulal s/o. Prabhu Ram,

Prakash s/o. Mangna Ram, Ramaram s/o. Durga Ram and others, totaling 15 who all Jats of Chataliya and others of Nagaur -came armed with

lathi, dhariya, sword, revolver and they entering dhani, did beat them and while beating by them continued, arrived his sister"s husband Mohan

Ram so all these persons observing Mohan Ram and to assault him apprehendingly following him tried to detain him and, as Mohan Ram to protect

self ran away on motor cycle these persons following him in jeep, and stopping him inflicted injuries to him informer PW 1 runningly went and

intervening tried to protect but these persons picking up Mohan Ram, and to kill him, have taken him in jeep so, and he (PW 1) at P.S. to report.

ASI PW 16, making own endorsement and also mentioning (to him) of PW 1, that incident, happened because of land partition dispute between

them and elder father Magna Ram s/o. Rama Ram, registered FIR No. 139/02 Ex.P41 for the offences of Sections 147, 148, 149, 452, 364,

323, 341 and 379 IPC. Regarding FIR, PW 16 also mentioned that injured are being got medically examined.

3. SHO PW/26 commencing investigation per him (i) in morning of September 20th, on receiving information by some informer reached Khadepa

Melana road milestone of Khedapa 2 km and finding there near Goshala dead body of Mohan Ram prepared memos and sketch of the place

Ex.P/19 and 22 collecting samples of spread blood and plain soil was sealed and packets marked as S1, S2 -there in pocket of pant on the

person of Mohan Ram was also a live cartridge of 12 bore (ii) place of dead body photographed by PW/15 positives P/44 to 50 and negatives,

44A to 50A, (iii) Examining body, prepared memos P16 and 17, describing injuries which included that of head (iv) directed for postmortem

which performed by Medical officer PW/27 proving memo P/17 -shirt pant and underclothes of Mohan Ram taken and sealed preparing memo

P/20 packet marked A. SHO PW/16 in course of investigation also inspecting place of beginning of occurrence, the dhani, which also was place

where deceased Mohan Ram was beaten and now where kidnapped -and there found (a) toy pistol, (b) a dhariya, (c) bamboo peel (chhal) pieces

with blood like stains (d) shoe and handkerchief said to be of deceased, (e) broken glass pieces of light of motor cycle taken preparing memo and

sketch Ex.P/3 .

4. PW 26 arresting appellant Bhaga on 20.09.02 at 11:35 PM and per his disclosure recorded as P/74 on 22.09.02 and at his instance from his

room recovered a Zai preparing memo Ex. P/31 and site plan Ex.P/35 appellant Pukhraj was also arrested on 22.09.02 and per his disclosure

Ex.P/73 on 22.09.02 from his room recovered a lathi vide memos P/32 and 33-appellant Babu arrested on 21.09.02 vide memo Ex.P/28 and per

his disclosure Ex.P/72 on 23.09.02, a lathi recovered from his house memo Ex.P/30 and site plan Ex.P/31. Motor cycle No. RJ-19 13M 2755

with broken headlight and damaged mudguard etc found near stone quarries on 20.09.02 at 9:15 PM taken vide memo Ex.P/21.

5. Information regarding registered owner of jeep was obtained from Transport Officer vide letter Ex.P/75 and then notice u/s 133 of M.V. Act

given to owner PW/27 who informed that driver was Sikander Khan who arrested on 21.09.02 vide memo Ex.P/27 and jeep RJ 21 C 4304 taken

preparing memo Ex.P/29. Subsequently, Bablu @ Raju was arrested in July,03 and per his disclosures, place of occurrence are said to have been

verified and related memos prepared are Ex.P/55, 71, 56, 77. Appellant Ram Chand @ Chandra Ram S/o Magna Ram was arrested on

17.06.03 and Pukhraj S/o Magna Ram on 22.10.02 and place of occurrence etc also verified at their instance.

6. It also appear that prior to above information on 19.9.02 itself, PW 1 purportedly also presented a written report Ex.P1 at 4.50 p.m., stating that

litigation and consequential enmity is between them and Chandra Ram, Pukh Raj, Bhaga Ram, all sons of Mangna Ram, Mangla Ram s/o. Ruga

Ram, Prakash s/o. Mangna Ram and Pukh Raj s/o. Durga Ram, so these persons often quarrelled and abused and on that day also at about 4

afternoon some persons coming to their (PW 1's) house with lathis, abused and threatened them.

