

MOHAN SINGH
v.
PREM SINGH AND ANR.

OCTOBER 1, 2002

[U.C. BANERJEE AND D.M DHARMADHIKARI, JJ.]

Penal Code, 1860—Section 302 read with Section 34—Murder—Conviction—According to the prosecution accused allegedly causing death of a person—Motive being a pending civil litigation—Trial Court relying on evidence and extra-judicial confession convicting accused—High Court rejecting the version of eyewitness, evidence of extra-judicial confession and recoveries of weapons as untrustworthy, acquitting the accused—On appeal held prosecution having failed to prove the genesis of the crime and the nature of incident, High Court justified in acquitting the accused.

Code of Criminal Procedure, 1973—Section 313:

Statement of accused—Acceptance of inculpatory portion—If exculpatory part of statement is false and evidence led by prosecution is reliable, inculpatory part of statement can be taken aid of to lend assurance to evidence of prosecution—If prosecution evidence does not inspire confidence to sustain conviction of accused, inculpatory part of statement cannot be made the sole basis of conviction.

Statement of accused—Can be used for appreciating evidence led by prosecution to accept or reject it—However, not being a substantive piece of evidence cannot be a substitute for the evidence of the prosecution.

According to the prosecution respondent No. 1 and respondent No 2 inflicted injuries on the appellant's son and caused his death. It is alleged that the motive of the crime was a pending litigation between appellant and father of respondent No. 1 regarding possession of a piece of land. When the appellant's son along with his father and PW 7 was returning from field, respondent No. 1 and respondent No. 2 armed with weapons way-laid the appellant's son. Respondent No-1 allegedly gave a blow to deceased which the latter warded off and tried to escape but stumbled down after covering some paces and fell on the heap of earth lying in the

A courtyard of the house of one A. Respondent No. 1 inflicted blow on the neck of appellant's son while respondent No. 2 inflicted blow on the knee. Alarm was raised whereupon respondents ran away. Appellant's son was taken to the hospital whereupon doctor declared him dead. FIR was lodged and was conveyed to the Magistrate the next day. Investigation was carried out. Two days after the incident the respondents made extra judicial confession to the Lambardar of the village and a week later they were produced before the ASI who arrested them. Weapons were recovered on the disclosure statement made by the respondents. Respondent No. 2 pleaded that he had been falsely implicated and respondent No. 1 denied having attacked or caused any injuries to the appellant's son. Trial Court relying on eyewitnesses' account and extra judicial confession convicted respondent No. 1 under section 302 and respondent No. 2 under section 302 read with section 34 IPC. High Court reversed the judgment of the trial Court and acquitted the accused. Hence the present appeals.

Respondent No. 2 contended that there was neither motive nor evidence against him for his conviction with the aid of Section 34 IPC; that he has been attributed to have caused one skin deep injury, not on any vital part of the body of the deceased; that as the evidence of extra-judicial confession and recovery of weapons was rightly rejected by High Court, there was no other evidence to hold that respondent No. 2 had common intention with respondent No.1 to commit murder and that respondent No. 2 has rightly been acquitted by the High Court on justifiable reasons.

Dismissing the appeals, the Court

HELD: 1.1. High Court committed no error in acquitting both the accused and the conclusion of High Court that the prosecution has failed to prove the genesis of the crime and the nature of the incident is concurred with. The version of the alleged eyewitnesses, the evidence of extra-judicial confession and recoveries of weapon have been found to be untrustworthy.

[17-E]

1.2. The evidence of alleged eyewitnesses that at about 8'O clock in the night, they were following the deceased on way to the village does not inspire confidence since they did not intervene in the attack or rushed to the village for help, which itself is very unnatural and has rightly been found unreliable. The entry in the register of OPD of the hospital, was found tampered which supports the defence case that in order to prove

the presence of eyewitnesses, interpolations were made in the hospital records. The delay in recording of FIR was explained on lame excuses which clearly indicates that there was no prompt lodging of the report of the incident by the witnesses, hence their presence at alleged date and time of incident is highly doubtful. [15-D-G] A

1.3. The prosecution is guilty of fabricating false evidence of extra judicial confession and recovery of the weapons used by respondents. Respondent No.2 was falsely implicated. He had no motive to committing murder of the deceased. He is alleged to have caused one simple injury to the deceased. There is no evidence why he should join the co-accused in opening a brutal attack on the deceased. The defence plea taken by him that he was falsely implicated because of some pending civil dispute with PW7 concerning use of a path, appears to be plausible. [15-G, H; 16-A] B C

