

PREETAM SINGH AND ORS.

v.

STATE OF RAJASTHAN

NOVEMBER 4, 2003

[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

Penal Code : 1860—Sections 148, 302, 307/149, 326, 324, 323/149 and 300 Exception(4)—Charge for offences under—Prosecution—Death of one person caused by three accused and injury caused by others—Cross fight between complainant and accused party—Aggression alleged on accused—Plea of self defence by accused—Inconsistency in version regarding spot of incident—Injuries on accused not mentioned in FIR—Testimony of injured eye-witnesses—Conviction by trial Court for the offences charged—High Court convicted u/s 302/34 and acquittal from other charges—Plea of self defence rejected by both the Courts—On appeal. Held: Courts below rightly disbelieved the version of accused—Individual responsibility cannot be fixed on accused for various injuries causing death—Accused liable to be convicted u/s 304(Part I) r/w Section 34 as there is reasonable doubt regarding their common intention to kill the deceased—Exception (4) to Section 300 not applicable as it was not a case of sudden fight.

Appellants-accused were charged for forming unlawful assembly, rioting, causing death of a person with deadly weapons, and causing grievous injuries to three members of complainant party.

Prosecution case was that when informant (PW2), his brother (PW6), the deceased and his son (PW1) were sitting in the house of PW2, appellants-accused came there armed with deadly weapons and started abusing PWs 2 and 6 for causing depletion of water in their tube well. Accused persons started fighting with them. When the deceased and PW1 intervened, appellant Nos. 2 and 3 who were armed with swords and appellant No. 1, who was armed with 'gandasi' attacked the deceased and caused injuries on his head. PW-1 was attacked by appellant No. 4 and four other accused with 'gandasi' and 'lathis'. Accused 'R' inflicted injuries on the arm of PW2. Thereafter the accused-appellants dragged the deceased upto the house of appellant No. 2. On investigation, body of the deceased was found from the house of appellant No. 2, and ammunition

A was recovered from the person of the deceased. PW-1 gave a different version of the incident that after the attack on the deceased, when he fell down on the 'chabutara' of house of PW-2, appellant Nos.1 to 3 and accused 'R' tried to move the deceased to the house of appellant No.2, at that stage he and PW-6 brought out a 'lathi' and a 'sickle', and attacked the appellants to stop them, but did not succeed.

B Accused-appellants had filed a counter-complaint that it was the complainant party who were aggressors and had come to the house of appellant No.2 to attack, and death of the deceased and injuries to PWs were caused by them in the course of self defence.

C Trial Court disbelieved the version of appellants and convicted appellant Nos.1, 2 and 3 under Sections 148, 302, 307/149, 326, 324 and 323/149 IPC. Appellant No.4 was held guilty for offences u/s 148, 302/149, 326, 324/149, 307 and 323/149 IPC and other accused were convicted u/ss 302/149, 307/149, etc. On appeal High Court disbelieved the version of appellants and found appellants 1 to 3 guilty of murdering the deceased, and holding that Section 149 IPC was not attracted, convicted them u/s 302/34 IPC and acquitted them of other charges. Appellant No.4 was convicted u/s 326 IPC and acquitted of other charges and others were convicted u/ss. 322, 323 and 324 IPC and were acquitted of other charges.

E In appeal to this Court appellants contended that even if it be assumed that they were responsible for initiating fight, their intention would not have been to cause harm to the deceased; that the present case at the most, could be of exceeding the right of self defence; and that deceased could not have participated in the fight unarmed as live ammunition was recovered from him; that the case therefore, falls within Exception (4) to Section 300 IPC r/w its Explanation and hence appellants 1 to 3 were liable to be punished u/s 304 Part II.

Disposing of the appeals, the Court

G HELD : 1. Trial court as well as High Court have rightly disbelieved the story of the accused/appellants that in exercise of the right of self defence, they inflicted injuries on the deceased which led to his instantaneous death. Having rejected the version of the accused in this regard, High Court, agreeing with the trial court, concluded that the appellants and some other accused were the aggressors and they initiated the fight. This part of the finding of High Court is unassailable. The fact

that the appellants were armed and that they inflicted injuries on the deceased, cannot be and has not been disputed. The very case set out in the FIR, the statements of the appellants under Section 313 Cr.P.C. coupled with the evidence of the prosecution which has been critically assessed by the High Court leads to this irresistible conclusion. [146-D-F] A

