

(2001) 01 SHI CK 0006

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 298 of 1999

Pratap Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: Jan. 5, 2001

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 154, 313
- Penal Code, 1860 (IPC) - Section 307, 323, 353, 506

Citation: (2001) 1 ShimLC 460

Hon'ble Judges: R.L. Khurana, J; Lokeshwar Singh Pant, J

Bench: Division Bench

Advocate: Sandeep Sharma, for the Appellant; M.S. Guleria, D.A.G. and J.S. Guleria, Law Officer, for the Respondent

Final Decision: Dismissed

Judgement

Lokeshwar Singh Pant, J.

Appellant Pratap Singh (hereinafter referred to as the accused) has filed this appeal from Modern Central Jail, Nahan against the judgment and order dated July 13, 1999 passed by Additional Sessions Judge, Shimla in Sessions Trial No. 5-S/7 of 1998 whereby he was convicted u/s 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 3,000 and in default of payment of fine he shall undergo rigorous imprisonment for further period of one year.

2. The prosecution case was that on 17.5.1998 at about 7.15 p.m. Shri Mrigainder Singh Mandyal a Member of H.P. Higher Judicial Services, posted as President District Consumer Redressal Forum, Shimla was strolling on the Mall Road, of Shimla. He was coming from Chhota Shimla side and going to reporting room on the Mall. When he reached near the building of Khadi Bhandar, the accused came

from the opposite right hand side and at once appeared before Shri Mandyal, suddenly made murderous assault with a premeditated and preplanned manner to murder Shri Mandyal with a dagger. He inflicted dagger blow on the left side of the chest near the heart of Shri Mandyal as a result thereof blood started oozing from the wound. The blade of the dagger pierced into left side of the heart of Shri Mandyal almost all, touching his left lungs. The shirt and under vest of Shri Mandyal also got cut mark where the dagger blow was inflicted by the accused. Shri Mandyal grappled with the accused and held his hands with a view to prevent him from inflicting further dagger blows. However, irrespective of the resistance shown by Shri Mandyal, the accused also gave him punches on head, forehead, nose and ears. A large gathering of people assembled at the scene of the incident who made efforts to catch hold of the accused but he, however, managed to escape by fleeing away through the stairs in between the Khadi Ashram and the Municipal toilet on the Mall Road. Shri Mandyal thereafter, came to the police reporting room on the Mall Road to lodge the report. After reporting the matter to the police Shri Mandyal fell unconscious and was removed to Indira Gandhi Medical College and Hospital, (for short IGMC) Shimla for medical treatment. ASI Shri Sohan Lal (PW-10) accompanied by Constable Richh Paul of Police Station Sadar, Shimla rushed to IGMC, Shimla and recorded statement (Ext. PW-1/A) of Shri Mandyal u/s 154 Code of Criminal Procedure Shri Mandyal complainant-injured reported the entire occurrence in detail and also stated that in the year 1993 when he was posted as Additional Sessions Judge, Shimla, the accused assaulted him in the same manner on the Mall Road. About earlier incident also, the case was registered against the accused and he was convicted. ASI Shri Sohan Lal (PW-10) sent Rukka to Police Station on the basis of which FIR (Ext. PW-6/A) was recorded by ASI. Shri Dharam Singh (PW-6). Shri Mandyal was admitted in IGMC Shimla in the department of Surgery who was examined by Dr. R.S. Kanwar (PW-2), and Dr. Puneet Mahajan (PW-8). Dr. Jatinder Jhingta (PW-3), Registrar Radiology, IGMC, Shimla conducted the X-ray examination of Shri Mandyal-injured. PW-10 the Investigating Officer during the investigation of the case collected medico legal certificate (Ext. PW-8/A), X-ray report (Ext. PW-3/A) as well as the skia-grams (Ext. PW-3/B). PW-10 also submitted an application (Ext. PW-2/A) for seeking the expert opinion in regard to the nature of the injuries on the person of the injured. PW. Dr. R.S. Kanwar issued certificate (Ext. PW-2/B) in respect of the injuries sustained by the injured. Dr. D.V. Behl (PW-11) also rendered his opinion marked Ext. PW-11/A after examining the relevant record about the treatment given to the injured.