2.1. The statement made in defence by accused under Section 313 Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 Cr.P.C. cannot be made the sole basis of his conviction. The law is settled that statement under Section 313 Cr.P.C. can either be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. If the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 Cr.P.C. cannot be made the sole basis of his conviction. [16-F, G; 17-H; 18-A, B] D E F

2.2. In the instant case, the statement of respondent No.1 recorded under Section 313 of Cr.P.C. constitutes his defence plea. He stated that when he was sitting on a cot in the open compound of one A he was attacked by the deceased along with his associate whereupon the villagers rushed and caused injuries to the deceased. Thereafter, respondent No.1 went to dispensary and got himself examined. The inculpatory part of his statement is his admission of an incident of assault on the deceased in his presence in the compound of the house of A. The accused categorically denied to have attacked the deceased or caused him any injuries. His specific defence plea was that in order to save him, villagers from the H

A neighbourhood rushed and assaulted the deceased. [16-D-E; 17-F]

2.3. The exculpatory part of statement of the accused under Section 313 Cr.P.C. in which he stated that he was attacked by the deceased and his associate, whereupon the villagers rushed for his help and inflicted injuries on the deceased, cannot be outright rejected as false. The inculpatory part of his statement under Section 313 Cr.P.C. to the extent of admission of his presence in the compound of one A when the deceased was attacked, cannot form sole basis of the conviction. [18-B-C]

Nishi Kant Jha v. State of Bihar, AIR (1969) SC 422, relied on.

3. The statement of accused under section 313 Cr.P.C. is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. The evidence led by the prosecution having been rejected, the defence set up by accused cannot be discarded as wholly improbable. [17-G, H]

4. The submission that accused is liable to be convicted for exceeding his right of private defence under Section 304 IPC cannot be accepted. Regarding respondent No.2-co-accused, since the evidence of the prosecution that the two co-accused made a joint assault on the deceased is not relied on, he cannot be convicted under section 302 with the aid of section 34 IPC. [18-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 792-793 of 1994.

From the Judgment and Order dated 24.9.93 of the Punjab & Haryana High Court in Crl. A. Nos. 34-DB/92 and 475-DB of 1991.

WITH

Criminal Appeal Nos. 794-795 of 1994.

Jaspal Singh, Vipin Gogia, Mrs. Jaspreet Gogia, Sushil Kumar Jain, Bimal Roy Jad, R.K. Rathore, P.N. Puri, Sanjay Sarin and Ashok Mathur for the appearing parties.

The Judgment of the Court was delivered by

DHARMADHIKARI, J. These two appeals have been filed by complainant and the State of Punjab against the judgment of the High Court of Punjab and Haryana dated 24th September, 1993 whereby the two accused, (respondents herein) by reversal of the judgement of the Sessions Judge, Hoshiarpur, have been acquitted of the charges under Section 302 read with Section 34 and 324 of the Indian Penal Code.

The case of the prosecution against the two accused is that at 8.40 on the night of 28.6.1990 in village Bassi Umar Khan, near the courtyard of Atma Singh, that two accused viz. Prem Singh, accused No.1 and Deepinder Singh-accused No.2 inflicted injuries on deceased Ravinder Singh, son of Mohan Singh-PW6 and caused his death. The prosecution case, as sought to be proved in the court in necessary details, is as under:-

The motive of the crime is stated to be a pending civil litigation between father of the deceased in the capacity of holder of Power of Attorney on behalf of one Joginder Singh Mahant on one side and Sampuran Singh, father of accused No.1, Prem Singh on the other, regarding the possession of a piece of land in village Bassi Umar Khan.

