

**(2003) 07 AHC CK 0190****Allahabad High Court****Case No:** Criminal Appeal No"s. 563 and 565 of 1981Collector Singh and Others (in  
Jail)**APPELLANT**

Vs

State of U.P.

**RESPONDENT****Date of Decision:** July 11, 2003**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 304

**Citation:** (2003) 3 ACR 2450**Hon'ble Judges:** U.S. Tripathi, J; D.P. Gupta, J**Bench:** Division Bench**Advocate:** Pt. Mohan Chandra and Vinod Prasad, for the Appellant; D.G.A., for the Respondent

### **Judgement**

1. The above two appeals have been preferred by the Appellants against the judgment and order dated 19.2.1981, passed by the v. Ith Additional Sessions Judge, Budaun in S. T. No. 206 of 1980 convicting the Appellants Mahabir under Sections 148, 324 read with Section 149 and Section 302 read with 149, I.P.C. and Appellants Ghalendu, Siyaram, Shishupal, Collector Singh and Chet Ram under Sections 147, 324 read with 149 and 302 read with 149, I.P.C. and sentencing the Appellant Mahabir to undergo R.I. for a period of one year u/s 148, I.P.C., 9 months R.I. u/s 324 read with Section 149, I.P.C. and imprisonment for life u/s 302 read with 149, I.P.C. and sentencing other Appellants to 9 months R.I. u/s 147, I.P.C. 9 months R.I. u/s 324 read with 149, I.P.C. and imprisonment for life u/s 302 read with 149, I.P.C. All the sentences were ordered to run concurrently.

2. The prosecution story, briefly stated, is as under:

Appellant Mahabir is the son of Appellant Chet Ram, while Appellant Ghalendu is nephew of Appellant Chet Ram. Appellant Collector is brother-in-law (wife's brother)

of Appellant Chet Ram, Appellant Siya Ram is son of Sadhu of Collector and Appellant Shishupal is associate and friend of Appellant Chet Ram. Appellants Chet Ram, Mahabir, Shishupal and Ghalendu are residents of village Sateti, P. S. Bilsi, district Badaun, Appellant Siya Ram is resident of village Kudauli and Appellant Collector is resident of village Keseruwa. Ahibaran Singh deceased (35) was a resident of village Sateti. He was a teacher in primary school at Sherpur. His son Narsingh (P.W. 1) was student of class 12 in N. A. Inter College, Bilsi.

3. Prior to 10-11 months of the occurrence of this case the Appellants Shishupal, Ghalendu, Mahabir and one Mahendra had cut the grove of Ahibaran Singh deceased. A criminal case u/s 427, I.P.C. was initiated by Ahibaran Singh deceased against them, which was pending on the date of occurrence of this case. On account of above criminal case there was enmity between the parties.

4. On the afternoon of 22.12.1979 Ahibaran Singh deceased had gone to Bilsi to withdraw his salary from District Co-operative Bank, Bilsi Branch. Narsingh (P.W. 1) had also gone to Bilsi along with Ahibaran Singh deceased to appear in Half Yearly Examination at N. A. Inter College, Bilsi. Thereafter, Ahibaran Singh deceased and Narsingh (P.W. 1) were returning to their village Sateti. At about 5.00 p.m. when they reached in between fields of Rajpal Singh and Hari Babu near village Sateti, Appellant Mahabir armed with spear, Chet Ram, Shishupal, Ghalendu, Siyaram and Collector armed with lathis emerged out from the bushes in the field of Rajpal Singh. Chet Ram exhorted to kill Ahibaran Singh deceased as he claimed himself a big litigant. On his exhortation all the Appellants surrounded Ahibaran Singh deceased and Narsingh (P.W. 1) and started inflicting blows with their respective weapon on them. They raised alarm and on their alarm Mulayam Singh (P.W. 2), Hem Raj Singh (P.W. 3), Sohan Pal, Nempal and Udaipal Singh rushed to the spot. On the challenge given by the above witnesses the Appellants ran away. Ahibaran Singh deceased fell down and succumbed to his injuries. Thereafter, several persons of the village also came. Leaving the dead body of Ahibaran Singh deceased on the spot under the watch of villagers Narsingh (P.W. 1) came to the police station, Bilsi in a bullock cart, where he lodged oral report of the occurrence at 6.45 p.m. Chik F.I.R. (Ext. Ka-1) was prepared by the Head Constable Rajpal Singh (C.W. 1) who made an endorsement of the same at G.D. report (Ext. Ka-18) and registered a case under Sections 147, 148 and 302, I.P.C. against the Appellants and sent injured Narsingh (P.W. 1) to Primary Health Centre, Bilsi, where he was medically examined by Dr. Ram Chandra Joshi (P.W. 5), who found 4 lacerated wounds, one punctured wound, one abrasion and one traumatic swelling on different parts of his body and prepared injury report (Ext. Ka-3).

