DASHRATH SINGH

v.

STATE OF U.P.

AUGUST 13, 2004

[P. VENKATARAMA REDDI AND B.P. SINGH, JJ.]

Criminal Trial :

Investigation—Defective investigation—IO omitted to make certain important points in the site plan—Effect of—Held: Though the investigation was perfunctory yet it did not materially affect the substratum of the prosecution case which stood established by cogent and reliable evidence.

Injuries on the accused—Non-mention of the same in FIR—Effect of—Held: Non-mention of injuries in FIR not a ground to discard the explanation of injuries given at the trial.,

Injuries on the accused—Non-explanation—Effect of—Held: The weight to be given to non-explanation of injuries on the accused depends upon the quality of the prosecution evidence—Non-explanation of the injuries is one of the factors that could be taken into account in evaluating the prosecution evidence and the intrinsic worth of the defence version.

Injury—On the occipital region/skull—Weapon causing it—Held: Could be caused by a lathi or stick.

Code of Criminal Procedure, 1973: Section 154.

Cognizable cases—Investigation in—Omissions in FIR—Informant failed to mention in FIR that his associates tried to resist the attack and that there was a fight—Effect of—Held: Such an omission should not be given undue importance in view of reliable prosecution evidence and unreliable defence version.

Penal Code, 1860: Sections 300 thirdly, 302, 304 and 326 read with S.149.

Murder—Intention to kill—Absence of—Effect— Accused inflicted an injury on the head of the deceased by a single blow—Deceased survived for 38 days after the injury—Trial court convicted the accused under S. 302—High Court affirmed the conviction—Correctness of—Held: Both the Court's found that the common object was not to kill the deceased—Moreoever, after inflicting a single blow on the deceased the accused made no further move to attack him—This shows that the accused had no intention to kill the deceased—Further no report or case-sheet filed to indicate condition of deceased after surgery who survived for 23 days thereafter—Therefore, the scope of any intervening ailment unconnected with the surgery is not ruled out—Prosecution has, therefore, failed to establish beyond a reasonable doubt that the eventual cause of death was only the injury inflicted by the accused and nothing else—Hence, accused cannot be convicted under S. 302 or 304—Conviction altered to one under S. 326.

According to the prosecution, when P brought his cattle and tied them up at a small parcel of land, the appellant R and one G objected to the same and threatened him with dire consequences. After a few minutes, the appellant R armed with *kanta*, the other appellant D armed with a country-made pistol, G armed with *lathis* came to the house of the informant and started inserting some pegs in front of his house. At that time, the informant was sitting near the well. The accused R, using abusive language against P, shouted that he should come out of the house. A few minutes later, as P came out of the room, D aimed a shot at him with the pistol. As it did not hit him, D once again fired; again, it missed the target. When P tried to run away, R stopped him and inflicted an injury on his head with *kanta* as a result of which P fell down. The nephew of the informant and his brother, in a bid to defend them, picked up the bamboos which were lying nearby and inflicted injuries on some of the accused persons. P was taken to a nearby hospital where he died after 38 days and his dying declaration was recorded. No postmortem of the dead body was conducted.

The trial court believed the eyewitnesses' account and the dying declaration. The trial court disbelieved the defence version that the accused acted in self-defence. However, the trial court was of the view

that the common object of the unlawful assembly was not to commit the murder of P and the common object could only be to cause hurt or use criminal force against the prosecution party with a view to refraining P from asserting his rights over the disputed site. Therefore, the trial court held that the other members of the unlawful assembly could not be held vicariously liable for the acts of R and D, the appellants.

The trial court convicted R under Sections 302, 323 and 324 read with Section 149 of the Penal Code, 1860. D was convicted under Section 302 read with Section 34 IPC and Sections 148, 323 and 324 read with Section 149 IPC. The High Court upheld the conviction and sentence of R. The conviction of D under Section 302 read with Section 34 IPC was altered to one under Section 307 and he was sentenced to five years' RI. Hence the appeal.

On behalf of the appellants, it was contended that the injuries on the accused were not explained; that there was no disclosure of the injuries inflicted on the accused in the FIR; that the heap of bamboos which provided the means of counter-attack was not noted by the Investigating Officer (IO) in the site plan and, therefore, there was a lapse in the investigation on the part of the IO.