3. During the investigation the police searched the accused in Shimla Town and ultimately he was arrested in Butail Dharamsala located at Bus Stand, Shimla where after assaulting Shri Mandyal the accused had taken shelter. PW-10 associated Shri Rajiv Sharma, Advocate (PW-5) in the investigation who was also present at the spot at the time of assault and in his presence shirt (Ext. P-2) and under vest (Ext. P-3) of the injured smeared with blood were taken into possession on the same day. PW-5

and PW-10 proceeded to the place of occurrence and on inspection dagger (Ext. P-5) was recovered from the spot which was found lying in between water tank and electric pole nearby the stairs leading to the public toilet from the Mall Road as well as one leading to Lower Bazar from Eastern side corner of Khadi Ashram. The weapon of offence was carried to IGMC, Shimla and it was got identified from the injured. Thereafter, PW-10 prepared sketch map (Ext. PW-5/A) of the weapon of offence which was taken into possession vide memo (Ext. PW-5/B). On investigation, it was found that the accused is a hardened criminal, as he on earlier occasions also assaulted Shri A.N. Sharma, Senior Indian Police Service Officer on 1.9.1989 and a case u/s 307 IPC and Section 25 of the Arms Act was registered against him vide FIR No. 197/89. In the said case he was convicted on 23.3.1993. The accused even found to be an offender in case No. 172/93 under Sections 307, 353 and 506 IPC in which, he, however was convicted u/s 323 IPC. At the relevant time, the accused was produced in Police custody before the learned Sessions Judge, (Forest), Shimla as in the earlier case in which he was convicted, the High Court remanded the case to the trial Court for enhancement of the sentence. The accused was produced before the Special Judge, Shimla on 12.5.1998 and on that day, he, however, was released on bail by the learned Sessions Judge (Forest), Shimla on personal bond with a direction to appear in the Court on 21.5.1998. It was further case of the prosecution that the accused was inimical to Mr. Mandyal, therefore, he was in search of some opportunity to kill Mr. Mandyal and he succeeded in his attempt on the day of occurrence because on that day Mr. Mandyal was found by him alone strolling on the Mall Road without his security guard. Besides, the conviction of the accused in the above-said three cases, he was also found to have been convicted by Additional Sessions Judge, Kolhapur (Maharashtra) for committing assault on one boy belonging to Himachal Pradesh who was a student of Kolhapur University. In that case also the accused was sentenced to undergo rigorous imprisonment for six years.

4. After completing the investigation, Inspector Ramesh Pathania (PW-9) on 27.5.1998 submitted the charge-sheet against the accused.

5. The case was committed to the Court of Sessions in the usual manner where it was entrusted to the learned Additional Sessions Judge who framed charge against the accused u/s 307 IPC to which he pleaded not guilty and claimed to be tried.

6. During the trial, in all, the prosecution examined 11 witnesses out of whom the victim is Mr. Mandyal (PW-1), Mr. N.D. Sharma, Advocate (PW-4) and Mr. Rajiv Sharma, Advocate (PW-5) were examined as eye witnesses. The learned trial Judge believed their evidence as also that of PW-10 ASI. Shri Sohan Lal and Dr. D.V. Behl (PW-11) and convicted and sentenced the accused in the manner stated above. Hence, this appeal has been preferred by the accused from jail.

7. On 16.8.1999 this appeal came to be admitted. A Division Bench of this Court appointed Shri Sandeep Sharma, Advocate, Legal Aid Counsel to conduct this appeal

on behalf of the accused.

8. We have heard Shri Sandeep Sharma, Legal Aid Counsel for the accused and Shri M.S. Guleria, learned Deputy Advocate General for the State. We have also perused the deposition of the prosecution witnesses; the material exhibits tendered and proved by the prosecution; the statement of the accused recorded u/s 313 Code of Criminal Procedure and the impugned judgment.