5. At the time of registration of the case no Sub-Inspector was present at the police station. Sub-Inspector Bhagwan Das (P.W. 9) Officer Incharge of the police station was on patrol duty. In village Sateti he got information about the incident of the case and he reached the spot along with Constable Ram Dayal. On the spot he came

to know that Narsingh (P.W. 1) had gone to police station to lodge report. Dead body of the Ahibaran Singh deceased was lying on the spot. The Investigating Officer sent Constable Ram Dayal to police station to bring papers of the case. Due to paucity of light the Investigating Officer could not conduct inquest of the dead body of the deceased in the night. On next morning the Investigating Officer conducted inquest of the dead body of the deceased and sent it in sealed condition for post-mortem. He also took into possession blood stained and simple earth from the spot, inspected place of occurrence and prepared site plan.

6. Autopsy on the dead body of the deceased was conducted on 23.12.1979 by Dr. O. P. Chhinga (P.W. 4), who found 3 lacerated wounds and 3 contusions as ante-mortem injury and cause of death due to shock and haemorrhage. He prepared post-mortem report (Ext. Ka-2). The Investigating Officer completed remaining investigation and submitted charge-sheet against the Appellants.

7. Cognizance of the case was taken up by the Magistrate, who committed the case to the Court of Sessions. Before Sessions Court Appellant Mahabir was charged with the offence punishable under Sections 148 and 302, I.P.C. read with Section 149, I.P.C. and other Appellants were charged with the offence punishable under Sections 147, 324 read with 149, I.P.C. and Section 302 read with Section 149, I.P.C.

8. The Appellants pleaded not guilty and their contention was that Ahibaran Singh deceased was robbed by unknown robbers and in the said incident of robbery Ahibaran Singh deceased and Narsingh (P.W. 1) sustained injuries and they were falsely implicated on account of enmity.

9. The prosecution in support of its case examined Narsingh (P.W. 1), Mulayam Singh (P.W. 2), Hem Raj Singh (P.W. 3) as witnesses of fact besides Dr. O. P., Chhinga (P.W. 4), Dr. Ram Chandra Joshi (P.W. 5), constable Madan Lal (P.W. 7), Bharat Singh (P.W. 8) and S. I., Bhagwan Das (P.W. 9). Head Constable Rajpal Singh was examined as C.W. 1. The Appellants did not adduce any evidence in their defence.

10. On consideration of evidence of prosecution the learned Sessions Judge held that prosecution has established its case beyond all reasonable doubts that all the six Appellants were members of an unlawful assembly and in prosecution of the common object of such assembly, i.e., in causing the murder of Ahibaran Singh and assault to Narsingh and cause the death of Ahibaran Singh and hurt to Narsingh. With these findings he convicted the Appellant Mahabir under Sections 148, 324 read with Sections 149 and 302 read with Section 149, I.P.C. and other Appellants under Sections 147, 324 read with 149 and 302 read with Section 149, I.P.C. and sentenced each of them as mentioned above.

11. The Appellants have challenged their above conviction and sentence by filing above two appeals before this Court.

12. Appellant Chet Ram died during pendency of appeal vide report of C.J.M. Budaun dated 25.4.2003. Therefore, the appeal preferred by Chet Ram stood abated.