Partly allowing the appeal filed by R and dismissing the appeal filed by D, the Court

HELD: 1. The appellant's contention that the lapses or omissions on the part of the Investigating Officer in not noting certain important points in the site plan is untenable. Though the investigation appears to be perfunctory, that should not materially affect the substratum of the prosecution case which stands established by cogent and reliable evidence. [572-E-G]

2. The High Court took note of the fact that the prosecution witnesses did explain that the injuries came to be inflicted on the accused with bamboos picked up by PW 2 and his brother in order to repel the further attack by the accused. The High Court observed that the mere fact that the FIR was silent regarding the injuries received

A by the accused is not a ground to discard the explanation given at the trial. There may be initial reluctance on the part of the informant to disclose that the prosecution party made a counter attack causing injuries to some of the accused. The High Court was of the view that in the face of the clear and consistent evidence of independent and
B natural witnesses supported by the dying declaration, all of which revealed that the accused party was the aggressor and initiated the attack on the deceased in front of his house, the non-explanation of the injuries at the earliest point of time cannot be put against the prosecution. Broadly speaking, the approach of the High Court seems
C to be correct and in conformity with the legal position clarified and explained by this Court in a series of decisions. [573-A-D]

Bhaba Nanda v. *State of Assam,* AIR (1977) SC 2252 and *Takhaji Hiraji* v. *Thakore Kubersing Chamansingh,* [2001] 6 SCC 145, relied on.

D 3. The injuries of a serious nature received by the accused in the course of the same occurrence would indicate that there was a fight between both the parties. In such a situation, the question as to the genesis of the fight, that is to say, the events leading to the fight and which party initiated the first attack assumes great importance in
E reaching the ultimate decision. It is here the need to explain the injuries of a serious nature received by the accused in the course of the same occurrence arises. When explanation is given, the correctness of the explanation is liable to be tested. If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of
F the relevant details concerning the incident. The Court has then to consider whether such an omission casts a reasonable doubt on the entire prosecution story or it will have any effect on the other reliable evidence available having a bearing on the origin of the incident. Ultimately, the factum of non-explanation of injuries is one circumstance which has to be kept in view while appreciating the evidence of
G prosecution witnesses. In case the prosecution version is sought to be proved by partisan or interested witnesses, the non-explanation of serious injuries may *prima facie* make a dent on the credibility of their evidence. So also where the defence version accords with probabilities to such an extent that it is difficult to predicate which version is true,
H then, the factum of non-explanation of the injuries assumes greater

importance. Much depends on the quality of the evidence adduced by the prosecution and it is from that angle, the weight to be attached to the aspect of non-explanation of the injuries, should be considered. There cannot be a mechanical or isolated approach in examining the question whether the prosecution case is vitiated by reason of non-explanation of injuries. In other words, the non-explanation of injuries of the accused is one of the factors that could be taken into account in evaluating the prosecution evidence and the intrinsic worth of the defence version. [574-E-H; 575-A-D]

Bhaba Nanda v. _State of Assam,_ AIR (1977) SC 2252 and _Takhaji Hiraji_ v. _Thakore Kubersing Chamansingh,_ [2001] 6 SCC 145, relied on.

4. The informant could have mentioned broadly in the FIR that his associates tried to resist the attack and that there was a fight. The High Court found the prosecution evidence reliable and held that the defence version did not inspire confidence. Therefore, the omission to state so in the FIR should not be given undue importance. [575-H, E]

5. The injury found on the occipital region/skull could have been caused by a lathi or stick. Cox H.W.V.: _Medical Jurisprudence and Toxicology_ (7th Edn.), edited by _Dr. P.C. Dikshit_ and _Modi's Medical Jurisprudence & Toxicology_ (22nd Edn.), edited by _B.V. Subrahmanyam,_ pp. 342 and 404, referred to. [577-F-G]

6.1. The prosecution case as regards the head injury inflicted by the appellant R on the deceased with _kanta_ by resorting to firing having been established beyond a reasonable doubt, the next question is as to the nature of offence committed by R. [577-G-H; 578-A]

6.2. Apart from the finding of both the Courts below that the common object of the unlawful assembly was not to kill the deceased, one more circumstance that rules out the intention on the part of any of the accused to kill the deceased is that after the single blow inflicted on the victim with the _kanta_, there was no further move to attack him. From the medical evidence of PWs 6 & 8 coupled with the magnitude of the injury caused on the head with a dangerous weapon, it can be presumed that the injury which was inflicted and intended to be inflicted