9. The material evidence in the instant case is that of the victim (PW-1), PW-4, PW-5, ASI (PW-10), Dr. Puneet Mahajan (PW-8), PW-9 Inspector Ramesh Pathania and PW-11 Dr. D.V. Behl. Since the conviction of the accused is primarily based on their evidence we propose enumerating the details contained in their evidence extensively. PW-1 Mr. Mandyal stated that on 17th May, 1998 he was taking evening stroll on the Mall Road and when he reached near Khadi Ashram, he found the accused stealthily appearing in front of him all of a sudden with a premeditated and pre-planned manner to kill him and then the accused immediately inflicted a dagger blow on the left side of his chest near heart. The blade of the dagger pierced into left side of the heart almost touching his lungs. The blood oozed out from the wound and as a result thereof his shirt and under vest smeared therewith. He grappled with the accused and held his hands to prevent him from inflicting further knife blows. However, irrespective of his resistance the accused gave him punches on his head, fore-head, nose and ears. Several people gathered at the scene of the occurrence, out of whom he could only recognize PW-4 Mr. N.D. Sharma and one Mr. Chauhan, Executive Engineer, Public Works Department. Thereafter he managed to escape from the murderous attack of the accused and went to the reporting room to lodge the report. He was shifted to IGMCH, Shimla where his statement (Ext.PW-1/A) was recorded and his shirt (Ext. P-2) and under vest (Ext.P-3) smeared with blood was also taken into possession by the police. He also stated that earlier to this incident the accused was tried by him u/s 307 IPC when he was posted as Additional Sessions Judge, Shimla. In that case the accused made murderous attack upon Shri A.N. Sharma the then Superintendent of Police Enforcement when the latter was strolling on the Mall Road. The plea of insanity taken by the accused in that trial was found devoid of truth. The trial was concluded by him, but the judgment could not be delivered. Subsequently, his successor in office Mrs. Kiran Aggarwal convicted the accused u/s 307 IPC, but he was released on probation. The matter came before him when he was posted as Joint Secretary (Law) to the Government of Himachal Pradesh for examining the suitability of filing an appeal against the impugned order and on examination of the record he advised the Government to assail the order of inadequacy of sentence recorded against the accused in appeal. The accused was apprised of one by Mr. Narinder Thakur the then Joint Secretary (Home) who happened to be the class fellow of the accused about the opinion rendered by him in that matter. On getting this information, the accused got deadly biased against him and resultantly he made similar murderous attack on him on 24.5.1993 with similar kind of dagger near Baljee's restaurant on

the Mall Road. He has identified the dagger (Ext. P-5) which was used by the accused in assaulting him in the present case and taken in possession by the Police. He further stated that he remained in the hospital under treatment of PW-11 Dr. Behl, Head of the Department and 2-3 other Doctors also attended upon him during that period. The accused has not shattered his testimony in the cross-examination on the material aspect of the matter. He denied the suggestion that the accused had no pre-meditated plan to assault him on the day of the occurrence. He also denied the suggestion that the previous assault was simply a case of thrashing and not with the help of a dagger.

10. PW-4 Mr. N.D. Sharma is a practicing lawyer at Shimla and his office is located on the Mall Road. He deposed that on 17.5.1998 around 7-7.15 p.m. when he was strolling on the Mall Road, he noticed PW-1 near Khadi Ashram, who was coming from left side and going towards scandal point. He saw the accused coming behind him (PW-4) and at a spur of moment, the accused hit PW-1 with a dagger. Many people were also strolling on the Mall Road at that time and they tried to apprehend the accused but he ran away through the stairs leading to Lower Bazar from Mall Road situate in between Khadi Ashram and Municipal toilet. The accused while running, however, threw the dagger in between an electric pole and a water tank nearby the Municipal toilet. The injuries received by PW-1 started bleeding. PW-1 immediately visited the reporting room at the Mall Road from where he was taken to the IGMC, Shimla for medical treatment. He identified the dagger (Ext. P-5) with which the accused made murderous assault on PW-1. In his cross-examination he admitted that Mr. Mandyal after receiving blood injury on his person tried to catch hold the accused but the accused managed to escape from the place of occurrence. He categorically stated that he had seen the accused throwing dagger (Ext.P-5) at a place from where it was later on recovered.