The alleged offence of murder of deceased is alleged to have been committed on 28th June, 1990 at about 8.40 p.m. when the deceased was returning from his field to his house. It is stated that Mohan Singh-PW6, father of the deceased and Sardara Singh-PW7 were also following the deceased on their way back from field to the house. At that time, accused No.1-Prem Singh, armed with *Datar* and Deepinder Singh-accused No.2 armed with *Gandasi* way-laid the deceased. Accused No.1 shouted that Mohan Singh, father of the deceased would be "taught a lesson" for pursuing a case against father of Prem Singh. After such declaration accused No.1-Prem Singh gave a *Datar* blow to the deceased which the latter warded off but it hit him on his right hand. Deceased then in a bid to escape started running towards the village. The two accused chased him. After covering about forty paces, the deceased stumbled down and fell on the heap of earth lying in the courtyard of the house of one Atma Singh. When the deceased had fallen down, accused No.1-Prem Singh inflicted a *Datar* blow on the left side of neck of the deceased while accused No.2, Deepinder Singh inflicted a *Gandasi* blow on his left knee. The above named two eyewitnesses raised alarm whereupon the two accused ran away with their weapons. The villagers then gathered there. The deceased was taken in a tractor-trolley to the Civil Dispensary, Haryana where Dr. Chaman Lal-PW5, after examining the deceased, declared him

A dead. The doctor then sent an intimation at about 9.30 p.m. to the police station, Haryana which is stated to be at a distance of about 200 yards from the Hospital.

The further case of the prosecution is that thereafter leaving the dead body of the deceased in the hospital in the care of Sardara Singh-PW7, Mohan Singh PW6, while proceeding to the police station, Haryana for making a report, met on the way, ASI Santokh Singh-PW10. A report of the incident was lodged with him (marked as Ex.PN) at 10:30 pm. It is not disputed that the formal First Information Report Ex.PN, under Section 302/34 Indian Penal Code was registered at the police station at 10:30 pm on 28.6.1990 by ASI Nirmal Singh. Special report of the FIR was conveyed to the Magistrate at Hoshiarpur through Head Constable Kapur Singh-PW4 on 29th June, 1990 at 4.45 am.

Santokh Singh, ASI-PW10 undertook the investigation of the crime. After preparing inquest memo. Ex.PC, the investigating officer inspected the spot and seized blood stained earth from near the courtyard of Atma Singh. A pair of chappals-Ex.P7/1-2 of the deceased which was found lying near the spot at the place shown in the site-plan Ex.PT was seized.

Autopsy on the dead body of the deceased was conducted by Dr. Avinash Sood PW1 at Civil Hospital, Hoshiarpur at 12 noon on 29th June, 1990. The doctor found the following ante mortem injuries on the person of the deceased, which according to him were sufficient in the ordinary course of nature, to cause his death.

F “1. A spindle shaped incised wound with inverted margins measuring 6.3 cm on the nape of neck on its left laterally. Underlying muscles and major blood vessels cut. The wound started 2 cm away from midline towards left the laterally.

G 2. A continuous wound on the right hand fingers. The wound was incised in nature with inverted margins and underlying muscles cut and the bones of all the fingers exposed as if in gripping a sharp weapon.

3. An incised wound with inverted margins size 2 x 1 cm over the left knee joint superiority. The wound was skin deep”.

H The further case of the prosecution is that the two accused made an extra-judicial confession to Puran Singh-PW8, Lambardar of the village when

they contacted him on 30th June, 1990 and sought his help for their production before the police. It is stated that the Lambardar instructed them to contact him on the next day. The accused contacted him much thereafter on 6th July, 1990 and they were then produced before ASI-Santokh Singh who arrested them.

It is also the case of the prosecution that on the disclosure statements of the two accused, the alleged weapons used, described as Datar Ex.P6 and Gandasi Ex.P5, were recovered and seized after digging out earth from the corner of the tube-well room.

Accused No.2, Deepinder Singh, abjured his guilt and stated that he had been falsely implicated. Prem Singh-accused No.1, however, after the trial, in his examination under Section 313 of the Code of Criminal Procedure took the following specific defence which reads as under:-

“Atma Singh does not live in the village. The compound of his house is open. I was sitting on a cot in his compound. Ravinder Singh armed with takua, Amarjit Singh, son of Sardara Singh, armed with a dang, came there and attacked me and caused injuries. I raised alarm. Neighbours came, and inflicted injuries to Ravinder Singh in order to rescue me from Ravinder Singh. I went to the Civil Dispensary, Haryana and got myself medically examined. Doctor Chaman Lal informed the police. ASI Santosh Singh came to the hospital and I informed him of the occurrence. He arrested me and took me to the police station, detained till 5.7.1990 and framed me in the case. Mohan Singh does not reside in village Bassi Umar Khan. Sardara Singh is inimical to me and the members of my family.”