2. The discrepancy as regards the exact scene of offence does not weaken the prosecution case to any material extent. It is true that according to the finding of the High Court the fatal attack on the deceased took place somewhere on the lane leading to the house of appellant No.2 and the High Court did not believe the version of the prosecution. But, the mere fact that the prosecution witnesses gave an inaccurate version of the exact spot of attack does not lead the Court anywhere. B C

[147-A; 146-F-H]

3. The recovery of ammunition from the pocket of the deceased would at best indicate his preparedness and proclivity to mount an attack if necessary but it is nobody's case that he used a fire arm. Though, there is a strong possibility that the deceased would have played an active role in the free fight that occurred, the finding of the High Court that he was unarmed cannot be upset. [147-D-E] D

4. The plea of private defence is not at all available to the appellants. High Court did not accept the version of the accused that the deceased first attacked the accused and inflicted an injury on appellant with his weapon. In the face of these findings of the High Court and in view of the further finding that the appellants who were admittedly armed were in fact the aggressors, the question of the appellants exercising the right of private defence or exceeding it does not arise. [147-E-F] E F

5. As regards the injury on appellant No.1, the evidence discloses that it was attributable to PWs1 and 3 who launched an attack when the injured deceased was being dragged away. The mere fact that in the F.I.R. the injuries to appellant No.1 and others were not mentioned, is no ground to discard the injured eye-witnesses' version in this behalf. [147-F-G] G

6. Application of Exception (4) to Section 300 IPC is ruled out. It is not a case of sudden quarrel or sudden fight. The appellants went prepared for a fight and provoked the complainant party and thus initiated the quarrel. True, there was a mutual fight with weapons after the deceased was attacked, but it is not the same thing as a sudden fight preceded by a A H

A sudden quarrel. Moreover, the appellants have obviously taken undue advantage of the fact that the deceased was unarmed and chose him as a convenient target in the first instance. [148-A-D]

7. Individual responsibility cannot be fixed on appellants 1 and 3 for various injuries that were inflicted. In the present case, there are three head injuries on the deceased. The first two injuries are, undoubtedly, fatal injuries. As regards the third injury it cannot be said for certain that in the ordinary course it would have caused death. The medical evidence is silent on this aspect. All the three appellants inflicted injuries on the head of the deceased with the weapons in their hands according to the prosecution witnesses. On the basis of evidence on record, it would be difficult to say which of the two appellants caused the two fatal injuries and which other appellant inflicted injury No. 3. [148-E-H]

8. A pre-arranged plan and the meeting of minds to commit a particular offence is the pre-requisite to infer common intention. Although the common intention can develop on the spot, it should be the result of prior concert. Such prior concert can be inferred from the conduct of the accused revealing unity of purpose and the part played by them at the time of the occurrence, the injuries inflicted and other relevant factors. [149-A-C]

E *Krishna v. State of Maharashtra*, AIR (1963) SC 1413 and *Ramashish Yadav v. State of Bihar*, [1999] 8 SCC 555, relied on.

9. Appellants did not come to the informant's house to injure or kill deceased with whom admittedly they did not have enmity. When the deceased came out on hearing the shouts and cries of the accused, they did not attack him immediately as the evidence of PW1 shows. There was undoubtedly a free fight in which even the appellants suffered severe injuries. At the same time, the deceased was attacked at the very start of the fight and given deadly blows by two of them while three of them participated in the attack. The reasonable inference to be drawn from the sequence of events emerging from the evidence is that when deceased actively intervened and endeavoured to ward off the attack, the three appellants would have been irked by his behaviour and entertained the common intention to cause injuries to him. The fact that such common intention had developed then and there is clearly evident from the conduct of all the three appellants acting in concert in attacking him. They would not have intended to kill him but definitely intended to silence him by

inflicting injuries. While the nature of injuries inflicted by two of them may be a circumstance to be taken into account to infer common intention to kill the deceased or to inflict such injuries which could, in the ordinary course of nature, be sufficient to cause death, the Court has to weigh the other circumstances which rule out the intention to kill the deceased. Considering the facts and reasonable probabilities, it is not safe to conclude that the three accused at any point of time harboured the common intention crystallized by prior meeting of minds to put an end to the life of the deceased. At any rate, there is room for reasonable doubt. The real common intention that can be safely imputed to the appellants 1 to 3 was to cause bodily injuries to the deceased which were likely to cause death. Therefore, the offence committed by appellants 1 to 3 would be culpable homicide not amounting to murder and they are liable to be convicted and punished under Section 304 (Part I). They are also liable to be convicted under Section 148 IPC for the offence of rioting. [149-C-H; 150-A-B]

10. On the basis of the evidence on record and the findings recorded by the High Court, there is no escape from the conclusion that the appellants were members of unlawful assembly of five or more persons having the common object falling within the scope of Clause (iii) of Section 141, though the common object was not to kill or hurt the deceased person. Hence appellants 1 to 3 are convicted under Section 304 (Part I) read with Section 34 and also under Section 148 IPC. The conviction under Section 302 read with Section 34 IPC is set aside. [150-B-D]

11. High Court has rightly convicted appellant No.4 under Section 326 IPC. Evidence of PW1 is clear and categorical about the injury inflicted by appellant No. 4. [150-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 449 of 1994.