7. Smt. Jhamku PW 2 injured was admitted in hospital on very day for treatment and medical jurist PW 12, examining her and getting her x-

rayed, prepared report Ex.P38 injury report of first informer PW 1 and of his sister PW 3 respectively are Exs. P78 and 77 who were examined

by doctor PW 27. Post-mortem on body of Moham Ram conducted by Board which included medical jurist PW 27 and report prepared is

Ex/P79.

8. After other investigation and delivering packets of collected and recovered articles intact, with forwarding letter, to FSL initially charge- sheet

was submitted against four. Then after supplementary charge- sheet against two and then against one. Per charge-sheet proceedings for some

continued u/s 173(8) Cr.P.C.

9. Appellants and two others Sikander, Bablu @ Raju, all charged for the offences of Sections 148, 302 or 302/149, 307 or 307/149, 364, 454,

323, 341 and 209 IPC, claimed trial. Appellants are held guilty as above while other two are acquitted and one is absconding.

10. Among the 28 prosecution witnesses examined, PW 1 is first informer, PW 2 is mother of PW 1 and PW 3. PW 3 is also wife of deceased

Mohan Ram who all received injuries. PW 10 and PW 11, witnesses of incident, are declared hostile. PW 4, 5, 6, 7, 8, 9 and 24 are motbirs of

different proceedings, who all except PWs 4 and 6 are declared hostile. Constables PWs 17 and 18 are motbirs of verification of place of

occurrences. Head constable PW 13, constable PW 14, constable PW 21 pertain to safe keeping of and delivering of different packets at FSL.

PW 15 is photographer. ASI PW 16 registered FIR and SHO PW 26 did most of the investigation and Sub-Inspector PW 20, ASI PW 23 and

after posted SHO PW 25 also investigated at different stages. Nemi Chand PW 28 is jeep owner. PWs 12, 22 and 27 are medical officers,

whereas before Judicial Magistrate Mahendra Singh PW 19 was conducted identification parade for accused Bablu @ Babliya @ Raju s/o. Shri

Parsa Ram, who proves memos of identification Exs. P13 and 14.

11. Appellant Pukhraj expressing of his false implication, asserted that on that whole day, he was on job as supervisor in Hari Industries belonging

to Vasudeo DW 6, from where he was arrested on 20.9.02 also explains that complainants intending to grab land of his share, tried for forceful

possession and this false case.

12. Appellant Ram Chandra explains that he with family since seven years living at Nagaur in rented house of Prem Singh and employed at shop of

Prem Prakash on that day, was at Nagaur who picked from Tonk on 11.6.03 where he was for sale of business material and he falsely implicated

for grabbing land.

13. Per appellant Babulal, he falsely implicated because he 107 Cr.P.C. proceedings cited as a witness for opposite party.

14. Bhaga explains that PWs 1, 2, 3 and Mohan Ram did quarrel and beat him so he went to report at 12.30 noon that day to police station, but

constable Mohan Ram, a relative of deceased, detaining him falsely implicated him. Also explains that dispute for partition of land was and

complainant intended to grab his land.

15. Among nine defence witnesses, DW 1 is in relation to acquitted accused Bablu-DW 2 and DW 3 state of Ram Chandra living at Nagaur. Dws

4, 5, 6 and owner of the factory DW 7 tell of appellant Pukhraj working at factory on 19.9.02 and taken from thereby place on 20.9.02.

16. Defence witness Mota Ram DW 8-husband of PW 2 and father of PWs 1 and 3, say of living separate to wife since 25 years and that after a

fortnight of marriage he was handicapped as a result of accident with a tractor. Deva Ram DW 9 do also depose in this regard.

17. Learned Judge, while acquitting two, arriving conclusions for guilt of appellants, convicted and sentenced them as above.

