

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Criminal Appeal No. 705 OF 2003****Hari Singh & Anr.****-Vs-****State of M.P.**

Shri Madhukar Kulshreshtha, counsel for the appellants.

Shri Rajendra Singh Yadav, Public Prosecutor for the respondent/State.

J U D G M E N T
(23/02/2017)

This criminal appeal has been filed under Section 374 of Cr.P.C. against the judgment dated 29.11.2003 passed by 4th Additional Sessions Judge (Fast Track Court), Shivpuri in S.T.No. 288/2002 by which the appellants have been convicted under Section 304 Part-II, 34 of IPC and have been sentenced to undergo the rigorous imprisonment of five years and a fine of Rs. 1000/- with default imprisonment.

The facts of the present case in short are that on 14.9.2002 the complainant Mohan Singh lodged a FIR at about 20:45 against the appellant and other co-accused persons alleging that at about 4:00 PM some dispute had taken place between Lakhan and co-accused Hari Singh on the question of grazing of cattles and, therefore, on this issue, the appellants and the co-accused Hari Singh, Harnam, Devendra, Bundela, Kailash, Shivraj Singh, Raja Singh Yadav, Ramji Lal etc. came on the spot who were armed with sharp edged weapon as well as lathies and challenged the complainant party that if they are the son of their father then they may stop the accused persons from grazing

their cattles in the field. When the complainant party objected to the act of abusing, the co-accused Ram Singh assaulted the complainant by means of an axe whereas the appellant No.2 assaulted the complainant by means of a Farsa and the co-accused Lala Ram assaulted the complainant by means of lathi, as a result of which the complainant received several injuries. The co-accused Devendra caused injury to Ranvir by Luhangi and the co-accused Shivraj assaulted him by means of lathi, as a result of which he too received several injuries. Lakhan assaulted Raja Singh by means of lathi and Bundela assaulted Raja Singh by means of Luhangi, as a result of which he too received several injuries. After hearing the shouts of the complainant party Ram Kumar, the brother of the complainant and Dhan Kunwar, the grandmother of the complainant also came on the spot. Harnam Singh and Ram Singh assaulted Dhan Kunwar by means of Farsa and an axe, as a result of which she received injuries on her head and her left leg and Ram Singh, Ramji Lal, Hari Singh, Lala Ram and Kailash assaulted Ram Kumar by means of an axe as well as lathies, as a result of which he too received several injuries. Dhan Kunwar was brought back to the house and by that time she had already expired. On this FIR, the police registered the offence and started investigation.

It is not out of place to mention here that on the report of the appellant No.1 Hari Singh, a criminal case against Ranvir, Bhaiya Saheb, Rajendra, Lakhan, Mohan Singh and six others was also registered. In both the cases one person died on each side and five persons received several injuries. The police after completing the investigation filed the charge sheet.

The Trial Court by order dated 10.01.2003 framed the charges under Sections 148, 149, 325/149 (two counts), 324/149 (two counts) and 302/149 of IPC against the appellants and co-accused persons.

The appellants abjured their guilt and pleaded not guilty.

The Trial Court after recording the evidence acquitted all

the accused persons including the appellants for offences punishable under Sections 148, 302/149, 325/149 (two counts) and 324/149 (two counts) of IPC. However, the appellants have been convicted under Section 304 Part-II of IPC.

It is not out of place to mention here that in the FIR there was a specific allegation that Harnam Singh and Ram Singh had caused injury to the deceased Dhan Kunwar but Harnam Singh also lost his life in the same quarrel for which the complainant party was also tried for offences punishable under Sections 302, 149 of IPC along with other offences.

The prosecution in order to prove its case had examined Ram Kumar (PW-1), Dr. R.R. Mathur (PW-2), Dr. M.L. Agrawal (PW-3), Jaipal Singh (PW-4), Gurucharan Singh (PW-5), R.R. Bhagat (PW-6), Mahendra Singh (PW-7), Mujaffar Ali (PW-8), Ranvir (PW-9), Bhaiya Saheb (PW-10), Rajendra (PW-11), Lakhani (PW-12), Mohan Singh (PW-13), Bablu (PW-14), Avneet Sharma (PW-15), Shankar Singh (PW-16), Rajdhar (PW-17) and Dr. Smt. Alka Trivedi (PW-18).