A **is sufficient in the ordinary course of nature to cause death. [578-A-E]**

6.3. The medical evidence, however, does not establish beyond a reasonable doubt that the ultimate cause of death was the aforesaid head injury. From the date of the surgery, the victim was alive for 23 days and undergoing treatment in the hospital. He survived for 38 days B **after the injury was received. Not a word has been said and no report or case-sheet has been filed to indicate the condition of the patient after the surgery. No doubt, there was no cross-examination of the doctor (PW 8) on this aspect. Yet, it was the primary duty of the prosecution to adduce evidence in regard to the post-operative condition of the** C **patient so that the scope for any intervening ailment unconnected with the injury is ruled out. This becomes all the more important because of the long time lag and the omission to hold postmortem. Apparently, there was a callous indifference or lack of vigilance on the part of the Investigating Officer in failing to ensure the postmortem examination** D **in a case of this nature. PW 8 came forward with the explanation that the postmortem is not absolutely necessary to ascertain the cause of death. But, then, the prosecution has to establish beyond a reasonable doubt that the eventual cause of death was only the injury inflicted by the appellant and nothing else, but it has failed to do so. [579-A-D]**

E **Therefore, appellant R cannot be held guilty of an offence under Section 302 or 304 IPC. He must be held guilty under Section 326 for voluntarily causing a grievous hurt by means of a dangerous weapon. [579-D-E]**

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 909 of 2001.

From the Judgment and Order dated 16th February, 2001 of the Allahabad High Court in Crl. A.No. 727/81.

G R.D. Mehra, Deepak Dhingra and Pradeep Kumar Bakshi for the Appellant.

Pramod Swarup, Ms. Pareena Swarup, Praveen Swarup and A.S. Pundir (NP) for the Respondent.

H The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. : The appellants Dashrath Singh and Raja Ram in these two appeals along with nine others stood trial in S.T.No. 495 of 1978 in the Court of the VIII Additional Sessions Judge, Kanpur. The incident giving rise to the prosecution, took place on 31.7.1977 at about 9 a.m. in the Village of Daya Ka Purwa within the limits of Akbarpur police station. One Pratap Singh son of Gajraj Singh (PW 4) was attacked with a *Kanta* (a fork like pointed weapon with a wooden handle), inflicting injury on his head. After a surgery and prolonged treatment, he died on 6.9.1977 at the hospital. Three other persons on the prosecution side also received simple injuries in the course of the same incident. There were also injuries to five accused persons including one of the appellants Dashrath.

The learned Sessions Judge convicted the appellant Raja Ram for the offence under Section 302 on the finding that he caused the fatal head injury resulting in the death of Pratap Singh. Raja Ram was also convicted under Sections 148, 323 & 324 read with Section 149 IPC. The appellant Dashrath was convicted under Section 302 read with Section 34 IPC. He was also convicted for the offences under Sections 148, 323 & 324 read with Section 149. Other accused (who are not appellants before us) were convicted for various lesser offences. The two appellants were sentenced to life imprisonment in view of their conviction under Section 302.

On an appeal filed by all the convicted accused, the High Court at Allahabad, by the impugned Judgment dated 16.2.2001 partly allowed the appeal. Four persons, who were not named in the FIR, were acquitted. The conviction of Raja Ram, one of the appellants herein, under Section 302 IPC as well as under other Sections was upheld. The conviction of the appellant Dashrath under Section 302 read with Section 34 was set aside. However, the High Court convicted him under Section 307 and sentenced him to five years R.I. for making an attempt on the life of Pratap Singh by firing from a pistol. His conviction under other Sections was upheld.

The members of the prosecution party and the accused are related to each other, they being the descendants of a common ancestor. The dispute over the rights on a small parcel of joint land known as *Khajiha* close to the house of the deceased and some of the accused, has triggered off the incident on the crucial day. There was a case and a counter-case. In the counter case filed at the instance of the accused Raja Ram, nine persons

A including the father of the deceased were charged for the offences under Sections 147, 307, 323 & 325 IPC. By the judgment delivered on the same day, the members of the prosecution party in the present case were acquitted.

B PW-4 the informant and father of the deceased, PW 2 the daughter-in-law of PW-4; PW-1closely related to PW-4 and has an interest in the *Khajiha* and PW 3 a neighbour are the eye-witnesses in this case. PWs 1 & 2 received simple injuries in the course of altercation. Narender Singh, brother of PW1 who received an incised wound over the chest was not examined.