Dr. Chaman Lal-PW5 had medically examined accused Prem Singh on 28.6.1990 at 9.45 pm and found following four injuries on his person:

“1. An incised wound 3.5 cm x 0.25 cm x muscle deep present on the inner aspect of the right thumb. It was lying obliquely. Upper end was 5 cm from the tip of the thumb. Fresh bleeding from the wound was present.

2. An abrasion 2 cm in length x linear present on the palmer aspect of the right hand, 2 cm in front of injury no.1.

3. An abrasion 2 cm in length x linear present on the back of ring finger lying obliquely and in the middle of the finger of left hand.

- A 4. An abrasion 2 cm x linear lying on the back of ring finger of left hand 2 cm below the injury no.3”.

The trial court believed the eyewitnesses account given by Mohan Singh-PW6 and Sardara Singh-PW7. It also relied on the evidence of extra-judicial confession made to Puran Singh-PW8. The trial court, however, doubted the genuineness of the recovery of the weapons. After appreciating the evidence on record by its judgment dated 6.12.1991 the trial court convicted Prem Singh-accused No.1 under Section 302 IPC and sentenced him to life imprisonment. Deepinder Singh-accused No.2 was convicted under Section 302 with the aid of Section 34 IPC and was also sentenced to life imprisonment.

- C The High Court in appeal, however, acquitted the accused. On the question of alleged motive, the High Court found that civil litigation was against Mohan Singh-PW6 and not against his son deceased Ravinder Singh. In its opinion, the case of the prosecution is highly improbable that—deceased alone was attacked, and Mohan Singh against whom the accused had actual grudge, was allowed to go unhurt.

- D The High Court found that the entries in the OPD register of the Hospital, where the dead body is alleged to have been carried by the two alleged eyewitnesses, contains interpolation. There was a subsequent insertion of entry of dead body of the deceased in the register. The said tampering with the hospital record indicates that false evidence was created to prove the presence of the two alleged eyewitnesses at the time of the incident. The High Court also found that evidence of recovery of the alleged weapons made on 6th July, 1990 was a fabrication as was also found by the trial court.

- F The High Court totally discarded the alleged extra-judicial confessions made to Puran Singh-PW8. It is held that there was no possibility of the accused reposing any confidence in Puran Singh, the Lambardar of the village and confessing their involvement before him. The conduct of Puran Singh is also unnatural. On such alleged confession he instructed them to contact him the next day but the accused contacted him on 6th July, 1990 on which date they were formally arrested. The High Court observed that Puran Singh is Lambardar of the village and being in close contact with the police has been set up as a witness to prove a false extra judicial confession.

- H The High Court came to the conclusion that there is unexplained delay in lodging the FIR. The High Court found that the FIR was ante-timed. Kapur Singh, Head Constable in that regard was disbelieved. His explanation that

he left police station, Haryana on motorcycle at 12.00 in the mid-night but could not carry the report to the judicial magistrate same night because his motorcycle developed some problem on the way, has been disbelieved. The explanation for further delay, by stating that the magistrate was asleep has also been found by the High Court to be false. The conduct of Police Constable is held to be contrary to the provisions of the Punjab Police Manual which contains instructions how FIRs are to be promptly recorded and reported to the Magistrate.

The High Court also came to the conclusion that the two eye-witnesses Mohan Singh PW6 and Sardara Singh-PW7 have been falsely set up to depose that they had actually witnessed the assault made by the accused. The High Court has recorded more than one reason to reject the testimony of the alleged eyewitnesses. It is observed that if one of the accused had a serious grudge against Mohan Singh-PW6 who was present on the spot, instead of attacking him, there was no cause to open attack on his son, the deceased. According to the High Court, the conduct of the alleged eyewitnesses is highly unnatural so also of the deceased. When suddenly attacked the deceased did not turn towards the eyewitnesses for help. The two eyewitnesses did not intervene, render any help or raise a hue and cry to attract the villagers. If the incident took place near the village in the courtyard of Atma Singh, independent witnesses could have been examined from the village. The version of the eyewitnesses that they had carried the deceased in injured condition to the hospital has been disbelieved because there was no recovery and seizure of any blood stained clothes of the eyewitnesses. The investigating party also did not collect any blood stained earth from the place where the accused are alleged to have first opened the attack and inflicted injuries on the deceased.