From the Judgment and Order dated 29.10.93 of the Rajasthan High Court in D.B. CrI. A. No. 325 of 1989.

WITH

CrI. A. No. 450 of 1994.

Hardev Singh, Dinesh Kumar Masant, Ms. Madhu Moolchandani for the Appellants.

Ms. Sandhya Goswami, Sushil Kumar Jain, Ms. Anjali Dhoshi and Ms.

A Ruchi Kohli for the Respondent.

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. These appeals are against the judgment of Rajasthan High Court in Criminal Appeal No. 325 of 1989. The appellants in Criminal Appeal No. 449 of 1994 together with six others were charged and tried for forming unlawful assembly, indulging in rioting, causing the death of one Pyara Singh with deadly weapons on the night of 12th January, 1988 at the house of the informant Harbans Singh situate in village 3-X and for causing grievous injuries to three members of the complainant party—the informant, his brother and the son of the deceased. Along with the appellants, six others were also tried for various offences in connection with the same incident. The Sessions Judge convicted appellants 1, 2 and 3 under Sections 148, 302, 307/149, 326, 324 and 323/149 and sentenced them to life imprisonment. The accused-appellants No. 4, Nihal Singh was held guilty of the offence under Sections 148, 302/149, 326, 324/149, 307 and 323/149 and sentenced to life imprisonment. Others were convicted for various offences viz., Sections 302/149, 307/149 etc. On appeal, the High Court found the appellants guilty of the offence of murdering Pyara Singh. The High Court having held that Section 149 was not attracted, convicted them under Section 302/34 IPC and sentenced them to life imprisonment and fine of Rs. 1000. They were acquitted of other charges. Nihal Singh (Appellant No. 4) was convicted under Section 326 IPC for causing grievous injuries to Satpal Singh (son of deceased) and he was sentenced to suffer three years R.I. and to pay fine of Rs. 100. However, he was acquitted of other charges. Three other accused were convicted for the offences either under Section 322, 323 or 324 IPC and were acquitted of other charges.

The motive for the attack, as brought out in evidence was the ill-feelings that developed between Harbans Singh and his brother Jeet Singh on the one hand and the accused Nihal Singh on the other. Both of them have adjoining fields. It appears that the tube well dug up by Nihal Singh close to the tube well of the complainant caused the depletion of water in the tube well of the complainant. Harbans Singh, the Informant and Jeet Singh (P.W.6) are the brothers. The deceased Pyara Singh is the brother-in-law of Jeet Singh. Satpal Singh, PW-1 is the son of the deceased. The accused are also related to each other. Appellants 1 and 2 are brothers. The 3rd appellant Bakshish Singh is the son of Appellant No. 1.

H

In the incident that occurred, Pyara Singh lost his life and three others of the complainant party, namely, Satpal Singh, son of the deceased, Harbans Singh, the informant and his brother Jeet Singh were injured. Three of the accused who are appellants 1 to 3 herein also received injuries. A

The prosecution case can best be described by referring to the contents of FIR lodged by Harbans Singh (PW-2) at Kesharsighpur Police Station of Sri Ganganagar District at 12.05 a.m. on 13.1.1988. At about 9 p.m. on the night of 12th January, 1988, the complainant Harbans Singh and his brother Jeet Singh and other relations—Pyara Singh (deceased), Satpal Singh (son of Pyara Singh) and two others were sitting in the drawing room of the house of Harbans Singh/Jeet Singh. At that time, three or four persons armed with deadly weapons entered the house of Harbans Singh and started abusing Harbans Singh and his brother for causing depletion of water in their tube well. When Harbans Singh and Jeet Singh came out, the accused persons started fighting with them. Pyara Singh (deceased) and his son (PW-1) intervened at that stage. The appellants Banta Singh and Bakshish Singh who were armed with swords (kirpans) and the appellants Preetam Singh who was armed with 'gandasi' attacked Pyara Singh and inflicted injuries on his head. After he fell down, they inflicted some more injuries on his waist and legs. The son of the deceased Satpal Singh (PW-1) was attacked by Nihal Singh (4th appellant) and four other accused with 'lathis' and 'gandasis'. Injuries were also inflicted on Jeet Singh with 'lathis' and 'gandasis'. Another accused by name Ram Singh inflicted an injury on the arm of the informant Harbans Singh. At that juncture, Amreek Singh and two other relatives who were at the house, challenged the accused persons. Then, the accused dragged Pyara Singh upto the house of Banta Singh (2nd appellant) which is almost behind the house of the informant. B C D E