C

According to the prosecution case, on 31.7.1977 at about 9.00 a.m. when Pratap Singh brought his cattle and tied them up at *Khajiha*, the appellant Raja Ram and Gyan Singh (not appellant before us) objected to the same and threatened Pratap Singh with dire consequences. After a few D minutes, the appellant Raja Ram armed with *kanta*, the other appellant Dashrath armed with a country-made pistol, Gyan Singh armed with a *barchchi* and eight other persons armed with *lathis* came to the house of the informant and started inserting some pegs in front of the house of PW-4 and the deceased. At that time, PW-4 was sitting near the well. The E accused Raja Ram using abusive language against Pratap Singh shouted that he should come out of the house. A few minutes later, as Pratap Singh came out of the room, Dashrath aimed a shot at him with pistol. As it did not hit him, Dashrath once again fired; again, it missed the target. At that stage, Pratap jumped over the platform and tried to run away. Raja Ram F stopped him and inflicted an injury on his head with *kanta* as a result of which Pratap fell down at the spot between the platform and the well. The sister-in-law of Pratap who is PW-2 also came out of the house and when she tried to go close to Pratap, one Ram Narain hit her with a *lathi.* When Surinder Singh (PW-1 and nephew of PW-4) and his brother Narender Singh intervened, they were attacked by the accused with *barchchi* and G *lathis*. Narender and Surinder then picked up the bamboos which were lying nearby and in a bid to defend themselves, inflicted injuries on some of the accused persons. The victim Pratap was brought to the *verandah* and he was taken in a bullock cart to the police station. After getting a report scribed by one Mishra, the report signed by PW-4 was handed over at the H police station and the FIR was recorded at 11.30 a.m. Accompanied by a

Police Constable, Pratap Singh was taken to the Primary Health Centre at Akbarpur. Other injured were also sent to the same hospital for medical examination. PW-6 who is the Medical Officer attached to the Primary Health Centre examined Pratap Singh at 12.15 p.m. and noted the injuries and the condition of the patient as follows:

Incised wound 15 cm x 5 cm. x brain tissue deep, cutting all structures in between i.e., layers and scalp bones and dura matter i.e., (brain covering). Brain tissues were protruding out of the wound. Wound was profusely bleeding continuously. Injury was kept under observation and X-ray was advised and patient was referred to U.M.H. Hospital, Kanpur. Condition of patient: low pulse, was 110/mt. blood pressure was 100/mm., temperature was normal. Pupils were slightly reacting to light. Patient was in semi coma state.

At the trial, PW-6 deposed that the injury on Pratap could be inflicted by a sharp edged weapon such as *kanta* and that the said injury was sufficient to cause death in the ordinary course of nature. PW-6 also examined the other three injured persons and it is not necessary to set out the details of the injuries. Suffice it to state that they were simple in nature except injury No. 1 an incised wound found on the left side of chest of Narender Singh.

The victim Pratap Singh was referred to U.M.H. Hospital, Kanpur. He was admitted on 1.8.1977. PW-5, the Radiologist, took the X-Ray of the skull of Pratap Singh the next day. He found that there was a fracture on the right side of parietal region and on the same day, pursuant to the letter addressed by the Medical Officer of U.M.H. Hospital (PW-7), the Magistrate recorded the dying declaration of Pratap Singh. On 7.8.1977 he was shifted to Medical College Hospital, Lucknow. PW-8 a Neuro-Surgeon, performed an emergency operation on 13.8.1977 and Pratap remained in that hospital upto the date of his death i.e., 6.9.1977. No postmortem of the dead body was conducted.

In the evening of 31.7.1977, at about 3.00 p.m., the appellant Raja Ram lodged a complaint to the police giving a different version of the incident. He stated that in the morning when he was fixing pegs on the joint site (*khajiha*) in front of his house, Pratap Singh and others including PWs 1 & 4 came armed with *lathis*, spear and *paretha*, picked up a quarrel and

launched attack on five of his companions including Dashrath Singh. The FIR was recorded and as already stated, the charge-sheet was filed against the members of the prosecution party in the present case. The case ended in acquittal.