Keeping all the above evidence and circumstances in view, the High Court acquitted both the accused.

We have heard learned counsel appearing for the complainant-Mohan Singh and learned counsel appearing for the State of Punjab. On behalf of the appellant, the judgment of acquittal passed by the High Court has been assailed and criticized severely on several grounds. It is argued that as the deceased was walking ahead of the eyewitnesses, it was not possible for the accused to have opened attack on the eyewitnesses. It is submitted that after receiving a blow the deceased, as a natural response ran away for his life. It was not necessary for him to have turned for help towards the eyewitnesses. For non-recovery of blood stained earth from the place where the attack was first

A opened, it is submitted that the place might have been trampled by cattle to leave no trace of blood. So far as non-examination of independent witnesses is concerned, it is stated that it is only after the attack was over that the villagers rushed to the spot on hearing an alarm raised by the eyewitness. The learned counsel also severely criticized the reasoning of the High Court that the chappals of the deceased were found near the courtyard of Atma Singh when they would have been left by the deceased at the place where he was first attacked. On the question of unexplained delay in reporting the FIR to the Magistrate, it is submitted that the explanation given by the Head Constable, Kapur Singh that his vehicle had developed plug spark problem, on the way to Magistrate, ought to have been believed. On the other reasoning of the High Court that as the deceased had died immediately after the assault, there was no reason to carry his body to the hospital, it is urged that it was natural for the father to have carried the body to the hospital, as he would not have known that there could have been no chance of revival of life of his son. It is also argued that it was not necessary for the prosecution to explain the injuries found on the person of the accused Prem Singh as they were very minor or superficial injuries and according to doctor would have been even self-inflicted.

On behalf of complainant in the appeal, the learned counsel laid much emphasis on the statement of accused Prem Singh in his examination under Section 313 Cr.P.C. wherein he admitted the incident to have taken place in the compound of Atma Singh. It is argued that the accused took a false plea that the deceased and one Amarjeet Singh s/o PW7 Sardara Singh had attacked him whereupon the villagers rushed to his help and caused injuries to the deceased. On behalf of the complainant, learned counsel further argues that the High Court having rejected the defence version of accused Prem Singh made by him in his statement under Section 313 of the Code of Criminal Procedure, ought to have held that story of assault by villagers was false. On his own defence plea the accused Mohan Singh had exceeded the right of private defence making him liable to be convicted and sentenced under Section 304 IPC.

G As against accused No.2, Deepinder Singh, it is argued that since he accompanied accused No.1 Prem Singh and participated with him in assaulting the deceased he should have been convicted under Section 302 or 304 with the aid of Section 34, IPC.

H We have heard learned counsel appearing for Deepinder Singh. It is

argued that there was no motive nor is there evidence against him for his conviction with the aid of Section 34, IPC. Accused No.2 Deepinder Singh has been attributed to have caused one injury which is found to be only skin deep. He did not cause any injury on any vital part of the body of the deceased.

The evidence of extra-judicial confession and recovery of weapons was rightly rejected by the High Court. There was no other evidence to hold that Deepinder Singh had common intention with the co-accused Prem Singh to commit murder. It is submitted that accused No.2 has rightly been acquitted on justifiable reasons. He has by this time already suffered imprisonment for six months during trial and after his conviction.

Having gone through the evidence on record and considering the submissions made by the learned counsel, we have come to the conclusion that there is no case made out for this Court to interfere with the judgment of acquittal passed by the High Court. At some places, in the impugned judgment of acquittal the reasoning of the High Court may not be sound but on weighing the total evidence on record, in our considered opinion, the High Court committed no error in acquitting both the accused. There are several infirmities in the prosecution case. The evidence of alleged eyewitnesses does not inspire confidence. At about 8³⁰ clock in the night, their version is that they were following the deceased on way to the village. Their subsequent conduct in not intervening in the attack or rushing to the village for help is unnatural. Their testimony has rightly been found unreliable. The entry in the register of the Out Patient Department of the hospital, has been found to have been tampered which supports the defence case that only in order to prove the presence of the two eye witnesses, interpolations were made in the hospital records. The delay in recording of FIR has been explained on lame excuses such as the Head Constable carrying report to the magistrate was held up because of the break down of his motorcycle and the magistrate was asleep when he contacted him at his residence. These circumstances clearly indicate that there was no prompt lodging of the report of the incident by the two witnesses PW6 and PW7. Hence their presence at alleged date and time of incident is highly doubtful.