11. PW-5 Mr. Rajiv Sharma is also a practising lawyer at Shimla who was also strolling on the Mall Road on 17.5.1998 at the relevant time. He deposed that when he reached near Khadi Ashram he noticed the accused stabbing PW-1 and thereafter fleeing away towards Lower Bazar side through stairs after throwing the weapon of offence near the Municipal Toilet. He along with 2-3 persons tried to chase the accused but of no avail. He thereafter went to the police reporting room where PW-1 had gone in injured condition who was thereafter taken to Hospital for treatment. He followed PW-1 and in his presence shirt (Ext.P-2) and undervest (Ext. P-3) smeared with blood in cut marks were taken into possession by the police. On the same day he accompanied PW-10 the Investigating Officer from IGMC, Shimla to the place of occurrence and on inspection of the place of occurrence and the adjoining area, the dagger having black coloured handle was found lying in between water tank and electric poll situate nearby the stair cases leading to the Public toilet and lower bazar from the eastern corner of Khadi Ashram. The dagger was picked up by PW-10 and taken to hospital where it was shown to PW-1. PW-10 the Investigating Officer then prepared the sketch map (Ext.PW-5/A) of the dagger. He

identified dagger (Ext. P-5) in the court to be the same. In his cross-examination, he has admitted that minor scuffle took place in between the accused and PW-1 and further that to his knowledge some punch blows were also exchanged in between the two. He also admitted that the dagger was recovered from the place of occurrence around 9 to 10 p.m. on the same day. However, the suggestion of the accused that dagger (Ext. P-5) was planted by the police, has emphatically been denied by him.

12. The victim Mr. Mandyal was medically examined in IGMC Shimla on the same day (17.5.1998) by PW-8 Dr. Puneet Mahajan. He found the following injuries on his person:

1. Abrasion, reddish colour 2 cm. x 1 cm. on the center of fore-head 6 cm. above the medical of left end of eye brow.

2. Abrasion reddish colour 1 cm. x 1 cm. on the bridge of nose. Underlying bony tenderness present.

3. Clean cut wound obliquely placed on the 6th left inter costal space 2.5 cm. x 1 cm. elliptical about 7.5 cm. Away from midline. Slight bleed through wound with subcutaneous fat seen through the wound. There is no air leak through wound. Air entry b/l equal. I advised the patient X-ray chest, X-ray of nasal bone and X-ray of abdomen and opinion from CTS ENT and Surgical opinion.

13. In the opinion of the Doctor as per his medico legal certificate (Ext. PW-8/A) injury Nos. 1 and 2 were simple in nature caused by blunt weapon whereas injury No. 3 though simple but was caused by a sharp edged weapon. However, in his cross-examination, he admitted that injury No. 3 was not serious in nature.

14. PW-9 Inspector Shri Ramesh Pathania stated that on 17.5.1998 he received information that Mr. Mandyal was assaulted by the accused on the Mall Road and the victim was removed to IGMC, Shimla. He deputed ASI PW-10 to visit IGMC, Shimla and himself accompanied by other police officials proceeded in search of the accused. He also took Constable Ishwar Singh with him for identification of the accused as the accused was seen by him in the earlier cases. During checking of the visitor's register of Butail Dharmashala at Cart Road, Shimla he found an entry in respect of room No. 13 having been made in the name of the accused. On checking of the said room, constable Ishwar Singh identified the accused to be the occupant of that room. Abstract of the register (Ext. PW-7/A) was taken into possession by this witness. He arrested the accused on the same day at about 10.30 p.m.