18. Learned Counsel for the appellants extensively describing statements of witnesses argued that on fact, the case is not proved and at least

reasonably substantial doubt regarding truthfulness created. For Bhaga Ram argued is that for him specifically stated is of having dhariya, but no

injury to any of any sharp object is and witness admit of not truly narrating in course of investigation. Regarding sword and dhariya, emphatically

argued for appellant Pukh Raj s/o. Magni Ram that he on 19.9.02 hold a working at a factory in Jodhpur which firmly established by defence

witness which include owner of the factory DW 7. Similarly, for Ram Chandra, urged that he happen to be at Nagaur. On behalf of the appellant,

thrustly submitted that no dhani of theirs was and they not were in possession.

19. Learned Public Prosecutor contends that provenly Mohan Ram forcibly picked up and taken from there by persons, including appellant and,

thereafter, Mohan Ram found dead next morning.

20. Hearing arguments of the learned Counsel for the appellant and learned Public Prosecutor, we have carefully gone through the record,

evidence produced, documents, judgment assailed and also memo of appeal.

21. Having a look at the deposition of medical jurist doctor PW 27, is proved that post-mortem on the body of Mohan Ram s/o. Sanwata Ram,

45 years, conducted at 2.35 p.m. on 20.9.02 who had sustained following injuries (A) Abrasions (i) 2 x 2 right forehead, (ii) 3 x 0.5 left temporal,

(iii) 6 x 25 cm right cheek, (iv) 2 x cm on chin, (v) 5 x cm on left chin, (vi) 2 x 1 cm on left cheek, (vii) 8 x 4 cm on right shoulder and right chest

middle, (viii) 2 x 0.5 cm right knee, 5 x 1 cm on right knee, 5 x 2 cm on left leg, 7 x 3 cm on left knee, 16 x 11 cm below chest above abdomen, 2

x 0.5 cm on left thigh, 22 x 7 cm on right back and 12 x 2 cm above right buttock. (B) Bruises (i) 6 x 2 cm on left thigh, (ii) 12 x 2 cm on left

shoulder, (iii) 10 x 2 cm on lower left back, (iv) 9 x 2 cm on left back, (v) 12 x 2 cm and 10 x 2 cm on left buttock, 5 x 1.5 cm on left thigh, 3 x 2 cm

on left thigh middle, 12 x 2 cm right upper buttock. (C) Haematoma on right left and mid parietal region and sub-dural, haematoma left parietal to

temporal area, (D) Fractures of 3rd, 4th and 5th right ribs with one torn and with 600 cc of blood, and fracture of left elbow. (E) Lacerated

wound with bruises and abrasion 2 x 1 left upper arm. All injuries were ante-mortem and death due to head and lung injuries which sufficient in

normal course of nature to cause death. Postmortem report Ex.P79 bears signatures of three members constituting board and death within past 24

hours, that is after afternoon of 19.9.02.

22. Cumulatively taken with other evidence is proved that Ram Chandra died after about 5 p.m. of 19.9.02 and prior to early of 20.9.02.

23. Considering deposition of doctor PW 27, is proved that on 21.9.02 noon, following were the injuries to Smt. Suwa PW 3 (A) Bruises (i) 13 x

7 cm overlapping on thigh outer side with swelling, 4 x 2 cm left lower outer side of thigh, 3x3 cm on left knee, 6x3 cm on left leg, 7x3 cm and 3x3

cm on left arm, 8x5 cm on outer of right thigh and of 11x6 cm at back, 1.5 x 1 and 1 x 1 cm on right leg. (B) Bruise 0.5 x 0.5 cm on left knee.

24. Injury report Ex.P30 and injuries simple of blunt of 1 to 2 days duration.

25. Mehra Ram PW 1 examined by medical jurist PW 27 at 12.30 noon of 21.9.02 and on his person, were (i) Abrasions 3.5 x 4 cm on lower

left arm and of 8 cm on left posterior of left arm;(ii) Abrasions near each other respectively of 5, 4 and 3 cm left arm front; (iii) Abrasion 1 x 05 left

ankle and of 5 & 3 cms crossing each other on lower part of chest all of blunt object of between 1 and 2 days duration and report Ex.P78.