The appellants and some other accused, in the course of the examination under Section 313 Cr.P.C. took the plea that they attacked the deceased and his associates in self-defence, when they started assaulting them at the *khajiha*. Thus, the presence of the appellants at the time of the incident cannot be disputed. On the side of the accused, four persons were injured. Amongst them was the appellant Dashrath Singh who had an abraded contusion on the dorsum of left hand. The X-ray taken by PW-5 revealed that there was fracture of little finger. PW-6 stated that it was a grievous injury. The accused Ram Narain had a lacerated wound 6 cm x 1 cm x scalp deep exposing skull bone over the right side of the forehead. The accused Hari Lal had three injuries out of which one was an incised wound 5 cm x 1 cm x scalp deep exposing skull bone on the occipital region. The accused Ram Roop had a lacerated wound 8 cm x 1 cm x scalp deep over right side of the head. The accused Ranjit Singh had three injuries one of which was crushed lacerated wound 6 cm x 2 cm x scalp deep with swelling all around the wound. There was also an incised wound 2 cm x 5 cm x cutting pinna and cartilage. PW-6, the Medical Officer in-charge of P.H.C., Akbarpur examined the injuries and prepared the reports. He deposed that the incised injuries could have been caused by sharp-edged weapon and the other injuries by a blunt weapon like lathi.

The investigation was done by PW-9 the Sub-Inspector of Police, Akbarpur. Much has been commented upon by the trial Court against the manner in which the investigation was conducted by him.

The learned Sessions Judge believed the eye-witnesses' account and the dying declaration. The learned Judge disbelieved the defence version that the accused acted in self-defence. However, the learned trial Judge was of the view that the common object of the unlawful assembly was not to commit the murder of Pratap Singh and the common object could only be to cause hurt or use criminal force against the prosecution party with a view to refrain Pratap Singh from asserting rights over the disputed site. Therefore, they cannot be held vicariously liable for the acts of Raja Ram

and Dashrath – the present appellants. A

The High Court rightly focused its attention on the questions as to who were the aggressors and which was the scene of offence. The High Court immensely relied on the evidence of PW-3 who is a neighbour and who is undoubtedly an independent witness. He categorically stated that B when he reached the house of deceased on hearing the commotion, he noticed the accused fixing the pegs on the open space between the well and '*chabutra*' and PW-4 (father of deceased) was sitting close to the well. When Pratap Singh came out of his room, Dashrath Singh made unsuccessful attempts to fire at him. He then jumped over the platform and started running away. At that stage, the appellant Raja Ram hit Pratap Singh on C the head with *kanta*. Pratap Singh fell down then and there between the well and the platform. PW-2 ran towards Pratap Singh and one of the accused inflicted *lathi* blows on her. Then she fell down and thereafter PW-1 and his brother Narender Singh picked up the bamboos lying over there and started attacking the accused to protect themselves. PW-1 and Narender D Singh also sustained injuries. Thereafter, Pratap Singh was carried to the verandah.

The High Court observed that the most important evidence to fix the place of occurrence is that of PW-3 who is an independent witness and E whose presence was natural and probable. He had no axe to grind against the accused. The High Court also drew support from the evidence of two injured witnesses. The High Court then dealt with the dying declaration recorded by PW-10, the Executive Magistrate, at the hospital on 1.8.1977. The High Court observed that the dying declaration lends ample support to the evidence of prosecution witnesses. PW-7 the Medical Officer F working in UHM Hospital, Kanpur testified that the dying declaration was recorded by PW-10 in his presence after he gave the opinion that the injured was in a position to give the statement. PW-7 deposed that the patient (deceased) remained in good senses when he gave the statement to the Magistrate. It may be noticed at this stage that the trial Court did G not accept the argument that Pratap Singh could have been tutored by his father (PW-4) and other relatives to implicate the accused. The presence of PW-4 and other relatives at the hospital was not considered to be a factor that goes against the veracity of the dying declaration. These findings of the High Court and of the trial Court based on the analysis and H

A appreciation of evidence furnished by the eye-witnesses' account as well as the dying declaration cannot be faulted on the ground of perversity or non-consideration of any material circumstances or any other legal grounds.