13. We have heard Sri Vinod Prasad, learned Counsel for the Appellants in both the appeals and learned A.G.A. for the Respondent and have gone through the entire evidence on record.

14. Both the appeals arise out of same judgment and therefore, are being disposed of by a common judgment with the consent of learned Counsel for the parties.

15. Before advertising to the contention raised by parties learned Counsel we would like to give the gist of evidence of the prosecution witnesses.

16. Narsingh (P.W. 1), the son of the Ahibaran Singh deceased stated inter-se relationship of the Appellants. He further stated that his father Ahibaran Singh deceased had planted grove in an area of two bighas land. Prior to 10-11 months of the occurrence of this case the Appellants Shishupal, Ghalendu, Mahabir and one Mahendra had cut and uprooted the plants of said grove. His father had initiated a criminal case of the said incident. On account of it there was enmity between the parties. On 22.12.1979 he had gone to appear in half yearly Intermediate examination at N. A. Inter College, Bilsi and his father had gone to withdraw his salary from the Bank. He was a teacher in primary school. He and his father had gone to Bilsi at about 11-12 a.m. While they were going to Bilsi the villagers had enquired from them and he had told that he was going to Bilsi. He appeared in the examination from 1.00 p.m. to 3.30 p.m. Thereafter, his father met him at the gate of the college. He along with his father was returning to the village. Bilsi was at a distance of 2-3 kos from his village. They were returning on foot. When they reached near the village at about 4-5 p.m. near the field of Hari Babu, it was broad daylight. Appellant Mahabir armed with spear, Chet Ram, Shishupal, Ghalendu, Siyaram and Collector armed with lathi emerged out from bushes from northern side. Chet Ram exhorted that they should be killed as they claimed to be a big litigant. On above exhortation all the Appellants surrounded him and his father. They raised alarm. On their alarm Mulayam Singh (P.W. 2), Sohan Lal, Nempal, Hem Raj Singh (P.W. 3) and Udaipal Singh came to the spot. Hemraj Singh was his uncle. The Appellants caused injuries to them (him and his father). On the challenge given by the witnesses the Appellants ran away. On sustaining injuries his father fell down and died. Persons of the village also came to the spot subsequently. Leaving dead body of his father under the watch of villagers he went to police station where he lodged report of the incident at 6.45 p.m. Thereafter, he was sent to hospital where his injuries were examined.

17. Mulayam Singh (P.W. 2) stated that on the evening of the occurrence he was returning to his village from Bilsi along with Nempal Singh and Sohan Pal. When he reached on the mend between fields of Mathuri and Nathu, he heard shrieks and rushed to the spot and when he reached near the field of Hari Babu and Rajpal

Singh he saw that Appellants Mahabir with spear and Collector, Chet Ram, Ghalendu, Shishupal Singh and Siyaram with lathi were causing injuries on Ahibaran Singh deceased and Narsingh (P.W. 1). Udaipal Singh and Hem Raj Singh (P.W. 3) also came to the spot from other side. They challenged the Appellants and they ran away towards south. Ahibaran Singh deceased fell down and died on the spot. Narsingh (P.W. 1) had sustained injuries. It was at about 5.00 p.m. Thereafter, other persons also came to the spot.

18. Hemraj Singh (P.W. 3) stated that on the evening of the occurrence at about 4-5 p.m., he had gone to watch his arhar field as it was being damaged by Neelgai. Udaipal Singh, his maternal brother, was also with him. He heard shrieks and on hearing shrieks he reached on mend in between fields of Rajpal and Har Pal Singh, Mulayam Singh, Nempal and Sohan Pal also came from other side. He saw that Appellant Mahabir with a spear and Appellants Shishupal, Ghalendu, Siyaram, Collector and Chet Ram with lathis were causing injuries on the deceased and Narsingh (P.W. 1). He challenged the Appellants and they ran away towards south. Ahibaran Singh deceased and Narsingh (P.W. 1) sustained injuries and Ahibaran Singh deceased died on the spot. He sent Narsingh (P.W. 1) to lodge report of the occurrence. He remained on the spot.