26. Dr. Joshi PW 12 medical jurist, hospital Jodhpur, depose that Smt. Jhamku PW 2, admitted in orthopedic ward on 20.9.02 was examined by

him on 25.9.02 and found following injuries:

(i) Stitched lacerated wound of 2 x 2 cms forehead;(ii) Plaster on left leg from toe to upper knee; (iii) Abrasion 5 x 1 cm left scapula, 5 x 2 cm left

back, 6 x 2 cm right chest, 5.8 x 3 cm mid of back.(iv) Bruises 5 x 1 cm left scapula.

Her chest and left knee were x-rayed before doctor Radiologist PW 22, (plates Ex.P66 to 70) and found were (i) Fractures of 8th, 9th and 10th

ribs; (ii) Fractures of left tibia upper 1/4th -all of blunt object. Injury report Ex.P38, x-ray report Ex.P39 and x-rays 66 to 70.

Prior to appreciation and evaluation of evidence for the incident, appropriate is to mention that some dispute regarding partition and possession of

agriculture land existed prior to incident. PW 2 is wife, whereas PW 1 and PW 3 among four issues of Mota Ram DW 8.

27. Mehra Ram PW 1, 21 years and first informer, accepts that he, brother, sister and mother filed a civil revenue suit Ex.P4 against father and

brothers of father and Ex.D2 is copy of written statement filed by Mota Ram and others. PW 1 categorically admits that father did attempt to

relinquish and release his share of agriculture land in 2002, executing a registered deed. Filing of revenue suit Ex.P4, written statement Ex.D2 and

also proceeding before Family Court Ex.D3 are admitted one. Going through Ex.P5 and D2, appears that Mota Ram, Mangla Ram, Magni Ram

and one Shri Koja Ram real brothers are sons of Shri Goga Ram. Ex.P4 was filed on May 1, 02, claiming 5/24 of the total and out of 1/4th share

of Mota Ram of the 152.03 bigha of land situated in village Chataliya. Thus, complainants claimed share, partition and possession of 5/6th of

belonging to Mota Ram. In written statement Ex.D2, Mota Ram and others mentioned that Mota Ram executed relinquishment and release deed

and got it registered on 5.1.02 and total land in possession of Mota Ram and brothers. Ex.D3 is copy of application u/s 125 Cr.P.C. filed on

29.5.02 by Smt. Jhamku, claiming maintenance of her and a 16 years son from Mota Ram and in paras 4 and 6, specifically averred and PW 2

categorically admits that since 1992 Mota Ram abandoning and deserting family, is living with his brothers.

28. As shall be observed that sufficient probabilities (as far as, and limitedly concerned for this case) exists that perhaps Mota Ram living

separately for last 20 25 years. Stands firmly established that since 1992 at least Mota Ram not living with complainant and further established is

serious dispute regarding possession, partition of agriculture land and proceedings u/s 107 Cr.P.C. also initiated in April, 02, copies of which are

Exs. P7, 8, 9 and 10. It is to be noted that three appellants are sons of Magna Ram among the ten persons named in FIR Ex.P2, four are sons of

Magna Ram and one Mangla Ram, both brothers of Mota Ram and cause of the incident was land dispute ancestral one. PWs 1, 2 and 3, all very

straightly admit that Mota Ram is handicapped. Mehra Ram PW 1, then 20 years, says that he last saw parents living together 12-13 years ago

and father living with his brothers for 10-15 years, father handicapped prior to his remembrances and PW 1 strangely states ignorance of which leg

father is handicapped, as such safely can be inferred that Mota Ram handicapped, did not live with complainant for 15 years. For Mota Ram being

handicapped since long, is also unambiguous admission by PWs 2 and 3.

29. Mota Ram DW 3 in written statement Ex.D2 in May, 02, asserting of living separate to PW 2 since last 30 years and soon after marriage,

vehemently questions also about children. Mota Ram DW 8 himself deposes that he now 55 years, was married when 20 years and wife lived with

him for 15 days and then after never since 25 years DW 8 further says that he handicapped, as a result of striking by a tractor and questions about children.

30. A close perusal of the evidence also discloses that per PWs 1, 2 and 3, maternals of PW 1 also live in village Chataliya and dhani of maternal

uncle Labu Ram is at a distance of about half km from dhani of complainant but no where appears any description of residential house of PWs 1 &

2 in the village.