B The learned senior counsel for the appellant strenuously urged that the High Court was not justified in coming to the conclusion that the appellants acted as aggressors in the absence of explanation for the injuries received by five of the accused. It is pointed out that there was no disclosure of injuries inflicted on the accused in the FIR or in the course of investigation. There was no scope to cause such injuries if a sudden C attack was launched by the accused with arms. According to the learned counsel, the prosecution has suppressed the real happenings. The alleged heap of bamboos which provided the means of counter-attack against the accused by PWs 1 & 2 was not noted by the Investigating Officer in the site plan nor any pegs said to have been planted, were noted. The blood-D stained earth was not sent to the Chemical Examiner. No lead or empties traceable to pistol shots were recovered nor attempted to be recovered. It is also stressed that if really the appellants and their companions trespassed into the house of the deceased in the background of the dispute over the *khajiha*, they would not have spared the father of the deceased Gajraj Singh E who was sitting outside, near the well. The last argument does not deserve serious consideration for the reason that the immediate provocation was the quarrel that took place minutes earlier between Pratap Singh and the appellant Raja Ram. There is nothing unnatural in choosing Pratap Singh as the target of their attack. Equally untenable is the contention that the F lapses or omissions on the part of the Investigating Officer in not noting certain important points in the site plan and in not obtaining the report of the Chemical Examiner weakens the prosecution case to such an extent as to cast a doubt on the version of the direct witnesses. In fact, the I.O. stated in his deposition that he found certain pegs fixed near the well but he did not consider it necessary to show them in the site plan. As regards G the bundle of bamboos, he stated that he could not recollect whether PW-1 had shown them to him. Though the investigation appears to be perfunctory, that should not, in our view, materially affect the substratum of the prosecution case which stands established by cogent and reliable evidence.

H

We have given our anxious consideration to the aspect of non-explanation of injuries at the earliest opportunity by the prosecution party keeping in view the fact that some of the accused received fairly severe injuries. This aspect has also engaged the attention of the High Court. The High Court took note of the fact that the prosecution witnesses did explain that the injuries came to be inflicted on the accused with bamboos picked up by PW-2 and his brother in order to repel the further attack by the accused. The High Court observed that the mere fact that the FIR was silent regarding the injuries received by the accused is not a ground to discard the explanation given at the trial. There may be initial reluctance on the part of the informant to disclose that the prosecution party made a counter attack causing injuries to some of the accused. The High Court was of the view that in the face of the clear and consistent evidence of independent and natural witnesses supported by the dying declaration, all of which revealed that the accused party was the aggressor and initiated the attack on Pratap Singh in front of his house, the non-explanation of injuries at the earliest point of time cannot be put against the prosecution. Broadly speaking, the approach of the High Court seems to be correct and in conformity with the legal position clarified and explained by this Court in a series of decisions.

In *Bhaba Nanda* v. *State of Assam,* AIR (1977) SC 2252, a three Judge Bench of this Court made the following pertinent observations:

> "..The prosecution is not obliged to explain the injuries on the person of an accused in all cases and in all circumstances. This is not the law. It all depends upon the facts and circumstances of each case whether the prosecution case becomes reasonably doubtful for its failure to explain the injuries on the accused. In the instant case, the Sessions Judge was not justified in doubting the truth of the version given by the eye-witnesses three of whom were wholly independent witnesses. Gopi Nath was surely present on the scene of the occurrence as he himself had received the injuries in the same transaction. The High Court has rightly believed the testimony of the eye-witnesses."

The law on the subject has been succinctly clarified by R.C. Lahoti, J. (as he then was) speaking for a three Judge Bench in *Takhaji Hiraji* v. *Thakore Kubersing Chamansingh,* [2001] 6 SCC 145. After referring to

A the three Judge Bench decisions of this Court, it was observed:

> "..the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.
>
> The High Court was therefore not right in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons."

The injuries of serious nature received by the accused in the course of the same occurrence would indicate that there was a fight between both the parties. In such a situation, the question as to the genesis of the fight, that is to say, the events leading to the fight and which party initiated the first attack assumes great importance in reaching the ultimate decision. It is here the need to explain the injuries of serious nature received by the accused in the course of same occurrence arises. When explanation is given, the correctness of the explanation is liable to be tested. If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident. The Court has then to consider whether such omission casts a reasonable doubt on the entire prosecution story or it will have any effect on the other reliable

evidence available having bearing on the origin of the incident. Ultimately, the factum of non-explanation of injuries is one circumstance which has to be kept in view while appreciating the evidence of prosecution witnesses. In case the prosecution version is sought to be proved by partisan or interested witnesses, the non-explanation of serious injuries may *prima facie* make a dent on the credibility of their evidence. So also where the defence version accords with probabilities to such an extent that it is difficult to predicate which version is true, then, the factum of non-explanation of the injuries assumes greater importance. Much depends on the quality of the evidence adduced by the prosecution and it is from that angle, the weight to be attached to the aspect of non-explanation of the injuries should be considered. The decisions above cited would make it clear that there cannot be a mechanical or isolated approach in examining the question whether the prosecution case is vitiated by reason of non-explanation of injuries. In other words, the non-explanation of injuries of the accused is one of the factors that could be taken into account in evaluating the prosecution evidence and the intrinsic worth of the defence version.