19. Dr. O. P. Chhinga (P.W. 4) stated that on 23.12.1979 he conducted autopsy on the dead body of Ahibaran Singh deceased and found following ante-mortem injuries on his person:

(1) Lacerated wound 5 cm. x .5 cm. x bone deep on the top and middle of head obliquely placed. Margins of wound were congested and full of blood clots. Under the wound there was fishered fracture of both parietal bones. On opening the skull there was haemotoma of about 20 c.c. blood under the injury. Laceration of mangieses and brain under it ;

(2) Lacerated wound 1.5 cm. x .5 cm. x .5 cm. on the front and left of chin.

(3) Lacerated wound 3 cm. x .3 cm. x .5 cm. transversely placed one cm. below chin ;

(4) Contusion 3 cm. x 2 cm. on the centre of right cheek ;

(5) Contusion 4 cm. x 1 cm. on the top of right shoulder ;

(6) Contusion with swelling of right upper eye brow and lid.

He further stated that internal examination showed that there was fracture on skull bone. Stomach contained two ounce liquified digested food. Small intestine contained faecal matters and gases. Large intestine contained faecal matters. The cause of death was due to shock and concussion on account of Injury No. 1. He further stated that the ante-mortem injuries could be caused by blunt object like lathi. The death would have taken place on 22.12.1979 between 4 and 5 p.m. He proved post-mortem report (Ext. Ka-2).

20. Dr. Ram Chandra Joshi (P.W. 5) the then Medical Officer of P.H.C. Bilsi stated on 22.12.1979 at about 7.30 p.m. he medically examined Narsingh and found following injuries on his person:

- (1) Lacerated wound on the middle of both the parties 2 cm. x 1.8 cm. x skin deep fresh blood coming out. Kept under observation. Advised X-ray scalp ;
- (2) Lacerated wound on the left side of parieto occipital region of scalp 4 cm. x 0.5 cm. x skin deep in diameter, 13.5 cm. from left ear. Kept under observation. Advised X-ray ;
- (3) Lacerated wound on the right side of parieto occipital region of scalp 4.5 cm. x 0.7 cm. x skin deep in diameter 10 cm. from right ear kept under observation. Advised X-ray ;
- (4) Lacerated wound on the left side occipital region of scalp 2 cm. x 0.4 cm. x skin deep. Kept under observation. Advised X-ray 9 cm. from left ear ;
- (5) Punctured wound on the left side of dorsum of left hand on metacarpal region of left little finger 0.4 cm. x 0.2 cm. x 1 cm. in diameter. Kept under observation. Advised X-ray left hand ;
- (6) Abrasion mark on the middle of left ring finger and little finger 2 cm. x 0.5 cm. in diameter ;
- (7) Traumatic swelling on the dorsum of left hand 9 cm. x 3 cm. in diameter, advised X-ray left hand left little finger. Kept under observation.

He further stated that all injuries except injury No. 5 were caused by blunt object and injury No. 5 was caused by pointed object and kept under observations, Advised X-ray of scalp. The duration of injuries was fresh. The patient was referred to District Hospital, Budaun after giving emergency treatment, 21. Constable Har Pal Singh (P.W. 6) stated that on 23.12.1979 he escorted sealed dead body of Ahibaran Singh deceased to the mortuary at Budaun for post-mortem. Madan (P.W. 7) Clerk in N. A. Inter College, Bilsi stated that he had brought answer book of Narsingh (P.W. 1) relating to examination of English third paper held on 22.12.1979, according to which Narsingh (P.W. 1) had appeared in half yearly examination of English third paper on 22.12.1979 in second meeting from 1.00 p.m. to 3.30 p.m. Bharat Singh (P.W. 8), Branch Manager of District Co-operative Bank, Bilsi branch stated on the basis of Ledger Book of the bank that on 22.12.1979 Ahibaran Singh deceased had withdrawn a sum of Rs. 340 from the said bank which was entered at Serial No. 23 on Page No. 143 and withdrawal form was No. 2-B-1/134. Ahibaran Singh deceased was an Assistant Teacher. All payments were made up to 2.00 p.m.