31. As such established is that Mota Ram was not living with wife and children since 15 years and perhaps since 20-25 years. With above also is

fact that PWs 2 and 1 do say that for 10-11 years, they resided at Jodhpur and prior to it, for 2-3 years, at Gotan, all these may be relevant to

determine genesis of the incident. For the dhani where and from where incident began, PW 2 says that they built a room like only a month ago by

stone slabs and inserting slabs in earth. From the evidence of PWs 1 and 3, also appears that dhani or substantial change made only a month or

two ago. Here, it is worth to take note that memo of site inspection Ex.P3 prepared by SHO before PW 1 and as is deposed and admitted by

them fields around the dhani are described to be those in possession of Magna Ram etc. and for the field of dhani itself also is mentioned that now

in possession of complainant and earlier was possession of Magna Ram s/o. Ruga Ram.

32. Appellants Ram Chandra @ Chanra Ram s/o. Magni Ram and also Pukhraj s/o. Magna Ram have pleaded alibi. Appellant Ram Chandra

claims to be at Nagaur. Principles for proving and effect of alibi are well settled and also are elaborated in Hon"ble Apex judgment in (i) State of

Kerala Vs. Anilchandran @ Madhu and Others, (ii) State of Himachal Pradesh Vs. Rakesh Kumar, (iii) Akbar Sheikh and Others Vs. State of

West Bengal, and (iv) (2005) 12 SCC 267, Gayadin v. State of M.P. The alibi is to be established by the person claiming it alibi, if proved, may

also a little adversely affect prosecution (in relation to other accused, if any, and depending upon various other factors, facts and circumstances of

that case) and incident alibi specifically pleaded and found untrue, still onus on prosecution to prove its case remains intact and only the other

defence if specifically taken by the accused is perhaps to be examined carefully. Therefore, in this particular case, failure to establish alibi pleaded

does not adversely affect any appellant.

33. Considering alibi, Ram Chand @ Chandra Ram S/o Magna Ram claims to be at Nagaur. His landlord at Nagaur Prem singh DW/2 say of he

living with family in his house since last 7-8 years and employed at the shop of the trader who also keep buffalo and sell milk in morning and

evening. DW/2 further say that on 19.09.02 Ram Chandra was very much there and police personnel inquiring about him on 19.09.02 also some

days after who told by him (DW 2) of Ramchandra being there on 19.09.02. Prem Prakash DW/3 say of Ramchandra working at his shop since

2002 duty hours being 9 morning to 7.30 evening who also used to go out in relation to business and sell milk in morning and evening. DW/2 also

say that either on June 9th, 10th or 15th, policemen inquired about Ram Chandra who was out to Tonk since June 10th where sent for business

work. The testimony of these witnesses is not worth of establishing presence of appellant at Nagaur.

34. Appellant Pukhraj S/o Magna asserts of being at Jodhpur and working at factory Hari Industries owned by Vasudev DW/7 who state that

Pukhraj and other five were employed in his factory who used to come at 9 and work till 7.30 evening and that he himself remains at factory during

day. Per DW/7 appellant Pukhraj was employed since last 10-11 months and very much at factory on 19.11.02 from morning to evening and

when he (DW/7) came to factory at 9 AM on 20.09.02 Pukhraj was not and other employees told of coming of police personels so the witness

inquired on phone from P.S. Basni and informed of Pukhraj having been called in regard to some quarrel of 19.09.02 in village.

35. Nakul Prasad DW/4 and Ghevar Ram DW/6 state of them and Pukhraj being employed in this factory and working hours 9 am to 8 pm so

and during the entire time on 19.9.02, they and Pukhraj were working there and then on 20.09.02, Pukhraj did not report and owner DW/7 told

them of Pukhraj being taken by police. DW/6 say that 9-10 AM of 20.09.02 also came police personnel. 1½s.

36. DW/4,6,7 also depose of daily brining of lunch for Pukhraj by his brother in law Pappu Ram and Pappu Ram DW/5 say that he living with

Pukhraj used to deliver lunch for Pukhraj who on 19.09.02 was very much in factory and in night at house and on 20.09.02 when he (DW 5) went

to factory, Pukhraj was not available - co-labourer and owner told of having been picked up by police.