15. ASI PW-10 the Investigating Officer stated that on receipt of the information in the Police Station Sadar, about attack on Mr. Mandyal with dagger he immediately went to IGMC and recorded the statement of the injured u/s 154 Code of Criminal Procedure He sent Ruqa through Constable Richh Pal for the registration of the case. He took into possession shirt and undervest of the injured. He inspected the

spot on the same day around 9 p.m. in the company of PW-5. The dagger (Ext. P-5) was found lying by him near Khadi Ashram in between the electric pole and the water tank. The dagger was got identified from the victim in IGMCM and thereafter it was taken into possession. He made search of the accused and when he reached at Lower Bazar, PW-9 met him accompanied by other police officials. Accused was found occupying room No. 13 of Butail Dharamshala at Cart Road. He was arrested and during his interrogation, he revealed that he was even convicted by the Court at Kolhapur in Maharashtra for the commission of the similar type of offence. He stated that the accused even admitted the registration of earlier three cases of similar type in Police Station Sadar, Shimla when he assaulted Shri A.N. Sharma the then Superintendent of Police Enforcement; Mr. Mandyal the victim in the present case and one Shri Pradeep Negi and in all those cases he was convicted by the court. Dr. Jatinder Jhingta (PW-3) conducted the X-ray examination of victim PW-1 and placed on record report (Ext.PW-3/A) on the basis of skia-grams (Ext. PW-3/B).

16. PW-7 Het Ram was on duty at the booking counter of Butail Dharamshala around 5 p.m. on 17.5.1998. He allotted room No. 13 to the accused for night stay and charged Rs. 25 from the accused. He stated that around 10 p.m. on the say day the police came to Butail Dharamshala and arrested the accused.

17. PW Dr. Behl at the relevant time was posted as Professor and Head of the Department of Cardiothoracic, IGMCM, Shimla. He stated that the Station House Officer, Police Station Sadar approached him on 11.6.1998 and sought his opinion about the nature of the injury on the person of PW-1. He perused the injury statement prepared by Dr. R.S. Kanwar (PW-2) when he found that there was 2.5 cm. wound at the level of 6th IC space (left) about 7.5 cms. away from the midline on the person of the injured. A linear cut was noticed over the medial part of 6th rib (costal cartilage) with finger. In his opinion linear cut over 6th left costal cartilage was grievous in nature. He recorded his opinion in report (Ext. PW-11/A) in this behalf.

17-A. Before us, Mr. Sandeep Sharma, learned Legal Aid Counsel for the accused vehemently contended that both PWs 4 and 5 are the interested witnesses being in legal profession and they deposed in favour of PW-1 injured being a Judicial Officer of the higher judiciary of the State. He has made an attempt to point out some discrepancies in the evidence of PWs 1 and 4 to" the extent that it has been admitted by PW-1 that he grappled with the accused who administered punch blows on his person whereas PW-4 has denied that any scuffle took place between the victim and the accused and, therefore the evidence of PW-4 was not trustworthy nor he could recognize the accused to be the real culprit. He next contended that PW-5 could not see the accused giving dagger blows to PW-1 because according to his version there were about 15-20 persons in between the accused and the victim and, therefore, it was not possible for him to have seen the occurrence in the manner in which it was projected by PW-5. We have considered the submissions. It is no doubt true that PW-4 in his cross-examination has admitted that no hot exchanges took