The appellants examined Ghasiram (DW-1), Bhagwan Singh (DW-1) and Dr. S.P. Raghuvanshi (DW-3) in their deposition.

As the appellants have been acquitted for offences punishable under Sections 148, 325/149 (two counts) as well as 324/149 (two counts) of IPC and the remaining co-accused persons have also been acquitted in toto, therefore, the evidence of the witnesses is being considered to ascertain that whether the prosecution has succeeded in proving that the appellants have committed the offence under Section 304 Part-II of IPC or not.

Before considering the evidence which has been led by the prosecution it would be apposite to consider the postmortem report of deceased Dhan Kunwar.

Dr. R.R. Mathur (PW-2) (wrongly mentioned as DW-2 in the deposition sheet) had conducted the postmortem on the

body of the deceased Dhan Kunwar Bai. In postmortem report the following injuries were found on the body of Dhan Kunwar Bai:-

(1) Incised wound with fracture (cut) of scalp brain matter seen. Size of the wound was 25cm x 2cm x 2cm (deep to brain matter). Transversely to head middle part of head.

(2) Incised wound 6cm x 1cm x 1½ cm (deep to bone) left leg backside middle part of calf muscle.

The postmortem report of the deceased Dhan Kunwar Bai is Ex.P/1-A. Thus, according to Dr. R.R. Mathur (PW-2) only two injuries were found on the body of the deceased.

Ram Kumar (PW-1) has stated that the appellant No.2 and Harnam assaulted the deceased Dhan Kunwar Bai by means of Farsa whereas Ram Singh and appellant No.1 assaulted the deceased by means of an axe whereas the co-accused Devendra and Bundel assaulted her by means of Luhangi. By referring to the case diary statement of Ram Kumar (PW-1), it is submitted by the counsel for the appellants that the allegation against the appellants of causing injury to the deceased Dhan Kunwar Bai were not mentioned in the case diary statement of Ram Kumar (PW-1). In the case diary statement of Ram Kumar Ex.D/10 it was mentioned that Harnam Singh had assaulted the deceased by means of Farsa whereas Ram Singh had assaulted the deceased by means of an axe. There is no allegation against the appellants in the case diary statement of Ram Kumar to the effect that they had also assaulted the deceased Dhan Kunwar Bai. In the cross-examination, this witness has further admitted that for the first time he is stating before the Court that the appellants had also assaulted the deceased Dhan Kunwar by means of Farsa and an axe.

Jaipal Singh (PW-4) has also stated in his examination in

chief that Ram Singh and the appellant No.1 assaulted the deceased by means of an axe on her head whereas the co-accused Ramji Lal caused injury on the back side of the neck of the deceased. The appellant No.2 as well as Harnam Singh also assaulted the deceased on the head whereas Devendra and Bundel Singh assaulted the deceased on her legs. By referring to the case diary statement of Jaipal Singh which is Ex.D/3 it was submitted by the counsel for the appellants that in fact this witness had not seen the incident. It was submitted that in his case diary statement, this witness had stated that when he reached on the spot, the assault was already going on and his grandmother was lying in an injured condition on the ground and the blood was oozing out from her head and leg. Thus, it was submitted that the incident of assault on the deceased was never seen by this witness. This witness was specifically confronted with his case diary statement with regard to the omissions and this witness could not explain the reason for not mentioning the fact of assault by the appellants on the deceased by means of Farsa and an axe. It is submitted by the counsel for the appellants that even otherwise only two injuries were found on the body of the deceased Dhan Kunwar and, therefore, the evidence of this witness cannot be relied upon as it is in direct conflict with the medical report.

Ranvir (PW-9) has stated that all the accused persons had assaulted the deceased Dhan Kunwar but he has not specified the name of the assailants. It is submitted by the counsel for the appellants that as the other accused persons have been acquitted for offence under Section 302/149 of IPC including Ram Singh against whom there was an allegation of assaulting the deceased Dhan Kunwar, therefore, the omnibus allegations made by this witness cannot be said to be reliable for the purposes of convicting the appellants. In cross-examination also this witness has admitted that he has been

produced from jail as he is facing trial for the murder of Harnam Singh as well as for causing injury to the accused persons.