After the incident, the three injured went to the Government hospital. Leaving Satpal Singh and Jeet Singh in the hospital, Harbans Singh went to the police station and lodged the FIR (Ext. P1) at about mid night. On information furnished by the SHO (PW-10), PW-11—the D.S.P. reached the place of occurrence at about 6 a.m. on 13.1.1988 and took up investigation. The dead body of Pyara Singh was found in Banta Singh's house. the I.O. seized the incriminating material found at the spot, prepared the inquest report, sent the dead body for postmortem and arrested the accused persons. At their instance, weapons stained with blood were recovered from various places postmortem of dead body was done by P.W.3 and Exhibit P8 is the postmortem report. F G H

A PW-1, Satpal Singh—the son of the deceased, gave a slightly different
version of the incident. He stated that after his father fell down on the
'Chabutra' (platform) of Harbans Singh's house, appellants 1 to 3 and one
B Ram Singh tried to lift and move his father towards the house of Banta
Singh. At that stage, he and his uncle Jeet Singh brought a dang (lathi) and
a sickle from the house and attacked appellants 1 to 3, but they could not
C succeed in stopping them. The deceased was lifted by the appellants 1 to 3
and another and taken to the house of Banta Singh and thereafter, the remaining
accused dragged the deceased into the house of Banta Singh. Nihal Singh
(appellant No. 4) tried to aim sickle which he was carrying, on his (PW-1's)
head and when he stretched his right hand the injury landed on the thumb
C which got cut off. Some other accused also attacked him with lathi and sickle
injuring his fingers.

There was a counter complaint filed by the accused party. The appellant
Preetam Singh lodged the FIR (Ext. P48-A) at about 4 a.m. on 13.1.1988
according to which the complainant party including Harbans Singh, Jeet
D Singh, Pyara Singh (deceased) and Satpal Singh stood in front of the house
of the accused and started abusing them and when they were asked to keep
away, Pyara Singh (the deceased) inflicted injury with sword on the head of
Preetam Singh (appellant No. 1). They were all armed with weapons viz.,
'Kirpan' and 'gandasi' at that time. Preetam Singh (appellant No. 1) tried to
E defend himself with sword and in that process, he and Pyara Singh scuffled
with each other. At the same time, Harbans Singh struck a blow on his left
scapular region with a lathi. When Banta Singh and Bakshish Singh (appellants
2 and 3) tried to save themselves, Jeet Singh and another attacked Banta
Singh with 'gandasis'. Satpal Singh (PW-1) and another attacked Bakshish
Singh with 'gandasi' and lathi respectively. There was a mutual fight and
F both sides were injured. The accused caught hold of Pyara Singh and took
him inside the house of Banta Singh (appellant No. 2) where he died on
account of the injuries. When two or three other accused intervened, the
informant Harbans Singh and party ran away. Thus, according to the report
given by Preetam Singh (appellant No. 1), four persons from the complainant
G party including the deceased took part in the fight and the appellants were
armed at the time when the complainant party allegedly came to the house
of the appellant Banta Singh and challenged them. In substance, the appellants
took the stand of self-defence.

H The material part of the version of the appellants was not accepted by
the trial Court and the High Court. All the accused in the counter-case lodged

by the appellants were acquitted.

Before advertng to the findings of the High Court, it is necessary to notice the injuries found on the deceased and the medical evidence. PW3 conducted postmortem on the dead body of the deceased on the day following the incident. The following is the description and analysis of the injuries given :

1. Incised wound of 7" x 2½" with bone cutting, membrane cutting and injury to the brain matter on the right side of the skull reaching upto right mastoid process.

On postmortem examination there were multiple fractures of right parietal bone with fracture of right frontal bone and cutting of the right mastoid process. Membranes cut and there was injury to brain matter and underneath the same blood clotting was present.