place between Mr. Mandyal and the accused as the accused suddenly attacked Mr. Mandyal whereas the victim himself has admitted that he grappled with the accused and held his hand preventing him from inflicting more injuries to him. The omission on the part of PW-4 to speak about grappling of the accused and the victim with each other is not very material to discredit the testimony of PWs 1 and 4. PW-4 unequivocally stated that when he was crossing by the side of the victim, he saw the accused who was coming behind him hitting the victim with a dagger and many people tried to catch hold of the accused but he ran away through stair cases leading to Lower Bazar, Shimla. He saw the accused throwing the dagger at the place from where it was later on recovered by the police in the presence of PW-5. However, it has come in his cross-examination that Mr. Mandyal tried to catch hold of the accused but he managed to escape. There is no specific suggestion put to PW-4 by the accused that the witness could not identify the accused to be the real culprit. Similarly, PW-5 has also identified the accused giving dagger blows at the chest of PW-1. PW-5 also saw the accused throwing the dagger near the public toilet at the Mall Road where the incident had taken place. PW-5 in his cross-examination has clearly stated that PW-1 injured was about 15-20 ft. ahead of him and there may be 10 to 15 persons walking between him and PW-1. He categorically stated that he was in a position to see PW-1 walking on the Mall Road. He saw the accused inflicting dagger blow on the chest of the injured. He admitted that minor scuffle did take place between the injured and the accused and further that to his knowledge some punch blows were also exchanged in between the two. The testimony of PWs 4 and 5 have not been shattered by the accused in their cross-examination and both these witnesses have seen the accused inflicting dagger blow on the chest of the victim. No suggestion has been put to these witnesses that they have deposed against the accused because of some enmity or that they being Advocates wanted to support the version of the injured being a judicial officer. May be that there were many persons strolling on the Mall Road who had also seen the occurrence, but PWs 4 and 5 are the best persons who saw the incident and deposed true version of the occurrence. The presence of PWs 4 and 5 at the scene of the occurrence cannot be doubted as the accused has not put any suggestion to them to prove that they were not present at the scene of the occurrence at the time of the incident. The contention of the learned Legal Aid Counsel for the accused that PWs 4 and 5 are interested witnesses and, therefore, their testimony should not be accepted is unsustainable.

18. The accused has admitted in his statement recorded u/s 313 Code of Criminal Procedure that PW-1 Mr. Mandyal lodged First Information Report (Ext. PW-1/C) against him on 24.5.1993 about the earlier murderous assault given by him for which he stood convicted. He has also admitted that he was convicted by the Court of Kolhapur for similar offence. In answer to question No. 18 he states as under:

Since I am being suspected a member of a spy of CIA of USA therefore, the CBI and Intelligence Agencies including the police and certain members of judiciary are

trying to implicate me in a false case and it is for this reason, the witnesses deposed falsely.

19. In answer to question No. 19 the accused states as under:

I am innocent and not committed any offence. As regard my conviction by the Additional Sessions Judge Kolhapur, the same stand already suspended by the Bombay High Court in an appeal filed by me. Similarly, the appeal pertaining to the case registered against me on 24.5.1992 at the instance of Mr. Mandyal, the appeal is pending in Hon"ble the High Court.

20. In answer to question No. 13 the accused stated that he was tried by Mr. Mandyal in Sessions Trial u/s 307 IPC pertaining to assault on Shri A.N. Sharma and the judgment in that case was delivered by the then District and Sessions Judge (Forest), Shimla Mrs. Kiran Aggarwal.

21. The injuries found on the person of victim have been corroborated by PW-8 Dr. Puneet Mahajan. It is a fact that PW-8 in cross-examination has admitted that injury No. 3 was not serious in nature. The Station House Officer, Police Station Sadar sought the opinion of PW-11 Dr. Behl about the nature of the injuries received by PW-1. Injured PW-1 was admitted in IGMCH, Shimla on 17.5.1998 and discharged on 19.5.1998. Dr. Behl being Professor and Head of the Department of Cardiothoracic opined after going through the records of the injury statement prepared by Dr. PW-2 that injury over 6th left costal cartilage was grievous injury. Dr. Behl has emphatically denied the suggestion of the accused that the linear cut injury on the cartilage of 6th rib was simple in nature. He categorically stated that the cut injury was deep enough to cut the rib, as the same was palpable by finger. Similar was the opinion of Dr. PW-2. In the face of the clear opinion of Dr. Behl, it cannot be said that injury No. 3 found on the person of injured PW-1 was simple in nature. The contention of the learned Legal Aid Counsel for the accused that the opinion was sought by the Station House Officer to demolish the opinion of Dr. Puneet Mahajan (PW-8) who found the said injury not serious in nature cannot be accepted. The opinion of PW-8 Dr. Puneet Mahajan stands over ruled by the opinion of Dr. Behl an expert. PW-8 Dr. Puneet Mahajan was only post graduate student in the department of Surgery when he medically examined PW-1 injured and, therefore the expert opinion of Dr. Behl has to be accepted about the nature of injury No. 3 found on the person of PW-1 injured.