By this explanatory note, we are only elucidating what has been laid down in a catena of decisions on this aspect.

Coming back to the situation in the present case, the High Court found that independent and reliable evidence including dying declaration of the victim is available. The defence version does not inspire confidence in the estimation of the Court and does not compete in probability with that of the prosecution. That is how the High Court has approached the matter and we cannot find fault with the same. To add to what the High Court has said, we may point out that there is every possibility that PW-4 the informant, would not have been in a position to notice that some of the accused received severe injuries. It is true that one of the appellants Dashrath had a facture of the little finger which is described as a grievous injury but there could hardly be any occasion to observe such injury in the melee that followed the aggressive attack of the accused party. So also, the injuries on the other accused might not have been noticed by PW-4 the informant. Still, he could have mentioned broadly that his associates tried to resist the attack and there was a fight. The omission to state so in the FIR should not be given undue importance, as held by the High Court.

A Coming to the investigation stage, by the time the investigation was taken up, a clear picture had emerged. The counter-complaint of Raja Ram given a few hours later was on record. The investigation into these two FIRs would have proceeded simultaneously. There could not have been any suppression of the other part of the incident at that stage. No such questions
B were put to the I.O. in order to elicit whether there was such suppression. However, there is one aspect which remained unexplained even at the trial i.e, the incised wounds - one each on Ranjit Singh and Hari Lal which, according to the medical evidence, could have been caused by a sharp-edged weapon. As far as Ranjit Singh is concerned, the question of explaining the injury caused to him does not arise as he was acquitted for
C the reason that his presence was doubted. In fact Ranjit Singh himself in the course of Section 313 examination denied the knowledge of the incident. There remains the incised injury caused to Hari lal which at first blush seems unexplained. PW-6 noted incised wound of 5 cm. x 1 cm. x scalp deep on the occipital region, with the exposure of skull bone. PW-
D 1 and his brother were supposed to have wielded bamboo sticks. If we go strictly by medical evidence, this injury might have been caused by a sharp-edged weapon but not a *lathi*. But, we get it from the text books on Medical Jurisprudence that some of the lacerations caused by a blunt instrument could look like incised wounds if the blunt force is applied on the areas
E such as scalp. The following passages from *Medical Jurisprudence and Toxicology* (Seventh Edition) authored by HWV Cox and edited by Dr. P.C. Dikshit would clarify the position:

> "The most common place for serious lacerations to be found,
F especially in forensic practice, is the scalp which is often the target for homicidal attack. As mentioned above, the hard underlying skull forms an unyielding base upon which the skin and soft tissues can be crushed, so that many blunt injuries of the scalp are indistinguishable at first sight from a laceration caused by a knife, sharp axe or any other cutting instrument."

G

Under the head *Split Laceration*, it is explained:

> "Splitting occurs by crushing the skin between two hard objects. They are also called incised looking wounds. When there is
H application of blunt force on areas where the skin is closely

applied to the bone and sub-cutaneous tissue is scanty, the wounds are produced by linear splitting of the skin. The common areas are scalp, eyebrows and hibones. They can be differentiated by examining the margins by magnifying glass and in these cases the roots of hair are crushed." A

Again, at the beginning of the Chapter V dealing with *wounds of the head* it is explained: B

"Blunt injuries to the scalp are classically confused with knife slashes, due to the splitting of the tissues because of the firm underlying cranial bones beneath the aponeurosis. This has been described in the last chapter, but it should be repeated that the distinction between blunt splits and knife cuts may be difficult, but usually possible by a minute examination of the wound margins." C

In *Modi's Medical Jurisprudence & Toxicology* (Twenty-Second edition) edited by B V Subrahmanyam, it is explained at page 342: D

"Occasionally, on wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow, iliac crest, skin, perineum etc..." E

It is further clarified at Page 404—

"...A scalp wound by a blunt weapon may resemble an incised wound, hence the edges and ends of the wound must be carefully seen to make out a torn edge from a cut and also to distinguish a crushed hair bulb from one cut or torn....." F

Therefore, the evidence of the Medical Officer does not necessarily lead to the conclusion that the injury found on the occipital region/skull could not have been caused by a *lathi* or stick. Even if there is some doubt on this aspect, taking an overall view, we do not consider it a legitimate ground to reject the prosecution case lock, stock and barrel. G

The prosecution case as regards the head injury inflicted by Raja Ram on Pratap Singh with kanta and the attempt on his life by Dashrath by H

A resorting to firing having been established beyond reasonable doubt, the next question is as to the nature of offence committed by Raja Ram.