2. Incised wound : 4" x ¾" x bone deep in the middle of skull at a distance of 2' from Injury No. 1 and bone was cut.

On postmortem, fractures of left parietal bone and right parietal bone were found. Membranes were cut, and underneath the same Haemotoma was present and brain matter was cut.

3. Incised wound : 2" x 1" on left parietal region 3" away from left Pinna.
4. Incised wound : 4" x ½" x ½" on the right leg 2" away from right knee joint.
5. Incised wound : 3" x ½" x ½" on the left forearm 2" away from left wrist joint.
6. Incised wound : 5" x ½" x ¾" posterior aspect of the left elbow joint.
7. Contusion : 3" x 1" on the right maxillary process.

In cross examination, he clarified that "there must have been excessive bleeding from injury No. 1 and injury No. 2".

The injuries on Satpal Singh may be noticed :-

1. Incised wound of 4" x ½" x 1½" x cutting bone through and through of right thumb reaching the junction of right index and

- A middle finger posteriority.
2. Incised wound of 2" x 1/8" on the back of chest, left side, just near the medial border of left scapula.
 3. Abrasion of 3" x 1/4" on the back of chest left side 1/2" from inferior border of left scapula.

B The injury No. 1 inflicted on the right thumb was serious in nature, according to the Doctor (PW3). The Doctor stated that injuries 1 & 2 were inflicted by sharp edged weapon.

C The appellant Banta Singh received three incised wounds at the back of the right shoulder joint, right thigh and left parietal region. The Doctor (PW-3) stated that all the three injuries were caused by sharp weapon and injury No. 1 was grievous in nature. Bakshish Singh (Appellant No. 3) received three injuries, one of them is lacerated wound of 1" x 1/4" x 1/2" on the occipital cavity, another injury was an abrasion of 3"x1" on the left scapula. Four injuries were found on the body of the other appellant Preetam Singh. Notable amongst them is an incised wound of 2"x1/4"x1/2" on the left parietal region and the other one is an abrasion of 3"x2" on the left wrist joint. PW-3, the Medical Officer deposed that injury No. 1 would have been caused by a sharp weapon and the rest of injuries by blunt weapon. The Medical Officer further deposed that injury No. 2 was serious in nature. He relied on the X-ray reports of Banta Singh and Preetam Singh.

E Let us now notice the *findings of High Court* which are summarized below :

F Having regard to the motive that led to the incident viz., ill-feelings between Harbans Singh/Jeet Singh and Nihal Singh on the issue of reduction of flow of water in the tube-wells, the accused persons could not have the motive to kill Pyara Singh or his son Satpal Singh with whom they had no enmity whatsoever. Hence, the prosecution case that the common object of the unlawful assembly was to kill Pyara Singh and Satpal Singh cannot be sustained. The version of the eyewitnesses reveal that initially, when Harbans Singh and Jeet Singh came out of the house, the accused started quarreling but no injury was caused to them till Pyara Singh and Satpal Singh appeared on the scene. When Pyara Singh intervened and exhorted the accused not to quarrel, appellants 1 to 3 attacked him by inflicting injuries on the head with the weapons they had. The prosecution version that Pyara Singh was attacked first on the 'Chabutra' of the house of the informant cannot be believed

because practically no blood was found on the 'Chabutra' excepting a few drops. It is really a case of cross-fighting which ensued between the two groups after the quarrel was initiated by the accused persons. The fight started from place 'A' in Ext. P2 (which is just outside the house of the informant) and it went on upto spot 'B' (on the lane leading to the house of Banta Singh). Both parties were armed; however the accused persons were armed with deadly weapons from the very beginning as stated in the FIR (P-48A) and as admitted by the accused. Both parties anticipated the troubles and were prepared for a fight. When Pyara Singh was being attacked, the accused-appellants were attacked by the complainant party in exercise of their right of private defence. Though the common object of the assembly was not to kill Pyara Singh and both parties were determined to fight with each other, initially the accused persons were the aggressors. They went armed to the house of the informant Harbans Singh, hurled abuses and challenged them and thereupon the members of the complainant party, some of whom were definitely armed, came out. At that stage, the fight ensued and the accused first attacked Pyara Singh with the weapons in their hands. The story that has been developed by the prosecution witnesses that after Pyara Singh was attacked and was taken to some distance, Jeet Singh and Satpal Sing went inside the house and came armed with a 'gandasi' and lathi, is an afterthought. It was not their case in the FIR (Ext. P1).