22. The learned Legal Aid Counsel also contended that the recovery of the weapon of offence from an open place was doubtful and that if the dagger was blood stained, it was never sent for chemical analysis to find out the blood group. It is no doubt true that the weapon of offence was not sent to the Chemical Analyst by the Investigating Officer but non-submission of the weapon of offence to the Chemical Analyst will not discredit the reliable testimony of the injured PW-1 and other witnesses PW-4 and PW-5 who have identified the dagger to be the same which was

used by the accused inflicting the injuries on the person of the victim and it was the same weapon which was thrown by him in between an electric pole and water tank nearby public toilet on the Mall Road. The weapon of offence was recovered by PW-10 at about 9 p.m. from the spot where it was earlier thrown by the accused in the presence of PW-5. It has come in the evidence of PW-5 that dagger having black coloured handle was found in between water tank and electric pole situate nearby the stair case leading to the public toilet and lower bazar from eastern corner of the Khadi Ashram. Thereafter the weapon of offence was taken to the hospital by the Investigating Officer where it was shown to PW-1 Mr. Mandyal who identified the same to be the one used by the accused in assaulting him. PW-5 emphatically denied the suggestion of the accused that the weapon of offence (Ext. P-5) was planted by the police. PW-10 the Investigating Officer has corroborated the evidence of PW-5 that the place where the weapon of offence was earlier thrown by the accused was identified by PW-5 and the weapon of offence was also got identified from PW-1 in IGMCS Shimla. On assessment of the evidence of PWs 5 and 10, we find that no suggestion was put to these witnesses by the accused that the weapon of offence was not recovered by PW-10 from the place where it was found. We find no cogent reason to disbelieve the version of PWs 5 and 10 that the weapon of offence was not recovered from the place where it was thrown by the accused after attacking PW-1 victim. However, there is a minor discrepancy noticed in the statement of PW-10 who stated that the weapon of offence after recovery was sealed by him at the spot in the presence of PW-5 and thereafter it was got identified from PW-1 in IGMCS, Shimla whereas PW-5 has stated that the weapon of offence after recovery was taken to hospital where it was shown to PW-1 who identified the same having been used by the accused in assaulting him. It is the evidence of PW-5 that weapon of offence was sealed by PW-10 after it was shown to the victim. Such minor discrepancy in the statement of PWs 5 and 10 will be of little consequence and the said discrepancy will not discredit the testimony of PWs 5 and 10 that the weapon of offence was not recovered from the place where it was thrown by the accused.

23. The learned Legal Aid Counsel also contended that there is no evidence adduced on record by the prosecution that PW-9 Inspector Ramesh Pathania raided other places at the cart road to trace out the accused and he straightway went to Butail Dharamshala accompanied by Constable Ishwar Singh in search of the accused meaning thereby that PW-9 knew it that the accused was staying in the said Dharamshala and that he was implicated in the present case on suspicion and surmises only because of his involvement in the earlier pending cases. We do not find any substance in this contention of the learned Legal Aid Counsel, as no suggestion was put to PW-9 that he knew about the stay of the accused in Butail Dharamshala and further that the accused was arrested merely on suspicion because of previous incidents.