Firstly, it must be noted that the intention to cause the death of Pratap Singh cannot be imputed to the accused Raja Ram. Apart from the finding B of both the Courts that the common object of the unlawful assembly was not to kill Pratap Singh or any other member of his family but only to cause hurt or apply criminal force in order to desist them from asserting the rights over the disputed site, one more circumstance that rules out the intention on the part of any of the accused to kill Pratap Singh is that after the single blow inflicted on the victim with the *kanta*, there was no further move to C attack him. PW-1 made this clear in his deposition. If Raja Ram intended to kill him, he would not have stopped at injuring him once only. Still, the question remains whether the offensive act done by the appellant Raja Ram falls within clause thirdly of Section 300. That the appellant intended to cause bodily injury to the victim by striking him on his head with a sharp-D edged weapon the appellant was carrying cannot be denied in view of the sequence of events deposed to by PWs 1 to 4. From the medical evidence of PWs 6 & 8 coupled with the magnitude of the injury caused on head with a dangerous weapon, it can be presumed that the injury which was inflicted and intended to be inflicted is sufficient in the ordinary course of E nature to cause death. PW-8 who performed the surgery on 13.8.1977 noted the pre-operative diagnosis on Exhibit ka-9 as follows:

> "Right fronto-parietal infected compound communated fracture of skull with brain heriniates, underneath: brain abscess and cerebratis with heriniation."

F

He prescribed post-operative treatment. PW-8 stated that the death was on account of the head injury which caused brain abscess and such injury could lead to the occurrence of death in the ordinary course of nature. The evidence of PW-8 leaves no doubt that the skull and brain G injury caused to the victim was sufficient in the ordinary course of nature to cause death. PW-6 who attended on the victim on the day of occurrence itself noticed the incised wound of 15 cm x 5 cm x brain tissue deep found on the head of the patient. He stated that the injury was appearing to be dangerous to life and the injury must have been inflicted by a sharp-edged H object thrust with sufficient force.

The medical evidence however, does not establish beyond reasonable doubt that the ultimate cause of death was the aforesaid injury. From the date of the surgery, the victim was alive for 23 days and undergoing treatment in the hospital. He survived for 38 days after the injury was received. Not a word has been said and no report or case-sheet has been filed to indicate the condition of the patient after the surgery. No doubt, there was no cross examination of the Doctor (PW-8) on this aspect. Yet, it was the primary duty of the prosecution to adduce evidence in regard to the post-operative condition of the patient so that the scope for any intervening ailment unconnected with the injury is ruled out. This becomes all the more important because of the long time lag and the omission to hold post-mortem. Apparently, there was a callous indifference or lack of vigilance on the part of the Investigating Officer in failing to ensure the post-mortem examination in a case of this nature. PW-8 came forward with the explanation that the post-mortem is not absolutely necessary to ascertain the cause of death. But, then, the prosecution has to establish beyond reasonable doubt that the eventual cause of death was only the injury inflicted by the appellant and nothing else, but it has failed to do so.

We are therefore of the view that the appellant Raja Ram cannot be held guilty of an offence under Section 302 or Section 304. He must be held guilty under Section 326 for voluntarily causing a grievous hurt by means of a dangerous weapon. Accordingly, his conviction is modified to Section 326 and he is sentenced to undergo rigorous imprisonment for six years and to pay the fine of Rs. 1,000. In default of payment of fine, he shall undergo further imprisonment for four months. The accused will have the benefit of set off of the period of imprisonment undergone in terms of Section 428 Cr.P.C.

In the result, the Criminal Appeal No. 910 of 2000 filed by Raja Ram is allowed partly. The Criminal Appeal No. 909 of 2000 filed by Dashrath Singh is dismissed.

V.S.S. Criminal Appeal No. 909/2000 dismissed.
Criminal Appeal No. 910/2000 partly allowed.