22. Bhagwan Das (P.W. 9) is the Investigating Officer of the case. He stated that on 22.12.1979 he was Officer Incharge of the police station, Bilsi. On that day he was on patrol duty. At village Sateti, he came to know about the incident and rushed to the

spot. Dead body of the deceased was lying on the spot. He sent Constable Ram Dayal and others to bring papers from the police station. Due to paucity of light he could not conduct the inquest of the dead body of Ahibaran Singh deceased in the night. On the next morning he conducted inquest of the dead body of the deceased. He took into possession blood stained and simple earth from the spot, inspected place of occurrence, prepared site plan, interrogated Mulayam Singh (P.W. 2), Hemraj Singh (P.W. 3) and other witnesses and on receipt of post-mortem report and completion of investigation submitted charge-sheet against the Appellants. Head Constable Rajpal Singh (C.W. 1) stated that on 22.12.1979 at 6.45 p.m. he prepared chik F.I.R. (Ext. Ka-1) on the dictation of Narsingh (P.W. 1) and made an endorsement of the same at G.D. report (Ext. Ka-18).

23. The Appellants have not disputed identity, death, and cause of death of Ahibaran Singh deceased, injuries of Narsingh (P.W. 1) and date, time and place of occurrence. The Appellants stated in their statement u/s 313, Cr. P.C. that unknown robbers caused injuries to Ahibaran Singh deceased and Narsingh (P.W. 1) due to which Ahibaran Singh deceased died. The medical evidence of Dr. O. P. Chhinga (P.W. 4) and Dr. Ram Chandra Joshi (P.W. 5) supported the evidence of ocular witnesses that Ahibaran Singh deceased and Narsingh (P.W. 1) had sustained injuries and Ahibaran Singh died on account of above injuries. Therefore, death of Ahibaran Singh deceased and injuries of Narsingh (P.W. 1) caused in the same incident have been established by the prosecution.

24. Date, time and place of occurrence is also not disputed. According to prosecution, occurrence took place on the pagdandi (foot path) in between field of Hari Babu and Rajpal Singh. The Investigating Officer Bhagwan Das (P.W. 9) reached the spot at about 6.00 p.m. and saw the dead body of Ahibaran Singh deceased lying on the spot. He also found blood on the spot. The report of the occurrence was lodged at 6.45 p.m. while the distance of the police station was about 7-1/2 km. The injuries of the injured Narsingh (P.W. 1) were examined at 7.30 p.m. The above evidence established date, time and place of occurrence.

25. The motive alleged by the prosecution was that prior to 10-11 months of the occurrence the Appellants Shishupal, Ghalendu, Mahabir and one Mahendra had cut the grove of the deceased regarding which he had initiated a criminal case which was pending on the date of occurrence. Narsingh (P.W. 1), further, stated that on 25.11.1980 the Appellants Shishupal and Ghalendu were convicted in the said case and were sentenced to one year R.I. each and they were on bail granted by the appellate court. This fact is also proved by the judgment and order dated 25.11.1980, passed in Criminal Case No. 862 of 1980.

26. The learned Counsel for the Appellant contended that the other Appellants have no motive and two Appellants namely Siyaram and Collector Singh are resident of another village. Narsingh (P.W. 1) has given inter-se relationship of the Appellants Chet Ram, Mahabir and Ghalendu, which is not disputed, Mahabir is son of

Appellant Chet Ram and Ghalendu is nephew of Chet Ram. Ghalendu and Mahabir were accused in the criminal case initiated by Ahibaran Singh deceased. There is also evidence of Narsingh (P.W. 1), which is not challenged, that Appellant Collector is sala (wife's brother) of Chet Ram Appellant and Siyaram is relative of Collector while Shishupal was associate of Chet Ram. Thus, the other three Appellants namely Collector, Shishupal and Siyaram are also associated with Chet Ram and, therefore, they had unity of object and it cannot be said that there was no occasion for joining Appellant Chet Ram and others with Appellant Shishupal, Collector and Siyaram.