Bhaiya Saheb (PW-10) has stated that the appellant No.1 caused injury on the head of Dhan Kunwar by means of an axe whereas the appellant No.2 caused injury by means of a Farsa. By referring to the case diary statement of this witness Ex.D/7, it is submitted by the counsel for the appellants that in fact this witness had not seen the incident of assault on the deceased Dhan Kunwar Bai. According to the case diary statement of Bhaiya Saheb Ex.D/7 when he reached on the spot he saw that the deceased Dhan Kunwar Bai was lying on the ground and blood was oozing out from her head and legs. This witness was specifically confronted with his case diary statement but he could not give any explanation as to why the fact of assault by the appellants on the deceased Dhan Kunwar Bai is not mentioned in his case diary statement.

Rajendra (PW-11) has also stated that when the deceased Dhan Kunwar came to save the witnesses at that time Harnam Singh and Ram Singh assaulted the deceased on her head by means of an axe whereas the appellant No.2 also assaulted on her head by means of a Farsa. Ramji Lal assaulted on the head of the deceased by means of an axe, Lalaram assaulted on her hand by means of a lathi and injury was caused on her legs by Bundel by means of Luhangi. By referring to the case diary statement Ex.D/8 of this witness the counsel for the appellants submitted that this witness had stated in his case diary statement that Harnam Singh had assaulted his grandmother by means of a Farsa on her head whereas the co-accused Ram Singh assaulted on her legs. It is submitted that in the case diary statement of this witness it was nowhere mentioned that the appellants had ever assaulted the deceased. This witness was confronted with his

case diary statement but he could not narrate the reasons as to why the factum of assault by the appellants on the deceased was not mentioned in his case diary statement.

Lakhan (PW-12) has stated that the appellants caused injury on the head of the deceased Dhan Kunwar by means of an axe and Farsa whereas the co-accused Ram Singh and Kailash assaulted on her head by means of an axe and Farsa and the co-accused Bundel assaulted on her legs. By referring to the case diary statement of this witness which is Ex.D/9 it is submitted by the counsel for the appellants that this witness had stated that Harnam Singh had assaulted his grandmother on her head by means of Farsa whereas the co-accused Ram Singh assaulted the deceased by means of an axe on her legs. It is further submitted that there is no allegation in the case diary statement of Lakhan with regard to assault by the appellants on the deceased Dhan Kunwar. This witness was confronted with his police case diary statement but he could not explain as to why the fact of assault by the appellants to the deceased has not been mentioned in the case diary statement.

Mohan Singh (PW-13) is the person who had lodged the FIR. In his Court evidence this witness has stated that the appellants had assaulted the deceased on her head by means of an axe and Farsa whereas the co-accused Ram Singh had assaulted the deceased on her leg by means of an axe. By referring to the First Information Report Ex.P/15 lodged by this witness, it is submitted by the counsel for the appellants that in the FIR it was mentioned that Harnam Singh and co-accused Ram Singh had assaulted the deceased Dhan Kunwar by means of a Farsa and an axe and in the FIR there is no allegation that the appellants had ever assaulted the deceased. By referring to the case diary statement of this witness which is Ex.D/11 it is submitted by the counsel for the

appellants that in the said statement also it was mentioned that Harnam Singh had assaulted the deceased Dhan Kunwar on her head by means of a Farsa whereas Ram Singh had assaulted the deceased on her leg by means of an axe. There is no allegation in the case diary statement Ex.D/11 with regard to assault made by the appellants on the deceased. This witness could not explain that as to why the allegation of assault by the appellants on the deceased Dhan Kunwar is not mentioned in the FIR as well as in the case diary statement.

Rajdhar (PW-17) has made a general allegation that at about 6:30 PM all the accused persons had killed the deceased Dhan Kunwar and after noticing him he was also challenged by the accused persons but he ran away. By referring to the case diary statement of this witness Rajdhar which is Ex.D/13 the counsel for the appellants submitted that in fact this witness had not seen the incident at all. In his case diary statement he had stated that after assaulting the deceased as well as other injured persons he had seen the accused persons going towards their houses and he found that his mother Dhan Kunwar had already expired and other witnesses had sustained injuries. This witness was confronted with his case diary statement Ex.D/13 but he could not explain as to why the factum of noticing the accused persons assaulting the deceased Dhan Kunwar Bai is not mentioned in the case diary statement.