37. Per attendance register Ex.D6/A Pukhraj was at job entire month upto 19th and total are five workers. The evidence is not tending of

reasonably definite inference of Pukhraj being there from afternoon of 19.09.02 to late evening. Factory is at Jodhpur and not appear that place of

occurrence and area around P.S. Khedapa from Jodhpur is at such a distance to rule out possibility of arrival in a hour or two. Pukhraj and

Ramchandra pleading alibi both are sons of Magna Ram who is uncle of PW/1 & 3 and husband's brother of PW 2 as such both are well known

to PW/1,2,3 and their presence at the scene of occurrence is stated by these witnesses in categorical terms. Therefore, not is established that Ram

Chandra was at Nagaur and/or Pukhraj was at Jodhpur as they explained.

38. The entire incident consists of three parts, first is coming of several persons allegedly including some appellants and threatening to PW/1,2 & 3

for which report Ex.P/1 given at P.S. at about 4:50 PM and registered u/s 107 Cr.P.C. Second part of coming of about 15-persons of which 11

are named in FIR Ex.P/2, -at the dhani and beating PW/1,2 3 during which Mohan Ram arriving there apprehended by assailants who getting hold

and picking him carried in jeep. Per Mehra Ram PW/1 and FIR he intervening tried to protect Mohan Ram who forcibly taken and PW/1

proceeded on motor cycle-of his maternal uncle-to police station and lodged written report Ex.P/2 at 7.00 P.M. Third part is that of after taking

finding only of dead body of Mohan Ram in morning.

39. Regarding incident material is evidence of PW/1,2,3 and investigating officer PW/26. All these witnesses are cross-examined at quite a length

recorded in many pages. Going through the evidence of all these surfaces, per them, that in late afternoon at about 6.30 came Mangla,

Ramchandra @ Chandra, Pukha, Bhaga Ram and 5-6 (named) in a jeep armed with lathis and other sharp weapons and also a pistol (which

subsequently turned out to be a toy and not real and only of that appearance).

40. In FIR 10-11 persons are named and rest out of total 15-are described to be from Nagaur. PW/2 specifically say of so mentioning (of

Nagaur) because Ram Chandra @ Chandra Ram lives there (Nagaur). As such and for some other doubts as will be observed, safely can be

inferred probabilities of First Information Report being little exaggerated but irrespective of this, it is worthwhile to mention that established is

kidnapping of Mohan Ram and that he found dead next morning.

41. None of the injured seems to have sustained injury of sharp object and the witnesses very clearly say that they wrongly mentioned in FIR and

in their statement in course of investigation of some having sword. Also mentioned inflicting of injury by dhariya and witness also say of causing

injury of reverse Dhariya meaning thereby from blunt side. Investigating Officer PW/26 depose that on 20th September, he specifically asked

PW/1, 2,3 for getting their statements recorded but PW/2 and 3 telling of not being in sound state so to statements afterwards. PW/2 admits that

her statement recorded after 4-5 days. Statement Ex.D/4 of PW/2 bears 24th September whereas, of Smt. Sua PW/3 Ex.D/5 bears date October

2nd. PW/1 states that when injuries to him, PW/2 & 3 were being inflicted, was by assailants was arriving Mohan Ram and when he (deceased) as

turningly tried to run away chased by these persons who taking on Mohan Lal, at a distance of about 15-20 steps or so, did begun beating him and

he ( PW/1) tried to intervene but could not and Mohan Ram taken away forcibly in a jeep, therefore, PW/1 rushed to P.S and lodged written

report Ex.P/2. Ex.P/2 also mentions of forcibly taking Mohan Ram. Injuries of PW/1 Mehra Ram described above are few abrasions whereas, he

also asserts that Bhaga Ram having Dhariya inflicted injury of same at his left wrist.

42. As is observed dhani too was built only a month or two earlier by roping slabs - in memos of site inspection specifically is mentioned and as

also is deposed by I.O. and witnesses confronted to it that now that portion is in possession of complainant and the field is that about which

possession is disputed. Also is the fact that for 10-11 years at least, PW/1 and mother remained at Jodhpur and prior to that 2-3 years at Gotan.

All these are quite relevant to determine genesis, and main cause of the incident.