27. The next contention of the learned Counsel for the Appellants was that there was no sufficient light at the time of occurrence and therefore, the witnesses could not see the assailants and in fact robbery was committed by unknown robbers and the Appellants were falsely implicated. The ocular witnesses Narsingh (P.W. 1), Mulayam Singh (P.W. 2) and Hem Raj (P.W. 3) have categorically stated that occurrence took place at about 5.00 p.m. in the month of December. It is true that sun sets in the last week of December at about 5.00 p.m. but just after sun set, there remains sufficient light for some times in which persons could be easily recognized. The occurrence of the present case took place in open place i.e., on the footpath in between two fields. The fields near the footpath were vacant having no crop. The Appellants were well known to the prosecution witnesses. The time of occurrence at 5.00 p.m. is established by the lodging of the report at 6.45 p.m. and medical examination of Narsingh (P.W. 1) at 7.30 p.m.

28. Narsingh (P.W. 1) is admittedly an injured witness. His injuries as stated by Dr. Ram Chandra Joshi (P.W. 5) were fresh at the time of examination, i.e., at 7.30 p.m. He sustained injuries in the same transaction. Therefore, his presence on the spot cannot be doubted. The learned Counsel for the Appellants further contended that injuries on the person of Narsingh (P.W. 1) is no doubt guarantee of his presence, but it is no guarantee of his truthfulness. Narsingh (P.W. 1) was cross-examined at great length, but nothing could be elicited to doubt his veracity. The witness had gone to Bilsi to appear in half yearly examination being held from 1.00 p.m. to 3.30 p.m. This fact is proved by evidence of Madan Lal (P.W. 7) and answer book (Ext. 1). Ahibaran Singh deceased had also gone to Bilsi to withdraw his salary from District Co-operative Bank, Bilsi. This fact is also proved by evidence of Bharat Singh (P.W. 8), Branch Manager of the said bank. It is true that the above facts did not find place in the F.I.R. but F.I.R. is not an exhaustive piece of evidence and it is not necessary that it should contain each and every minute details of the occurrence. The presence of Ahibaran Singh deceased and Narsingh (P.W. 1) at Bilsi up to 3.00 p.m. is proved by documentary evidence referred to above and therefore ; non-mention of this fact in the F.I.R. is not material.

29. Narsingh (P.W. 1) is the real son of the deceased and it was not expected from him to spare out the real assailant and falsely implicate any innocent persons. The F.I.R. was promptly lodged by the witness, which rules out possibility of any

deliberations or false implication of innocent persons. The witness had replied each and every minute details of the incident and topography of the spot. Therefore, there is no reason to doubt his veracity.

30. Mulayam Singh (P.W. 2) stated that at the time of occurrence he was returning to his village from Bilsi. He had gone to Bilsi Bazar for purchasing cloth and there he purchased one lady's dhoti and one gent's dhoti from the shop of Gyan Chand Bajaj and therefore, the presence of the witness on the spot, which was in the way to village of the witness, was natural and probable. No doubt. Harnam Singh the brother of the witness had appeared as a witness in the case relating to cutting of grove, but there is no other material on record to doubt his veracity. Certain contradictions were pointed out, but those contradictions do not affect the truthfulness of the witness.

31. Hemraj (P.W. 3) the real brother of Ahibaran Singh deceased had gone to watch his arhar field near the place of occurrence, where he heard shrieks and reached the spot. The presence of witness on the spot was, therefore, natural and probable. Although he is real brother of the Ahibaran Singh deceased but on account of it he cannot be disbelieved.

32. Thus, the evidence of ocular witnesses is worthy of credence.

33. The ocular witnesses have denied the suggestion of the Appellants that robbery was committed by unknown robbers and they could not recognize the robbers. They also denied the suggestion that cycles of Ahibaran Singh deceased and Narsingh (P.W. 1) were lying on the spot. The Investigating Officer had not found any cycle on the spot. Narsingh (P.W. 1) had categorically stated that he and his father were returning to their village on foot. It is true that Ahibaran Singh deceased had withdrawn a sum of Rs. 340 from the bank and there is no evidence that he spent it. The ocular witness stated that they have not checked the pocket of the deceased. The Investigating Officer had also not recovered any amount of money from the person of the deceased. But on this count, it cannot be said that robbery took place, as the possibility that any of the Appellant removed the money from the pocket of the deceased while leaving the spot cannot be easily ruled out, as Narsingh (P.W. 1) had fallen at some distance from the deceased and the Appellants ran away on the challenge given by the witnesses, before their arrival on the spot.