It is submitted by the counsel for the appellants that it is apparent from the postmortem report Ex.P/1-A of the deceased Dhan Kunwar, that only two incised wounds were found. In the FIR the allegations were against Harnam Singh and Ram Singh. Even in the case diary statement of almost all the witnesses the allegations of assaulting the deceased Dhan Kunwar were made against Harnam Singh, Ram Singh and none of the witnesses had ever alleged in their case diary

statement that the appellants had also assaulted the deceased by means of an axe and Farsa. The evidence of the witnesses are contrary to the medical evidence also as only two incised wounds were found on the body of the deceased whereas the witnesses had stated that at least 4 to 5 persons had assaulted the deceased on her head and leg. It is further submitted that the omission in the police case diary statement with regard to assault made by the appellants is not trivial in nature and is an important and major omission resulting in contradictions and, therefore, the evidence of the prosecution witnesses become unreliable.

Per contra, it is submitted by the counsel for the State that the prosecution witnesses have specifically stated that the appellants were the persons who had assaulted the deceased and the Trial Court after appreciating the evidence in detail and after removing the grain from the chaff has found that the appellants are guilty of committing offence punishable under Section 304 Part-II of IPC.

It is well settled principle of law that every omission in the case diary statement of the witnesses is not fatal and, therefore, the accused cannot get advantage of the same. However, where the omission is found to be so grave in nature which completely changes the nature of the offence, the name of the assailants etc. then the said omission cannot be said to be trivial in nature and the same would get converted into contradiction.

The Supreme Court in the case of **Narayan Chetanram Chaudhary vs. State of Maharashtra** reported in **(2000) 8 SCC 457** has held as under:-

"42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the

witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in *State of H.P. v. Lekh Raj* (2000) 1 SCC 247 (in which one of us was a party), dealing with discrepancies, contradictions and omissions held: (SCC pp.258-59, paras 7-8)

"Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incidence there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in *Ousu Varghese v. State of Kerala* (1974) 3 SCC 767 held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In *Jagdish vs. State of M.P.* 1981 Supp SCC 40 this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in *State of Rajasthan v. Kalki*

(1981) 2 SCC 752 held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in *State of U.P. v. M.K. Anthony* (1985) 1 SCC 505, *Tehsildar Singh v. State of U.P.* AIR 1959 SC 1012, *Appabhai v. State of Gujarat* 1988 Supp. SCC 241 and *Rammi v. State of M.P.* (1999) 8 SCC 649, this Court in a recent case *Leela Ram v. State of Haryana* (1999) 9 SCC 525 held:

'There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason thereof should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence.....

The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.' "

The Supreme Court in the case of **Shashidhar**

Purandhar Hegde & Anr. vs. State of Karnataka reported in **(2004) 12 SCC 492** has held as under:

"12. The word "contradiction" is of a wide connotation which takes within its ambit all material omissions and under the circumstances of a case, a court can decide whether there is one such omission as to amount to contradiction. (See *State of Maharashtra v. Bharat Chaganlal Raghani* (2001) 9 SCC 1 and *Raj Kishore Jha v. State of Bihar* (2003) 11 SCC 519. The Explanation to Section 162 of the Code of Criminal Procedure, 1973 (in short "the Code") is relevant. "Contradiction" means the setting of one statement against another and not the setting up of a statement against nothing at all. As noted in *Tahsildar Singh v. State of U.P.* AIR 1959 SC 1012 all omissions are not contradictions. As the explanation to Section 162 of the Code shows, an omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant or otherwise relevant having regard to the context in which the omission occurs. The provision itself makes it clear that whether any omission amounts to contradiction in the particular context is a question of fact."

The Supreme Court in the case of **Nand Kishore vs. State of M.P.** reported in **(2011) 12 SCC 120** has held as under:-

"14. As far as the alleged discrepancy with regard to recovery of knife is concerned, it is not possible for the Court to attach undue importance to this aspect. The court has to form an opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations *per se* do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details

which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. (Vide *State v. Saravanan*, (2008) 17 SCC 587, *Arumugam v. State*, (2008) 15 SCC 590 and *Mahendra Pratap Singh v. State of U.P.*, (2009) 11 SCC 334."