43. For above and some other inconsistencies appearing in evidence, the evidence of PW/1, 2, 3 is required to be examined and evaluated very

minutely and cautiously.

44. Memo Ex.P 19 is of place where, Mohan Ram found dead and PW/12 mentions of that place being at a distance of 13 km from police station.

Memo of place where occurrence began Ex.P/3 mentions of distance being 12 km from P.S. Investigating Officer PW/26 say that distance

between dhani of complainant and place where body found is 7 km and distance from P.S. of the place body found is less than to dhani.

Therefore, it also appears that dead body of Mohan Ram found at a distance of 7 km from the place he forcibly taken away. At on around dhani

where PW1, PW2 and PW 3 were beaten not said is of blood but on pieces of chhal found there blood was.

45. Appellants are Bhaga Ram S/o Magna, Lakha S/o Magna, Babu lal, Ramchandra @ Chandra Ram.

46. PW/1 says that in afternoon came Chandra Ram, Pukhraj (two), Bhaga Ram and some others who abusively threatened them and as he came

after lodging of report of that incident soon after when they were sitting in Dhani came Chandra (Ramchandra), Bhaga Ram, Pukhraj, Babu lal and

4-5 others (named) categorically says that Babu s/o Prabhu not among the persons who came in afternoon (for threatening) and that these persons

chasing and detaining Mohan Ram taken him in jeep RJ 21 C 4304 and that Bhaga Ram possessed Dhariya. PW/1 also say that for lodging report

of afternoon incident he went on motorcycle of maternal uncle from where he came alone as Magha Ram told of coming little after that in course of

incident he could not reach near enough to take care of Mohan Ram and as he saw Mohan Ram forcibly taken in jeep he headed for P.S. without

informing maternal uncle who resides at about distance of km.

47. PW/1 says appellant Babu S/o Prabhu Ram is residing in Bhopalgarh who happen to be brother-in-law of other appellant Bhaga and the

witnesses un-ambiguously admit of not having any dispute or indifference with Babu prior to this incident. As is observed some (who not named)

are described as belonging to Nagaur and which is on assumptions like Ramchandra living at Nagaur-do tend to show some possibility of some

outsider too not very truly identified and is named as involved . At least create is doubt for Balbu. Smt. Jhamku PW/2 say that when and as for

protecting Mohan Lal arrived near PW/1 near he (PW 1) was also beaten ( not so said by PW/1) and that during day came Chandra, Bhaga,

Pukhraj (two) and some other who after threatening them went away and then in evening when after return of Mehra Ram they were sitting at

home, Chandra, Bhaga, Pukhraj, Babu and others having lathis entering dhani did beat them and then Mohan Ram came and who also tried to run

away on motorcycle. PW/2 stating of taking of Mohan Ram say that all the accused did beat him and she first taken to Khedapa hospital and then

Jodhpur hospital where treated hospital. PW/2 states that she does not know if the assailants belong to Nagaur or Chataliya and that as Chandra

Ram resided at Nagaur, so they assumed them of being of Nagaur and that Mohan Ram was beaten at a distance of 10-15 paces from dhani. Smt.

Sua PW/3 state that she, husband and two little children came on motorcycle to see mother and brother on that very day and as PW/1 told of

threat given by these persons so her husband and PW/1 went to police station and brother came back who on asking said of Mohan Ram coming

after a little.

48. Babu Lal s/o. Prabhu Ram definitely was not among the persons threatening complainants about 2-3 hours earlier to main incident. For above

reasons, presence of appellant Babulal s/o. Prabhu Ram at the place of occurrence becomes reasonable doubtful, so he is to be given benefit of

doubt.

49. For the reasons above and on reasonable basis, probability of incident being created (in relation to person and number) cannot be ruled out.

For this reason, appellant Babu Lal s/o. Prabhu Ram gets benefit of doubt. Complainants perhaps not in possession for more than a month and at

least perhaps not in settled possession and admittedly, Mohan Ram who at least for 15 years, was not living with wife and children and living with

brothers only few months ago did relinquish/release his share in agriculture field in favour of his brothers. These situations may have some bearings

for the incident which occurred at the dhani, i.e. where injuries to PWs 1, 2 and 3 inflicted. Despite all this, the fact that the deceased forcibly taken

away from there who only found next morning dead at the distance of 5-7 km, clinchingly concludes aspects against persons who provenly

involved in forcibly picking and taking away Mohan Ram.