The case of the accused persons that initially Pyara Singh attacked Preetam Singh with the sword cannot be believed because the weapon was not produced by the accused persons although the accused Bakshish Singh stated that the sword of Pyara Singh was taken away by him and kept inside his house. Pyara Singh was most probably unarmed when he was attacked. Further, the case of the appellants that the members of complainant party came armed to the house of the accused Banta Singh and they were in fact the aggressors is not believable having regard to the injuries and casualties inflicted on the complainants. If the members of the complainant party were really armed and came prepared to assault the accused, they would not have allowed Pyara Singh to be killed in the manner in which he was done to death.

The accused other than appellants 1 to 3 can only be held responsible for their individual acts as it was a case of mutual fight. Constructive criminal liability cannot be fastened on them with the aid of Section 149. As far as the appellants 1 to 3 are concerned, they admitted to have inflicted injuries to Pyara Singh in purported exercise of the right of self defence. The plea of

A self defence having been rejected in relation to the accused, they must be responsible for the injuries caused to Pyara Singh. The accused persons formed a common intention then and there to kill Pyara Singh and started inflicting deadly blows to Pyara Singh on the head. Therefore, they were liable to be convicted under Section 302 read with Section 34 IPC.

B These are the findings of High Court in so far as relevant to these appeals. As regards the attack on the deceased, the version of injured eye-witnesses viz., PWs 1, 2 and 6 (Satpal Singh, Harbans Singh and Jeet Singh) has been substantially believed by the trial Court as well as the High Court. The High Court did its best to analyse and critically examine the evidence so as to ascertain which version could be true or more probable. In that process **C** the High Court did not accept the version of the complainant party in certain respects. The version of the accused persons was substantially disbelieved.

The trial Court as well as the High Court have rightly disbelieved the story of the accused/appellants that the members of the complainant party **D** including the deceased and his son stood in front of the house of Banta Singh with deadly weapons and endeavoured to mount the attack on them and that in exercise of the right of self defence, they inflicted injuries on Pyara Singh which led to his instantaneous death. Having rejected the version of the accused in this regard, the High Court, agreeing with the trial court, concluded that the appellants and some other accused were the aggressors and they **E** initiated the fight by going to the house of Harbans Singh abusing and challenging. This part of the finding of the High Court is, in view, unassailable and in any case turns on the appreciation of evidence. The fact that the appellants were armed and that they inflicted injuries on Pyara Singh, cannot be and has not been disputed. The very case set out in the FIR, the statements **F** of the appellants under Section 313 Cr.P.C coupled with the evidence of the prosecution which has been critically assessed by the High Court leads to the irresistible conclusion. It is true that according to the finding of the High Court the fatal attack on the deceased took place somewhere between spot 'A' and 'B' i.e., on the lane leading to the house of Banta Singh and the High Court did not believe the version of the prosecution that the injuries were **G** inflicted on the deceased close to the 'Chabutra' and he fell down on the 'Chabutra' where not much of blood was found. But, the mere fact that the exact spot of attack does not lead us anywhere. The lane between place 'A' and place 'B' in the sketch is very close to 'Chabutra'. In fact, some blood was found though not in appreciable quantity on the 'Chabutra'. Hence, the **H** beginning of the attack by the side of 'Chabutra' cannot be ruled out. In any

case, this discrepancy as regards the exact scene of offence does not weaken the prosecution case to any material extent. A

The learned counsel for the appellants contended that even if it be assumed that the appellants were responsible for initiating the fight, they would not have thought of causing harm to Pyara Singh unless he menacingly surged forward with the weapon (sword) on hand to attack the appellants. It is pointed out that the evidence of I.O. (PW 11) discloses that he recovered 11 live cartridges of 303 rifle including 10 in the charger in the pocket of the deceased and it indicates that he was fully prepared for an offensive and in this background it is unbelievable that Pyara Singh would have participated in the fight unarmed and was targeted by the appellants leaving aside their real enemies, namely, Harbans Singh and his brother. The learned counsel for the appellants, therefore, submits that Pyara Singh would have been attacked by the appellants only after he inflicted head injury on one of the accused—Pritham Singh and the appellants sensed the danger of attack by Pyara Singh with his weapon. It could therefore be a case of exceeding the right of self defence. This contention is liable to be rejected for more than one reason. The recovery of ammunition from the pocket of the deceased would at best indicate the preparedness and proclivity of the deceased to mount an attack if necessary but it is no body's case that he used a fire arm. Though, there is a strong possibility that the deceased Pyara Singh would have played an active role in the free fight that occurred, the finding of the High Court that he was unarmed cannot be upset. The reason given by the High Court in support of this conclusion cannot be said to be irrelevant or perverse. The High Court did not accept the version of the accused that Pyara Singh first attacked the accused and inflicted an injury on Preetam Singh (Appellant) with his weapon. In the face of these findings of the High Court and in view of the further finding that the appellants who were admittedly armed were in fact the aggressors, the question of the appellants exercising the right of private defence or exceeding it does not arise. The plea of private defence is not at all available to the appellants as rightly held by both the Court. As regards the incised injury found on the left parietal region of Preetam Singh, the evidence discloses that it was attributable to PWs1 and 3 who launched an attack when the injured Pyara Singh was being dragged away. The mere fact that in the F.I.R. the injuries to Preetam Singh and others were not mentioned, is no ground to discard the injured eye-witnesses' version in this behalf. B C D E F G