Thus it is clear that where omissions are of trivial in nature and do not go to the root of the case and do not shake the basic version of prosecution, then the accused cannot get the advantage of minor omissions. However, if the nature of contradictions are such that the basic case of the prosecution is uprooted and gives a deep dent, then the accused must get advantage of the same.

It is clear that in the FIR and case diary statements of the witnesses, the basic allegation of assaulting Dhan Kunwar on her head was against Harnam Singh, but unfortunately, he too lost his life in the same incident. Therefore, there was good reason for the prosecution witnesses to change their version and to put blame on other surviving accused persons so that they can be punished. Further almost all the prosecution witnesses have stated that numerous injuries were caused to Dhan Kunwar by various accused persons whereas only two injuries were found on the body of the deceased Dhan Kunwar. If the FIR and case diary statements of the witnesses are considered, then it would be clear that the initial version of the eyewitnesses was in consistency with the medical report, but since the main assailant Harnam Singh, unfortunately also lost his life in the same incident, therefore, the witnesses had reasons to change their evidence. The changed version of the witnesses not only became inconsistent with their case diary statements but became

inconsistent with the medical evidence. Furthermore, different versions have been given about the assault on Dhan Kunwar by different witnesses. Even allegations were made against other accused persons of assaulting deceased, but they all were acquitted by the Trial Court by giving benefit of doubt. Merely in court evidence, all the witnesses have taken the name of the appellants as one of the assailants causing injury to Dhan Kunwar, then that by itself cannot be a ground to convict the appellants, specifically when the allegation of assaulting the deceased by the appellants was made for the first time in the Court. Thus, this Court is of the considered opinion that the evidence of Ram Kumar (PW-1), Jaipal Singh (PW-4), Ranvir (PW-9), Bhaiya Saheb (PW-10), Rajendra (PW-11), Lakhan (PW-12), Mohan Singh (PW-13) and Rajdhar (PW-17) are not worth reliance in view of material omissions, contradictions in their statements. If the evidence of these witnesses are ignored then there is no evidence against the appellants.

It is an important aspect to note that the appellants had suffered several grievous injuries on their vital parts of the bodies and the complainant party was also tried in a cross case for offences under Sections 302, 307 of IPC. The appellant No.1 Hari Singh had sustained the following injuries:-

- (i) A 10 cm length 2 cm width reddish blue contusion placed horizontally over right thigh, middle 1/3 anteriorly.
- (ii) A 10cm x 2 cm reddish blue contusion placed over left arm middle 1/3 anterior-laterally.
- (iii) An abrasion of 2x2 cm over left forearm middle 1/3 laterally.
- (iv) A 10 cm. X 4 cm. reddish blue contusion placed over left forearm middle 1/3 antero-laterally.
- (v) A swelling of 10cm x 10cm over right thumb middle phalanx .

(vi) A bleeding dragged wound of 3 cm length in head occipital region slightly shifted to left side.

(vii) A bleeding wound of 3 cm length in occipital region bld+

(viii) A 5 cm length wound in frontal region of head. bld+

(x) A cut wound of 3 cm length above left ear. bld+

His MLC report is Ex.D/17-C.

The appellant No.2 Manna Singh had suffered following injuries:-

(i) One wound of 5 cm x 1cm. Right parietal region. Bld profusely

(ii) A wound of 5 cm. X ½ cm. On right parietal region just below the previous wound. Bld. Profusely

(iii) A wound of 3 cm. X ½ cm. in occipital region of head, Bld+

(iv) # Left forearm, thus referred to Radio for x-ray MLC and other needful.

(v) # Rt. Elbow joint with forearm thus referred to D.H. for x-ray MLC and other needful.

(vi) Swelling of 10 cm. X 4 cm. In right side chest middle 1/2.

and his MLC report is Ex.D/18-C.

It is important to note that the appellants were also sent for medical treatment and they also remained hospitalized for several days and the complainant party was also prosecuted for causing death of Harnam Singh and also U/s 307 of IPC. The prosecution witnesses have not explained as to how the appellants sustained the serious injuries. Thus, it is clear that the prosecution witnesses have suppressed the very genesis of the incident.