34. The next contention of the learned Counsel for the Appellants was that the medical evidence does not corroborate the oral evidence. Having considered the evidence of ocular witnesses and medical evidence, we find no force in the above contention. All the ocular witnesses stated that the Appellant Mahabir was having spear and other Appellants lathis. Injury No. 5 of Narsingh (P.W. 1) was a punctured wound. No doubt there was a cutting on injury report (Ext. Ka-3) and previously "lacerated" was written and it was corrected as "punctured", but the doctor has clarified that he made above correction at the time of preparation of injury report

and it is proved from the evidence of the doctor that it was only clerical mistake. It was pointed out that according to evidence of Narsingh (P.W. 1) all the Appellants caused injuries to him as well as his father, but Ahibaran Singh deceased had not sustained any incised or punctured wound. However, he has clarified that Appellant Mahabir caused injury to him alone. The presence of punctured wound on the person of Narsingh (P.W. 1) established the use of spear. He also clarified that blade of spear was round and pointed one. No doubt Mulayam Singh (P.W. 2) stated that blade of spear of Mahabir was flat and like hood of snake. Narsingh (P.W. 1) had come into close contact with the Appellants, specially the Appellant Mahabir. Thus, he was in a position to observe closely the nature and shape of spear. Mulayam Singh (P.W. 2) saw the occurrence from some distance and the Appellants have left the spot when he reached the spot. As such he could not minutely observe the nature of blade of the spear and if he had given statement regarding blade by his speculation it is nothing but an exaggeration. Therefore, we find no conflict, between ocular evidence and medical evidence.

35. The next contention of the learned Counsel for the Appellants was that there was no unlawful assembly and all the Appellants had no common object as three of the Appellants had no occasion to assemble on the spot with a common object. The evidence of ocular witnesses established that all the Appellants were laying ambush behind the bushes in the field of Rajpal Singh besides footpath proceeding to village Sateti. It is also in the evidence of Narsingh (P.W. 1) that prior to going to Bilsi he had told on enquiry of villagers that he and his father were going to Bilsi. Narsingh (P.W. 1) was studying in an Intermediate College at Bilsi. The departure of Narsingh (P.W. 1) and Ahibaran Singh deceased to Bilsi, thus, could be easily known to the Appellants of his village and by the time the deceased returned the other Appellants who were associates of Appellants Chet Ram could also be called to share the plan. Laying ambush by all the Appellants near the place of occurrence through which the deceased had to pass, emerging out from the bushes armed with weapon and simultaneously attacking on the deceased clearly indicated that all the Appellants had formed an unlawful assembly and had shared common object.

36. Lastly, it was contended by the learned Counsel for the Appellants that the offence falls u/s 304, I.P.C. only and not beyond it. On considering the manner of occurrence and number of injuries on the person of deceased and Narsingh (P.W. 1), we are of the view that all the Appellants had common object to murder the deceased and to cause injuries to Narsingh (P.W. 1). That the occurrence took place in a pre-planned manner and the common object of the Appellants was to commit murder of deceased and causing injuries to Narsingh (P.W. 1). Therefore, the offence punishable u/s 302 read with Section 149 was established against all the Appellants.

37. In view of our above discussions and observations, we find no force in both the appeals. Both the appeals are dismissed. The conviction and sentence of the

Appellants awarded by the trial court are confirmed.

38. The Appellants Collector, Mahabir, Ghalendu, Shishupal and Siya Ram are on bail. They shall surrender before the C.J.M. concerned to serve out their sentences. The C.J.M. concerned is directed to issue non-bailable warrants against the above Appellants to secure their arrest. Copy of the judgment be sent to C.J.M., Budaun, for compliance and report.