50. For the persons who provenly were among the persons forcefully taking away deceased, are the persons deceased last seen alive with.

51. Prosecution has provenly established that appellants Ram Chandra @ Chanrar Ram, Bhaga Ram and Pukh Raj were among the persons who

forcibly picking up Mohan Ram, took away him in a jeep and Mohan Ram was found dead next morning and died as a result of injuries inflicted to

him. As Mohan Ram taken forcibly and after inflicting injuries to PWs 2, 3 and also 1 and Mohan Ram found dead next morning as a result of

injuries inflicted to him, so the persons taking Mohan Ram forcibly away are to be convicted for the offence of Section 302 IPC. This being so,

then significance of in what circumstances and situation, injuries to PW 2 and/or PW 3 inflicted is reduced, because those inflictors are also the

persons who forcibly took away Mohan Ram who was found only dead. However, as above, stands proved that Ram Chandra @ Chandra Ram,

Bhaga Ram and Pukh Raj did also inflicted injuries to PWs 1, 2 and 3 and conviction for this on all three persons suffers no infirmity.

52. Appellants Ram Chandra @ Chandra Ram, Bhaga Ram and Pukh Raj are also convicted for attempting murder of PW 2. As above, injuries

sustained are fracture of ribs and tibia. Also is proved that the persons who inflicted injuries when observed deceased Mohan Ram arriving there,

leaving PW 2, chased Mohan Ram. Had there been intention to cause death of Smt. Jhamku, no contingency arose for all assailants, said to be 11

to go away. Therefore, in the opinion of the Court, in relation to causing injuries to Smt. Jhamku, conviction ought to be for the offence of Section

325 and not 307 IPC.

53. For the reasons above, conviction of the appellants Ram Chandra @ Chandra Ram, Bhaga Ram and Pukh Raj for constituting unlawful

assembly inflicting grievous injuries to Smt. Jhamku PW 2 and simple injuries to PWs 1 and 3 and abducting Mohan Ram and killing him, is to be

affirmed. This act of these persons constitute offence punishable under Sections 148, 302 read with Section 149, 323, Section 325 read with

Section 149 and Section 364 IPC. As persons five or more are proved to be involved, so appellants are guilty read with Section 149 and in any

eventuality, provisions of Section 34 are at place.

54. Appellant Babulal s/o. Prabhu Ram is to be acquitted, giving him benefit of doubt and other appellants (convicted as above) for the offence of

Sections 454 and 201 IPC are to be acquitted.

55. For the convictions affirmed as above, the sentence awarded by learned Sessions Judge is also to be affirmed, but reducing the fine imposed.

56. Accordingly, all three appeals are decided as under:

(A) Appellant Babu Lal s/o. Prabhu Ram is acquitted of the offences he charged-his conviction and sentences awarded are set aside.

(B) Convictions of appellants (i) Ram Chandra @ Chandra Ram s/o. Magni Ram, (ii) Bhaga Ram, and (iii) Pukh Raj, sons of Magna Ram for the

offences of Sections 148, 302 read with Section 149, 364, 323 are affirmed and they also are convicted (instead of Section 307 read with Section

149) for the offence of Section 325 read with Section 149 IPC and each is sentenced (a) for Section 302 read with Section 149 IPC life

imprisonment with fine Rs. 1,000/-, in default two months" rigorous imprisonment, (b) for Section 364 IPC five years" rigorous imprisonment with

fine Rs. 100/-, in default ten days rigorous imprisonment, (c) for Section 325 read with Sect. 149 IPC two years rigorous imprisonment with fine

Rs. 100/-, in default ten days rigorous imprisonment, (d) for Section 148 IPC one year"s simple imprisonment, (e) for Section 323 IPC one

month"s simple imprisonment.

All substantive sentences of imprisonment to run concurrently.

(C) Convicting appellants Ram Chandra @ Chandra Ram, Bhaga Ram and Pukh Raj as above they are acquitted of Sections 307/149, 454 and

201 IPC

57. Appeals decided accordingly.