The learned counsel for the appellants then made a serious endeavour H

A to bring the case within Exception (4) to Section 300 IPC read with its Explanation and on that premise contended that if at all, the appellants 1 to 3 are liable to be punished under Section 304 Part II. Exception (4) to Section 300 posits that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. The Explanation thereto says—"it is immaterial in such cases which party offers the provocation or commits the first assault". We find it difficult to accept this contention either. It is not a case of sudden quarrel or sudden fight. The appellants went prepared for a fight and provoked the complainant party and thus initiated the quarrel. True, there was a mutual fight with weapons after Pyara Singh was attacked, but it is not the same thing as a sudden fight preceded by a sudden quarrel. Moreover, the appellants have obviously taken undue advantage of the fact that Pyara Singh was unarmed and chose him as a convenient target in the first instance. For these reasons, we are of the view that the application of Exception (4) to Section 300 should be ruled out.

D

Still, the question remains whether the conviction of the appellants under Section 302 read with Section 34 IPC shall be sustained or if the offence would fall under any other penal provision.

E

In the present case, there are three head injuries, two on the scalp and one on the left parietal region. The first two injuries are, undoubtedly, factual injuries. As a result of those injuries, multiple fractures of right parietal bone occurred, the membranes got severed and there was injury to brain matter. As regards the third injury, which is an incised wound of 2" X 1" on the left parietal region, it cannot be said for certain that in the ordinary course it would have caused death. The medical evidence is silent on this aspect.

F

The doctor did not even say what impact this 3rd injury had internally. All the three appellants inflicted injuries on the head of the deceased with the weapons in their hands accordings to the prosecution witnesses. There is an allegation that after the deceased fell down all the three went on giving blows on the leg and waist. Certain injuries were found on the knee joint, elbow joint and left fore-arm of the deceased.

G

On the basis of evidence on record, it would be difficult to say which of the two appellants caused the two fatal injuries and which other appellant inflicted injury No. 3. Hence, individual responsibility cannot be fixed on appellants 1 to 3 for various injuries that were inflicted.

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The next question is whether and to what extent the constructive criminal liability under Section 34 IPC can be fastened on the appellants 1 to 3 causing the death of Pyara Singh. It is trite to say that a pre-arranged plan and the meeting of minds to commit a particular offence is the pre-requisite to infer common intention. As observed in *Krishna v. State of Maharashtra*, AIR (1963) SC 1413 the pre-arranged plan may also develop on the spot during the course of commission of offence, yet, the crucial requirement is that such plan must precede the act constituting the offence. Therefore, it is settled law that although the common intention can develop on the spot, it should be the result of prior concert (vide *Ramashish Yadav v. State of Bihar*, [1999] 8 SCC 555. Such prior concert can be inferred from the conduct of the accused revealing unity of purpose and the part played by them at the time of the occurrence, the injuries inflicted and other relevant factors. As already noted, the appellants did not come to the informant's house to injure or kill Pyara Singh with whom admittedly they did not have enmity. The appellants would not have intended to kill Pyara Singh leaving aside Harbans Singh and Jeet Singh who, by then, came out of the house to face the accused. When Pyara Singh came out on hearing the shouts and cries of the accused, they did not attack him immediately as the evidence of PW 1 shows. There was undoubtedly a free fight in which even the appellants suffered severe injuries. That is the finding of the High Court. At the same time, it should be noted that Pyara Singh was attacked at the very start of the fight and given deadly blows by two of them while three of them participated in the attack. The reasonable inference to be drawn from the sequence of event emerging from the evidence is that when Pyara Singh actively intervened and endeavoured to ward off the attack, the three appellants would have been irked by his behaviour and entertained the common intention to cause injuries to him. The fact that such common intention had developed then and there is clearly evident from the conduct of all the three appellants acting in concert in attacking him. They would not have intended to kill him but definitely intended to silence him by inflicting injuries. While the nature of injuries inflicted by two of them may be a circumstance to be taken into account to infer common intention to kill the deceased or to inflict such injuries which could, in the ordinary course of nature, be sufficient to cause death, the Court has to weigh the other circumstances adverted to above which rule out the intention to kill Pyara Singh. Considering the facts and reasonable probabilities, it is not safe to conclude that the three accused at any point of time harboured the common intention crystallized by prior meeting of minds to put an end to the life of Pyara Singh. At any rate, there is room for reasonable doubt. We are of the view that the real common intention that can be safely imputed