The prosecution is guilty of fabricating false evidence of extra judicial confession and recovery of the weapons used by the accused. So far as Deepinder Singh, accused No.2 is concerned, he has been falsely implicated. He had no motive of committing murder of the deceased. He is alleged to

A have caused one simple injury to the deceased. There is no evidence why he should join the co-accused in opening a brutal attack on the deceased. The defence plea taken by him that he was falsely implicated because of some pending civil dispute with PW7, Sardara Singh concerning use of path, appears to be plausible.

B To seek conviction of accused No.1 Prem Singh much emphasis has been laid on his inculpatory statement given under Section 313 of the Code of Criminal Procedure. This argument advanced on behalf of the complainant deserves some serious consideration.

C By a careful reading of the statement of accused No.1-Prem Singh, (reproduced above) which is recorded during his examination under Section 313 of Cr.P.C. his defence plea has to be appreciated. According to him, when he was sitting on a cot in the open compound of Atma Singh, deceased armed with Takua and Amar Singh (son of Sardara Singh-PW7) armed with a Dang came there and attacked him causing him injuries. On his raising

D alarm neighbours rushed and inflicted injuries to the deceased to save the accused. Thereafter, Prem Singh went to the Civil Dispensary, Haryana and got himself examined by Dr. Chaman Lal. In the above statement of accused-Prem Singh given under Section 313, the inculpatory part is his admission of an incident of assault on the deceased in his presence in the compound of the house of Atma Singh. The accused has categorically denied to have attacked the deceased or caused him any injuries. His specific defence plea is that in order to save him, villagers from the neighbour rushed and assaulted the deceased.

F The statement made in defence by accused under Section 313, Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 Cr.P.C. of the accused can either be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part in found to be false on the basis of the evidence led by the prosecution See *Nishi Kant Jha v. State of Bihar*, AIR (1969) SC 422.

H "In this case the exculpatory part of the statement in Ex. 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of

Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under S. 342 Cr.P.C. to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13th October 1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in the river Patro, the amount of bleeding and the washing of the blood-stains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner. According to the post mortem report this knife could have been the cause of the injuries on the victim. *In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ex.6 the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime.*"

[underlining for emphasis]

In the case in hand, we have agreed with the conclusion of the High Court that the prosecution has failed to prove the genesis of the crime and the nature of the incident. The version of the alleged eye-witnesses, the evidence of extra judicial confession and recoveries of weapons have been found to be untrustworthy.

The statement of accused No.1 - Prem Singh recorded in his examination under Section 313 of Cr.P.C. constitutes his defence plea. He stated that he was attacked by the deceased along with his associate whereupon the villagers rushed and caused injuries to the deceased. The evidence led by the prosecution having been rejected by this Court, the defence set up by accused-Prem Singh cannot be discarded as wholly improbable.

The statement of accused under Section 313 of Cr.P.C. is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. As held in the case of *Nishi Kant* (Supra) by this

A Court, if the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 of Cr.P.C. cannot be made the sole basis of his conviction.

B

In the present case, the exculpatory part of statement of the accused under Section 313 of Cr.P.C. in which he stated that he was attacked by the deceased and his associate, whereupon the villagers rushed for his help and inflicted injuries on the deceased, cannot be outright rejected as false. The inculpatory part of his statement under Section 313 of Cr.P.C., therefore, to the extent of admission of his presence in the compound of Atma Singh when the deceased was attacked, cannot form sole basis of his conviction.

C

The alternative submission made by the learned counsel on behalf of the complainant that on basis of the statement of the accused-Prem Singh under Section 313 of Cr.P.C., is liable to be convicted for exceeding his right of private defence under Section 304 of IPC, cannot be accepted for the reasons mentioned above.

D

So far as case against the co-accused-Deepinder Singh is concerned, since we have not relied on the evidence of the prosecution that the two co-accused had made a joint assault on the deceased, he cannot be convicted under Section 302 with the aid of Section 34 IPC for his alleged common intention with the co-accused Prem Singh.

E

We thus, find no ground to interfere with the verdict of acquittal passed by the High Court in favour of both the accused. In the result, we dismiss both the appeals. Bail-bonds furnished by the respondent-accused are discharged.

F

N.J.

Appeals dismissed.