24. As discussed above the accused has been identified by PWs 1, 4 and 5 who assaulted the victim on the Mall Road on the day of the occurrence with a dagger and no explanation has been rendered by the accused that he has been involved in the commission of the present offence falsely. It is, but natural that victim Mr. Mandyal shall not involve the accused in a false case for the reason that he was earlier assaulted by the accused and let the real culprit to go scot free. It is undisputed fact that in the earlier cases the accused stood convicted and sentenced by the Court(s) and, therefore, his false implication in the present case is unbelievable.

25. Now the question for our consideration is whether the accused was rightly convicted and sentenced for offence u/s 307 IPC or not. From the assessment of the reasonings recorded in the impugned judgment, we find that the learned Additional Sessions Judge has rightly stated that first part of Section 307 IPC deals with the intention or knowledge and circumstances and the same would apply even if no injury has been inflicted to the victim, which is capable of causing death, whereas the second part provides that where no hurt is caused, the lighter punishment is to be awarded, and when the hurt is caused, the suitable punishment should be imposed. The third part deals with such situation where the hurt is caused to the victim by an offender who is already convicted and sentenced to undergo life imprisonment. The ingredients of the offence u/s 307 IPC is established, once the prosecution is able to prove that the act irrespective of its result was done with the intention or knowledge and under circumstances mentioned in this section. It is settled law that for constituting an offence u/s 307 IPC it is sufficient in law, if there is present an intent occupied with some overt act in execution thereof. The learned Additional Sessions Judge in his judgment has also relied upon judgments of the Supreme Court in [State of Maharashtra Vs. Balram Bama Patil and Others](#), ; [Matiullah Sheikh Vs. The State of West Bengal](#), and [Om Parkash Vs. The State of Punjab](#), . On our consideration of these decisions the legal position settled by the apex Court is that in order to hold an offender guilty for the commission of offence u/s 307 IPC, it is not essential that the bodily injury capable of causing the death should have been inflicted or that by such injury some vital organs of the injured should have been cut. It is, however, the knowledge, intention and the circumstances under which the accused did certain act with a view to cause the death of the victim must be proved on record to hold such an accused guilty under this section. In the present case the ingredients of Section 307 IPC have been fully established against the accused and therefore, he stands legally convicted by the trial Court. We are also not inclined to accept the contention of the learned Legal Aid Counsel that there was no pre-meditation on the part of the accused to commit the offence alleged against him. It is by now well settled that premeditation can develop on the spot as well but it all depends upon the facts and circumstances of the case. In the facts and circumstances of the case on hand, the accused was strolling on the Mall Road armed with dagger and when he found victim Mr. Mandyal strolling on

the Mall Road he immediately in the presence of the huge crowd stealthily came from right to left side hiding himself in the crowd and then all of a sudden appeared before Mr. Mandyal and thereafter at once assaulted him with the dagger. Such ghastly act on his part itself speaks about his intention and knowledge to kill Mr. Mandyal. It is also pertinent to note that the accused with a view to kill Mr. Mandyal has intentionally and knowingly chosen the vital part of the body viz. left side of chest, where many vital organs of human body such as heart, lungs and vessels exist. The prosecution has proved beyond all reasonable doubt that it was the accused and none else who made murderous assault on victim Mr. Mandyal with intention and knowledge to kill him. The learned Additional Sessions Judge has meticulously examined the entire evidence on record and found the accused guilty of the offence for which he was charged. In view of the reliable, trustworthy and convincing evidence on record, we find no infirmity in the impugned judgment. The accused has been rightly sentenced to the maximum punishment provided u/s 307 IPC and we are not inclined to accept the contention of the learned Legal Aid Counsel that the sentence imposed upon the accused should be reduced.

26. No other point has been urged by the learned Legal Aid Counsel before us.

27. For all the above said reasons, there is no merit in this appeal which is dismissed.

28. A copy of this judgment shall be sent by the Registry Office to the accused through Superintendent Model Central Jail, Nahan.

29. Before parting with this" judgment, we wish to place on record our appreciation for the valuable assistance rendered by Legal Aid Counsel Mr. Sandeep Sharma.