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A to the appellants 1 to 3 was to cause bodily injuries to Pyara Singh which were likely to cause death. It is this common intention which, in our view, had developed on the spot. Therefore, the offence committed by appellants 1 to 3 would be culpable homicide not amounting to murder and they are liable to be convicted and punished under Section 304 (Part I). They are also liable to be convicted under Section 148 IPC for the offence of rioting. On **B** the basis of the evidence on record and the findings recorded by the High Court, there is no escape from the conclusion that the appellants were members of unlawful assembly of five or more persons having the common object falling within the scope of Clause (iii) of Section 141, though the common object was not to kill or hurt the deceased person.

C We therefore convict appellants 1 to 3 under Section 304 (Part I) read with Section 34 and also under Section 148 IPC. The conviction under Section 302 read with Section 34 IPC is set aside. Coming to the question of sentence, we are informed that the appellants 1 to 3 have already suffered imprisonment for a period of about eight years. We are of the view that having regard to **D** the facts and circumstances of the case, imprisonment for eight years coupled with the enhancement of fine would be adequate punishment for the main offence they committed under Section 304 Part I. Accordingly, they are sentenced to eight years R.I. and at the same time we consider it just and proper to enhance the fine to Rs. 2,000 in the case of each of the three **E** appellants. It is further directed that in default of payment of enhanced fine within a period of one month from today, they should suffer rigorous imprisonment for a further period of nine months. Appellants 1 to 3 are sentenced to one year's R.I. for the offence under Section 148 I.P.C. The sentences for the aforesaid two offences should run concurrently.

F The 4th appellant is Nihal Singh, who was convicted under Section 326 IPC for causing grievous injury to Satpal Singh (PW1)—the son of the deceased Pyara Singh. Evidence of PW1 is clear and categorical about the injury inflicted by him. That Satpal Singh was attacked by Nihal Singh and other with weapons was mentioned in the FIR. The medical evidence affirms **G** that injury No. 1 was grievous in nature and it was inflicted by a sharp weapon. Though Satpal Singh was armed and participated in the fight after his father was attacked, the appellant cannot plead self-defence. The reasons given by the High Court to rule out the plea of self-defence in the case of appellants 1 to 3 will equally hold good for rejecting such plea of the 4th **H** appellant. In the written submissions filed on behalf of the appellants, it is contended that Nihal Singh was not even present at the place of occurrence,

according to the FIR. But, on perusal of FIR, we find that Nihal Singh's name very much figures therein. It was alleged that he was armed with weapon and participated in the attack. A

For the foregoing reasons, we are of the view that the High Court has rightly convicted Nihal Singh under Section 326 IPC. It appears that the period of imprisonment so far undergone by him is about eight months. In the peculiar facts and circumstances of the case, we are inclined to reduce the sentence to two years R.I. but enhance the fine to Rs. 3,000 which shall be paid over to the injured Satpal Singh by way of compensation. In case of default of payment of fine within a period of one month from today, he should suffer further imprisonment for a period of six months. B C

We make it clear that the period of detention/imprisonment already undergone by the four appellants, at whatever stage it was, shall be setoff against the period of imprisonment to which they are now sentenced.

Accordingly, the Criminal Appeal No. 449 of 1994 is partly allowed. D

Criminal Appeal No. 450 of 1994 has been filed by Harbans Singh—the informant in the case, aggrieved by the judgment of the High Court in not applying Section 149 I.P.C. and for acquitting some of the accused. The points arising in the appeal filed by the accused and this appeal are practically the same. No additional arguments have been addressed. In view of what we have held in Criminal Appeal No. 449 of 1994 filed by the four accused, nothing more needs to be said in this appeal. The Criminal Appeal No. 450 of 1994 stands disposed of in terms of the judgment in Criminal Appeal No. 449 of 1994. E

K.K.T.

Appeals disposed of