Another evidence which was sought to be proved by the prosecution against the appellants is the seizure of weapon. According to the prosecution, one Farsa was seized from the possession of the appellant No.2 Manna Singh on 20.10.2002 by seizure memo Ex.P/22. By seizure memo Ex.P/22 an axe was seized from the possession of the appellant No.1 Hari

Singh on 3.10.2002. As per the seizure memo blood like substance was found on the axe. The axe was sent for Forensic Science Laboratory, Gwalior vide Ex.P/29-C. From the report of the Forensic Science Laboratory, Gwalior, it appears that the articles were sent to Forensic Science Laboratory, Sagar for ascertaining the blood group but it appears that the report of Forensic Science Laboratory has not been produced by the prosecution. Even the report of Forensic Science Laboratory, Gwalior was not exhibited at the trial. Even no question was put to the appellant No.1 in his statement under Section 313 of Cr.P.C. to the effect that blood was found on the axe seized from his possession.

Thus, it is clear that neither the report of Forensic Science Laboratory, Gwalior was proved by the prosecution nor the Trial Court in exercise of powers under Section 293 of Cr.P.C. treated the said report of Forensic Science Laboratory, Sagar as an evidence against the appellants and the said report was not exhibited as prosecution document. Thus, it is clear that the prosecution failed to prove the presence of blood on the axe seized from the possession of the appellant No.1. Even otherwise, under the facts and circumstances of the case mere presence of the blood on the axe is not material. As pointed out earlier that an incident took place in which at least 4 to 5 persons from each side sustained serious injuries and one person from each side lost his/her life. The appellants and the other co-accused persons have been acquitted for causing injuries to the other injured persons. When the specific allegation against the appellants in the case diary statement of the witnesses was that they had assaulted the other injured, therefore, under these circumstances it was essential for the prosecution to establish the blood group of the blood stains which were found on the axe of the appellant No.1 to show that the axe seized from the possession of the appellant No.1

contains the blood of the deceased. If the blood found on the axe seized from the possession of the appellant No.1 is of any other injured witness then as the appellant No.1 has already been acquitted for causing injuries to the other witnesses, therefore, under this circumstance mere presence of the blood on the axe is not sufficient to hold a circumstance against the appellant No.1. Furthermore, it is important to note that all the seizure witnesses have turned hostile and they have not supported the prosecution case.

Avneet Sharma (PW-15) is the Investigating Officer who had seized the weapons from the possession of the appellants has stated that Farsa was seized from the possession of Manna Singh on 20.10.2002 whereas axe was seized from Hari Singh on 3.10.2002. If the peculiar facts of the case are considered then it would be clear that these two appellants had also received several serious injuries on their heads apart from other parts of their bodies. They were also immediately shifted to the hospital for treatment where they remained admitted for several days. Thus, immediately after the incident these appellants had no opportunity to hide their weapons at a particular place. Under these circumstances the seizure of the weapons from the possession of the appellants also becomes suspicious and, therefore, in absence of corroboration by the independent witnesses the evidence of investigating officer Avneet Sharma (PW-15) can not be relied upon. Avneet Sharma (PW-15) had specifically admitted in his cross-examination that he had sent the appellants for medical treatment. When the appellants were with the police party immediately after the incident, then why the weapons were not seized at that point of time only. Thus, in absence of report of blood group on the axe which was seized from the possession of the appellant No.1 Hari Singh and in absence of presence of blood on the Farsa allegedly seized from the

possession of the appellant No.2 Manna Singh, this Court is of the considered opinion that the seizure of weapons from the possession of the appellants has not been proved by the prosecution beyond reasonable doubt and the seizure of weapons cannot be treated as an incriminating circumstances against the appellants.

Thus, considering the fact that in the FIR as well as in the case diary statements of all the witnesses there was no allegation against the appellants that they had ever assaulted the deceased, therefore, in view of the contradictions in the evidence of the witnesses, the evidence of the witnesses cannot be said to be reliable for convicting the appellants.

Accordingly, the judgment and sentence passed by the Trial Court is set aside. The appellants are held not guilty of committing an offence under Section 304 Part II of IPC and accordingly they are acquitted of the said charges. The appellants are on bail. Their bail bonds and surety bonds are discharged.

The appeal succeeds and is hereby **allowed**.

(G.S. AHLUWALIA)
Judge

(alok)